

Dürr Terms and Conditions of Delivery and Assembly

Last updated: 5/2024

I. General, scope of application

- (1) These Terms and Conditions of Delivery and Assembly (hereinafter also referred to as "Our Terms and Conditions of Delivery and Assembly") in the version applicable at the time of contracting shall govern all our deliverables and/or other services. Services within the meaning of these Terms and Conditions of Delivery and Assembly shall also include, in particular, assembly, commissioning, repairs, maintenance and other services.
- (2) In addition, the price lists of the company using these Terms and Conditions shall apply in the version applicable at the time of contracting. Work performed outside normal working hours shall be subject to a surcharge. Travel and waiting time shall be classified as working time.
- (3) Our Terms and Conditions of Delivery and Assembly shall only apply to persons who, as at the date of contracting, are acting in exercise of their trade, business or profession (traders) and legal persons under public law.
- (4) Counter-confirmations by the customer referencing its terms and conditions are hereby rejected. We do not acknowledge any conflicting, differing or additional terms and conditions of the customer unless we have expressly agreed in writing to their application. Our Terms and Conditions of Delivery and Assembly shall apply even if we provide the deliverables and/or services without reservation in full knowledge of the customer's conflicting, differing or additional terms and conditions.
- (5) All deliverables and other services provided to the customer in the future shall also be governed by our Terms and Conditions of Delivery and Assembly and the price lists specified in section I (2) in the version applicable at the time of contracting.
- (6) For purposes of these Terms and Conditions of Delivery and Assembly, the written form requirement will also be satisfied by an electronic signature using a trusted provider (e.g., DocuSign).

II. Contract documents, formation of contract

- (1) Our offers are non-binding unless they are expressly designated in writing as binding or contain a specific deadline for acceptance.
- (2) If our offer has been expressly designated in writing as binding or contains a specific deadline for acceptance, a contract will be formed upon the customer's timely acceptance of the offer. If our offer is non-binding, no contract will be formed until we have confirmed the order. If a contract is formed by virtue of our order confirmation, the scope of our performance shall be conclusively determined by our order confirmation together with its annexes.
- (3) All information in catalogs, product descriptions, data sheets, plans, drawings, in particular information on availability, performance data, quantity, dimensions, use, color, etc., are non-binding; they shall only become legally binding integral parts of a given contract if and to the extent that the above information/documents are expressly listed as integral parts of the contract or express reference is made thereto.
- (4) We hereby reserve all proprietary rights, copyrights and intellectual property rights (including the right to register such rights) in all drawings, plans, catalogs, samples, cost estimates, other documents and software which we provide to the customer prior to or after the date of contracting. The aforementioned documents, including in particular our offers and order confirmations and the software, are confidential, may only be used for purposes of entering into and performing the contract between us and the customer (intended purpose) and may only be disclosed to third parties with our prior written consent. The foregoing obligations shall apply whether or not a contract is formed and shall survive the termination/expirations of the contractual relationship, regardless of the manner in which it ends.

III. Scope of performance, right to make changes

- (1) Any individual agreements made with the customer in a given case (including ancillary agreements, supplements and amendments) shall have priority over these Terms and Conditions of Delivery and Assembly. Notwithstanding evidence to the contrary, any agreement or our confirmation in written form shall be controlling for the terms of any such individual agreements.
- (2) We reserve the right to make changes to the design and materials provided that the normal or contractually intended use of the deliverable is not materially impaired and the change is reasonable for the customer.

