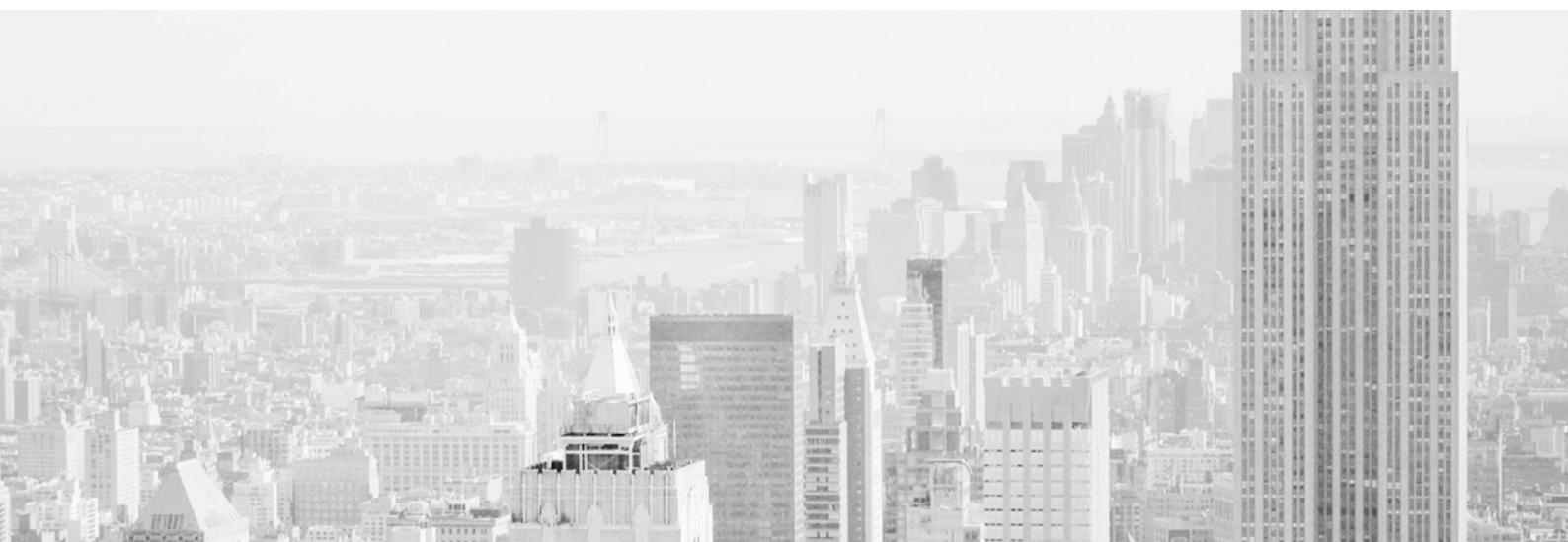


Movement by Perfection



**The Royal League** in ventilation, control and drive technology

# General Terms and Conditions of Business

May 2017

Please note that this is an English translation of the original Polish version. Both language versions shall have the same legal effect. In case of any conflict, the original Polish version shall prevail.



## Content

I.	Validity of the General Terms and Conditions	3
II.	Offers, Scope of Performance	3
III.	Special provisions concerning the exchange of information via electronic communication or by fax	3
IV.	Price	3
V.	Retention of Title	4
VI.	Terms of Payment	5
VII.	Delivery and Service Periods	5
VIII.	Software delivery	6
IX.	Transfer of risk and acceptance of goods	6
X.	Claims based on defects	6
XI.	Liability	7
XII.	Other Customer's duties, Export Control	8
XIII.	Confidentiality	9
XIV.	Miscellaneous	9

