

Terms and Conditions

Last update: May, 1st, 2020



1. General and scope of application

- 1.1. These General Terms and Conditions (GTC) apply objectively to all purchase and delivery contracts for all products and devices distributed by BRESSNER Technology GmbH (hereinafter "BRESSNER"), including software, accessories and spare parts, as well as for services such as installation, maintenance, software development and training exclusively. They apply accordingly to contracts for work performance and work delivery insofar as their application is not excluded from the nature of the work contract. Deviating regulations, in particular contrary terms and conditions of the customer, shall only be deemed agreed if they have been expressly confirmed by BRESSNER in writing as being in place of these conditions. These GTC also apply if BRESSNER supplies the customer without reservation in awareness of conflicting or deviating terms and conditions of the customer.
- 1.2. These GTC apply in personal respect only to entrepreneurs in the sense of Sec. 14 German Civil Code (BGB), i.e. natural or legal persons acting in pursuit of their trade or business, as well as to legal entities of public law.
- 1.3. In a current business relationship, these GTC in their updated version as valid upon the closing of a contract shall also apply without special notice or reference to all future business transactions, especially in the case of verbal or telephone follow-up orders.
- 1.4. Business mail printed by BRESSNER in electronic data processing or sent by email, such as order confirmations, invoices, credit notes, account statements and payment reminders, are valid without signature and legally binding.
- 1.5. Agreements on the purchase of hardware (including operating software) on the one hand and on software on the other hand represent two legally independent and separate contracts, even if they have been made as part of a single order or have been recorded in a single order confirmation. Legal defects or performance disruptions in one contractual relationship only have an effect on the other if the will of the customer explicitly stated in the order was aimed at the acquisition of a uniform object of purchase. This applies accordingly to agreements which relate both to the purchase of goods and the provision of work or services.

2. Offers and conclusion of contract

- 2.1. Offers from BRESSNER are non-binding and are subject to the reservation of self-delivery, unless expressly agreed otherwise in writing. Orders become binding only upon written order confirmation, unless the ordered service has already been executed or invoiced by BRESSNER. The confirmation of the receipt of electronic orders (email) does not constitute a binding acceptance of the order. However, the confirmation of receipt can be linked to the declaration of acceptance. For orders in electronic commerce, the text of the contract is saved by BRESSNER and sent to the customer by request together with these terms and conditions by email.

- 2.2. If BRESSNER requires an export license for the performance of its obligations, the contract is concluded under the condition precedent that an export license is granted. BRESSNER is obliged to apply for a corresponding permit from the responsible office. In case of rejection of the application, BRESSNER will not be obliged to perform.

- 2.3. Property rights and copyrights, in particular copying and distribution rights, illustrations, drawings, calculations and other documents that come into the possession of the customer in connection with an offer by BRESSNER remain with BRESSNER. These documents may not be made accessible to third parties except in cases of resale in accordance with their intended purpose and must be returned to BRESSNER on request if the contract does not come to fruition or fails.

3. Prices and terms of payment

- 3.1. The prices quoted by BRESSNER in offers and price lists are net prices; they do not include sales tax or any other taxes, duties, fees and government duties associated with the customer's purchase of the products in question. Packaging, postage, freight and transport insurance will be charged separately. Confirmed prices are valid only on acceptance of the confirmed quantity. Deliveries and services that are not included in the offer (for example, in the event of subsequent changes to the contract) are charged separately.
- 3.2. If the list price applicable at the time of delivery is higher than that agreed with the customer, this higher list price shall apply if the delivery is made later than four months after the conclusion of the contract for reasons for which the customer is responsible, unless the purchase price has already been invoiced by BRESSNER and paid by the customer or the parties expressly agreed otherwise.
- 3.3. Unless otherwise agreed, the purchase price is due net (without deduction) within 14 days from the date of invoice for payment. Different payment terms are shown in the invoice. Payments by the customer must be made exclusively to BRESSNER. BRESSNER reserves the right to demand advance payment from the customer.
- 3.4. The acceptance of bills of exchange and checks requires the approval of BRESSNER and is only on account of performance. Discount charges and other ancillary costs are charged to the customer.
- 3.5. If the customer is in arrears with due payments, BRESSNER is entitled to withhold the delivery from other orders of the customer. Upon receipt of payment of the outstanding amounts, BRESSNER shall be entitled to make a new delivery under consideration of other delivery obligations at its reasonable discretion (Sec. 315 German Civil Code).
- 3.6. If the customer does not meet his payment obligations (e.g. a check or bill is not redeemed) or if insolvency proceedings are applied for or instituted, BRESSNER is entitled to demand payment of the entire claim, irrespective of the term and maturity of a bill of exchange. In such case BRESSNER is entitled to execute outstanding deliveries only against advance payment or security. If advance payment or

