

General Delivery Conditions of AVITEQ Vibrationstechnik GmbH

All countries excluding Germany (applicable as from September 1, 2004)

1. Scope of application

- 1.1. The general delivery conditions are applicable exclusively for all sales and deliveries of AVITEQ Vibrationstechnik GmbH (hereinafter referred to as "AVITEQ") to all countries excluding Germany (hereinafter referred to as "exports"). Conditions of the purchaser / receiver of the goods (hereinafter referred to as "customer") which conflict with, differ from or which supplement these delivery conditions, shall not be recognised and shall not be applicable. This shall also be applicable in the event that AVITEQ should not contradict or the customer should declare that he only intends to purchase at his own conditions. Conflicting or differing conditions of the customer shall only apply if AVITEQ agrees to this expressly in writing. The delivery conditions of AVITEQ shall also be applicable even if it undertakes the deliveries unconditionally in the knowledge of conflicting conditions or conditions of the customer which may differ from these delivery conditions. The customer shall recognise these conditions at the latest at the time of the partial or complete reception of the goods delivered. These general delivery conditions shall also be applicable for all future business relationships with the customer.
- 1.2. These general delivery conditions shall be applicable only with regard to corporations within the meaning of Section 310 of the BGB (German Civil Code).

2. Offer/acceptance

- 2.1. All agreements, which are concluded between AVITEQ and the customer for the execution of the relative contract, shall be set down in writing in the contract. Oral sub-agreements or oral commitments, which are undertaken by sales employees without the right of representation or other employees of AVITEQ with no right of representation and which exceed the content of the contract, shall only be effective if they are confirmed in writing or by fax by AVITEQ. This shall also apply to amendments and supplements following the conclusion of the contract.
- 2.2. The offers made by AVITEQ shall always be subject to confirmation and serve only to request the customer to submit an offer regarding the conclusion of a contract. Orders from the customer become binding only following the acceptance by AVITEQ and shall result in the conclusion of a contract. The acceptance of AVITEQ can also become effective through delivery and/or the submission of an invoice.
- 2.3. Should the goods to be delivered correspond to particular purposes of the customer, these requirements must be stated expressly and completely by the customer in the contract and be confirmed by AVITEQ in writing.
- 2.4. Offers of AVITEQ, which are subject to confirmation, shall expire 20 days following the date of the submission of the offer (submission or date of establishment of the letter/telegram/fax).
- 2.5. The documents included in the offer subject to confirmation such as drawings, copies, product descriptions, measures, weights or other performance data are only approximately definitive, insofar as they are not expressly confirmed as binding by AVITEQ, or if they conform to legal regulations or are confirmed in writing or by fax.

- 2.6. AViTEQ shall reserve all rights to ownership as well as to copyrights with regard to cost estimates, drawings and other documentation as well as to all information in material or immaterial form (in particular also in electronic form); third parties may not be given access to them. Should the contract not be concluded, the customer is obliged to return the above-mentioned documentation etc. entrusted to him to AViTEQ on demand. With regard to plans designated by the customer as confidential AViTEQ shall undertake to make these available to third parties only with the customer's approval; this shall not apply if AViTEQ is permitted to transfer the implementation of the contract completely or in part to third parties.

