

General Terms of Sale, Delivery and Service of Babcock & Wilcox Diamond Power Germany GmbH
For use in Business Transactions with Tradesmen, Legal Entities under Public Law and Special Funds under Public Law

1. Applicability of General Terms, Prohibition of Assignment, Written Form, Choice of Law, Venue and Data Processing etc.

1.1. Our deliveries, services and offers are made solely on the basis of these General Terms of Sale, Delivery and Service (hereinafter “General Terms”). The General Terms thus also apply to all future business relationships, even if they are not expressly agreed again. These General Terms are deemed as accepted at the latest upon receipt of the goods or service.

We do not accept any opposing terms of the customer, or terms of the customer which deviate from our General Terms, unless we expressly agree to their applicability in writing. Our General Terms also apply if we make a delivery to the customer without reservation, even if we are aware of opposing or deviating terms of the customer.

1.2. The Customer cannot assign any claims against us.

1.3. Any agreements, contractually presupposed uses, assumption of procurement risks, guarantees or other assurances prior to or upon formation of the contract are only valid if they are made in writing. Transmission via telecommunications, in particular via fax or email, is sufficient to satisfy the written form requirement, provided that the copy of the signed declaration is transmitted. This also applies if written form is required or considered authoritative in these General Terms.

Subsequent individual agreements with the customer made in the individual case (including ancillary agreements, amendments and modifications) take precedence over these General Terms in each case. The written agreement or our written confirmation is authoritative for the content of such agreements.

1.4. Legally relevant declarations and notifications to be served to us by the customer after formation of the contract (e.g. setting of grace periods, notifications of defects, rescission or reduction declarations) must be made in written form in order to be valid.

1.5. We have not made any additional agreements or verbal undertakings, in particular regarding contractually presupposed uses, the assumption of procurement risks, guarantees or other assurances. The persons acting on our behalf are not authorized to make verbal modifications of the pre-formulated contractual wording, verbal amendments or verbal assurances which exceed the content of the written contract.

1.6. This Contract is subject to substantive German law under exclusion of the Vienna UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) and of the German conflict of laws principles. The prerequisites and effects of the retention of title are subject to the laws of the country where the goods are stored to the extent the choice of German law is invalid.

The negotiating language is German.

1.7. The place of performance for obligations of the customer and for our obligations is the seat of our company.

1.8. Straubing is the sole – including international – venue for all current and future claims under the business relationship, including claims based on bills of exchange or cheques, provided that the customer is a tradesman or a legal entity under public law or special fund under public law. This venue also applies if the customer does not have a place of general jurisdiction in Germany, transfers his residence or usual abode from Germany after formation of the contract or if his place of residence or his usual abode is not known at the time the lawsuit is filed.

1.9. If one of the terms of this contract, including these General Terms, is or becomes invalid or unenforceable, the remaining terms are not affected. Instead of the invalid or unenforceable term, such valid and enforceable term shall apply which most closely resembles the invalid or unenforceable term with regard to its content and purpose. This also applies to any gaps.

1.10. We process and use the personal data of the customer solely for purposes of processing the contract, customer service, market and opinion research and our own advertising. Thus, the customer agrees that its data is electronically stored, processed and used by us for our business purposes. The customer further agrees that this data is forwarded to the required extent to third parties which grant us loans or which insure our claims against the customer.

2. Offer, Scope of Delivery and/or Service, Sub-Contractors, Delivery to Us by Our Suppliers, Time of Delivery or Service, Transfer of Risk and Return Shipments

2.1. Our offers are subject to change and non-binding unless expressly marked as binding or containing a certain acceptance period. Acceptance declarations and all orders require our confirmation in written or text form in order to be legally valid. If we commence with a delivery or service without express written agreement or confirmation, a contractual relationship is only established upon completion of our delivery or service.

The customer is bound to its offer (order) for a period of 4 weeks as from the day on which we receive its order.

2.2. Our written order confirmation is authoritative for the scope of delivery or service, in case of an offer made by us, the latter, if it is accepted and if there is no order confirmation.

2.3. Documents such as e.g. estimates, drawings, illustrations, measurements, weights or other specifications are only binding if expressly agreed in writing. Apart from that, Section 8 applies.