security is not provided even after the setting of a reasonable deadline, BRESSNER shall be entitled to withdraw from the contract with regard to services not yet performed, with the result that all claims of the customer regarding the not yet executed deliveries shall expire. In these cases, besides the rescission, BRESSNER can also claim damages and execute its rights from the retention of title in accordance with the following clause 10 below.

- 3.7. The customer is only entitled to offset if his counterclaims are legally established, undisputed or acknowledged by BRESSNER. Rights of retention or other rights of refusal of performance may be asserted against BRESSNER only if and insofar as they are based on the same contractual relationship. Even if the business relationship is ongoing, each individual order must be regarded as a separate contractual relationship. Complaints of any kind whatsoever do not justify withholding of payments, unless the alleged deficiencies are legally established, undisputed or acknowledged by BRESSNER.

4. Quality and tolerances, advisory duties

- 4.1. The product description of BRESSNER and the manufacturer shall be deemed agreed as the quality of the goods or services. Assurances and guarantees by BRESSNER are only valid if granted expressly and in writing. For public statements, especially in advertising, BRESSNER is only responsible if it has caused them and if the purchase decision of the customer has actually been influenced by it. The information contained in catalogues, price lists, brochures, circulars, other advertising, other publications or in the documents belonging to the offer, drawings, illustrations, performance descriptions, measurements and weights or other performance data are approximately correct within the scope of customary industry standards, and insofar of limited significance. They only constitute guarantees if they have been expressly designated as such by us in writing. A reference to DIN standards is only a closer description of the product and does not constitute a guarantee unless expressly agreed.
- 4.2. Reasonable deviations from specified performance data (tolerances) of up to 10% do not represent a material defect.
- 4.3. BRESSNER reserves the right to make design changes to devices without prior notice, provided these are customary in the trade and within reason for the contracting party. The customer cannot claim that devices already delivered will be retrofitted according to the modifications of the running series.
- 4.4. The customer is liable for the correctness of the documents to be supplied by him, such as patterns and drawings. If industrial property rights of third parties are infringed during the manufacture of the goods according to drawings, samples or other information provided by the customer, the customer shall indemnify BRESSNER from all claims of the property rights holder.
- 4.5. BRESSNER shall only accept advisory duties by conclusion of a written consulting agreement

5. Delivery and acceptance

- 5.1. The deadlines for deliveries or services specified by BRESSNER are only approximate, unless they have been confirmed in writing with a date determined by calendar. Specified delivery periods begin with the dispatch of the written order confirmation, but not before the customer procures the agreed or necessary documents and releases and not before receipt of any required official certificates or approvals. If the customer is obliged to make advance payments, the delivery period begins on receipt of the advance payment by BRESSNER.
- 5.2. Agreed deadlines are deemed being met when the delivered goods have left the factory or warehouse of BRESSNER or the customer has been informed of their readiness for dispatch or the service has been performed until expiry of the period. BRESSNER is entitled to make partial deliveries within reason .
- 5.3. Should BRESSNER be unable to comply with agreed delivery dates due to force majeure, governmental action, catastrophes, epidemics, quarantine, war, riots, labor disputes in own factories, delivery facilities, at suppliers or means of transport, fire, power outage or failure of telecommunication lines, BRESSNER shall be entitled to catch up delivery after the reason for the obstruction has ceased. In case of delivery delay of more than four months, the customer is entitled to reject the delivery and to withdraw from the contract. The customer has no further rights or claims for non-delivery or late delivery for such reasons, not even if these reasons only occur when the delivery period has already passed or if BRESSNER was in default.
- 5.4. BRESSNER does not assume any procurement risk according to Sec. 276 German Civil Code, unless explicitly agreed in writing. The mere obligation to deliver unascertained goods of a particular kind shall not imply the assumption of a procurement risk.
- 5.5. If the customer is in default of acceptance, starting one month after notification of readiness for dispatch, he will be charged with the storage costs. BRESSNER is entitled to charge 1% of the net price of the goods for each commenced month. The customer remains free to proof lower storage costs, as well as BRESSNER is free to claim a higher damage cause by the delay.
- 5.6. Compliance with the delivery and performance deadlines presupposes the fulfillment of the contractual obligations of the customer. Upon request, he is obliged to confirm in writing that he is prepared to accept and complete any necessary preparatory acts prior to delivery. In case of refusal or rejection of takeover of the goods, default of acceptance occurs.
- 5.7. The delivery of BRESSNER is ex works (EXW Incoterms 2020). In case of agreement of a different Incoterm clause or any other kind of delivery, the following rules shall apply: The type of transport, the means of transport, the nature and extent of the required means of protection and the choice of carrier, as well as the packaging, are decided freely by BRESSNER after a due assessment and under exclusion of liability. At the request of the customer, the