3. Delivery, delivery dates and default

- 3.1. The deliveries of AViTEQ are effected ex works.
- 3.2. The delivery period shall start with the dispatch of the contract confirmation on the part of AViTEQ, but not, however, prior to the timely provision of documentation, approvals, releases etc., which may have to be obtained by the customer, and prior to the receipt of the agreed prepayment or total cash in advance as well as the clarification of all technical questions.
- 3.3. The delivery period is complied with provided that the customer is informed up to its expiry date that the goods to be delivered are available for collection or are ready for dispatch.
- 3.4. Agreed delivery dates or delivery periods are only binding for AViTEQ insofar as they are confirmed in writing or by fax by AViTEQ or by an authorised representative.
- 3.5. The confirmation of the order in writing by AViTEQ is decisive for the scope of the delivery.
- 3.6. Acts of God or circumstances, which are not the responsibility of AViTEQ (e.g. public unrest, strikes, lock-outs, operational disturbances, natural catastrophes, government measures and restrictions, mobilisation, lack of raw and working materials etc.), and which may hinder the timely execution of the contract, shall give AViTEQ the right to postpone for an appropriate period the fulfilment of the obligations assumed or to withdraw fully or in part from the contract should the performance by AViTEQ be thereby rendered impossible. The same shall apply if AViTEQ should not or should not receive on time the materials ordered from its suppliers, which are required for the execution of the order, for reasons not attributable to AViTEQ. The prerequisite for the withdrawal is that AViTEQ shall inform the customer immediately of the non-availability and, if appropriate, compensate the customer immediately for any services which he may already have rendered to AViTEQ. Late deliveries do not release the customer from his obligation to accept delivery. Compensation claims on the part of the customer are excluded for such events insofar as the implementation of the contract has been undertaken by AViTEQ with all due care and commercial diligence up to the occurrence of these events.
- 3.7. If the hindrance described in Point 3.6 above should last for longer than 3 months, the customer shall have the right, following an appropriate period of grace, to withdraw from the contract due to the part thereof still not fulfilled. Should the delivery period become prolonged or should AViTEQ be released from its obligation to perform, the customer may not file any compensation claims in this respect. AViTEQ can only refer to the above-mentioned circumstances if it informs the customer immediately of having knowledge of these or if these are generally known, even if the customer himself does not have any knowledge thereof.

- 3.8. Insofar as AViTEQ is responsible for the non-compliance with confirmed obligatory periods and dates as a result of simple negligence or is in default, the claim of the customer for the compensation of damages due to such delay, which can be proven by him are limited to 0.5% of the invoice amount for each full week of the delay, in total, however, to 5% of the invoice value of that part of the total delivery and service in question, which as a result of the delay cannot be used at the right time or in accordance with the contract. If the customer can demand compensation instead of the performance due to such default, AViTEQ shall be liable for compensation in the event of an infringement of the main obligations of the contract even in the case of simple negligence; however, in this case the possible claims of the customer shall be limited to compensation for the probable damage at the time of the conclusion of the contract up to a maximum of 50% of the value of the order. Additional claims are excluded, unless the delay is attributable to intentional or gross negligence of AViTEQ.
- 3.9. Should the dispatch be delayed at the wish of the customer, the customer shall be charged, however, for the costs arising from the storage of the goods, and at least 0.5% of the invoice amount per month for storage in the factory / warehouse of AViTEQ, beginning one month after the availability of the dispatch has been announced to him.
- 3.10. AViTEQ has the right to effect partial deliveries and partial services at any time, provided that these are reasonable.
- 3.11. The compliance with the delivery obligations of AViTEQ shall require the complete clarification of the order and, if appropriate, the necessary approvals as well as the timely and correct fulfilment of the contract obligations of the customer (such as, e.g. the documentation to be provided, payment and submission of collateral etc.). The delivery time shall be extended accordingly, insofar as the above-mentioned requirements are not all fulfilled in a timely manner; this shall not apply if the delay is due to AViTEQ.
- 3.12. If the customer is in delay with regard to acceptance or if he infringes other obligations regarding collaboration, AViTEQ shall have the right to demand compensation for the damage arising to it including eventual additional expenses. At the beginning of the delay in acceptance the risk of eventual deterioration or of the eventual non-usability will be transferred to the customer at the time at which the delay in acceptance occurs.
- 3.13. All deliveries by AViTEQ are subject to the correct and timely deliveries to AViTEQ itself.
- 3.14. Should considerable facts become known to AViTEQ following the conclusion of the contract but prior to delivery, which put in doubt the ability of the customer to pay, AViTEQ can withdraw from the contract insofar as the customer does not declare himself ready to accept the goods to be delivered by means of a prepayment or to provide AViTEQ other collateral which is usual in commercial practice.
- 3.15. Both claims for damages of the customer due to delay of the delivery as well as claims for compensation instead of the performance, which exceed the limits stated in Point 3.8, are excluded in all cases of delayed deliveries, even after the expiry of any period for the delivery which may have been set for AViTEQ. This shall not apply insofar as there is a compelling case of liability in cases of intentional or gross negligence or due to violations of life, corporal damage or health. Within the framework of the legal conditions the customer can only withdraw from the contract insofar as the delay in the delivery is attributable to AViTEQ. Any change in the burden of proof to the disadvantage of the customer is not connected with the above-mentioned conditions.
- 3.16. The customer is obliged to declare within a reasonable period at the demand of AViTEQ whether he wishes to withdraw from the contract due to the delay in the delivery or whether he wishes to accept delivery.

