

## General Terms and Conditions of Business of Calenberg Ingenieure GmbH

### § 1 Scope of application

(1) The following General Terms and Conditions of Business (GTC) govern the contractual relationship between Calenberg Ingenieure GmbH, Am Knübel 2-4, 31020 Salzhemmendorf, Germany (*Contractor*) on the one side and entrepreneurs, legal entities under public law or special funds under public law („öffentlich-rechtliches Sondervermögen“) in terms of § 310 subs.1 BGB (German Civil Code) as *Clients* on the other side. They apply to all goods offered by Calenberg Ingenieure including but not limited to those belonging to the business areas structural bearings/statics, vibrations/dynamics, railway construction, noise protection and environment protection. We hereby explicitly reject any conflicting or supplementary terms and conditions of the Client as well as any such terms and conditions of the Client that deviate from ours. They do not even apply if the Client has based its purchase order or other declaration on them. So we only accept any conflicting, supplementary or deviating GTC if we explicitly agree to their application in writing („Schriftform“).

(2) Our GTC also apply to all future transactions with the Client provided these are legal transactions of a similar kind.

### § 2 Offer and contract conclusion

(1) Our offers for contract conclusion are subject to change and without engagement unless they are explicitly referred to as binding or they stipulate a fixed time limit for acceptance. We are free to accept purchase orders or proposed engagements within fourteen days from receipt („Zugang“<sup>1</sup>).

(2) The legal relationships between us and our Client are exclusively and conclusively governed by the written sales contract and these GTC. They contain and fully reflect the entire understanding between the contracting parties regarding the subject matter of the contract. Oral warranties or covenants, if any, given by Calenberg Ingenieure GmbH prior to the conclusion of this agreement are non-binding in legal respect and any oral arrangements between the contracting parties are deemed to be superseded by the written contract unless it is explicitly made clear in the oral arrangements that they are meant to bindingly continue in force.

(3) Changes and amendments to the arrangements made between the parties including these GTC must be made in written form („Schriftform“) to be valid. The written form requirement is deemed satisfied by transmission by telecommunication means including but not limited to transmission by fax or email provided that a copy of the signed declaration or notice is transmitted.

(4) Any information Calenberg provides with regard to the goods to be delivered or service to be provided (e.g. weights, dimensions, utility values, load carrying capacity, tolerances and technical data) as well as any presentations of said goods or services (e.g. drawings and illustrations) are only approximate unless absolute compliance is required to ensure the usability of the goods or services for the contractually agreed purpose. The said information and presentations do not constitute warranted qualities but mere descriptions or specifications of the goods or services in question. Deviations that are usual in trade as well as deviations that are due to legal regulations or constitute technical improvements as well as the substitution of components by parts of equal quality are permitted if and to the extent they do not impair their usability and fitness for the contractually agreed purpose.

(5) We reserve title and all copyrights to the offers and cost estimates we have issued and to any drawings, illustrations, calculations, prospectuses, catalogues, models, tools and other documents and auxiliary means we have provided to the Client. The Client is neither allowed without the explicit consent of the Contractor to make them physically available or disclose them or their content to third parties nor is the Client allowed to use copy or reproduce them or their content by itself or through third parties. The Client, upon our request, is obliged to return these items completely and destroy any copies made thereof provided they are no longer required by the Client in the ordinary course of business or if negotiations have not led to contract conclusion. This does not apply to the storage of data that has been transmitted electronically for the purpose of ordinary data backup.

### § 3 Delivery & Delivery time

(1) Deliveries are made ex works.

(2) Delivery times and dates for deliveries and services indicated by the Contractor always are mere approximate ones unless a fixed time limit or date has been explicitly promised or agreed. If dispatch by the Contractor has been agreed, the delivery times and dates refer to the time of hand-over to the forwarder, carrier or other third parties commissioned to carry out the transport.

(3) The Contractor, notwithstanding its rights in the case of default of the Client, may request from the Client the extension of the times for delivery or service provision or the deferral of the dates for delivery or service provision by the period during which the Client fails to comply with its contractual obligations vis-à-vis the Contractor.