shipment will be insured by BRESSNER against theft, breakage, transport, fire and water damage and other insurable risks at the expense of the customer.

- 5.8. If the order constitutes a contract for work, the customer shall be in default of acceptance of the work if he does not declare acceptance within one week after completion and delivery or notification of completion. Acceptance shall be deemed to have taken place if the customer uses the work after delivery or notification of completion for a period of fourteen days, provided that BRESSNER has informed the customer of this consequence upon delivery, in the notification of completion or on invoicing.
- 5.9. In case the ordered work is installed by BRESSNER at the place of the customer, by derogation from clause 5.7 the customer shall be obliged to declare acceptance immediately on the spot, completion provided. In case of omission, acceptance shall be deemed declared nonetheless, if the customer takes the delivered, completed and installed work into use or operation. Recognizable deficiencies of the work or its installation must be reported immediately in the presence of the technician or representative of BRESSNER.

6. Transfer of risk, transport damage

- 6.1. The risk is transferred to the customer with delivery ex works (EXW Incoterms 2020). If another kind of delivery is agreed upon, the risk shall pass to the customer upon handover to the forwarder, carrier or collector. This shall also apply to carriage paid delivery or free delivery. When delivered by BRESSNER, BRESSNER bears the risk until delivery to the receiving office. The preceding shall also apply to partial deliveries.
- 6.2. Delivered items, even if they have insignificant defects, are to be accepted by the customer, without prejudice to the rights under clause 7. Complaints regarding transport damage must be made by the customer in due time to freight forwarders, carriers and their insurance companies themselves.

7. Warranty

- 7.1. The customer is obliged to inspect the goods properly upon receipt. He must notify BRESSNER in writing of any discernible defects, shortfalls or incorrect deliveries immediately upon receipt of the goods on the delivery note or on the bill of lading, however no later than five working days after receipt and in any case before processing or installation. Otherwise, the deliveries are considered approved. Hidden defects shall be reported in due time after detection and within the warranty period of clause 7.3. Except in cases according to clause 7.14, warranty claims are excluded in case of delayed reporting.
- 7.2. The warranty for legal deficiencies shall be limited to the territory of the Federal Republic of Germany, unless otherwise agreed, In case of software obtained by BRESSNER from a third party, the special warranty and liability provisions of clauses 11.4 to 11.7 shall apply.