2.4. We may use sub-contractors.

2.5. If and to the extent the intended purpose or the fitness for use are not affected, the value is retained or increased and the modifications are reasonably acceptable to the customer, we may change the subject of our delivery or service as compared to the sample, the offer or the contractual description in order to improve our delivery or service for the purpose of manufacturing or technical progress or because the former is caused by customary variations in weight, amounts,

measurements, material composition, material construction, structure, surface and color or by the nature of the used materials.

2.6. Partial deliveries/partial services are permitted in reasonable scope and may be invoiced separately, provided that the interests of the customer are preserved, in particular provided that the scope of delivery/service is not changed and that a partial delivery/service in intervals is reasonably acceptable to the customer in consideration of the type of contractual goods/services and their typical use.

2.7. The delivery/service period commences upon dispatch of the order confirmation, in case of an offer by us upon the time this offer is accepted, however, not prior to full clarification of all details of execution. Adherence to the delivery/service period requires the fulfillment of all contractual obligations of the customer. The agreed delivery/service period is extended by the period during which the customer is in default with its obligations under this contract or under another contract under the ongoing business relationship. Our rights due to the customer's default remain unaffected.

The period is also deemed as met if the contractual product has been dispatched no later than on the 15th calendar day after the delivery/service date or if the customer has been informed that we are ready to dispatch.

2.8. We are not liable for an impossibility of delivery/service or for delays in delivery/service to the extent the former are caused by force majeure or other events which could not be foreseen at the time the contract was made (e.g. interruption of operations of any kind, difficulties in procuring the materials or energy, transport delays, strikes, lawful lock-outs, lack of workforce, energy or raw materials, difficulties in obtaining required governmental permits, measures by authorities or failure of our supplier to deliver to us or incorrect or late delivery to us by our supplier), and which are not attributable to us. To the extent such events materially complicate or render impossible the delivery or service and the obstruction is not merely temporary, we may rescind the contract. In case of temporary obstructions, the delivery or service periods extend or the delivery or service dates are postponed by the period of the obstruction plus a reasonable start-up period. To the extent acceptance of the delivery/service is not reasonably acceptable to the customer as a result of the delay, it may rescind the contract by notifying us hereof in writing immediately.

2.9. In case of a delay in delivery/service, the customer may only rescind the contract after fruitless expiration of a reasonable grace period of at least 14 calendar days to be set by the customer in writing, unless a grace period is not required by law; any such rescission is only possible if we have not notified the customer that the contractual product is ready for shipment by such time. This applies mutatis mutandis in case of a partial delay or partial impossibility.

To the extent the failure to meet bindingly agreed delivery periods and dates is attributable to us or to the extent we are in default, the customer is entitled to a default compensation in the amount of 0.5% of the invoice amount for each complete week of default, however, limited to a total of up to 5% of the invoice amount of the deliveries and services affected by the delay. Any further claims are excluded unless the delay is attributable at least to our gross negligence or they are based on damages from injury to life, health or body which is attributable at least to our simple negligence.

2.10. The risk (transport and payment risk) passes to the customer upon handover of the contractual product to the customer, shipping company, freight forwarder or other person designated to carry out the shipment, regardless of whether the means of transport used are ours or a third party's. This also applies in case we pay for the delivery. If the dispatch is delayed due to circumstances attributable to the customer, the risk passes to the customer as from the day on which we are ready to dispatch; however, upon request and at the expense of the customer, we are obligated to take out the insurance policies requested by the customer.

2.11. If (i) the goods or the contractual product is not collected by the customer by the agreed date, (ii) the dispatch is postponed upon request of the customer, (iii) the set-up and installation is postponed upon request of the customer or (iv) the customer fails to collect the goods or contractual product after notification of readiness and a reminder, then the customer will be charged with the costs incurred due to storage and financing, however, at least 0.5% of the invoice amount of the affected deliveries and services for each commenced month of delayed acceptance, however limited to a total of 5%, unless the customer proves lower costs. These costs will be charged to the customer as from (i) midnight of the agreed date, (ii) notification of readiness to dispatch or (iii) receipt of the reminder. We expressly reserve the right to assert higher damages.