## **General Terms and Conditions of Business of ZIEHL-ABEGG Polska Sp. z o.o.**

### **I. Validity of the General Terms and Conditions**

1. All our deliveries, services, and offers are made exclusively on the basis of the present General Terms and Conditions. Consequently, these General Terms and Conditions also apply to all future business relations even if not expressly agreed upon again in the future.
2. These General Terms and Conditions are deemed accepted at the moment of the receipt of the goods and services at the latest. Counter-confirmations by the Customer with a reference to the Customer's General Terms and Conditions or General Purchase Conditions are hereby rejected. We expressly deny the validity of any commercial terms and conditions that deviate from the present terms and conditions of sales. Customer's terms and conditions which are contrary to the present Terms and Conditions shall not be binding upon us even if the order is based upon them or if the Customer refers to them on forms or in other Customer's documents.
3. Rights to which we shall be entitled according to the statutory provisions in addition to what is provided for in these General Terms and Conditions shall remain unaffected.
4. These General Terms shall apply exclusively with regard to legal relations between entrepreneurs as provided for by Art 43(1) of the Polish Civil Code.
4. Unless the Customer refers to catalogue data when placing the order, the Customer shall be obliged to provide us with general information as to the purpose of use of the supplied goods, assembly type, operating conditions, and other terms that have to be taken into account in relation thereto.
5. Protective devices shall also be included in our deliveries to the extent expressly agreed upon.
6. We unrestrictedly retain all exploitation rights under property and copyright law in all cost estimates, calculations, drawings, and other documents; such documents may not be passed on to third parties. Drawings and other documents that form part of our offers shall be returned to us without undue delay if the order is not placed with our Company.
7. The execution and validity of subsidiary agreements have to be proved by the Party referring thereto.

### **II. Offers, Scope of Performance**

1. For the scope of our deliveries or services, our written order acceptance confirmation is valid. If we submit an offer with time limits determined for the binding force of the offer and for the acceptance thereof, the said offer shall be valid, unless the order acceptance is confirmed in due time.
2. Figures, drawings, information as to weights, dimensions, performance and consumption, as well as other descriptions of goods included in the documentation that forms part of our offer are approximations only, unless they have been expressly referred to as binding. They shall not constitute an agreement upon a guarantee of relevant characteristics of the goods.
3. Due to manufacturing and technological reasons we reserve the right to supply up to 5% more or less of the delivery volume when delivering consumables or small parts. There will be no reimbursement if a lesser quantity is delivered.

### **III. Special provisions concerning the exchange of information via electronic communication or by fax**

1. If a message (declaration of intent) is sent electronically (exchange of information via electronic communication), such message shall be deemed received by the recipient when it has been delivered to the recipient's communication device.
2. An audio message shall be deemed to have been played by the recipient when it has been made available for listening in the relevant part of the sender's communication device and has been played from such part by the recipient.
3. The contracting parties recognize the legal validity of messages transmitted according to the provisions of items 1 and 2 above.
4. If the contracting parties exchange correspondence by fax, the transmission report shall be deemed sufficient evidence of the receipt of our declarations.

### **IV. Price**

1. Unless otherwise stated in a separate agreement, our prices shall be "ex Works" including loading at our works, but excluding the packaging. To these prices, VAT shall be added calculated at the statutory rate.

2. If the delivery or service is to be performed or provided more than four months after the conclusion of the contract, we reserve the right to reasonably raise the amount of our remuneration provided that there has been a significant increase in the valid parameters prevailing at the time of the contract execution, that have been decisive for determining our prices, in particular, the price of materials, wages, and public charges.

