

General Terms and Conditions of Dr. Mach GmbH & Co KG **(Status: 05/2025)**

I. General provisions

§ 1 Scope of application

(1) Dr. Mach GmbH & Co KG, Am Brucker Feld 4, 85567 Grafing ("DR. MACH") provides its deliveries and services in business transactions with entrepreneurs, legal entities under public law or special funds under public law exclusively on the basis of these General Terms and Conditions ("GTC"), unless otherwise stipulated in individual contracts. Insofar as reference is made in the following to performance or services, this shall include all deliveries and services of any kind provided by DR. MACH to the customer. If the masculine form is used in relation to persons, this shall also refer to female and diverse persons, unless otherwise agreed in individual cases.

(2) DR. MACH does not provide any services to consumers within the meaning of Section 13 of the German Civil Code (BGB) subject to these GTC. In connection with the services referred to in paragraph 1, the GTC shall also apply to all pre-contractual obligations and to all future contracts, even if they are not expressly agreed again. A future contract shall not be governed by the present version of the GTC, but by a more recent version, if DR. MACH has informed the customer of the existence of the newer version and how the customer can easily take note of its content before or at the latest upon conclusion of the contract.

(3) In the event that the customer does not wish to accept the GTC, he must notify DR. MACH in writing before or upon conclusion of the contract. Deviating (purchasing) terms and conditions of the customer or third parties are hereby rejected. Therefore, the terms and conditions of the customer or third parties shall not apply even if DR. MACH does not separately object to their validity in individual cases or if DR. MACH refers to a letter that contains or refers to the terms and conditions of the customer or a third party.

(4) No authorized dealer agreement or other distribution agreement is concluded between the parties, even in the event of repeated deliveries. Neither exclusivity nor territorial protection are agreed. Such agreements must be made in writing; this also applies to any agreement to waive the written form. The application, including the analogous application, of commercial agency law is excluded.

(5) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Definitions

For the purposes of these GTC is or are

1. *Working day* Monday to Friday with the exception of public holidays in Bavaria and with the exception of December 24 and 31;
2. *Foreign trade restrictions* Prohibitions and restrictions imposed by the foreign trade law applicable to the specific *individual contract* and its fulfillment (in particular export control and/or customs regulations including embargoes and *prohibitions on provision*), in particular under the foreign trade law of the Federal Republic of Germany and of the country in which the customer has its registered office or to which and by which the intended delivery or service is provided;
3. *Prohibition on the provision of foreign economic assistance* Prohibition on the direct or indirect provision of funds, technical assistance or economic resources to certain persons, countries, institutions or organizations;
4. *order* constitutes a binding offer by the customer to conclude an *individual contract*;
5. *Individual contract* the contract concluded in the individual case within the scope of these GTC; in the case of *orders* via an online store of DR. MACH online shop, the more detailed content of the *individual contract* results in particular from the selection made by the customer during the ordering process;
6. *Fault* a functional impairment also insofar as this does not constitute a "defect" within the meaning of the law;
7. *Response time* the period starting with the error message up to the time at which DR. MACH begins to rectify the error; if the *response time* is specified in hours, only hours within *normal business hours* shall be taken into account; if days are specified, this means *working days*, unless the parties have exceptionally agreed to rectify the error outside *normal business hours* in individual cases; delays for which DR. MACH is not responsible for shall lead to a reasonable extension of the *response time* and shall not justify any claims for compensation by the customer;
8. *Service level* is the guarantee to be available during certain times or to start providing certain services within certain *response times*;
9. *normal business hours* 07:00 to 17:00 (CET) on *working days*.

§ 3 Conclusion of individual contracts

(1) An *individual contract* and thus a contractual obligation regarding the individual services is created by an order confirmation from DR. MACH, by conclusive action, in particular if DR. MACH begins to provide services in accordance with the contract after the *order* has been placed, or by the customer accepting a binding offer from DR. MACH. The offers of DR. MACH are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The product and service descriptions of DR. MACH do not constitute a binding offer. The customer is bound to his *orders* for 14 days.

(2) If the customer orders via an online store of DR. MACH, the following applies in addition to paragraph 1: After creating a customer account, opening the existing customer account or, if such an account is not created, entering the customer's personal data and filling the shopping cart, an overview page appears before the order process is completed. There the customer can check the accuracy of his details and correct any errors. The customer can cancel the order process at any time by pressing the "Back" button or a similar button and by closing the browser window. After checking the accuracy of his details on the overview page, the customer places an *order* by clicking the "Order with obligation to pay" button in the final step of the order process. Once the order has been successfully received, the customer will receive an e-mail confirming receipt of the *order* and providing all the necessary information about the *order*. This confirmation e-mail only represents a binding acceptance of the order if this is expressly declared by DR. MACH expressly declares this. German is the only language available for the conclusion of the contract. The information on the *individual contract* is sent to the customer by e-mail and is available to the customer until it is deleted if the *order is placed* via a customer account.

(3) If it is possible to set up sub-accounts in the online store via which individual employees or other representatives of the customer can *place orders*, the customer shall ensure that the respective person has sufficient authorization to conclude legal transactions and is legally competent. The creation of the sub-account shall be deemed to be a manifestation of authorization within the meaning of Section 171 of the German Civil Code (BGB). If the power of representation is to be withdrawn from the respective person, the customer shall immediately block or delete the sub-account. The power of attorney can only be revoked by blocking or deleting the sub-account. Any other declaration of revocation (e.g. by e-mail) to DR. MACH does not, however, result in the power of representation ceasing to apply.

§ 4 Content of the services of DR. MACH

(1) The specific content of the services owed by DR. MACH is set out in the *individual contract* together with any agreed contractual amendments and supplements.

(2) DR. MACH is entitled to minor deviations from the agreed service provision, provided that these do not impair the quality of the service and are reasonable for the customer. In particular,

DR. MACH is entitled to excess or short deliveries to the extent customary in the trade; the parties may agree on the size of customary tolerances in the *individual contract*.

(3) Product descriptions, illustrations, test programs, etc. are performance descriptions and do not constitute a guarantee of quality. The guarantee must be in writing to be effective. It can only be validly declared by a managing director or authorized signatory of DR. MACH. Other employees of DR. MACH are not authorized to declare guarantees.

(4) Apart from liability for material defects and defects of title (§§ 19, 20), DR. MACH shall only be liable for the provision and, if necessary, updating of goods with digital elements if this has been expressly agreed in the *individual contract*.

(5) As long as services provided by DR. MACH are free of charge for the customer, the services of DR. MACH are purely voluntary and the customer has no claim against DR. MACH for continuation of the services. DR. MACH reserves the right to discontinue the free services in whole or in part at any time without prior notice.

(6) DR. MACH may also provide its services through third parties.

§ 5 Place of service provision by DR. MACH

Unless otherwise agreed in the *individual contract*, DR. MACH shall provide all services at the registered office of DR. MACH. Insofar as the provision of services requires access to the customer's systems, this shall generally take place by means of remote maintenance.

§ 6 Prices, additional costs

(1) The prices are based on the *individual contract* together with any agreed contract amendments and supplements.

(2) In the absence of an express price agreement, the prices are based on the current price list valid at the time of conclusion of the *individual contract*, which can be requested from DR. MACH at any time.

(3) If the parties have agreed on daily rates or person days as part of the remuneration on a time and material basis, DR. MACH shall owe a maximum of eight person-hours per calendar day. If DR. MACH performs additional person hours on a calendar day, these shall be remunerated additionally on a pro rata temporis basis, unless the excess time contradicts the customer's recognizable request or its objective interest. If hourly rates are agreed, these shall be remunerated for every 15 minutes or part thereof.

