

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF NEPTUNUS

1. GENERAL

- 1.1 In these general terms and conditions of delivery and payment ("**General Terms and Conditions**"), the following terms have the following definitions:
- Customer:** the party entering into or seeking to enter into an Agreement with Neptunus.
- Services:** the services as defined in the Agreement, including but not limited to the erection, installation and repair of the Goods by Neptunus, excluding the actual lease and the actual purchase.
- Neptunus:** Neptunus GmbH, with its registered office at Prinzenallee 7, 40549 Düsseldorf, registered in the commercial register of the Düsseldorf Local Court under number HRB 48880, or any party affiliated with it, with whom the Customer has entered into the Agreement.
- Agreement:** the agreement between the Customer and Neptunus for the purchase and/or lease of the Goods and/or performance of the Services, of which these General Terms and Conditions form an inextricable part.
- Parties:** the Customer and Neptunus.
- Semi-permanent:** lease of Goods for a longer period of time, if so provided in the Agreement.
- Work:** the work carried out specifically for the Customer after an Agreement is concluded.
- Goods:** the Goods as defined in the Agreement which are leased or sold to the Customer, as defined in the Agreement.
- 1.2 These General Terms and Conditions apply to all contracts granted to Neptunus and Agreements concluded with Neptunus, unless expressly agreed otherwise and confirmed in writing by Neptunus.
- 1.3 The Customer acknowledges the applicability of these General Terms and Conditions. Other terms and conditions – which may be declared applicable by the Customer – are excluded, unless agreed otherwise in writing.
- 1.4 These General Terms and Conditions may only be deviated from with the written approval of Neptunus. Where any clause of these General Terms and Conditions is deviated from in writing, the remaining clauses will continue to apply to the Agreement.
- 1.5 In case of any contradiction between these General Terms and Conditions and the Agreement, the provisions of the Agreement will prevail.
- 1.6 The nullity of any provision of these General Terms and Conditions will not render the General Terms and Conditions null and void as a whole. In such case, the null-and-void or invalid provisions will be replaced by suitable provisions which correspond as closely as possible in a legally valid manner to the intentions of the Parties and the economic result they seek.
- 1.7 These General Terms and Conditions have been drafted in the German language and translated into English for information purposes only. In the event of any contradiction, discrepancy or inconsistency between the German version and the English translation, the German version shall prevail in all respects.

SPECIFIC PROVISIONS

2. LEASE OF THE GOODS

- 2.1 Neptunus will in all cases remain the owner of the Goods made available to the Customer in the context of the lease.
- 2.2 The lease period means the period from the day of commencement of delivery of the Goods up to and including the day of complete return of the Goods. After a review of the availability of the leased materials based on any existing agreements already concluded with other customers, and subject to Neptunus's written consent, the lease period may be renewed at the Customer's request for a new lease period to be newly established, in which case the term of the Agreement will be renewed accordingly. However, Neptunus is under no circumstances bound to agree to a renewal of the lease period. Neptunus is entitled to impose additional/amended terms and conditions with regard to the renewal. The arrangements concerning the possible renewal and amendment of the conditions will be laid down in writing in an addendum to the Agreement or in a new agreement, such at Neptunus's discretion.
- 2.3 The Customer must use the leased Goods carefully as a proper tenant for the intended purpose of the Goods and declares to have received it in good condition, to keep it in the same condition and thus to

NEPTUNUS GmbH

■ THE NETHERLANDS

■ BELGIUM

■ UNITED KINGDOM

■ GERMANY

■ FRANCE

■ POLAND

■ AUSTRIA

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return it at the end of the lease period in the same condition in which the Customer received it. The condition of the leased Goods at the commencement of use is recorded in a handover record (delivery report) as referred to in Clause 8.2. In case a handover record is missing for whatever reason, the leased Goods will be deemed to have been delivered in a well-maintained condition, free of defects and damage, and must therefore also be returned in such condition at the end of the lease period. Floors must be "broom clean" upon return at the end of the lease period. The Customer may not transport, move, dismantle or modify the leased Goods (or have such done) without Neptunus's prior written consent. During the lease period, the Customer will refrain from any acts or omissions that may cause damage to the Goods, and will take reasonable measures to prevent damage to the Goods or – if damage nevertheless occurs – to limit it.

