

General Delivery Conditions of AVITEQ Vibrationstechnik GmbH

All countries excluding Germany (applicable as from Mai 1, 2010)

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. The purchase contract concluded in writing, including these General Delivery Conditions, alone shall be applicable to the legal relations between AVITEQ and the ordering party. It shall set forth, in full, all agreements made between the contracting parties concerning the subject matter of the contract. Oral promises made by the seller prior to conclusion of this contract shall be legally unbinding, and oral agreements made by the contracting parties shall be replaced by the written contract unless it is clearly understood in the case of each one of them that they continue to apply bindingly. Supplements and amendments to the agreements made, including these General Delivery Conditions, shall require the written form to be effective. With the exception of managing directors and Prokuristen (authorised signatories), AVITEQ employees shall not be entitled to make oral agreements deviating herefrom on a case-by-case basis. In order to meet the written form requirement here agreed upon, it shall be sufficient to use fax transmission, or even telecommunicative transmission, in particular email, provided such messages are confirmed by the respective other contracting party in the same text format.
- 2.2. AVITEQ's offers shall at all times be without obligation and merely constitute a request directed at the ordering party to submit an offer for conclusion of a contract. The order shall be binding on AVITEQ (conclusion of a contract) upon its written confirmation or upon commencement of execution of the order.
- 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. Details given by AViTEQ concerning the delivery item or subject of agreement (e.g. weights, dimensions, utility values, loading capacity, tolerances, technical or other performance data) as well as AViTEQ's corresponding representations of the foregoing details (e. g. product descriptions, drawings, illustrations) shall be only approximately applicable, unless they are described by AViTEQ in writing as binding and/or unless usability for the contractually intended purpose necessitates strict conformity with the details given. They do not constitute warranted characteristics, but descriptions or markings of the delivery or performance. Customary deviations and variances occurring as a result of statutory provisions or representing technical improvements, as well as the replacement of components by equivalent parts shall be admissible provided they do not impair the usability for the contractually intended purpose.
- 2.6. AViTEQ reserves all ownership rights and/or copyrights in all offers and cost estimates submitted by it as well as any and all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids placed at the ordering party's disposal, as well as all other information in physical and non-physical form (including, in particular, in electronic format). The ordering party may not make said objects, as such or content-wise, accessible to third parties, nor publicise, utilise or reproduce them, itself or through third parties, without AViTEQ's express approval. At AViTEQ' request, it shall return to it said objects in full and destroy any copies made of them if they are no longer needed by it in the ordinary course of business, or if negotiations fail to result in the conclusion of a contract. The same shall apply to corresponding documents placed at AViTEQ's disposal by the ordering party for the execution of the contract. AViTEQ shall, however, be entitled to make said documents accessible to such third parties as AViTEQ has admissibly transferred deliveries.

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. If AViTEQ is in default of delivery or of performance, or if it becomes impossible for AViTEQ to deliver or perform, regardless of the reason, AViTEQ's liability shall be limited to compensation in accordance with Point 11 of these General Delivery Conditions.
- 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 shall be entitled to make partial deliveries and render partial services if the partial deliveries and/or partial services can be used by the ordering party within the scope of the contractually intended purpose, delivery of the remaining goods is ensured and the ordering party does not thereby incur excess expenditure or additional costs.
- 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. 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.
- 3.15. 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. AViTEQ shall, after due consideration, decide the mode of despatch and type of packaging.

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. AViTEQ shall be entitled to render still outstanding deliveries and services only against prepayment or security deposit if, after conclusion of the contract, circumstances become known which are liable to significantly impair the creditworthiness of the ordering party and put at risk payment by the ordering party of AViTEQ's receivables from the respective contractual relationship and from other individual orders. This includes the non-observance of terms of payment, discontinuance of payment and/or default in payment in respect of preceding deliveries. In this case, AViTEQ shall, moreover, be entitled to prohibit the ordering party from reselling any of the goods already delivered under reservation of ownership and to repossess individual delivery items.
- 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. Offset against counterclaims of the ordering party, or the withholding of payments by virtue of such claims shall only be admissible if the counterclaims are undisputed or have been established by court of law.
- 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. The risks shall pass to the ordering party at the latest upon delivery of the delivery item (commencement of the loading process being the determining point) to the forwarder, carrier or other third parties entrusted with the despatch of the goods. This shall also apply even if partial deliveries are effected or AViTEQ has assumed additional services (e. g. despatch). If despatch or delivery of the shipment is held up as a result of a circumstance the cause of which lies with the ordering party, the risks shall pass to the ordering party from the date on which the delivery item is ready for despatch and AViTEQ has reported this to the purchaser.
- 8.2. The shipment shall be insured by AViTEQ against theft, breakage, transport, fire and water damage, or other insurable risks, only upon the express request of the ordering party and at its expense.
- 8.3. Items delivered, even if they show minor defects, must be accepted by the ordering party without prejudice to the rights set forth under Point 9.