- 7.3. Unless otherwise agreed, the warranty period is one year from transfer of risk (according to clause 6.1 or, in case of a work performance, upon acceptance of the work). This does not apply in the cases specified in clause 7.14. If the customer purchases the goods for resale (if necessary after further processing), the warranty is extended by the time until the resale, but not by more than one month.
- 7.4. Excluded from the warranty are damages resulting from inappropriate and improper use, faulty or improper installation or commissioning by the customer or third parties, normal wear and tear, faulty or negligent handling, use of unsuitable equipment, improper storage and climatic, chemical, electrochemical and electrical effects, provided that they are not the fault of BRESSNER. The same applies to damages resulting from non-observance of the installation, operating and maintenance instructions, as well as damage due to improper modifications or repair work by the customer or third parties and from influences of parts of foreign origin as well as from further use despite the occurrence of an obvious error.
- 7.5. The creation of a warranty obligation requires a professional execution of the installation of the devices and other delivery items from BRESSNER. The warranty obligation lapses if the delivered goods are changed by third parties or by the installation of parts of foreign origin, unless the defect is not causally related to the change. It also expires if the customer disregards provisions for commissioning and this causes a defect.
- 7.6. The warranty obligation shall cease to apply if BRESSNER is not given the time or opportunity necessary to rectify the defect or make replacement deliveries as it seems fit at BRESSNER's discretion. The customer has the right to have the defect rectified himself or by a third party and to demand compensation from BRESSNER for the necessary costs, only in urgent cases of endangering operational safety, preventing disproportionately large damages or if BRESSNER is in default of remedying the defect. However, a prerequisite in this case is that BRESSNER is notified immediately of the damage.
- 7.7. The warranty is limited to the choice of BRESSNER for free delivery or repair within the territory of the European Union and the European Economic Area. This does not apply if, due to special, statutory provided circumstances (for example, Sec. 323 (2), 326 (5), 444 or 636 German Civil Code), the customer can claim immediate reduction, withdrawal from the contract or compensation for the damage instead of performance. BRESSNER shall be entitled to make the supplementary performance dependent on the prior payment of a part of the fee commensurate with regard to the defect and to have the rectification carried out by the manufacturer. In the case of replacement delivery, the rejected goods or parts shall become the property of BRESSNER at the time BRESSNER acknowledges the complaint. Any additional costs incurred as a result of difficult access to the installation site or insufficient working space or through delivery to an area outside the European Union or the European Economic Area shall be borne by the customer. If the customer receives a faulty assembly instruction, BRESSNER is only obliged to deliver a faultless assembly instruction. This obligation does not apply if the

defect in the assembly instructions does not prevent the proper assembly.

- 7.8. If the rectification or replacement fails, the customer may, at his choice, demand a reduction of the remuneration or compensation for damages or withdraw from the contract, unless a further attempt of subsequent improvement or replacement cannot reasonably be expected of him. However, in the case of minor breach of contract, especially minor defects, the customer has no right of withdrawal. If the customer chooses to withdraw from the contract because of a defect after failed supplementary performance, he is not entitled to compensation. If he chooses compensation for damages after failed performance, the goods remain with the customer, if this can reasonably be expected of him. In such case, the compensation is limited to the difference between the purchase price and the value of the defective good. This does not apply if BRESSNER has fraudulently caused the breach of contract. Claims for damages can only be asserted by the customer under the conditions specified in clause 9.
- 7.9. For defects to unascertained goods of a particular kind, BRESSNER shall only be liable to the same degree as for defects to ascertained goods. In particular, a procurement obligation shall not constitute a no-fault-liability of BRESSNER, unless explicitly agreed in writing.
- 7.10. Unless the warranty for software is excluded according to clauses 11.4. to 11.6, Software errors shall be remedied at the discretion of BRESSNER by providing a corrected version of the software or by appropriate remedial action. The customer shall provide BRESSNER with the information and documentation necessary to remedy the error. Before implementing a new correction version, BRESSNER will provide a transitional solution to circumvent the error, unless this is impossible or disproportionate for BRESSNER. For software that has been extended by BRESSNER through interfaces that BRESSNER has released for this purpose, the warranty extends only to, but not beyond, the software including the interface.
- 7.11. Used products are provided in their current condition and under the exclusion of any warranty. This does not apply in the cases specified in clause 7.14.
- 7.12. If a purchaser of the customer asserts his warranty rights against him in Germany, BRESSNER indemnifies the customer against the warranty claim of his purchaser under the conditions and to the extent that BRESSNER directly assumes the warranty for the purchaser in accordance with the preceding clauses 7.3. to 7.11. However, this exemption is only made on the condition that the purchaser allows BRESSNER to carry out the repair work that BRESSNER deems necessary at the purchaser's premises. In particular, he must ensure that BRESSNER obtains the required time to perform the necessary checks, reworks and replacement deliveries and has sufficient access to the defect good, even if it is permanently installed at the purchaser's premises. Additional costs resulting from difficult access or insufficient work space are always borne by the customer. If the customer is claimed by his purchaser in connection with a sale of consumer goods, the rules for recourse in the delivery chain according to Sec. 445a German Civil Code remain unaffected.
- 7.13. As far as the parties have not excluded the claim for reimbursement of expenses according to Sec. 478 (2) German Civil Code by granting an equal compensation, the customer is obliged to refuse supplementary performance in case of resale of the goods to a consumer according to Sec. 439 (4) German Civil Code, if it is only possible with disproportionate costs. In the case of a resale of the good by the customer to an entrepreneur, he must also oblige him to refuse supplementary performance in case of resale of the good to a consumer, if it is only possible with disproportionate costs. BRESSNER therefore replaces the customer with the expenses required for supplementary performance within the scope of Sec. 445a (1) German Civil Code only if they are not disproportionate within the meaning of Sec. 439 (4) German Civil Code.
- 7.14. The exclusion or limitation of warranty according to clauses 7.1, 7.3 and 7.11 shall not apply in case of intentional, gross negligent or fraudulent conduct of BRESSNER, in case of culpable injury of life, limb or health, in case of assumption of a guarantee or procurement risk (Sec. 276 German Civil Code) or in case of a mandatory legal liability, in particular according to the German Product Liability Act. The statutory provisions on regress in the delivery chain (Sec. 445a German Civil Code) shall remain unaffected, unless the goods delivered by BRESSNER are processed or modified by the customer in deviation from their intended purpose.
- 7.15. None of the preceding warranty terms shall constitute a limitation of a merchant's duty to examine the received goods and to give notice of defects according to Sec. 377 HGB (German Commercial Code).