4. Dispatch and packaging

The dispatch of the goods shall be effected for the account and at the risk of the customer. The costs for the insurance of the goods to be delivered shall be borne by the customer.

5. Inspections and acceptance

- 5.1. Inspections in the presence of the customer or his representative as well as special inspections shall be subject to prior agreement; AVITEQ shall have the right to invoice the costs of the inspection to the customer.
- 5.2. If an acceptance inspection of the goods to be delivered is foreseen, this must be effected in the production facilities of AVITEQ. Acceptance takes place if the customer does not intimate justified complaints up to the end of the inspection.
- 5.3. Should the customer renounce participation in an agreed acceptance inspection or if he does not attend the inspection in spite of being informed in time, the inspection shall be considered by AVITEQ as the acceptance.
- 5.4. Should inspections be delayed for reasons not attributable to AVITEQ, any additional costs shall be for the charge of the customer.

6. Prices, invoices, payment conditions

- 6.1. The prices of AVITEQ are valid ex works, unpackaged and uninsured, insofar as no other conditions have been agreed. The invoicing shall be effected on the basis of the order confirmation of AVITEQ. Prices included in offers subject to confirmation shall only become binding through the confirmation of the order. The legal sales tax is not included in the prices of AVITEQ; this will be shown separately in the legally applicable amount in the invoice.
- 6.2. Additional deliveries and services exceeding the scope of the goods to be delivered shall be invoiced separately. Insofar as no other conditions are agreed, the invoices (payments on account, instalments etc.) of AVITEQ are payable without any deduction as from the date of the invoice in cash or per bank transfer, free of postage and expenses, and due immediately after the receipt of the invoice as follows:
 - 1/3 of the value of the order following the receipt of the order confirmation as payment on account
 - 1/3 of the value of the order as soon as the customer is informed that the main parts of the order are ready for dispatch (payment on account or instalment)
 - The remaining amount following the receipt of the goods within 14 days as from this date.
- 6.3. A payment is only considered to have been effected when AVITEQ shall actually have the amount at its disposal. Payments by cheque require the approval of AVITEQ and are only accepted for reasons of settlement. The costs of money transfers and other costs as well as foreign exchange losses are for the charge of the customer. Bills of exchange are not accepted.

- 6.4. AVITEQ has the right, notwithstanding any contrary conditions of the customer, to set off payments initially against the customer's prior debts relating also to other debt situations. AVITEQ shall inform the customer regarding the type of the set-off effected. Should costs and interest have already occurred, AVITEQ shall have the right to apply the payment first of all to such costs, then to the interest and finally to the main purpose of the payment.
- 6.5. Should the customer be in arrears with the payment, AVITEQ shall have the right to demand from the date of the beginning of the arrears interest of 6% in excess of the relative basis interest rate of the European Central Bank, but at least 8% per annum as lump sum damages. The interest shall be applied at a lower rate if the customer shall prove a lower degree of default; the proof of higher damages by AVITEQ shall be permissible. The assertion of continuing arrears damages shall not be affected.
- 6.6. If the customer is in arrears with regard to the acceptance of the goods to be delivered or the payment, AVITEQ shall have the right, notwithstanding any further claims, to refuse additional deliveries during this period, whereby the customer shall not have any rights in this regard.
- 6.7. In the event of non-compliance with the payment conditions, suspension of payments, delay in payments or the knowledge of facts, which may put in doubt the credit-worthiness of the customer, AVITEQ shall have the right to declare the remaining amount owed as immediately due. This shall also apply if AVITEQ has accepted cheques. In such a case AVITEQ shall also have the right to demand prepayments or collateral as well as to stop outstanding deliveries either fully or in part and furthermore, to prohibit the customer to sell on the goods delivered, which are already under reserve of ownership, and to repossess individual goods delivered.
- 6.8. With regard to partial deliveries AVITEQ shall have the right to invoice each partial delivery separately.
- 6.9. AVITEQ shall have the right to assign the claims of the customer to third party.

