

## 1. APPLICABILITY & DEFINITIONS

**1.1** These General Terms & Conditions (GTC) apply to Contracts by means of which ARVOS GmbH assigns Services or Works to the Contractor. Purchase Contracts („Kaufverträge“, § 433 German Civil Code – BGB) as well as Contracts dealing with the supply of movable goods to be manufactured or fabricated by the Contractor (Contracts for Work and Materials – „Werklieferverträge“, § 651 German Civil Code – BGB) are not covered by these GTC.

**1.2** “Buyer” shall mean ARVOS GmbH, the entity ordering the Services from the Contractor under the Contract and as applicable its legal successors and assigns.

“Charges” means all levies, taxes, fees, duties and cost that may be levied in relation to the Contract and Contractor’s performance of the Services.

“Contract” shall mean the contract between the Parties, consisting of the Purchase Order and all contract documents referenced in or belonging to the Purchase Order, including the documents set out in Clause 1.3 and including any amendments to any such documents.

“Contract Price” means the total amount which must be paid to the Contractor for the proper and timely provision of the contractual services according to the contract by the Buyer.

“Contractor” shall mean the person or entity which is to perform the Services to Buyer pursuant to the Contract and as applicable its legal successors and permitted assigns.

“Day(s)” shall mean calendar day(s), unless explicitly defined otherwise.

“Deliverables” shall mean all documentation and/or results and/or materials (as the case may be) to be delivered by Contractor to Buyer as a result or as part of the Services as set forth in the Contract.

“Owner” shall mean the customer of Buyer (or of an affiliate of Buyer, as the case may be) and/or user of the Services or any part thereof and shall include such person’s representatives, engineer, successors and assigns, the financing parties to the project and inspection and testing agencies.

“Purchase Order” or “PO” shall mean the purchase order issued by the Buyer to which these GT&C apply and all documents belonging to such purchase order, including, as applicable, appendices and particular terms and conditions for project related orders.

“Services” shall mean any and all services, works and supplies that are required of Contractor under the Contract or are to be reasonably inferred from the terms thereof, including as applicable the Deliverables and including any work to remedy defects.

“Working days” means working days at the place where the Contractor has to carry out its works or services.

**1.3** All Contract documents shall be taken as mutually explanatory of one another. In case of conflict, the documents shall be interpreted and prevail in the following order of precedence:

- a) the PO, including any particular terms and conditions incorporated into the PO but excluding any appendices to the PO unless expressly stated in the PO to prevail;
- b) if applicable, the agreement under which the PO is issued, excluding any appendices thereto;
- c) these GT&C;
- d) if applicable, the appendices to the agreement under which the PO is issued, in, as applicable, numbering or alphabetical order so that the appendix 1 or A has the highest priority and so on;
- e) as applicable, the appendices to and/or the documents referenced in the PO.

**1.4** In no event shall any other than these GT&C or other terms or conditions than those mentioned in clause 1.3 of whatever kind apply unless the Parties have expressly agreed thereto in writing.

## 2. FORMATION OF THE CONTRACT

Contractor shall acknowledge acceptance of the Purchase Order without undue delay, however within ten (10) Days after receipt of the Purchase Order the latest. If the Buyer does not receive an acknowledgement of acceptance within this period, it may cancel the Purchase Order. In case Contractor fails to respond within the ten-Day period, the Purchase Order issued by Buyer shall be deemed accepted. In any event Contractor’s commencement of performance in any manner under the Purchase Order or sending of any invoice in relation to the Purchase Order shall constitute unconditional acceptance of said Purchase Order.

## 3. PERFORMANCE OF THE SERVICES

**3.1** Prevailing Circumstances. The Contractor warrants that the Services will be performed in line with all contractual terms and conditions, timely, diligently, free of retention rights, third party claims and/or liens in a competent, safe and professional manner consistent with the state of science and technology and the best contractor practices and standards that are applicable in the Contractor’s field of business. Contractor warrants that it has acquainted itself with all facts, data, documents, requirements, impediments (if any),

considerations and circumstances relevant to the performance of its obligations under the Contract and that it has agreed to the terms of the Contract accordingly. In addition, and without prejudice to any other of its contractual obligations and assurances the contractor is liable for ensuring that the contractual services are performed by the most qualified, most competent and most experienced personnel in accordance with the highest level of care and quality, compared with professionals of the same profession. Notwithstanding the right of the Buyer to supervise the execution of the contractual services, the Contractor remains responsible for the personnel which performs the contractual Services.

**3.2** Subcontracting. The Services shall not be subcontracted in whole or part without Buyer’s prior written approval. Contractor shall remain liable at all times for any acts or omissions of any subcontractors.

**3.3** Full Responsibility for the Work. Contractor shall be responsible for its own interpretation of any documentation and information obtained. Any participation by Buyer in selecting any subcontractor, planning the Services, processing of any document, information, data, material and/or software, or any review or approval of the same by Buyer, shall not release Contractor from its obligation to perform the Services in full compliance with the terms of the Contract. The same applies if and insofar as the Buyer advises the Contractor on the interpretation of documents or information, to which he is entitled, but not obliged. No document or information obtained by Contractor from Buyer in connection with the Contract shall in any way release the Contractor from its obligation to review any such document and information and to promptly notify the Buyer of potential problems and/or obtain any additional information and data from the Buyer or from other sources, where appropriate, in order to ensure prompt and proper performance of the Services.

**3.4** Information about Personnel. If requested by Buyer, Contractor shall provide Buyer with a written list of the personnel employed or to be employed in the performance of the Services. In this respect Contractor shall be responsible for complying with any applicable law or regulation on personal data protection.