We may, however, otherwise dispose of the delivery item after setting and fruitless expiration of a reasonable grace period, and deliver another delivery item to the customer upon after a reasonably extended delivery period.

The preceding terms apply mutatis mutandis in case of supplementary or follow-up orders which cause a delivery delay of the delivery item.

If we rescind the contract due to a delay in accepting the goods or payment default or due to other reasons attributable to the customer, we may in our discretion demand damage compensation because of non-performance; this does not affect our other rights. In this case, we may assert 25% of the net value of the delivery/service as liquidated damages; this does not affect the possibility to assert actual higher damages. The customer may prove that (i) we did not incur any damages at all, or (ii) the damages incurred are substantially lower than the preceding liquidated damages.

2.12. Notwithstanding the customer's rights under Section 5, delivered items and rendered services must be accepted by the customer even if they immaterially deviate from the agreed quality or if their fitness for use is immaterially impaired.

2.13. To the extent we procure goods or services which we use to fulfill our contractual obligations vis-a-vis our customers, we undertake entry inspections or other checks only in our own interest and according to our own needs.

2.14. To the extent an acceptance of the goods/services is required, the contractual product is deemed accepted if

- the delivery/service is completed and, provided we are also obligated to carry out the set-up and installation, upon completion of set-up and installation,
- we have informed the customer accordingly under reference to this deemed acceptance, and requested the customer to declare acceptance
- two weeks have passed since delivery/service, including set-up and installation, if the latter are to be carried out by us, or if the customer has commenced to use the delivery/service (e.g. has taken the delivered item into operation) and in this case, if one week passed since the delivery/service including set-up and installation, if the latter are to be carried out by us, an
- the customer has failed to declare acceptance within this period for a reason other than a defect notified to us which renders use of the delivery/service impossible or materially impairs such use.

3. Prices and Payment Terms

3.1. The prices are stated in Euro and unless agreed otherwise, apply ex works/warehouse and exclude loading, packaging and insurance. The prices are net prices payable plus VAT in the respective statutory amount.

Upon request, we insure the transport of the goods on behalf and for the account of the customer.

3.2. If one or more factors, such as energy costs and/or costs for raw or primary materials and/or auxiliary and operating materials and/or the costs for procurement of the delivery item (if sourced from a sub-supplier or pre-supplier), increases in the period from formation of the contract to the delivery date, we may adjust the prices by the amount by which the procurement or manufacturing costs of the delivery item have increased. However, such adjustment will take into account costs listed in clause 1 which have decreased during the period set forth in clause 1, and reduce any adjustment accordingly. In case of a price increase, we will demonstrate cost increases and decreases pursuant to their type and amount. In case the price increase exceeds 10% of the originally agreed price, the customer may rescind the contract.

3.3. Rebates or other discounts only apply if all contracts between the customer and us pending or partially open at the time the contract is formed are properly performed. We do not grant early payment discounts.

3.4. Cheques or bills of exchange are only accepted upon agreement and always subject to actual payment. Costs are always borne by the customer and payable immediately.

3.5. Our representatives or other employees are not authorized to accept payments or other dispositions without written collection authority.

3.6. Subject to Section 3.7, the withholding of payments or the set-off with counterclaims of the customer is not permitted, unless the counterclaims are undisputed, ready for judgment or finally judicially determined.

3.7. Subject to justified complaints about defects, the agreed price is payable within 21 days after delivery. In case of justified complaints about defects, payments of the customer may be withheld to an extent reasonable in light of the defects. In case of an unjustified complaint about defects, we may demand reimbursement of the costs incurred by us from the customer.

3.8. In case of default, we may claim statutory interest and the liquidated default damages. We reserve the right to assert further damages in case of default.

In case of default, all our other claims vis-à-vis the customer based on other deliveries and services are payable immediately regardless of payment or deferment agreements, if any.

3.9. In case our claim to consideration is threatened because of lack of solvency of the customer, and if this threat only becomes apparent to us after formation of the contract, we may request payment of the purchase price prior to delivering the goods, regardless of the payment arrangements set forth in the contract. If the customer does not comply with this request or fails to provide security via third parties, we may rescind the contract after expiration of 14 days, reserving damage compensation claims.