8. Return of goods to BRESSNER

- 8.1. Before returning goods to BRESSNER, the customer is obliged to apply for an RMA number issued by BRESSNER, using the provided and duly completed application form. He shall indicate this number in the delivery note and in a copy of the RMA form to be attached to the consignment. This obligation applies irrespective of the reason for the return of goods, in particular in the case of exchange, in warranty cases and upon return for repair.
- 8.2. Returns from a third country outside the European Union or the European Economic Area shall be agreed in advance with BRESSNER, in particular but not exclusively with regard to customs clearance and customs-related data. BRESSNER is not obliged to accept incorrectly declared or unreturned goods.
- 8.3. The RMA form is available on the BRESSNER website (www.bressner.de) under "Contact" and can be completed and dispatched or downloaded from there. Upon request, it will also be sent to the customer by fax or letter.
- 8.4. BRESSNER shall not be liable for damages resulting from disregard of the provision under clause 8.1, in particular for any delays in the handling of warranty claims and repairs.

9. General limitation of liability

- 9.1. BRESSNER is fully liable only for intent and gross negligence (also of its legal representatives and agents) as well as for damages resulting from injury to life, limb or health based on a negligent breach of duty by BRESSNER or his legal representatives or agents. Likewise, BRESSNER shall be liable without limitation for damages resulting from the lack of warranted characteristics, the assumption of a procurement risk, the failure to comply with a granted guarantee or fixed delivery- or performance-dates. Any mandatory legal Liability, in particular under the German Product Liability Act, also remains unrestricted.
- 9.2. In the case of any other breach of material contractual obligations (cardinal obligations), the liability of BRESSNER shall be limited to the amount of the contractually typical foreseeable damage. Cardinal duties are those duties which give the contract its character and on the fulfillment of which the contractual partner may and did rely; these are the essential rights and obligations which create the conditions for performance of the contract and are indispensable for the attainment of the purpose of the contract.
- 9.3. Otherwise, the liability of BRESSNER is excluded - regardless of the legal grounds including unlawful acts or tort.
- 9.4. Except in case of a liability according to clause 9.1., BRESSNER shall not be liable for lost profits, business interruptions, missed savings, damages arising from claims of third parties and other indirect and consequential damages. Except in cases according to clause 9.1., the liability for the loss of recorded data is excluded, unless BRESSNER has created a special confidence in this respect. For the recovery of data, BRESSNER is only liable if the customer has ensured that this data can be reconstructed from other data at reasonable costs.
- 9.5. The above exclusions and limitations of liability apply accordingly to non-contractual and pre-contractual liability.
- 9.6. As far as the liability of BRESSNER is limited or excluded, the personal liability of executives, employees, representatives and agents of BRESSNER shall also be limited or excluded.
- 9.7. The claims of the customer for damages expire with the end of the warranty period provided in clause 7.3., but no later than twelve months after the claim arises, except for cases specified in clause 7.14.
- 9.8. For claims for reimbursement of expenses - with the exception of those according to § 439 (2) and 635 (2) German Civil Code - this clause 9 applies accordingly.
- 9.9. None of the preceding terms on the liability of BRESSNER shall constitute any shift of the legal burden of proof.
- 9.10. For software obtained by BRESSNER from third parties, the warranty- and liability-provisions of clauses 11.4. to 11.7. shall apply.

