

## General Terms and Conditions for Deliveries and Services

### 1. Scope, General Provisions

- 1.1 These General Terms and Conditions for Deliveries and Services ("Conditions") shall apply to (i) any and all deliveries ("Supplies") effected by BARTEC Top Holding GmbH or any of its affiliated companies (each of them "BARTEC") to the contracting party ("Customer"), and (ii) any and all installation services ("Installation Works") rendered by BARTEC to Customer, and (iii) any and all maintenance and repair services comprising in particular, but not limited to, services regarding preventive maintenance for the purpose of perpetuation of functionality and corrective maintenance involving the elimination of malfunctions to restore functionality, repair works and modifications, as well as recommissioning services ("Service Works") rendered by BARTEC to Customer, and (iv) any and all other services, including ancillary services and suggestions rendered by BARTEC to Customer (Service Works, Installation Works and any other services together "Works"; sales contracts, installation contracts and service contracts together "Contract").
- 1.2 The Conditions shall only apply in business transactions with entrepreneurs, legal entities governed by public law, and special trusts under public law as Customers. Within the scope of an ongoing business relationship, these Conditions shall apply to any and all future transactions with Customer.
- 1.3 Any conditions stipulated by Customer which are in contradiction with these Conditions shall not apply, unless expressly acknowledged in writing by BARTEC.

### 2. Offer and Conclusion of Contract; Scope

- 2.1 Offers issued by BARTEC are without engagement and non-binding, unless BARTEC expressly defines such offer as binding. They shall only initiate contract negotiations between Customer and BARTEC.
- 2.2 Any order issued by the Customer always constitutes a binding offer, unless expressly stated otherwise in the respective order. BARTEC may accept such order within two weeks as of receipt.
- 2.3 The Contract between BARTEC and Customer shall come into effect upon receipt of an order confirmation from BARTEC in writing (including email and fax) or if BARTEC commences the Supplies and/or the Works requested by Customer without reservation.
- 2.4 BARTEC may render Installation Works and Service Works with regard to products manufactured and/or delivered by itself ("BARTEC-Products") and/or third-party products (together with BARTEC-Products "Products"). Service Works only comprise the delivery of spare parts or any other replacement units ("Spare Parts") if expressly agreed upon in the respective Contract.
- 2.5 The exact scope of the Works to be performed by BARTEC (including any reaction time, if applicable) is conclusively laid down in the respective Contract entered into between BARTEC and Customer.
- 2.6 Data, images, weights and measures and other characteristics relating to the Supplies and/or Works, provided for in plans and/or technical documents by either BARTEC or Customer are only binding in so far as having been expressly stipulated as such.

### 3. Prices and Terms of Payment

- 3.1 Unless expressly agreed upon otherwise in the respective Contract, prices for Supplies are net prices plus statutory value added tax (VAT), if applicable, and shall apply ex works (EXW according to Incoterm 2010). Any ancillary costs (e.g. costs for carriage, packaging, freight, customs import) will be charged separately, unless expressly agreed upon otherwise.
- 3.2 Works shall be remunerated on an hourly basis in accordance with BARTEC's respective hourly rates made available to Customer, unless BARTEC and Customer agree upon a fixed price. However, in case a fixed price was agreed, such price does not include any additional work to the Works not provided for in a Contract. Such additional work is charged separately.
- 3.3 Unless expressly agreed otherwise in the Contract, payments under a Contract shall become due (without any deduction) within thirty (30) calendar days as of receipt of an invoice issued by BARTEC. BARTEC accepts payments via bank transfer. The date of receipt of payment to BARTEC's account shall be decisive for the timeliness of the payment by Customer.
- 3.4 Customer will only be entitled to any rights of retention provided that the counter-claims have been finally legally established or are undisputed.  
Further, Customer may only set off those claims against claims arising under or related to the Contract, that are (i) owed in the same currency and (ii) are undisputed or have been finally legally established.
- 3.5 If Customer is in default with its payment obligations under a Contract, BARTEC is entitled – notwithstanding BARTEC's other claims and rights due to Customer's payment default and irrespective of Supplies being paid in advance or in arrears – (i) to rescind the Contract at any time and (ii) to charge default interest immediately from the time of default without any further notice in the amount of the interest rates prevailing at the BARTEC's registered office. Customer's payment of default interest shall not release Customer from paying the amounts owed under a Contract.