4. Retention of Title

4.1. We reserve the title to the delivery item (reserved goods) until all claims (including all balance claims from current account and refinancing or promissory notes, if any), which we have against the customer currently or in the future on any legal basis whatsoever, are fully paid.

Payments made against receipt of a promissory note of the customer issued by us are only deemed as payment when the bill of exchange is honored by the drawee and we are thus released from liability for the bill of exchange.

Neither the inclusion of individual claims into a current invoice nor the balancing and its recognition affect the retention of title.

The customer shall treat the reserved goods with care; in particular, it shall reasonably and sufficiently insure such goods at replacement value against damage from fire, water and theft at its own expense. If maintenance and inspection works are required, the customer shall regularly carry out such works at its own expense. Any damage to or destruction of the goods must be notified to the customer immediately.

4.2. Any processing or treatment of the reserved goods is made on behalf of us as manufacturer within the meaning of Section 950 of the German Civil Code (BGB) without obligating us. The processed and treated goods are deemed as reserved goods within the meaning of Section 4.1. In case the customer processes, combines or mixes the reserved goods with other goods which are not our property, co-ownership in the new item vests in us pro rata to the ratio between the invoice amount of the reserved goods and the invoice amounts of the other used goods.

If our ownership expires due to processing, combination or mixing, the customer hereby transfers to us the ownership rights in the new stock and the item vested in the customer, in the amount of the invoice amount of the reserved goods.

The customer shall keep the (joint) property safe for us at no charge.

Our joint property rights are deemed as reserved goods within the meaning of Section 4.1.

4.3. The customer may only sell the reserved goods within the ordinary course of business on customary commercial terms and for as long as it is not in default, provided that the receivables from the resale are assigned to us pursuant to Sections 4.4 to 4.6. The customer is not authorized to make any other dispositions regarding the reserved goods.

4.4. The claims regarding the reserved goods (including all balance claims under a current account) arising from the resale or another legal reason (e.g. insurance, tort) are hereby fully assigned to us by the customer. They serve to secure our claims in the same scope as the reserved goods pursuant to Section 4.1. If the reserved goods are sold by the customer along with other goods not sold by us, the claim from the resale is assigned to us pro rata to the ratio between the invoice amount of the reserved goods and the invoice amounts of the other used goods. In case goods co-owned by us pursuant to Section 4.2 are sold, a share corresponding to our co-ownership is assigned to us. If the reserved goods are used by the customer to fulfill a works agreement, the claim under the works agreement is assigned to us in advance in the same scope. We hereby accept the aforementioned assignments.

4.5. The customer may collect claims arising from the resale. This collection authority expires if revoked by us. We will only use our revocation right if we become aware of circumstances which lead to a material deterioration of the customer's financial situation endangering our payment claim, in particular in case of payment default, non-payment of bills of exchange or cheques, or application for the opening of insolvency proceedings.

Upon our request, the customer shall immediately inform its customers about the assignment to us, and provide us with the documents required for collection.

4.6. If contractual terms of the third party debtor with the customer contain a valid limitation of the right to assign claims or if the third party subjects the assignment to its consent, we must be informed hereof in writing immediately. In this case, we are hereby irrevocably authorized pursuant to the preceding Section 4.5 to collect the claim to which we are entitled, on behalf and for the account of the customer. The customer hereby also irrevocably instructs the third party debtor to make payment to us.

The customer shall inform us immediately in case of an attachment or other impairment by third parties. The customer bears all costs which must be borne in order to annul the attachment or return the reserved goods, unless these costs are reimbursed by third parties.

4.7. If the sustainably realizable value of the collateral provided to us exceeds our claims by a total of more than 20%, we are obligated to release collateral to such extent and in our discretion, if so requested by the customer or a third party adversely affected by our over-collateralization.

4.8. In case the customer breaches duties, in particular in case of payment default, we may rescind the contract adhering to the statutory provisions; we reserve other damage compensation claims. In this case, the customer is obligated to surrender the goods and to assign rights of surrender. We may enter the premises of the customer for purposes of recovering the reserved goods. This also

applies if other circumstances arise which infer a material deterioration of the customer`s financial situation and which seriously endanger our payment claim.