**3.5** Suitability of Personnel. Should any personnel provided by the Contractor be unsatisfactory to Buyer and/or Owner for any reason whatsoever, Buyer shall if reasonable have the right to require the removal of such person from the performance of the Service. Upon such Buyer’s request Contractor shall promptly replace such person with another person satisfying the Contract requirements. Any costs resulting from such replacement shall be at the Contractor’s sole expense.

**3.6** Costs of Personnel, Work Permits. Contractor shall be responsible for strictly complying with all applicable laws relating to the employment of labor. It is understood and agreed that Contractor shall assume full liability for the payment of all labor costs associated with performing the Services and for the payment and/or collection of all pension, social security, unemployment insurance and/or other employment taxes or contributions imposed by domestic or foreign authority and arising from the employment of any person by Contractor. Contractor shall be responsible for obtaining and maintaining at its expenses all visa and work-related permits required for the performance of the Services. Contractor represents and warrants that any personnel provided by the Contractor is in the possession of a valid work permit. In the event of any necessary overtime work or work on Sundays and public holidays, the Contractor must comply with the provisions of the Working Hours Act (ArbZG) regarding his employees and subcontractors, such as the independent application for special permits at the responsible trade supervisory office (Gewerbeaufsichtsamt). Upon request, the Contractor must present the relevant documentation to the Buyer.

**3.7** Environment, Health and Safety (EHS) and Site Internal Rules. Contractor’s personnel are under the responsibility of Contractor; this also applies in case its personnel is present or working on a site of the Buyer and/or the Owner. It is Contractor’s responsibility to ensure that all its personnel as well as any subcontractors and their personnel follow and abide by at all times the environmental, health and safety regulations and requirements („EHS-regulations“), the internal rules of the site, where the Services are carried out and the applicable site risk management plan. The Contractor must carry out risk assessments for the activities to be carried out and for the personnel involved, determine the necessary protective measures, document them, and keep them up to date. Interactions with third parties must also be assessed. Risk assessments must be made available in good time before the start of the activity and must constantly be updated and must be always kept available on site. The Contractor is obliged to monitor compliance with this obligation for his subcontractors. In the event of a breach of the risk assessment obligations, the Contractor must pay a contractual penalty of EUR 2,000.00 per breach. The Contractor is obliged to abide to all relevant instructions of the Buyer and / or the Owner. Contractor shall be responsible for ensuring that its personnel have access to health, first aid and rescue services. Buyer shall have the right to postpone or suspend the performance of the Services if it has reason to believe that Contractor is not performing the Services in compliance with health and safety regulations.

**3.8 Quality Management.** Contractor shall implement an appropriate and recognized quality management program (like e.g. DIN EN ISO 9001), including appropriate documentation, processes, inspections, tests and other quality management measures. Contractor shall provide Buyer with all corresponding reports and certificates.

#### **4. CHANGES**

Buyer shall have the right at any time to make changes regarding the Services or any part thereof, by means of a written instruction to Contractor. If Contractor considers that the changes requested by Buyer cause additional cost or affect the time required for performance of the Services or otherwise affect any provision(s) of the Contract, Contractor shall notify Buyer promptly in writing, but in no event later than ten (10) Days after the receipt of Buyer's notice, including appropriate substantiation regarding the claimed impact of the change. Subject to Contractor's notification in accordance with the foregoing, if and to the extent that the changes requested by Buyer in the circumstances reasonably justify an adjustment of the PO price, time schedule and/or other provision of the Contract, the Parties will enter into negotiations of an equitable adjustment. Failing a notification by Contractor in accordance with the foregoing within ten (10) days after receipt of the instruction to make changes, any claim or defense of Contractor with respect to the changes is deemed waived. Buyer may request Contractor to commence the changes prior to having finalized the adjustment to the PO. Contractor shall not make any changes to the Services without Buyer's prior written consent.

#### **5. INSPECTION AND REVIEW**

Contractor's performance under the Contract and any or all portions of the Services shall at all times be subject to inspection, audit and quality review by Buyer, and/or any third party authorized by Buyer (including the review of the Contractor's quality management program). Upon reasonable notice, the Buyer and/or any third party authorized by Buyer shall be afforded free access to the relevant facilities of the Contractor and/or Subcontractors. The Contractor shall make sure in his contract(s) with Subcontractor(s) that the Buyer is entitled to such access to the relevant facilities in order to conduct such inspections and reviews. Upon completion of the Services or upon receipt of the Deliverables, the Buyer may inspect the same or any part thereof at that time or at any time thereafter. Buyer's review and/or acceptance of any or all portions of the Services shall not constitute or imply any waiver of any of Buyer's rights, claims or remedies (unless expressly stated otherwise in a written document signed by authorized representatives of Buyer), including any rights, claims or remedies in relation to defects in the Services, Seller's warranties and Seller's failure to perform in accordance with the Contract. The provisions regarding the acceptance of Services remain unaffected.

#### **6. DOCUMENTATION**

**6.1** Contractor shall as applicable furnish as part of the Services any manuals, drawings, calculations, technical data, diagrams, progress reports, quality confirmation certificates, licenses, and any such other documents as required or as agreed, in particular in the case of licenses under the Contract and/or any applicable laws. If so required by Buyer, Contractor shall submit any such documents to Buyer for review and approval. The Services shall not be deemed to be completed until delivery of all required documentation in accordance with the Contract has occurred.

**6.2** Contractor shall keep all data and documents pertaining to the Services at least for ten (10) years after delivery of the last Deliverable under the Contract or any such longer time required by applicable law. Contractor warrants that all records to trace and evidence compliance with the Contract requirements, including EHS requirements, shall within the aforesaid retention period be available to Buyer and/or Owner as the case may be.