10. Retention of title

- 10.1. BRESSNER retains ownership of the delivered goods and provided works until full payment of the purchase price. In case of breach of contract by the customer, in particular in case of default of payment, BRESSNER is entitled to take back the delivered goods. Its withdrawal by BRESSNER is a withdrawal from the contract. BRESSNER is authorized to realize the goods after they have been taken back; the proceeds of the realization - less reasonable costs of realization - shall be deducted from the liabilities of the customer.
- 10.2. In case of ongoing business relationship with the customer, BRESSNER reserves ownership of movable property until all claims arising from the business relationship have been fulfilled.
- 10.3. The customer is obliged to treat the delivered goods with care and insure them at his own expense against fire and water damage as well as theft and vandalism at replacement value. On request, BRESSNER can demand submission of the insurance policy for inspection. The customer hereby assigns his claims against the insurer with regard to the delivered goods to BRESSNER; BRESSNER accepts this assignment. BRESSNER also declares the re-assignment of these claims to the customer under the condition precedent of the expiry of the retention of title due to complete payment of all claims of BRESSNER. Required maintenance and inspection work must be carried out on time by the customer at his own expense.
- 10.4. Within the scope of ordinary business operations, the customer is entitled to resell the goods delivered by BRESSNER and to transfer them further. The customer hereby assigns his claims (including value added tax) from the resale of these goods to BRESSNER. If the customer transfers the receivables from the resale of the goods to a current account, he assigns to BRESSNER the claim from the closing balance, limited to the amount of the purchase price claim of BRESSNER for the goods resold by the customer. BRESSNER accepts these assignments.
- 10.5. If there is a ban on assignment between the customer and his purchaser, the customer is not authorized to resell the goods, unless the receivable from their resale is transferred to a current account. In this case, the customer assigns the current account claim (causal balance) against his purchaser to BRESSNER according to clause 10.4. After balancing of the current account, the causal balance shall be replaced by the recognized balance, which is deemed being assigned to BRESSNER up to the amount of the initial current account claim.
- 10.6. Insofar as the customer processes the goods delivered by BRESSNER, BRESSNER becomes the owner of the new movable item produced. The processing or transformation of the delivered goods is always carried out for BRESSNER, however without obligation for BRESSNER. If the manufactured item is not manufactured exclusively from BRESSNERs goods, BRESSNER acquires the co-ownership of the manufactured item; the coownership share of BRESSNER is determined by the ratio of the net price of the goods of BRESSNER to the net prices of the remaining items that were processed in making the new item.

