

## General Terms and Conditions of Sale and Supply

### § 1 General

1. The following terms and conditions of sale and supply of who Ingenieurgesellschaft mbH (hereinafter: *who*) shall apply to all current, and in the case of merchants, for all future legal transactions, irrespective of any separate, individual notice, unless *who* has acknowledged deviations expressly and in writing. Side agreements and subsequent changes are binding on *who* only if subsequently confirmed in writing by *who*. Employees of *who* are not authorized to conclude oral agreements that deviate from these terms and conditions.

2. Any terms and conditions of purchase of the Contractor are only binding with the express and written consent of *who*. General terms and conditions of the Contractor shall not apply even if the Contractor includes a reference to these terms and conditions in their order and *who* does not object to them.

### § 2 Offers and scope of delivery

1. All offers of *who* are always non-binding and subject to change without notice. A contract is concluded only when the order is confirmed in writing by *who*. *who* is entitled to accept an offer made by the Contractor within a notice period of three weeks.

2. Any records related to the offer by *who*, such as illustrations, drawings, weights and measurements, merely serve to identify the object of the contract and do not constitute a quality agreement. They are only approximate specifications as part of customary tolerances.

3. *who* retains ownership and copyright in all drawings and other records. These drawings and records may not be made available to third parties and must be returned to *who* at the request of *who* or, if the order is not placed, returned postage paid without undue delay.

4. The scope of delivery is conclusively determined by the written order confirmation of *who*. Delivery includes protective mechanisms if and to the extent that this has been agreed in writing.

5. *who* reserves the right to make any changes to the item to be delivered, provided that the changes do not adversely affect the usefulness of the goods for the intended purpose and the agreed cost-effectiveness to the detriment of the Contractor. Technical improvements are always permitted.

### § 3 Prices and payments

1. All prices are net prices. Unless specifically agreed otherwise, no discounts for early payment are granted. Prices apply—ex factory at (the sales point of) *who* and are exclusive of packaging and insurance; *who* does not cover any bank, discounting and collection fees.

2. The prices are calculated based on the costs of material and wages applicable at the time of the conclusion of the contract. If these costs increase prior to delivery, *who* shall be entitled to charge higher prices at an appropriate rate. This right applies irrespective of any down or advance payments by the Contractor.

3. Unless otherwise agreed, payment must be made in cash without deductions and free of charge at the payment point of *who* at the time of invoicing, irrespective of the time of delivery of the goods (—payment against invoice).

4. If payment is not made on time, *who* is entitled

- to charge interest at the rate of 8% above the corresponding base interest rate pursuant to sections 288(2), 247 of the German Civil Code [BGB],
- immediately assert all claims against the Contractor arising out of this or any other transaction, including individual instalments that are not yet due for payment,
- withhold deliveries or other performance under this or any other transaction until all claims due to *who* under this or any other order placed by the Contractor have been satisfied in full,
- request appropriate security.

The assertion of any further damage remains reserved.

5. Any claims on the part of *who* cannot be opposed by rights of retention, offset or the defense of non-performance or malperformance, unless the counterclaims have been established as final, binding and non-appealable, or have been acknowledged by *who*.

6. When an order is cancelled, the agreed price is immediately due and payable. However, from this amount the costs,

which *who* has saved for the part of the works still to be performed for the full completion of the ordered parts must be deducted. The remuneration is equivalent to 30% of the order volume unless the other contracting party is able to show less extensive damage. *who* remains entitled to provide proof of greater damage.

### § 4

#### Date of delivery and delay of acceptance

1. *who* strives to comply with the stipulated delivery dates and deadlines; in the absence of a written commitment, the delivery dates specified by *who* are merely indicative, provided, however, that delivery shall be made at the latest within three weeks after the indicated date and subject to timely downstream delivery to *who*.

2. Deadlines begin to run upon dispatch of the order confirmation but not before the Contractor has submitted the final records and approvals, all technical issues have been resolved and an agreed down payment has been received. Delivery deadlines are deemed to have been complied with if the item to be delivered has left the shipping point at *who* or if readiness for shipping has been notified prior to the expiry of the deadline.

3. Delivery and execution deadlines shall be extended accordingly in the event of measures as part of industrial action, in particular in the case of strikes and lockouts, as well as in the case of unforeseen obstacles if these cause delivery delays for *who* or their suppliers or subcontractors without any fault on the part of the latter.

4. If *who* is in default, their liability for damages in the case of slight negligence is limited to foreseeable damage. Further claims for damages shall be founded if the default is caused by intent or gross negligence.

