

## Allectra Terms and Conditions of Trade

Depending on which entity of Allectra you do business with, different Terms and Conditions of Trade apply.

Webshop orders of Customers with a billing address in the European Union and in Japan will be processed by Allectra GmbH. Webshop order of Customers with a billing address from any other country will be processed by Allectra Limited.

The corresponding Terms you find below apply.

## Allgemeine Verkaufs- und Lieferbedingungen der Allectra

Je nachdem, mit welchem Unternehmen der Allectra Sie Geschäfte machen, gelten unterschiedliche Allgemeine Geschäfts- und Lieferbedingungen.

Webshop-Bestellungen von Kunden mit einer Rechnungsadresse in der Europäischen Union und in Japan werden von der Allectra GmbH bearbeitet. Webshop-Bestellungen von Kunden mit einer Rechnungsadresse aus einem anderen Land werden von Allectra Limited bearbeitet.

Es gelten die entsprechenden untenstehenden Bedingungen.

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# Allgemeine Verkaufs- und Lieferbedingungen der Allectra GmbH in der Fassung vom 01.01.2022

## 1. Allgemeines

Die Allgemeinen Geschäftsbedingungen der Allectra GmbH gelten, soweit nicht ausdrücklich etwas anderes vereinbart ist, für alle Angebote, Aufträge, Kaufverträge, Werkverträge und Lieferungen, die wir an Auftraggeber leisten. Sie gelten gleichfalls für künftige Geschäftsbeziehungen, wenn sie nicht nochmals ausdrücklich vereinbart werden.

Abweichende allgemeine Geschäftsbedingungen des Käufers werden nicht anerkannt, auch wenn wir ihnen nicht ausdrücklich widersprechen. Zur Wirksamkeit anders lautender Bedingungen bedarf es einer ausdrücklichen schriftlichen Vereinbarung.

1.1. Diese Bedingungen sind verbindlich, wenn sie im Angebot oder in der Auftragsbestätigung als anwendbar erklärt werden. Anders lautende Bedingungen des Auftraggebers haben nur Gültigkeit, soweit sie von Allectra ausdrücklich und schriftlich angenommen worden sind.

### 1.2. Vertragsabschluss

Der Vertrag kommt durch die schriftliche Auftragsbestätigung durch die Allectra GmbH zustande. Alle Vereinbarungen und rechtserheblichen Erklärungen der Vertragsparteien, die von diesen Allgemeinen Geschäftsbedingungen abweichen, bedürfen zu ihrer Wirksamkeit der Schriftform.

1.3. Sollte sich eine Bestimmung dieser Verkaufs- und Lieferbedingungen als ganz oder teilweise unwirksam erweisen, so wird dadurch die Gültigkeit dieser Verkaufs- und Lieferbedingungen im übrigen nicht berührt. Die Vertragsparteien werden diese Bestimmung durch eine neue, ihrem rechtlichen und wirtschaftlichen Erfolg möglichst nahekommende Vereinbarung ersetzen.

1.4. Die Allectra GmbH behält sich an Mustern, Kostenvoranschlägen, Zeichnungen u.ä. Informationen körperlicher und unkörperlicher Art - auch in elektronischer Form - Eigentums- und Urheberrechte vor; sie dürfen Dritten nicht zugänglich gemacht werden. Die Allectra GmbH verpflichtet sich, vom Auftraggeber als vertraulich bezeichnete Informationen und Unterlagen nur mit dessen Zustimmung Dritten zugänglich zu machen.

## 2. Umfang der Lieferungen und Leistungen

2.1. Die Lieferungen und Leistungen der Allectra GmbH sind in der Auftragsbestätigung einschließlich eventueller Beilagen zu dieser abschließend aufgeführt. Leistungen, die darin nicht enthalten sind, werden gesondert berechnet.

## 3. Technische Unterlagen

3.1. Prospekte und Kataloge sind ohne anderweitige Vereinbarung nicht verbindlich. Angaben in technischen Unterlagen sind nur verbindlich, soweit sie ausdrücklich zugesichert sind.

3.2. Die Allectra GmbH behält sich alle Rechte an den technischen Unterlagen vor, die sie dem Auftraggeber ausgehändigt hat. Ohne vorherige schriftliche Ermächtigung der Allectra GmbH dürfen diese Unterlagen weder ganz noch teilweise Dritten zugänglich gemacht oder außerhalb des Zweckes verwendet werden, zu dem sie dem Auftraggeber übergeben worden sind. Der Besitz dieser Unterlagen berechtigt nicht zum Nachbau von Maschinen, Anlagen, Komponenten oder von Teilen derselben.

## 4. Geheimhaltung

4.1. Jede Vertragspartei hat die Fabrikations- Erfahrungs- und Geschäftsgeheimnisse der anderen Vertragspartei, die ihr zugänglich gemacht oder anderweitig bekannt werden, vertraulich zu behandeln. Die Vertragsparteien dürfen diese Informationen weder direkt noch indirekt irgendwelchen Dritten mitteilen, noch sie auf irgendeine Weise veröffentlichen oder für andere Zwecke (namentlich für den Nachbau von Maschinen, Anlagen und Komponenten sowie von Teilen derselben) verwenden.

## 5. Preise

5.1. Die Preise verstehen sich netto ab Lager Schönfließ, EXW gemäß Incoterms 2020, ohne Mehrwertsteuer / Warenumsatzsteuer und Verpackung, zahlbar ohne irgendwelche Abzüge. Sämtliche Nebenkosten (z. B. Fracht, Versicherung, Ausfuhr- Durchfuhr-, Einfuhr- und andere Bewilligungen sowie Beurkundungen) gehen zu Lasten des

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Auftraggebers. Ebenso hat der Auftraggeber alle Arten von Steuern, Abgaben, Gebühren, Zöllen und dergleichen zu tragen, die im Zusammenhang mit dem Vertrag erhoben werden oder sie gegen entsprechenden Nachweis von der Allectra GmbH zurückzuerstatten, falls die Allectra GmbH hierfür leistungspflichtig geworden ist.

5.2. Zur Vereinfachung der Abwicklung können Fracht und Verpackungskosten in Angebot / Auftragsbestätigung verbindlich angegeben werden. Wird vom Kunden eine Teillieferung gewünscht, können die zusätzlichen Kosten in Rechnung gestellt werden.

