

## **GENERAL CONDITIONS OF SUPPLY AND SERVICES**

These conditions are an integral part of all our quotations for and contracts on supplies and services, including current and future business relations. Deviations from these conditions of supply and services, particularly business conditions of the customer, are deemed agreed only if they have been expressly confirmed in writing by our company.

### **1. Conclusion of Contract/Documents**

- 1.1 Our cost estimates are not binding.
- 1.2 Contracts made with our company shall be considered in effect only after we have given written acceptance of contracts/orders received or after we have supplied the goods or rendered the services ordered by the customer. The same applies accordingly to the customer's requests with regard to contract amendments or changes.
- 1.3 Any information given and any documents made available to the customer only contain approximate values customary in this branch of business. Stated measured values (e.g. performance values, power requirements, ranges, measuring accuracy etc.) are understood to apply only in the absence of effects of possible interferences or other disturbances from the environment and are binding only if they expressly become a subject matter of the contract.
- 1.4 We retain title, copyright and any other rights to all documents stated above. Without our written approval, the above documents may not be used in any way for purposes not connected with the respective contract; in particular, they may not be made available to third parties. Upon request, they must be returned to us without delay.

### **2. Software Services and/or Consultancy Services**

- 2.1 In the case of contracts according to which we are obliged to render software services and/or consultancy services, the services to be rendered by us are defined in a written statement of work (e.g. statement of work or specification). In the case of series and standard software, our delivery specification is considered the statement of work.
- 2.2 We retain title and all rights in the work results; the customer is entitled to use them only for his own purposes within the scope of the contractual provisions.
- 2.3 Handing over of program documentation for user software can be requested by the customer only if the software has been especially developed for him, if handing over has been expressly agreed and if the customer has paid all costs and fees within the scope of the order.
- 2.4 Any data and documents made available to our company will be held in safe custody by us with due diligence. Copies for purposes of reconstructibility must be kept by the customer.

### **3. Prices**

Our prices are understood to be in DKK ex relevant plant, excluding costs for packaging, other incidental costs (e.g. installation and commissioning) as well as turnover tax at the applicable statutory rate.

### **4. Payments**

- 4.1 All payments must be made to us, without any deduction, within two weeks after receipt of our respective invoice.
- 4.2 If payment by instalments has been agreed and if the customer either is in delay, in whole or in part, with two successive instalments and the outstanding payment amounts to at least 5% of the total contract price or if the customer offends against his obligations from the agreed retention of title (ref. § 9), the total residual amount still to be paid by the customer falls due immediately.
- 4.3 Bills of exchange are accepted by our company only after previous written agreement and only subject to their discountability as well as on account of performance. The customer must bear all discount charges and other incidental costs and must immediately reimburse us these costs. Values of bills and cheques are credited only after the equivalent amounts have been made available to us unconditionally.
- 4.4 If the customer delays in payment, in part or in whole, we are entitled – irrespective of any other rights of our company – to interest on the delayed payment as of this date, amounting to 7 percentage points above the relevant applicable base interest rate. We reserve the right to assert other damage due to delay.
- 4.5. If the customer fails to fulfil the terms of payment, we are entitled to cancel the agreement immediately with a written notification and to claim damages for our loss.
- 4.6. All costs in connection of payment are to the buyer's account
- 4.7. Unless agreed otherwise, the buyer must supply us with an irrevocable bank guarantee or an irrevocable confirmed Letter of Credit against a first class Bank, for the full purchase price, prior to our supply of the goods or the rendering of our services.
- 4.8 If the supply/services are prevented or delayed for reasons attributable to the customer, and if we do not withdraw from the contract according to § 7.2 payment will fall due on the date no later

than 30 days from the original date of delivery according to the agreement.

## **5. Assignment/Retention/Setoff**

- 5.1 Our customer is not entitled to assign any claims – except monetary claims – against us to third parties without our written approval.
- 5.2 The customer may not offset any counterclaims against our claims against him except and unless such counterclaims are undisputed, legally established or ripe for judgment (proved).
- 5.3 The customer only has a right of retention, insofar as this is based on the same contractual relationship.