- 3.6 Payment shall also be made if Works are delayed for reasons not attributable to BARTEC.

### 4. Retention of Title

- 4.1 BARTEC shall remain the owner of all Supplies delivered under a Contract, and, if applicable, of all Spare Parts provided by it, until any and all claims of BARTEC under a Contract are satisfied.
- 4.2 Customer undertakes to perform any and all acts which are necessary to preserve the effectiveness and validity of the retention of title to the Supplies and, if applicable, to the Spare Parts, in the country of destination, both with regard to BARTEC and with regard to third parties; for instance, in cooperation with BARTEC, Customer shall ensure the registration of the retention of title to the Supplies in the register for retention of title and/or an equivalent register.

### 5. Delivery; Time-Schedule for Delivery and Performances

- 5.1 All deliveries shall be made ex works (EXW according to Incoterms 2010) BARTEC's plant, unless expressly agreed upon otherwise in the Contract. BARTEC is entitled to partial deliveries to the extent reasonable for Customer.
- 5.2 All indications concerning delivery dates and time-limits set forth in a Contract are based on estimations and are not binding. Binding delivery dates, dates and time-limits (together "Time-Limits") have to be explicitly agreed upon as binding in writing in the respective Contract.
- 5.3 Time-Limits for Supplies agreed upon are met if BARTEC has notified Customer that the Supplies are ready for collection before expiry, even if Customer is unable to collect Supplies in due time without any fault of BARTEC. Time-Limits for Supplies are also complied with, even though parts are missing or readjustments still have to be made, if operation of the Supplies for the intended purpose is possible and unhindered. Time-Limits for Supplies are also subject to the proper and timely self-supply by BARTEC's suppliers. Further prerequisites for the compliance with Time-Limits for Supplies are the clarification of all technical questions by Customer, the presentation of the necessary permits and/or documents, and the timely fulfillment of any and all contributory obligations of Customer.
- 5.4 Time-Limits for Works agreed upon are met if the Works owed under a Contract have been completely rendered by BARTEC before expiry of the Time-Limits and are ready for Acceptance. Even in case Works are not fully completed because, e.g., parts are missing or readjustments still have to be made, Time-Limits shall also be considered to be met, if the unrestricted operation of the Products which are subject to the Works for the intended purpose is possible, provided that Customer is responsible for the circumstances leading to the only partial completion of Works. Further prerequisites for the compliance with Time-Limits for Works are the clarification of all technical questions by Customer, the presentation of the necessary permits and/or documents, and the timely fulfillment of any and all contributory obligations of Customer.
- 5.5 Time-Limits for Works agreed upon shall be suitably extended:  
- if the instructions of Customer required by BARTEC to carry out the Works are not provided in due time, or if Customer later changes such instructions; or  
- if Customer does not comply with its obligations set forth in the Contract, respectively if Customer does not or not timely comply with its obligations set forth in Section 8 of these conditions.

BARTEC's rights set forth in Section 9 shall remain unaffected.