5.3. Eine angemessene Preisanpassung erfolgt, wenn:

-die Lieferfrist nachträglich aus einem vom Auftraggeber zu vertretenden Grund verlängert wird oder -Art oder Umfang der vereinbarten Lieferungen oder Leistungen eine Änderung erfahren haben oder

-das Material oder die Ausführung Änderungen erfahren, weil die vom Auftraggeber gelieferten Unterlagen den tatsächlichen Verhältnissen nicht entsprochen haben oder unvollständig waren.

6. Zahlungsbedingungen

6.1. Die Zahlungen sind gemäß den Bedingungen der Auftragsbestätigung bzw. Rechnung zu leisten. Die Zahlungspflicht gilt als erfüllt, wenn der gesamte vereinbarte Lieferpreis bezahlt worden ist. Für Vorauszahlungen werden keine Zinsen vergütet.

6.2. Zahlungen werden jeweils auf die älteste Schuld angerechnet.

7. Eigentumsvorbehalt

7.1. Die von der Allectra GmbH gelieferten oder verkauften Gegenstände bleiben Eigentum der Firma Allectra GmbH bis zur Erfüllung sämtlicher aus dem jeweiligen Vertrag gegen den Kunden zustehenden Ansprüche.

7.2. Der Eigentumsvorbehalt bleibt auch bestehen für alle Forderungen, die die Firma Allectra GmbH gegenüber Kunden im Zusammenhang mit dem Vertragsgegenstand, beispielsweise aufgrund von Reparaturen, Ersatzteillieferungen sowie sonstigen Leistungen, nachträglich erwirbt. Vorgenannte Regelung gilt nicht, wenn die Reparaturen oder Ersatzteillieferungen durch die Firma Allectra GmbH unzumutbar verzögert werden oder fehlgeschlagen sind.

7.3. Bis zur Erfüllung der vorgenannten Ansprüche der Firma Allectra GmbH dürfen die Gegenstände nicht weiterveräußert, vermietet, verliehen, verschenkt und auch nicht Dritten in Besitz gegeben werden. Sicherungsübereignungen und Verpfändungen sind ohne Zustimmung der Firma untersagt.

7.4. Für den Fall, dass der Vertragspartner der Firma Allectra GmbH ein Wiederverkäufer ist, wird ihm die Weiterveräußerung im gewöhnlichen Geschäftsgang nur unter der Voraussetzung gestattet, dass die Forderungen aus dem Weiterverkauf gegenüber seinen Kunden, Abnehmern oder Dritten, einschließlich sämtlicher Nebenrechte, in Höhe des Rechnungswertes der Firma Allectra GmbH bereits jetzt abgetreten werden.

7.5. Der Kunde der Firma Allectra GmbH ist zum Besitz und Gebrauch des Kaufgegenstandes für eine Dauer des Eigentumsvorbehaltes nur solange berechtigt, wie er seinen Verpflichtungen aus dem Vertrag sowie diesen Allgemeinen Geschäftsbedingungen nachkommt und sich nicht in Zahlungsverzug befindet.

7.6. Falls der Kunde der Firma Allectra GmbH in Zahlungsverzug gerät oder seine Verpflichtungen aus dem Eigentumsvorbehalt nicht erfüllt, hat die Firma Allectra das Recht, Rücktritt vom Vertrag zu erklären. Die Firma Allectra GmbH kann den Vertragsgegenstand von Ihrem Vertragspartner herausverlangen und nach Androhung einer angemessenen Frist durch freihändigen Verkauf zu verwerten. Alle Kosten der Rücknahme, der Verwertung des Kaufgegenstandes trägt der Vertragspartner der Firma Allectra GmbH.

7.7. Der Kunde ist verpflichtet, bei Zugriffen Dritter, beispielsweise bei Pfändungen und Beratung oder Einleitung eines Insolvenzverfahrens die Firma Allectra GmbH unverzüglich zu informieren. Eines Rücktritts vom Vertrag bei Vorliegen eines Insolvenzgrundes zur Durchsetzung des Eigentumsvorbehaltes und verlängerten Eigentumsvorbehaltes bedarf es nicht.

7.8. Der Vertragspartner der Firma Allectra GmbH verpflichtet sich, den Vertragsgegenstand für die Dauer des Eigentumsvorbehaltes in einem ordnungsgemäßen Zustand zu halten sowie alle notwendigen Wartungsarbeiten und erforderlichen Instandsetzungen unverzüglich durchführen zu lassen.

7.9. Die Firma Allectra GmbH verpflichtet sich, die ihr zustehenden Sicherungen freizugeben, wenn der Wert der zu sichernden Forderungen, die noch nicht ausgeglichen sind, um mehr als 10 % mit dem vorgenannten Sicherungsrecht übersichert wird.

## 8. Lieferfrist

8.1. Die Lieferzeit beginnt mit der Absendung der Auftragsbestätigung, jedoch nicht vor Beibringung der vom Auftraggeber zu beschaffenden Unterlagen, Genehmigungen, Freigaben sowie vor Eingang einer vereinbarten Anzahlung. Die Lieferfrist ist eingehalten, wenn bis zu ihrem Ablauf die Versandbereitschaftsmeldung an den Auftraggeber abgesandt worden ist.

8.2. Die Einhaltung der Lieferfrist setzt die Erfüllung der Vertragspflichten durch den Auftraggeber voraus.

8.3. Die Lieferfrist verlängert sich angemessen, wenn Hindernisse auftreten, die die Allectra GmbH trotz Anwendung der gebotenen Sorgfalt nicht abwenden kann, ungeachtet ob sie bei der Allectra GmbH, beim Auftraggeber oder einem Dritten entstehen. Sobald der die Lieferung hindernde Umstand nicht mehr besteht, wird der Liefertermin schriftlich neu festgesetzt.

8.4. Wegen Verspätung der Lieferungen oder Leistungen hat der Auftraggeber keine Rechte und Ansprüche. Insbesondere hat er kein Recht auf Vertragsrücktritt. Diese Einschränkung gilt nicht im Falle von rechtswidriger Absicht oder grober Fahrlässigkeit von der Allectra GmbH. Dagegen gilt sie im Falle von rechtswidriger Absicht oder grober Fahrlässigkeit von Hilfspersonen.