5. Material and Title Defects

5.1. Documents and/or information regarding the delivery item or service, its intended use (e.g. drawings, illustrations, measures, weights, utility values and other performance data) constitute only descriptions or labels, rather than guarantees, warranted properties, contractually presupposed uses or similar and are to be considered as approximate, regardless of whether they were expressly agreed in writing or not. We reserve the right to discrepancies which are customary in the industry, to the extent they are reasonably acceptable to the customer, i.e. in particular in cases where the value of the goods is maintained or improved.

Our drivers or third party drivers are not authorized to receive complaints about defects.

Complaints about defects after processing or treatment are excluded in any case to the extent the defect was identifiable in the delivery state during inspection.

5.2. The customer shall thoroughly inspect the delivery item/service immediately after its receipt while it is in its delivery state, or upon collection and notify us of any complaints in writing immediately, at the latest within one week after receipt of the delivery item. If the notification period is not observed, the assertion of warranty claims and claims for defects is excluded and the delivery or service is deemed approved. If such a defect becomes apparent later (hidden defect), the customer shall inform us hereof immediately after discovery of the hidden defect; otherwise, the preceding clause 2 shall apply mutatis mutandis. The timely dispatch by the customer suffices to meet the notification period. The defective items shall be kept available for inspection by us in the state in which they are at the time the defects are discovered. Surplus / short weights / deliveries within customary limits do not entitle the customer to complaints or reductions of the price.

5.3. Claims for material defects become time-barred after 12 months if they relate to newly manufactured items or works. This does not apply to the extent the law prescribes longer limitation periods pursuant to Section 438 para. 1 no. 2 (Buildings and items for buildings), Section 479 para. 1 (right of recourse) and Section 634 a para. 1 no. 2 (construction defects) of the German Civil Code. In case of delivery of used goods, all claims for material defects are excluded, subject to statutory law and other agreements. The reduced limitation period and the exclusion of liability do not apply in cases of willful or grossly negligent injury to life, body or health, willful or grossly negligent breaches of duty by us, in case of fraudulent concealment of a defect, in case of an applicable quality guarantee or in case of claims based on the German Product Liability Act. The statutory provisions regarding the commencement, expiration, suspension and re-start of the limitation periods remain unaffected unless agreed otherwise.

During supplementary performance, the expiration of the warranty period is suspended. The carrying out of warranty works does not result in an extension of the warranty above and beyond that, unless there are additional special circumstances which lead to a re-start of the limitation period. Even a precautionary exchange of machine parts is generally only undertaken to remove notified defects, and without other recognition of the warranty claim within the meaning of Section 212 para. 1 no. 1 of the German Civil Code.

5.4. In case of material defects, we must first be granted the opportunity to provide supplementary performance within a reasonable grace period, by at our discretion (subject to Section 478 of the German Civil Code) either removing the defect or delivering a non-defective item. In the latter case, the customer shall return the defective item pursuant to the statutory provisions upon our request. If (i) supplementary performance fails or (ii) we finally and seriously refuse supplementary performance or (iii) we may refuse supplementary performance pursuant to Section 439 para. 3 of the German Civil Code or (iv) supplementary performance is not reasonably acceptable to the customer or (v) there is a case of Section 323 para. 2 of the German Civil Code, the customer may rescind the contract or reduce consideration; damage compensation claims pursuant to Section 6 remain unaffected.

The customer shall grant us the required time and opportunity to carry out all repairs and replacement deliveries which appear necessary to us in our reasonable discretion; otherwise, we are released from the liability for defects.

The customer may only remove the defect itself or have it removed by third parties and request reimbursement of the necessary expenses from us if (i) there is an urgent case of danger, operational security or to defend against unreasonably large damages, which must be notified to us immediately, or (ii) we are in default regarding the removal of a defect.

