

as per October 2011

## 1. Applicability And General Provisions

- 1.1. These general terms and conditions (hereinafter "the Terms") shall apply exclusively to all business conducted between BRESSNER Technology GmbH (hereinafter "BRESSNER") and the customer, including sales and deliveries, services and training. Deviating provisions, in particular adverse terms and conditions of the customer, shall only be considered agreed in case of their explicit written confirmation of BRESSNER. The Terms shall also apply, if BRESSNER, being informed of adverse or deviating terms and conditions of the customer, delivers and/or performs without reservation.
- 1.2. The Terms shall apply only vis-à-vis *Unternehmern* (enterprises) and public law entities.
- 1.3. In running business relations, the Terms in their version as amended from time to time shall apply without explicit reference to all future agreements of the parties, in particular in case of verbal orders.
- 1.4. Electronically processed or transferred business statements of BRESSNER such as order confirmations, invoices, credit notes, statements of account and reminders, are valid and binding without bearing a signature.
- 1.5. Contracts on the purchase of hardware (including system software), contracts on services, in particular training agreements, and contracts on user software shall each be legally separate and independent, even if they result from a common order or a common order confirmation. Defects or any other impairment of performance concerning one of these contracts shall have no effect on the other contract, unless explicitly stated by the customer upon ordering.

## 2. Offer And Conclusion Of Contract

- 2.1. Offers of BRESSNER are made without obligation and under reservation of self supply. Orders shall become binding upon written confirmation, unless the ordered merchandise or service is delivered or invoiced. The confirmation of the receipt of an electronic order (email) does not constitute the acceptance of the order. However, the confirmation of receipt can be combined with the acceptance of the order. In case of orders made in the electronic trade, the text of the contract shall be stored by BRESSNER. Upon demand, it shall be sent to the customer by email together with the Terms. The parties dispense with the applicability of the provisions of Sec. 312e, para 1, sentence 1, Sec. 1-3 German Civil Code concerning duties in electronic trade.
- 2.2. The description of a good or service given by BRESSNER and its manufacturer shall be deemed its agreed condition and quality. BRESSNER shall only be liable for public statements, in particular in advertising, if BRESSNER has caused the statement and if the customer's purchase decision has actually been influenced by it. Statements, including specifications of performance, measurement, weight and further quality descriptions, but also drawings and illustrations, given in catalogues, brochures, pricelists and other publications or in documents belonging to the offer are – within the scope of the usual in the trade – approximately correct and insofar of limited relevance only. Any such statement constitutes a quality guarantee only, if explicitly indicated as such in writing. References to DIN-standards (German Industrial Standard) are only made for description purposes and do not constitute a quality-guarantee, unless explicitly agreed.
- 2.3. BRESSNER reserves the right for technical changes of goods without prior announcement, provided that such changes are usual in the trade and their acceptance can be reasonably expected from the customer. In case of technical changes in a running line, the customer cannot claim the re-fitting of goods already delivered.
- 2.4. Property- and copyrights (in particular the rights for reproduction and distribution) in illustrations, drawings, calculations and further documents, the customer receives from BRESSNER in connection with the offer, shall remain with BRESSNER. Except for the case of a mutually designated resale, such documents may not be disclosed to third parties and shall be returned to BRESSNER upon demand, if the contract fails or becomes void.
- 2.5. The customer is liable for the correctness of documents to be procured by him, such as patterns and drafts. If BRESSNER infringes the industrial property rights of a third party by manufacturing goods according to drafts, patterns or other descriptions of the customer, the customer shall indemnify BRESSNER against any claim of the holder of these rights.