8.5. Wird der Versand auf Wunsch des Auftraggebers verzögert, so werden ihm, einen Monat nach Anzeige der Versandbereitschaft, die durch die Lagerung entstandenen Kosten für jeden Monat berechnet (mindestens 0,5% des Rechnungsbetrages für jeden Monat). Der Auftragnehmer ist jedoch berechtigt nach Setzung und fruchtlosem Verlauf einer angemessenen Frist anderweitig über den Liefergegenstand zu verfügen, und den Auftraggeber mit angemessener verlängerter Frist zu beliefern.

## 9. Gefahrenübergang, Abnahme

9.1. Die Gefahr geht auf den Auftraggeber über, wenn der Liefergegenstand das Werk verlassen hat, und zwar auch dann, wenn Teillieferungen erfolgen oder die Allectra GmbH noch andere Leistungen, z. B. Versandkosten oder Anlieferung und Aufstellung übernommen hat. Soweit eine Abnahme zu erfolgen hat, ist diese für den Gefahrenübergang maßgebend. Sie muss unverzüglich zum Abnahmetermin, hilfsweise nach der Meldung der Allectra GmbH über die Abnahmebereitschaft durchgeführt werden. Der Auftraggeber darf die Abnahme bei Vorliegen eines nicht wesentlichen Mangels nicht verweigern.

9.2. Verzögert sich oder unterbleibt der Versand bzw. die Abnahme infolge von Umständen, die der Allectra GmbH nicht zu zurechnen sind, geht die Gefahr vom Tage der Meldung der Versand bzw. Abnahmebereitschaft auf den Auftraggeber über. Die Allectra GmbH verpflichtet sich, auf Kosten des Auftraggebers die Versicherung abzuschließen, die dieser verlangt hat.

9.3. Teillieferungen sind zulässig, soweit für den Auftraggeber zumutbar.

9.4. Die Allectra GmbH wird die Lieferungen und Leistungen soweit üblich vor Versand prüfen. Verlangt der Auftraggeber weitergehende Prüfungen, sind diese gesondert zu vereinbaren und vom Auftraggeber zu bezahlen.

9.5. Der Auftraggeber hat die Lieferungen und Leistungen innerhalb angemessener Frist zu prüfen und der Allectra GmbH eventuelle Mängel unverzüglich schriftlich bekannt zu geben. Offensichtliche Transportschäden müssen bei Übergabe der Ware sofort bei der ausführenden Spedition gemeldet werden. Verborgene Transportschäden müssen innerhalb von fünf Kalendertagen bei der Allectra GmbH gemeldet werden. Unterlässt er dies, gelten die Lieferungen und Leistungen als genehmigt.

9.6. Die Allectra GmbH hat die ihr gemäß Ziffer 10.2. mitgeteilten Mängel so schnell wie möglich zu beheben, der Auftraggeber hat ihr hierzu Gelegenheit zu geben.

9.7. Die Durchführung einer Abnahmeprüfung sowie die Festlegung der dafür geltenden Bedingungen bedürfen einer besonderen Vereinbarung.

9.8. Wegen Mängeln irgendwelcher Art an Lieferungen und Leistungen hat der Auftraggeber keine Rechte oder Ansprüche außer den in Ziffer 10 sowie 11 ausdrücklich genannten (Gewährleistung, Haftung für Mängel).

## 10. Mängelansprüche, Verjährung

Für Sachmängel der Lieferung leistet die Allectra GmbH unter Ausschluss weiterer Ansprüche wie folgt Gewähr:

10.1. Alle diejenigen Teile sind unentgeltlich nach Wahl der Allectra GmbH nachzubessern oder mangelfrei zu ersetzen, die sich infolge eines vor dem Gefahrenübergang liegenden Umstandes als mangelhaft herausstellen. Die Feststellung solcher Mängel ist der Allectra GmbH unverzüglich schriftlich zu melden. Ersetzte Teile werden Eigentum von der Allectra GmbH.

10.2. Zur Vornahme aller der Allectra GmbH notwendig erscheinenden Nachbesserungen und Ersatzlieferungen hat der Auftraggeber nach Verständigung mit der Allectra GmbH die erforderliche Zeit und Gelegenheit zu geben, andernfalls ist die Allectra GmbH von der Haftung für die daraus entstehenden Folgen befreit. Nur in dringenden Fällen der Gefährdung der Betriebssicherheit bzw. zu Abwehr unverhältnismäßig großer Schäden, wobei die Allectra GmbH sofort zu verständigen ist, hat der Auftraggeber das Recht, den Mangel selbst oder durch Dritte beseitigen zu lassen und von der Allectra GmbH Ersatz der erforderlichen Aufwendungen zu verlangen.

10.3. Von den durch die Nachbesserung bzw. Ersatzlieferung entstehenden unmittelbaren Kosten trägt die Allectra GmbH - soweit sich die Beanstandung als berechtigt heraus stellt - die Kosten des Ersatzstückes einschließlich des Versandes. Für eine unfreie Rücksendung ist die von der Allectra GmbH angegebene Spedition zu benutzen. Entstehen der Allectra GmbH durch die Wahl einer anderen Spedition Mehrkosten, so kann die Differenz dem Kunden in Rechnung gestellt werden.

10.4. Der Auftraggeber hat im Rahmen der gesetzlichen Vorschriften ein Recht zum Rücktritt vom Vertrag, wenn die Allectra GmbH - unter Berücksichtigung der gesetzlichen Ausnahmefälle - eine ihm gesetzte Frist für die Nachbesserung oder Ersatzlieferung wegen eines Sachmangels fruchtlos verstreichen lässt. Liegt nur ein unerheblicher Mangel vor, steht dem Auftraggeber lediglich ein Recht zur Minderung des Vertragspreises zu. Das Recht auf Minderung des Vertragspreises bleibt ansonsten ausgeschlossen. Weitere Ansprüche bestimmen sich nach Abschnitt 11.2 dieser Bedingungen.

10.5. Ein Mangel des Vertragsgegenstandes liegt nicht vor, wenn nachfolgende Bedingungen eingetreten sind: Ungeeignete oder unsachgemäße Verwendung, fehlerhafte Montage bzw. Inbetriebsetzung durch den Auftraggeber oder Dritte, natürliche Abnutzung, chemische, elektrochemische oder elektrische Einflüsse - sofern sie nicht von der Allectra GmbH zu verantworten sind.

10.6. Bessert der Auftraggeber oder ein Dritter unsachgemäß nach, besteht keine Haftung der Allectra GmbH für die daraus entstehenden Folgen. Gleiches gilt für ohne vorherige Zustimmung von der Allectra GmbH vorgenommene Änderungen des Liefergegenstandes.