#### **7. BUYER MATERIAL AND EQUIPMENT**

**7.1** Any materials, components, tools, patterns, equipment, consumables and other items provided by Buyer to Contractor for the performance of the Services shall be under Contractor's custody, clearly marked and recorded by Contractor as belonging to Buyer and during such custody shall be at Contractor's risk. Legal ownership in and/or the right to dispose of any such Buyer items shall under no circumstances pass to Contractor. Upon Buyer's request, including in case of termination for whatever reason, Contractor shall allow Buyer, and/or any third party mandated by Buyer, to enter any premises of Contractor to repossess any such Buyer items or any part thereof; this also applies – insofar as applicable – for the segregation of Buyer items (or parts of such items) from items in other proprietorship.

**7.2** Upon receipt of any such Buyer item Contractor shall inspect it accordingly and give immediate notice to Buyer of any obvious defect, damage or lack in quantity or quality; for any other defect, damage or lack in quantity or quality Contractor shall give immediate notice to Buyer upon discovery of any such defect, damage or lack in quantity or quality. Should Contractor fail to immediately notify Buyer as per the foregoing, any such item shall be deemed

to be received by Contractor free from defects and damages and in the appropriate quantity.

#### **8. DELAYS**

**8.1** The Services shall be performed in a timely manner and Contractor shall attain each of the milestones as described in the Contract, including delivery of the Deliverables, by the respective date specified in the Contract. Contractor shall give immediate written notice to Buyer if any performance of the Services (wholly or partly) or delivery of the Deliverables is delayed or likely to be delayed beyond its specified date. The notice shall include Contractor's proposal for acceleration of the progress to achieve the specified date(s). Measures for expediting progress shall include the use of additional manpower and material (as applicable), multiple shift and weekend work (to the extent permitted by applicable law). The costs of the acceleration measures shall be borne by Contractor, unless it is established that Buyer is exclusively responsible for the delay.

**8.2** If the completion of all or any portion of the Services (including delivery of the Deliverables) is delayed beyond the respective date specified in the Contract, the Contractor shall pay penalties (irrespective of whether or not Buyer reserves its right thereto when taking delayed delivery or acknowledging delayed completion), without prejudice to Buyer's other rights, claims and remedies, including Buyer's right to compensation for any additional damage incurred and Buyer's right to terminate the Contract, provided, however, that such penalties paid by Contractor shall be credited against its further liabilities for damages. Unless stated otherwise, the penalties due by Contractor shall be for each Working Day of delay zero-point-three per cent (0,3%) up to a cap of five per cent (5%) of, as applicable, (i) the PO price in the case of a Lump Sum Price, (ii) in the case of prices based on agreed rates and reimbursable expenses, the Maximum Price stated in the Contract or failing that the PO price. Penalties will not be due by Contractor to the extent that Contractor's delay (i) is due to an act or omission of Buyer or due to reasons Contractor is not responsible for (ii) is caused by Force Majeure notified in accordance with Clause 11 or (iii) is caused by an instruction of the Buyer to suspend (Clause 16).

#### **9. PRICE AND PAYMENTS**

##### **9.1 General Provisions**

**9.1.1** Buyer shall pay Contractor for the Services performed in accordance with the Contract as per the provisions on price and payments agreed in the Contract. The provisions of Clause 9.2 (Lump Sum Price) and/or Clause 9.3 (Price Based on Agreed Rates and Reimbursable Expenses), as the case may be, shall apply, unless and to the extent expressly specified otherwise in the Contract.

**9.1.2** Except to the extent expressly stated otherwise in the Contract, the prices stated in the Contract shall be firm and fixed and are inclusive of all Charges. Contractor shall promptly pay all such Charges and if applicable immediately release Buyer from any liability and indemnify if Buyer is called upon to pay any such Charges. The prices stated in the Contract shall constitute Contractor's sole entitlement to compensation for its performance of the Contract.

**9.1.3** All Contractor's invoices shall comply with the invoicing instructions specified by Buyer in the Contract or as Buyer may reasonably provide. Buyer shall be entitled to return for correction incorrect invoices, or invoices which are not accompanied by the proper supporting documents. The payment period for such corrected invoices shall commence on the day of receipt of the corrected invoice.

**9.1.4** Payment by Buyer in accordance with this Clause 9 shall be in full discharge of Buyer's liabilities and obligations under the Contract. Buyer shall be under no obligation to make any payment to Contractor if Contractor is in breach of contract and for so long as such breach continues.

**9.1.5** If Buyer is in default in respect of any sum due and payable, Contractor, by way of a sole and exclusive remedy – and excluding its right to demand maturity interest according to § 353 German Commercial Code (HGB) - , shall be entitled to interest at the rate provided for in § 288 German Civil Code (BGB), however limited to a maximum interest rate of 5%.

**9.1.6** Contractor shall not be entitled to set off any claim that it might have against Buyer against sums owing to Buyer unless such Contractor claim is undisputed by Buyer or has been decided in Contractor's favor finally and conclusively pursuant to Clause 21 (Dispute Resolution).

##### **9.2 Lump Sum Price**

**9.2.1** In the event that the price agreed in the Contract is a lump sum price ("Lump Sum Price"), Contractor shall complete the Services in full accordance with the Contract for no more than the Lump Sum Price, and accordingly shall not be entitled to any sum in excess of the Lump Sum Price except as provided in Clause 4 (Changes) and Clause 16 (Suspension).

**9.2.2** Contractor shall be entitled to invoice for payment for the Services only when completion of the Services or achievement of a payment milestone in

accordance with the Contract has occurred, and payments due by Buyer shall then be made within forty-five (45) Days after receipt of Contractor's invoice accompanied by the relevant documentation, into the bank account nominated by Contractor.