7. Assignment and set-off

- 7.1. The customer only has a right to undertake set-offs, retentions or reductions, even if notices of defects or counter-claims are made, once the counter-claims are legally determined or are indisputable.
- 7.2. The assignment of contractual claims by the customer is excluded. Payment claims are excluded from this.

8. Risk transfer and acceptance

- 8.1. Insofar as no other conditions are included in the order confirmation, the delivery is effected ex works at AVITEQ.
- 8.2. Insofar as a price quotation is agreed, for which the Incoterms 2000 including the valid supplements at the time of the conclusion of the contract provide for different conditions for the risk transfer, this shall be considered as a contradictory regulation.
- 8.3. At the request of the customer the dispatch by AVITEQ may be insured against theft, breakage, transport, fire, water damage and other insurable risks at the charge of the customer.

- 8.4. Goods delivered must be accepted by the customer irrespective of the rights included in Points 9 and 12, even if they have slight defects.

9. Guarantees

With regard to material and legal defects of the goods delivered AViTEQ shall give the following guarantees under the exclusion of further claims subject to Point 12:

- 9.1. Should the goods delivered have defects due to circumstances prevailing prior to the transfer of risk, the customer may demand subsequent fulfilment in accordance with Section 439 BGB (German Civil Code). All those parts or services must be subsequently improved and delivered free of charge, redelivered or reproduced at the discretion of AViTEQ, which within the period of one year show material damage in accordance with Point 17, irrespective of the duration of operation. The parts replaced shall become the property of AViTEQ.
- 9.2. In the event of recognisable defects and damages of the goods and/or the packaging as well as volume deviations and false deliveries at the time of delivery, the customer is obliged to note these initially on the delivery certificate to the transport company undertaking the delivery at the time of reception of the goods. Moreover, the customer is obliged to inform AViTEQ immediately in writing of such defects or damages. Moreover, the regulation of Section 377 HGB (German Commercial Code) shall apply. The customer must inform AViTEQ immediately in writing of all recognisable defects. Should a complaint about the defects not be submitted during an appropriate period of time, the customer cannot raise any further claims against AViTEQ with regard to the defects not communicated.
- 9.3. AViTEQ has the right to view and inspect the goods to be delivered about which a complaint has been made, in the event of every complaint concerning a default. The customer is obliged to leave the goods in an unchanged condition until the viewing and the inspection. With regard to the viewing and the inspection the customer has the right to demand an appropriate period for this vis-à-vis AViTEQ.
- 9.4. Following agreement with AViTEQ the customer must grant the required time and opportunity for the undertaking of the replacement delivery or other subsequent fulfilment; otherwise, AViTEQ is released from the liability for the resulting consequences. Only in urgent cases concerning the endangerment of operating security or the avoidance of exceptionally major damage, whereby AViTEQ must be informed immediately, has the customer the right to demand from AViTEQ the necessary costs for the avoidance of the damage.
- 9.5. Should the subsequent fulfilment fail in spite of repeated attempts or if AViTEQ refuses this unjustifiably or if it delays this unacceptably, the customer, irrespective of any compensation claims in accordance with Point 12, can withdraw from the contract or reduce the payment.
- 9.6. Claims for defects are not valid in the case of immaterial deviations from the agreed qualities, in the case of immaterial impairment of the usability and in the case of natural wear or tear or damage, which may arise following the transfer of risk as a result of incorrect or negligent treatment, excess use, unsuitable operating materials, incorrect or negligent handling, improper maintenance, chemical, electro-chemical or electric influences or as a result of external influences, which are not foreseen in the contract. Should improper changes or other alterations be effected by the customer or by third parties, no right to claim for defects shall exist for these and for the resulting consequences.

