

### § 1 Object of contract

LemnaTec GmbH (hereinafter referred to as LemnaTec) shall permanently provide the customer a standard software product or several different standard software products within the framework of the software licence agreement concluded with the customer (hereinafter: the software) and shall grant the customer the rights of use to the software as described in these General Business Terms. If software is sold by LemnaTec together with software of other producers (third party software) the respective General Business Terms (licence conditions) of the other producer shall apply to the granting of rights of use to the third party software in addition to these General Business Terms. LemnaTec explicitly refers to these licence conditions of the other producer in the respective product specifications.

### § 2 General information/scope

(1) The General Business Terms shall apply to all current, and as a Framework Agreement, also to all future business relationships between LemnaTec as software producer and the customer, which permanently acquires the software of LemnaTec, without LemnaTec having to refer the customer to the General Business Terms again in each individual case.

(2) The offers and declarations of acceptance, all services and deliveries shall be carried out exclusively based on the General Business Terms stated below in their respective most recent version. These General Business Terms are freely available in the Internet under [www.LemnaTec.com](http://www.LemnaTec.com) at all times and can be saved and printed out by the customer in any reproducible form.

(3) The Terms of Purchase of the customer are hereby explicitly objected to. Deviating, contradictory or supplementary General Business Terms of the customer shall, even if LemnaTec is aware of such terms, not become part of the contract unless LemnaTec explicitly agrees to their validity in writing upon conclusion of the contract. This requirement for a confirmation shall also apply if LemnaTec carries out the delivery to the customer without reservation in the knowledge of contradictory or deviating General Business Terms of the customer. The consent granted in writing upon conclusion of the contract shall respectively only apply to the individual case regulated therein.

(4) The General Business Terms of LemnaTec shall only apply if the customer is an entrepreneur (Section 14 BGB [German Civil

Code]), a legal entity under public law or special fund under public law.

### § 3 Scope of services and obligations of the customer

(1) The hardware and software environment, within which the software is to be used, can be derived as well as the types of licences offered with regard to the respective software of LemnaTec – e.g. Basic-Licence, User-Licence, Project-Licence, Basic-Upgrade-Licence, User-Upgrade-Licence or Project-Upgrade-Licence – from the product description of LemnaTec.

(2) LemnaTec will hand over a copy of the software to the customer as well as a version of the associated user documentation or enables the customer to download the software together with user documentation in a printable form.

(3) A guarantee is only granted if it has explicitly been described as such and was declared in writing by the management of LemnaTec. The condition of the software and the third party software that is possibly to be delivered can be derived from the respective product specifications of LemnaTec, applicable at the time when the contract is concluded other details such as technical data, descriptions, diagrams and drawings, measurement and weight details – also if these refer to standards – are subject to regular changes. These details shall only obligate LemnaTec if they were confirmed as binding by LemnaTec in advance.

(4) Subject to deviating regulations, which the parties have agreed upon in the contract, the following services are not an object of contract

- Installation and configuration services,

- Training,

- the support by LemnaTec, which is granted with the analysis and remedy of interferences, which were suffered due to improper handling or by other circumstances which are not due to the software. All of these services are invoiced separately by LemnaTec based on the respective valid list prices for such services.

(5) The customer is responsible for the selection of the software for applications of the customer and the tests for the suitability of the software for certain purposes as well as the data backup. The use of the software as well as the selection and use of the data can only be carried out by specialist trained personnel. LemnaTec-Software serves as assistance and does not take any decisions away from the

user. In case of doubt the specialist advice of LemnaTec is additionally to be obtained.

(6) The customer shall take reasonable precautionary measures for the event the software does not work properly in full or in part.

### § 4 Conclusion of contract

(1) Offers of LemnaTec are without obligation. The offers of LemnaTec represent a non-binding request to the customer to order goods from LemnaTec.

(2) If the order placed by the customer is to be qualified as an offer according to Section 145 BGB LemnaTec can accept this within 4 weeks insofar as not otherwise derived from the customer's order.

(3) The acceptance can either be declared in writing by the order confirmation (also by fax and e-mail) of LemnaTec or by delivery of the software to the customer. In this case the customer will also receive a written order confirmation. Insofar as no other written agreements exist the written order confirmation of LemnaTec shall contain the services owed as per contract.