## V. Retention of Title

1. Until all claims against the Customer (including any and all receivables related to the trade balance and current account) to which we shall be entitled now or will be entitled in future on whatever legal grounds have been fulfilled, we are granted the following securities, which we will release upon request at our discretion if that the value of such security exceeds the value of the aforementioned claims by more than 20%. The provided securities shall be appraised at their nominal value and in the case of goods subject to value restriction, the appraisal shall be performed at their net purchase price –VAT excluded – as stated in the invoice, whereas in the case of co-ownership, the appraisal shall be performed according to the relevant share in the real value of the principal item. The resulting value shall be reduced by secured third-party rights the amount of which is limited to the amount of receivables secured by such third parties at the time the request for release of securities is made.
2. The supplied goods shall remain our property until all our claims resulting from the business relationship, including claims that have not as yet become due, are fully settled, especially in terms of total payment of the price for the delivered goods. The above also applies if the balance is recognized. In such a case, the retention of title serves as security for the claim resulting from the existing balance. The Customer shall be obligated to handle the goods in which title is retained with due care throughout the duration of the retention of title. In particular, the Customer shall be obliged to adequately insure the goods at their replacement value, at the Customer's own expense, against damage by fire, water, and theft. The Customer already assigns to us at the moment all claims for compensation arising from such insurance. We hereby accept the assignment. If such an assignment is not permissible, the Customer hereby irrevocably instructs its insurer to make payments, if any, exclusively to us. Further-reaching claims on our part shall remain unaffected. At our request, the Customer must furnish us with evidence for the conclusion of the insurance contract.
3. The Customer is entitled to resell or process the supplied goods in the ordinary course of business. In the event of a resale, the supplied goods are replaced Customer's claim against the purchaser, which the Customer hereby assigns to us with all ancillary rights up to the total amount of all our claims against the Customer. We hereby accept the said assignment. If the assignment is not permissible, the Customer hereby irrevocably instructs to purchaser to make payments, if any, exclusively to us. Until this provision is recalled, the Customer is entitled to collect and recover the receivables. All amounts collected shall be deposited collectively and remitted to us by the Customer until all our claims have been settled in full. If the Customer's purchaser makes payments by means of bank transfers, the Customer hereby assigns to us the Customer's claims against the relevant financial institution under such transfer. We hereby accept this assignment now. Upon our request, the Customer shall provide us with all necessary information and allow us to inspect the records.
4. To the extent that the Customer processes goods in which title is retained, the contracting parties agree that such processing shall occur on our behalf so that we become the owners of the new items. The Customer's expectant right (expectant rights) in the goods in which title is retained continues to a corresponding extent in the processed or transformed item. If the processing costs considerably exceed the value of our goods, the contracting parties agree that the goods shall be processed also on our behalf and that we acquire co-ownership of the new item proportionally to the ratio of the invoice value of our goods to the value of the new item at the time of processing. If the Customer combines goods in which title is retained with another item so that our goods become an essential part of another item that is then to be deemed the principal item, the Customer shall immediately transfer to us the proportionate co-ownership of the new item. The Customer shall hold such new items for safekeeping for our benefit free of charge. In the event of a resale, the foregoing provisions shall apply accordingly.
5. If, upon the conclusion of the contract, we become aware of circumstances that give rise to justified doubts about the Customer's creditworthiness, or if the Customer defaults in the settlement of a liability towards us, we shall be entitled to rescind the contract without setting an additional period for discharging the liability and/or to demand – as a security – that the goods owned or co-owned by us be deposited with us until all our claims have been settled in full.
6. In the event that third parties seize or, in particular, impound goods of which we are the owners or co-owners or receivables to which we shall be entitled the Customer shall furnish the third party or the court enforcement officer without undue delay with evidence of our ownership of, or title to the item. Moreover, the Customer shall notify us without undue delay of undertaking such measures and assist us in whatever



manner in the protection of our rights. If we impound the goods, such impoundment shall not be deemed a waiver of our retention of title or a termination of the contract.

7. The goods owned or co-owned by us shall not be assigned to third parties as a security or a pledge.
8. If goods are delivered to countries with a different legal system where the provisions on the retention of title pursuant to Section V(1) to Section V(6) above provide less protection than in the country where our company has its registered office, the Customer hereby grants us a security interest that is customary in such country and that is, in economic terms, equivalent to the retention of title in the country in which our company has its registered office. If further declarations or legal actions prove necessary for this purpose, the Customer shall make such declarations and undertake such legal actions. The Customer shall assist us with all measures that are necessary and useful to ensure the validity and enforceability of any such security interest.