- 9.7. For the purposes of subsequent fulfilment AViTEQ shall bear all necessary expenses, in particular transport, labour and other costs. The charge of costs is excluded, insofar as the costs may increase in the event that the goods to be delivered are dispatched subsequently to another destination than the originally agreed place of fulfilment on the part of the customer, unless such transport corresponds to the determined use.
- 9.8. Should the operating or maintenance instructions of AViTEQ not be followed, or if changes are made to the products or parts are changed or supplies used which do not correspond to the original specifications, then all guarantees shall become invalid; this shall also apply in the event of unsuitable or incorrect use as well as incorrect or negligent treatment of the goods delivered, if AViTEQ does not disprove a corresponding substantiated claim that initially one of these circumstances has caused the defect.
- 9.9. In the event of claims for defects, payments of the customer may be postponed to an extent which corresponds to the relative material faults in an appropriate ratio. The customer may only postpone payments if a claim for defects is made and when the justification therefore is incontestable. If the claim for defects is incorrect, AViTEQ shall have the right to demand from the customer all the relative costs which it has incurred.
- 9.10. Defects of a part of the goods to be delivered do not give the customer the right to oppose additional deliveries, insofar as the usability of the total delivery as defined by the contract is not unreasonably impaired.
- 9.11. Reversion claims of the customer against AViTEQ in accordance with Section 478 BGB (liability for compensation of the entrepreneur) only exist insofar as the customer has not concluded any agreement with his own customer in excess of the legal claims for defects. With regard to the scope of the reversion claim of the customer against AViTEQ in accordance with Section 478 para. 2 BGB, Point 9.6 shall also apply.
- 9.12. Point 12 shall otherwise apply with regard to claims for compensation (other claims for compensation). Additional or other claims of the customer against AViTEQ and its fulfilment agents due to material defects, other than those regulated under this Point 9, are excluded.

10. Commercial trademarks and copyright; deficiency in title

- 10.1. Insofar as no other conditions are agreed, AViTEQ is obliged to effect the delivery only in Germany free of commercial trademarks and copyrights of third parties (hereinafter referred to as "trademarks"). Insofar as a third party should raise justifiable claims against the customer due to the infringement of trademarks through deliveries used in accordance with the contract and effected by AViTEQ, AViTEQ shall be liable to the customer within the period determined in Point 17 as follows:
 - a.) At its discretion and for its own charge AViTEQ shall either obtain an exploitation right for the deliveries concerned, or alter them so that the trademarks shall not be infringed, exchange them with goods delivered with corresponding qualities or take back the goods to be delivered against refund of the purchase price. If this is not possible for AViTEQ at acceptable conditions, the customer shall have the legal reduction or withdrawal rights.
 - b.) The liability for the provision of compensation by AViTEQ is governed by the terms of Point 12.
 - c.) The above-mentioned liabilities of AViTEQ only apply insofar as the customer informs AViTEQ immediately in writing about claims made by third parties, does not recognise an infringement and all defence measures and composition negotiations are reserved for AViTEQ. Should the customer halt the use of the delivery for reasons of damage reduction or other important reasons, he is obliged to inform the third party that no recognition of an infringement of the trademarks is connected with the halt in use.

- 10.2. Claims of the customer are excluded insofar as he is responsible for the infringement of the trademarks.
- 10.3. Should the customer undertake changes to the goods delivered, the installation of additional components or the connection of the goods delivered with other apparatus or equipment, or if the contract has been effected in accordance with special instructions of the customer and trademarks of third parties are thereby infringed, the liability of AViTEQ shall not apply. In such cases the customer shall release AViTEQ from all claims of third parties. Similarly, AViTEQ shall not be liable for the infringement of third party trademarks for goods delivered, which are produced in accordance with the drawings, developments or other instructions of the customer. In such cases the customer shall also release AViTEQ from all claims of third parties.
- 10.4. In the event of trademark infringements the claims of the customer governed in Point 10.1a are also governed by the conditions in Points 9.4, first half sentence 9.9 and 9.11.
- 10.5. In the event of other deficiency in title the terms in Point 9 shall apply.
- 10.6. Additional or other types of claims do not exist for the customer as a result of the infringement of trademarks of third parties. In particular AViTEQ shall not replace subsequent damages, such as loss of production or use as well as loss of profit. This shall not apply insofar as there is conclusive liability for legal reasons due to intentional or gross negligence; otherwise Point 12 shall apply.