IV. Prices, payment

- (1) In the absence of a separate written agreement, prices are quoted ex works (Incoterms 2020) and stated in euros net, excluding ancillary costs such as packaging, shipping and insurance plus any statutory VAT (where applicable) and all other taxes, fees and charges for the deliverables and/or other services. Costs of packaging, shipping and insurance, insofar as insurance has been agreed, shall be billed separately at the prices applicable at the time the costs are actually incurred. Services not expressly agreed in the scope of performance shall not be owed. If additional services (e.g., unloading, staging, installation, assembly or commissioning) are subsequently agreed, these shall be billed separately at the prices applicable at the time the costs are actually incurred.
- (2) The prices offered shall apply solely to the respective individual order. Fixed prices may only be arranged subject to express written agreement.
- (3) The payment terms agreed with the customer shall apply. Unless expressly agreed otherwise in writing, we are entitled to require that the customer pays a 30% advance payment after entering into the contract. After notification of readiness for delivery or notification of readiness of acceptance, we are entitled to require payment of a further 60% of the contract price. The remainder shall be payable after passing of risk. Payments must be made in the currency stated in our offer or our order confirmation. To the extent not expressly agreed otherwise, payments are due and payable within 10 days of receipt of invoice.
- (4) Payments must be remitted in full and free of charge to the account stated in the invoice. Regardless of the method of payment, payment shall only be deemed to have been made once the full invoice amount has been irrevocably credited to our account for our disposal (receipt of payment). The customer shall bear any additional costs incurred due to the selected method of payment.
- (5) If the customer fails to pay the purchase price within 10 days of receipt of invoice, expressly agreed payment period, we may claim interest at the statutory rate without the need for any payment reminder and without prejudice to any other legal remedies. We reserve the right to show that the actual loss or damage suffered was greater. Further rights, in particular those arising under section VI (1) remain unaffected.
- (6) The customer shall only have a right to withhold performance or set-off to the extent its claims are uncontested or have been declared final and binding by a court of law.

V. Deadlines, default, impossibility, acceptance of deliverables

- (1) In order for agreed deadlines to be met, all documents to be supplied by the customer must be received in good time and the technical and commercial questions to be answered by the customer and the details of the desired execution to be specified by the customer, including the approval of plans, must be clarified in full. If the foregoing requirements are not met in good time, we reserve the right to reasonably extend the deadlines and dates. The period during which the customer is in arrears with an agreed payment shall not be included in the periods for delivery and/or service, i.e., the deadlines shall be extended by the period during which payment is in arrears.

- (2) Unless expressly agreed otherwise, the delivery deadline shall be deemed to have been met if we have given the customer timely notice that the deliverables are ready for shipping or if the deliverables have left the factory.
- (3) The period for delivery and/or service shall be reasonably extended if we are unable to meet our obligation to perform in due time or at all for reasons outside our sphere of control. Reasons outside our sphere of control shall include, in particular, failure to receive proper or timely delivery from our suppliers; force majeure, labor disputes, virus and other attacks on our IT system by third parties, to the extent that these occurred despite having exercised the due care customary for protective measures, travel warnings issued by the German Federal Foreign Office and delayed receipt of government permits. We will notify the customer as soon as possible of the expected duration of the interruption (start and end date). If the interruption lasts longer than 6 months or it becomes clear that it will last longer than six months, both the customer and we shall be entitled to rescind the contract. In such cases, damages claims of the customer shall be precluded.
- (4) If we are in default and the customer incurs loss or damage as a result, it may claim lump-sum compensation for default in an amount equivalent to 0.5% for each full week of delay, but in the aggregate not more than 5% of the value of that part of the total delivery which cannot be used on schedule or as contractually agreed due to the delay. If the customer sets us a reasonable deadline for performance – taking into account the statutory exceptions – while we are in default and if the deadline is not met, the customer shall be entitled to rescind the contract pursuant to the statutory provisions. Should we so request, the customer shall within a reasonable period state whether or not it intends to exercise its right of rescission. Further claims arising from default of delivery shall be governed solely by section XIII of these Terms and Conditions.
- (5) In the event of partial impossibility of performance, the customer may rescind the contract only if it can show that partial performance is of no interest to it. If this is not the case, the customer shall be required to pay that portion of the contract price attributable to the partial performance/delivery. Section XIII shall otherwise apply.
- (6) Unless otherwise agreed in writing, the customer must take receipt of the deliverable within ten days of receiving notice that the deliverable is available for pick-up at our premises. If this period is exceeded by more than five days, this shall constitute a material breach of contract which shall entitle us – without prejudice to other legal remedies – to arrange for the deliverable to be shipped to the customer and the associated formalities at the customer's expense. Failure to take receipt of the deliverable shall have no bearing on the customer's obligation to pay the purchase price. Instead of shipping the deliverable to the customer, we may elect to dispose of it otherwise and deliver a replacement to the customer subject to a reasonable extended deadline. The following provisions of section VI concerning default of acceptance are hereby reserved.

VI. Default of acceptance, postponement of the delivery date at the customer's request

- (1) If the customer is in default of acceptance of the deliverable or a payment, we may, after setting a short grace period, in particular rescind the contract and claim damages in lieu of performance. If a claim for damages is asserted in lieu of performance, we may claim compensation, without having to furnish proof,
 - in an amount equivalent to 20% of the purchase price, where the deliverable involves a serial or standard product; or
 - in an amount equivalent to 100% of the purchase price, where the deliverable involves a custom-made product according to the customer's specifications.