## 3. Prices And Payment Conditions

- 3.1. The prices given by BRESSNER in offers and pricelists are net prices. They do neither include value added tax nor other taxes, customs duty, fees or governmental charges connected with the purchase of the relevant good by the customer. Packaging, postage, freight and transport insurance shall be invoiced separately. Confirmed prices are only valid upon purchase of the confirmed amount. Deliveries and services not included in the offer (e.g. in case of subsequent changes of the order) shall be invoiced additionally.
- 3.2. In case of an increase of prices, the higher listed price shall prevail the agreed price, if the goods are delivered later than four months after contract date for reasons in the responsibility of the customer, unless the goods have already been invoiced and paid for.
- 3.3. The purchase price shall be payable net without deductions within 14 days of the invoice date. Deviating periods for payment will be shown in the invoice. Payments have to be made exclusively to BRESSNER. BRESSNER reserves the right to request prepayment.
- 3.4. The acceptance of bills of exchange and cheques requires the consent of BRESSNER and is only deemed as payment, if these documents can be cashed in successfully. Provisions and charges shall be borne by the customer.
- 3.5. If the customer gets in default with due payments, BRESSNER is entitled to retain deliveries of other orders of the customer. As far as payment of delayed amounts is effected, BRESSNER may deliver retained goods as appears fair with regard to further delivery commitments (Sec. 315 German Civil Code).
- 3.6. If the customer does not meet his obligation to pay (e.g. if he does not cash in a cheque or bill of exchange) or if the customer is in danger of insolvency or declared bankrupt, BRESSNER is entitled to accelerate maturity of the whole claim for payment immediately, disregarding the period of accepted bills of exchange. Moreover BRESSNER shall then be entitled to retain due deliveries until receipt of prepayment or securities. If BRESSNER does not receive prepayment or securities after giving the customer an appropriate deadline, BRESSNER may withdraw from the contract with regard to goods and services not yet delivered. In such case, all claims of the customer concerning these goods and services shall become extinct. Instead of declaring the withdrawal from the contract, BRESSNER may also claim damages or assert its rights from the retention of title according to Sec. 8 hereinafter.
- 3.7. Any offsetting by the customer with claims neither accepted by BRESSNER, nor established by declaratory judgement shall be excluded. Any right of retention or any other right of the customer to refuse performance shall be excluded, unless it derives from the same contract as the related claim of BRESSNER. Each single order shall be considered a separate contract. A notice of defect, of which kind ever, does not entitle the customer to retain payment, unless the defect is undisputed, accepted by BRESSNER or established by declaratory judgement.

## 4. Delivery Terms And Acceptance

- 4.1. Dates and terms of delivery or performance stated by BRESSNER are only roughly binding unless a set date has been confirmed. Stated delivery terms commence with the dispatch date of the written order confirmation, however not before the customer has procured required documents, release declarations or prepayments.
- 4.2. Goods shall be deemed delivered within a set period, if they leave the works or warehouse of BRESSNER or if readiness for dispatch is announced to the customer within the term. Within the scope of reasonableness, BRESSNER is entitled to partly delivery. If acceptance of the completed work is required, the date of inspection and secondarily the date of announcement of readiness for inspection shall be relevant, except for a case of justified refusal of acceptance.

- 4.3. In case of force majeure and unpredictable events such as war, riots or strikes which materially impede performance or delivery, BRESSNER will be entitled to catch up on performance or delivery after the impediment ceases. If the delivery is delayed for more than four months, the customer will be entitled to reject delivery and to withdraw from the contract. The customer shall have no further rights or claims because of non-performance or late delivery, even if said impediments occur, after the delivery term has expired or BRESSNER was in default.
- 4.4. In case of expiration of binding terms of delivery or performance, the customer shall be entitled to set an appropriate period for delivery or performance and to withdraw from the contract after futile lapse of the extension. Damages for delay shall be excluded, unless BRESSNER has acted intentionally or with gross negligence. If the default has been caused by BRESSNER intentionally or with gross negligence, the customer shall be entitled to a lump sum compensation of 0.5% of the net price for each complete week of default, however not more than 5% of the net price. BRESSNER reserves the right to compensate the lower actual damage caused by default, if proof is supplied.
- 4.5. If the customer should get in default of acceptance, starting one month after announcement of readiness for dispatch, BRESSNER will charge him 0.5% of the invoiced amount for each month to compensate storage costs. The customer is free to prove and compensate lower storage costs, while BRESSNER may prove and claim higher damage caused by default of acceptance.
- 4.6. The compliance with a term of delivery or performance is subject to the customer's observance of his contractual duties. Upon demand of BRESSNER, the customer is obligated to declare in writing the completion of necessary preparatory work and his readiness to accept delivery. His refusal will cause default of acceptance.
- 4.7. Deliveries of BRESSNER will be made ex works. If the parties agree on a different type of delivery, the following shall apply: BRESSNER will decide on the kind and means of dispatch, the transportation route, the forwarding agent, the carrier, the kind and scope of required securities and the packaging at its sole discretion after due assessment of the circumstances. Due diligence provided, BRESSNER shall not be liable for losses or damages during transport. If required, BRESSNER will insure the consignment at the customer's expenses against theft, breakage and other damages from transport, fire or water and further insurable risks.