- 10.7. BRESSNER revocably authorizes the customer to collect the claims assigned to BRESSNER. BRESSNER will be entitled to revoke this authorization if the customer is in default with his payment obligations. It also expires without revocation as soon as the customer is over-indebted or insolvent, or in case of imminent insolvency or a material deterioration in his assets.
- 10.8. In the event of expiry of the collection authorization, the customer is obliged to inform the third party debtors of the assignment of the claims to BRESSNER in writing without delay and to inform BRESSNER of the assignment notice. Upon request, the customer is further obliged to provide BRESSNER with all information and documents required to assert the assigned claims.
- 10.9. At the customer's request, BRESSNER shall release its collateral rights insofar as the realizable value of the goods still owned by BRESSNER and of the claims assigned to BRESSNER exceeds 110% of BRESSNER's claims arising from the ongoing business relationship with the customer. When choosing the securities to be released, BRESSNER must take the legitimate interests of the customer into consideration.
- 10.10. The valuation of the collaterals is based on their realizable market or stock exchange price. If such price is not available or cannot be determined, the purchase price shall apply. If such cannot be ascertained either, then the manufacturer price is decisive.
- 10.11. The customer is not entitled to pledge, transfer or sell the collaterals in a sale-and-lease-back transaction. In the event of seizures and other attacks by third parties, he must inform BRESSNER immediately to enable BRESSNER to file a third-party objection suit in accordance with Sec. 771 of the German Code of Civil Procedure (ZPO). As far as the third party is not in a position to reimburse BRESSNER for the legal and extra-judicial costs of the claim pursuant to Sec. 771 ZPO, the customer shall reimburse BRESSNER for any loss incurred.
- 10.12. If BRESSNER asserts its security interests against the customer, BRESSNER is entitled to enter the customer's land, premises and buildings during his usual business hours, to take possession of the reserved property or collateral property and to have it transferred to another location.
- 11. Software**
- 11.1. If the scope of delivery includes operating software subject to licence, BRESSNER grants the customer a simple, non-exclusive right to use this software on the delivered system in the program state (release) valid at the time of delivery, upon full payment of the invoice from the delivery to the customer. This software may only be assigned in connection with the delivered hardware system. For user software, special license terms apply, which are supplied to the customer with the software. The customer is obliged to install and use software exclusively within the scope of the granted authorization.
- 11.2. Software (including firmware and middleware) is provided to the customer solely as object code on a suitable medium, made available for download or preinstalled on internal storage media of the hardware, the choice being at BRESSNER's sole discretion. The software documentation is provided by BRESSNER either in paper form or in the same way as the software.
- 11.3. Neither the customer nor any third party is authorized to modify, translate or otherwise manipulate the software. This applies accordingly to the associated documentation, as far as it is not provided in paper form. Any reverse engineering, disassembly or decompilation of the software is strictly prohibited.
- 11.4. The software may include freeware or shareware received from a third party by BRESSNER. For the inclusion of such freeware or shareware BRESSNER has paid no license fees; hence the customer, too, will not be charged any license fee for the use of such freeware or shareware. The customer acknowledges and accepts that BRESSNER therefore assumes no warranty obligation with respect to such freeware or shareware components and assumes no liability obligations of any kind in connection with the possession, distribution and / or use of the respective freeware or shareware by the customer. The customer recognizes the license terms and conditions for the use of the freeware or shareware specified by the respective author as binding on him.
- 11.5. The software may also contain software components developed under the "Open Source Model" which are distributed solely on the basis of the applicable open source software license terms in effect at the time the relevant open source software component is distributed. The customer recognizes the license conditions for the use of such open-source software components determined by the respective author as binding on him and undertakes to comply with them, in particular with regard to the supply of source code and the attachment or retention of the necessary copyright notices. BRESSNER does not receive license fees or other fees for the supply of open source software components. Insofar as BRESSNER or a third party receives any remuneration in connection with open-source software components, such fee received shall be paid exclusively for additional delivery items and / or services. Due to the special nature of the development and the distribution of open source software components, BRESSNER assumes no warranty for them and excludes any liability for them, in particular in connection with missing specifications, missing functionality, programming errors and other faults, unless otherwise provided in the following clauses.
- 11.6. For open source software, which is incorporated in the contractual software product and is necessary for its functioning (embedded software), the above general warranty and liability conditions (clauses 7 and 9) shall apply. Otherwise, BRESSNER assumes no warranty or liability for open source software.

11.7. The exclusion of warranty and liability for freeware, shareware and open-source software shall not apply in case of intentional, gross negligent or fraudulent conduct of BRESSNER, in case of culpable injury of life, limb or health, in case of assumption of a guarantee or procurement risk (Sec. 276 German Civil Code) or in case of a mandatory legal liability, in particular according to the German Product Liability Act. The statutory provisions on regress in the delivery chain (Sec. 445a German Civil Code) shall remain unaffected, unless the software delivered by BRESSNER is processed or modified by the customer in deviation from its intended purpose.

12. Copyright and infringement of property rights

12.1. The customer acknowledges that software may contain or incorporate copyrights, trademarks, know-how and other industrial property rights and that such rights are owned by BRESSNER or its suppliers. Similarly, work documents for training courses are protected by copyright and may not be reproduced – not even in excerpts – without the express written consent of BRESSNER.