However, we reserve the right to show and claim that the actual loss or damage was higher. The customer shall be entitled to show that we incurred no loss or damage at all or that the loss or damage was substantially lower than the above stated lump-sum compensation. Nor shall the foregoing affect the statutory rules for calculating damages insofar as we have performed our part of the contract in full.

- (2) We shall furthermore be entitled to charge the additional expenses incurred, in particular storage costs, if the customer is in default of acceptance. If we store the deliverable with third parties, we shall be entitled in particular to claim reimbursement from the customer for the costs charged by the third party as well the costs of transport to the storage site. If we store the deliverable on our premises, we shall be entitled to claim, without having to furnish proof, costs in an amount equivalent to 0.1% of the purchase price for each week or part thereof that the customer is in default of acceptance or postpones the delivery date, but not more than a total of 5% of the purchase price. The customer shall be entitled to show that we incurred no or substantially lower costs. We reserve the right to show that we incurred additional expenses.
- (3) If we claim damages from the customer in the event of default of acceptance or default of payment of the purchase price or if we postpone shipping at the customer's request, we shall likewise be entitled to claim reimbursement from the customer for additional expenses incurred, in particular storage costs, in accordance with the paragraph above.
- (4) Our rights to assert further statutory claims in the event of the customer's default shall remain unaffected.

VII. Delivery, passing of risk

- (1) We are entitled to make partial deliveries to the extent that the parties have not expressly precluded them and part performance is reasonable for the customer.
- (2) Unless expressly agreed otherwise, deliveries are always ex works (Incoterms 2020) from the place of production.
- (3) Risk of accidental loss or destruction shall pass to the customer when the deliverable is provided at the named place (EX Works Incoterms (2020)) unless agreed otherwise. In the case of deliverables under a contract to produce a work (*Werkleistungen*), the risk of accidental loss or destruction shall pass to the customer upon acceptance at the latest. If the customer undertakes the transport of the goods from the place of production to the place of use, he shall bear the risk of accidental loss or destruction, in particular for the duration of the transport.
- (4) The provisions on the passing of risk shall also apply if partial services are rendered or further services are to be rendered by us.
- (5) If shipping or acceptance is delayed or omitted due to circumstances for which we are not responsible, risk of loss shall pass to the customer on the date of notification that the deliverables are ready for shipping/acceptance regardless of the agreed terms and conditions for delivery and/or performance.

VIII. Customer's obligations to provide cooperative assistance

- (1) If we have expressly agreed with the customer in writing to effect delivery, installation, provide assembly and/or commissioning services and/or servicing and have arranged a date for this, the customer must ensure at its expense that all the conditions necessary to properly provide the services at the work site are in place in good time. This may include in particular:
 - all earthwork, construction work and other non-industry-related incidental work, including the necessary specialists and support staff, building materials and tools;
 - a foundation that meets the requirements of our installation plan;
 - the equipment and materials required for installation, assembly and commissioning, such as scaffolding, lifting tools, lubricants and fuels, etc;
 - electrical connections, energy, heating, water, compressed air connections, extraction and adequate lighting;
 - providing necessary and appropriate support staff in the requisite number and for the length of time required;