10.7. Mängelansprüche für alle verkauften neuen Gegenstände verjähren in einem Jahr seit Anlieferung der Sache. Offensichtliche Mängel müssen innerhalb von 2 Wochen nach Ablieferung, bezogen auf die Absendung der Anzeige, gegenüber der Allectra GmbH gerügt werden, ansonsten ist der Verkäufer von einer Mangelhaftung befreit. Ist der Vertragsgegenstand mangelhaft, so hat der Vertragspartner von der Allectra GmbH folgende Rechte:

Die Firma Allectra GmbH ist zur Nacherfüllung verpflichtet und wird diese nach ihrer Wahl durch Beseitigung des Mangels oder die Lieferung einer mangelfreien Sache erbringen. Schlägt die Nachbesserung fehl, so ist der Vertragspartner berechtigt, vom Vertrag zurückzutreten oder den Kaufpreis zu mindern. Der Rücktritt ist ausgeschlossen, wenn die Pflichtverletzung von der Allectra GmbH nur unerheblich ist.

## 11. Ausschluss weiterer Haftungen

11.1. Wenn der Liefergegenstand durch Verschulden der Allectra GmbH infolge unterlassener oder fehlerhafter Ausführung von vor oder nach Vertragsschluss erfolgten Vorschlägen und Beratungen oder durch die Verletzung anderer vertraglicher Nebenverpflichtungen - insbesondere Anleitung für Bedienung und Wartung des Liefergegenstandes - vom Auftraggeber nicht vertragsgemäß verwendet werden kann, so gelten unter Ausschluss weiterer Ansprüche des Auftraggebers die Regelungen der Abschnitte 10 und 11.2.

11.2. Für Schäden, die nicht am Liefergegenstand selbst entstanden sind, haftet die Allectra GmbH - aus welchen Rechtsgründen auch immer - nur

- bei Vorsatz,

- bei grober Fahrlässigkeit des Inhabers/ der Organe oder Leitender Angestellter,
- bei schuldhafter Verletzung von Leben, Körper, Gesundheit,
- bei Mängeln, die sie arglistig verschwiegen oder deren Abwesenheit sie garantiert hat,
- bei Mängeln des Liefergegenstandes, soweit nach Produkthaftungsgesetz für Personen- oder Sachschäden an privat genutzten Gegenständen gehaftet wird.

Bei schuldhafter Verletzung wesentlicher Vertragspflichten haftet die Allectra GmbH auch bei grober Fahrlässigkeit nicht leitender Angestellter und bei leichter Fahrlässigkeit, in letzterem Fall begrenzt auf den vertragstypischen, vernünftigerweise vorhersehbaren Schaden. Weitere Ansprüche sind ausgeschlossen.

### 13. Anwendbares Recht, Gerichtsstand

13.1. Für alle Rechtsbeziehungen zwischen der Allectra GmbH und dem Auftraggeber gilt ausschließlich das für die Rechtsbeziehungen inländischer Parteien untereinander maßgebliche Recht der Bundesrepublik Deutschland.

13.2. Gerichtsstand ist das für den Sitz der Allectra GmbH zuständige Gericht. Die Allectra GmbH ist jedoch berechtigt, am Hauptsitz des Auftraggebers Klage zu erheben.

Sollte einer oder mehrere Punkte dieser Allgemeinen Geschäftsbedingungen unwirksam sein oder werden, so berührt dies nicht die Wirksamkeit der übrigen Bestimmungen.

# General Terms and Conditions of Sale and Trade of Allectra GmbH in the version dated 01.01.2022

***This translation is for information purposes only. The only legally binding version is the German version above.***

## 1. General

Unless expressly agreed otherwise, the General Terms and Conditions of Business of Allectra GmbH shall apply to all offers, orders, purchase contracts, contracts for work and services and deliveries that we make to customers. They shall also apply to future business relations unless they are expressly agreed again. Deviating general terms and conditions of the buyer shall not be recognised, even if we do not expressly object to them. An express written agreement is required for the validity of any other terms and conditions.

1.1 These terms and conditions are binding if they are declared applicable in the offer or in the order confirmation. Any other terms and conditions of the customer shall only be valid if they have been expressly accepted by Allectra in writing.

### 1.2 Conclusion of contract

The contract is concluded by the written order confirmation by Allectra GmbH. All agreements and legally relevant declarations of the contracting parties that deviate from these General Terms and Conditions must be made in writing to be valid.

1.3 Should any provision of these Terms and Conditions of Sale and Delivery prove to be invalid in whole or in part, this shall not affect the validity of the remaining provisions of these Terms and Conditions of Sale and Delivery. The contracting parties shall replace this provision with a new agreement that comes as close as possible to its legal and economic purpose.

1.4 Allectra GmbH reserves the right to samples, cost estimates, drawings and the like. Allectra GmbH reserves property rights and copyrights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties. Allectra GmbH undertakes to make information and documents designated as confidential by the customer accessible to third parties only with the customer's consent.

## 2. Scope of deliveries and services

2.1 The deliveries and services of Allectra GmbH are exhaustively listed in the order confirmation including any enclosures thereto. Services not included therein shall be invoiced separately.

## 3. Technical documents

3.1 Brochures and catalogues are not binding unless otherwise agreed. Details in technical documents are only binding if they are expressly warranted.

3.2 Allectra GmbH reserves all rights to the technical documents which it has handed over to the customer. Without the prior written authorisation of Allectra GmbH, these documents may not be made accessible to third parties in whole or in part or used for purposes other than those for which they were handed over to the customer. The possession of these documents does not authorise the reproduction of machines, systems, components or parts thereof.

## 4. Confidentiality

4.1 Each contracting party shall treat as confidential the manufacturing, experience and business secrets of the other contracting party which are made accessible to it or otherwise become known to it. The contracting parties may neither directly nor indirectly disclose this information to any third party, nor publish it in any way or use it for other purposes (in particular for the reproduction of machines, systems and components as well as parts thereof).

## 5. Prices

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5.1 The prices are net ex warehouse Schönfließ, EXW according to Incoterms 2020, excluding VAT / sales tax and packaging, payable without any deductions. All ancillary costs (e.g. freight, insurance, export, transit, import and other authorisations and certifications) shall be borne by the Client. Likewise, the Principal shall bear all types of taxes, duties, fees, customs duties and the like which are levied in connection with the contract or reimburse them to Allectra GmbH against appropriate proof if Allectra GmbH has become liable to pay them.