- 2.4 The Customer must ensure that the site/location on which the Goods are located during the lease period are cordoned off and guarded, and not freely accessible to unauthorised persons. With regard to Semi-Permanent Lease, the foregoing applies only during the assembly and disassembly period. In case of snowfall, the Customer must ensure adequate heating of the Goods to melt any snowfall and prevent the risk of structural failure. If necessary, the Customer must take additional appropriate measures to prevent snow from accumulating on the Goods.
- 2.5 The Customer must at all times provide access to the leased Goods at Neptunus's first request.
- 2.6 The Goods may only be sublet or made available for use by third parties with the prior written consent of Neptunus.
- 2.7 The Customer will immediately inform Neptunus if an attachment is levied in respect of the Customer, its movable or immovable property or the present leased Goods or if Neptunus's ownership rights are at risk of being impeded in any other way, as well as in case of bankruptcy, petition for suspension of payments, placement under guardianship and/or relocation of the Customer. The Customer is obliged to inform the bailiff or administrator immediately about the Agreement and to provide a copy thereof to the bailiff or administrator and retain evidence thereof.
- 2.8 The Customer is liable and indemnifies Neptunus for any damage to the leased Goods or caused by the leased Goods, however named and however caused, irrespective of whether it is caused by the Customer or third parties or through Force Majeure. The Customer is obliged to inform Neptunus without delay of any damage and defects to the leased Goods. The Customer is not liable for damage to the Goods caused by Neptunus or any third party engaged by Neptunus in connection with the installation of the Goods as referred to in Clause 4.1, provided that such damage cannot be attributed to the Customer and is not in any way related to a breach of the Agreement by the Customer.
- 2.9 The leased Goods are insured by Neptunus against the risks of fire, storm, aircraft damage and lightning strikes. Systems and goods that are not owned by Neptunus and that are located on or in the Goods are not included in this cover and are at the Customer's risk and expense. During the lease period as described in Clause 2.2, the Customer bears the risk of, and indemnifies Neptunus against, any damage resulting from vandalism, theft, misappropriation or loss of the Goods.
- 2.10 Neptunus will never be liable for any environmental damage (including but not limited to soil contamination resulting from fuel-powered leased Goods such as heaters, generators, etc.). In this respect, the Customer indemnifies Neptunus against third-party claims, including (public-law) claims of government bodies.
- 2.11 The Customer is not allowed to cover or remove any brand names, (figurative) trademarks and logos affixed to the Goods or parts thereof without Neptunus's permission.
- 2.12 If the Customer fails to make the Goods available to Neptunus in time at the end of the lease period, Neptunus will be entitled to charge the Customer 0.5% of the total rent for each day or part of a day that the Goods have not been delivered to Neptunus, up to a maximum of 5% of the total rent, plus any associated costs, without prejudice to Neptunus's other rights. The rent payment obligation shall continue.
- 2.13 In good time before the end of the lease period or upon delivery, the leased Goods will be inspected jointly by the Parties, and the Parties will draw up and sign a record of this inspection, in which the findings regarding the condition of the Goods are recorded (including but not limited to damage and missing parts). The record does not under any circumstances prejudice Neptunus's right to claim any additional defects at a later date, that were not noticed during the inspection for any reason.

- 2.14 If it follows from the record referred to in Clause 2.13 or if it becomes clear upon return of the Goods that they have defects, are damaged or incomplete or that the leased Goods have not been cleaned or have been cleaned inadequately, or at least deviate from the condition in which the leased Goods were made available at the start of the lease, Neptunus will be entitled to charge the Customer for the related costs. The Customer will in any event be charged for cleaning costs for any paint, tape or self-adhesive stickers it has applied to the Goods. In case of missing items with regard to all or part of the Goods, Neptunus's and its sub-suppliers' stock counts are binding.
- 2.15 In the event of early termination of the Agreement, the Customer must allow Neptunus to take back the Goods upon first request, and the Customer will owe Neptunus all remaining rent instalments, plus the dismantling costs (including but not limited to transport).
- 2.16 During the lease period, the Customer is prohibited from permanently fixing the Goods to immovable property, including the land. In respect of Semi-Permanent Lease, the foregoing will only be permitted with the prior written consent of Neptunus. If the Customer violates this prohibition, it will not become the owner of the leased Goods, as the parties intend by the Agreement only temporary use of the leased Goods on site. The leased Good are only erected on the property for a temporary purpose (§ 95 BGB). The leased Goods shall be deemed movable property and therefore remain the property of Neptunus.
- 2.17 If the Customer is also the owner of the land on which the leased Goods will be placed, the Customer hereby irrevocably authorises Neptunus to establish a dependent leasehold, whereby Neptunus will receive the leasehold for the same period as the present rental agreement (including any extension thereof). The purpose of establishing the leasehold is to establish that Neptunus is and remains the legal owner of the leased Goods.
- 2.18 If the Customer is not the owner of the land on which the leased Goods will be placed, the Customer declares that he has concluded a leasehold agreement or rental agreement or any other agreement concerning the right to use the land with the owner of the land for the same period as this Agreement. The Customer shall provide Neptunus with a copy of this lease agreement. Neptunus is authorised at any time to conclude an agreement with the owner of the land regarding the transfer of the rent claim to Neptunus. In addition, Neptunus is authorised at any time to contact the owner of the land directly to clarify whether the mortgagee, if any, has given its consent to the leasehold or rental.
- 2.19 If insulated roof tarpaulins are used, the following applies. The roof covering consists of double-walled PVC tarpaulin with air chambers. Pressure in the air chambers is kept constant by means of air pumps. The Customer is obliged to provide a necessary fixed 230Volt (500watt/2.4 amperes) electricity connection for each air pump at the respective connection points. The air pumps used to keep the roof pressurised are equipped with an acoustic alarm, which goes off the moment there is insufficient pressure in the air chambers and/or in case of power failure. If the alarm goes off, the Customer is obliged to immediately inspect for power failure. If the Customer is unable to solve the problem within one hour, it is obliged to contact Neptunus immediately.
- 2.20 If it has been agreed with Neptunus that a standby crew will be available, the following will apply. The Customer is responsible for providing the following at its own expense: (i) free parking and free access to the necessary areas; (ii) catering; and (iii) accommodation for the crew.