- providing sufficient large, suitable, dry and lockable rooms for storing machine parts, apparatus, materials, tools, etc., and appropriate working and break rooms including appropriate sanitary facilities for our employees; in all other respects, the customer shall take the same measures to protect our property and our employees on the construction site as it would take to protect its own property and personnel;
 - providing protective clothing and equipment required due to special conditions prevailing at the work site
 - further provisions by the customer.
- (2) The customer must provide us with the necessary information on the location of concealed electrical conduits and gas and water pipes or similar systems as well as the necessary structural data without prior request before the work commences. The customer shall at its expense inform our staff about existing safety regulations and risks and take all measures necessary to protect persons and property at the workplace.
 - (3) If the customer's preparatory measures do not meet the agreed specifications, we shall be entitled in particular to refuse or halt the work until the agreed condition is met. We are entitled, but not obligated, to perform the actions owed by the customer (in particular those set out in VIII (1) and (2)) in its stead and at its expense.
 - (4) If the customer prevents us from installing the intended safety equipment, in particular safety fencing, etc., on the deliverable, we shall in particular be entitled to decommission the deliverable.
 - (5) In the event that simulation software is provided, the customer shall be required to verify the simulation results on its real system in advance in a test environment, taking into account the applicable security or other relevant provisions. In this respect, the customer shall perform an independent risk assessment of the systems and components.
 - (6) The customer shall prepare its work environment accordingly for deployment of the software and shall cooperate in performing the contract, in particular by providing employees, IT systems, data and telecommunications equipment free of charge.
 - (7) If the customer is responsible for the fact that we are unable to carry out the planned work completely, within a reasonable space of time or at all, we shall be entitled, in addition to proper performance of the contract by the customer, to claim a contractual penalty (*Vertragsstrafe*) in an amount equivalent to 0.1% of the net order value for each working day of the delay and/or that the deadline is exceeded, up to a maximum of 5% of the net order amount. We reserve the right to show that our loss or damage exceeded the amount of the contractual penalty and claim compensation for this, in particular the reimbursement of additional expenses incurred as a result of additional travel time and time wasted and/or additionally required on the part of our employees. When calculating the loss or damage, the additional expenses incurred for additional work on the part of our employees and additional travel time may be charged according to our applicable price list as amended from time to time.

IX. Retention of title (RoT), provisional right of recovery

- (1) We shall retain title in the deliverable until such time as the purchase price as set out in section IV is paid in full. The customer shall take all action necessary to preserve this retention of title or a functionally equivalent security interest recognized in the country of destination (customer's registered office).
- (2) By entering into the supply contract, the customer also authorizes us to enter or publish the retention of title in the requisite form in public registers, ledgers or similar records at the customer's expense and in accordance with the applicable national regulations. Said authorization shall not affect the customer's obligation under section IX (1).
- (3) The customer may not pledge or sell the deliverables nor transfer title therein as security. In the event that the RoT goods are attached by third parties, in particular levies of attachment, the customer shall advise them of our title and notify us without undue delay so that we can enforce our ownership rights.
- (4) If the customer acts in breach of contract, in particular if it fails to pay the purchase price due, we shall be entitled to rescind the contract in accordance with the statutory provisions and/or recover the goods on the basis of our retention of title. The claim to recover the goods does not concurrently constitute notice of rescission; rather, we are simply entitled to demand that the goods be returned and reserve our right to rescind the contract. In such case, the customer shall be required to return the goods and shall bear the transport costs required for their return.
- (5) Notwithstanding the provisional right of recovery stipulated in the paragraph above, if the customer is in default of payment, we shall instead be entitled, after a notice period of four weeks has expired without result, to decommission the deliverable, in particular by means of remote access, until such time as the outstanding amount has been paid.
- (6) For customers domiciled within the Federal Republic of Germany, the following shall also apply:
 - (a) Contrary to section IX (1), we shall retain title in the deliverables until all our receivables against the customer arising out of the current business relationship have been satisfied.
 - (b) Contrary to section IX (3), the customer is entitled to process and sell the RoT goods in the ordinary course of business as long as he is not in default. The customer hereby assigns to us in full by way of security any receivables arising from the resale or on any other legal grounds (insurance, tort) with respect to the RoT goods. We hereby revocably authorize the customer to collect the receivables assigned to us for our own account in its name. The authorization shall expire if the customer fails to duly satisfy its payment obligations, experiences payment difficulties, levy of execution is made against it or judicial insolvency proceedings are instituted against its assets or are dismissed due to insufficient assets.
 - (c) If the recoverable value of the security exceeds that of our receivables by more than 10%, we shall release the security of our choice at the customer's request.
 - (d) If the goods are processed or transformed, this is always carried out on our behalf as manufacturer, albeit without any obligation for us. If the deliverables are processed with other objects not owned by us, we shall acquire a co-ownership interest in the new object corresponding to the value of the deliverables in proportion to the other processed objects at the time of processing. If the deliverables are combined or inseparably intermixed with other objects not owned by us, we shall acquire a co-ownership interest in the new object corresponding to the value of the deliverables in proportion to the other combined or intermixed objects. If the customer's object is to be deemed the main object when it is combined or intermixed, the parties agree that the customer shall transfer a pro rata co-ownership interest in the new object to us. The customer shall store the co-owned goods on our behalf.

