

# General Terms of Sale of Siteco GmbH (August 2019)

## Article I: Definitions

1. The following definitions within these General Terms of Sale shall apply:
  - a) **"BGB"** means the German Civil Code.
  - b) **"CUSTOMER"** means the ordering customer of SITECO.
  - c) **"CUSTOMIZED-PRODUCTS"** means products manufactured by SITECO according to the specifications of the CUSTOMER or modified for specific projects.
  - d) **"ElektroG"** means the German Electrical and Electronic Equipment Act.
  - e) **"INTELLECTUAL-PROPERTY-RIGHTS"** means industrial property rights and copyrights of third parties.
  - f) **"MARKED-LUMINAIRES"** means luminaires placed on the market from 13.08.2005, marked with a crossed-out refuse bin and a black bar under the refuse bin.
  - g) **"PACKAGING"** means transport packaging (§4 VerpackV), secondary packaging (§5 VerpackV) and sales packaging which accumulates with commercial final consumers (§7 VerpackV).
  - h) **"PRODUCTS/SERVICES"** means the delivery of SERIAL-PRODUCTS and/or CUSTOMIZED- PRODUCTS as well as the provision of SERVICES.
  - i) **"RESERVED-GOODS"** means PRODUCTS/SERVICES for which a retention of title applies, i.e. in which the title shall not pass to the CUSTOMER until all claims to which SITECO is entitled under the business relationship with the CUSTOMER have been satisfied.
  - j) **"SERIAL-PRODUCTS"** means products of SITECO or a third party according to the published product catalogues.
  - k) **"SERVICES"** means services provided by SITECO which are not based on physical products (including, but not limited to: lighting design, lighting control, digital applications, commissioning, etc.).
  - l) **"SITECO"** means Siteco GmbH, Georg-Simon-Ohm-Straße 50, 83301 Traunreut, Germany, registered at local court Traunstein: HRB 27821.
  - m) **"SPECIFICATION"** means the technical specification and/or approval/registration (including, but not limited to: certification, declaration of conformity, etc.) of PRODUCTS/SERVICES.
  - n) **"VerpackV"** means the German Packaging Ordinance.
2. Deviating definitions shall only apply if expressly confirmed in writing by SITECO.

## Article II: General Provisions

1. Unless otherwise agreed in writing, the supply relationships between SITECO and the CUSTOMER in connection with PRODUCTS/SERVICES shall be governed exclusively by these General Terms of Sale. SITECO shall also be entitled to have PRODUCTS/SERVICES provided by third parties. The CUSTOMER's general terms and conditions shall only apply to the extent that SITECO has expressly agreed to them in writing. The scope of the PRODUCTS/SERVICES shall be governed by the mutually agreed written declarations.
2. Necessary documentation for PRODUCTS/SERVICES shall be provided to the CUSTOMER in electronic form (i.e. pdf format).
3. For Incoterms the version as of 2010 shall apply.
4. "Claims for damages" shall also include claims for reimbursement of futile expenses.
5. SITECO's privacy policy can be reviewed at [www.siteco.de](http://www.siteco.de).

## Article III: SERIAL-PRODUCTS; CUSTOMIZED-PRODUCTS; SERVICES

1. SERIAL-PRODUCTS
  - a) The SPECIFICATION of the SERIAL-PRODUCTS is defined in the respective product data sheets.
  - b) The CUSTOMER is solely responsible for ensuring that the SERIAL-PRODUCTS ordered are suitable for their intended use. Furthermore, the CUSTOMER must ensure that in the event of delivery or use in a country for which the required SPECIFICATION is not available, the SERIAL-PRODUCTS are certified, approved or provided with the required declarations of conformity in accordance with the country-specific laws and regulations prior to use or marketing.
2. CUSTOMIZED-PRODUCTS
  - a) SITECO may specify minimum purchase quantities or order values for CUSTOMIZED-PRODUCTS.
  - b) The SPECIFICATION of CUSTOMIZED-PRODUCTS shall be agreed in writing between SITECO and the CUSTOMER.
  - c) Non-binding delivery dates for CUSTOMIZED-PRODUCTS can only be communicated by SITECO after final clarification of all technical questions of the binding order. Delivery dates stated by SITECO within the scope of the offer or before receipt of the binding order shall only serve to provide the CUSTOMER with general information about the delivery situation at the time of the offer and shall not be legally binding. Legally binding delivery dates must be expressly confirmed by SITECO in writing as fixed dates.
  - d) Offers for CUSTOMIZED-PRODUCTS shall only be valid for the stated period. Acceptance of the offer after expiry of the validity period shall constitute a counter-offer by the CUSTOMER, which shall only be deemed accepted with written confirmation from SITECO.