(4) There are no oral collateral agreements upon conclusion of the contract. Individual agreements explicitly reached by the customer with LemnaTec in an individual case (including collateral agreements, supplements and changes to these General Business Terms) shall – if they were reached after conclusion of the contract – in any case have precedence over these General Business Terms. A written contract or – if such does not exist – LemnaTec's written confirmation to the customer is decisive for the content of such individual agreements.

(5) The right is reserved to make changes to the software within the scope of that which is deemed reasonable for the customer.

(6) LemnaTec can accept the binding offer of the customer subject to an agreement with the customer to the contrary up to 7 days after receipt by LemnaTec by means of sending an order confirmation. The contract with the customer will only be concluded with the receipt of the order confirmation by the customer. The contractual text will not be stored by LemnaTec. According to this the purchase price for the software will be invoiced to the customer. LemnaTec will enclose the activation code /licence key with this invoice. This is to be used by the customer during the installation process,

(7) After receipt of the licence key the customer is entitled to use the software as described in these General Business Terms. This licence to the software is however granted subject to a condition subsequent. The licence for the software will end if the customer has not paid the purchase price within 30 days after receipt of the invoice at the customer, insofar as the customer is not entitled to withhold the payment. Each further use of the full version of the software shall accordingly be deemed equivalent to an infringement of copyright, with the consequence that LemnaTec can request from the customer in any case that it refrains from the use, the deletion of the software and possibly made copies and can request damages.

### § 5 Licence and property rights

(1) With regard to the design of the licensing of the rights to the software during the acquisition process reference is initially made to Subclause 4.7 these General Business Terms.

(2) Insofar as the customer is not explicitly granted rights in these General Business Terms, LemnaTec or a producer of third party software shall be exclusively entitled to all rights to the software and all copies made by the customer – in particular the copyright, the right to or in connection with inventions, data, samples, models, blueprints and know-how as well as other technical property rights. This shall also apply to possible editing of the software by the customer. The ownership of the customer to the data carriers respectively delivered by it shall remain – after the end of the reservation of title Subclause 22 of these General Business Terms – unaffected.

### § 6 Reproduction rights

(1) The customer may reproduce the delivered software, insofar as the respective reproduction is necessary for using the software. The necessary reproductions shall include the installation of the software from the original data carrier or by downloading onto the mass storage device of the used hardware as well as the loading of software into the main memory.

(2) In addition the customer can carry out a reproduction for backup purposes. However, principally only one single backup may be made and stored. This backup copy is to be marked as such of the provided software.

(3) If, for reasons of data security, or the ensuring a fast reaction reactivation of the computer system after a total loss, of the

internal audit department or the auditing the regular securing of the entire data stocks including the used software is essential, the customer may make backup copies in the essentially necessary number. The relevant data carriers are to be marked accordingly. The backup copies may only be used for purely archiving purposes.

(4) The customer may only make further reproductions of the software, which also includes the issue of the programme code on a printer as well as the photocopying of the documentation if LemnaTec has granted the entitlement hereto in advance in writing. Additional documentation if applicable required for employees is to be procured through LemnaTec. The customer may reproduce the software acquired on the original data carrier or by downloading insofar as it has acquired the licences in this respect from LemnaTec. Subclause 7 of these General Business Terms shall moreover apply in this respect.

### § 7 Multiple uses and network use

(1) The customer may use the software on the hardware made available to it. If the customer however changes the hardware, it must delete the software from the previously used hardware.

(2) A simultaneous storage, reservation or use on more than just one hardware is principally not permitted. If the customer would like to use the software on several hardware configurations at the same time, for example by several employees, it must acquire a corresponding number of licences for the software. In the event of the granting of a right to reproduction by LemnaTec the customer will receive a written confirmation of the approved number of reproductions, which entitle the customer to their creation with the data carriers delivered with the licence and enables the simultaneous use on several workplaces in the amount of the number of allocated licences. The copyright notice and all other references to ownership are to be affixed on each copy or partial copy. Already available copyright notices/other references to ownership may not be removed.

(3) The use of the provided software within a network or any other multi-station computer system is not permitted, is the possibility for the simultaneous multiple use of the software is created hereby. If the customer would like to use the software within a network or other multi-station computer systems it must prevent a simultaneous multiple use by access protection mechanism or pay a special network fee (multiple licence) to LemnaTec,

the amount of which is determined according to the number of users connected to the computer system. The multiple licence fees to be paid in an individual case will be notified to the customer immediately by LemnaTec as soon as it has announced the planned network use to LemnaTec including the number of connected users in writing. The use in the network is only permitted after the full payment of the multiple licence fees.