11. Impossibility, contract adjustment

- 11.1. Insofar as the delivery is impossible, the customer shall have the right to demand compensation, unless the impossibility is not attributable to AViTEQ. However, the claim for compensation of the customer is limited to 10% of the value of that part of the delivery which could not be received by the customer due to such impossibility. This limitation shall not apply insofar as conclusive liability exists in cases of intention, gross negligence or due to the violation of life, corporal damage or health; a change of the burden of proof to the disadvantage of the customer is thus not connected therewith. The right of the customer to withdraw from the contract remains unaffected.
- 11.2. Insofar as unforeseeable events within the meaning of Point 3.6 should change substantially the economic importance or the contents of the delivery or have a substantial effect of the operations of AViTEQ, the contract shall be adapted appropriately in good faith. Insofar as this is not economically acceptable, AViTEQ shall have the right to withdraw from the contract. Should AViTEQ wish to make use of this right of withdrawal, it must inform the customer immediately as soon as the scope of the event is known; this shall also apply if an extension of the delivery period has been agreed initially with the customer.

12. Other compensation claims, liability

- 12.1. Apart from the default and defect claims regulated above, AVITEQ shall have no liability unless damage is based on an infringement of duty due to gross negligence on the part of AVITEQ or on an intentional or grossly negligent infringement of duty by legal representatives or fulfilment agents of AVITEQ or that such damages arise from the violation of life, corporal damage or health, which are due to a negligible infringement of duty on the part of AVITEQ or an intentional or negligence-related infringement of duty by legal representatives or fulfilment agents of AVITEQ or concern such damages, which normally and typically are insurable at acceptable conditions through a liability insurance policy to be concluded by AVITEQ. This shall apply in particular in respect of damage claims resulting from faults prior to or during the conclusion of the contract, violation of ancillary duties and claims due to impermissible actions. In each case the possible claims shall be limited to the contractually typical and reasonably foreseeable damages. A change of the burden of proof to the disadvantage of the customer is not agreed in connection with the above regulations.
- 12.2. For damages, which do not occur to the goods to be delivered themselves, AVITEQ for whatever legal reasons shall be liable only in the case of intention or gross negligence of the owner and its statutory bodies or executives, in the case of wrongful violation to life, corporal damage and health, with regard to defects which it has wrongfully concealed and the absence of which it has guaranteed, with regard to defects of the goods to be delivered, insofar as there is liability in accordance with the product liability law for personal or material damage, or due to other legal regulations. In the event of wrongful infringement of key terms of the contract AVITEQ is also liable with regard to the intention or the gross negligence of non-executive employees and, in the case of simple negligence, limited in the latter case to the contractually typical and reasonably foreseeable damages. Additional claims are excluded. A change in the burden of proof to the disadvantage of the customer is not connected with the above regulations.
- 12.3. Insofar as the customer has compensation claims in accordance with Point 12, these shall expire at the end of the limitation period agreed for claims for material defects in accordance with Point 17. With regard to claims for compensation in accordance with the product liability law or legal food products regulations, the corresponding legal limitation regulations shall apply, however, only insofar as these are conclusive.

13. Title retention, processing, transformation, mixing

- 13.1. Until the fulfilment of all receivables (including all balances on current account), which accrue to AVITEQ vis-à-vis the customer for any legal reason, including receivables arising also only in the future from the business relationship with the customer, the following collateral shall be granted to AVITEQ.
- 13.2. The goods delivered shall remain the property of AVITEQ until the receipt of all payments from the contract, insofar as no other conditions have been agreed.