5.2 To simplify processing, freight and packaging costs can be bindingly stated in the offer / order confirmation. If the customer requests a partial delivery, the additional costs can be invoiced.

5.3 An appropriate price adjustment shall be made if:

-the delivery period is subsequently extended for a reason for which the client is responsible or -the type or scope of the agreed deliveries or services have changed or

-the material or the execution undergo changes because the documents supplied by the client did not correspond to the actual circumstances or were incomplete.

## 6. Terms of payment

6.1 Payments shall be made in accordance with the terms of the order confirmation or invoice. The payment obligation shall be deemed to have been fulfilled when the entire agreed delivery price has been paid. No interest shall be paid on advance payments.

6.2 Payments shall be credited against the oldest debt.

## 7. Retention of title

7.1 The items delivered or sold by Allectra GmbH shall remain the property of Allectra GmbH until all claims against the customer arising from the respective contract have been fulfilled.

7.2 The retention of title shall also remain in force for all claims which Allectra GmbH subsequently acquires against customers in connection with the subject matter of the contract, for example due to repairs, spare parts deliveries and other services. The above provision shall not apply if the repairs or spare parts deliveries are unreasonably delayed by Allectra GmbH or have failed.

7.3 Until the fulfilment of the aforementioned claims of Allectra GmbH, the objects may not be resold, rented, lent, given away or given into the possession of third parties. Transfer by way of security and pledging are prohibited without the consent of the company.

7.4 In the event that the contractual partner of Allectra GmbH is a reseller, he shall only be authorised to resell in the ordinary course of business on condition that the claims from the resale against his customers, purchasers or third parties, including all ancillary rights, are already now assigned to Allectra GmbH in the amount of the invoice value.

7.5 The customer of Allectra GmbH shall only be entitled to possess and use the object of purchase for the duration of the retention of title as long as he fulfils his obligations under the contract and these General Terms and Conditions and is not in default of payment.

7.6 If the customer of Allectra GmbH is in default of payment or does not fulfil his obligations from the retention of title, Allectra GmbH has the right to declare withdrawal from the contract. Allectra GmbH may demand the return of the contractual object from its contractual partner and realise it by private sale after a reasonable period of notice. All costs of taking back and realising the object of purchase shall be borne by the contractual partner of Allectra GmbH.

7.7 The customer shall be obliged to inform Allectra GmbH immediately in the event of seizure by third parties, for example in the event of attachment and counselling or the initiation of insolvency proceedings. Cancellation of the contract in the event of a reason for insolvency to enforce the retention of title and extended retention of title is not required.

7.8 The contractual partner of Allectra GmbH undertakes to keep the object of the contract in a proper condition for the duration of the retention of title and to have all necessary maintenance work and required repairs carried out without delay.



7.9 Allectra GmbH undertakes to release the securities to which it is entitled if the value of the claims to be secured, which have not yet been settled, is over-secured by more than 10 % with the aforementioned security right.

#### 8. Delivery period

8.1 The delivery period shall commence with the dispatch of the order confirmation, but not before the documents, authorisations and approvals to be procured by the customer have been provided and an agreed advance payment has been received. The delivery deadline shall be deemed to have been met if the notification of readiness for dispatch has been sent to the client by the time it expires.

8.2 Compliance with the delivery period shall be subject to the fulfilment of the contractual obligations by the customer.

8.3 The delivery period shall be extended appropriately if obstacles occur which Allectra GmbH cannot avert despite exercising due care, irrespective of whether they occur at Allectra GmbH, at the Principal or at a third party. As soon as the circumstance preventing delivery no longer exists, the delivery date shall be redefined in writing.

8.4 The client has no rights or claims due to delays in deliveries or services. In particular, he has no right to withdraw from the contract. This restriction shall not apply in the event of unlawful intent or gross negligence on the part of Allectra GmbH. However, it shall apply in the event of unlawful intent or gross negligence on the part of auxiliary persons.

8.5 If dispatch is delayed at the request of the customer, he shall be charged the costs incurred by storage for each month one month after notification of readiness for dispatch (at least 0.5% of the invoice amount for each month). However, the Contractor shall be entitled to dispose of the delivery item otherwise after setting a reasonable deadline and fruitless expiry thereof, and to supply the Client within a reasonably extended period.

#### 9. Transfer of risk, acceptance

9.1 The risk shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or Allectra GmbH has assumed other services, e.g. shipping costs or delivery and installation. If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after Allectra GmbH's notification of readiness for acceptance. The customer may not refuse acceptance in the event of a minor defect.

9.2 If dispatch or acceptance is delayed or does not take place as a result of circumstances for which Allectra GmbH is not responsible, the risk shall pass to the customer from the day of notification of readiness for dispatch or acceptance. Allectra GmbH undertakes to take out the insurance requested by the customer at the customer's expense.

9.3 Partial deliveries shall be permissible insofar as reasonable for the customer.

9.4 Allectra GmbH shall inspect the deliveries and services as far as usual before dispatch. If the customer requests further inspections, these shall be agreed separately and paid for by the customer.

9.5 The customer shall inspect the deliveries and services within a reasonable period of time and notify Allectra GmbH immediately in writing of any defects. Obvious transport damage must be reported to the forwarding agent immediately upon delivery of the goods. Hidden transport damage must be reported to Allectra GmbH within five calendar days. If the customer fails to do so, the deliveries and services shall be deemed approved.

9.6 Allectra GmbH must rectify the defects notified to it in accordance with clause 10.2 as quickly as possible; the customer must give it the opportunity to do so.

9.7 The performance of an acceptance test and the determination of the conditions applicable thereto shall require a special agreement.

9.8 The Client shall have no rights or claims for defects of any kind in deliveries and services other than those expressly stated in Clauses 10 and 11 (warranty, liability for defects).

#### 10. Claims for defects, limitation period

Allectra GmbH warrants for material defects of the delivery under exclusion of further claims as follows:

10.1 All parts which prove to be defective as a result of a circumstance prior to the transfer of risk shall be repaired or replaced free of charge at the discretion of Allectra GmbH. The discovery of such defects must be reported to Allectra GmbH immediately in writing. Replaced parts shall become the property of Allectra GmbH.