### § 8 Decompilation and change to the software by the customer

(1) The customer is principally not entitled to decompile the software back into the source code or into other forms or transfer it into other programming languages, to edit modify the software and to reproduce it beyond the framework stated in Subclause 6 of the General Business Terms. The customer may not remove alphanumeric codes of the data carriers and will reproduce the alphanumeric code, insofar as it is entitled to the reproduction, owing to the reproduction in an unchanged form.

(2) If LemnaTec does not satisfy its warranty obligations within a reasonable final deadline the customer is entitled, as an exception, to remedy the defects in an individual case.

(3) A further exception is that the customer analyses the delivered software and only changes it to the extent that this is absolutely essential for establishing the interoperability with an independently created computer programme, whereby the following conditions must have been fulfilled:

- All analysis or editing acts will only be carried out by the customer, its employees or a third person explicitly authorised by the customer.

- The information that is necessary for the establishment of the interoperability is not accessible for the customer or the persons commissioned by it without decompilation and was not made available to the customer either by LemnaTec, although the customer requested LemnaTec to do this and set LemnaTec a reasonable deadline for this.

- The analysis and editing act of the customer are limited to the parts of the software, which are necessary for establishing the interoperability.

(4) The customer may not use the information gained with acts according to Subclause 8.3 of the General Business Terms for other purposes than that for establishing the interoperability of the independently created programme, above all not for the development,

production or marketing of a programme with essentially similar forms of expression and other acts, which infringe the copyright. It may in particular not forward such information to third parties, except in the framework, in which the forwarding of the information is necessary for establishing the interoperability of the independently created programme.

(5) Insofar as the customer cannot or does not want to carry out the aforementioned permitted exceptional acts itself or through own employees it will, before it commissions third parties, give LemnaTec the opportunity to effect the requested work for establishing the interoperability within a reasonable period of time with a reasonable remuneration for the customer.

#### § 9 Resale and further rental

(1) The customer may sell or give as a gift the software including the user manual and the other accompanying material permanently to third parties, presuming the acquiring third party declares that it agrees with the further validity of these contractual terms and conditions also towards it. In the event that it is forwarded the customer must hand over all copies of the software to the acquiring third party including possibly existing backup copies or destroys the copies which are not handed over. The customer's right to use shall lapse as a result of the forwarding. It is obliged to inform LemnaTec about the sale.

(2) The customer may temporarily hand over the software including the user manual and the other accompanying material to third parties, if this does not take place by way of the rental for acquisition purposes or for leasing and the third party declares that it agrees with the further validity of these contractual terms and conditions also towards it and the customer handing these over hands over all copies of the software including possibly existing backup copies to the third party or destroys the copies which are not handed over. For the period of the provision of the software to the third party the providing customer will not be entitled to any right for own use of the software. The customer has to inform LemnaTec about the provision for use. A rental for acquisition purposes is not permitted.

(3) Insofar as the customer has acquired several licences for the software to enable the simultaneous use in line with Subclauses 7.2 and 7.3 of these General Business Terms, these volume licences may only be resold, given as a gift or temporarily handed over as a unit.

(4) The customer may not hand the software over to third parties if there is justified suspicion that the third party will breach these contractual terms and conditions, in particular make illicit reproductions. This shall also apply with regard to employees of the customer.

(5) Insofar as the customer additionally acquires an upgrade for the software, it may no longer use the previous version or forward it to third parties after the installation of the upgrade.

#### § 10 Delivery

(1) Partial deliveries are permitted insofar as they are deemed reasonable for the customer.

(2) Insofar as not otherwise derived from the contract between LemnaTec and the customer, delivery is agreed "ex works" Incoterms 2010.

(3) The customer is responsible for the execution of all procedures with regard to export and import of the software and shall bear all costs incurred for this purpose. LemnaTec shall support the customer hereby. The software can be subject to (re-)export restrictions, e.g. those of the United States of America or of the European Union. The customer has to comply with these provisions in case of a resale or other export.