### 9.3 Prices Based on Agreed Rates and Reimbursable Expenses

**9.3.1** In the event that the Contract provides for Contractor's compensation based on agreed rates and reimbursable expenses Buyer shall pay Contractor for the Services performed in accordance with the Contract at the rates and reimbursable expenses stated therein. When the Contract provides for reimbursement of expenses, Buyer shall reimburse Contractor for its justified and reasonable expenses at the rates specified in the Contract (or failing those, at cost), provided always that Contractor has incurred such expenses in accordance with the Contract and/or Buyer's reasonable instructions and provides appropriate substantiation of such expenses.

**9.3.2** (a) Contractor shall furnish to Buyer, in a timely fashion as specified in the Contract or if no specific timing is stated in the Contract at least fortnightly, a cost summary ("Contractor Cost Summary") including, as applicable:

i. timesheets of personnel engaged in performing any part of the Services in the preceding reporting period, including the following minimum information:

- the name and category of personnel engaged in accordance with the respective rate categories specified in the Contract;
- the tasks they were working on; and
- the number of working hours performed.

ii. statement of expenses, specifying the expenses to be reimbursed by Buyer under the Contract incurred by Contractor in relation to the performance of the Services in the preceding reporting period, along with any supporting documents as reasonably required to evidence said expenses.

(b) Buyer shall review the Contractor Cost Summary. Failing any feedback from Buyer within said two (2) weeks after receipt of the full information as per item (a) above, the Contractor Cost Summary shall be considered approved.

(c) If Buyer disputes any part or all of the Contractor Cost Summary, it shall do so within the two (2) weeks as per item b) above along with written reasons. Contractor shall review Buyer's comments and promptly revise the documents concerned as reasonably justified. To the extent that Contractor rejects specific comments made by Buyer; it shall provide Buyer with reasonable justification in writing. If no agreement on the Contractor Cost Summary is reached within four (4) weeks of Buyer's receipt of the full information as per item (a) above, the issue shall be elevated to Buyer and Contractor department heads for resolution.

**9.3.3** Unless specified otherwise in the Contract, Contractor shall be entitled to invoice monthly for the Services performed in the preceding calendar month at the rates stated in the Contract. All Contractor's invoices shall comply with the invoicing instructions specified by the Buyer in the Contract and shall be accompanied by copies of the relevant Contractor Cost Summary documents approved by Buyer in accordance with the foregoing Clause 9.3.2.

**9.3.4** Contractor shall keep account of its ongoing charges and expenses and notify Buyer monthly of the cumulative amount invoiced. In the event that the Contract states a maximum total price or limit of costs ("Maximum Price"), Contractor shall complete the Services in full in accordance with the Contract for no more than the Maximum Price, and accordingly shall not be entitled to any sum in excess of the Maximum Price except as provided in Clause 4 (Changes) and Clause 16 (Suspension).

**9.3.5** Payments due by the Buyer shall be made within forty-five (45) Days after receipt of Contractor's invoice accompanied by the relevant documentation, into the bank account nominated by Contractor.

### 9.4 Compensation for work performances due to acceptance

**9.4.1** To the extent work performances („Werkleistungen“) are commissioned, the compensation claim of the contractor is due and payable on acceptance by Buyer. The acceptance procedure is exclusively formally and must be recorded in writing. Partial acceptance will take place only at the express written request of the Buyer. The rights of the Contractor under § 632a German Civil Code (BGB) remain unaffected.

**9.4.2** The unconditional acceptance of the final payment excludes additional claims of the contractor. A caveat to the final payment can be declared by the Contractor within two weeks after receipt of the final payment in writing. Unless the Contractor reasonably explains possible additional claims within one month after receipt of the final payment - in particular by submitting a verifiable invoice -, the caveat is invalid.

**9.4.3** The other provisions of this clause 9 - in particular paragraphs 9.1 and 9.2 - shall apply mutatis mutandis, unless they are solely applicable to service contracts („Dienstverträge“). Otherwise, the statutory provisions apply.

## 10. WARRANTY

**10.1** The Buyer shall be fully entitled to statutory defect-related claims and

to statutory claims for damages unless otherwise regulated in the following.

**10.2** If the Services of the contractor are defective prior to or upon passing of risk or within the deadlines as of Clause 10.6, the Buyer can demand the elimination of the defect or delivery of conforming goods or the production of a new work as part of the statutory provisions at his discretion. All costs of the remedial measures - including costs of incidental services such as dismantling, transportation, scaffolding and cleaning work, etc. - are borne by the contractor.

**10.3** If the Contractor fails to remedy the defects despite being given a reasonable time limit, the Buyer may withdraw from the contract or reduce the remuneration by a reasonable amount, or remedy the defect or have it remedied at the Contractor's cost and demand compensation for damages in lieu of performance. In case of withdrawal, the Contractor is obliged to bear the costs of dismantling / removal, the return freight and disposal. The client is, however, entitled, to use the services of the contractor free of charge until a suitable replacement has been arranged for. § 281 Abs. 2 and § 323 Abs. 2 of the German Civil Code (BGB) remain unaffected.

**10.4** The rights as per Clause 10.3 above can be exercised without further deadline if the Buyer has a severe and particular interest in immediate rectification or replacement - e.g. to avoid own delays - and it is not reasonable for the Buyer to request the Contractor to repair or replace the Product within a reasonable time period.

**10.5** Unless statutory provisions provide longer periods, the warranty period for material deficiencies is three years and the warranty period for deficiencies in title is five years. If the Contractor replaces or rectifies in the context of its remedial duties, the above mentioned defects liability periods start afresh.