## 5. Passing Of Risk

- 5.1. The risk of fortuitous loss or deterioration shall pass to the customer upon delivery ex works. If the parties agree on a different type of delivery, the risk shall pass to the customer upon handing over of the goods to the carrier, the forwarding agent or the collecting person, even if the consignment is free or free at customer's address. If the transport is executed by BRESSNER, BRESSNER shall bear the risk until delivery at the place of receipt. These stipulations shall also apply in case of partly deliveries.
- 5.2. Notwithstanding his rights in Sec. 6, the customer is obligated to accept delivered goods except for the case of essential defects. The customer is obligated to assert transport defects directly vis-à-vis the forwarding agent, the carrier and the insurance companies and to inform BRESSNER.

## 6. Warranty

- 6.1. The customer is obligated to examine the goods upon receipt with due care. He shall make notes on all discernible defects, false amounts or false goods on the delivery note or consignment note immediately upon receipt of the goods. He shall inform BRESSNER in writing no later than five working days after receipt and in any case before processing or installation of the defect or false goods. Failure to inform BRESSNER of defect or false goods will be deemed as approval. The customer shall bear the burden of proof for all requirements for a claim arising from a defect, in particular the defect itself, the time of its ascertainment and the filing of a respective complaint in due time.
- 6.2. If the delivered goods are installed by BRESSNER, the customer shall declare acceptance of the completed work immediately on the spot. In case of refusal, acceptance will be deemed declared, if the customer puts the delivered and installed goods in operation. The customer shall give notice of discernible defects of the installation while the engineer or representative of BRESSNER is present. Except for hidden defects, claims based on defects shall be excluded after acceptance of the installation.
- 6.3. The warranty period shall be one year commencing with the passing of risk according to Sec. 5. Defects resulting from unsuitable or improper use, false or improper installation or operation by the customer or by third parties, natural wear and tear, false or negligent treatment, use of unsuitable means of operation, improper storage and climatic, chemical, electrochemical or electrical influences shall be excluded, unless caused by a fault of BRESSNER. The same shall apply to defects resulting from the non-observance of directions for installation, operation and maintenance, improper changes or repairs by the customer or third parties, influences of parts manufactured by third parties and continued operation despite the occurrence of obvious defects. The regulations on the limitation of action concerning the right of recourse against the supplier according to Sec. 479 German Civil Code shall not be affected.
- 6.4. The warranty is limited either to rectification (repair) or the replacement of the good at the discretion of BRESSNER, which shall be free of charge and, within the European Union and the European Economic Area, free of transport costs. BRESSNER is entitled to let the repair being executed by the manufacturer of the good. In case of replacement, the title in the defect good shall pass to BRESSNER, as soon as BRESSNER accepts the complaint. Additional expenses deriving from obstructed access to the good or insufficient workspace or delivery outside the territory of the European Union or the European Economic Area shall be borne by the customer. If the rectification or the replacement fails, the customer may claim reduction of the purchase price or may withdraw from the contract, if the acceptance of a further attempt of rectification or replacement cannot be reasonably expected from the client. However, in case of a minor breach of contract, in particular in case of minor defects, the customer shall have no right to withdraw from the contract. If the customer should receive faulty instructions for installation, he can only claim the delivery of faultless instructions, provided that the fault hinders a proper installation.
- 6.5. If the rectification of a defect fails and the customer chooses to withdraw from the contract, any additional claim for damages shall be excluded. If he chooses to claim damages, the good will remain with the customer, if reasonable. In that case, the damage will be calculated as difference between purchase price and value of the faulty good, unless BRESSNER has caused the breach of contract fraudulently. The customer can claim damages only under the provisions of Sec. 7.
- 6.6. If a purchaser of the customer raises warranty claims against him in Germany, BRESSNER shall indemnify the customer against these claims in so far, as BRESSNER has granted a warranty vis-à-vis the customer according to the preceding Sec. 6.3 and 6.4, provided that the customer enables BRESSNER to carry out those rectifications, BRESSNER deems necessary. In particular, the customer has to ensure that BRESSNER will get the required time and access to the good, to carry out the necessary inspections, repairs and replacements, even if the good is firmly installed. Additional expenses caused by difficult access or insufficient workspace will be charged to the customer. In case of claims against the customer in connection with the purchase of consumer goods, the right of recourse against the supplier according to Sec. 478 German Civil Code shall not be affected.
- 6.7. Warranty obligations can only arise, if the installation of the good has been executed competently. The warranty extinguishes immediately, if the delivered good is changed by unauthorized persons or by the installation of parts manufactured by third parties, unless the reported defect has not been caused by such changes. The warranty also extinguishes, if the customer disregards instructions for the installation and operation of software and thereby causes a defect.
- 6.8. Warranty obligations will lapse, if the customer, after having informed BRESSNER of the defect, does not ensure that BRESSNER gets the required time and access to the good, to carry out the necessary inspections, repairs and replacements, even if the good is firmly installed. Provided that BRESSNER will get immediately informed of a defect, the customer shall have the right to rectify that defect himself or by a third party and to claim compensation of the necessary expenses from BRESSNER only in urgent cases of jeopardized security of men, to avert excessive imminent damages or if BRESSNER is in default with the rectification of the defect.