- 13.3. In the event that the customer should infringe the terms of the contract, and in particular in the case of arrears in payment, AVITEQ shall have the right to withdraw from the contract and to repossess the goods following the unsuccessful expiry of a reasonable period fixed for the customer; the legal conditions concerning the indispensability of the fixing of a period shall remain unaffected. The customer is liable for restitution. If necessary, AVITEQ can demand the assignment of the restitution claims of the customer vis-à-vis third parties. The repossession of the goods and the validity of the reserve of ownership by AVITEQ do not constitute a withdrawal from the contract. The pledging of the goods delivered by AVITEQ always constitutes a withdrawal from the contract. Following the return of the goods delivered AVITEQ is authorised to utilise the goods, and the proceeds from such use shall be set-off against the liabilities of the customer after deduction of appropriate exploitation costs.
- 13.4. During the period of reservation of proprietary rights the customer is obliged to treat the goods delivered with all due care; in particular he is obliged to insure these sufficiently at replacement value at his own cost against fire, water damage and theft as well as other insurable risks. Insofar as other costs are required for the correct maintenance of the goods to be delivered, the customer must bear these costs.
- 13.5. With regard to pledges and other recourses by third parties the customer must indicate the ownership of AVITEQ and immediately inform AVITEQ, so that AVITEQ can secure its ownership rights and file action in accordance with Section 771 ZPO. The customer is obliged to provide all the required collaboration. Insofar as the third party is not in the position to refund to AVITEQ the court and out-of-court expenses of an action in accordance with Section 771 ZPO, the customer shall be liable for the losses arising to AVITEQ.
- 13.6. The customer shall not have the right to pledge, transfer as collateral or to burden the goods under reserve with other rights of third parties.
- 13.7. The customer has the right to process further and to sell the goods for normal business purposes so long as he is not in delay or is otherwise not in arrears with his obligations towards AVITEQ. The receivables in connection with the further sale or for any other legal reason (insurance, impermissible action etc.) with regard to the goods to be delivered shall already be transferred fully in the amount of the final invoice agreed with AVITEQ (including sales tax) to AVITEQ as collateral. The customer shall also remain authorised for the collection of these receivables following the transfer within the framework of normal business practice until revoked by AVITEQ. AVITEQ, however, undertakes not to collect the receivables for as long as the customer fulfils his payment obligations from the proceeds received, is not in payment arrears and in particular if no application for the opening of insolvency proceedings has been submitted or a suspension of payments has taken place. If this, however, is the case AVITEQ can demand that the customer informs it of the pledged receivables and his debtors, gives details on all amounts to be collected, transfers the corresponding documentation and informs the debtors (third parties) of the assignment. In addition, AVITEQ shall also have the right to publish the assignment.
- 13.8. Processing or transformation by the customer shall take place always for AVITEQ as the producer, but, however, without any obligation for him. The reversionary interest of the customer in the goods delivered continues in the transformed goods. Should the goods delivered be processed with other goods not belonging to AVITEQ, AVITEQ shall obtain the co-ownership in the new goods in relationship to the objective value of the goods delivered to the other processed goods at the time of the processing. For the goods originating from the processing the same shall apply as for the goods delivered under reserve.

- 13.9. Should the goods to be delivered be inseparably mixed with other goods not belonging to AViTEQ, AViTEQ shall obtain the co-ownership in the new goods in relationship of the objective value of the goods delivered to the other mixed goods at the time of the mixing. If the mixing occurs in such a way that the goods of the customer are considered to be the main product, it is therefore now already agreed that the customer shall transfer to AViTEQ co-ownership accordingly. The customer shall maintain the co-ownership of AViTEQ free of charge.
- 13.10. AViTEQ undertakes to release the collateral assignable to it at the demand of the customer, insofar as the realisable value of the collateral exceeds the receivables secured by more than 20%; the selection of the collateral to be released shall be at the discretion of AViTEQ.
- 13.11. The customer shall permit AViTEQ irrevocably as well as all its employees or other third parties acting on behalf of AViTEQ to access his business premises and warehouses at any time during normal business hours in order to determine the goods delivered belonging to AViTEQ. Should the customer not fulfil his obligations from the business relationship existing with AViTEQ, AViTEQ shall have the right to repossess at any time the goods to be delivered if a substantial deterioration should take place or be threatened in the financial situation of the customer.

14. Change of design

AViTEQ reserves the right to undertake at any time construction changes; it is, however, not obliged to also undertake such changes with regard to products already delivered.

15. Confidentiality

- 15.1. Should no other conditions be agreed in writing, the information submitted to AViTEQ in connection with the orders shall not be considered as confidential.
- 15.2. The customer shall undertake to treat confidentially all information known to him in connection with the contractual relationship, insofar as this is not generally known, as well as all corresponding documentation. The subcontractors and/or fulfilment agents appointed by the customer shall also be similarly obliged.
- 15.3. With regard to the issuing of references or publications the customer may only mention the corporate name or trademark of AViTEQ, if the latter has agreed to this beforehand in writing.
- 15.4. In the event of an infringement of the confidentiality obligation or infringement of the above-mentioned conditions under Points 2, 10 and 13 AViTEQ has the right to claim lump sum compensation in the amount of 10% of the order value. Claims for compensation beyond this amount remain expressly reserved. The customer has the right to submit proof that no damage or a considerably lower degree of damage has occurred. The lump sum amount shall be reduced accordingly in such cases.