X. Acceptance inspection, acceptance

- (1) Our deliverables under a contract to produce a work shall be deemed accepted two weeks after completion of the work and notification that they are ready for acceptance, unless the customer gives written notice of material defects within this period.

- (2) The customer may only refuse acceptance if the defect eliminates or substantially reduces the ordinary and/or contractually agreed use of the work and/or its value. If there are defects in the work that do not entitle the customer to refuse acceptance, the customer must accept the work on the condition that the defect(s) be remedied.
- (3) Refusal of acceptance or contingent acceptance must be effected without undue delay in writing, stating and describing the relevant defect.
- (4) If the customer uses the deliverables, they shall be deemed accepted by the customer.

XI. Claims for defects

We shall be liable for defects in quality and defects in title in the deliverables/services to the exclusion of further claims – subject to section XIII – as follows:

Defects in quality

- (1) Where the parties have agreed on the condition/quality of a purchased item, objective requirements for the purchased item shall not apply in this respect.
- (2) All those parts which prove to be defective due to circumstances occurring before the risk of loss passed shall, at our option, be repaired or replaced free of defects. The discovery of such defects must be reported to us without undue delay in writing. Parts replaced shall become our property.
- (3) The customer must give us the time and opportunity to perform all repairs and deliver replacements that we deem necessary; otherwise we shall be released from liability for the resulting consequences. Only in urgent cases of which we must be immediately informed where operational safety is at risk or in order to prevent disproportionately extensive damage shall the customer be entitled to remedy the defect itself or to have it remedied by third parties and claim reimbursement of the necessary expenses.
- (4) Should the complaint prove to be justified, we shall bear the expenses necessary for the purpose of curing performance, provided that this does not result in any unreasonable effort and expense for us. Insofar as the expenses increase due to the fact that the customer moved the object to a place other than the place of performance after it was delivered, any additional costs incurred as a result shall be borne by the customer. If the customer reports a defect in the deliverable or service and we are unable to identify any such defect, the customer must reimburse us for the costs incurred in connection with the inspection.
- (5) The customer has the right to rescind the contract pursuant to the statutory provisions if, taking into account the statutory exceptions, we allow a reasonable deadline that has been set for us to repair the defect in quality or deliver replacement goods to expire without result. In the case of non-material defects, the customer's rights shall be limited to a reduction of the contract price. The right to a reduction of the contract price shall otherwise be excluded.
- (6) No claims for defects shall arise based on causes which do not fall within our sphere of responsibility. In particular, no defect shall be deemed to exist in the event of minor deviations from the requirements for the deliverable, minor impairment of usability, incorrect or improper use of the deliverable, incorrect assembly or commissioning by the customer or third parties not instructed by us, ordinary wear and tear (specifically wearing parts), incorrect or careless handling of the deliverable, inadequate servicing, alterations or additions made by the customer or third parties and the resulting consequences, unsuitable supplies and replacement materials, defective construction work, unsuitable building ground, chemical, electro-chemical or electrical effects, insofar as these are not due to any fault on our part.
- (7) If repairs are made by the customer or any third party, we shall not be liable for the resulting consequences. The foregoing shall also apply if alterations are made to the deliverable without our prior consent.
- (8) Assembly, repair and other services shall be governed by the following provisions instead of section XI (5): The customer shall have a right of rescission within the scope of statutory provisions if, taking into account the statutory exceptions, a reasonable period for performance set for us while we are in default expires without result. The right to a reduction of the contract price shall also exist in other cases where defects are unable to be remedied. The customer shall only have a right of rescission in those cases where it can show that the assembly, repair and other services are of no interest to the customer despite the reduction of the contract price.

Defects in title

- (9) If use of the deliverable would result in an infringement of intellectual property rights or copyrights for which we are liable, we shall, at our expense, procure the right for the customer to continue using the deliverable or modify the deliverable in a way that is reasonable for the customer and such that it is no longer infringing any intellectual property rights. If it is not possible to procure those rights on commercially reasonable terms or within a reasonable period, the customer may rescind the contract. We shall also have a right to rescind the contract under the aforementioned conditions. We shall furthermore indemnify the customer against claims of the relevant holders of intellectual property rights which are uncontested or have been declared final and binding by a court of law.
- (10) Notwithstanding the provisions of sections XII and XIII, our obligations set out in section XI (9) in the case of infringements of intellectual property rights or copyrights shall be exhaustive.
They shall exist only where
 - the customer notifies us without undue delay of infringements of intellectual property rights or copyrights being asserted;
 - the customer provides us reasonable assistance with defending against the claims asserted or implementing the modification measures pursuant to section XI (9);
 - we retain the right to take any and all defensive action, including out-of-court settlements;
 - the defect in title is not based on any instruction of the customer; and
 - the infringement of rights or copyrights was not caused by any unauthorized alteration or non-conforming use of the deliverable by the customer.