**7. Return of Merchandise to BRESSNER**

- 7.1. The customer may not return any merchandise to BRESSNER without indicating the RMA-number provided by BRESSNER on the delivery note and without adding a copy of the duly filled in RMA-form to the consignment. The customer shall apply for an RMA-number using the form provided by BRESSNER. This obligation shall exist without regard to the reason for returning the merchandise, be it in case of exchange, warranty or repair.
- 7.2. The RMA-form can be downloaded under "Support" on the website "www.bressner.de" and will also be submitted by mail or fax upon request.
- 7.3. BRESSNER shall not be liable for any damages resulting from the disregard of the provision under Sec. 7.1.; in particular BRESSNER shall not be responsible for any delay in the handling of warranty cases and of repairs caused by such disregard.

**8. General Liability Limitations**

- 8.1. BRESSNER shall be liable without limitation only in case of wilful or negligent personal injury and for other damages (including damages caused by employees or agents of BRESSNER) which are caused wilfully or by gross negligence. The liability shall also be without limitation in case of a damage caused by the lack of a guaranteed quality or feature or in case of non-compliance with a guarantee given with regard to the defect that gave cause to the damage. The liability for jeopardy, in particular according to the German Product Liability Law, shall not be affected.
- 8.2. In any other case of a negligent breach of primary duties or essential collateral duties (cardinal duties), the scope of the remaining liability of BRESSNER shall be limited to the damage that is foreseeable with regard to the type of the contract. Cardinal duties are such duties that constitute the character of the contract and in the observance of which the customer may rely; they form the elementary rights and duties and constitute the preconditions for the performance and for attaining the purpose of the contract.
- 8.3. In any other case, including tort, the liability of BRESSNER shall be excluded.
- 8.4. BRESSNER shall not be liable for lost profit, not realized savings, damages resulting from claims of third parties, further indirect or consequential damages and for the loss of stored data, unless BRESSNER has a liability based on principles of reliance. BRESSNER shall only be liable for the reconstruction of data, if the customer takes care that lost data can be reconstructed with reasonable effort.
- 8.5. The preceding exclusions and limitations of liability shall apply respectively in cases of pre-contractual or non-contractual liability.
- 8.6. 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.
- 8.7. The customer's claims for compensation shall become statute-barred with the expiration of the warranty period according to Sec. 6.3, however not later than six months after the claim arises, unless the claim is based on fraudulent conduct, on the German Product Liability Law or on Sec. 478 para 1 fig. 2 or Sec. 634a para 1 fig. 2 of the German Civil Code.
- 8.8. This Sec. 8. shall apply respectively to claims for compensation of expenses. Claims according to Sec. 439 para 2 and 635 para 2 German Civil Code remain unaffected.
- 8.9. None of the stipulations in this Sec. 8. shall constitute an alteration of the burden of proof according to the law or jurisdiction.