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- e) Prices and other general conditions (including, but not limited to: delivery dates, etc.) for CUSTOMIZED-PRODUCTS shall only be valid if the entire quantity is ordered in full and the SPECIFICATION for the respective offer remains unchanged. If the CUSTOMER orders less than the offered quantities, SITECO shall be entitled to adjust the price for the CUSTOMIZED-PRODUCTS within reasonable limits without the consent of the CUSTOMER. In the event of a deviation following a binding order, SITECO shall invoice the CUSTOMER for the additional costs incurred by the deviation plus the lost profit.
- f) Due to the high degree of individualization of CUSTOMIZED-PRODUCTS, the prices and framework conditions for each order are determined individually, i.e. the re-ordering of CUSTOMIZED-PRODUCTS with the same SPECIFICATION can also take place at considerably changed prices and framework conditions.

### 3. SERVICES

- a) The SPECIFICATION of the SERVICES shall be agreed in writing between SITECO and the CUSTOMER.
- b) For SERVICES, no formal acceptance shall be required and the SERVICES shall be deemed accepted if SITECO has not been notified in writing of any significant defects within two (2) weeks after provision to the CUSTOMER. Acceptance cannot be refused on basis of minor defects.
- c) The prices for SERVICES are unit prices. SITECO shall invoice the SERVICES after performance on the basis of the agreed unit prices. In case the SERVICES exceed the cost estimation according to the offer by more than ten percent (10%), SITECO shall inform the CUSTOMER thereof.

#### **Article IV: Prices; Payment Conditions; Delay; Set-Off**

1. The prices for PRODUCTS/SERVICES on the basis of the agreed Incoterms includes customary packaging plus the applicable statutory value-added tax. If the CUSTOMER orders less than the offered quantities, SITECO shall be entitled to adjust the price for the PRODUCTS/SERVICES within reasonable limits without the consent of the CUSTOMER. In the event of a deviation following a binding order, SITECO shall invoice the CUSTOMER for the additional costs incurred by the deviation plus the lost profit.

2. SITECO shall charge for SERIAL-PRODUCTS and CUSTOMIZED-PRODUCTS the following surcharges/flat rates plus the applicable statutory value added tax:

- a) Processing surcharge of twenty-five Euros (25 EUR) per order with a net value of less than one thousand five hundred Euros (<1,500 EUR),
- b) Disposal lump sum in the amount of thirteen Euro cents (0.13 EUR) per conventional light sources, for which the ElektroG is applicable.

3. Travel expenses (including, but not limited to: reimbursement of travel time including surcharges, travel and accommodation costs, expenses, etc.), which are necessary for the provision of the PRODUCTS/SERVICES, are not included in the price of the PRODUCTS/SERVICES, but will be invoiced to the CUSTOMER separately on a time and material basis.

4. Payments shall be made within fourteen (14) calendar days of the invoice date without any deduction free paying agent SITECO by bank transfer. Payment by cash, cheque or bill of exchange is excluded. The day of performance shall be the day on which SITECO can dispose of the full amount.

5. In the event of delay of payment by the CUSTOMER, SITECO shall charge default interest on the basis of §§247, 288 BGB, subject to further claims, and furthermore reserves its right to refuse performance until receipt of full payment.

6. In the event of cessation of payment or application for the opening of insolvency proceedings against the CUSTOMER, the entire amount of the claim shall become due immediately.

7. The CUSTOMER may, after consultation with SITECO, only set off such claims which are undisputed or have been declared final and absolute by a court of law.