(4) The prices quoted are exclusive of the costs of insurance, packaging and shipping, any taxes, duties and customs duties incurred in the cross-border movement of goods and

services, the ancillary costs of monetary transactions and the respective statutory value added tax.

(5) Unless otherwise agreed, the customer shall bear all expenses such as travel and accommodation costs, out-of-pocket expenses and third-party claims for remuneration incurred in connection with the performance of the contract. Travel time shall be remunerated.

(6) If the parties have not reached an agreement on the remuneration of a service provided by DR. MACH, the provision of which the customer could expect under the circumstances only in return for remuneration, the customer shall pay the usual remuneration for this service. In case of doubt, the fees charged by DR. MACH for its services shall be deemed customary.

(7) Costs incurred as a result of subsequent changes to the content of the service initiated by the customer shall be charged separately.

(8) If DR. MACH has also undertaken to provide troubleshooting services (Clause IV. § 39) as part of the maintenance under an individual contract, the fulfillment of statutory claims for the elimination of defects shall remain free of charge. Remuneration for troubleshooting (e.g. on a time and material basis or as part of a lump sum) is only agreed and owed for the additional troubleshooting services (e.g. the elimination of *errors* that are not defects or that were not reported in good time, as well as the guarantee of *service levels*).

§ 7 Payment and default

(1) Unless otherwise agreed, invoices from DR. MACH are due immediately and must be paid without deduction no later than one week after receipt of the invoice in order to avoid default. In the case of a permissible partial delivery, this can be invoiced immediately. Invoices may be issued electronically. If payment in advance has been agreed, DR. MACH shall only provide the service after receipt of payment.

(2) Unless otherwise agreed in individual contracts, the following shall apply to the payment of ongoing remuneration. Insofar as the remuneration

- a) is independent of the scope of use or other variables, this is to be paid monthly in advance; if the contract begins or ends in the current calendar month, the payment obligation is pro rata;
- b) is dependent on the extent of use or other variables, billing takes place after the end of each billing month.

(3) If the customer does not pay by the due date, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default remains reserved.

(4) If the customer is in default, the customer shall be charged interest at the statutory rate from the relevant date. DR. MACH reserves the right to claim higher damages for delay. Other rights of DR. MACH remain unaffected; this also applies in particular to DR. MACH under §§ 273 and 320 BGB as well as the right of DR. MACH's right to terminate the contract for good cause.

(5) DR. MACH shall be entitled to offset payments against older debts of the customer first, despite any provisions of the customer to the contrary, and shall inform the customer of the type of offsetting that has taken place. If costs and interest have already been incurred, DR. MACH shall be entitled to offset the payment first against the costs, then against the interest and finally against the principal claim.

(6) All payments shall be made in euros and, unless otherwise agreed in the *individual contract*, by bank transfer to an account specified by DR. MACH's designated account. A payment shall only be deemed to have been made when DR. MACH can dispose of the amount.

(7) If DR. MACH becomes aware of circumstances that objectively call the customer's creditworthiness into question, in particular if the customer stops making payments or a direct debit is returned for lack of sufficient funds, DR. MACH shall be entitled to declare the entire remaining debt due. DR. MACH is also entitled in this case to demand advance payments or the provision of security.

§ 8 Export control and embargoes

(1) The delivery or service shall be used exclusively for the purposes specified in the *individual contract*. The customer guarantees that the delivery or service will not be used by the customer or the end users of the delivery or service in connection with any of the following technologies: Armaments technology, weapons, missiles capable of carrying weapons and/or nuclear technology.

(2) In addition, the customer warrants that the delivery or service will not be used by the customer or any other customer of any level in the supply chain, including end users, in violation of *foreign trade restrictions*. The customer shall examine the intended delivery or service at the earliest possible time, as far as possible and reasonable even before the *order* is placed, for all possible *foreign trade restrictions* and inform DR. MACH immediately if there are any indications of possible *foreign trade restrictions*. The customer undertakes to submit an end-use declaration for each individual case. Further details shall be regulated in the *individual contract*.

(3) DR. MACH may refuse to fulfill its obligations under the *individual contract* if fulfillment is prohibited or impaired by *foreign trade restrictions* (e.g. because no export license is issued). DR. MACH shall inform the customer of such circumstances without delay.

(4) If DR. MACH refuses the delivery or service due to a *prohibition of provision* and the customer disputes the existence of a *prohibition of provision*, the customer shall, as far as possible and reasonable, request written confirmation from the competent authority that DR. MACH does not violate the foreign trade law applied by the authority by fulfilling the obligations arising from the *individual contract*. If such confirmation is not provided within a reasonable period of time, the parties shall assume the existence of a *prohibition of provision*. Likewise, the parties shall assume the existence of a *prohibition of provision* if it is impossible or unreasonable to request confirmation from the competent authority and there are objective indications that a violation of a *prohibition of provision* is possible.

(5) Claims for damages and reimbursement of expenses by the customer due to the aforementioned *foreign trade restrictions* are excluded insofar as

- a) the *foreign trade restriction* is not attributable to DR. MACH itself (e.g. because DR. MACH is no longer classified as reliable by the export control authorities due to previous conduct contrary to export control law) or
- b) DR. MACH did not fraudulently mislead the customer about the existence of the *foreign trade restriction*.

DR. MACH shall not be liable. The scope and amount of liability for damages and reimbursement of futile expenses due to a foreign trade restriction for which DR. MACH, § 22 ("Liability of DR. MACH") shall apply.

(6) Without prejudice to further statutory or contractual obligations to provide information, the customer shall inform DR. MACH immediately of all circumstances and provide all documents required under the foreign trade law of the country of destination,

- a) in which the customer has its registered office,
- b) in which the intended delivery or performance and
- c) through which the intended delivery or service takes place,

are necessary or expedient for the smooth fulfillment of the obligations of DR. MACH are necessary or expedient. This includes, in particular, information on the end customer, the country of destination and the intended use of the delivery or service.

§ 9 Dates, deadlines and obstacles to performance

(1) Delivery and performance dates or deadlines are agreed as non-binding. If they are to be binding in exceptional cases, this shall require an express written agreement. The schedule envisaged for the services to be provided can be regulated in the *individual contract*. If

shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with transportation.

(2) DR. MACH shall not be liable for impossibility of performance or delays in performance due to force majeure or other events unforeseeable at the time of conclusion of the contract - including, in particular, operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, pandemics, strikes, lawful lockouts, delays in the granting of permits, confirmations or similar requirements, in particular also in connection with foreign trade law, official orders or non-delivery, incorrect or untimely delivery by suppliers, even if they occur at suppliers of DR. MACH or its subcontractors, problems with third-party products - for which DR. MACH is not responsible for, DR. MACH shall not be liable. DR. MACH shall inform the customer of such circumstances without delay.

(3) Insofar as DR. MACH is not responsible for events within the meaning of paragraph 2, DR. MACH significantly impede or render impossible performance and the impediment and hindrance is not only of a temporary nature, DR. MACH is entitled to withdraw from the obligation to fulfill the contract; DR. MACH shall immediately reimburse any consideration already paid by the customer for the unfulfilled part. If such events lead to hindrances of a temporary nature, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period. DR. MACH shall inform the customer of the expected new dates or deadlines without delay. If the hindrance lasts longer than two months, the customer is entitled to terminate the respective *individual contract* with regard to the part not yet fulfilled after setting a reasonable grace period with a threat of refusal. Further statutory rights of the customer shall remain unaffected. Likewise, the statutory provisions in favor of DR. MACH in accordance with Section 275 BGB shall remain unaffected.