**9. Reservation Of Title**

- 9.1. All goods supplied by BRESSNER shall remain property of BRESSNER until complete settlement of claims for payment against the customer including accessory claims (current account settlement). Cheques and bills of exchange shall only be deemed as payment, if accepted and cashed by the drawee.
- 9.2. The customer is obligated to handle the reserved goods with care and to insure their new value at his own expense against fire, water, theft and vandalism. The customer shall hand over the insurance policy for inspection to BRESSNER on request. The customer declares to assign his claims against the insurance company and BRESSNER accepts the assignment. BRESSNER declares to re-assign these claims to the customer under the condition precedent that the title in the reserved goods passes to the customer because of a complete settlement of all claims for payment of BRESSNER. The customer shall take care of all necessary maintenance or inspection services at his expense.
- 9.3. The customer shall be entitled to process and sell reserved goods in the normal course of business. Any processing and adaptations of reserved by the customer shall be effected on behalf of BRESSNER. If such processing or adaptation is effected with goods which are not the property of BRESSNER or if the reserved goods are inseparably connected or mingled in any other way with other goods, BRESSNER shall acquire the co-ownership of the new or single chattel in the ratio of the invoice value of the reserved goods to the value of the other goods at the time of processing.
- 9.4. If the value of reserved goods according to Sec. 9.1 and 9.3 permanently exceeds the amount of the secured claim by more than 10 % (limit of cover), BRESSNER shall release reserved goods of the respective value on request of the customer. The choice of the goods to be released is at the discretion of BRESSNER.
- 9.5. The reserved goods shall be valued according to their market prices or stock exchange prices. In the absence of such price, the purchase price shall be decisive. If no purchase price can be determined, the manufacturer price shall be decisive.
- 9.6. The customer is not entitled to pledge the reserved goods, to assign them by way of security or to sell them by sale-and-lease-back-agreement. In case of seizure of reserved goods or other means of debt enforcement by a third party, the customer shall immediately inform BRESSNER and to enable BRESSNER to take legal action according to Sec. 771 of the German Civil Procedure Code. The customer shall compensate any connected expenses of BRESSNER, if they cannot be recovered from the third party.
- 9.7. The customer shall hereby assign his claims arising from the resale of the reserved goods to BRESSNER by way of security for all claims for payment against the customer including accessory claims. In case of co-ownership, the customer's claim is assigned pro rata. BRESSNER accepts the assignment.
- 9.8. The customer will not be entitled to resale the reserved goods, if he agrees with the purchaser on a prohibition of assignment of his claim for payment, unless his claims for payment of the resold goods will become assets on current account. In such case, the customer shall assign these current account assets to BRESSNER according to Sec. 9.7. After balancing the current account, these assets shall be replaced by the confirmed balance, which will be deemed assigned to BRESSNER in the amount equal to said assets on current account.

- 9.9. The customer shall remain entitled to assert the assigned claim.
- 9.10. If the realizable value of the assigned claims permanently exceeds the amount of the secured claim by more than 10 % (limit of cover), BRESSNER shall reassign claims of the respective value on request of the customer. The choice of the claims to be reassigned is at the discretion of BRESSNER.
- 9.11. BRESSNER shall have the right to realize the given securities and to revoke the customer's authority to process and resale the reserved goods and to assert the assigned claims only, if the customer is in default with his payments, is in danger of insolvency, ceases payments or is declared bankrupt
- 9.12. In each of the cases mentioned in Sec. 9.11, the customer shall immediately inform BRESSNER about name and address of the debtors of the assigned claims and to submit all documents necessary to assert the claims. The customer shall also inform the debtor immediately of the assignment by way of security.
- 9.13. BRESSNER is entitled to withdraw from the contract and to claim the return of the reserved goods, if the customer gets in default with his payments or infringes any of his duties stipulated in this Sec. 9. When asserting the preceding security interests, BRESSNER is entitled to enter the property and buildings of the customer and to take possession of the reserved goods or property assigned by way of security and to transfer such goods and property to a different place.