## VI. Terms of Payment

1. Unless otherwise agreed, our invoices shall be payable without deduction within ten days after the invoice reception date. Payment in cash or by bill of exchange shall be accepted only based on a special agreement. In spite of the Customer's provisions to the contrary, we shall be entitled to credit the Customer's payments towards Customer's outstanding debts first, whereas we will inform the Customer of such settlement method. In the case of debts due to costs and interest, we shall be entitled to credit the payments towards the costs first, then towards the interest, and finally towards the principal amount.
2. Payments shall be deemed made only when we have a relevant amount at our disposal. In the case of a check, the payment shall be deemed made only after the check has been cashed.
3. If the Customer defaults on payment, we shall be entitled to claim interest at a rate of 8% above the basic interest rate (reference rate of the National Bank of Poland) p.a., however not more than the maximum interest rate. We do not exclude further claims for damages.
4. If we become aware of circumstances that give rise to doubts about the Customer's creditworthiness, in particular, if a check cannot be cashed or if payments are suspended, or if we become aware of other circumstances that give rise to doubts about the Customer's creditworthiness, we shall be entitled to demand the payment of all the remaining amounts receivable, even if we have accepted checks. In such a case, we shall be further entitled to demand advance payments or the provision of a security.

5. Counter-claims on the part of the Customer shall entitle the Customer to a setoff only if such claims have been ascertained by a final court judgment or if these are undisputable. The Customer may assert a right to retention only if the Customer's counter-claim is based on the same contractual relationship.

## VII. Delivery and Service Periods

1. Delivery dates or periods, which may be agreed upon as binding or non-binding, shall be established in writing.
2. We shall not be liable for delays in delivery or performance that occur due to force majeure or events that considerably complicate or hinder our delivery including in particular: strikes, lock-outs, orders of official authorities, etc., also when these affect our suppliers or their subcontractors – even if delivery or performance periods and dates have been agreed upon as binding. The aforementioned events shall entitle us to prolong the delivery or performance period by the duration of the impediment plus a reasonable start-up period. If such events considerably change the economic importance or the content of the delivery or service or if they have a significant impact on our business operation, we may additionally demand that the contract be reasonably adjusted. If the said impediment continues for more than one month, we shall be entitled to rescind the contract in whole or in part in relation to the unfulfilled part thereof. If we choose to make use of the said right to rescind the contract, we shall notify the Customer of such an intent after we have consulted how important and significant relevant event is. If the delivery period is extended or we are released from our obligation due to the aforementioned events, the Customer shall not be entitled to raise claims for damages. However, we may refer to the aforementioned circumstances only if we have notified the Customer thereof.
3. If we become liable for non-compliance with the agreed binding delivery or performance periods and dates or if we are in default, the Customer's claim shall be limited to a compensation amounting to 0.5% for each entire week of delay, whereas such liability shall not exceed 5% of the total invoice value of the deliveries and services affected by the delay. Additional claims shall be excluded unless the delay results at least from our gross negligence.
4. We shall be entitled to make partial deliveries and to provide partial services unless such partial deliveries or services are unacceptable to the Customer.
5. The compliance with our obligations to deliver and perform shall depend on the timely and proper fulfillment of the Customer's obligations.

6. The delivery period is deemed to have been observed if the goods have left the works, or if we have notified that the goods are ready for dispatching, before the lapse of the delivery period. The delivery (within the agreed delivery period) shall be subject to the condition that we timely and properly supply ourselves.
7. In the event of a delay in delivery, the Customer shall be entitled to terminate the contract if, upon the occurrence of a delay in delivery, the Customer sets an additional period for the delivery with a warning that the delivery would not be accepted after the lapse of the said period.
8. If the Customer defaults in the acceptance of delivered goods, we shall be entitled to claim compensation for the relevant damage incurred by us. The risk of accidental deterioration and accidental loss or destruction shall be transferred to the Customer upon occurrence of the Customer's default in the acceptance of delivered goods.