5.5. Subject to Section 478 of the German Civil Code, claims for defects do not exist in case of merely immaterial deviations from the agreed quality, in case of merely immaterial impairments of fitness for use, in case of natural wear and tear or damages which arise after transfer of risk as a result of incorrect or negligent treatment and/or storage, excessive use, inappropriate operating materials, defective works or special external influences which are not presupposed by the contract. If the customer or third parties incorrectly undertake modifications or repair works, the latter and the resulting consequences also do not give rise to claims for defects.

EC conformity declarations, manufacturer declarations or other declarations made in this context and provided documents lose their validity if the products are modified without our approval and/or if safety features are modified or disabled.

5.6. Recourse rights of the customer against us pursuant to Section 478 of the German Civil Code (Recourse of tradesmen) only arise insofar as the customer did not enter into any agreements exceeding the statutory claims for defects with its customers. Section 5.7 below applies mutatis mutandis to the scope of the recourse right of the customer against us pursuant to Section 478 para. 2 of the German Civil Code.

5.7. Claims of the customer due to expenses required for purposes of supplementary performance, in particular costs of transport, travel, works and materials, are excluded to the extent the expenses increase because the delivery item has subsequently been taken to a location other than the customer's establishment, unless such relocation is in line with its intended use.

5.8. Costs for the disassembly of defective deliveries and the fitting of replacement deliveries are not assumed by us unless (i) they constitute recourse rights of the customer against us pursuant to Section 478 of the German Civil Code, (ii) we are liable pursuant to Section 6 or (iii) we were originally obligated to carry out the fitting.

5.9. Complaints about partial deliveries do not entitle the customer to refuse the remaining deliveries unless the customer no longer has an interest in the latter due to the defects of the partial deliveries.

5.10. We do not assume any liability for claims for defects based on the conformity of the delivery item outside of the territory of the Federal Republic of Germany to laws which are more stringent than the German laws.

5.11. In case of title defects, the terms in Sections 5.1 to 5.10 apply mutatis mutandis.

6. Claims of the Customer in Case of Delays of Delivery/Service, Impossibility and other Breaches of Duty as well as Limitation of Liability

6.1. Any damage compensation claims of the customer due to delay of the delivery or service, impossibility of the delivery or service or due to other legal reasons, in particular because of breach of duties under the contractual relationship or in tort are excluded unless otherwise specified in Sections 6.2 to 6.8. This also applies to reimbursement claims of the customer.

6.2. The preceding exclusion of liability does not apply

- a)** in cases of willful intent or gross negligence,
- b)** for damages from injury to life, body or health based on a negligent breach of duty by us or on a willful or negligent breach of duty of our statutory representative or one of our vicarious agents,
- c)** for claims pursuant to the German Product Liability Act,
- d)** pursuant to other mandatory statutory provisions or
- e)** because of the breach of material contractual duties attributable to us.

The damage compensation claim for breach of material contractual duties is, however, limited to the typical, foreseeable, direct damages unless there is a case of willfulness or gross negligence or liability is constituted due to the negligent or willful injury to life, body or health. Material contractual duties are duties the fulfillment of which is a condition precedent for the proper execution of the contract and on fulfillment of which the customer may generally rely; this includes in particular the obligation to deliver/provide services and installation on time, the absence of defects which impair the functionality or fitness for use of the contractual product more than just immaterially, as well as consulting, protection and care obligations which are intended to enable the customer to use the delivery/service in accordance with the contract or which are intended to protect life and limb of employees of the customer or the protection of the latter's property from material damages. Typical, foreseeable, direct damages are the damages which we have foreseen upon formation of the contract as potential direct consequence of the realized breach of contract, or which we would have had to foresee in consideration of circumstances which we knew or should have known. Indirect damages and consequential damages which are the result of defects of the delivery/service can moreover only be compensated to the extent such damages are typically to be expected in case of intended use of the delivery/service.

In case of liability for simple negligence, our compensation obligation for material damages and resulting additional financial damages is limited to an amount of EUR 3,000,000.00 per damage case (corresponding to the current coverage of our product liability insurance or liability insurance), even if the breach of duty is a breach of a material contractual obligation.

The preceding terms do not entail a change of the statutory burden of proof to the detriment of the customer.

6.3. The preceding exclusion of liability and the preceding limitation of liability equally apply to our corporate bodies, statutory representatives, employees and other vicarious agents.