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 11:

- 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 11, 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 necessary expenses, in particular transport and labour 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. The warrant shall lapse if the ordering party, without AViTEQ's approval, changes the delivery item, or has it changed by third parties, such change rendering remedy of the defect impossible or unacceptably difficult. The same shall apply if the defect is attributable to violation of operating, storage, maintenance or installation instructions, unsuitable or incorrect use, faulty or careless handling by the ordering party, or natural wear and tear. Moreover, the ordering party shall have no warranty claims if AViTEQ's products are incorrectly installed, carelessly handled or overstressed, or malfunctions are attributable to unsuitable operating resources, substitute materials, mechanical, chemical, electrochemical or electrical influences. In the case of sentence 1, however, the ordering party must bear the excess cost of remedying the defect incurred as a result of the change.
- 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 11 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 11.
 - 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 or 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.

The ordering party shall only be obliged to indemnify and hold harmless AViTEQ in the event of claims for compensation if the ordering party fails to prove that he does not bear responsibility for the deficiency of its drawings or other data or for the infringement of an industrial property right. If, in such case, AViTEQ is forbidden by a third party to manufacture or supply an item in respect of which said third party claims to have a protected right, AViTEQ shall, after vainly setting the ordering party a reasonable deadline for the removal of the third party's prohibitive injunction, be entitled to discontinue work on the order and to withdraw from the contract. The assertion of a corresponding claim for compensation by AViTEQ vis-à-vis the ordering party on the basis of the relevant statutory provisions shall remain unaffected thereby.

- 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 11 shall apply.

11. Other liability (limitation and exclusion)

- 11.1 AViTEQ's liability for compensation, irrespective of the legal grounds for such, in particular by virtue of impossibility, delay, faulty or incorrect delivery, breach of contract, tort and violation of duties in the case of contract negotiations, shall, where it is a question of fault, be limited in accordance with the following regulations.
- 11.2 AViTEQ shall not bear liability in case of simple negligence on the part of its organs, legal representatives, employees or other performance agents provided said simple negligence does not constitute infringement of duties fundamental to the contract (principal duties of the contract / cardinal obligations). Duties fundamental to the contract are those duties the fulfilment of which is necessary to enable the proper execution of the contract and on whose observance the contracting party must be able to rely.
- 11.3 To the extent that, according to the foregoing subsection, AViTEQ is, on the merits of the case, liable, this liability is limited to damage which AViTEQ at the time of conclusion of the contract had foreseen or which AViTEQ should have foreseen if it had exercised due diligence. Indirect damage or consequential damage, which is the result of defects in the item delivered, is moreover only compensatable to the extent that such damage is typically to be expected if the delivery item is used in the manner intended.
- 11.4 In the case of liability for simple negligence, AViTEQ's obligation to provide compensation for material damage and the resulting further financial loss is limited to such damage as is normally and typically insurable at reasonable terms via a third-party insurance / product liability insurance to be concluded by AViTEQ even where it is a matter of violation of duties fundamental to the contract.
- 11.5 The foregoing exclusions of liability and limitations of liability shall apply analogously in favour of the organs, legal representatives, employees and other performing agents of AViTEQ.
- 11.6 If AViTEQ provides technical information, or acts in an advisory capacity and such information or advice does not fall within the contractually agreed scope of services owed by it, this will be free of charge and shall exclude liability of any kind.
- 11.7 The limitations of liability under Point 11 shall not apply to AViTEQ's liability for wilful misconduct, for warranted quality features, for violation to life, body or health, or according to ProdHaftG (German Product Liability Act).

12. Title retention, processing, transformation, mixing

- 12.1. AViTEQ reserves ownership rights in the delivery item (conditional commodities) until all of AViTEQ's claims from the business relationship with the ordering party, including claims arising in the future, also from contracts concluded at the same time or later, have been settled. In case of a current account, the conditional commodities and all rights shall act as security for the entire current account balance claim of AViTEQ plus interest and expenses.

In the event of attachments or other encroachments by third parties, the ordering party shall notify AViTEQ immediately.

- 12.2. The ordering party shall be entitled to process and resell the delivery item in the ordinary course of business. This authority shall end if the ordering party goes into default on payments, if it discontinues its payments, or upon the filing of a petition for the institution of insolvency proceedings for its assets. He shall be obliged to resell the conditional commodities only under reservation of ownership and to ensure that receivables from the resale are transferred to AViTEQ in accordance with 12.5 and 12.6. The use of the conditional commodities for the fulfilment of service contracts and contracts for work and materials shall also be deemed a resale. It shall not be entitled to use the conditional commodities in other ways, in particular to pledge them or assign them as security.

It shall be inadmissible to assign the receivables from the passing on of the conditional commodities by AViTEQ to third parties, unless said assignment is assignment by way of genuine factoring which shall be reported to AViTEQ and in the case of which the factoring proceeds exceed the value of AViTEQ's secured receivables. With the crediting of the factoring proceeds, AViTEQ's claim shall be immediately due.