## VIII. Software delivery

1. In case of software delivery, the Customer is granted a nonexclusive and non-transferable right to use the software and the related documentation necessary for the operation of the goods for which the software is supplied. The Customer shall not be permitted to make copies, except for one back-up copy. Copyright marks, serial numbers, and other features identifying the software shall not be removed or altered.
2. The Customer shall be obligated to prevent unauthorized access to the software and the documentation by third parties by means of appropriate precautions. The Customer shall store the original data storage media and back-up copies at a place that is secured against unauthorized access by third parties. The Customer shall expressly point out to its staff the duty to comply with the present terms of delivery and with the provisions of copyright law.
3. Our liability for the loss or alteration of data is limited to the typical cost of data recovery that would be incurred if back-up copies were made at regular intervals adequate to the existing risks.

## IX. Transfer of risk and acceptance of goods

1. The risk shall be transferred to the Customer no later than at the moment of dispatching the parts to be delivered, even in the case of partial deliveries or if we have assumed further obligations, such as the assumption of the shipping costs or delivery and installation of the supplied goods. If the shipment becomes impossible without our fault, the risk shall be transferred to the Customer on the

day the Customer is notified about the goods being ready for dispatch.

2. If shipment is delayed due to circumstances for which the Customer is responsible, the risk shall be transferred to the Customer from the day the Customer is notified about the goods being ready for dispatch.
3. The Customer shall accept the delivered items even if these have insignificant defects.

## X. Claims based on defects

1. The Customer shall not refuse to accept deliveries because of insignificant defects. The Customer's obligation to inspect goods and notify about defects and about the consequences related to these arises from the provisions of Art. 563 of the Polish Civil Code. The above shall apply subject to the condition that defects that are obvious or identifiable during a correct inspection are notified in writing no later than 8 days after the handover of the goods to the Customer. Other (hidden) defects shall be notified to us in writing no later than 8 days after they are discovered. Claims shall be sent in writing to our head office; claims reported to our field staff, carriers or other third parties will not be regarded as submitted in due form and time.
2. We assume liability for a specific application or specific suitability of goods only if this has been explicitly agreed upon in writing. Otherwise, the Customer shall bear the risk of suitability and application of goods. If the Customer has been informed about technical framework conditions or other specifications concerning the use and operation of goods, the Customer shall be responsible for compliance with such conditions and specifications. The Customer shall also inform its buyers about such conditions and specifications and oblige them to comply therewith. Defects resulting from the operation or use of the goods in a way that does not conform to the said conditions and specifications will be excluded from our guarantee. Claims based on defects will be excluded in particular if and insofar as damage to the delivered item or to Customer's other legal interests is caused by the following circumstances:
  - a. incorrect processing, assembly or treatment;
  - b. incorrect installation of the delivered items by the Customer or a third party, except where the incorrect installation is based on our instructions, whereas our field staff members are not authorized to give such instructions;
  - c. noncompliance with our instructions and directions





concerning start-up, possible applications and operation of the delivered item contained in the documentation of the delivered item, operation manual or other guidelines;

- d. normal wear and tear that cannot be associated with manufacturing or material defects;
  - e. inappropriate operation, modifications or repairs of the goods by the Customer or third parties, particularly in the case of interventions carried out by non-qualified persons or use of non-original spare parts or the Customer's own resources.
3. If the goods have to be returned due to existing defects, the return shipment shall be performed only upon our prior consent. Return shipments made without our prior consent might not be accepted. In any such case, the Customer shall bear the cost of our return shipment sent to the Customer.
4. If goods are repaired in order to remove a defect or goods free of defects are delivered (replacement delivery) as a result of a justified claim based on defects discovered in purchased goods, the provisions of Section VII concerning delivery periods shall apply accordingly.
5. The existence of a defect notified to us on the basis of a valid claim gives rise to the following rights pertaining to the Customer:
- a. If the delivered goods are defective, the Customer may first demand that we restore the conformity of the delivered goods with the contract specifications. In such a case we may choose at our discretion whether to replace the defective goods with goods that are free from defects or to remove the defect, unless Section X (5)(c) applies. If the defect is removed, insofar as the claim proves to be justified, we shall bear all direct expenses necessary for the removal of the defect, in particular, transportation and travel expenses and the cost of our own labor, staff and materials, to the extent that such costs are not increased due to the fact that the goods are transported back to a place other than the delivery address. Such transport costs shall be limited to the amount that arises or would have arisen in relation to the return of repaired goods to the former delivery address. If the goods are shipped to different place other than the former delivery address, the Customer shall bear the extra costs caused thereby, if the shipment was not part of the delivery contract between us and the Customer.
  - b. We shall be entitled, at our discretion, to employ third parties to carry out repair works. The above