(4) Paragraph 3 sentence 2 shall apply accordingly if the customer fails to cooperate in breach of the contract, e.g. fails to provide information, fails to provide access, fails to provide materials or fails to provide employees, or if the customer is in default of payment. However, the customer's right to withdraw from or terminate the contract is excluded in these cases.

(5) If the parties subsequently agree other or additional services that affect the agreed deadlines, these deadlines shall be extended by a reasonable period of time.

§ 10 Reminder and setting of a grace period by the customer, fault requirement for withdrawal or termination

(1) The termination of the further exchange of services as a result of performance disruptions (e.g. in the event of withdrawal, termination for good cause or compensation in lieu of performance) as well as the reduction of the agreed remuneration by the customer must always be threatened, notwithstanding the other legal requirements, by stating the reason and setting a reasonable grace period for rectification. The termination or reduction can only become

effective after the deadline has expired without result. In the cases of Section 323 (2) BGB, the deadline may be waived.

(2) All declarations by the customer in this context, in particular reminders and the setting of grace periods, must be made in writing to be effective. A grace period must be reasonable. A period of less than two weeks set by the customer is only appropriate in cases of particular urgency.

(3) The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if DR. MACH is responsible for the breach of duty.

§ 11 Offsetting, retention and assignment

(1) The customer shall only be entitled to set-off and retention if the due counterclaims have been legally established, are undisputed or ready for decision. However, the customer shall also be entitled to offset without the further requirements of sentence 1 if it wishes to offset a claim against a claim of DR. MACH which is in a reciprocal relationship with the customer's claim (e.g. offsetting a claim for damages due to non-performance or default against the claim for payment of the remuneration owed).

(2) Except in the area of § 354a HGB, the customer may only assert his claims against DR. MACH to third parties only with the prior written consent of DR. MACH to third parties, unless DR. MACH has no legitimate interest in the prohibition of assignment.

§ 12 Price changes

(1) The ongoing remuneration for continuing obligations can be adjusted annually to reflect price developments if the consumer price index of the Federal Statistical Office has changed by at least one percentage point since the start of the contract or, in the case of price changes that have already taken place, since the last price change.

(2) To this end, the party wishing an adjustment may submit a proposal in text form to the other party before the beginning of the new contract year regarding the amount of the price adjustment, which must be based on the development of the consumer price index of the Federal Statistical Office, taking into account considerations of fairness, which the other party may accept or reject in text form within one month.

(3) In the event of refusal, the amount of the adjustment shall be determined by a publicly appointed and sworn expert in accordance with the above agreed standard. At the request of the party wishing the adjustment, the expert shall be appointed by the Chamber of Industry and Commerce locally responsible for DR. MACH's local Chamber of Industry and Commerce. The decision of the expert as arbitrator shall be binding for both parties; the right to challenge the decision on the grounds of obvious incorrectness shall remain unaffected. The costs of the expert shall be borne equally by the parties.

(4) If the proposal is accepted by the other party or determined by the expert, the new price shall apply - also retroactively - from the first month of the new contract year.

(5) The rights of the parties to adjust or terminate the contract due to a disturbance of the basis of the contract (Section 313 BGB) remain unaffected by the above paragraphs. The parties agree that, in particular, inflation exceeding the scope of what is customary shall constitute a disruption of the basis of the contract, on the basis of which DR. MACH may demand a price adjustment or terminate the affected contract under the conditions of Section 313 (3) BGB even if the requirements of the above paragraphs are not met.

§ 13 Provision of materials by the customer

(1) If the customer provides materials (e.g. texts, graphics, images) whose use could conflict with the rights of third parties (e.g. copyrights and industrial property rights, rights to one's own image), the customer is obliged to obtain prior rights clearance and rights to the extent necessary to achieve the purpose of the contract. In particular, the customer shall check before each provision of materials in accordance with sentence 1 whether the customer has the necessary rights to use them within the scope of the contract, both itself and in relation to the execution of the contract by DR. MACH. The customer shall provide DR. MACH the sufficient ownership of rights or the sufficient acquisition of rights immediately upon request.

(2) DR. MACH is under no obligation to the customer to check that the customer has acquired sufficient rights.

(3) The customer shall compensate DR. MACH for any damage resulting from claims asserted by third parties due to the infringement of property rights and other rights, unless the customer is not responsible for this. The customer shall indemnify DR. MACH from all disadvantages that DR. MACH due to claims asserted by third parties due to damaging actions for which the customer is responsible.

§ 14 Change requests

(1) If the customer wishes to change the contractually agreed scope of the services to be provided by DR. MACH, the customer shall inform DR. MACH of his request for change. Section 3 ("Conclusion of individual contracts") applies to the entry into force of the changes to the *individual contract*. The remuneration is based on § 6 ("Prices, ancillary costs"), in particular also on its paragraphs 1, 6 and 7.

(2) The originally agreed deadlines and dates shall be postponed taking into account the duration of the examination of the change request and, if applicable, the duration of the change requests to be carried out plus a reasonable start-up period, even without this requiring express notification.

(3) DR. MACH may, for its part, submit proposals to the customer to change the services, the schedule and the previously agreed remuneration. The above paragraphs shall apply accordingly.

§ 15 Obligations of the customer to cooperate

(1) The customer shall support DR. MACH in the fulfillment of the contractual services of DR. MACH to a reasonable extent.

(2) The customer has

- a) to provide complete and truthful information for necessary registrations and other queries required to achieve the purpose of the contract,
- b) to choose a user name that does not infringe the rights of third parties or other name and trademark rights or offend common decency,
- c) to keep the password secret and not to disclose it to third parties under any circumstances; the customer must inform DR. MACH immediately if there are indications that his access is being or has been misused by third parties,
- d) to notify DR. MACH without delay.

Paragraph 4 sentence 2 applies accordingly to registrations and the use of user accounts.

(3) The customer undertakes to inform DR. MACH immediately if there is a change in the person, address, name, legal form or company.

(4) All obligations of the customer to cooperate are primary obligations. The customer is obliged to provide DR. MACH to provide evidence of the fulfillment of its obligations at any time upon request. The customer shall perform acts of cooperation at its own expense.

§ 16 Property rights

(1) Subject to any deviating provision in these GTC and in the *individual contract*, the copyright, patent rights, trademark rights and all other property rights to all objects that DR. MACH provides or makes accessible to the customer in the context of the initiation and execution of the contract shall be the exclusive property of DR. MACH is entitled to.

(2) Insofar as DR. MACH has attached references to its authorship, other property rights including the property rights of third parties, terms of use and license conditions as well as safety and warning notices, disclaimers and limitations of liability, trademarks and logos to these items, the customer may not remove these references without the consent of DR. MACH; DR. MACH will not refuse consent if there is an important reason for the change.

(3) DR. MACH reserves the ownership and copyright to all offers and cost estimates submitted by DR. MACH as well as drawings, illustrations, calculations, brochures, catalogs, models, tools, test or demonstration programs and other documents and aids made available to the customer. The customer may not use these items without the express consent of DR. MACH, disclose them, use them himself or through third parties or reproduce them. At the request of DR. MACH, the customer must return these items in full to DR. MACH and destroy any copies made if they are no longer required by the customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 17 Contract term and termination of individual contracts

(1) The start and end dates of the *individual contracts* are specified in the respective *individual contract*.

(2) If a minimum term is specified in the *individual contract*, the *individual contract* can be terminated for the first time by giving three months' notice to¹ at the end of the agreed minimum term. After expiry of the minimum term, the *individual contract* is extended by a further year in each case as long as it is not terminated within the period specified in sentence 1.