#### **Article V: Delivery Dates; Delivery Conditions; Transfer of Risk; Delay; Returns**

1. Non-binding delivery dates for PRODUCTS/SERVICES can only be communicated by SITECO after final clarification of all technical questions of the binding order. Delivery dates stated by SITECO within the scope of the offer or prior to receipt of the binding order shall only serve to provide the CUSTOMER with general information about the delivery situation at the time of the offer and shall not be legally binding. Legally binding delivery dates must be expressly confirmed by SITECO in writing as fixed dates.

2. Deliveries of PRODUCTS/SERVICES shall be made in accordance with the Incoterms FCA plant SITECO in Georg-Simon-Ohm-Straße 50, 83301 Traunreut, Germany. The delivery condition "Frei Haus", if agreed, is to be understood as the Incoterms DAP place of delivery according to the order. SITECO shall provide the PRODUCTS/SERVICES to the CUSTOMER "ready for unloading or loading" irrespective of the agreed Incoterms.

3. If no Incoterms has been agreed, the risk shall pass to the CUSTOMER upon delivery of the PRODUCTS/SERVICES.

4. Partial deliveries shall be allowed to the extent that they are reasonable for the CUSTOMER. Acceptance of the PRODUCTS/SERVICES cannot be refused on basis of minor defects. If CUSTOMER is responsible for the delay of delivery, the

day of delivery shall be deemed to be the date of the notification of readiness for dispatch, at the latest the date of the CUSTOMER's notification that the PRODUCTS/SERVICES cannot yet be accepted.

5. The delivery dates shall be extended appropriately if the non-compliance is due to:
- Force Majeure (including, but not limited to: war, acts of terrorism, riot, strike, lockout, etc.),
  - Attacks on SITECO's IT-infrastructure (including, but not limited to: hacker attacks, infection with viruses or other malware, etc.) to the extent that such attacks took place despite observance of the usual care with regard to protective measures,
  - Obstacles due to German, US American or other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which SITECO is not responsible,
  - Late or improper delivery to SITECO,
  - Late receipt of all documents, necessary approvals and releases (in particular plans) which had to be supplied by the CUSTOMER, or
  - Non-compliance with the agreed payment conditions and other obligations by the CUSTOMER.

6. In the event of a delay in delivery, the CUSTOMER shall be entitled to liquidated damages for each completed week of delay in the amount of zero point five percent (0.5%), but not more than a total of five percent (5%), of the net value of that part of the PRODUCTS/SERVICES which could not be used for its intended purpose due to the delay, provided that the CUSTOMER can substantiate credibly that he has suffered damage as a result thereof.

7. Both claims for damages by the CUSTOMER due to delayed delivery of the PRODUCTS/SERVICES and claims for damages in lieu of performance exceeding the limits specified in No. 6 shall be excluded in all cases of delayed delivery/provision, even after expiry of a period set by CUSTOMER for delivery/provision. This shall not apply in the event of intent, gross negligence or injury to life, limb or health. The CUSTOMER may only withdraw from the contract within the framework of the statutory provisions if SITECO is responsible for the delay in delivery of the PRODUCTS/SERVICES. A change in the burden of proof to the disadvantage of the CUSTOMER is not associated with the above provisions.

8. If the CUSTOMER declares that the delivery of the PRODUCTS/SERVICES shall take place at a later time than agreed or does not accept the delivery, SITECO shall be entitled to deliver the PRODUCTS/SERVICES concerned to a warehouse of its choice and to store them in the name and for the account of the CUSTOMER. The risk shall pass to the CUSTOMER upon storage of the PRODUCTS/SERVICES. SITECO shall invoice the CUSTOMER for the associated expenses (including, but not limited to: transport, storage costs, etc.).