3. SALE

- 3.1 The delivered Goods will comply with the legal requirements relating to the Goods and with the specifications as stated in the offer, order confirmation or Agreement. These guarantees are the only guarantees that Neptunus provides in relation to the Goods.
- 3.2 In the event of sale, hire purchase (*Ratenkauf*) or financial lease, Neptunus retains ownership of the Goods delivered by it until the Customer has fulfilled all its obligations under the Agreement, as well as any compensation payable by it in respect of the delivery in question. The risk for such Goods will pass to the Customer from the time of delivery.
- 3.3 As long as the Customer has not yet fulfilled all its obligations under the Agreement as referred to in the preceding paragraph, the provisions of Clauses 2.17 to 2.18 will apply mutatis mutandis, on the understanding that the right of superficies will lapse as soon as all obligations have been fulfilled.
- 3.4 Delivery of the Goods purchased by the Customer will be EXW (Ex Works) Incoterms 2020 at the location described in the Agreement.

- 3.5 The Customer is responsible for all import and export duties, local, national and international taxes and charges relating to the purchase and delivery of the Goods.
- 3.6 Goods (including materials) offered by Neptunus may include used Goods, provided that such used Goods are in good condition or as named in the offer/Agreement.
- 3.7 The Customer is obliged to check or have checked upon delivery whether the Goods comply with the Agreement, and in the event of defects and/or missing quantities of Goods, the Customer shall notify Neptunus in writing within five (5) days and shall report any defects not apparent during the inspection in writing within the same period after discovery. If the Customer fails to carry out the proper inspection and/or notification of defects, Neptunus's liability for the defect that was not reported or not reported in a timely or proper manner is excluded in accordance with the statutory provisions, Section 377 of the German Commercial Code (HGB).

4. SERVICES

- 4.1 In case of lease of the Goods, the Customer is obliged to have the installation (assembly and disassembly) of the Goods carried out by Neptunus or a third party engaged by Neptunus. Under no circumstances will the Customer be entitled to install the leased Goods itself. These Services and the intended date of installation will be specified in the Agreement. Unless agreed otherwise in writing, assembly and disassembly will always take place on business days (Monday - Friday). Additional labour and other costs and surcharges may be charged for work on weekends and/or public holidays.
- 4.2 The Services described in the Agreement are best efforts obligations, not obligations to achieve a result, except to the extent explicitly provided otherwise in the Agreement (including but not limited to the date by which the Goods must be installed).
- 4.3 Repairs to the leased Goods will be carried out by Neptunus or a third party to be engaged by Neptunus. Without Neptunus's prior written consent, the Customer may not carry out any repairs/maintenance or have a third party carry out repair work. Interim maintenance work, inspection and repairs to the Goods will be at the Customer's expense, unless expressly agreed otherwise. If the defect or damage to the leased Goods are of such a nature that, in the opinion of Neptunus, repair cannot reasonably be required, the Customer will – to the extent reasonably possible – be entitled to replacement of the relevant Goods for the remainder of the term of the Agreement. In that case, the costs of dismantling and removing the defective Goods and the costs of transporting and installing the replacement Goods will be borne by the Customer. During the period in which the Goods cannot be used as a result, the Customer's payment obligation will apply in full. Minor repairs, including but not limited to keeping the gutters clear, must be carried out by the Customer at its own risk and expense. In case of doubt as to whether certain maintenance qualifies as minor repairs, the Customer should contact Neptunus in advance.
- 4.4 If installation, maintenance and/or repair Services take place or in case of inspections, the Customer (or a person designated by the Customer) must be present upon commencement of the Services to determine, among other things, and if applicable, the exact location for placement of the Goods in consultation with Neptunus's foreman. Neptunus is entitled to reject the location at any time at its discretion, which it will not do on unreasonable grounds.
- 4.5 If any machinery (such as forklifts) is made available by the Customer for the performance of the Services, the Customer guarantees that it complies with the legal requirements and Neptunus's technical requirements, is adequately insured and inspected, and is free of defects. The insurance excess must have been paid off by the Customer. Necessary consumables such as diesel shall be provided by the Customer and shall be invoiced through the Customer at the Customer's expense.