(3) If a fixed term or a fixed termination date is specified in the *individual contract*, the *individual contract* ends when the relevant date is reached. The parties should therefore hold timely discussions on whether and how to extend the contract.

(4) An *individual contract* which establishes a continuing obligation on the basis of which recurring services and consideration are to be provided and which does not contain any information on the contract term and notice periods can be terminated by giving three months' notice to the end of a calendar month.

(5) The right to terminate for good cause remains unaffected. Good cause² for termination by DR. MACH is in particular

- a) a breach of principal contractual obligations or a material contractual obligation by the customer,
- b) if signs become apparent that give rise to objective doubts about the customer's financial capacity,
- c) a not insignificant direct or indirect (e.g. also through agreements under the law of obligations, domination agreements, trust agreements) change in the customer's ownership structure ("change of control"); it is clarified that the mere appointment of an insolvency administrator does not constitute a change of control; in any case, the customer must inform DR. MACH of any changes without delay,

- d) the unsuccessful expiry of a reasonable grace period set for payment in the event that the customer is in default of payment, or if the customer owes payment of a current monthly remuneration, if the customer is in default of payment of the remuneration or a not insignificant part of the remuneration for two consecutive dates or is in default of payment of the remuneration in an amount equal to the remuneration for two months in a period extending over more than two dates,
- e) violation of employee protection in accordance with § 25 of these GTC,
- f) a breach of the obligation of confidentiality and data protection pursuant to § 26 of these GTC or
- g) any other not insignificant breach of contractual obligations.

(6) Any termination of an *individual contract* must be in text form.

§ 18 Error classes

(1) The parties define the following error classes:

| Error class | Description | Examples |
|--|---|---|
| Class 1 Preventing operation Defects | The defect prevents the operation of the contractual delivery or service; there is no workaround. | Malfunctions of central functions that lead to complete failure. |
| Class 2 Operational hindrances Defects | The defect significantly impedes the operation of the contractual delivery or service, but its use is possible with workaround solutions or with temporarily acceptable restrictions or difficulties. | Despite the disruption of a central function, the intended effects can be achieved by means of a bypass solution. A less central function is omitted; although there is no workaround, it is still possible to work sensibly with restrictions. Frequently recurring failures or system crashes, significantly reduced performance. |
| Class 3 Other defects | Other defects | (Beauty) defects. Errors in the documentation (if contractually owed) that do not cause subsequent errors. |

| | | |
|--|--|--|
| | | <p>Shortcomings in user-friendliness.</p> <p>Individual functions take too long measured against the state of the art without this leading to unreasonable impairments.</p> <p>Temporary or other acceptable performance losses, faults that can be easily eliminated with workaround solutions, faults that have no direct impact on operation.</p> |
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(2) If the defects of class 3 as a whole lead to a not only insignificant restriction of usability, the defects as a whole may constitute a defect of class 1 or 2.

§ 19 Material defects

(1) The delivery or service has the agreed quality, is suitable for the contractually stipulated, otherwise normal use and has the usual quality for deliveries or services of this type.

(2) Claims for material defects are excluded in the case of

- a) contractual relationships for which the law does not provide for claims for material defects, e.g. service contracts;
- b) Deliveries and services of DR. MACH for which the customer owes no consideration;
- c) only insignificant deviations from the agreed quality and only insignificant impairments of usability;
- d) Impairments resulting from use outside the agreed environmental conditions, incorrect operation, modification contrary to the contract, incorrect transportation, incorrect installation, incorrect storage or the use by the customer of spare parts or consumables that do not comply with the original specifications or of an item provided or cooperation provided by the customer, unless DR. MACH is not responsible;

- e) defects that remained unknown to the customer at the time of conclusion of the contract due to gross negligence;
- f) of a delivery or service to a territory outside the Federal Republic of Germany and in the event that the delivery or service is to be resold or used in a territory outside the Federal Republic of Germany as intended, insofar as the delivery or service in the territory concerned violates technical standards, statutory or other sovereign provisions which DR. MACH neither knew nor should have known; DR. MACH is not obliged to examine the particularities of foreign law³ ;
- g) a contract for the supply of used goods.

All other statutory or contractual exclusions of claims for defects shall remain unaffected.

(3) The customer shall support DR. MACH in analyzing errors and rectifying defects by specifically describing any problems that occur and informing DR. MACH comprehensively. The customer shall provide DR. MACH the time and opportunity required to investigate the alleged defect and to rectify the defect. The customer shall, at DR. MACH for inspection or send it to DR. MACH for inspection or keep it available for inspection on site.

(4) The defect shall be remedied at the discretion of DR. MACH by remedying the defect on site or at the business premises of DR. MACH or by delivering an item that does not have the defect. At least three attempts to rectify a defect must be accepted. Insofar as it is possible to rectify the defect by means of remote maintenance and reasonable for the customer, DR. MACH may remedy the defect by means of remote maintenance; in this case, the customer must ensure the necessary technical requirements at its own expense⁴ and provide DR. MACH corresponding electronic access after prior notification.

(5) If the item is located at a place other than the place of intended use, the customer shall bear the resulting additional expenses for checking the defectiveness and remedying the defect.

(6) Insofar as a defect notified by the customer cannot be determined or DR. MACH is not responsible for the impairment, in particular in accordance with paragraph 2 sentence 1 lit. d), the customer shall bear the costs of DR. MACH according to the agreed or usual prices, unless the lack of defectiveness was not recognizable to the customer.

(7) In the event of defects in items manufactured or supplied by third parties that are part of the delivery or service of DR. MACH and which DR. MACH cannot remedy for licensing or factual reasons, DR. MACH shall, at its discretion, assert its claims for defects against the third party or assign them to the customer. Claims for defects in accordance with this § 19 against DR. MACH only exist in the event of the assignment of the defect claims to the customer if the judicial enforcement⁵ of the aforementioned claims against the third party by DR. MACH was unsuccessful, without the customer being responsible for this, or is futile, for example due to

insolvency. For the duration of the legal dispute, the limitation period for the customer's relevant claims for defects against DR. MACH is suspended. DR. MACH shall reimburse the customer for the reimbursable costs of the legal dispute in accordance with the cost laws, insofar as the customer and its legal representatives were entitled to consider these to be necessary under the circumstances and were unable to collect them from the third party.

(8) In the case of the provision of an item or the other granting of temporary use, the customer may not reduce the current remuneration in the event of defects. Any existing right to reclaim remuneration paid subject to reservation shall remain unaffected. A claim for damages or reimbursement of futile expenses due to a defect that already exists at the time the contract is concluded shall only exist if DR. MACH is responsible for the defect; liability for initial defects pursuant to Section 536a (1) BGB, where applicable in conjunction with Section 548a BGB, is excluded.

(9) The exclusions and limitations of the customer's rights under this § 19 shall not apply if DR. MACH has acted fraudulently or has assumed a guarantee for the quality of the item.

(10) The scope and amount of liability for damages and compensation for futile expenses due to a material defect for which DR. MACH shall be governed by § 22 ("Liability of DR. MACH").

§ 20 Defects of title

(1) DR. MACH warrants, unless otherwise agreed in the *individual contract*, that the delivery or service does not conflict with any third-party rights in the European Economic Area and Switzerland. DR. MACH shall only be obliged to examine conflicting industrial property rights or other intellectual property rights of third parties for the territory specified in sentence 1.