9. In the event of delay in acceptance, SITECO shall be entitled to liquidated damages for each completed week of default in the amount of zero point five percent (0.5%) of the net value of the part of the PRODUCTS/SERVICES with the acceptance of which the CUSTOMER is in delay, commencing on the delivery date or, in the absence of a delivery date, on notification that the PRODUCTS/SERVICES are ready for dispatch, provided that SITECO does not have the PRODUCTS/SERVICES stored and credibly demonstrates that it has suffered damage as a result thereof. The proof of higher damages and SITECO's statutory claims (including, but not limited to: reimbursement of additional expenses, reasonable compensation, withdrawal, termination, etc.) shall remain unaffected. However, the liquidated damages shall be set off against further monetary claims. The CUSTOMER shall be entitled to prove that SITECO has incurred no damage at all or only considerably less damage than the aforementioned liquidated damages. SITECO retains the right to store the PRODUCTS/SERVICES even in the event of assertion of liquidated damages.

10. With the prior written consent of SITECO, the CUSTOMER may, within ninety (90) calendar days of delivery, return to SITECO in accordance with the Incoterms DDP plant SITECO in Georg-Simon-Ohm-Straße 50, 83301 Traunreut, Germany, SERIAL-PRODUCTS in their original packaging, free of defects and undamaged, against credit. The credit shall be in the amount of seventy percent (70%) of the invoiced purchase price less costs for any necessary reconditioning and repackaging. Returns of CUSTOMIZED-PRODUCTS, special sales, or generally with a net value of less than one hundred Euros (<100 EUR) are excluded from this provision.

#### **Article VI: Retention of Title**

1. To the extent permissible under applicable law in the country of delivery, the PRODUCTS/SERVICES are RESERVED-GOODS. If the value of all security interests to which SITECO is entitled exceeds the amount of all secured claims by more than twenty percent (>20%), SITECO shall, upon request of the CUSTOMER, release a corresponding portion of the security interests at SITECO's option.

2. The CUSTOMER shall be prohibited from pledging or assigning by way of security any RESERVED-GOODS and resale shall be permitted only to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customers or also asserts a retention of title against its customers.

3. If the CUSTOMER resells RESERVED-GOODS, the CUSTOMER shall assign to SITECO by way of security his future claims against his customers arising from the resale together with all ancillary rights, including any balance claims, without any further special declarations being required. If the RESERVED-GOODS are resold together with other items without an individual price having been agreed for the RESERVED-GOODS, the PURCHASER shall assign to SITECO that part of the total price claim which corresponds to the price of the RESERVED-GOODS invoiced by SITECO.

4. The CUSTOMER shall be entitled to process the RESERVED-GOODS or to mix or combine them with other objects. The processing shall be carried out in the name of SITECO. The CUSTOMER shall keep the resulting new object for SITECO with the

diligence of a prudent businessman. The new object shall be deemed to be RESERVED-GOODS. In the event of combination or mixing of RESERVED-GOODS with other objects not belonging to SITECO, SITECO shall be entitled to co-ownership of the new object in the amount of the proportion resulting from the ratio of the value of the combined or mixed RESERVED-GOODS to the value of the remaining goods at the time of combination or mixing. The new object shall in this respect be deemed to be RESERVED-GOODS. The provision regarding the assignment of claims in accordance with No. 3 shall also apply to the new object. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed RESERVED-GOODS invoiced by SITECO. If the CUSTOMER combines the RESERVED-GOODS with real estate or movable property, the CUSTOMER shall also assign to SITECO by way of security, without requiring any further special declarations, his claim to which he is entitled as remuneration for the combination, together with all ancillary rights, in the amount of the ratio of the value of the combined RESERVED-GOODS to the other combined goods at the time of the combination.

5. Until revoked, the CUSTOMER shall be entitled to collect assigned claims from the resale. In the event of an important reason (including, but not limited to: delay in payment, suspension of payments, opening of insolvency proceedings, etc.) or justified indications of over-indebtedness or impending insolvency of the CUSTOMER, SITECO shall be entitled to revoke the CUSTOMER's authorization to collect. In addition, SITECO may, after prior warning and subject to a reasonable period of notice, disclose the assignment by way of security, realize the assigned claims and demand the disclosure of the assignment by way of security by the CUSTOMER to the customer.