5. OBLIGATIONS OF THE CUSTOMER

- 5.1 The Customer must, at its own risk and expense, ensure that the location where the Goods are to be installed: (i) is physically suitable for the installation, which in any case includes soil conditions; (ii) complies with the relevant requirements and applicable laws and regulations; and furthermore (iii) that all necessary permits and permissions to access the location for the performance of the Services have been obtained in a timely manner, that all facilities that are necessary are present and that the necessary precautions have been taken to enable the safe performance of the Services.

- 5.2 The Customer must ensure that the location where the Goods will be delivered is accessible from the public road for large and heavy vehicles such as lorries and forklifts, is completely free of obstacles, and, if installation is to be carried out by Neptunus, is levelled and provided with the necessary and agreed foundation so that Neptunus can start placing the Goods without any additional work, and that public areas are kept free during assembly and disassembly of the Goods. Unless provided otherwise in the Agreement, the Customer must ensure that the premises are properly traversable (or made passable by means of driving plates) for lorries, cranes, forklifts and other working equipment. Neptunus is not responsible for any damage to the premises or paving. If the premises are inaccessible or unsuitable, for instance due to weather conditions, the Customer must provide replacement premises, in the absence of which Neptunus will be entitled to suspend performance of its obligations, without prejudice to Neptunus's right to payment and without any claims on the part of the Customer.
- 5.3 On-site anchoring must be possible by means of ground anchors. If anchoring is not possible using ground anchors up to 2 metres, this may result in additional costs.
- 5.4 All trade taxes and levies levied in relation to the leased Goods, will be borne by the Customer, regardless of whether such charges and taxes are levied or collected from the Customer or Neptunus. If and to the extent that such charges and taxes are levied or collected from Neptunus, the Customer will be obliged to pay them at Neptunus's first request. The Customer will indemnify Neptunus against any claims of third parties towards Neptunus in connection with the aforementioned business charges and taxes.
- 5.5 Unless otherwise provided for in the Agreement, the Customer must ensure, at its own expense, that the prescribed fire alarm and evacuation systems and other fire prevention facilities (fire extinguishers, emergency lighting and emergency exit signs) are installed and kept ready for use. The Customer is obliged to inform the responsible official bodies regarding the intended construction of the Goods and – if required – to make an appointment for technical inspection, which must take place in the presence of a representative of Neptunus. The Customer, being aware that this drawing and/or calculation contains proprietary and confidential information as referred to in Clause 12 of these General Terms and Conditions, is obliged to observe confidentiality (and return said items) and must ensure that the drawing and/or calculation is used exclusively for the purposes of technical inspection. Any costs for the structural drawing and/or calculation will be further specified in the Agreement.
- 5.6 Unless otherwise provided for in the Agreement, the Customer must, at its own expense, ensure that there are toilets, site huts and storage containers available for own use (including by Neptunus) on the premises where the Goods are placed and the Services are performed. The Customer will also, at its own expense (including but not limited to usage costs), arrange for connection, supply, disposal and removal of electricity, water and utilities required during the Services, and a connection up to the meter cupboard, including the application for, installation and costs of necessary meters. Costs in connection with rainwater drainage and sewerage, any required ring main and connection to the down pipe of the rainwater drainage are at the expense (and responsibility) of the Customer. Repair costs and/or replacement costs of recesses made in floors and walls for the purpose of pipes will be charged to the Customer. Any facilities installed in the ground will not be removed by Neptunus and are the Customer's responsibility.
- 5.7 If excavation work and/or ground drilling in connection with anchoring is to take place, the Customer must ascertain in advance from the pipeline manager the exact location of cables and pipelines (including gas, water, electricity, heating and communication) and the Customer must submit drawings thereof to Neptunus. The Customer is responsible for making the necessary pipeline information, obtaining any necessary permits and permissions under private law as well as for any fees or charges due. The Customer indemnifies Neptunus against any third-party claims towards Neptunus in connection with damage caused to cables and pipelines or other materials located in the ground, or for not having the necessary permits or permissions.
- 5.8 Unless provided otherwise in the Agreement, the Customer must, at its own expense, provide a clear drawing showing where the Goods are to be placed. The Customer must be present at the commencement of the construction work and indicate the exact location. The Customer indemnifies Neptunus against third-party claims towards Neptunus in connection with the placement and presence of the Goods.