(2) In the event of a delivery or service to a territory outside the territory referred to in paragraph 1 sentence 1 and in the event that the delivery or service is intended to be resold or used in a territory outside the territory referred to in paragraph 1 sentence 1, a defect of title due to a conflicting industrial property right or other intellectual property right of a third party shall only exist if DR. MACH was aware or should have been aware of this when the contract was concluded. The customer shall therefore carry out the necessary property right searches himself before delivery or use abroad.

(3) In the event of defects of title, DR. MACH warrants that DR. MACH at the discretion of DR. MACH

- a) modifies or replaces the delivery or service in such a way that the defect of title is remedied and this does not lead to a reduction in quality, quantity or value and is also reasonable for the customer, or
- b) provides the customer with the right of use by concluding a license agreement.

(4) The customer shall inform DR. MACH immediately in writing if third parties assert property rights (e.g. copyrights, trademark rights or patent rights) to the delivery or service. The customer authorizes DR. MACH to conduct the dispute with the third party alone. If DR. MACH makes use of this authorization, the customer may not acknowledge the claims of the third party on its own initiative without the consent of DR. MACH. DR. MACH shall then defend the claims of the third party. Insofar as the customer is responsible for the assertion of the property right infringement (e.g. as a result of use contrary to the contract or failure to carry out property right research by the customer), the customer shall indemnify DR. MACH from all reasonable costs associated with the defense against these claims and shall reimburse DR. MACH for all additional damages and expenses; DR. MACH shall in this case be entitled to payment of an appropriate advance.

(5) The scope and amount of liability for damages and reimbursement of futile expenses due to a legal defect for which DR. MACH shall be governed by § 22 ("Liability of DR. MACH").

(6) § Section 19 (2) sentence 1 a), b), d) and e), sentence 2 and (7), (8) and (9) apply accordingly.

§ 21 Supplier recourse

(1) The statutory provisions of supplier recourse are waived to the following extent:

1. §§ Sections 478, 445a, 445b or sections 445c, 327 para. 5, 327u BGB are not applicable if, e.g. as part of a quality assurance agreement, DR. MACH and the customer have agreed on equivalent compensation.
2. § Section 445a (1) and (2) BGB does not apply if the final delivery of the newly manufactured item is made to an entrepreneur. Under no circumstances will the parties apply Section 445a (1) or (2) BGB in the case of final delivery to an entrepreneur if the newly manufactured item was traded across borders at any point in the supply chain (international supply chain).
3. If the final delivery of the newly manufactured item is made to an entrepreneur, the limitation period under Section 445b (1) BGB is reduced to six months.
4. If the final delivery of the newly manufactured item is made to an entrepreneur, the suspension of expiry under Section 445b (2) BGB shall end no later than three years after DR. MACH has delivered the item to the customer.

(2) In all other respects, the statutory provisions of supplier recourse shall remain applicable.

(3) Section 22 ("Liability of DR. MACH") shall apply to the scope and amount of liability for damages and reimbursement of futile expenses.

§ 22 Liability of DR. MACH

(1) The liability of DR. MACH for damages, regardless of the legal grounds (e.g. due to impossibility, delay, defective or incorrect delivery or performance, breach of contract and tort), is limited in accordance with this § 22 ("Liability of DR. MACH, is limited in accordance with this § 22 ("Liability of DR. MACH").

(2) The liability of DR. MACH for simple negligence is excluded unless there is a breach of an essential contractual obligation, the fulfillment of which is essential for the proper execution of the contract and on the observance of which the customer could rely and the non-fulfillment of which jeopardizes the achievement of the purpose of the contract (so-called "cardinal obligation"). In the event of a breach of such a material contractual obligation, the liability of DR. MACH's liability for simple negligence is limited to damages foreseeable at the time of conclusion of the contract and typical for the contract. DR. MACH's liability for simple negligence is limited to the liability limits agreed in the *individual contract*.

(3) In the event of gross negligence, the liability of DR. MACH shall be limited to damages foreseeable at the time of conclusion of the contract and typical for this type of contract.

(4) The above exclusions and limitations of liability in paragraphs 2 and 3 shall apply to the same extent, including retroactively, to claims arising from the breach of duties during contract negotiations.

(5) Insofar as the breach of duty by DR. MACH relates to deliveries and services that DR. MACH provides to the customer free of charge (e.g. in the context of a gift, loan or free-of-charge business management as well as in the case of pure favors), liability for negligence is excluded altogether. Insofar as DR. MACH provides technical information or advice after conclusion of the contract and this information or advice is not part of the contractual services owed by DR. MACH, this is done free of charge and to the exclusion of any liability for negligent incorrect information or advice.

(6) The exclusions and limitations of liability in this Section 22 ("Liability of DR. MACH") shall apply accordingly to claims for compensation for futile expenses and to claims for indemnification.

(7) The exclusions and limitations of liability in this § 22 ("Liability of DR. MACH") apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of DR. MACH.

(8) The exclusions and limitations of liability in this § 22 ("Liability of DR. MACH") do not apply to the liability of DR. MACH for intentional conduct, for injury to life, limb or health, in cases of fraudulent intent, in the event of the assumption of a guarantee or in the event of claims under the Product Liability Act.

§ 23 Limitation of the customer's claims

(1) The limitation period for customer claims

- a) for claims arising from material defects or defects of title for repayment of the remuneration from withdrawal or reduction one year from submission of the effective declaration of withdrawal or reduction; the withdrawal or reduction is only effective if it is declared within the period specified in b) for material defects or the period specified in c) for defects of title;
- b) one year in the case of claims arising from material defects which do not involve the repayment of the remuneration from withdrawal or reduction;
- c) two years in the case of claims arising from defects of title which do not relate to the repayment of the remuneration from withdrawal or reduction; however, if the defect of title lies in an exclusive right of a third party on the basis of which the third party can demand the return or destruction of the items provided to the customer, the statutory limitation period shall apply;
- d) two years for claims not based on material defects or defects of title for repayment of the remuneration, compensation or reimbursement of futile expenses.

(2) Subject to a deviating individual contractual provision, the limitation period begins in the cases of paragraph 1 lit. b) and c) in accordance with the statutory provisions, in particular the applicable law on liability for defects, in the case of paragraph 1 lit. d) from the time at which the customer became aware of the circumstances giving rise to the claim or should have become aware of them without gross negligence. The subsequent delivery or rectification shall not lead to the commencement of a new limitation period or an extension of the limitation period, unless DR. MACH has exceptionally declared an acknowledgement within the meaning of Section 212 (1) No. 1 BGB. The limitation period shall expire at the latest upon expiry of the maximum periods specified in Section 199 BGB.

(3) Notwithstanding the above, the statutory limitation provisions shall apply

- a) in the cases specified in § 22 paragraph 8,
- b) in the event of gross negligence in the case of claims for damages, compensation for futile expenses and claims for indemnification,
- c) in the case of claims due to a defect in the cases of § 438 Para. 1 No. 2 BGB and § 634a Para. 1 No. 2 BGB,
- d) for claims for reimbursement of expenses after termination of a rental agreement, and

e) for all claims other than those mentioned in paragraph 1.

(4) If DR. MACH has also undertaken to provide fault rectification services (Clause IV. § 39) as part of the maintenance under an individual contract, the limitation period for claims for the rectification of material defects with regard to the items to be maintained shall not expire until the end of the maintenance, insofar as these claims would otherwise expire earlier. The extension of the limitation period applies exclusively to the elimination of material defects, but not to further claims for material defects, such as in particular according to paragraph 1 lit. a) or for damages.