**10.6** Insofar as the contractual services are purely characterized as service contracts („Dienstverträge“), the statutory claims because of malperformance remain unaffected. If applicable, the foregoing provisions of this Clause 10 shall apply accordingly.

**10.7** The Contractor warrants that the performance of the Services, and any material, or information provided by or on behalf of the Contractor, including the use thereof, does not infringe any patent, copyright, registered design, trademark, trade name, trade secret or other intellectual property right of a third party, and the Contractor will, at its expense, defend, indemnify and hold harmless the Buyer and the Buyer's customers from and against all claims and liability based on alleged or actual infringement thereof. The Buyer, at its option, may require the Contractor (a) to procure at the Contractor's expense for the Buyer and the Buyer's customers the right to use the Product, (b) to take such action to alter, modify or replace the Product or part thereof, such that it no longer infringes, provided however that this does not cause any adverse effect on the Product or its intended use, or (c) to refund the PO Price or the corresponding part thereof, upon the return by the Buyer of the infringing Product, plus interest in line with § 288 II BGB (German Civil Code), however with a maximum interest rate of 5%.

**10.8** The remedies stated herein are without prejudice to Buyer's other rights and remedies under the Contract or at law. Insofar as the PO has been issued based on a frame agreement, the right of rescission („Rücktritt“) is limited to the respective PO. The right to terminate the frame agreement according to the provisions provided therein remains unaffected.

## 11. FORCE MAJEURE

If performance of the Contract, in whole or in part, is prevented or delayed due to a Force Majeure event (i.e. any unforeseeable and unavoidable event beyond the Parties' reasonable control and which cannot be overcome despite reasonable efforts of the affected Party), then the time for performance shall be modified accordingly, subject to the delayed Party promptly (but at the latest within three (3) Days) after becoming aware of the occurrence of Force Majeure notifying the other Party of the event and taking all reasonable steps to reduce the resulting delay. A Party affected by a Force Majeure event shall within fifteen (15) calendar days after becoming aware of the occurrence of Force Majeure, submit to the other Party a written statement - accompanied by corresponding proofs - with sufficient detail regarding its causes and consequences on the performance of the Contract including all reasonable steps to mitigate the effect of the Force Majeure. In particular the following events shall be considered being Force Majeure events: war, sabotage, strikes and lockouts, natural disasters, pandemics, geological changes and impacts.

## 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

**12.1** With regard to Information provided by the Buyer in connection with the Contract, the Contractor undertakes to treat all such information fully confidential, not to disclose such information to a third party without the written consent of the Buyer and to use such information exclusively to perform and fulfil the contract. Confidential information within the meaning of this Clause are all information and all know-how including drawings, specifications and other data provided by the Buyer in connection with the contract as well as all documents or data including this information and Know-How, or are derived

from or based on this data and Know-How (such as copies, notes, summaries, reports, analyses, compilations, studies). Beyond that, documentations, specifications, data and other information, which are designated as such, constitute a trade secret and/or are, from the perspective of a reasonable observer, usually to be treated confidential are confidential, too.

**12.2** The Buyer will also treat such information of the Contractor confidential which the Contractor has marked as confidential in writing. The right of the Buyer to disclose confidential information to its Affiliates remains unaffected, provided however, that the Buyer's Affiliates are obliged to keep such information confidential in an analogous manner.

**12.3** If one of the Parties is obliged to disclosure of Confidential Information with a view to complying with the requirements of any applicable law or intends to disclose Confidential Information due to an order of the court or arbitral tribunal or to resolve insurance claims or in order to execute or defend against judicial claims, such disclosure is permitted, provided, however, that the disclosing Party immediately informs the other Party in writing, so that the other Party can exercise its rights and that the disclosing Party undertakes all reasonable measures to make sure that the Confidential Information are treated confidential.

**12.4** If so requested in writing by the other Party, upon expiry or termination of the Contract, however upon expiry of the warranty period for deficiencies for the latest, each Party shall immediately return to the other Party or destroy all Confidential Information, including all copies made thereof in writing or in electronic form.

**12.5** Insofar as rights and duties over and above the foregoing Clauses 12.1 to 12.4 are agreed between the Parties by means of a separate Non-Disclosure-Agreement („NDA“), the terms and conditions of such NDA shall prevail.

**12.6** Buyer and/or Owner shall have the irrevocable, royalty free and unrestricted world-wide right to use all Contractor's systems, programs, documentation, know-how or other intellectual property rights relating to or embodied into the proper use of the Services delivered to Buyer. Upon request Buyer and/or Owner shall have the right to sublicense the named intellectual property rights. Any such sublicense shall be agreed in a separate agreement between the Parties based on normal market conditions.

**12.7** Contractor represents and warrants that neither Contractor nor its Affiliates or subcontractors – neither on their own nor jointly with others, neither directly nor through any other person – infringes intellectual property rights of the Buyer or the Buyer's Affiliates and in particular (a) does not accept or use proprietary information of the Buyer or its Affiliates, for whatever reason, insofar as there is reason to believe that such information is obtained from said party illegally, (b) does not disclose proprietary information of the Buyer or its Affiliates to any third party without the prior written consent of the Buyer and does not entice anyone else to such a disclosure, (c) does not use proprietary information of the Buyer or its Affiliates to any other purpose than to the purpose explicitly approved by the Buyer and does not entice anyone else to such a use.