(4) Delivery dates and delivery deadlines shall always only apply as approximate and are not binding for LemnaTec unless a delivery date was explicitly agreed as binding in writing upon conclusion of the contract. The delivery deadline or the delivery date shall be deemed as adhered to if the software has left the plant of LemnaTec.

(5) If the customer requests amendments or addendums to the contract after conclusion of the contract, e.g. with regard to the customer-specific adjustments to the software, which render the adherence to the delivery date or the delivery deadline impossible then the delivery date shall be postponed or the delivery deadline will be extended in line with the required amendments and addendums.

(6) The customer is obliged to accept an object of delivery, which only features insignificant deviations from the agreed condition or an insignificant impairment to the use.

(7) The costs for the shipment are to be borne by the customer, whereby the choice of the despatch route and the type of shipment are at the free discretion of LemnaTec. Transport insurance will only be concluded at the explicit request and for the account of the customer.

#### § 11 Force majeure

The delivery date will be postponed and the delivery deadline will be extended by a reasonable extent in case of measures within the framework of industrial disputes, in particular strike and lock-out, as well as with the occurrence of other unforeseeable events, which are not the responsibility of LemnaTec, insofar as such impediments have an influence on the completion or the delivery of the software. The circumstances described above will not be deemed the responsibility of LemnaTec either if they occur during an already existing delay. LemnaTec will inform the customer of the beginning and end of such impediments within three workdays.

#### § 12 Passing of risk

(1) The risk of the accidental loss or the accidental deterioration to the software shall pass to the customer as soon as the software has left the house of LemnaTec or LemnaTec has reported that the software are ready for shipment.

(2) It is deemed equivalent to the hand-over of the software if the customer is in default with the acceptance.

(3) If the shipment of the object of contract is delayed as a result of circumstances, for which the customer is responsible, then the risk shall pass to the customer from the day of the report that the goods are ready for shipment.

(4) Insofar as LemnaTec has taken over the shipment costs, delivery or installation of hardware and/or software of the object of contract according to a contractual agreement, the aforementioned risk assumption clauses shall remain unaffected hereby.

#### § 13 Default and impossibility

(1) Should LemnaTec be in default with the delivery obligation due to slight negligence then the customer can request compensation in the amount of 0.5%, in total however a maximum of 5% of the price, for each started week of the default for the part of the deliveries, which cannot be put into operation owing to default. The customer is at liberty to prove higher damages due to delay. LemnaTec can prove less damages.

(2) Irrespective of a right of cancellation of the customer in the event of defects (see Subclause 16 – Warranty - and Subclause 17 – defects of title – of these General Business Terms) the customer can, in case of impossibility for provision of the service of

LemnaTec or default, only cancel the contract with the existence of a breach of obligation for which LemnaTec is responsible.

(3) In the event of default a cancellation or damages instead of the service shall moreover presume that the customer has previously set LemnaTec a reasonable deadline in writing of at least 2 weeks to provide the contractually owed service and hereby explicitly made it clear that it shall cancel the contract and/or assert damages if this deadline is not adhered to (setting of a deadline with the threat of refusal). After expiry of this deadline the customer undertakes to declare after a request by LemnaTec whether it shall continue to insist on the delivery or according to Section 281 Par. 4 BGB will assert damages or cancel the contract. If the customer does not submit such a declaration within a reasonable deadline set by LemnaTec, the customer shall no longer be entitled to refuse the delivery or to cancellation and cannot assert any damages instead of the service either, but can only accept the delivery.

(4) The setting of a deadline with the threat of refusal is only dispensable if LemnaTec seriously and finally refuses the contractually owed service or special circumstances exist, which justify the immediate cancellation after weighing up the mutual interests.

(5) The customer cannot cancel before occurrence of the maturity of the service, nor in case of an only insignificant breach of obligation by LemnaTec. The cancellation is finally excluded if the customer is solely or predominantly responsible for the circumstances, which would entitle it to the cancellation or a circumstance occurs during the default of acceptance of the customer for which LemnaTec is not responsible.

(6) Subclause 19 of these General Business Terms shall apply to the claim for damages or claim for reimbursement of expenses from default or impossibility.