5. If the Contractor is in default of acceptance, *who* shall be entitled, irrespective of any further statutory claims, to charge 0.5% of the invoiced amount per month for the costs of storage limited, however, to 5%, unless the Contractor shows proof of a lesser damage. *who* remains entitled to assert greater damage.

### § 5

#### Passing of risk

1. Unless otherwise agreed, the risk shall pass to the Contractor when the items have been dispatched or collected, even in the case of freight-paid delivery. If the shipping or delivery is delayed for reasons for which the Contractor is responsible or if the Contractor is in default of acceptance, the risk shall pass to the Contractor at the time of the delay.

2. The Contractor may not refuse acceptance of delivery for minor defects.

3. Shipping is made subject to invoicing and at the risk of the Contractor.

### § 6

#### Examination of the goods

1. The Contractor must examine the goods without undue delay after receipt for completeness, compliance with the delivery papers and defectiveness. If a written objection is not made within four weeks from the date of the delivery bill, the goods are deemed to have been delivered properly and in full, unless it is a defect that was not apparent at the time of examination.

2. If the goods delivered show evident damage or shortfalls in quantity, the Contractor must make a note to this effect in writing on the confirmation of receipt of the shipping company. The note must identify the damage or the shortfall in quantity sufficiently clearly (notice of damage pursuant to section 438 of the German Commercial Code [HGB]).

### § 7

#### Partial delivery

*who* is entitled to make partial delivery and, subject to prior notice to this effect, also to make early delivery.

### § 8

#### Reservation of title

1. The goods delivered by *who* remain the property of *who* until full payment of the purchase price, including all ancillary claims. *who* also retains title to these goods until full payment of all existing and future claims arising from an already existing business relationship or initiated by the contract.

2. Any processing or conversion of the delivered goods is always made by *who*. If the goods are processed with other items not belonging to *who*, resulting in the

goods losing their independent legal status, *who* shall acquire co-ownership in the new item at the ratio of the value of the goods delivered by *who* to the other processed items at the time of processing.

3. If the item is mixed with other goods not belonging to *who*, *who* shall acquire co-ownership in the new item at the ratio of the value of the goods delivered by *who* to the value of the other mixed goods at the time of intixture. If the Contractor's item is deemed to be the principal item, the Contractor shall transfer ownership at the relevant rate to *who*.

4. In the event of attachment or other interventions by third parties, the Contractor shall inform *who* without undue delay in writing. The cost of intervention and replacement shall be borne in any event by the Contractor.

5. In the event of a culpable breach of contract on the part of the Contractor as well as in the event of reasonable doubts about the Contractor's creditworthiness, upon payment arrears, payment suspension or the filing of an insolvency application, *who* is entitled to request the return of or take back the purchased goods. Unless expressly stated to be such by *who*, neither such recovery nor the attachment of the goods subject to retention of title constitutes a revocation of the contract. Returned goods can be freely realized by *who*. The proceeds from the exploitation shall be credited against the remuneration. The Contractor shall be liable for the contingent liability.

6. The delivery items must be handled carefully by the Contractor and must be insured by the Contractor at their own expense against damage from fire, water, explosion, vandalism, war damage, elementary damage and other damage. *who* must be informed without undue delay about any damage that has occurred.

7. The Contractor is authorized to resell the goods in the ordinary course of business. If the Contractor resells the item subject to retention of title, the Contractor is, however, obliged to likewise retain the title to ownership vis-à-vis third parties. For the duration of the retained title of ownership, the Contractor hereby assigns all claims against its customers, to which *who* is entitled from the sale, including all ancillary rights to *who*, irrespective of whether the purchased item has been sold again without or after processing. The Contractor is entitled to collect the assigned claim itself; however, the collected amounts must be transferred without undue delay to *who*. *who* may notify any third-party acquirer at any time of the assignment. *who* shall be entitled to revoke the authorization for resale or collection with immediate effect if the Contractor fails to comply with their performance obligation vis-à-vis *who*.

8. If the value of the collateral rights granted to *who* by virtue of the retention of title exceeds the delivery claims of *who*, including ancillary claims, by more than 20%, *who* shall be obliged, at the request of the Contractor, to release the securities for the corresponding amount.

### § 9

#### Copyright, software licenses, industrial property rights

Copyright in the software remains with *who*. After full payment, the Contractor is granted the non-exclusive right of use in the supplied software. The separate licensing terms and conditions for each software shall apply.

### § 10

#### Warranty

1. For the delivery of new items, the warranty period is one year from delivery. If the goods are the subject of a consumer goods purchase, the rights of the customer under sections 478, 479 BGB remain unaffected. In case of doubt, the Contractor shall provide proof to *who* that the transaction amounts to a consumer goods purchase.