**10. Copyrights and Industrial Property Rights**

- 10.1. The customer shall neither imitate or copy the products of BRESSNER nor order such imitations or copies. He acknowledges that the products of BRESSNER are protected against imitation and copy by patent rights and other industrial property rights. The infringement of these rights is liable to criminal prosecution and will result in claims of BRESSNER for damages and injunctive relief.
- 10.2. In case the delivery of BRESSNER includes system software subject to licence, BRESSNER grants the customer a non-exclusive right to use the software as released at the time of delivery only in connection with the delivered hardware and only after complete payment of the invoice concerning that delivery. This right may only be transferred together with the delivered hardware. BRESSNER will submit licence regulations for user software separately. The customer shall install and use software only within the limits of the granted licence.
- 10.3. The customer acknowledges that software may contain or embody trademark-rights, know-how and other intellectual property and that these rights are held by BRESSNER or its supplier. Working papers submitted in training courses are protected by copyright and may neither partly nor wholly be duplicated without the explicit written consent of BRESSNER.
- 10.4. The customer shall inform BRESSNER immediately, if claims arise against him because of an alleged infringement of an industrial property right in the country to which the respective good has been delivered by BRESSNER. BRESSNER will either meet or contest the claim or settle the dispute at its discretion. The customer shall grant BRESSNER any reasonable support in the defence of the claims. BRESSNER will indemnify the customer from all payment obligations established by declaratory judgement or by settlement with the approval of BRESSNER including the costs of proceedings. The customer authorizes BRESSNER to decide on the means of defence and on settlement negotiations and will grant BRESSNER the required power of attorney.
- 10.5. If BRESSNER arrives at the conviction that a product might become subject of a claim for infringement of industrial property rights, BRESSNER shall be entitled – at its discretion -

- to acquire a licence enabling the customer to continue the use of the product;
  - to replace or alter the product as far as reasonable and required to avoid the infringement of industrial property rights;
  - to take back the product or parts thereof and to reimburse the purchase price or a respective proportion of it, after deduction of an adequate user fee.
- 10.6. No obligations of BRESSNER shall be incurred, if claims of third parties arise because software, hardware or other goods or parts thereof become modified or connected with software or data of the customer or third parties.

**11. Prohibition Of Use And Export Restrictions**

- 11.1. The customer shall not use any product of BRESSNER in connection with the operation or maintenance of
  - a plant or facility using nuclear power,
  - facilities of mass transportation,
  - facilities for the supervision or monitoring of airspace or aircrafts.
 This ban does not apply to flight simulators or mechanical CAD-applications for the construction of aircrafts.
- 11.2. The delivered goods are destined to be used and retained in the country of delivery and shall not be exported from there without permission. The customer acknowledges that the export of the delivered goods including the technical information provided with the delivery may be restricted by the export regulations of Germany and other countries, in particular of the United States of America. If BRESSNER approves export, the customer shall be obligated to abide with the relevant export regulations.

**12. Concluding Terms And Provisions**

- 12.1. German law shall apply exclusively. The Convention of the United Nations for the International Sale of Goods (CISG) shall not apply.
- 12.2. The place of performance for all claims deriving from the business relation with the customer shall be Gröbenzell (near Munich, Germany). However, the place of performance for supply commitments of BRESSNER shall be the place of the work or warehouse from where the goods are delivered according to the determination of BRESSNER.
- 12.3. Place of venue for all disputes arising between the customer and BRESSNER in connection with their contractual relation shall be Munich/Germany (Landgericht München I), provided that the customer is a public law entity or a *Kaufmann* (merchant) according to Sec. 1 – 3 of the German Commercial Code or has a comparable status according to the law at the place of his business. Each party is free to take legal action at the general place of venue of the other party.
- 12.4. All previous general terms and conditions of BRESSNER shall hereby become void.
- 12.5. The Terms have also been recorded in German. In case of doubt, the German version shall prevail.

**BRESSNER Technology GmbH** Telephone: +49-8142/472 84-0  
**Industriestrasse 51** Fax: +49-8142/472 84-77  
**D-82194 Gröbenzell** Email: info@bressner.de  
**Germany** Web: www.bressner.de

Geschäftsführer (Managing Directors):  
 Claudia Bressner · Josef Bressner  
 Handelsregister (Commercial Register):  
 HRB 127206, AG München

Bankverbindungen:  
 Commerzbank München Postbank München  
 BLZ 700 400 41 BLZ 700 100 80  
 Konto 220 065 700 Konto 22 022 807