16. Use of software

- 16.1. Insofar as software is included within the scope of the delivery, the customer shall be given a non-exclusive right to use the goods delivered including the relative documentation. This will be permitted for use in connection with the corresponding goods delivered. The use of the software on more than one system is prohibited.

- 16.2. The customer may copy, rework, or translate the software only within the legally permissible scope in accordance with Sections 69a et al. UrhG (German Copyright Law), or transform it from the object code into the source code. The customer shall undertake not to remove producer details and in particular copyright notations or to change these without the prior express approval of AViTEQ.
- 16.3. All other rights to the software and to the documentation including copies thereof shall remain with AViTEQ or the supplier of the software. The issuing of sub-licences is not permitted.

17. Limitation of software utilisation

- 17.1. All claims of the customer, for whatever legal reasons, shall lapse subject to the condition in Point 12.3 for compensation claims in accordance with the product liability law or regulations regarding food products 12 months following the delivery of the goods at the customer or at third parties named by him, and at the longest 15 months as from the date of the announcement from AViTEQ with regard to the readiness to dispatch the goods to be delivered.
- 17.2. With this exception, these claims shall lapse within the legal limitation period
- in the event of intentional, wrongful or grossly negligible infringement of duty by AViTEQ or by legal representatives or fulfilment agents of AViTEQ;
 - in the event of damages from the violation of life, corporal damage or health, which are due to a negligent violation of duty on the part of AViTEQ or to an intentional or negligent violation of duty of the representatives or fulfilment agents of AViTEQ;
 - in claims from a guarantee for the qualities of the product;
 - insofar as AViTEQ is obliged to refund the costs, which the customer must bear with regard to a private consumer and /or a subsequent entrepreneur in the delivery chain due to the sale of a new product for the purpose of subsequent fulfilment (Section 478 para. 2 BGB);
 - in the event that the goods delivered by AViTEQ have been used for a building construction corresponding to its normal manner of use and has proven to have a defect, and the contractual relationship was not based in total on part B of the service order for construction services (Sections 438 para. 1. No. 2, 634 a para. 1 No. 2 BGB).
- 17.3. In all cases the limitation period shall begin at the earliest in accordance with the legal regulations.

18. Data protection

The execution of the contract and the submission of invoices shall be undertaken by AViTEQ with the help of electronic data processing, in which the necessary data for this will be stored. AViTEQ shall have the right to store, process and to transfer the data of the customer for the purpose of the business transactions.

19. Place of jurisdiction, place of performance and applicable law

- 19.1. The exclusive place of jurisdiction, also for cheque proceedings, is for all litigation regarding and in connection with the contract and its execution the legal seat of AVITEQ, currently located at Hattersheim-Eddersheim, insofar as the customer is an entrepreneur, businessman, a legal entity in public law or trust assets under public law or who has no general place of jurisdiction in Germany. The same shall apply if the customer, following the conclusion of the contract, moves his domicile or ordinary place of residence/legal seat abroad or if the domicile or ordinary residence or legal seat at the time of the filing of an action on the part of AVITEQ is unknown. AVITEQ shall, however, have the right to select any other competent court.
- 19.2. The place of fulfilment for all contractual and legal claims in respect of the contract shall be the legal seat of AVITEQ.
- 19.3. German law shall be applied exclusively for the legal relationships in connection with this contract. The application of the agreement of the United Nations concerning contracts in respect of the international purchase of goods (CISG) as well as the application of the standard laws concerning the international purchase of moveable assets and the conclusion of such purchase contracts is excluded.
- 19.4. Insofar as no deviating regulations are concerned, the Incoterms (International Commercial Terms) 2000 shall be applicable for the interpretation of the usual commercial contract formulations including the valid supplements as at the time of the conclusion of the contract.

20. Redemption clause

Any ineffectiveness of individual conditions of the contract shall not affect the validity of the rest of the contract. In such a case the parties to the contract shall immediately make every effort to replace the corresponding ineffective term by another formally valid regulation which is closest to the originally intended economic purpose.