- 5.9 The Customer must ensure that the premises are properly locked and guarded against theft during the performance of the Services.
- 5.10 Unless otherwise stipulated in the Agreement, the Customer must provide a space for the storage of packaging and other materials available at or near the said location. If the Customer fails to comply with this, Neptunus will charge the Customer additional transport and storage costs as well as handling costs.
- 5.11 The Customer must inform Neptunus of the specific laws and regulations applicable at the location, including but not limited to Safety, Health and Environment provisions.
- 5.12 Any delay incurred as a result of the Customer's failure to comply with the provisions of this Clause 5 and/or which can be attributed to the Customer will be at the risk and expense of the Customer, and the Customer indemnifies Neptunus against any damage suffered as a result of non-compliance.
- 5.13 In case of installation, repair and/or maintenance Services, the Customer must, at its own expense, make a waste container of sufficient capacity (as required by Neptunus) available on the premises where the Goods are located.
- 5.14 The Customer must take out Construction All Risk ("CAR") insurance for the duration of the Services in accordance with the conditions customary among German insurance companies and must do so with a reputable insurance company. This CAR insurance policy must be governed by German law and Neptunus must be co-insured and registered as a direct beneficiary for damages. The sections of work, liability and damage to existing property must be insured under the CAR insurance policy. The concept of property damage must include damage caused by pollution at the work site. The insured limit will be specified in the Agreement. The Customer must provide Neptunus with the underlying insurance policy and a statement of payment of the premium prior to commencement of the Services. In case of Semi-Permanent Lease CAR insurance can be offered by Neptunus (against payment).

GENERAL CONDITIONS

6. AGREEMENTS

- 6.1 All prices stated in offers made by Neptunus are valid for a maximum period of 8 weeks, unless otherwise expressly agreed in writing. Unless explicitly stated, all offers are made without obligation, subject to prior letting, and do not constitute a binding agreement.
- 6.2 An order submitted by the Customer does not constitute a binding Agreement. A binding Agreement between the Customer and Neptunus is only formed upon Neptunus providing a written confirmation of the order or the contract. If the Customer does not raise any objections within eight (8) days of receiving the confirmation, the confirmation shall be deemed to accurately and fully reflect the terms of the Agreement.
- 6.3 Offered Goods will be exclusively reserved for the Customer only after receipt of the signed confirmation together with the first contractually agreed payment instalment.
- 6.4 Any changes to the Agreement, after its conclusion, must have been notified to Neptunus in good time and in writing. Changes will only apply after written confirmation by Neptunus. Any change that causes an increase in costs compared to the price offer will result in extra charges.
- 6.5 Neptunus reserves the right to carry out additional work and charge the Customer for such additional work, even if such work is not specified in this Agreement, provided that such work is in the interest of the proper execution of the Agreement. Neptunus will inform the Customer of such additional work in writing in advance, unless its urgent nature prevents it. Additional work not described in the Agreement will be invoiced at the costs/rates applicable at that time, including but not limited to those relating to man-hours and kilometres, subject to reasonableness and fairness.

7. PRICES

- 7.1 The prices for the lease and/or purchase of the Goods and performance of the Services are as described in the Agreement, reflecting the conditions applicable at the time of conclusion of the Agreement, and unless stated otherwise in the Agreement, are in Euros. Prices for installation Services are based on the assumption that assembly and disassembly work is carried out in a single phase. If this work takes place in several phases, Neptunus reserves the right to charge the Customer a surcharge. The Customer will also be charged a surcharge for work performed on a Saturday, Sunday or a public holiday in Germany.

- 7.2 Payment must be made at the time described in the Agreement/according to the instalments defined in the Agreement or, if no payment term has been agreed on, within ten (10) days from the invoice date.
- 7.3 All prices quoted by Neptunus are exclusive of VAT, packaging or shipping costs and/or taxes, duties or charges otherwise imposed in respect of the Goods and/or Services, unless agreed otherwise in the Agreement.
- 7.4 Unless otherwise agreed in writing, all charges and costs for the required energy and water as well as any tax and/or other levies imposed by the government will be borne by the Customer.
- 7.5 Prices in offers apply only to the quantities and/or materials specified therein.
- 7.6 Changes to quoted prices are expressly reserved by Neptunus. Neptunus is entitled to charge substantial increases (of more than five per cent (5%)) in the cost price, including but not limited to labour costs, personnel costs, material costs, energy and raw material costs, transport costs, fuel costs and other levies or taxes, on to the Customer, even after the conclusion of the Agreement, but before the entire delivery or dismantling has taken place.
- 7.7 Neptunus reserves the right to increase the rent for the Goods annually in accordance with the increase in the Consumer Price Index for Germany, published by the Federal Statistical Office at the then applicable base year. This indexation will take effect on 1 January following the year in which the Agreement took effect. The basis is the percentage change in the CPI for the month of handover of the Goods.