12.2. Industrial property rights deriving from work or performance in projects with the customer lie exclusively with BRESSNER, unless such work or performance results were created exclusively by employees of the customer or by third parties on behalf of the customer (e.g. as part of a customer contribution). There is no transfer of property rights to the customer, unless this has been agreed individually and expressly in writing with the customer. Even in the case of an expressly agreed transfer of industrial property rights, BRESSNER reserves the right to use ideas, concepts, experiences, tools, program development components, technologies and other work results that were developed or gained during the performance of the service or work by BRESSNER to the customer free of charge. If both parties have contributed to the creation of the work or service results, they are jointly entitled to the associated industrial property rights according to their share in the respective result. In relation to their share in the respective result, the parties mutually grant each other a license-free, non-exclusive and unrestricted right of use.

12.3. Each party is obliged to notify the other party immediately in writing upon receipt of information that a third party claims the infringement of copyrights or other industrial property due to the contractual use of the goods or work delivered or services rendered by BRESSNER, if the use of these goods, work or services is restricted or prohibited in the country of the place of performance due to such claims. As far as BRESSNER has granted a warranty or assumed liability according to clauses 7., 9. and 11. or by any other agreement with the customer, BRESSNER will, at its own discretion, fulfill these claims at its own expense, ward them off or end the dispute by means of settlement. The customer shall assist BRESSNER in defense in any reasonable way. BRESSNER will bear all financial burdens arising from a judgment against the customer, including any damages awarded to a third party and the costs of the proceedings. BRESSNER will bear the costs of a settlement if BRESSNER agrees to the settlement. The customer grants BRESSNER the sole

authority to decide on the defense in legal procedures and settlement negotiations. He shall grant BRESSNER the necessary powers in each individual case.

12.4. Should BRESSNER arrive at the conviction that a product may possibly be the subject of a complaint concerning copyrights or other industrial property rights, then BRESSNER is entitled, at its own discretion

- to obtain the right to continue using the product at its own expense,
- to replace the product to a reasonable extent at its own expense or modify it so that it no longer infringes the rights of third parties;
- to take back the product and to reimburse the buyer the purchase price less a reasonable usage fee.

12.5. BRESSNER shall have no obligations if the customer is responsible for the infringement of the property rights, e.g. if claims by third parties are caused because software, machines or parts thereof are changed by the customer or connected to programs or data not provided by BRESSNER. This also applies if the infringement of the industrial property rights was attributable to special specifications made on the customer's instructions or if it was caused by a type of use contrary to the contract or unforeseeable by BRESSNER.

13. Prohibition of use and export restriction

13.1. The customer may not use any product in connection with the operation or the maintenance of

- a plant or facility using nuclear power,
- facilities of mass transportation
- airspace surveillance equipment or aircraft

This prohibition does not apply to flight simulators or mechanical CAD applications for the manufacture of aircraft.

13.2. The goods and works delivered by BRESSNER are intended for final destination in the country of delivery agreed with the customer and may not be exported without authorization. The customer is aware that the export of the delivered goods and works, including the technical information transmitted with them, may also be restricted by the export regulations of the Federal Republic of Germany and other states, in particular the United States of America. If BRESSNER grants permission for export, the customer is obligated to comply with the relevant export regulations.

13.3. The customer is obliged to observe the relevant sanction lists of the European Union, the German Federal Government, the US export authorities or other relevant countries, e.g. The European Sanctions List, the Denied Persons List, as well as other warnings of the responsible authorities in its latest version, and act accordingly.

13.4. BRESSNER shall not be obliged to supply products or fulfill any contractual obligations if the delivery or service concerned would result in a breach of export regulations or country specific export restrictions of the Federal Republic

of Germany, the European Union, the United States of America or the relevant export control regulations of other countries.

14. Final provisions

14.1 Only German law shall apply between the parties. This also applies to non-contractual claims. The provisions of the United Nations on contracts for the International Sale of Goods (CISC) are excluded. If in individual cases mandatory foreign law must be applied, these GTC shall be interpreted in a way that the economic purpose pursued by them is achieved as far as legally possible.

14.2 The place of performance for all claims arising from the

business relationship with the customer is Groebenzell near Munich. However, the place of performance for delivery obligations of BRESSNER is the registered office of the factory or warehouse commissioned by BRESSNER with the delivery.

14.3 As far as the contracting party is a merchant according to the German Commercial Code or a legal entity under public law, the place of jurisdiction for all claims arising out of and in connection with the contractual relationship is - at choice of the plaintiff - Munich (district court Munich I) or the general place of jurisdiction of the defendant party.

14.4 All previous terms and conditions are hereby invalid.

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