6. The CUSTOMER shall notify SITECO immediately of any attachments, seizures or other dispositions or interventions by third parties. If a legitimate interest is substantiated, the CUSTOMER shall immediately provide SITECO with the information required to assert its rights against the customer and hand over the necessary documents.

7. In the event of breaches of duty by the CUSTOMER, in particular delay in payment, SITECO shall be entitled to rescind the contract in addition to taking back the RESERVED-GOODS after the unsuccessful expiry of a reasonable deadline set for the CUSTOMER to perform; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The CUSTOMER is obliged to surrender the RESERVED-GOODS. The taking back or assertion of the retention of title or the seizure of the RESERVED-GOODS by SITECO shall not constitute a withdrawal from the contract, unless SITECO has expressly declared this.

#### **Article VII: Material Defects**

1. Defective parts of the PRODUCTS/SERVICES shall, at SITECO's option, be repaired, replaced or rendered free of charge within a reasonable period of time, provided that the material defect already existed at the time of transfer of risk. SITECO shall also be entitled to make subsequent or replacement deliveries or new deliveries in the form of technically equal or superior PRODUCTS/SERVICES. For repaired or newly delivered or rendered PRODUCTS/SERVICES, the warranty period shall not restart.

2. Claims for subsequent performance, rescission and reduction shall become statute-barred twelve (12) months after the statutory commencement of the warranty period. This period shall not apply:

- a) As far as §§438 para. 1 No. 2 and 634a para. 1 No. 2 BGB stipulate longer periods,
- b) In the case of intent,
- c) Fraudulent concealment of the defect; and
- d) In the event of non-compliance with a quality guarantee.
- e) Claims for reimbursement of expenses of the CUSTOMER pursuant to §445a BGB shall also become statute-barred twelve (12) months after the statutory commencement of the warranty period, provided that the last contract in the supply chain is not a sale of consumer goods. The statutory provisions on suspension of expiration, suspension and recommencement of the periods shall remain unaffected.

3. Notifications of defects by the CUSTOMER must be made in writing immediately, i.e. in the case of obvious defects within five (5) working days from the date of delivery and in the case of hidden defects within ten (10) working days from the date of discovery.

4. If the notice of defect is unjustified, SITECO shall be entitled to invoice the CUSTOMER for the expenses (including, but not limited to: travel expenses, working hours, material, etc.) incurred as a result of the troubleshooting and/or rectification.

5. If the subsequent rectification fails twice (2), the CUSTOMER may withdraw from the contract or reduce the remuneration without prejudice to any claims for damages pursuant to No. 9.

6. Warranty claims are not permitted in case of:

- a) Only minor deviation from the agreed quality,
- b) Only minor impairment of fitness for use,
- c) Natural wear and tear,
- d) Damages which occur after the transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable operating resources, defective construction work, unsuitable building ground or as a result of special external influences which are not assumed under the contract,
- e) Non-reproducible software errors,
- f) Defectiveness due to requirement profiles or documents (including, but not limited to: specifications, plans, environmental influences, etc.) submitted by the CUSTOMER,
- g) Improper modifications or maintenance work, etc., or

- h) Failure of individual light-emitting diodes, provided that they are inseparably connected, i.e. without lamp holder or plug connection, in a fixed luminaire block and the average luminous flux of the luminaire does not fall below seventy percent (<70%) of the initial value, based on a standard-conforming measurement.

7. Claims of the CUSTOMER for expenses incurred for the purpose of subsequent performance shall be excluded to the extent that such expenses increase because the PRODUCTS/SERVICES have subsequently been moved to a location other than the CUSTOMER's place of business, unless such move is in accordance with its intended use. This shall apply mutatis mutandis to the CUSTOMER's claims for reimbursement of expenses pursuant to §445a BGB, provided that the last contract in the supply chain is not a sale of consumer goods.

8. The CUSTOMER's right of recourse against SITECO pursuant to §445a BGB shall only exist to the extent that the CUSTOMER has not entered into any agreements with its customer that go beyond the statutory warranty claims.