§ 24 Compliance with laws

(1) The customer is obliged to comply with the relevant statutory provisions in connection with the contractual relationship. In the European Union, this applies in particular to the regulations pursuant to Articles 14, 16 and 25 of Regulation (EU) 2017/745 of the European Parliament and of the Council (Medical Device Regulation, MDR) as well as national regulations for the operators of medical devices and other relevant national legislation in connection with medical devices, electrical devices and radio equipment. This also applies to anti-corruption and money laundering laws, antitrust, environmental protection and labor law regulations, including the provisions of the Minimum Wage Act. According to Regulation (EU) No. 1907/2006 of the European Parliament and of the Council, Article 33.1, Duty to communicate information on substances in articles, Dr. Mach provides this information in a respective [declaration](#).

(2) The customer shall make reasonable efforts to ensure that its customers comply with the obligations contained in paragraph 1 that apply to the customer. In particular, the customer shall enter into contractual agreements with its purchasers which oblige the purchasers to comply with the obligations contained in paragraph 1.

§ 25 Enticement of employees

For a period of two years after the end of the contractual cooperation, the customer undertakes not to entice away or have enticed away employees of DR. MACH employees or have them poached by third parties or to promote or support third parties with regard to such poaching measures.

§ 26 Confidentiality and data protection

(1) The customer undertakes to treat the content of the *individual contracts* concluded on the basis of these GTC as well as all information and knowledge obtained in connection with the negotiation and execution of the contract as confidential and not to disclose it to any third party, unless this is necessary for the execution of the contract or disclosure is required by law or the circumstances of the *individual case*. MACH and/or the circumstances of the individual case, and not to disclose it to any third party, unless this is necessary for the execution of the contract

or disclosure is required by law or has been ordered by a court or authority. The customer shall inform DR. MACH in advance about the enforced disclosure, insofar as this is lawful, and limit the disclosure to what is necessary. Further statutory duties of confidentiality remain unaffected.

(2) The customer shall comply with the currently applicable data protection regulations. This also includes technical security measures adapted to the current state of the art (Art. 32 GDPR) and the obligation of employees to maintain the confidentiality of personal data (Art. 28 para. 3 lit. b) GDPR).

(3) The confidentiality obligations under paragraph 1 and compliance with data protection obligations under paragraph 2 shall apply indefinitely.

(4) In case of doubt, a confidentiality agreement already concluded or to be concluded between the parties shall take precedence over this Section 26.

§ 27 Contractual penalty

For each case of culpable breach of an obligation under § 25 ("Enticement of employees") or § 26 ("Confidentiality and data protection"), the customer undertakes to pay DR. MACH a fee determined by DR. MACH in each individual case at its reasonable discretion and to be reviewed by the competent court in the event of a dispute regarding appropriateness; however, for the breach of an obligation under Section 26 ("Confidentiality and data protection"), the obligation to pay a contractual penalty is limited to breaches of obligation within five years of the execution of the last *individual contract* concluded on the basis of these GTC. Further claims for damages are not excluded by the contractual penalty.

§ 28 No obligation to pay contractual penalties by DR. MACH

DR. MACH is not obliged to pay a contractual penalty to the customer for any legal reason whatsoever. This shall also and in particular apply in the event of default by DR. MACH.

II. Sales contracts

§ 29 Subject matter of the contract

(1) Further details on the products sold by DR. MACH on the basis of purchase contracts, in particular details of the quality and scope of performance including intended use, tolerances, ambient conditions and storage and shelf life, are set out in the *individual contract*.

(2) If a user manual or other documentation is owed, it shall be delivered in a standard file format (e.g. PDF, Word, TXT) unless otherwise agreed in the *individual contract*.

(3) Set-up, installation and/or assembly of the purchased item by DR. MACH shall only be owed if this has been agreed in the *individual contract*.

§ 30 Delivery, transfer of risk, bearing of costs, partial delivery

(1) In the absence of any other agreement (e.g. an INCOTERMS agreement) in the *individual contract*, all deliveries shall be made at the risk and expense of the customer in the sense of a sales shipment. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer as soon as DR. MACH hands over the item to the person designated to carry out the transportation.

(2) Insofar as the details of the delivery are not regulated in the *individual contract*, DR. MACH is entitled to determine the type of shipment itself, in particular the transport company, packaging and shipping route. Shipment shall only be made within the European Union. If, in individual cases, the goods are shipped to a country outside the European Union, the customer shall be responsible for proper import customs clearance and shall bear the costs thereof and all other costs associated with the import.

(3) DR. MACH is entitled to make partial deliveries if the partial delivery is usable for the customer within the scope of the contractual purpose, the delivery of the remaining ordered services is ensured and the customer does not incur any significant additional work or additional costs as a result, unless DR. MACH agrees to bear these costs. This shall not affect the customer's statutory rights with regard to timely delivery.

§ 31 Taking back special packaging

The customer shall be entitled to return transport packaging and other special packaging within the meaning of Section 15 (1) sentence 1 of the German Packaging Act (VerpackG) to DR. MACH. Unless otherwise agreed in the *individual contract*, the place of return is the registered office of DR. MACH. The customer shall bear the costs of returning the packaging. The customer shall agree the date and method of return with DR. MACH in advance. DR. MACH shall reuse the returned packaging or dispose of it properly. Sentences 1, 2, 3, 4 and 5 apply accordingly if DR. MACH to take back packaging results from a comparable legal standard (e.g. a foreign law applicable in individual cases).

§ 32 Retention of title

(1) Until all claims arising from the business relationship (including all balance claims from a current account relationship limited to this business relationship) to which DR. MACH is entitled to against the customer for whatever legal reason, DR. MACH shall be granted the following securities.

(2) Delivered goods shall remain the property of DR. MACH. The goods and the goods covered by the retention of title that take their place in accordance with the following provisions are hereinafter referred to as "goods subject to retention of title". Insofar as the value of the goods or an item is referred to in the following, this shall mean the invoice value, in the absence of an invoice the list price and again in the absence of a list price the objective value.

(3) The customer shall store the reserved goods free of charge and with the diligence of a prudent businessman for DR. MACH. The customer is obliged to properly insure the reserved goods and to provide DR. MACH of such insurance upon request.

(4) The customer is entitled to process the goods subject to retention of title in the ordinary course of business and to combine and mix them with other items including real estate (hereinafter also referred to collectively as "processing" or "processing") and to sell them until the event of realization (paragraph 11) occurs. Pledges and transfers by way of security are not permitted.

(5) If the reserved goods are processed by the customer, it is agreed that the processing is carried out in the name and for the account of DR. MACH as the manufacturer and DR. MACH directly acquires ownership or - if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership in favor of DR. MACH and the newly created item is a movable item, the customer hereby transfers his future ownership or co-ownership of the newly created item in the ratio specified in sentence 1 to DR. MACH.

(6) In the event that the goods subject to retention of title are resold, the customer hereby assigns the resulting claim against the purchaser to DR. MACH's co-ownership of the goods subject to retention of title - but only in proportion to the co-ownership share - to DR. MACH. The same applies to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction.

(7) If the customer processes the reserved goods on behalf of his customer ("end customer"), he hereby assigns his claim, which he is entitled to as remuneration for the delivery and processing, as security - but only pro rata according to the co-ownership share of DR. MACH - to DR. MACH. If the reserved goods are combined with a property, the amount of the assigned claim shall be determined proportionally according to the ratio of the value of the reserved goods delivered by DR. MACH to the other combined movable items.