shall not establish a contractual relationship between the Customer and the third party. In such a case, the amount under the statutory warranty for defects will not exceed the one that would be applicable if we carried out the repair works on our own. Additionally, if an attempt at defect repair or removal fails, we shall have the right to make another attempt, at repairing or removing the defect, also at our discretion, subject to Section X (5)(c).

- c. Provisions concerning the removal of a defect, for example pursuant to Section X(5)(a) or Section X(5)(b), shall not apply insofar as such regulations prove unacceptable for the Customer, for example in the case of our unjustified refusal or unacceptable delay of a repair.
  - d. If the Customer's claim based on a defect proves to be unjustified, the Customer shall reimburse all the costs and expenses incurred by us due to such claim.
6. The limitation period for the Customer's claims based on defects is one year. The liability for defect shall be excluded if the defective products have not been used in accordance with their typical manner of use in the devices. The limitation period will start at the moment of the delivery of the goods. In the case of losses resulting from a breach of guarantee or from death, bodily injury or damage to health, willful misconduct and gross negligence as well as product defects will be subject to statutory limitation periods. Our statement in respect of a claim based on defects raised by the Customer must not be treated as our accession to negotiations concerning the claim or as the circumstances justifying the claim if we fully reject such a claim. The Customer shall in all cases prove that the defect existed already at the moment of delivery.

## **XI. Liability**

- 1. We are liable without limitation for losses resulting from a breach of guarantee or from death, bodily injury or damage to health. The same rule applies as well if we or our senior executives or vicarious agents become liable due to willful misconduct, fraudulent misleading or gross negligence.
- 2. We shall be liable for petty negligence only insofar as material obligations resulting from the nature of the contract and of particular importance for achieving the purpose hereof, on which the Customer relies and should rely, have been breached. In the case of a breach of a material contractual obligation, default and/or impossibility,

the Customer's claim for damages and reimbursement of expenses shall be limited to the indemnity available for a typical and foreseeable damage claim.

3. The above provisions do not affect mandatory statutory liability for product defects.
4. The Customer's claims for reimbursement of expenses are excluded, unless a reasonably operating third party would also have incurred such expenses. In addition, claims for damages or reimbursement of expenses – for any legal reason whatsoever – that go beyond the provisions of Section XI (1) to (3) shall be excluded.
5. Our liability for essential third-party products shall be limited to assignment of the claims based on liability for defects against the supplier of the relevant third-party products. The above does not apply if these claims against the supplier are not legally enforceable or if such an enforcement is impossible for the Customer.
6. In case that the Customer or one of the Customer's buyers resells the goods delivered by us to an end-consumer (natural person), the provisions of Art. 476(1) and the following articles of the Polish Civil Code shall apply to the Customer's rights under the guarantee covering the defective goods. In such a case we are only liable if the Customer failed to execute any agreements with the Customer's buyer covering claims exceeding the statutory mandatory provisions for claims based on defects and subject to the condition that the Customer fulfilled its obligation to inspect the goods and notify detected defects.
7. Any repair of physical defects or provision of insurance benefits shall be performed without recognition of a legal obligation unless in a specific case we expressly agree otherwise.