(4) The Contractor is not liable for impossibility of delivery or delay in delivery if and to the extent this is due to force majeure or other incidents which were not foreseeable upon contract conclusion (e.g. all kinds of operational disturbances, difficulties in material or energy procurement, delay in transport, strike, lawful lock-out, shortage of labour, energy or raw material, difficulties in obtaining

necessary permits from the authorities, measures taken by the authorities or omitted, incorrect or late supply by suppliers) and are not attributable („nicht zu vertreten haben“) to the Contractor. If any such incidents considerably impede the delivery or service provision or render it impossible and the impediment is not only temporary, the Contractor is entitled to withdraw from the contract. In the case of mere temporary impediments, the times for delivery or service provision will be extended or the dates for delivery or service provision will be deferred by the duration of the impediment plus a reasonable start-up time. If and to the extent the Client, in view of the delay, cannot reasonably be expected to still accept delivery or service provision, the Client may withdraw from the contract by written notice to the Contractor given without undue delay („unverzüglich“).

(5) The Contractor is entitled to make partial deliveries, if

- the partial delivery is reasonably usable by the Client for the contractually agreed purpose,
- delivery of the remaining goods ordered is secure and
- the Client does not incur considerable additional expenses, costs or efforts (unless the Client agrees to bear such costs).

(6) If the Contractor is in default of delivery or if delivery or service provision is rendered impossible, regardless of the reason, the Contractor's liability for damages is limited according to § 7 of these GTC.

### § 4 Prices and payment

(1) The prices refer to the scope of delivery and service provision specified in the order confirmations. Additional or special services will be charged separately. Prices are in EUROS, ex works and exclusive of packaging, statutory value-added tax, customs duties in the case of export deliveries and also exclusive of fees and other public charges, all of which have to be paid on top.

(2) If and to the extent the agreed prices are based on the Contractor's list prices and delivery is intended to be made more than four months after contract conclusion, the list prices valid at the time of delivery will be charged.

(3) The invoice amounts are due and payable immediately without deductions unless otherwise agreed in writing. The date of payment is deemed to be the date of receipt of the payment by the Contractor. Payment by cheque is impermissible unless specifically agreed from time to time. If the Client fails to pay upon maturity, interest in the amount of 5% p.a. has to be paid on the outstanding amounts from the due date; this is without prejudice to the Contractor's right to claim higher interest and further damages in the case of default.

(4) The Client is only entitled to set off counter-claims or withhold payment in view of such counter-claims if and to the extent the counter-claims are undisputed or have been established by a final non-appealable court decision (*res judicata*).

(5) The Contractor is entitled to perform any outstanding deliveries or services only against prepayment or provision of security if the Contractor, after contract conclusion, becomes aware of circumstances that may substantially impair the Client's creditworthiness and endanger satisfaction of the Contractor's outstanding claims by the Client under the relevant contractual relationship.

### § 5 Place of performance („Erfüllungsort“), dispatch, packaging, passing of risk, acceptance and approval („Abnahme“)

(1) The place of performance („Erfüllungsort“) for all obligations under the contractual relationship is the place of our establishment unless agreed otherwise.

(2) The mode of dispatch and packaging is left to the Contractor's duly exercised discretion.

(3) The risk passes to the Client no later than upon hand-over of the goods to be delivered (whereby the commencement of the loading process is decisive) to the forwarder, carrier or other third party commissioned to carry out the dispatch. This also applies if partial deliveries are made or the Contractor has agreed to provide additional services, too (e.g. dispatch or installation). If dispatch or hand-over is delayed for reasons the cause of which lies within the Client's sphere, the risk is deemed to pass to the Client from the day when the goods to be delivered are ready for dispatch and the Contractor has given notice thereof to the Client.

(4) Any costs of storage incurred for the time after the passing of risk are borne by the Client. If the Contractor stores the goods, the costs of storage will amount to 0.25% of the invoice amount charged for the goods to be delivered for each full week of storage. The right to evidence and claim higher costs of storage as well as the right to evidence that only less costs of storage have been incurred remain unaffected.

(5) The Contractor will insure the goods against theft, breakage, damage during transport, damage by fire or water or other insurable risks only upon explicit request by the Client and at the Client's expense.

### § 6 Warranty & defects in quality

(1) The warranty period is one year from delivery. This period does not apply to Client's claims for damages based on the injury of the life or limb or health or on intentional or grossly negligent breaches of duty by the Contractor or its vicarious

<sup>1</sup> A notice is deemed received („Zugang“ in terms of German law) if and as soon as it has come into the recipient's sphere in the way that the recipient can reasonably be expected to take note of it.