- 12.3. By processing and manufacturing conditional commodities, the ordering party does not acquire the ownership rights in the new item in accordance with § 950 BGB (Section 950 of the German Civil Code). Any processing or modification carried out on behalf of AViTEQ will not put AViTEQ under any obligation. The developed and processed goods shall be deemed to be conditional commodities.
- 12.4. If the conditional commodities are processed, combined and co-mingled with other goods, AViTEQ shall be entitled to joint ownership of the new item in proportion of the invoice value of the conditional commodities to the invoice value of the other goods used. If AViTEQ's ownership ceases as a result of combining, mixing or processing, the ordering party transfers to AViTEQ already now the ownership and expectancy rights to which he is entitled in the new stock or item to the extent of the invoice value of the conditional commodities; in the case of processing, in the ratio of the invoice value of the conditional commodities to the other goods used and shall keep them in safe custody for AViTEQ free of charge. AViTEQ's co-ownership rights shall be deemed conditional commodities.
- 12.5. The ordering party's receivables from the resale of the conditional commodities shall already now, by way of security, be assigned to AViTEQ, which hereby accepts the assignment. They shall serve as security to the same extent as the conditional commodities.

If the conditional commodities are resold by the ordering party together with other goods, the receivables from the resale shall be assigned to AViTEQ in the ratio of the invoice value of the conditional commodities to the invoice value of the other goods. In case of the resale of goods of which AViTEQ has co-ownership shares in accordance with 12.4, AViTEQ shall be assigned a share of the receivables commensurate with its co-ownership share. Also other receivables which take the place of the conditional commodities, or which come into being in connection with the conditional commodities, e. g., insurance claims, or claims arising as a result of violation of duty and tortious acts.

The ordering party shall, in its own name, be revocably entitled to collect the receivables assigned to AViTEQ. In case of crystallisation / the enforcement event, AViTEQ shall have the right to revoke the direct debit authorisation. All assignments made by the ordering party to AViTEQ in this Point are hereby accepted by AViTEQ.

- 12.6. The ordering party hereby authorises AViTEQ to inform the purchasers of the assignment and to collect the accounts receivable itself as soon as the ordering party goes into default or its financial situation deteriorates. AViTEQ shall be entitled to request verification of the balance of the assigned receivables through its appointees with the aid of the ordering party's accounts department. The ordering party must hand AViTEQ a list of the still existing conditional commodities and give all information necessary for asserting the assigned receivables including a list of the ordering party's receivables from the resale of the conditional commodities including the names and addresses of the purchasers.
- 12.7. If the value of the existing securities exceeds the secured receivables by more than 10 %, AViTEQ shall, at the request of the ordering party, be obligated to release securities to this extent to be chosen by AViTEQ having regard to the ordering party's interests. The value of the securities shall, in the case of the simple and subsequent reservation of title, be deemed to be the invoice value at which the ordering party purchases the goods from AViTEQ and, in the case of the extended reservation of title, the invoice value at which the ordering party resells the goods purchased from AViTEQ, in either case with a valuation haircut of one third of the purchase price, or of the nominal value of the receivables assigned.
- 12.8. In the case of bills of exchange, cheques, etc., payment shall be deemed to have been effected only after they have been honoured. AViTEQ will only accept cheques for reasons of settlement. Payments made against the handing over of a bill of exchange drawn by AViTEQ shall be deemed effected only if and when recourse claims on AViTEQ based on a cheque or bill of exchange are excluded. Notwithstanding further security rights of AViTEQ, the securities granted it shall continue to exist until this point in time.
- 12.9. By virtue of the reservation of title, AViTEQ shall be entitled to reclaim the delivery item if AViTEQ has withdrawn from the contract. Regardless of the further requirements of § 323 BGB (Section 323 of the German Civil Code) AViTEQ shall have the right to withdraw from the contract, in particular without setting a deadline, from the date on which the ordering party is fully or partially in default on payment. The same shall apply if the ordering party discontinues his payments or if a petition for the institution of insolvency proceedings for its assets has been filed. All costs incurred through the repossession of the delivery item shall be borne by the ordering party. AViTEQ shall be entitled to realise the repossessed delivery item in the free market.
- 12.10. 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.

13. 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.

14. Confidentiality

- 14.1. Should no other conditions be agreed in writing, the information submitted to AViTEQ in connection with the orders shall not be considered as confidential.

- 14.2. 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.
- 14.3. 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.
- 14.4. 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.

15. Use of software

- 15.1. 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.
- 15.2. 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.
- 15.3. 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.

16. Limitation of software utilisation

- 16.1. 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.
- 16.2. 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).
- 16.3. In all cases the limitation period shall begin at the earliest in accordance with the legal regulations.

17. 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.

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

- 18.1. 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.
- 18.2. The place of fulfilment for all contractual and legal claims in respect of the contract shall be the legal seat of AViTEQ.
- 18.3. 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.
- 18.4. 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.

19. 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.