9. Claims for damages of the CUSTOMER due to a material defect are excluded. This shall not apply in the event of intent, gross negligence, fraudulent concealment of the defect, non-compliance with a quality guarantee or injury to life, limb or health. A change in the burden of proof to the disadvantage of the CUSTOMER is not associated with the above provisions. Further claims of the CUSTOMER or claims other than those regulated in this Article due to a material defect are excluded.

#### **Article VIII: Disposal**

##### **1. Within Germany**

- a) SITECO is registered in the Waste Electrical Equipment Register (Elektro-Altgeräte Register).
- b) SITECO has commissioned Lightcycle Retourlogistik und Service GmbH (Munich) at its own expense (for receipt and disposal) to fulfil SITECO's disposal obligation for MARKED-LUMINAIRES imposed by the ElektroG. The return locations can be requested by the CUSTOMER from Lightcycle (www.lightcycle.de or head office in Munich) or SITECO. The take-back of MARKED-LUMINAIRES takes place according to legal obligation starting from 24.03.2006. The CUSTOMER bears the costs of the delivery to the return locations and is responsible that the disposal of the MARKED-LUMINAIRES takes place exclusively over Lightcycle.
- c) PACKAGING does not require participation in a recognized dual disposal system. The supplier of the packaged goods is obliged to take back the empty PACKAGING without having to comply with recycling quotas. SITECO has commissioned INTERSEROH Dienstleistungs GmbH (Cologne) to dispose of the PACKAGING. Disposal partners can be requested under www.interseroh.de

2. Outside Germany, the CUSTOMER shall be responsible and bear the costs for the proper disposal of the PRODUCTS/SERVICES or the packaging used in accordance with country-specific laws and regulations.

#### **Article IX: INTELLECTUAL-PROPERTY-RIGHTS: Legal Defects**

1. SITECO shall be obliged to provide the PRODUCTS/SERVICES only in the country of the place of delivery without infringing any INTELLECTUAL-PROPERTY-RIGHTS. If a third party asserts a justified claim against the CUSTOMER due to the violation of INTELLECTUAL-PROPERTY-RIGHTS by PRODUCTS/SERVICES provided by SITECO and which are used in accordance with the contract, SITECO shall be liable to the CUSTOMER within the period specified in Article VII No. 2 as follows:

- a) SITECO shall, at its option and expense, either obtain a right to use the relevant PRODUCTS/SERVICES, modify the PRODUCTS/SERVICES so as not to infringe the INTELLECTUAL-PROPERTY-RIGHTS, or replace the PRODUCTS/SERVICES. If this is not possible for SITECO under reasonable conditions, the CUSTOMER shall be entitled to the statutory rights of withdrawal or reduction.
- b) SITECO's obligation to pay damages shall be governed by Article XIII.
- c) The aforementioned obligations of SITECO shall only exist if the CUSTOMER informs SITECO immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations are reserved for SITECO. If the CUSTOMER discontinues the use of the PRODUCTS/SERVICES for reasons of damage minimization or other important reasons, the CUSTOMER shall be obliged to inform the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of INTELLECTUAL-PROPERTY-RIGHTS.

2. Claims of the CUSTOMER are excluded insofar as the CUSTOMER is responsible for the violation of the INTELLECTUAL-PROPERTY-RIGHTS.

3. Claims of the CUSTOMER are also excluded if the infringement of INTELLECTUAL-PROPERTY-RIGHTS is caused by special specifications of the CUSTOMER, by an application not foreseeable by SITECO or by the CUSTOMER modifying the PRODUCTS/SERVICES or using them together with products not supplied by SITECO.

4. In the event of violations of INTELLECTUAL-PROPERTY-RIGHTS, the claims of the CUSTOMER stipulated in No. 1a) shall be governed by the provisions of Article VII accordingly.

5. In the event of other legal defects, the provisions of Article VII shall apply accordingly.

6. Any further claims of the CUSTOMER against SITECO and its vicarious agents due to a legal defect or claims other than those stipulated in this Article are excluded.

#### **Article X: Grant of Software License**

1. For the deployment of software, regardless of whether this is provided independently or in connection with the respective hardware, the following provisions shall apply.