8. PERFORMANCE OF THE AGREEMENT

- 8.1 All delivery dates are always given by Neptunus by approximation and are not binding, unless the Agreement expressly provides otherwise (namely that the agreed delivery term and/or delivery date is an irrevocable deadline). The delivery period commences as soon as the order confirmation has been sent and all information, drawings and materials required by Neptunus have been provided to it by the Customer. Exceeding the delivery date will never release the Customer from its obligations under the Agreement, except in case of undisputed or legally established counterclaims of the Customer against Neptunus, or in case of Force Majeure, nor will it entitle the Customer to claim dissolution of the Agreement or compensation.
- 8.2 On the date on which the Customer receives the Goods, the Goods are fit for normal use for the purpose for which they are intended, are free of material and manufacturing defects and meet the specifications mentioned in the Agreement in all essential respects. The Goods are delivered without any other guarantees, express or implied. After delivery and/or placement of the Goods by Neptunus, a handover record describing and recording the condition of the Goods will be drawn up and signed by the Parties, which record will form part of the Agreement.
- 8.3 The Customer must ensure that the premises are suitable for Neptunus to carry out the Agreement. The Customer must also ensure that its employees or third parties that carry out work on its instructions do not cause any delays to Neptunus's work. If any delays do occur for the aforementioned reasons, the costs thereof will be borne by the Customer.
- 8.4 If, during the performance of the Agreement, it turns out that the work cannot be performed due to circumstances unknown to or beyond the control of Neptunus (including but not limited to Force Majeure), Neptunus will be entitled to demand that the Agreement be changed in such a way as to make performance of the work possible, to which the Customer will grant its cooperation upon first request. Neptunus is entitled, without notice or consultation being required, to subcontract the Agreement or part thereof to or have it performed by third parties, if Neptunus believes that this will promote the proper and efficient performance of the Agreement.
- 8.5 If the Customer fails to strictly comply with any obligation arising for the Customer from the Agreement with Neptunus, Neptunus will always have the right to suspend performance of the Agreement and/or dissolve it in whole or in part, while retaining its right to compensation and its other rights, including but not limited to the right to payment of the agreed amounts.
- 8.6 In the event of Force Majeure ("**Force Majeure**"), including but not limited to war, mobilisation, extreme weather conditions, (in particular strong) winds, frost delays, transport disruptions, fire, breakdown of machinery, strikes, non-delivery of necessary materials and semi-finished products to Neptunus by third parties, acts of war and other unforeseen circumstances that disrupt the normal course of business

and/or delay or reasonably render the performance of the Agreement impossible, Neptunus will be released from its obligation to perform, without the Customer being able to assert any claim to compensation for costs, damage or interest on that account. In the event of Force Majeure, Neptunus will immediately give notice thereof to the Customer after which the Customer will have the option, within five (5) days after receiving such notice, to dissolve the Agreement in writing subject to the obligation to reimburse Neptunus for the part of the Agreement carried out, as well as the costs still to be incurred by Neptunus in connection with the Agreement, insofar as such costs are reasonable and unavoidable, and can be substantiated by underlying invoices, including but not limited to the costs of disassembling the accommodation.

- 8.7 The Customer will at all times perform its obligations under the Agreement with due observance of the applicable laws and regulations. The Customer must make prior enquiries regarding permits, decisions and exemptions required in the context of the Agreement (including but not limited to those in connection with the assembly and use of the leased Goods) and will, at its own expense, apply for, obtain and retain such during the lease period. This obligation also includes any soil survey and cone penetration tests to be carried out by the Customer at its expense. Any withdrawal or failure to obtain permits, decisions and/or exemptions will be at the risk and expense of the Customer, will not be considered a defect in the leased Goods, and will not entitle the Customer to dissolve the Agreement or any other claim (in or out of court) towards Neptunus. In that case, the Customer will continue to owe any fees or other payments described in the Agreement. The Customer indemnifies Neptunus against any damage and/or claims resulting from a breach of this Clause 8.7.
- 8.8 All notices and communications under these General Terms and Conditions and/or the Agreement will be made by letter, fax or e-mail to the addresses/fax numbers/e-mail addresses communicated to each other by Neptunus and the Customer in the same written form.