10.2 After consultation with Allectra GmbH, the customer shall give Allectra GmbH the necessary time and opportunity to carry out all repairs and replacement deliveries which Allectra GmbH deems necessary, otherwise Allectra GmbH shall be released from liability for the resulting consequences. Only in urgent cases where operational safety is jeopardised or to prevent disproportionately large damage, in which case Allectra GmbH must be informed immediately, shall the customer have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from Allectra GmbH.

10.3 Allectra GmbH shall bear the direct costs arising from the rectification of defects or replacement delivery, including the costs of the replacement part including dispatch, insofar as the complaint proves to be justified. The forwarding agent specified by Allectra GmbH is to be used for a carriage forward return. If Allectra GmbH incurs additional costs due to the choice of another forwarding agent, the difference can be charged to the customer.

10.4 The customer has the right to withdraw from the contract within the framework of the statutory provisions if Allectra GmbH - taking into account the statutory exceptions - allows a deadline set for the rectification or replacement delivery due to a material defect to expire fruitlessly. If there is only an insignificant defect, the customer shall only be entitled to a reduction of the contract price. The right to reduce the contract price is otherwise excluded. Further claims shall be determined in accordance with section 11.2 of these terms and conditions.

10.5 A defect in the subject matter of the contract does not exist if the following conditions have occurred: Unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, chemical, electrochemical or electrical influences - unless Allectra GmbH is responsible for them.

10.6 If the customer or a third party carries out improper repairs, Allectra GmbH shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of Allectra GmbH.

10.7 Claims for defects for all new items sold shall become time-barred one year after delivery of the item. Obvious defects must be notified to Allectra GmbH within 2 weeks after delivery, based on the dispatch of the notification, otherwise the seller shall be released from liability for defects. If the subject matter of the contract is defective, the contractual partner of Allectra GmbH has the following rights:

Allectra GmbH is obliged to provide subsequent fulfilment and will do so at its discretion by rectifying the defect or delivering a defect-free item. If the rectification fails, the contractual partner shall be entitled to withdraw from the contract or to reduce the purchase price. Withdrawal is excluded if the breach of duty by Allectra GmbH is only insignificant.

## 11. Exclusion of further liability

11.1 If the delivery item cannot be used by the customer in accordance with the contract due to the fault of Allectra GmbH as a result of omitted or faulty execution of suggestions and consultations made before or after conclusion of the contract or due to the violation of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of sections 10 and 11.2 shall apply to the exclusion of further claims by the customer.

11.2 Allectra GmbH shall only be liable for damage that has not occurred to the delivery item itself - for whatever legal reasons

- in the event of intent,
- in the event of gross negligence on the part of the owner/the executive bodies or senior employees,
- in the event of culpable injury to life, limb or health,
- in the event of defects which it has fraudulently concealed or the absence of which it has guaranteed,
- in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, Allectra GmbH shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to reasonably foreseeable damage typical of the contract. Further claims are excluded.

### 13 Applicable law, place of jurisdiction

13.1 All legal relationships between Allectra GmbH and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties.

13.2 The place of jurisdiction is the court responsible for the registered office of Allectra GmbH. However, Allectra GmbH shall be entitled to bring an action at the principal place of business of the Principal.

Should one or more points of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.

***The translation above is for information purposes only. The only legally binding version is the German version above it.***

# Allectra Limited, Terms and Conditions of Trade

## 1. General application and definitions

These terms and conditions ('Conditions') apply to all contracts for the sale of Goods or provision of Services between the Customer and the Company, no terms proffered by the Customer will apply unless agreed in advance by the company. No contract and no obligation will come into existence until the Company has confirmed acceptance or has shipped Goods or commenced provision of the Services, in all cases subject to these Conditions. The headings in these Conditions are inserted for convenience only. They do not affect their interpretation or construction.

In these Conditions the following words shall have the meanings set opposite them:

'Company' means Allectra Limited and its authorised distributors the company identified on the invoice, order acknowledgement or as specified overleaf being the vendor;

'Contract' means the order placed by the Customer subject to these Conditions

'Customer' means the individual, firm or company with whom the Company contracts for the supply of Goods or Services;

'Goods' means the whole or part of goods (including spare parts) to be supplied by the Company under any Contract;

Nothing in these Conditions or any Contract shall restrict the statutory rights of any Customer. No variation of these terms and conditions will bind the Company unless in –writing and signed by a Director. All statements in literature or material published or delivered pre-Contract by or on behalf of the Company, either generally or in relation to any specific Contract, are for information and guidance only and shall not bind the Company unless specifically referred to in any Contract.

All Goods and the provision of all Services are subject to normal operating tolerances. The Company reserves the right to make changes to Goods or to the provision of Services without notice to the Customer.

## 2. Payment and prices

Unless otherwise stated on the invoice or agreed in advance, all invoices are due for payment in cleared funds within 30 days of the invoice date or immediately on the occurrence of any event of default (as referred to in clause 3.1).

The Company reserves the right to require payment in advance (pro-forma invoice terms) or by payment by credit or debit card prior to shipping.

Interest shall accrue on overdue payments (both before and after judgment) at 2% above Bank base lending rate from time to time, from the due date for payment until the date of actual receipt by the Company. The Customer will make payment in full without set off and will not be entitled to withhold or delay payment on account of any dispute.

All prices are quoted exclusive of VAT, insurance, packing, dock or airport dues and deliver)\* and any other incidental charges.

Prices quoted by the Company in writing remain open for acceptance for 30 days from date of issue but may be amended at any time to take account of any error or omission by the Company or any lack of information received from the Customer.

## 3. Cancellation, termination

3.1 Without prejudice to the Company's right to receive the full purchase price, the Company may defer or cancel any deliveries of Goods or cancel or suspend the performance of Services and/or treat the Contract as determined if the Customer fails to make full payment when due on any contract with the Company; or enters into any composition or arrangement with its creditors or otherwise becomes insolvent and/or unable to pay its debts as they fall due, or passes a resolution for winding up or suffers any court to make a winding up order; or breaches these Conditions or suffers any other event to occur which the Company considers may jeopardise its interest in the Goods or its prospects for being paid for Goods or Services, or where the Company becomes aware that the Goods and/or Services (and any related software and technology, including documents and other material containing technical data and other information) may be required in breach of export controls of the U.K. or other governments ("events of default")

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3.2 The Company may, in its absolute discretion, accept cancellation by the Customer, on such terms (including the payment of any costs and expenses incurred prior to cancellation) as the Company may require. To be effective any cancellation must be in writing and signed by a director of the Company.