6.4. To the extent the customer is entitled to damage compensation or reimbursement claims pursuant to the preceding Sections 6.1 to 6.3, these claims become time-barred upon expiration of the limitation periods applicable to claims for defects pursuant to Section 5.3 above. Damage compensation claims under the German Product Liability Act are subject to the statutory limitation rules.

6.5. The preceding exclusions and limitations of liability do not apply to the extent a more stringent liability is contractually agreed or can be inferred from the other content of the contractual relationship, in particular from the assumption of a guarantee or a procurement risk.

6.6. The customer may not request damage compensation in lieu of performance if our breach of duty is immaterial.

6.7. To the extent we provide technical information or act in advisory capacity, and such information or advice is not part of the contractually agreed scope of services owed by us, such information/advice is provided free of charge and under exclusion of any liability, unless there is gross negligence or willful intent.

6.8. Regardless of the preceding limitations, existing statutory rescission rights, if any, of the customer remain unaffected. However, in case of breaches of duty which do not consist of a defect of the goods, it is required that this breach of duty is attributable to us.

7. Set-up and Installation

7.1. The customer shall timely ensure at its expense that all preparatory construction works at the set-up or installation site have been properly undertaken in due time, that operating power, water and heating (including required connections to the point of use) are available in working order, that there is sufficient and appropriate space to store the uninstalled delivery and service items and that protective clothing and safety devices which are required as a consequence of special circumstances of the installation site and which are not customary for us, are available.

7.2. In due time prior to commencement of the installation works, the customer shall provide to us without request the necessary information about the location of hidden electricity, gas and water lines and similar facilities, as well as the required structural information.

7.3. If the set-up and installation, including initial operation, are delayed due to circumstances attributable to the customer, it shall bear the costs for waiting times and further required travel of the installation personnel within reasonable scope and in addition to the stipulation made in Section 2.11; other rights remain unaffected. If the contract made in the individual case does not contain any provisions regarding the calculation for set-up and installation, the following applies:

The customer shall compensate us for the standard hourly rates for work time and surcharges for overtime, night-time, Sunday and holiday work, for works under difficult conditions as well as for planning and supervision applicable at the time the order is placed. Preparation, travel and transit times as well as check-backs are invoiced at daily cost basis. This also applies to travel expenses, costs for tool and personal luggage transport as well as payment of agreed wages for travel times as well as for rest days and holidays.

8. Know-how, Industrial Property Right and Confidentiality

8.1. Models, matrices, templates, patterns, tools, drawings, marks, other coloring agents and cost estimates as well as confidential information (hereinafter "Know-How") which is provided to the customer by us or which were paid by us in full or pro rata may only be made accessible to third parties upon our express prior written consent. Also, the customer may not use the Know-How in order to manufacture products itself or render its own deliveries/services without our prior written consent.

8.2. We remain the holders of the industrial property rights, in particular of patents, marks, constructions, works, manufacturing processes including all technical documents and information as well as all business and trade secrets and the Know-How set forth in Section 8.1 which were provided in connection with the negotiation and/or performance of the respective contract.

8.3. The customer all keep all received illustrations, plans, drawings, authorizations, operation instructions, product descriptions and other documents and information (hereinafter "Information") strictly confidential, unless they are or become publicly known. We reserve all pertinent property rights and copyrights. This Information may only be disclosed to third parties upon our prior express consent. This confidentiality obligation also applies after fulfillment of the respective delivery contract for a period of five years as from termination/expiration of the respective contract.

8.4. The customer bears the sole responsibility for ensuring that the performance of its order does not infringe third party rights, patents, utility models, trademarks, trade dresses and other copyrights vis-à-vis third parties.

8.5. Know-How and Information which the customer received from us shall be returned to us at the customer's expense after performance of the contracts or in case a contract is not formed, and if this is not possible, such Know-How and Information must be deleted and/or destroyed.

9. Resale and Export Restrictions

9.1. In case of a resale of Diamond Power Germany products the seller undertakes to comply with all applicable provisions of foreign trade law and the sanction regulations and to obtain export clearances where required.