#### § 14 Test phase

Insofar as the customer or a third party has not yet acquired software and only uses it a test phase, principally all warranty claims are excluded. During the test phase, in which the software is only made available to the customer for test purposes free of charge, LemnaTec will merely be liable for damages if these are caused by LemnaTec due to gross negligence or wilful intent. This shall also apply if LemnaTec has used executives or vicarious agents or assistants. The exclusion of liability shall not apply to injuries, which are culpably caused by LemnaTec to the life, the body or the health.

163 / 021

#### § 15 Report of defects

(1) The customer has to inspect the software including the documentation within 10 workdays after delivery. Defects of title or recognisable material defects, the absence of a condition of the software including the documentation, which were under certain circumstances guaranteed by LemnaTec, as well as excess, shortfall in or false delivery (defects) are – insofar as they are obvious – to be asserted by the customer immediately in writing, no later than within a further 5 workdays after the end of the deadline for inspection stated in sentence 1.

(2) Defects, which are not recognisable, in a customary inbound inspection according to Subclause 15.1 of these General Business Terms are also to be asserted by the customer immediately in writing, no later than 14 days after they have been recognised.

(3) The report of defects by the customer must contain a detailed written description of the respective defect adjusted to the individual case. Insofar as possible, work results generated from the use of the software in this respect are to be documented in order to be able to understand the defect at LemnaTec.

(4) If defects are not asserted within the deadlines according to Subclause 15.1 and 15.2 of these General Business Terms, all warranty claims against LemnaTec are excluded.

#### § 16 Warranty in case of material defects

(1) LemnaTec shall provide the customer support for measures for avoiding faults.

(2) A defect does not exist already if:

- the software is not used on a suitable hardware of the customer or third party, which meets the hardware pre-requisites stated by LemnaTec, or

- the fault is not due to the software of LemnaTec as such, but is solely caused by third party software not delivered by LemnaTec and LemnaTec does not owe the compatibility of the software with such third party software, or

- is due to reasons stemming from the other activity of the customer or other reasons stemming from the risk area of the customer.

(3) With the existence of a defect – except defects of title; these are regulated in Subclause 17 – Defects of title – of these General Business Terms – the warranty of LemnaTec in case of a timely report of defect according to Subclause 15 of these General Business Terms, at the choice of LemnaTec, is initially limited to the subsequent fulfilment by the remedy of the defect (subsequent improvement) or substitute delivery if the customer proves that the defect existed already with the passing of the risk.

(4) The customer has to give LemnaTec the necessary time and opportunity to carry out the subsequent improvement or substitute delivery after coordination with it. LemnaTec is to be granted up to three attempts at subsequent improvement with regard to the complexity of the software.

(5) Defects to the software can also be remedied by LemnaTec at its own choice by a suitable form of the delivery of a data carrier or by enabling the download with the latest product issue stock – update or upgrade – of the software. This shall also apply if the software represents a software package that summarises several different standard software products.

A new product issue status – update or upgrade – of the software – albeit as individual software or software package – is also to be taken over by the customer if this leads to reasonable adjustment work for it.

If a current update or upgrade of the software is not available at the time of the necessary subsequent improvement LemnaTec is entitled to make an interim solution available to the customer to bypass the defect until the delivery of a new product issue status, if this is necessary in order to guarantee that the customer can process tasks which cannot be postponed despite the occurred defect. The subsequent fulfilment can further be carried out by the fact that LemnaTec demonstrates reasonable possibilities in order to avoid the implications of the defect.

(6) Error diagnoses and troubleshooting shall be carried out within the framework of the warranty at the choice of LemnaTec at the customer or at LemnaTec. If a (repair) service agreement exists between the customer and LemnaTec error diagnosis and troubleshooting will also be carried out after coordination with the customer at the place of use of the device, on which the software is used in line with these General Business Terms. LemnaTec shall receive from the customer the documents and information available at the customer, which are necessary for remedying the defects. If

LemnaTec remedies the fault at the customer the customer shall make the required hardware and software as well as the necessary other operating conditions available free of charge with suitable operating personnel.

If the subsequent fulfilment by LemnaTec is carried out at another location than the place of delivery and if no repair/service contract exists the customer will reimburse LemnaTec the transport, travel and accommodation costs incurred owing to the assignment to the actual place of use of the software as well as other incurred costs within the framework of the subsequent fulfilment unless the transportation to another location corresponds with the use of the delivered software as intended.

(7) If the customer receives deficient documentation LemnaTec is merely obliged to deliver faultless documentation, and also only if the deficiency to the documentation opposed the proper use of the software.