2. No claims for material defects shall apply

- in the event of merely minor deviations from the agreed quality
- in the event of merely minor deterioration of usability
- if the product is modified, improperly installed, maintained, repaired, used or exposed to environmental conditions by the Contractor or third parties that do not correspond to the installation requirements of the manufacturer, unless the Contractor documents that these circumstances have not caused the notified defects,
- if the serial number, type name or similar identifiers have been removed or made illegible.

3. Material defects shall be remedied, at the choice of *who*, either by repair or replacement. Replaced parts shall become the property of *who*. If *who* is not able to repair or replace the goods, or if such measures

Last updated: 2022

Managing Directors:  
Dipl.-Ing. (FH) Andreas Banz  
Dipl.-Ing. (FH) Timo Hackbarth  
Dipl.-Inf. (FH) Marcus Redeker

who Ingenieurgesellschaft mbH  
Schwertfegerstr. 27 –23556 Lübeck–  
Local Court Lübeck HRB 3738  
VAT ID No.: DE 172610935  
WEEE-Reg.-Nr.: DE 37880989

Tel.: +49 451 31781-000  
Fax: +49 451 31781-399  
Email: [info@who-ing.de](mailto:info@who-ing.de)  
<http://www.who-ing.de>

Volksbank Lübeck eG  
IBAN: DE44230901420006072313  
BIC: GENODEF1HLLU

Sparkasse Holstein  
IBAN: DE75213522400179097373  
BIC: NOLADE21HOL

Commerzbank Lübeck  
IBAN: DE092230400220013557400  
BIC: COBADEFFXXX

are associated with disproportionate costs, or if *who* does not remedy defects within a reasonable grace period set in writing, the Contractor is entitled to reduce the purchase price or revoke the purchase contract. If *who* delivers a replacement product to cure the defect, the Contractor must return the defective product and provide compensation for the benefits of use.

4. For the performance provided as part of the cure, *who* shall be liable to the same extent as for the original item to be delivered, however, only prior to the expiry of the warranty period applicable to the original item to be delivered.

5. Claims of the customer due to the expenses necessary to cure the defect, in particular costs of transport, travel, labor as well as material costs, are excluded if the expenses increase because the item of delivery was subsequently moved to a location other than that provided for in the contract, unless the removal is consistent with the intended use.

6. The Contractor shall be entitled to rights of recourse against *who* pursuant to section 478 BGB (recourse of the Client) only if the Contractor has not concluded any agreements beyond the statutory claims for defects with their customers. Furthermore, para. (5) shall apply, with the necessary modifications, to the scope of the right of recourse of the Contractor against *who* pursuant to section 478(2) BGB.  
7. In all other respects, § 13 (Other damages) shall apply to claims for damages. Further claims or claims other than those stipulated in § 10 of the Contractor against *who* and persons used by them to perform an obligation for a material defect are excluded.

#### § 11 Impossibility

If delivery is impossible, the Contractor can only claim damages if *who* is responsible for the impossibility. However, the claim for damages of the Contractor is limited to 10% of the value of the part of the delivery that cannot be put to the intended operation due to impossibility. This limitation does not apply in the event of intent, gross negligence or to the mandatory liability for an injury to life, limb or health; this does not lead to any change in the onus of proof to the detriment of the Contractor. The right of the Contractor to revoke the contract remains unaffected.

#### § 12

##### Industrial property rights and copyright

1. If a third party asserts justified claims against the Contractor for the breach of an industrial property right or copyright (hereinafter: proprietary rights) based on products supplied by *who* and used in accordance with the contract, *who* shall be liable to the Contractor within the deadline stipulated in §10 No. 1 (12 months):

- who* will, at their discretion and at their own expense, either obtain a right of use for the product, modify the product in such a way that the proprietary right is not infringed, or replace the product. If *who* is not able to do so on reasonable terms, they must take back the product against reimbursement of the purchase price.
- The aforementioned obligations of *who* shall arise only if the Contractor informs *who* about the claims asserted by third parties without undue delay in writing, do not acknowledge an infringement and *who* reserves the right to all defensive mechanisms and settlement negotiations. If the Contractor ceases to use the product to mitigate damage or other important grounds, the Contractor is obliged to inform the third party that the cessation of use does not amount to an acknowledgement of the proprietary right infringement.

2. Claims of the Contractor are excluded if they are responsible for the infringement of proprietary rights.

3. Claims of the Contractor are also excluded if the infringement of proprietary rights is caused by particular specifications of the Contractor, by an application not foreseeable by *who* or by the fact that the product is modified by the Contractor or used together with products not supplied by *who*.

4. Further claims against *who* are excluded. § 13 remains, however, equally unaffected as the right of the Contractor to revoke the contract.