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2. SITECO grants the CUSTOMER the non-exclusive and non-sub-licensable right to use the software as agreed below:
  - a) The right of use shall only apply for the period agreed between SITECO and CUSTOMER. If no period has been agreed, the right of use shall be limited to the lifetime of the hardware product with which the software was delivered.
  - b) The CUSTOMER may only use the software in connection with hardware referred to in the associated documentation (including the license certificate). If there is no reference to such hardware, the software may only be used in conjunction with the product with which the software was supplied. The use of software in connection with other hardware is only permitted with the prior written consent of SITECO. If the software is subject to certain restrictions regarding the scope or intensity of use and the CUSTOMER wishes to use the software in excess of the agreed scope, the CUSTOMER must notify SITECO in writing before the use of the software exceeds such restrictions and SITECO shall be entitled to additional compensation payable prior to the exercise of such additional rights.
  - c) If multiple devices are mentioned in the contract, the CUSTOMER shall only be entitled to use the software on one (1) device simultaneously ("single license") as long as the CUSTOMER has not been granted a multi-user license. If a device has several workstations where the software can be used independently, the single license is only valid for one (1) workstation.
3. The CUSTOMER shall only be entitled to make one (1) backup copy of any part of the software, and the use of such backup copy shall be limited to replacing the original software only if the original software is not functional. The CUSTOMER shall keep records of the storage of such backup copies and submit such records to SITECO upon request. Otherwise, the CUSTOMER shall only be entitled to reproduce the software in connection with a multi-user license.
4. The CUSTOMER shall be entitled to transfer to third parties all of its rights, claims and entitlements to the product and the right to use the software only together with the product pursuant to this Article. The CUSTOMER may not grant any further rights to its customers. The CUSTOMER may not keep any copies of the software and is not entitled to sublicense the software.
5. The software shall only be provided in machine-readable format (i.e. object code). The CUSTOMER shall not be entitled to decompile, reverse engineer, disassemble, retranslate or otherwise decode the software unless expressly permitted by law. Copyright and other proprietary notices and other identifying information may not be removed and must be reproduced in full in any full or partial copy.
6. To the extent the CUSTOMER is provided with software that is not the property of SITECO but for which SITECO has a derived right of use, and such software is not open source software (third party software), the terms of use agreed between SITECO and its supplier shall apply in addition, including with respect to the relationship between SITECO and the CUSTOMER. In the event of any dispute, these shall prevail over the provisions of this Article to the extent that they apply to the CUSTOMER (including but not limited to: End-User-License-Agreement, etc.). SITECO will inform the CUSTOMER of these applicable terms of use and make them available upon request. Certain third party licensors may also be direct and intended third party beneficiaries of certain terms contained herein. The CUSTOMER agrees that such third party beneficiaries may enforce these terms and conditions directly against the CUSTOMER.
7. The software may contain freeware, shareware or open source software. The CUSTOMER will not be charged a license fee for their use. The CUSTOMER acknowledges and agrees that SITECO makes no warranties and assumes no liability with respect to the CUSTOMER's ownership and/or use of the freeware, shareware or open source software. With respect to such portions of the software, the CUSTOMER hereby accepts the specific license terms which, in the event of conflict, shall prevail over the provisions of this Article. If required by the terms of use, SITECO shall provide the CUSTOMER with the source code of the freeware, shareware or open source software. SITECO shall inform the CUSTOMER of the existence of the terms of use for the open source software provided and shall make the terms of use available to the CUSTOMER upon request, unless they are already included in the documentation or accompany the product.
8. The usage of the software on several devices or at several workstations at the same time is only permissible if a corresponding right of use has been agreed separately. The same applies to the usage of the software in networks, even if the software is not duplicated in this case. For the above-mentioned cases ("multi-user license"), the following additional provisions shall apply:
  - a) The precondition for a multi-user license is written confirmation from SITECO of the permissible number of (i) copies that the CUSTOMER may make of the relevant parts of the software and (ii) devices and/or workstations on which the software may be used/accessed.
  - b) The provisions of No. 4, first sentence, apply to multi-user licenses in such a way that the multi-user license may only be transferred by the CUSTOMER to third parties if the multi-user license is transferred together with all devices on which the software may be used.
  - c) The CUSTOMER shall keep records of all copies of the software (including the whereabouts of each copy) and provide such records to SITECO upon request.
9. All rights, title and interest in the software and documentation not expressly granted to the CUSTOMER shall remain with SITECO or its third party licensors and nothing in this Article conveys any right or intends to confer any right in the software except as expressly granted herein. In particular, the CUSTOMER may not, and without limitation, modify, reproduce or copy the software except as expressly authorized by SITECO in writing or pursuant to this Article.
10. The CUSTOMER acknowledges and agrees that the software and documentation may contain proprietary and confidential information and trade secrets of SITECO and its third party licensors and agrees to keep such information secret and confidential.