9. COMPLAINTS AND WARRANTIES

- 9.1 Visible defects must be included in the acceptance record upon delivery. Invisible defects must be reported in writing immediately upon their discovery. Complaints thereafter will be considered to be out of time and will not be accepted. Any defects justifying partial dissolution will not entitle the Customer to demand full dissolution.
- 9.2 If Neptunus accepts a defect in the delivered Goods, it will, at its own discretion, either redeliver the Goods free of charge, repair the defect or offer the Customer a price reduction, all in mutual consultation with the Customer. For the determination of a defect, the Customer will give Neptunus all desired cooperation and opportunity to investigate on site or have a third party investigate the quality of the performance rendered. If the Parties do not agree on the existence of the defect, Clause 16 applies.
- 9.3 Neptunus does not accept any responsibility for defects caused by or in connection with the delivered Goods through the fault of third parties or the Customer, or due to external causes. Neptunus is never responsible for any defects caused by improper or careless use or use that is not in accordance with the intended use.

10. LIABILITY

- 10.1 Claims for damages due to the simple negligent breach of an essential contractual obligation (an obligation, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely) are limited to compensation for damage that is typical for the Agreement or reasonably foreseeable.
- 10.2 Neptunus's liability for any other reason is limited to the amount that Neptunus receives under its business liability insurance from the insurer with regard to the damage or loss for which it is held liable by the Customer.
- 10.3 If, for whatever reason, the insurer does not pay out, Neptunus's liability will in any event be limited to the amount the Customer owes Neptunus under the Agreement.
- 10.4 Under no circumstances will Neptunus be liable to the Customer for any special, consequential, indirect, punitive damages or incidental damage or loss, including all damage or loss other than damage to the Goods itself, such as damage to other goods, loss on the part of the Customer's customers, loss due to

business interruption, lost profits, lost savings, increase in operational costs, loss of customers etc., only to the extent that such damage is typically to be expected when the items are used as intended.

- 10.5 The aforementioned limitations and exclusions will not apply insofar as the damage or loss in question was caused by intent or gross negligence on the part of Neptunus or concerns injury to life, limb or health or concerns mandatory liability under the Product Liability Act.
- 10.6 The above exclusions and limitations apply to the same extent in favour of Neptunus's group companies, legal representatives, employees and other vicarious agents.
- 10.7 Complaints regarding specific work or deliverables do not suspend the Customer's payment obligation.
- 10.8 Legal claims and defences based on facts that would justify the assertion that the Customer has suffered damage for which Neptunus is liable will lapse by operation of law after a period of one year from the day on which the damage arose or should have been discovered.
- 10.9 The Customer is obliged to indemnify Neptunus and hold Neptunus harmless against all claims for damages instituted by third parties against Neptunus in respect of damage caused by or with the delivered Goods, by whatever name, unless such damage is attributable to Neptunus.

11. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

- 11.1 Neptunus reserves all rights in respect of intellectual property rights vested in it and has the exclusive right to disclose and reproduce copyrighted works (such as drafts, drawings and designs) produced by Neptunus. No intellectual property rights are transferred to the Customer and no licence is granted to the Customer.
- 11.2 Neptunus retains the copyrights with regard to the designs, drawings, sketches and calculations designed or created by it, even if such was done on the instructions of the Customer.
- 11.3 The Customer undertakes to use the supplied designs, drawings, sketches and calculations only for its own purposes under the Agreement and to not make them available to third parties in any way, either against payment or free of charge.
- 11.4 If the Customer prescribes the use of any intellectual property rights, the Customer guarantees that the use thereof by the Customer will not infringe the intellectual property rights of a third party. The Customer indemnifies Neptunus against any claims by third parties in this regard.

12. CONFIDENTIALITY

- 12.1 The Customer guarantees the confidentiality of Neptunus's trade secrets and business-specific information, including but not limited to any intellectual property rights, Neptunus's company logo, visual materials and construction manuals.
- 12.2 The Customer will not acquire, use or disclose Neptunus's trade secrets outside the scope of the Agreement and will keep them confidential.
- 12.3 The Customer will disclose the trade secrets only to its employees, affiliated companies, independent contractors or other (third) parties that need to know such information in order to perform the Customer's rights and obligations under the Agreement, and on the condition that such employees, affiliated companies, independent contractors or other (third) parties have entered into a confidentiality obligation in the form of a written agreement not to acquire, use or disclose the trade secrets, which agreement will be no less restrictive or less extensive than this Clause 12. The Customer will be liable for any breach of this confidentiality obligation by the third party as if it had been committed by the Customer itself.
- 12.4 The obligation of confidentiality as defined in this Clause 12 will remain in force even after the end of the Agreement, as long as the confidential information has not lost its confidential nature and this information has not become public.
- 12.5 Upon termination of the Agreement, or earlier upon Neptunus's first request, the Customer will return Neptunus's confidential information and any copies thereof to Neptunus no later than five (5) days after the Agreement is terminated or the request for return is made, whichever occurs earlier. The Customer will then confirm to Neptunus in writing that all confidential information has been returned. Notwithstanding the return of the confidential information, the Customer remains bound to keep it confidential in accordance with this Clause 12.