### **13. COMPLIANCE**

**13.1** Contractor represents and warrants that (to the extent applicable):

- a) the Services are in strict compliance with all applicable laws and regulations, including any environment, health and safety (EHS) requirements;
- b) any Deliverables and/or other materials to be supplied to Buyer shall not include any arsenic, asbestos, lead or any other hazardous and/or contaminated substances, elements or waste of any kind that are restricted by law or regulation at the place of origin and/or any temporary and/or final destination of such Deliverables and/or other materials or any part thereof prohibited pursuant to the Contract, or by the state of science and technology;
- c) Contractor shall not in the course of any activity arising in connection with the Contract cause any of Buyer's or Owner's employees or representatives or any third party authorized by Buyer to act on its behalf to be exposed to any such hazardous and/or contaminated substances, elements or waste as specified in item a) above;
- d) as applicable, the Services shall be performed, and the Deliverables shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation. In case of conflict between different EHS requirements, the most stringent standard shall apply.

**13.2** Contractor hereby acknowledges on the date hereof having read and having full knowledge of the EHS Policy, the Sourcing Policy and the Code of Conduct set out by Buyer, and the last updated versions of these documents which are available on the ARVOS web site at the following address [www.arvos-group.com](http://www.arvos-group.com) under the Icons „EHS“ and „Compliance“, and undertakes to comply with those provisions, and to ensure, when applicable, that each entity of the group it belongs to and any subcontractors and sub-suppliers comply with such

provisions.

**13.3** Contractor warrants that it has not directly or indirectly paid any commission, fees or granted any rebates to any third party, employees of Buyer or Buyer's customers, or made any gifts, entertainment or any other non-monetary favors or other arrangements.

**13.4** Any breach of this Clause shall be considered to be a material breach. Contractor shall indemnify and hold harmless Buyer, its affiliates, officers, employees or agents, from and against any and all claims, liabilities, loss, damage, costs and expenses (including legal fees and expenses) which may arise as a result of or in connection with Contractor's breach of its obligations and/or warranties under this Clause, except in the event that the breach of obligations and/or warranties is not due to Contractor or Contractor's representatives.

### **14. INDEMNITIES/THIRD PARTY CLAIMS**

Contractor shall indemnify, hold harmless and defend Buyer, its affiliates, agents, employees, officers and directors, from and against any and all claims, liabilities, loss, damage, costs and expenses (including legal fees and expenses) arising out of or in connection with Contractor's act or omission (including negligence) or breach of obligations in relation to the performance or non-performance of the Contract, and resulting in: a) bodily injury or death (including Contractor, Buyer and Owner personnel) and/or b) destruction of or damage to tangible property, except in the event that the bodily injury or death or destruction of or damage to tangible property is not due to Contractor or Contractor's representatives.

### **15. INSURANCE**

Contractor shall not later than at the date of formation of the Contract until thirty (30) Days after the expiry of the latest warranty period, as such may be extended from time to time pursuant to Clause 10 (Warranty), at its cost procure and maintain, and cause its subcontractors and sub-suppliers to procure and maintain, with respect to the subject matter of the Contract appropriate insurance coverage, with a reputable insurer acceptable to Buyer, for the duration of the Contract. Contractor shall oblige its subcontractors to procure a corresponding insurance coverage. Such insurance coverage shall include as a minimum Workmen's Compensation and Employers Liability Insurance per statutory requirements, Comprehensive General Liability Insurance and Professional Indemnity Insurance. Comprehensive General Liability and Professional Indemnity Insurance shall be for at least EUR 1,000,000 (one million euros) per occurrence. ARVOS shall be entitled to direct claims against the insurance of the Seller and the Seller releases ARVOS from any recourse claims of the insurance (waiver of subrogation).

### **16. SUSPENSION**

**16.1** The Buyer shall be entitled at any time to instruct the Contractor to suspend the performance of the Purchase Order in whole or in part by serving notice in writing on the Contractor to such effect. Whenever the Buyer requests such suspension, the Contractor shall immediately notify the Buyer of the associated costs as per Clause 16.2 below, in order for the Buyer to determine whether it indeed wishes to suspend or not. Upon receipt of the Buyer's suspension notice, the Contractor shall cease all performance hereunder unless and to the extent otherwise provided in the notice of suspension and shall take all reasonable steps to minimize costs associated with suspension.

**16.2** In case of a suspension, except where the Buyer has suspended for Contractor's breach and/or Force Majeure, the Buyer shall make payment to the Contractor of all reasonable additional direct costs incurred by the Contractor due to the suspension, subject to the Contractor demonstrating those costs. With the exclusion of loss of profit additional direct costs shall mean costs which are appropriate, could not be avoided or minimized and incurred as a direct result of suspension.

**16.3** Should the suspension be for a period exceeding 180 Days, the Parties shall seriously strive to amicably agree on the impact of the suspension and the continuation or termination of the Contract within 30 Days after the expiration of the 180 Days Term. If such agreement cannot be reached, the Contract is deemed to be terminated for reasons not attributable to the Contractor. In this case, with the exclusion of further claims, the claims of the Contractor are limited to the compensation of its direct costs according to Clause 16.2.

**16.4** Except as expressly provided in Clause 11 (Force Majeure) and this Clause 16, any suspension of the Work by Contractor shall be deemed a willful breach of contract, unless the suspension is not attributable to the Contractor.

### **17. TERMINATION**

#### **17.1 Termination of work contracts („Werkverträge“)**

**17.1.1** Termination pursuant to §§ 648 and 643 German Civil Code (BGB) Until the completion of the work the Buyer shall be entitled to terminate the contract at any time. Notice of termination shall be given in writing, stating the relevant reason for termination. Claims of the Contractor shall be governed by § 648

sentences 2 and 3 of the German Civil Code (BGB) with the proviso that 5% of the remuneration for such Services which had not yet been performed at the date of termination is payable to the Contractor. Other payments or compensations to the Contractor as a result of the termination are excluded. The right of the Contractor to terminate pursuant to § 643 BGB remains unaffected.