(8) Until revoked, the customer is authorized to collect the claims assigned in accordance with paragraphs 6 and 7. The customer shall immediately forward payments made on the assigned claims up to the amount of the secured claim to DR. MACH without delay. In the event of good cause, in particular in the event of default of payment, suspension of payment or justified

indications of over-indebtedness or imminent insolvency of the customer, DR. MACH is entitled to revoke the customer's authorization to collect. DR. MACH is also entitled to disclose the assignment of security, to realize the assigned claims and to demand disclosure of the assignment of security by the customer to the end customer after prior warning and observance of a reasonable deadline for payment and its fruitless expiry. In the event of good cause in accordance with sentence 3 or the fruitless expiry of the deadline in accordance with sentence 4, the customer shall provide DR. MACH the information required to assert its rights against the end customer and hand over the necessary documents.

(9) If third parties seize the reserved goods, in particular by attachment, the customer shall immediately inform them of DR. MACH and inform DR. MACH of this in order to enable DR. MACH the enforcement of its property rights. If the third party is not in a position to reimburse DR. MACH for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable to DR. MACH.

(10) DR. MACH shall release the goods subject to retention of title and the items or claims replacing them if their value exceeds the amount of the secured claims by more than 10%. DR. MACH.

(11) In the event of non-payment of the due remuneration or non-fulfillment of any other due claim arising from the business relationship, DR. MACH shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods subject to retention of title on the basis of the retention of title (enforcement event). The demand for return does not at the same time include a declaration of withdrawal; DR. MACH is rather entitled to demand only the return of the reserved goods and to reserve the right to withdraw from the contract. If the customer does not fulfill the due claim, DR. MACH may only assert these rights if DR. MACH has previously set the customer a reasonable deadline for payment without success or such a deadline can be dispensed with in accordance with the statutory provisions.

§ 33 Obligation to inspect and give notice of defects

The customer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification of defects (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later point in time, DR. MACH must be notified of this in writing without delay. In any case, obvious defects must be reported in writing at the latest on the 10th calendar day after delivery and defects not recognizable during the inspection must be reported in writing within the same period after discovery. If the customer fails to carry out the proper inspection and/or report defects, DR. MACH's liability for the defect not reported or not reported in good time or not reported properly shall be excluded in accordance with the statutory provisions.

§ 34 Disposal of old appliances

Insofar as DR. MACH is obliged to dispose of old appliances properly in accordance with the German Electrical and Electronic Equipment Act (ElektroG), the customer shall assume this obligation. The customer shall dispose of the goods purchased from DR. MACH at his own expense in compliance with the statutory provisions. A take-back of old devices by DR. MACH or the creation of take-back options for old appliances within the meaning of the ElektroG. MACH. The customer shall indemnify DR. MACH from all obligations arising from § 19 ElektroG. Sentences 1, 2, 3 and 4 shall apply accordingly if DR. MACH to properly dispose of old appliances arises from a comparable legal standard (e.g. a foreign law applicable in individual cases).

III. Rental agreements

§ 35 Subject matter of the contract

(1) The further details of the rental object provided by DR. MACH for temporary use on the basis of a rental agreement, in particular details of the quality and scope of performance including intended use, tolerances, system requirements, environmental conditions, storage and durability as well as assembly, are set out in the *individual contract*.

(2) Clause II. § 29 ("Subject matter of the contract") paragraph 2 shall apply accordingly.

§ 36 Secondary obligations of the customer

(1) Unless otherwise agreed in the *individual contract*, the customer is not entitled to use the rental object outside the customer's company or to transfer it to third parties, in particular to sublet it.

(2) The customer shall handle the rental object with the care of a prudent businessman. In particular, the customer shall ensure that its employees and vicarious agents use and operate the rented item in accordance with the contract and shall provide suitable instruction and training.

(3) Unless otherwise agreed in the *individual contract*, the customer undertakes to insure the rental object appropriately against damage, destruction and theft and to provide evidence of the conclusion and existence of the property insurance at the request of DR. MACH upon request.

(4) The customer must report any damage, destruction or theft of the rental item to DR. MACH immediately.

(5) Insofar as DR. MACH has provided the rental object packaged, Clause II. § 31 ("Taking back special packaging") shall apply accordingly.

§ 37 Obligation to return the rented property

- (1) The customer is obliged to return the rental item, including any documentation and other accessories provided, to DR. MACH at the end of the rental period.
- (2) Shipment shall be at the customer's expense and risk and only with the prior written consent of DR. MACH.

IV. Maintenance and support

§ 38 Subject matter of the contract

- (1) Insofar as DR. MACH provides maintenance and support services for the customer, the further details, in particular the scope of services, are set out in the *individual contract*. Other services, such as in particular regular inspections, the implementation of preventive measures and the replacement of wearing parts, are not included in the scope of services, subject to an express provision in the *individual contract*.
- (2) DR. MACH shall provide the services in accordance with the recognized rules of technology. If the parties agree on a specific type of execution of the services, in particular by referring to technical guidelines (e.g. DIN, EN, VDI or manufacturer's guidelines), these service descriptions shall determine the recognized rules of technology in relation to each other. In these cases, DR. MACH is not obliged to draw the customer's attention to deviations of the agreements from the recognized rules of technology.
- (3) The obligations of DR. MACH do not release the customer from controls and measures that laws or other regulations impose on the customer, unless this has been expressly made the subject of the services to be provided by DR. MACH with reference to the relevant law and other regulations.

§ 39 Troubleshooting

- (1) Insofar as *the individual contract* includes the rectification of defects, this shall be in addition to any existing statutory liability for material defects. The aim of fault rectification is to produce and maintain the agreed functionality irrespective of the question of the existence of a "defect" within the meaning of the law and additionally in compliance with agreed *service levels*. If the customer has purchased the defective item via DR. MACH, the rectification of defects also includes in particular the rectification of functional impairments for which the customer cannot prove that they already existed at the time of the transfer of risk, as well as functional impairments that were not reported in good time.
- (2) The parties agree the following *service levels*, unless otherwise agreed in individual contracts:

| Error class according to Section I. § 18 | Response time |
|---|---------------|
| Class 1 Preventing operation <i>Error</i> | 1 hour |
| Class 2 Operational hindrances <i>Error</i> | 8 hours |
| Class 3 Other <i>errors</i> | 14 days |

(3) DR. MACH to ensure a certain availability does not exist.

(4) Clause I. § 19 ("Material defects") paragraph 2 sentence 1 lit. c), d) and f) shall apply accordingly, i.e. if such a case exists in relation to the defective item, rectification of the defect shall be excluded. Clause I. § 19 ("Material defects") paragraph 10 shall apply accordingly.

(5) Section I. § 19 ("Material defects") paragraphs 3, 4, 5, 6, 7 and 8 shall apply accordingly to the rectification of defects.

§ 40 Support

(1) Insofar as the *individual contract* includes support, DR. MACH will answer queries from the customer and its employees about the products and how they work.

(2) Support can be limited to a maximum number of hours per month in the *individual contract*.

(3) Unless otherwise agreed in the *individual contract*, the following shall apply to support:

- a) Support is provided by telephone and e-mail.
- b) Telephone support is available during *normal business hours*.
- c) E-mail support is provided within three *working days* of receipt of the e-mail.
- d) Insofar as DR. MACH provides a ticket system for support, this ticket system is to be used primarily by the customer. For the processing time, lit. c) applies accordingly.

(4) Further details on the type and scope of support can be agreed in the *individual contract* - in particular by agreeing corresponding *service levels*.

§ 41 Retention of title and lien

(1) The goods supplied by DR. MACH within the scope of maintenance (e.g. spare parts, replacement parts, filters, accessories) shall remain the property of DR. MACH UNTIL FULL PAYMENT OF ALL SECURED CLAIMS. Clause II. § 32 ("Retention of title") applies accordingly.