## **6. Contractual Periods/Fixed Dates**

- 6.1 Any contractual periods agreed with us commence with the date of the written declaration of acceptance by our company.
- 6.2 In the case of changes or amendments to the supplies and services in the contracts attributable to the customer the contractual periods stated in the above § 6.1 are prolonged reasonably.
- 6.3 Contractual periods and fixed dates are binding only if expressly agreed in writing. Force Majeure and other abnormal circumstances such as, in particular, labour disputes, failing energy supply, fire, explosion, government acts and transport disruptions – irrespective of whether they occur within our own company or at our vendor's , or any other event outside our control, will relieve us from our obligation to supply/render services either for the duration of their effects or altogether if it becomes impossible to render the services at all. **If such a hindrance exists for more than 6 months, the customer is entitled to withdraw from the contract. Under these circumstances, any penalty possibly agreed upon shall be considered not forfeited.**
- 6.4. If we cannot supply or render our services on the agreed date, we will without delay inform the buyer thereof in writing. In the case of a delay for reasons attributable to us for more than 8 complete weeks, the buyer will be entitled to cancel the agreement. Our obligation to pay damages depends in § 11 below.

## **7. Taking over/Acceptance**

- 7.1 Upon due date the customer must accept or take over our supplies/services immediately after having been requested to do so by us.
- 7.2 If the customer does not accept/take over the supplies/services in conformity with the above § 7.1, our company is entitled, after unsuccessful reminder, to withdraw from the contract after expiration of a reasonable period fixed by us and to claim damages, i.e. at our option either in the form of a reimbursement of the loss incurred to us or – without proving the loss – at the amount of 10% of the agreed price. It will be left to the customer, in particular, to furnish proof of the fact that we have incurred no or only a minor loss.
- 7.3. The customer is obliged to obtain all permissions, necessary for the supply of our goods or the rendering of our services (e.g. export control etc.)
- 7.4. It is the customer's responsibility to ensure that the supply of our goods or the rendering of our services can take place without any hindrance.

## **8. Transfer of Risk**

- 8.1 We are entitled to make partial supplies and/or to render partial services as long as no recognisable interest of the customer is opposing to it.
- 8.2 **The risk for our supplies and services passes to our customer with the acceptance or taking over of such supplies/services; however, in the case of supplies, the risk passes at the time such supplies leave the relevant plant of our company at the latest (ex works / Incoterms 2000). This also applies to partial supplies/services even if we have undertaken further services (such as transport, installation, assembly and/or commissioning).**
- 8.3 If the taking over/acceptance of supplies, or their leaving the relevant plant of our company, is delayed for reasons attributable to our customer, the risk passes to the customer upon futile expiration of the period fixed by us as per above § 7.1 at the latest.
- 8.4 If goods are taken into safe custody for the customer by our company, the customer assumes the costs and risk for such custody. Unless agreed otherwise, the customer is obliged to pay to us for such storage the ordinary fee of a commercial storage company.

## **9. Retention of Title**

- 9.1 We reserve the right of property in the goods supplied by our company until receipt of all payments from the business relationship with the customer. In the case of a behaviour of the customer not conforming to the contract, particularly in the case of a delay in payment, we are entitled to recover the goods subject to retention of title subsequent to withdrawal from the contract.
- 9.2 The customer is obliged to treat goods subject to retention of title with care; in particular, he is obliged to adequately insure, at his own expense, such goods at their reinstatement value against damage by fire, water and theft. We will, on request, provide details of the insurance value of the equipment on order.
- 9.3 In the case of attachment or other interventions by third parties, the customer must immediately inform us in writing. *Unless third parties are incapable of reimbursing us judicial and extrajudicial costs, the customer shall be liable for any expenses defrayed by our company.*

## **10. Defects**

- 10.1 The following applies in the case of defects of quality:

- 10.1.1 The customer shall notify us of any defects of quality immediately after their discovery.
- 10.1.2 The customer has to examine our supplies and services immediately after receipt thereof and has the obligation to inform us without delay should our supplies or services be defective.
- 10.1.3. If the customer does not notify us within reasonable time after the establishment of the damage, the customer loses his claim for defects against us. We will in that case cure the defect only on a repair charge levied in accordance with our general terms and conditions.
- 10.1.4 First, we are to be given the opportunity to provide for rectification of the defect within a suitable period of time, i.e. at our option either by elimination of the defect, the delivery of goods free from defects or by manufacture of a new product.
- 10.1.5 If the rectification definitely fails, or is only possible with excessive costs/expenses, which cannot be expected neither from our company nor from the customer, the customer is entitled to withdraw from the contract or to reduce the remuneration, irrespective of any other damages subject to § 11.
- 10.1.6 Any claims of the customer against our company due to expenses required for the purpose of rectification, in particular costs for transportation, travelling, labour and material, are excluded as far as the expenses increase due to the fact that the subject matter of supply/services has been transferred to a place other than the branch office of the customer, unless such transfer corresponds to the intended use of the subject matter of supply/services.
- 10.1.6 Legal claims of the customer against our company under a right of recourse exist only in so far as the customer has not reached any agreements with his clients beyond the legal warranty claims and rights. Furthermore, the above § 10.1.4 shall apply accordingly as far as the scope of the customer's claim against our company under a right of recourse is concerned.
- 10.1.6 In the case of notices of defects, payments of the customer may be withheld to an extent proportionate to the defects in quality found.
- 10.2 The following applies in the case of defects in title:
- 10.2.1 Unless agreed otherwise, we are obliged to render the supplies/services free from third parties' industrial property rights and copyrights (hereinafter: „protective rights“) only in the country of the place of delivery. In the case of justified claims raised by third parties against the customer on the grounds of the infringement of protective rights due to supplies/services rendered by our company and used in accordance with the contract, the following shall apply:
- 10.2.2 We will, at our option and cost, either obtain a right of use for the relevant supplies/services, or we will change the supplies/services so that the protective right is no longer infringed, or we will replace the supplies/services. If this is impossible for us at reasonable terms/conditions, the customer shall be entitled to the statutory rights to claim rescission of the contract or to reduce the amount payable – irrespective of any other damages. Otherwise, § 10.1 shall apply accordingly.
- 10.2.3 Claims of the customer on the grounds of the infringement of protective rights are excluded if he is responsible for such infringement of protective rights or if the infringement of protective rights has been caused by special requirements of the customer, by an application unforeseeable for our company or by the fact that the supplies/services are changed by the customer or used together with products not supplied by our company.
- 10.3 The period of limitation for defects of quality and in title amounts to one year, commencing with the passage of risk if and in so far as there has been a malicious silence with regard to the defect or if one of the cases of liability stated in § 11.1 below applies.**
- 10.4 Our obligation to pay damages depends on § 11 stated below.
- 10.5 Used goods are supplied by our company – subject to § 11 stated below – excluding any liability for defects of quality and in title.
- 10.6 The above stipulations are not connected with a shifting of the burden of proof to the disadvantage of the customer.
- 10.7. Our responsibilities do not extend to cover third party items such as computers and software not produced by us. The customer can only advance a claim on these units against the manufacturers or base suppliers of the product in accordance with their terms and conditions. We will on request forward all necessary delivery documentation from the manufacturer or base suppliers of these third party items.
- 10.8. We do not cover defects, which arise from bad maintenance, unauthorized repairs, incorrect installation or use by the customer without our written consent.

## **11. Damages and Liability**

- 11.1 Claims for damages and compensation of expenses (hereinafter „damages“) of the customer against our company are excluded, irrespective of the cause in law, unless they are based on the provisions of the Product Liability Act, on an intentional or grossly negligent violation of contractual or legal obligations on our part, on injuries to health and physical injuries of the customer due to a violation of duties for which we are responsible, the take-over of a guarantee for the existence of a characteristic feature or the violation of essential contractual obligations by our company (including any losses caused by our supplies (e.g. EDP/data damage in any form and environmental damage.)
- 11.2 Damages for the violation of essential contractual obligations shall be limited to foreseeable damage which is typical for the contract, unless it is based on intent or gross negligence, on the assumption of a liability with regard to injuries to health or physical injuries or due to the taking-over of a guarantee for the existence of a characteristic feature.
- 11.3 A violation of duties by our representatives or persons employed in performing our obligation is considered to be a violation of duties by our company.
- 11.4 § 10.6 shall apply accordingly.

11.5. In no event shall we have any liability under this agreement or otherwise arising out of the resulting from the performance of services in an aggregate amount exceeding DKK 10.000.000.

## **12. Secrecy**

12.1 All documents and information received by the customer during and for the purpose of the performance of a contract are to be treated confidentially by the customer as long as they do not become generally known.

12.2 These obligations remain effective even after termination of a contract and are to be imposed also upon third parties if the disclosure of documents and information to them is permitted.

## **13. Legal expenses**

13.1 The customer is obliged to indemnify us for the whole amount of our legal expense, necessary for the enforcements of our rights under this agreement.

## **14. Place of Jurisdiction/Applicable Law**

14.1 The sole place of jurisdiction for both parties with regard to all disputes directly or indirectly arising from the contractual relationship – also from documentary deeds, drafts and cheques – shall be Copenhagen (Maritime and Commercial Court of Copenhagen). At our option, however, we remain entitled to assert claims against the customer at the courts which have jurisdiction over the customer's place of residence, registered office or assets.

14.2 Danish law shall apply, excluding the convention of the United Nations on contracts concerning the international sale of goods dated 11.04.1980 (UNCITRAL / CISG).

## **15. Severability**

Should individual provisions of a contract on supplies and services, of which these provisions are an integral part, be or become invalid, this will not affect the validity of the remaining provisions of the contract.

as per 23<sup>rd</sup> August 2005