## **XII. Other Customer's duties, Export Control**

1. The Customer may not alter the goods in any material respect that is relevant for safety. In particular, the Customer shall not alter or remove existing warnings about dangers in the case of improper use of the contracted goods. If this duty is violated, the Customer shall internally indemnify and hold us harmless from and against product liability claims of third parties to the extent to which the Customer is responsible for the defect that gave rise to liability.
2. If we are forced to withdraw a product or issue a warning about the (defective) product, the Customer shall assist us and undertake all reasonable measures ordered by us. The Customer shall be obligated to bear the cost of the product withdrawal or issuance of the warning about the (defective) product to the extent the Customer is liable for

the product defect and the damage sustained according to the principles of product liability regulations. This shall not prejudice our further-reaching claims.

3. The Customer shall notify us without undue delay of any risks in the use of the goods covered by the Contract and of possible product defects of which the Customer becomes aware.
4. The delivery of goods (products, software, and technology) within the framework of services provided under this contract may be subject to export restrictions or prohibitions. The Customer shall comply with all applicable export control regulations and corresponding restrictions. This particularly applies to European, German and, if relevant, the US provisions of law relating to (re-) exports. In the case of a re-sale / forwarding of the supplied goods, the Customer shall notify the recipient on the provisions on export control and the resulting obligations.
5. In particular, the Customer shall ensure that goods are not used, either directly or indirectly, for a purpose that is connected in any way to chemical, biological or nuclear weapons of mass destruction and their carrying systems. Furthermore, the Customer shall ensure that the items are not put, either directly or indirectly for a military end-use in a country subject to an embargo on weapons. The Customer shall not sell, export, re-export, supply, deliver, forward the supplied goods or otherwise make them available to persons, companies, facilities, organizations or countries, either directly or indirectly, if doing so would violate European, German or any other applicable export control laws and regulations, including the U.S. provisions relating to (re-)exports.
6. The Customer shall, upon request, provide end-use certificates in order to prove the final destination and end-use of the products required for the application of any exports licenses or approvals.
7. The Customer shall be fully liable towards us for any loss suffered by us that has been caused by the Customer's failure to comply with the applicable export control provisions, including the US (re-)export provisions.
8. The performance of the contract and corresponding obligations is subject to the condition that the required export or transfer authorizations, approvals or any other authorizations specified by foreign trade law or required by the competent authorities are issued and that there are no other legal restrictions that must be complied with according to the provisions of export control law.
9. The Customer shall be responsible for all taxes, charges and duties in connection with the services provided outside the Republic of Poland that will be reimbursed, if necessary.





### **XIII. Confidentiality**

The contracting parties shall maintain, for an unlimited period of time, the confidentiality of any and all information that becomes available to them and is referred to as confidential or can be recognized as a trade or business company according to circumstances, and they may neither record nor transfer or exploit such information. The contracting parties shall ensure through adequate contractual arrangements with their employees and agents that those employees and agents too shall refrain for an unlimited period of time from the use, transfer, or unauthorized recording of such trade or business secrets on their own behalf.

### **XIV. Miscellaneous**

1. The transfer of rights and obligations of the Customer to third parties is subject to our written consent.
2. The legal relations between the contracting parties shall be governed by the laws of the country in which our company has its registered office, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. The exclusive place of jurisdiction for settling all disputes arising from the current business relationship between the contracting parties shall be the court of competent jurisdiction over the place where our company has its registered office. We shall be further entitled to bring action in court competent for the Customer's principal place of business, as well as at any other permissible place of jurisdiction. The provisions of item XIV.3 shall be binding exclusively between entrepreneurs.
4. The place where all performances shall be made for all contracting parties shall be the place where our company has its registered office.
5. If any provision hereof is or becomes invalid or impracticable in whole or in part or if there is a gap in this agreement, the above shall not affect the validity of the remaining provisions hereof. Instead of an invalid provision, the statutory provisions shall apply. If a provision in this agreement is or becomes unenforceable and the statutory provisions prove to be unacceptable for either Party hereto, a provision corresponding to what would have been agreed upon according to the purpose of this agreement if the contracting parties had considered the relevant issue from the beginning shall be deemed agreed upon.

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