## 4. Liability

THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THE FOLLOWING LIMITATION OF THE COMPANY'S LIABILITY. THE CUSTOMER ACCEPTS THAT THESE LIMITATIONS ARE REASONABLE BEARING IN MIND THE DISPROPORTIONATELY LOW VALUE OF GOODS AS AGAINST THE POTENTIAL VALUE OF THE CUSTOMER'S LOSS AND THE CUSTOMER'S ABILITY TO PLACE INSURANCE COVER IN RESPECT OF SUCH LOSSES

4.1 Save as expressly provided herein and subject to Clause 4.2, the full extent of the Company's liability shall be as provided in this Clause 4.1 - the Company accepts that it will be liable for death and/or personal injury caused by its negligence without limit; the Company accepts that it will be liable for damage to the Customer's property or any other property situated at or adjacent to the worksite to the extent caused by the Company's negligence up to the limit specified in Clause 4.2, and the Customer agrees to release, indemnify and hold the Company harmless from and against any liability caused by the Customer's negligence; and where the Customer suffers loss attributable to a component part of the Goods or to a component supplied within the Services which was manufactured by a third party, the Company shall endeavour to pass on to the Customer any warranty it obtained in respect of the same.

4.2 Notwithstanding anything in this Contract to the contrary and save for the liability of the Company for death or personal injury caused by its negligence, the liability of the Company under the Contract (whether by reason of breach of contract, tort or otherwise, including under indemnification provisions (if any)), but except for breach of warranty (the sole remedy for which shall be as provided in Clause 6), shall be limited to the lesser of £5,000 and the value of Goods or Services the subject of the Contract save that where such limitation would not be valid on grounds of unreasonableness by operation of law or otherwise then the entire liability of the Company under or in connection with the Contract shall not exceed the sum of £650,000 and, in any event, the Company shall not be liable for indirect loss of any kind, loss of business or revenue, loss of profits, loss of goodwill or loss of opportunity regardless of (a) the negligence (either sole or concurrent) of the Company; or (b) whether the Company has been informed of the possibility of such loss.

4.3 The Company shall not be liable for any loss or damage whatsoever arising as a result of the Goods or the Services not conforming with any building, health and safety or other legislative or regulatory requirements in respect of any use to which the Goods or the product of the Services may be put unless such use has been notified to the Company and accepted by a director of the Company in writing prior to order acceptance.

## 5. Delivery

Time for delivery of Goods or the provision of Services shall not be of the essence and the Customer shall not be entitled to delay or refuse payment should delivery be later than an established delivery date. The Customer shall ensure that the Company is provided all necessary information to enable delivery' and shall pay the Company's storage charges if it does not accept delivery. Risk in Goods will pass for deliveries in the UK at the Company's premises and for Goods to be delivered outside the UK on delivery FCA to the port or airport notified.

## 6. Goods Warranty

THE CUSTOMER'S ATTENTION IS DRAWN TO THE SPECIFIC WARRANTY APPLICABLE TO THE GOODS, DETAILS OF WHICH ARE AVAILABLE FROM THE COMPANY, ON REQUEST. THE CUSTOMER SHOULD BE AWARE THAT DUE TO THE NATURE OF THE GOODS, SPECIALIST CONSIDERATION OF THE PERFORMANCE CHARACTERISTICS OF THE GOODS, THEIR SPECIFICATION, OPERATING CHARACTERISTICS AND THE APPLICATIONS TO WHICH THEY MAY NORMALLY BE PUT, IS ESSENTIAL. THE COMPANY DOES NOT WARRANT THAT THE GOODS ARE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. IN THE ABSENCE OF ANY SPECIFIC WARRANTY THE FOLLOWING WARRANTY SHALL APPLY.

6.1 The Company warrants that the Goods will operate substantially in conformity with the Company's published specifications, when subjected to normal, proper and intended usage by properly trained personnel, for a period of 24 months after shipment to the Customer (the "Warranty Period"). The Company agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any material defect and further provided that all costs of

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returning the defective Goods to the Company are pre-paid by the Customer, to repair or replace, at the Company's option, defective Goods so as to cause the same to operate in substantial conformance with the said specifications. Replacement parts may be new or refurbished, at the election of the Company. All replaced parts shall become the property of the Company. Shipment to the Customer of repaired or replacement Goods shall be made in accordance with the provisions of Clause 5 above. All consumable or expendable items (including without limitation) lamps, fuses, bulbs are expressly excluded from the warranty under this Clause. The Company's sole liability with respect to equipment, materials, parts or software furnished to the Company by its third party suppliers shall be limited to the assignment by the Company to the Customer of any such third party supplier's warranty, to the extent the same is assignable. In no event shall the Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of

(i) normal wear and tear, (ii) accident, disaster or event of force majeure,  
(iii) misuse, fault or negligence of or by or on behalf of the Customer,  
(iv) use of the Goods in a manner for which they were not designed,  
(v) causes external to the Goods such as, but not limited to, power failure or electrical power surges or  
(vi) use of the Goods in combination with equipment or software not supplied by the Company.

If the Company determines that Goods for which the Customer has requested warranty services are not covered by the warranty hereunder, the Customer shall pay or reimburse the Company for all costs of investigating and responding to such request at the Company's then prevailing time and material rates. If the Company provides repair or replacement parts that are not covered by the warranty provided in this Clause, the Customer shall pay the Company therefore at the Company's then prevailing time and materials rates. Any installation, maintenance, repair, service, relocation or alteration to or of, or other tampering with, the Goods, performed by any person or entity other than the Company without the Company's prior written approval, or any use of replacement parts not supplied by the Company, shall immediately void and cancel all warranties with respect to the affected Goods.

The obligation created by Clause 6.1 to repair or replace defective Goods shall be the sole remedy of the Customer in the event of defective Goods.

The Company does not warrant that the Goods are fit for any particular purpose or intended use by the Customer, and it is for the Customer to satisfy itself that the Goods are so fit.

The Customer hereby represents that it is a competent user of the class of Goods to be supplied hereunder, that it has satisfied or is able to satisfy itself that the Goods are safe to use, and that it will institute a safe system of working for the use of the Goods.

The Customer shall indemnify the Company against any claim by any third party that the third party (or any fourth party on whose behalf the third party is acting) has suffered any loss, damage, personal injury or death by reason of or resulting from any negligence by the Customer or any defect in the design, specification or manufacture of the Goods. Where the Company agrees to repair or replace Goods or rectify Services any time specified for delivery or performance under the Contract will be extended for such period as the Company may reasonably require to accommodate such repair, replacement or rectification.