(8) Incidentally, LemnaTec is not obliged to subsequent improvement or substitute delivery if this is only possible with a disproportionate amount of costs. Such costs are deemed disproportionate if they exceed 25% of the purchase price of the software.

(9) Parts, which are possibly replaced within the framework of the warranty, shall become the property of LemnaTec.

(10) For the event that the subsequent fulfilment fails i.e. if LemnaTec allows a reasonable deadline set to LemnaTec for the subsequent fulfilment to pass unsuccessfully, has carried out subsequent improvement twice or has carried out a one-time substitute delivery and the reported defect was not remedied hereby, if LemnaTec unjustifiably refuses, unduly delays a necessary subsequent improvement or substitute delivery or if a subsequent improvement is not deemed reasonable for the customer for other reasons and if the pre-requisites of Sections 281 Par. 2 or 323 Par. 2 BGB exist or if LemnaTec rightly refuses the subsequent fulfilment owing to disproportionality the customer can assert the legal remedies of cancellation and reduction, envisaged by law, instead of the subsequent improvement or subsequent delivery as well as damages or claims for reimbursement of expenses. The latter within the framework of Subclause 19 of these General Business Terms.

(11) In case of only slight breach of contract, in particular with slight defects, the customer will not be entitled to any right to cancellation.

(12) If there is merely a slight defect then the damages is to be calculated according to Section 281 BGB, damages instead of the performance according to the difference between the purchase price and value of the faulty software.

(13) In case of third party software the warranty of LemnaTec is limited to the assignment of the claims, which LemnaTec has against the manufacturer of the third party software. For the event that the customer cannot assert its warranty rights against the manufacturer of the third party software LemnaTec will assume warranty within the framework of these terms and conditions. Guarantees possible granted by manufacturers of third party software shall remain unaffected.

(14) If the report of defects was made unjustifiably LemnaTec is entitled to request reimbursement of the expenses incurred by LemnaTec from the customer if the customer culpably failed to recognise that a circumstance from the area of responsibilities of the customer caused the alleged defect.

#### **§ 17 Warranty in case of defects of title**

(1) LemnaTec guarantees that the use of the software, as per contract, by the customer in the country of the place of delivery is not opposed by any rights of third parties. In case of defects of title, i.e. if third parties assert justified claims against the customer owing to the infringement of property rights through software delivered by LemnaTec, which are used as per contract, LemnaTec will assume warranty in case of a complaint within the deadline according to Subclause 15 of these General Business Terms by the fact that LemnaTec, at the choice of LemnaTec, procures a legally impeccable possibility for using the software for the customer or modifies or exchanges the software so that the property right is not infringed. LemnaTec can hereby exchange the relevant software against equivalent software, which comply with the contractual provisions if this is deemed reasonable for the customer. If this is not possible for LemnaTec at reasonable conditions the customer will be entitled to the statutory rights of cancellation or reduction as well as claims for damages or reimbursement of expenses. The obligation of LemnaTec to pay damages or for the reimbursement of expenses is oriented to Subclause 19 Damages of these General Business Terms.

(2) The customer will inform LemnaTec immediately in writing if third parties assert property rights (e.g. copyrights or patent rights) to the software. The customer

authorises LemnaTec to solely conduct the dispute with the third party. LemnaTec will, at its choice, and by coordination with the customer defend or satisfy the claims. As long as LemnaTec exercises this authorisation the customer may not recognise the claims of third party itself without LemnaTec's consent; LemnaTec shall defend the claims of the third party at its own costs and indemnify the customer from all costs associated with the defence of these claims insofar as these are not due to a conduct of the customer in breach of the obligation (e.g. the use of the software in breach of the contract). Should the customer discontinue the use of the software due to reasons for minimising the damages or other important reasons, it undertakes to inform the third party that the discontinuation of the use is not associated with a recognition of an infringement of a property right.

(3) Claims of the customer are excluded if and insofar as it is responsible for the infringement of property right. They are further excluded if the infringement of property right is only caused by special stipulations of the customer, by an application that was not foreseeable by LemnaTec or, for example, by the fact that the software are changed by the customer or are used together with products not delivered by LemnaTec.

(4) Further claims owing to a defect of title are excluded.