#### 17.1.2. Termination for cause

The right of termination for cause according to § 648a BGB remains unaffected. The Buyer is entitled to terminate for cause according to § 648a BGB if the Contractor fails to meet its contractual obligations negligently, in particular – without limitation – if the Contractor:

- violates its compliance obligations resulting from Clause 13;
- violates its confidentiality obligations resulting from Clauses 12.1 to 12.5;
- is in breach of its license- and intellectual property obligations resulting from Clauses 12.6, 12.7 or 10.7;
- is in breach of Clause 19.2 (assignments);
- fails to provide punctual execution of the due performance and deliveries;

provided, however, that to the extent a breach is curable, the Contractor has failed to meet such contractual duties despite a prior written request and the setting of a reasonable time limit. If the Contract is terminated for cause according to § 648a BGB, the Buyer shall pay the Contractor for the services the Contractor has rendered in conformity with the Contract up until receipt of notice of termination on the basis of the agreed PO Price relating to the partial performances, insofar as the Buyer is able to use the services. If the Buyer rejects Services wholly or partly because they are not reasonably suitable for him, it can reclaim payments already effected for such Services plus interest equal to the then applicable interest rate in line with § 288 II BGB (German Civil Code), however with a maximum interest rate of 5%. Further rights and damage claims on the part of the Buyer shall remain unaffected.

### **17.2 Termination of service contracts (Dienstverträge)**

#### 17.2.1 Termination for convenience

Subject to the provisions of this clause 17.2.1 the Buyer is entitled at any time to terminate the contract in whole or in part in writing. The Buyer can either complete the Services or parts thereof on its own or have it completed by a third party. The Contractor shall be entitled to a) a pro rata compensation for each part of the Services accomplished in line with the contractual requirements until the date of termination in accordance with Section 9 (price and payment) – and after such date if requested in writing by Buyer to perform certain Services after termination – and (b) a reasonable amount to cover its direct and unavoidable costs that have been incurred prior to the termination or for the payment of costs of which the Contractor has already committed itself in a binding way on that date, provided that such amounts are duly established in writing. The amounts to be paid to the Contractor shall under no circumstances exceed in the aggregate the Lump Sum Price or the maximum price – as the case may be. The Contractor shall take all reasonable steps to keep the termination costs as low as possible and shall promptly submit the termination costs along with supporting evidence to the Buyer for review and approval. If the cancellation costs submitted by the Contractor are disputed, the Buyer is entitled to examine the books of the contractor or have it examined by an auditing company determined by Buyer. Other payments or compensations to the Contractor as a result of termination are excluded.

#### 17.2.2 Termination for cause and termination without notice

If a good cause for termination exists, the contract may be terminated by both parties in writing and stating the reason for termination, without notice if cancellation, provided however, that the termination is given within two weeks after the Party entitled to termination has become aware of the facts which are relevant for the termination (§ 626 German Civil Code – BGB -). If the Buyer terminates the Contract for a negligent violation of contractual provisions by the Contractor, the Contractor shall not be entitled to the remuneration for services provided prior to the receipt of the termination notice insofar as the Services performed until such date are not of interest to the Buyer due to the termination. The same applies if the Contractor terminates the Contract without being caused to do so by a negligent violation of contractual duties by the Buyer. If the Buyer rejects Services wholly or partly because they are not reasonably suitable for him, it can reclaim payments already effected for such Services plus interest equal to the then applicable interest rate in line with § 288 II BGB (German Civil Code), however with a maximum interest rate of 5%. In other respects, Clause 17.1.2 shall apply accordingly for the termination by Buyer.

### **17.3 Termination due to bankruptcy and deterioration in capital**

#### 17.3.1 Termination due to bankruptcy

If the Contractor's insolvency proceedings are not subject to the German Insolvency Code ("Insolvenzordnung"), the Buyer may terminate the Contract or withdraw from the Contract wholly or partly - subject to further rights and

claims for damages -, if the Contractor should cease to make payments or if an interim insolvency administrator is appointed or if insolvency proceedings are applied for or commenced in relation to the Contractor's assets or if their commencement is rejected due to insufficient assets. In this case the Buyer shall, on a pro-rata basis, pay the Contractor for the Products manufactured / services carried out up until the occurrence of such events and the Buyer shall be entitled to demand from the Contractor compensatory damages on account of non-performance of the remainder.

#### 17.3.2 Termination due to deterioration in capital

If the Contractor's insolvency proceedings are subject to the German Law, the Buyer may terminate the Contract, if the Contractor is subject to a substantial deterioration in capital. Evidence of substantial deterioration in capital exists when, in the opinion of a prudent merchant, negative information has been furnished by a bank, a credit enquiry agency, or a company in a business relationship with the Contractor so that – taking into account the legitimate interests of the Buyer – the continuation of the commercial relations with the Contractor appears unacceptable. Clause 17.3.1, 2nd sentence applies accordingly.

### **17.4 General Provisions**

17.4.1 Upon the Buyer's request, the Contractor shall in each case of a termination deliver to the Buyer all deliverables and work results, all documents (whether in electronic or physical form), any parts of the Services and all remaining items created in connection with the Contract, whether or not completed, free from encumbrances and do and procure all things necessary to enable the Buyer to complete the Services, or have it completed by a third party.

17.4.2 If the contractor as a result of the termination is entitled to a pro rata payment for the contractual Services performed until the receipt of the termination notice, such payment is determined based on the rates specified in the contract and in accordance with the provisions of Clause 9 (Prices and payment), taking into account any payments already made by the Buyer.