XII. Software

- (1) If software from another provider is included in the scope of delivery, that provider's standard terms and conditions and license terms shall be controlling. If these are not available to the customer, we will have them sent to the customer upon request. Our Terms and Conditions of Delivery and Assembly shall apply in addition thereto.
- (2) If software is included in the scope of delivery of a system or machine, the following licenses shall be granted to the customer. We shall not be obligated to provide any training, support or maintenance or to provide updates or upgrades (except in the context of any bug fixes under the warranty for defects). Such services may be agreed by separate contract.

The following licenses shall be granted to the customer:

(a) For software programs manufactured by third parties, the license terms and conditions of those manufacturers shall apply. Insofar as a software component is subject to an open source license, the respective open source license terms and conditions shall be controlling. We will provide the terms and conditions of the third party manufacturer and the relevant open source license terms and conditions to the licensee upon request.

(b) If not stipulated to the contrary in these Terms and Conditions, the customer will be granted a non-exclusive, perpetual, worldwide, non-transferable, non sublicensable license to use the software together with the documentation from the time of provision. To the extent not otherwise agreed, the type of license shall be indicated in the contract. In each case, the type of license shall include the following scope of use:

(aa) In the case of a hardware-related license, the customer shall be entitled to install and use the software on the hardware for which it has received the license key. This does not preclude using the software on other hardware, provided that changing the hardware does not result in any reproduction of the software and a new license key has been requested for the new hardware.

(bb) In the case of a user-related license, the license shall be limited to the number of Full Client Concurrent Users specified in the agreement, i.e. the license may only be exercised simultaneously by the maximum number of users specified.

(cc) In the case of a named user license, only the persons named in the agreement shall be entitled to use the software simultaneously.

(dd) In the case of a group license, the customer has the right to deploy the software in all companies that are affiliated with it within the meaning of section 15 *et seq.* of the German Stock Corporation Act (*Aktiengesetz – AktG*). This includes the right for all employees of the group companies to use the software regardless of their number. In this respect the licensee is entitled to grant sublicenses. We may require that the remuneration be adjusted appropriately if the number of Group companies or the number of employees of the Group companies increases significantly.

- (3) Copyright notices, trademarks and other rights reserved, serial numbers or other marks may not be deleted, altered, redacted or blocked and must always be imported when back-up copies are made.
- (4) The license in the software shall specifically exclude the right to edit, translate, lease, loan, distribute, communicate to the public and make available online to third parties outside the customer's company; nor does the license in the software include the right to reproduce, unless this is required for the intended purpose or for making back-up copies. Use of the software in outsourcing, service bureau, ASP operations, etc. is permitted only where the outsourcing provider uses the software solely on the licensee's behalf and the licensee discontinues use for such period.
- (5) The software may only be transferred to third parties as a whole and subject to written notice of transfer. The customer must completely and permanently cease its use of the software and surrender all copies thereof to the third party or destroy them. These license terms and conditions must also be provided to the relevant third party.
- (6) The customer shall not be entitled to receive or use the source code of the software or the source code documentation. Nor may the customer decompile, disassemble or otherwise reverse engineer the software to obtain the source code; section 69e of the German Copyright Act (*Urhebergesetz – UrhG*) shall remain unaffected.
- (7) The customer shall keep proper records of the use of the software, in particular the authorized users and installation locations as well as the hardware and software environment used, and shall provide us with information in this regard should we so request. The customer agrees that we may engage our own employees or independent third parties, each of whom is bound to maintain confidentiality, to audit (including manually and/or electronically) the customer's records, systems and equipment for the purpose of confirming that the customer's installation and use of the software comply with the terms of valid licenses from us. The customer shall provide us with all the requested documents and information within 30 days of any such request. We shall bear the costs of such audit unless the findings reveal a material breach of contract.
- (8) In the event of defects in the software, the following shall apply in addition to and be controlling over the provisions in section XI:

(a) Defects in quality

(aa) We shall be obligated to provide the software (including the documentation) free of defects in quality. Where the parties have agreed on the condition/quality of the software, objective requirements for the software shall not apply in this respect. The contractually agreed condition/quality of the software shall be determined in particular on the basis of the software documentation. As far as IT security is concerned, we only owe the IT security standards customary in the industry. Any IT security requirements beyond this must be arranged by separate agreement. In cases where the customer connects the software provided to third-party software, we make no warranty that the software will be compatible with such third-party software, nor do we make any warranty in cases where the defects are due to the customer's non-conforming use or improper operation of the software. We make no warranty in cases where the customer fails to use the required system configuration, in particular infrastructure, hardware, operating system and database.

(bb) If the software exhibits reproducible defects in quality, the customer may assert claims for defects against us in accordance with the following paragraphs. If the defect does not (materially) impair the software's functionality, we shall be entitled, to the exclusion of further claims for defects, to remedy the defect by delivering a new version or an update in the context of our version and update planning. The foregoing shall apply *mutatis mutandis* in the case of defects in third-party programs where such defects do not (materially) impair functionality.

(cc) If the software exhibits reproducible defects in quality, the customer may, at our option, have us repair the defect or deliver a replacement.

(dd) If after having sent us an initial request, the customer sets a further grace period which expires without result or if two attempts to repair or replace the defective software fail, the customer may rescind the contract or reasonably reduce the remuneration. In the case of non-material defects, the customer's rights shall be limited to a reduction of the remuneration.

(ee) We may refuse to cure performance unless or until the customer pays the agreed remuneration less a portion reflecting the commercial significance of the defect.

(ff) section XII (8) (b) (dd) and (ee) shall apply *mutatis mutandis* to reproducible defects in quality.

(gg) All notices of defects must be made in writing and provide a clear description of the symptoms of the defect and, as far as possible, include written records, hard copies or other documents illustrating the defects.

(b) Defects in title

(aa) We shall provide the software (including the documentation) unencumbered by rights of third parties that would preclude use of the software as contractually agreed.

(bb) In the event that third parties assert any such rights, we shall defend the software against the third-party rights claimed. The customer shall notify us without undue delay of the assertion of such third-party rights and shall grant us all powers of attorney and authorizations necessary to defend the software against the third-party rights claimed.

(cc) In the event that defects in title exist, we shall, at our option, be entitled

- (i) to take appropriate action to eliminate the third-party rights or their assertion which impair use of the software as contractually agreed, or
- (ii) To modify or replace the software such that it is no longer infringing third-party rights, if and to the extent that this does not materially impair the warranted functionality of the software.

If we are unable to do this within a reasonable deadline to be set by the customer, the customer shall be entitled to assert claims for defects in accordance with the provisions in (dd) below and section XII (8) (a) (dd) to (gg).

(dd) If the defect in title is due to a defect in a third-party program, claims for defects in title shall initially be limited to assigning the claims for defects that we have against the manufacturer of the third-party program. We shall provide the customer with the information and documents required to assert the assigned claims against the manufacturer of the third-party program. If the customer's legal action against the manufacturer of the third-party program fails, the customer shall be entitled to assert claims for defects directly against us if the requirements are met.

(ee) Claims of the customer shall be precluded if the customer is responsible for infringing intellectual property rights or if the infringement of intellectual property rights was caused by special specifications of the customer, by an application not foreseeable by us or not provided for in the documentation or by the fact that the software was unilaterally modified by the customer and/or used together with software not supplied by us.

(9) Our obligations set out in this section regarding software defects shall be exhaustive. Any further claims shall be governed solely by section XIII.

XIII. Liability, limitation and disclaimer of liability

(1) Our liability is limited in all cases of contractual and extracontractual liability for damages or reimbursement of expenses as follows:

- (a) We shall be liable without limitation in the case of willful conduct or gross negligence, fraudulent concealment of a defect and culpably caused personal injury in accordance with the statutory provisions.
- (b) We shall furthermore be liable in the case of a guarantee undertaking, albeit only in accordance with the respective guarantee terms and conditions.
- (c) In the case of liability under the German Product Liability Act (*Produkthaftungsgesetz*), we shall be liable in accordance with the statutory provisions.
- (d) In the case of ordinary negligence, we shall be liable solely for the breach of material contractual obligations and limited to typically foreseeable loss or damage. "Material contractual obligations" are those obligations, the satisfaction of which is essential to the due and proper performance of the contract and on which the customer may and does legitimately rely. Liability for ordinary negligence (without prejudice to section XIII (1) (a) to (c)) shall otherwise be excluded.