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agents or other persons engaged by it in the performance of its obligations („Erfüllungsgehilfen“), all of which are subject to the statutory limitation periods. If and to the extent the delivered goods, according to their regular application, have been used for a structure („Bauwerk“) and have caused the latter to become defective, the limitation period is five years.

(2) The Client is obliged to carefully inspect the delivered goods without undue delay („unverzüglich“) after their hand-over to the Client or a third party designated by the Client. The delivered goods are deemed accepted and approved by the Client with regard to obvious defects or other defects that could have been recognized on the occasion of careful inspection carried out without undue delay („unverzüglich“) if the Contractor has not received („Zugang“<sup>2</sup>) a written notice of defect within seven working days („Werktage“) from hand-over. In the case of defects other than the aforesaid, the delivered goods are deemed accepted and approved if the Contractor has not received („Zugang“<sup>3</sup>) notice of defect within seven working days („Werktage“) from the time when the defect has become obvious; however, if the Client, while regularly using the goods, could have detected the defect at an earlier point in time already, such earlier point in time will be decisive for the commencement of the time limit for giving notice of defect. The Client, upon the Contractor's request, is obliged to return any allegedly defective goods to the Contractor, carriage paid. If the complaint for defect is justified, the Contractor will reimburse to the Client the costs of the cheapest mode of dispatch; this does not apply if the costs are increased because the delivered goods are located at a place other than the originally intended place of use.

(3) If the delivered goods show defects in quality, the Contractor, at its choice made within a reasonable period, is first of all obliged and entitled to perform subsequent remedy („Nachbesserung“) or substitute delivery („Ersatzlieferung“). In the case of failure, i.e. if subsequent remedy or substitute delivery is impossible or unreasonable or rejected or unreasonably delayed, the Client is entitled to withdraw from the contract or reasonably reduce the purchase price.

(4) If the defect was caused by the Contractor's fault (intentional or negligent conduct), the Client is entitled to claim damages under the conditions stipulated in § 7.

(5) In the case of defects of components from other manufacturers which the Contractor, for reasons of licensing law or factual reasons, is unable to remedy, the Contractor will at its choice either assert its warranty claims against the manufacturer or supplier for the Client's account or assign such warranty claims to the Client. In these cases, the Client is only entitled to warranty claims against the Contractor if all other conditions are fulfilled and according to the provisions of these GTC if judicial enforcement of the aforesaid claims against the manufacturer and supplier has failed or is forlorn, e.g. because of the manufacturer's or supplier's insolvency. The running of the limitation period for the Client's warranty claims in question is suspended for the duration of the litigation.

(6) Warranty is deemed forfeited if the Client, without the Contractor's consent, has changed or modified the delivered goods by itself or through third parties and, as a result thereof, defect remedy is rendered impossible or unreasonably impeded. In any case, the Client is obliged to bear the additional costs of defect remedy incurred as a result of the change or modification.

(7) If delivery of used goods is agreed with the Contractor from time to time, any warranty for defects in quality of such used goods is excluded.

### § 7 Liability

(1) The Contractor's liability for damages, regardless of the legal basis, including but not limited to impossibility of performance, default, defective or wrong delivery, breach of contract, culpa in contrahendo and tort, is limited according to this § 7 if and to the extent to which fault (intentional or negligent conduct) is concerned.

(2) The Contractor is not liable for simple negligence („einfache Fahrlässigkeit“) by its officers, executive bodies („Organe“), legal representatives, employees, vicarious agents or other persons engaged by it in the performance of its obligations („Erfüllungsgehilfen“) if and to the extent the breach in question is not a breach of fundamental contractual duties („vertragswesentliche Pflichten“). Fundamental contractual duties are deemed to comprise the duty to ensure timeous delivery of the ordered goods, the non-existence of defects in title of such goods as well as the non-existence of such defects in quality as cause other than a mere minor impairment of their serviceability or usability as well as any duties to render advice, protect and take care that are meant to enable the Client to use the delivered goods or services as agreed in the contract or ensure the protection of the life or limb of the Client's personnel or the protection of the Client's property from major damage.

(3) If and to the extent the Contractor is liable for damages on the merits under § 7 (2), such liability is limited to the compensation of such damage as the Contractor has anticipated upon contract conclusion as a possible consequence of a breach of contract or could reasonably be expected to anticipate when exercising due diligence and care („verkehrsübliche Sorgfalt“). Moreover, indirect damage and consequential damage that result from defects of the goods delivered or services provided are only eligible for compensation if such damage is expected to typically occur in the context of the intended use of such goods or services.