#### **§ 18 Statute-of-limitations of claims owing to material defects and defects of title**

The legal statute-of-limitations for all claims for defects is 12 months from the hand-over of the software. The legal statute-of-limitations shall apply to damages from the injury to life, the body or the health, which are caused by a defect for which LemnaTec is responsible as well as if the defect is due to a wilful or grossly negligent breach of obligation of LemnaTec, in case of malicious failure to disclose a defect or defects of title within the meaning of Section 438 Par. 1 No. 1 a) BGB as well as with guarantees (Section 444 BGB). The same shall apply to claims according to the German Product Liability Act.

#### **§ 19 Damages**

(1) Insofar as not otherwise agreed in these provisions all claims of the customer for compensation for damages of all kinds, also claims for reimbursement of expenses and claims for compensation of indirect damages

such as missed profits, are excluded. This shall, in particular apply to claims owing to all breaches of obligations from the contractual obligation and due to illicit act. The exclusion of liability shall also apply if LemnaTec uses vicarious agents or assistants.

(2) Notwithstanding Subclause 19.1 of these General Business Terms LemnaTec will only be liable, no matter for what legal grounds, – and this shall also apply if LemnaTec assigned executives or vicarious agents and assistants –, if:

(a) LemnaTec is responsible for gross negligence or wilful intent,

(b) LemnaTec maliciously failed to disclose a defect or assumed a guarantee for the condition of the software,

(c) injuries were culpably caused by LemnaTec to the life, health or the body and if

(d) LemnaTec breached so-called cardinal obligations, i.e.

(aa) with essential breaches of obligations, which jeopardise the achievement of the purpose of the contract, or

(bb) with the breach of obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the customer relies or may rely as a rule (cardinal obligations).

(3) In the event of Subclause 19.2 (d) of these General Business Terms – breach of cardinal obligations – the liability of LemnaTec is, however, with only slight negligence is limited with regard to the amount to the compensation of the foreseeable, typically suffered damages.

(4) The exclusion of liability will not apply with regard to claims from the German Product Liability Act. A change in the burden of proof for the disadvantage of the customer is not associated with the aforementioned regulations.

### § 20 Price and terms of payment

(1) The prices shall apply in the absence of a special agreement plus the respective applicable statutory value added tax.

(2) The deduction of cash discount shall require a separate written agreement.

(3) Insofar as not otherwise derived from the order confirmation /the offer, the purchase is to be paid net (without deduction) within 30 days from the invoice date. If the customer is in

default of payment then LemnaTec is entitled to request interest on default in the amount of 8% above the base lending rate of the European Central Bank p. a.. Insofar as higher damages due to default can be proven, LemnaTec is entitled to assert these. The customer is, on its part, entitled to provide the proof of less damages.

### § 21 Right of retention/offsetting

(1) The retention of payments owing to any claim of the customer against LemnaTec is excluded, unless the right of retention is due to undisputed claims of the customer or those which have been declared final and binding.

(2) The offsetting of the customer against the claims of LemnaTec with own claims is not permitted unless it concerns undisputed claims or claims determined final and binding.

### § 22 Reservation of title

(1) All deliveries of software shall remain the property of LemnaTec until the full payment of all claims of LemnaTec existing at the time when the contract was concluded, no matter for what legal grounds. If LemnaTec has accepted cheques or bills of exchange on account of payment in the interest of the customer, then all deliveries shall remain the property of LemnaTec until the full indemnification from such liabilities. This shall also apply to the event that payments were made for especially designated claims. The entry of individual claims into a current account as well as the account balancing and their recognition will have no effect on the reservation of title.

(2) If the customer does not behave as per contract, if it is, in particular, in default with its payment obligations, LemnaTec is entitled to take the software back after a warning and the setting of a deadline. In this case the customer is obliged to hand the software over. Neither the assertion of the reservation of title, nor the attachment of the software by LemnaTec shall in such cases be deemed as cancellation of the contract. With the assertion of the reservation of title the customer's right to the further use of the software will lapse. All copies of the software made by the customer must be deleted. The customer declares hereby now already that it agrees to allow the persons commissioned by LemnaTec with the control of the deletion of the software and the copies made of this software for this purpose to access or drive on its site, on which the software is located, and to tolerate the interventions in its data processing system that

are necessary for the deletion should the deletion not have been carried out.