- 5.6 If a Time-Limit is not complied with due to circumstances solely attributable to BARTEC, Customer's claims for damages and reimbursement of expenses shall be limited to 0.5 % of the net order value of the delayed Supplies and/or Works per each completed week of delay up to a maximum of 5 % of the net order value of the delayed Supplies and/or Works in total. Further rights and claims in respect of the delay, in particular the right to rescind the Contract and claims for damages, are excluded.
- 5.7 If collection of Supplies is delayed at Customer's request by more than one month after notice of the readiness for collection was given, for every week commenced, BARTEC may charge storage costs of 0.5 % of the price of the Supplies, up to a maximum of 5 % of the price of the Supplies. Both BARTEC and Customer are entitled to prove that higher or, as the case may be, lower storage costs have been incurred. If Customer fails to collect the Supplies within ten (10) weeks after the notice of readiness for collection, BARTEC is entitled – without prejudice to any further rights or remedies – to rescind the Contract. Any further claims for compensation of BARTEC shall remain unaffected.
- 5.8 If, after conclusion of the Contract, BARTEC is made aware of circumstances that cast reasonable doubt on the financial solvency and the creditworthiness of Customer, e.g. if payments have been suspended or a cheque has not been honoured, BARTEC is entitled to refuse the delivery of Supplies or the performance of Works until the counter-performance is made or a security for it is provided by the Customer. BARTEC is entitled to set a deadline within which the Customer shall effect the counter-performance or shall provide a security. After the unsuccessful expiration of such deadline, BARTEC is entitled to rescind the Contract.

## 6. Transfer of Risk

- 6.1 The risk of accidental destruction and accidental deterioration of the Supplies will pass to Customer as soon as BARTEC has made the Supplies available at the agreed upon delivery location and has notified Customer in accordance with Clause 5.3 sentence 1, however at the latest upon handing over of the Supplies to Customer.
- 6.2 Clause 6.1 shall apply accordingly to partial deliveries.
- 6.3 Notwithstanding Sections 6.1 and 6.2, in cases BARTEC also renders Installation Works to Customer, the risk of accidental loss or accidental deterioration of the Supplies passes to Customer at the latest upon completion of the Installation Works and the issuance of the respective completion notice.
- 6.4 The risk of accidental loss or accidental deterioration of Spare Parts supplied by BARTEC passes to the Customer at the latest upon completion of the Works and the issuance of the respective completion notice.

## 7. Inspection and Defect Notification; Acceptance of Supplies and Works

- 7.1 Customer shall inspect the Supplies and/or Works immediately upon delivery respectively completion and shall immediately, however at the latest within five (5) calendar days, notify BARTEC in writing of any obvious defects of the Supplies and/or Works. In case of a hidden defect, Customer shall notify BARTEC in writing immediately after detection of said defect, however at the latest within five (5) calendar days.
- 7.2 If Customer fails to notify BARTEC of any obvious or hidden defects, the Supplies shall be deemed approved with regard to these obvious or hidden defects and any and all warranty claims in this regard shall be excluded.
- 7.3 Supplies delivered under a Contract only require acceptance, if and to the extent it has been expressly agreed upon or if required by statutory mandatory provisions. In such event, Customer shall create the conditions, which are necessary to carry out the acceptance and shall bear the costs of acceptance. Unless agreed upon otherwise, acceptance must be conducted within two (2) weeks following the announcement of the readiness for acceptance of the Supplies.
- 7.4 In case of insignificant or minor defects, in particular those which do not substantially hinder the efficient function or use of the Supplies, Customer will not be entitled to refuse the acceptance of the Supplies. However, BARTEC's obligation to remedy such defects shall remain unaffected.
- 7.5 With respect to Works, the following acceptance provisions shall apply:
- 7.5.1 Works rendered by BARTEC to Customer shall be ready for formal acceptance ("Acceptance") when BARTEC accordingly notifies Customer of the completion of the Works by issuing a completion notice.
- 7.5.2 Acceptance shall take place as soon as Customer has been notified that the Works are ready for Acceptance, however, within five (5) calendar days after the completion notice has been given. Upon Acceptance, the Works shall be inspected by Customer or its appointed representatives in the presence of BARTEC's representative. Any deficiencies are to be reported immediately in writing to BARTEC. However, Customer is not entitled to refuse Acceptance on account of minor defects, i.e. defects which do not substantially hinder the efficient function, operation or use of the Supplies subject to the Works.
- 7.5.3 If Customer fails to accept the Works in time or if Acceptance is impossible due to circumstances not attributable to BARTEC, the Works shall be deemed to have been accepted.