The Company's warranty and Customer's remedies in these Conditions are in substitution for any other warranties, rights, obligations, representations, undertakings, liabilities, terms and/or conditions (whether they are express or implied, or arise in contract, tort or otherwise and irrespective of the negligence of Company, its employees or agents) in connection with the Goods and/or Services (including without limitation any relating to condition, performance, satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations, but excluding implied statutory warranties relating to title) and all such warranties, rights, obligations, representations, liabilities, terms or conditions are hereby expressly excluded.

## 7. Customer's Responsibilities

7.1 The Goods, especially electrical components specified for use in excess of 50v may be dangerous if not properly used and the appropriate precautions taken. The Customer accordingly agrees that it shall take all such steps as are reasonably practicable or usual to eliminate or reduce any risk to health and/or safety to which use of the Goods may give rise and acknowledges that where the Goods are manufactured to a design supplied by the Customer, the Company will not undertake any research as to the risks to health and/or safety which may arise from use or storage of the Goods. Where the Goods are manufactured to a design supplied by the Customer, the Customer shall comply with all the duties which may be implied at law on a designer and/or manufacturer of the Goods. The Customer shall

indemnify the Company against any claim, proceedings, costs, loss, damage or liability suffered by the Company as a result of any failure by the Customer, or any other person involved with the Goods, to take such steps or ensure compliance with the duties referred to in Clause 7.1 above.

It is the responsible of the customer to ensure that components supplied by the company are correctly incorporated into any machinery in accordance with current safety and CE regulations. The Company will on request and free of charge supply a Certificate of Compliance.

## **8. Intellectual Property/Tools**

8.1 The Customer shall not use or deal with the Goods or the Company's catalogues, brochures, leaflets or lists so as to infringe, interfere with or weaken any rights of the Company under or in respect of any patents, processes, proprietary information, trademarks, registered designs, logos, artwork or copyright for or in connection with the Goods. The Company shall have no liability for the infringement of any rights of any third party arising from the use of the Goods in combination with other Goods, trademarks or processes not supplied by the Company. In particular, and without prejudice to the generality of the foregoing the Customer's use of any software supplied as part of or in connection with the Contract shall be subject to the Company's standard software licensing terms which are available on request. Where the Goods are manufactured to the design or specification of the Customer, the Customer warrants that such design or specification does not infringe the rights of any third party. Tools used in the manufacture of the Goods remain the property of the Company unless the Customer is invoiced for and pays the entire cost of tooling. The use, safekeeping and maintenance of the Customer's tools (even if in the Company's possession) shall be at the Customer's risk. If, after reasonable notice the Customer fails to remove any tools in the Company's possession the Company shall be entitled to destroy or otherwise dispose of the tools without payment or compensation to the Customer.

## **9. Passing of title**

The Goods shall remain the Company's property until all payments to be made by the Customer under the Contract and any other contract between the Company and the Customer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Customer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company. The Customer shall where any sums remain payable to the Company, permit the Company (and anyone acting on its behalf) to enter onto any premises in which Goods (or any products incorporating Goods) are located to recover them.

Prior to the payment of the full amount for such Goods, the Customer may only re-sell the Goods to the Customer's customers in the ordinary course of its business as a fiduciary and trustee for the Company. In the event of any resale by the Customer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Customer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.

Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Customer to remove the Goods. Pending payment of the full purchase price of the Goods the Customer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Customer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

## **10. Service Warranty**

10.1 The Company warrants that the Services provided under this Contract will comply with the requirements expressly set forth herein and will otherwise be performed in accordance with generally accepted industry practice by competent personnel. In the event that any Services fail to comply with the foregoing standard, the Company will, at its

option, provided it is promptly notified in writing upon the discovery of such failure, either repeat such non-complying Services at no additional charge or refund to the Customer all fees paid by the Customer with respect to such non-complying Services. Notwithstanding the foregoing, the cost of any such repeat of Services which generates results consistent with the original results will be at Customer's expense.

10.2 The Company's obligation to repeat any Services with respect to a given sample will be contingent upon the Customer providing (at the Customer's sole cost and expense) such additional sample(s) facilities, access and resources as may be reasonably requested by the Company. The foregoing warranty is the sole and exclusive warranty<sup>1</sup> given by the Company in connection with the Services performed hereunder, and is in lieu of all other warranties of any kind, whether express or implied, oral or written.

## **11. Loan/Hire Equipment**

Should the terms of any current Contract entitle the Customer to possession of equipment or Goods on loan or hire supplied by the Company, the Customer shall ensure that such equipment or Goods are covered by all risks insurance and that such equipment or Goods are returned to the Company at the end of the loan or hire period, suitably packed and insured. Carriage costs for the return of such equipment or Goods will be borne by the Company.

## **12. Intellectual Property**

The property and any copyright or other intellectual property rights in any information, reports, drawings, designs or written or electronic information or other products generated or used by the Company in the course of the provision of the Services (hereinafter referred to as the "Materials") shall be and remain vested in the Company. Subject to the Company receiving payment of all monies due under the Contract, the Company grants to the Customer the right to use the Materials for the purposes of utilising the Services.

The Customer shall not use the Materials for any other purpose without the prior written consent of the Company and upon such terms as may be agreed by the Company. The Company shall not be liable for the use by any person of the Materials for any other purpose other than that for which the same were prepared by or on behalf of the Company.

## **13. MISCELLANEOUS**

If the Company is delayed or prevented from delivering the Goods or supplying the Services due to circumstances beyond its control including, without limitation, war, governmental or parliamentary restrictions, civil commotion or insurrection, strike, lock-out, fire, flood, tempest or abnormal weather conditions, explosion, labour disturbances, trade disputes, damage to or destruction of the Goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause beyond the control of the Company, the Company may cancel or suspend deliver<sup>1</sup> of Goods or the supply of Services comprised in the Customer's order without notice and without liability. The Company may deliver Goods or supply Services in parts or in instalments and the Customer shall be obliged to pay for each such part or instalment as provided herein.

These Conditions and any Contract shall be governed by and construed in accordance with English Law. Customer hereby agrees, for the Company's exclusive benefit, that the English Courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods, the Services and any Contract. The Company may nevertheless bring claims in any other courts of competent.

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