(2) Insofar as our liability is disclaimed or limited in accordance with the above provisions, this shall also apply to the personal liability of our governing bodies, legal representatives, employees and vicarious agents.

(3) The customer shall back-up data appropriately and regularly, in particular by making backup copies that are available and restorable at all times. We shall only be liable for the loss of data and the recovery thereof if such data loss would have been unavoidable even if the customer had taken appropriate measures to back-up data. The customer shall bear the burden of proof to show that such data back-up measures were carried out on a regular basis. Our liability for data loss or damage for which we are responsible shall be limited to the expenses that would be required to recover the data from the data back-up material assuming that the customer properly backed up the data.

(4) Any further liability on our part, on whatever legal grounds, is hereby excluded.

XIV. Limitation period

(1) Claims of the customer – regardless of the legal grounds – which are subject to the standard limitation period under section 195 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) or a shorter statutory limitation period, shall become time-barred after 12 months. The foregoing shall also apply to the limitation of recourse claims in the supply chain under section 445b (1) BGB. The suspension of expiration of the limitation period under section 445b (2) shall remain unaffected; it shall expire five years after the date on which the supplier delivered the item to the seller. The provision

on the limitation of recourse claims and suspension of expiration of the limitation period shall not apply insofar as the last contract in that supply chain is for the sale of consumer goods. The statutory provisions on the commencement of the limitation period shall remain unaffected.

- (2) The limitation period under section XIV (1) shall not apply to claims under section XIII (1) (a) and (c). The statutory periods shall apply in this respect.

XV. Export, data protection

- (1) If the delivery includes an export requiring our approval, the contract shall not be deemed formed until receipt of the respective approval. The customer shall provide all documents required for such approval. If we notify the customer in writing that we are prepared to obtain any necessary export licenses, we shall make every reasonable effort to do so, whereby the customer shall reimburse us for all costs we incur unless otherwise agreed in writing. However, we do not guarantee that the export license will be issued. The customer shall in any event be responsible for procuring any necessary import license.
- (2) If the customer exports the deliverable, it shall be required to comply with the export control regulations applicable to the deliverable in the given case. If the customer violates export control regulations, we shall be entitled to refuse performance or rescind the contract, in which case the customer shall in any case be required to pay our expectation interest in the performance of the contract (*positives Vertragsinteresse*) at a minimum. The customer shall provide intended use and/or end-use certificates on request, even if they are not officially required.
- (3) Personal data will be stored and processed by us in compliance with the statutory requirements. Please see the privacy policy at <https://www.durr.com/de/rechtliche-hinweise-datenschutz/> for more information.

XVI. Place of performance, confidentiality, governing law, dispute resolution, severability

- (1) To the extent not otherwise agreed in writing, the place of performance shall be the registered office of the company using these Terms and Conditions.
- (2) The customer shall treat as strictly confidential any and all trade secrets (in particular also manufacturing and/or business secrets) to which it has or will become privy through us in connection with the contract negotiations, the contract or otherwise, and shall use them solely for the purposes of this contract. Any other exploitation of or disclosure to third parties is prohibited. The duty of confidentiality and prohibition on exploitation shall survive the termination/expiration of the contract. In particular, the customer shall be obligated to impose the same obligations on its employees and support staff and shall be liable to us for their compliance with these obligations.
- (3) The contract shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (4) Exclusive place of jurisdiction for all disputes arising out of or in connection with the supply contract, including all questions relating to the existence, validity or expiration/termination of the contractual relationship, shall be the registered office of the company using these terms and conditions. We are also entitled to sue the customer at its general place of jurisdiction.
- (5) Should any provision of the contract or these Terms and Conditions of Delivery and Assembly be invalid, either in whole or in part, for any reason whatsoever, this shall not affect the validity of the remaining provisions thereof. Any invalid provision shall be replaced in writing by mutual agreement of the parties. If no mutual agreement can be reached on a substitute provision, the invalid provision shall be replaced by a provision that most closely reflects the intent of the parties based on the spirit and purpose of the contract to the extent permitted by law.