(2) The customer and DR. MACH agree that DR. MACH has a lien on the goods belonging to the customer and coming into the possession of DR. MACH as part of the maintenance. The lien may also be asserted for claims arising from work carried out earlier, spare parts deliveries and other services, insofar as they are related to the goods. The right of lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or legally binding.

§ 42 Obligation to inspect and give notice of defects

(1) There is an obligation to inspect and give notice of defects in accordance with the following paragraphs for the performance results produced and goods delivered as part of the maintenance.

(2) The customer must inspect the result of the service or the goods immediately after delivery and, if a defect is found, notify us of this immediately in writing with a precise description of the symptoms of the defect, unless a functional test has been agreed and insofar as this is feasible in the ordinary course of business. The customer shall thoroughly test every essential function before the customer begins productive use. In any case, obvious defects must be reported in writing no later than the 10th calendar day after delivery.

(3) If the customer fails to notify us, the result of the service or the goods shall be deemed approved, unless the defect was not recognizable during the inspection.

(4) If such a defect only becomes apparent later, notification must be made immediately after discovery; otherwise the result of the service or the goods shall be deemed to have been approved even in view of this defect. In any case, defects not recognizable during the inspection must be reported in writing no later than the 10th calendar day after discovery.

(5) If DR. MACH has fraudulently concealed a defect or assumed a guarantee for the quality of the service, DR. MACH may not invoke the above provisions.

(6) Further duties and obligations of the customer based on statutory inspection and complaint obligations remain unaffected.

V. Contractual consulting and/or support services

§ 43 Subject matter of the contract

Insofar as DR. MACH provides contractual consulting and/or support services for the customer, including the implementation of workshops, briefings and training courses, the further details, in particular the scope of services, are set out in the *individual contract*.

§ 44 Implementation and rights

(1) DR. MACH in particular regularly when DR. MACH owes the pure service according to the contractual agreements. The production of a specific work or otherwise the achievement of a specific success is not owed by DR. MACH does not owe. The customer bears the overall responsibility for the professional, on-time and on-budget realization of the project.

(2) If performance results arise in the course of the provision of contractual services, the specific content of the right of use results from the *individual contract*, or alternatively from the purpose of the service contract. The acquisition of the right of use is subject to the condition precedent of full payment of the remuneration owed.

(3) DR. MACH is not obliged to check the results of the service for conflicting industrial property rights or other intellectual property of third parties.

(4) Documents, proposals, test programs and other items of DR. MACH, which are made available to the customer before or after conclusion of the contract, shall be deemed intellectual property and a business and trade secret of DR. MACH. Unless otherwise stated in the above, they may not be disclosed to third parties without the written permission of DR. MACH and must be kept secret in accordance with Clause I. § 26 ("Confidentiality and data protection"). Otherwise, Clause I. § 16 ("Property rights") paragraphs 3 and 4 shall apply accordingly.

(5) Subject to an express agreement to the contrary in the *individual contract*, all deliveries and services provided by DR. MACH are excluded. In particular, the customer shall provide all materials in connection with the service (e.g. texts, graphics, images, videos) in accordance with Clause I. § 13 ("Materials provided by the customer").

VI. Other provisions

§ 45 Benefit exclusions

(1) The scope of performance of an *individual contract* concluded on the basis of these GTC shall in particular include

- a) all services performed at the customer's request outside *normal business hours*, unless the contractually agreed service is to be performed outside *normal business hours*;
- b) all services performed at the customer's request at a location other than the registered office of DR. MACH's registered office;
- c) the rectification of faults after the end of the warranty period and outside of a maintenance and support contract;
- d) work and services that become necessary due to improper use by the customer, regardless of whether these were carried out by the customer, his vicarious agents or other persons within the customer's sphere of influence;
- e) the implementation of workshops, briefings and training courses;
- f) Work and services necessitated by force majeure or other circumstances for which DR. MACH is not responsible for;
- g) Work and services resulting from changed or new individual usage requirements of the customer;
- h) Work and services that are triggered by use of the IT systems of DR. MACH by the customer or its vicarious agents, e.g. frequent mass mailing of documents, permanent exports in full reconciliation and the effects of such use, such as in particular increased data traffic, increased use of storage space and computing power on the servers, increased utilization of the networks and data lines as well as additional work and personnel expenditure by DR. MACH

is not covered without a special express provision.

(2) The services referred to in paragraph 1 shall only be provided on the basis of a separate agreement in the *individual contract* and only against separate remuneration. Separate remuneration is only not owed if this is expressly regulated in the *individual contract*.

§ 46 Reference naming

DR. MACH is entitled to list the customer's company and logo in reference lists and to publish and disseminate these on the Internet, in print media, at presentations or otherwise for factual information. Any further use is not permitted unless otherwise agreed.

§ 47 Notifications and declarations

(1) Subject to a deviating provision in these GTC, the text form pursuant to Section 126b BGB (e.g. email) is sufficient, but also required, for the validity of declarations and notifications. On the other hand, declarations for which these GTC or the law expressly require this must be made in writing (Section 126 BGB), whereby transmission by telecommunication is sufficient to meet the deadline if the recipient receives the original written declaration as soon as possible.

(2) Subject to proof to the contrary, an e-mail shall be deemed to originate from the other party if the e-mail contains the name and e-mail address of the sender as well as a reproduction of the sender's name at the end of the message.

§ 48 Contact person

(1) The parties shall each name a contact person and a deputy in the *individual contract*, who can make decisions or bring about decisions at short notice and provide information within the scope of the power of representation to which they are entitled under the *individual contract*. Without further specification in the *individual contract*, the power of representation of the contact persons and their respective deputies is limited in case of doubt to making decisions to concretize or specify the services agreed in the individual contract, to commission changes and extensions to the agreed services, to reschedule non-binding or bindingly agreed dates and to provide binding information.

(2) One party must notify the other party immediately of any changes to the named contact persons and/or their deputies. Until such notification is received, the previously named contact persons and/or their deputies shall be deemed authorized to make and receive declarations within the scope of their previous power of representation.

§ 49 Transfer of rights and obligations

DR. MACH may transfer all rights and obligations arising from these GTC and the *individual contracts* concluded on their basis to third parties at any time. The customer may object to the transfer within one month if legitimate interests of the customer are impaired by the transfer, e.g. because the acquiring company is a direct competitor of the customer, does not offer the necessary knowledge and qualifications or there are reasonable doubts about its economic performance.

§ 50 Final provisions

(1) These⁶ GTC and all *individual contracts* concluded under them are subject exclusively to the law of the Federal Republic of Germany. The UN Sales Convention (CISG) is excluded;

mandatory provisions of the UN Sales Convention (in particular Art. 12, Art. 28 and Art. 89 et seq. CISG) remain unaffected.

(2) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer has no general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes in connection with the *individual contracts* concluded subject to these GTC shall be the registered office of DR. MACH. For actions brought by DR. MACH against the customer, any other statutory place of jurisdiction shall also apply. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by the above provisions.

(3) The agreements on the place of jurisdiction pursuant to paragraph 2 shall be governed exclusively by the law of the Federal Republic of Germany.

(4) If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of performance shall be the registered office of DR. MACH, unless otherwise stated in the above provisions or the individual contract.

(5) Insofar as the *individual contract* concluded with the customer on the basis of these GTC contains loopholes, the legally effective provisions that the parties would have agreed in accordance with the economic objectives of the *individual contract* if they had been aware of the loophole shall be deemed to have been agreed to fill these loopholes.