17.4.3 In the event of a termination caused by negligence of the Contractor, the Contractor shall immediately compensate the Buyer upon its request for all costs, expenses, damages and losses of the Buyer resulting from or in connection with the termination and / or the negligence of the Contractor, including - if applicable - all additional costs and expenses which arise upon the completion of the contractual Services or parts thereof carried out by the Buyer itself or a third party as well as damages and losses caused by the violation of contractual provisions, including delays. The Buyer is entitled to withhold the payment of amounts due – if any – up to the amount of twice the anticipated costs for the completion and the estimated damages until the amounts to be paid by Contractor are determined.

### **18. LIABILITY**

**18.1** The Contractor shall be liable in accordance with statutory provisions. It indemnifies the Buyer from all claims by third parties, unless those third party claims are not attributable to the Contractor. The indemnification of the Buyer comprises in particular all costs, fees and expenses.

**18.2** The Contractor waives the assertion of claims against the Buyer for any accidents and / or damage to its staff, unless (i) such accidents and / or damages are caused by intent or gross negligence of the Buyer or (ii) the liability of the Buyer for such accidents and / or damage cannot be restricted and / or excluded by mandatory provisions of applicable law.

### **19. DATA PROTECTION**

**19.1** The Parties agree to process the personal data made available to each other in accordance with the applicable data protection laws and regulations. This includes in particular the lawfulness of processing, fair processing and full transparency of processing, purpose-related processing, data minimization, accurateness of data processing, physical limitation of data memory as well as the integrity and confidentiality of personal data. The Parties must impose aforementioned obligations on all third parties they use for the execution of the Contract. This even applies in case the assigned third parties are processing data exclusively in accordance with applicable data protection laws and regulations.

**19.2** The Parties agree to evidence compliance with aforementioned provision in the applicable legal form upon request of the other Party or its data protection officer.

**19.3** Regarding legal information and for additional information in connection with personal data processing we refer to our data protection declaration available at: <https://www.schmidtsche-schack.com/data-protection>.

### **20. MISCELLANEOUS**

**20.1 Amendments.** Except where the Contract expressly states otherwise, any amendment to the Contract shall be binding only if in writing and signed by duly authorized representative(s) of the Parties.

**20.2 Assignments.** Neither Party shall assign this Contract or any part thereof

without the prior written consent of the other Party. The Buyer shall, however, be free to assign the Contract or any part thereof to its Affiliates or to the Owner, provided it remains obliged to payments to the Contractor by way of a collateral promise. § 354a of the German Commercial Code (HGB) remains unaffected.

**20.3 Entire Agreement.** The Contract shall be and incorporate the entire agreement and understanding between the Parties in relation to all matters contained therein and supersedes any previous written or oral agreements, negotiations, commitments, communications and representations of any kind.

**20.4 No Waiver.** Unless expressly stated otherwise neither Party's rights shall be prejudiced or restricted by any indulgence or forbearance extended by such Party or by any delay in exercising or failure to exercise any right and no waiver by either Party of any breach shall operate as a waiver of any other or further breach, whether of a like or different character.

**20.5 Survival of Obligations.** Any obligations which by their nature extend beyond the expiration or termination of the Contract, including (without limitation) the provisions of Clauses 10 (Warranty), 12 (Confidentiality and Intellectual Property Rights) and 21 (Dispute Resolution), shall survive the expiration or termination of the Contract.

**20.6 Notices and Communications.** Any notice to be given to either Party under the Contract shall be in writing and delivered by hand or sent by courier, post or facsimile to the respective addresses stated in the PO (or such other nominated address notified in writing to the other Party). Communications dealing with day-to-day business may be made by electronic mail.

**20.7 Independent Contractor.** Contractor hereby acknowledges that it is an independent Contractor. The Contract shall not be interpreted or construed to create any relationship of agency, association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have the right, power or authority to enter into any contract or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind the other Party, unless expressly otherwise agreed in writing.

**20.8 Retention rights.** The Buyer is entitled to exercise retention rights to the statutory extent. The Contractor is entitled to exercise a right of retention, insofar as his counterclaim is undisputed or determined without further legal recourse. Apart from that any rights of retention of the Contractor are excluded.

**20.9 Severability.** The invalidity, in whole or in part, of any of the provisions of the Contract shall not affect the remainder of such provision or any other provision of the Contract. To the extent allowable under the law applicable to the Contract, the Parties agree in good faith to replace any such invalid provision by a lawful provision having proximate economic effect. This applies accordingly for the completion of contractual gaps.

## **21. GOVERNING LAW AND CONTRACT LANGUAGE**

**21.1** This Contract shall be governed by and construed in accordance with the laws of Germany with the exception of its conflict of law provisions.

**21.2** The language of the Contract shall be German and all communications thereunder or in relation thereto shall be delivered in German or English unless otherwise agreed in writing. In case of differences over the content or interpretation of the Contract the German language of the contract shall prevail. The same applies if these GT&C are available in other languages.

## **22. DISPUTE RESOLUTION**

### **22.1 Legal Venue**

The exclusive legal venue for all disputes arising directly or indirectly from the contractual relationship is the domicile of the Buyer. Over and above the foregoing, the Buyer shall be entitled to bring an action before the court which has jurisdiction over the place where the Contractor's registered office is situated.

### **22.2 Continued Performance**

Unless the Contract has already been suspended and/or terminated pursuant to the appropriate provisions, the Contractor shall in every case proceed with the performance of all of its obligations under the Contract during and notwithstanding any dispute resolution proceedings.

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