**Article XI: Performance Proviso; Export Control**

1. The performance of the contract is subject to the proviso that there are no obstacles due to German, US-American or other applicable national, EU or international regulations of foreign trade law as well as no embargos or other sanctions.

2. The CUSTOMER shall comply with the applicable provisions of national and international (re-)export control law when passing on the PRODUCTS/SERVICES (including, but not limited to: hardware, software, technology and associated documentation, regardless of the manner in which they are made available, including technical support of any kind, etc.) to third parties at home and abroad. In any case, the CUSTOMER shall observe the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America.

3. If necessary for export control audits, the CUSTOMER shall, upon request, immediately provide SITECO with all information on the final recipient, final destination and intended use of the PRODUCTS/SERVICES as well as any related export control restrictions.

4. The CUSTOMER shall fully indemnify SITECO against all claims asserted by authorities or other third parties against SITECO due to the CUSTOMER's failure to comply with the above export control obligations and shall reimburse SITECO for all damages and expenses incurred in this regard, unless the CUSTOMER is not responsible for the breach of duty. A change in the burden of proof to the disadvantage of the CUSTOMER is not associated with the above provisions.

5. The CUSTOMER is obliged to provide all information and documents required for the export, transfer or import.

**Article XII: Exclusion of the Duty of Performance; Contractual Adaptation**

1. If the delivery of the PRODUCTS/SERVICES is impossible, the CUSTOMER shall be entitled to claim damages, unless SITECO is not responsible for the impossibility. However, the claim for damages shall be limited to ten percent (10%) of the net value of that part of the PRODUCTS/SERVICES which cannot be used for its intended purpose due to the impossibility. This shall not apply in the event of intent, gross negligence or injury to life, limb or health. A change in the burden of proof to the disadvantage of the CUSTOMER is not associated with the above provisions. The right of the CUSTOMER to withdraw from the contract remains unaffected.

2. Insofar as events within the meaning of Article V No. 5 a) to c) substantially change the economic implications or the content of the PRODUCTS/SERVICES or have a significant effect on the operation of SITECO, the contract shall be adapted appropriately in good faith. Insofar as this is not economically justifiable, SITECO shall be entitled to withdraw from the contract. The same shall apply if necessary export permits are not granted or cannot be used. If SITECO intends to make use of this right of withdrawal, SITECO shall notify the CUSTOMER thereof without undue delay after becoming aware of the consequences of the event, even if an extension of the delivery times had initially been agreed with the CUSTOMER.

**Article XIII: Further Claims for Damages**

1. Unless expressly agreed otherwise, claims for damages by the CUSTOMER, irrespective of their legal basis, in particular due to breach of duties arising from the contractual obligation and tort, shall be excluded.

2. This shall not apply in the event of intent, gross negligence, fraudulent intent, non-compliance with a guarantee given, injury to life, body or health, as well as liability under the Product Liability Act and in the event of breach of material contractual obligations. The claim for damages for the violation of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases exists.

3. A change in the burden of proof to the disadvantage of the CUSTOMER is not associated with the above provisions.

**Article XIV: Jurisdiction; Applicable Law**

1. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Traunstein (Germany).

2. The contract including its interpretation shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**Article XV: Severability**

The remaining parts of the contract shall remain binding even if individual provisions become legally invalid. This shall not apply if the adherence to the respective contract would represent an unreasonable hardship for one of the parties.