(4) If the Contractor is liable for simple negligence („einfache Fahrlässigkeit“), the Contractor's obligation to compensate for damage caused to property and further

pecuniary damage resulting therefrom is limited to EUR 1,000,000.00 for each case of damage, even in the case of breach of a fundamental contractual duty („vertragswesentliche Pflicht“).

(5) The preceding exclusion and limitation of liability apply to the same extent in favour of the officers, executive bodies („Organe“), legal representatives, employees, vicarious agents of the Contractor or other persons engaged by the Contractor in the performance of its obligations („Erfüllungsgehilfen“).

(6) If and to the extent the Contractor provides technical information or renders advice and such information or advice is not part of the contractually agreed scope of performance which the Contractor is obliged to cover, such information or advice is rendered free of charge whereby any liability of the Contractor is excluded insofar.

(7) The limitations under this § 7 do not apply to the Contractor's liability for intentional conduct, warranted qualities, for injury of the life or limb or health and the Contractor's liability under the Produkthaftungsgesetz (German Product Liability Act).

### § 8 Reservation of title

(1) The delivered goods remain our property until all claims that have arisen or will still arise from the business relationship with the Client have been satisfied in full (goods subject to reservation of title). In the case of several claims or current account, the reservation of title is deemed to serve as security for the outstanding balance claim, even if some individual deliveries have already been paid.

(2) In the case of a breach of contract by the Client, e.g. default of payment, we are entitled, subject to prior grant of a reasonable period, to request return of the goods subject to reservation of title. If we request return of the goods, this will be deemed to constitute our withdrawal from the contract. We are then entitled to realize the goods subject to reservation of title after they have been returned to us. The proceeds from such realization, less a reasonable amount to cover the costs of the realization, will be set off against the debts owed to us by the Client.

(3) In the case of seizure of the goods subject to reservation of title by third parties, especially in the case of garnishment, the Client will make such third party aware of the fact that the goods are our property and notify us without undue delay („unverzüglich“) so as to enable us to safeguard and enforce our property rights.

(4) The Client is entitled to process and sell the goods subject to reservation of title in the ordinary course of business for as long as the Client is not in default. Pledging or transfer of title by way of security are impermissible. The Client already now fully assigns to us by way of security all claims relating to the goods subject to reservation of title that arise from the resale or are based on another legal cause (insurance, tort). We revocably authorize the Client to collect the claims assigned to us for the Client's account and in the Client's own name. The authority to collect is forfeited if and as soon as the Client fails to duly fulfill its payment obligations or gets into financial distress or execution is levied against the Client or judicial insolvency proceedings are instituted against the Client's assets or the opening of insolvency proceedings is rejected for insufficiency of assets.

(5) Processing or transformation of the goods is always deemed to be undertaken for us as the manufacturer but with no obligations on our part resulting therefrom. If the delivered goods are processed with other items not belonging to us, we will acquire co-ownership of and share title to the new item in the proportion of the value of the delivered goods to that of the other processed items at the time of processing. If the delivered goods are combined or inseparably mixed with other items not belonging to us, we will acquire co-ownership of and share title to the new item in the proportion of the value of the delivered goods to that of the other combined or mixed items. If, in the case of combination or mixture, the item of the Client is deemed to be the main item, the parties are deemed to have agreed that the Client transfers to us pro-rata co-ownership of the new item. The Client will retain the item so held in co-ownership for us and on our behalf.

(6) We are obliged to release the security provided to us to the extent that the realizable value of such security exceeds the claims to be secured by more than 10%; we will in our discretion determine those parts of the security that are to be released.

### § 9 Final provisions

(1) The place of performance („Erfüllungsort“) for all delivery obligations on our part and any other contractual obligations of both parties is the domicile of our establishment.

(2) This agreement and these GTC as well as all legal relationships between the Client and us are governed by the law of the Federal Republic of Germany with the exception of all references made to the laws of other countries, other legislations or international treaties. UN Sales law does not apply.

(3) The place of jurisdiction („Gerichtsstand“) for all disputes arising out of this contractual relationship is Hannover. We are however also entitled to sue the Client at the place of its business domicile.

<sup>2</sup> See foot note 1.

<sup>3</sup> See foot note 1.