(3) The customer has to inform LemnaTec immediately about enforcement measures of third parties over the software subject to reservation of title and by handing over the documents that are necessary for the objection.

(4) All software subject to a reservation of title are to be insured by the customer at its costs, in particular against fire and theft. All claims of the customer against the respective insurer are assigned to LemnaTec already with regard to the software subject to a reservation of title. LemnaTec hereby accepts this assignment.

(5) LemnaTec is obliged and willing to return or release the securities granted to LemnaTec, insofar as they exceed the agreed coverage limit, to the customer if the value of the securities granted to LemnaTec in total exceed the claims of LemnaTec by more than 20%.

### § 23 Confidentiality

(1) The customer has to maintain secrecy concerning confidential information, i.e. all data and information of which it becomes aware, of which it gains knowledge within the framework of the contractual relationship with LemnaTec (hereinafter: "Confidential Information"). The customer undertakes to only use confidential information for the purposes of the contract concluded with LemnaTec and not to forward it to third parties without the prior explicit written consent of LemnaTec or to make it accessible to third parties in any other way.

(2) The customer undertakes to protect confidential information against the access of third parties. Both possibly delivered original data carriers as well as backup copies of the software are to be stored at a place protected against the unauthorised access of third parties. The same shall apply to the passwords and licence keys that are necessary for downloading the software. The customer has to apply the care and attention hereby, which it applies with the treatment of own confidential information, at least the reasonable care and attention. The customer undertakes to impose the same obligations to maintain secrecy concerning the confidential information upon its employees. The customer shall inform LemnaTec immediately and in writing if it gains knowledge of an impending or actual breach of the non-disclosure agreement or has corresponding suspicion.

(3) The obligation to maintain secrecy concerning the confidential information shall

## General Terms and Conditions for the Distribution of Software Products

cease to apply if the customer succeeds in proving that

- it was aware of this confidential information already before its notification by LemnaTec;

- it lawfully received this confidential information from third parties without imposing a non-disclosure obligation, without it being clear to it that the third parties breach non-disclosure obligations imposed against these third parties;

- the confidential information was general knowledge or became general knowledge without a breach of this non-disclosure obligation;

- this confidential information was developed or is developed by the customer irrespective of its notification by LemnaTec.

(4) LemnaTec reserves all rights to the confidential information (including copyrights, the right to apply for industrial property rights as well as patents, utility models, topography property rights, registered designs, trademarks) and the property right to the objects, which are made available and contain confidential information (papers, diskettes, etc.). The customer is, in any case, not granted any ownership, licence, imitation, usage or other rights to confidential information of LemnaTec, no matter whether property rights exist to this information or not.

(5) At the request of LemnaTec the customer has to return all received confidential information to LemnaTec immediately. An exception shall merely apply to copies, which have to be archived owing to the fulfilment of mandatory statutory regulations. All confidential information existing on computers is to be deleted upon request.

(6) The non-disclosure agreement shall apply beyond the end of the contract for three years.

### § 24 Final provisions

(1) The customer is hereby informed that LemnaTec collects, stores, processes its data and, insofar as necessary for this purpose, transmits its data to third parties in the scope as necessary in order to execute the contract and based on the data protection regulations.

(2) LemnaTec is entitled to change the contents of these General Business Terms with the consent of the customer insofar as the changes are deemed reasonable for the customer by taking the interests of LemnaTec into consideration. The consent to the change in the contract shall be deemed as granted if the customer does not object to the change in writing within four weeks after receipt of the change notification. LemnaTec undertakes to inform the customer with the change notification about the consequences of an omitted objection.

(3) LemnaTec can assign its rights from this contract to one or several third parties.

(4) The law of the Federal Republic of Germany shall apply under the exclusion of the Convention of the United Nations on Contracts for the International Sale of Goods of 11.4.1980 (UN Convention on Sales).

(5) The place of performance for the obligations from this contractual relationship is the registered seat of LemnaTec in Aachen.

(6) If the customer is a merchant, legal entity under public law or special fund under public law the exclusive place of jurisdiction for all disputes from this contract is the registered seat of LemnaTec. The same shall apply if the customer does not have any general place of jurisdiction in Germany or the place or residence or customary place of abode are not known at the time when the action is filed. The plaintiff is moreover entitled to file an action at the registered seat of the defendant.

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141 / 497

163 / 021