13. PROCESSING OF PERSONAL DATA

- 13.1 If and to the extent that personal data as referred to in the General Data Protection Regulation ("GDPR") is processed in the context of the Agreement, each Party will do so in accordance with the requirements applicable to that Party under the GDPR.
- 13.2 Each Party will, to the extent relevant, qualify as an independent controller within the meaning of the GDPR.

14. PAYMENT

- 14.1 All payments must be made in accordance with the payment terms specified in the Agreement, net without any deduction, suspension or setoff.
- 14.2 If the performance of an Agreement extends over a period of more than one month or if, in Neptunus's opinion, the amount owed in respect of the contract qualifies for it, it may demand advance payment or payment in instalments.
- 14.3 Neptunus is entitled, regardless of the agreed payment condition, to require security for payment during the performance of the Agreement, including but not limited to a bank guarantee originating from a banking institution accepted by Neptunus, which the Customer will comply with on first request. The bank guarantee must be and remain valid until Neptunus has collected the Goods, and for a period of three months thereafter. If the Customer fails to provide security or provides insufficient security, Neptunus will be entitled to suspend the Agreement or to dissolve it with immediate effect.
- 14.4 If the payment deadline is exceeded, all amounts owed to Neptunus by the Customer will become immediately due and payable and the Customer will owe interest on the invoice amount of 1% per month or part of a month, commencing on the day the invoice amount falls due. If and to the extent that the statutory commercial interest rate is higher than the percentage stated here, the statutory interest rate will be calculated.
- 14.5 All judicial and extrajudicial costs incurred by Neptunus to enforce its rights will be borne by the Customer. These costs will be at least 15% of the amount claimed with a minimum of EUR 100.
- 14.6 If the Customer is in default of its payment obligations, Neptunus reserves the right to suspend its activities, which means that Neptunus will not resume its work until the Customer has fulfilled its obligations, notwithstanding Neptunus's other rights, including but not limited to the right to compensation should the Customer remain in default. If the cause of the late completion of the work is due to non-compliance with payment obligations, Neptunus will not bear any responsibility for the late delivery.
- 14.7 If the Customer has failed to pay, Neptunus reserves the right to invoke dissolution of the Agreement with immediate effect and to take back what has already been performed, holding the Customer liable for all damage resulting from the failure to meet the payment arrangements or to do so on time, including but not limited to the costs of dismantling and transporting the Goods.

15. TERMINATION BY NOTICE AND DISSOLUTION OF THE AGREEMENT

- 15.1 If the Customer fails to properly fulfil one or more obligations under the Agreement towards Neptunus, Neptunus will be entitled to dissolve the Agreement in whole or in part with immediate effect by means of a written statement, all this without prejudice to the right to compensation.
- 15.2 Neptunus is authorised to dissolve the Agreement with immediate effect, without prejudice to its other rights, if the Customer applies for suspension of payments, is declared bankrupt or resolves to fully or partially cease or transfer the Customer's business.
- 15.3 In the event of dissolution of the Agreement as described in Clauses 15.1 and 15.2, Neptunus will be authorised to disassemble and remove the Goods with immediate effect, regardless of whether there is any third-party property present in the leased Goods at that time.
- 15.4 The Customer is entitled to cancel/terminate the Agreement in writing by registered letter before commencement of the Work. In that case, the Customer will owe a cancellation fee equal to a percentage of the price agreed in the order confirmation, which percentage will be determined as follows:
- for cancellation more than 120 days before commencement of the Work: 20%

- for cancellation within 120 - 61 days before commencement of the Work: 40%
- for cancellation within 60 - 31 days before commencement of the Work: 60%
- for cancellation within 30 days before commencement of the Work: 80%

This cancellation fee applies if and insofar as no work has been performed and/or investments have been made by Neptunus or its subcontractors. If it has, the Customer will be obliged to additionally pay Neptunus the specific costs thereof (such as, for example, designs, logos, etc. made specifically at the Customer's request).

- 15.5 The Parties expressly waive the right to terminate and/or dissolve this Agreement, except to the extent not permitted by law, or to the extent that the Parties have expressly agreed otherwise in writing.

16. APPLICABLE LAW AND DISPUTES

- 16.1 All Agreements and transactions of Neptunus are governed exclusively by German law. Applicability of the U.N. Convention on Contracts for the International Sale of Goods is explicitly excluded.
- 16.2 The place of jurisdiction for all disputes, arising directly or indirectly from the contractual relationship is Düsseldorf.

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