#### § 13

##### Other claims for damages

1. Claims for damages and reimbursement of expenses of the Contractor (herein below: Claims for Damages), irrespective of the legal grounds, in particular for a breach of obligations under the contract and for tort are excluded.

2. This does not apply in the case of mandatory liability, e.g., under the Product Liability Act, in instances of intent, gross negligence, for an injury to life, limb or health, for the breach of essential contractual obligations. The claim for damages for the breach of essential contractual obligations is, however, limited to the typical foreseeable damage, except in the case of intent or gross negligence, or in the case of liability for an injury to life, limb or health. The above provisions do not amount to a change in the onus of proof to the detriment of the Contractor.

3. If the Contractor is entitled to claims for damages pursuant to this § 13, those claims are prescribed upon expiry of the prescription period applicable to claims for material defects pursuant to § 10 No. 1. In the case of Claims for Damages, the statutory prescription periods apply pursuant to the Product Liability Act.

#### § 14

##### Final provisions

1. The place of performance is Lübeck; the exclusive place of jurisdiction for all legal disputes arising from this legal relationship is Lübeck.

2. The contractual relationship, including the terms of delivery, shall be governed exclusively by German law – subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods, CISG – even if the Contractor have their registered office abroad or if it is an export transaction.

3. All side agreements as well as quality warranties must be made in writing. This also applies to the cancellation of the agreed written form.

4. Should individual provisions of these terms and conditions and the other concluded agreements be or become invalid, this shall not affect the validity of the remaining provisions. In this case, what comes as close as possible to the economic purpose of the invalid clause shall then apply.

5. The transfer of claims against *who* to third parties is excluded unless *who* consents to such claims in writing.

## Additional terms and conditions for the provision of services

The following additional terms and conditions apply to the provision of services by *who* in the area of contractor-specific product development. Unless otherwise specified herein, the statements of the above General Terms and Conditions shall apply *mutatis mutandis*.

#### § 1

##### Content and scope of services

1. The content of all services by *who* is based on the specifications of the respectively applicable functional specifications. If no functional specifications have been drawn up, the written specifications of the Contractor at the time of placing the order or the description of the service characteristics attached to the offer shall apply as a substitute.

2. Oral agreements concluded by the Client and *who* are only temporarily binding to speed up the progress of ongoing activities.

3. Binding changes to the specifications require mutual agreement. They must be recorded in writing, countersigned by the Client and *who*, and attached to the valid specifications.

4. Subsequent changes to the specifications are generally not free of charge. *who* shall exclusively decide the extent to which subsequent changes to the specifications become a free part of the services offered by *who*.

5. The Client is obliged – especially in the case of longer-term projects with the *who* – to continuously compare the specifications as well as the progress of the activities of *who* activities with their current goals and to report discrepancies without undue delay to *who*, so that a necessary change to the specifications can take place before the service is actually provided.

#### § 2

##### Date of delivery and delay of acceptance

1. Circumstances for which *who* is not responsible, but which jeopardize the fixed price and/or the delivery date, shall be communicated to the Client by *who* without undue delay and do not authorize the Client to reduce the invoiced amount.

2. The agreed service of *who* shall be deemed to have been rendered if compliance with the valid functional specification can be documented and the subject matter of the service has been received by the Client.

3. If the activities of *who* require provision by the Client or by third parties on the Client's behalf, these must be provided in full for *who* on the agreed date free of charge; otherwise, *who* shall be entitled to postpone their delivery date or to claim additional costs if the delivery date is met.

#### § 3

##### Documentation

Unless otherwise agreed, hardware modules are developed with the "Altium" layout system or higher. Specifications, reports and documentations are created in "MS Office" format. Records are delivered, at the choice of *who*, in printed form or as a file.

Last updated: 2022

Managing Directors:  
Dipl.-Ing. (FH) Andreas Banz  
Dipl.-Ing. (FH) Timo Hackbarth  
Dipl.-Inf. (FH) Marcus Redeker

who Ingenieurgesellschaft mbH  
Schwertfegerstr. 27 –23556 Lübeck–  
Local Court Lübeck HRB 3738  
VAT ID No.: DE 172610935  
WEEE-Reg.-Nr.: DE 37880989

Tel.: +49 451 31781-000  
Fax: +49 451 31781-399  
Email: [info@who-ing.de](mailto:info@who-ing.de)  
<http://www.who-ing.de>

Volksbank Lübeck eG  
IBAN: DE44230901420006072313  
BIC: GENODEF1HLLU

Sparkasse Holstein  
IBAN: DE75213522400179097373  
BIC: NOLADE21HOL

Commerzbank Lübeck  
IBAN: DE092230400220013557400  
BIC: COBADEFFXXX