## 8. Rights and Obligations of Customer (re Works)

- The following provisions only apply in respect of Works:
- 8.1 Customer shall inform BARTEC of any relevant regulations and standards relating to the execution of the Works to be performed under a Contract.
- 8.2 Customer shall – at its own expense - undertake all that is necessary in order that Works can be commenced at the agreed place on time and carried out without hindrance or interruption as well as without risk for BARTEC's personnel. BARTEC's personnel shall not be called upon until all preparatory work has been completed. If BARTEC's personnel has already been called upon but cannot commence the Works, the waiting time shall be invoiced at the applicable hourly/daily rates.
- 8.3 Customer shall ensure that all entry, exit, residence, work and any and all other official permits required for the performance of the Works by BARTEC and/or BARTEC's personnel are obtained in due time.
- 8.4 Customer shall, at its own expense, carry out all required and/or necessary accident prevention measures. Customer shall inform BARTEC or BARTEC's personnel of all current safety and hygiene regulations pertinent to installation personnel. Customer shall provide any necessary assistance should BARTEC's personnel suffer an accident or become ill during the performance of the Works.
- 8.5 Customer shall store the materials to be used during the Works (if applicable, in particular Spare Parts) in such a manner that they are protected from any damage or deterioration. Before Works are commenced, the materials to be used shall be checked for completeness and damage by Customer in the presence of BARTEC's personnel. If any items are found to be lost or damaged during storage or transit they shall be replaced or repaired at Customer's expense.

- 8.6 Customer shall provide for electrical energy and lighting, including the necessary connections up to the place of installation, heating, compressed air, water, steam, fuels, etc., and, if required means of communication, such as telephone, fax, scanner, printer and internet access. Further, Customer shall provide for suitable cranes and other lifting devices, in good working order, with attendant personnel, appropriate scaffolding, as well as means of transport for personnel and materials, appropriate workshop equipment and measuring devices, protection of the installation site and materials against harmful influences of any kind, cleaning of the installation site as well as necessary consumables and installation materials, clothes, cleaning materials, lubricants and miscellaneous small items required during the Works.
- 8.7 Customer shall arrange for the provision of heatable or air conditioned, lockable rooms for BARTEC's personnel, restrooms and changing rooms for BARTEC's personnel, including suitable sanitary facilities and first aid equipment. In addition, Customer shall provide lockable, dry rooms for the storage of materials and equipment. All these rooms shall be located in the immediate vicinity of the working premises of the Customer.
- 8.8 Customer shall ensure that BARTEC receives, in good time, all the necessary permits for the import and export of tools, equipment and materials, and shall bear any related charges. Customer shall immediately return the tools and equipment provided by BARTEC to the location designated by BARTEC. Customer shall bear the dispatch costs. Ownership of tools purchased by Customer from BARTEC and which BARTEC continues to use during the Works, shall be transferred to Customer, at the latter's expense, after completion of the Service Works. Unless instructions are given to the contrary, these tools shall be kept available for Customer on the installation site, at the latter's risk. The tools made available to BARTEC by Customer shall be returned to Customer after completion of the Works. Unless instructions are given to the contrary, these tools shall be kept available for Customer on the installation site, at the latter's risk.
- 8.9 Customer is not allowed to employ BARTEC's personnel for work which does not form part of the Contract. In no event, BARTEC accepts any responsibility for any work carried out by BARTEC's personnel to the order of Customer without BARTEC's explicit instruction.
- 8.10 The right of the Customer to withdraw from the Contract at any time before the Works are completed is excluded even if Customer pays for Works already done and indemnifies the contractor in full.
- 8.11 The following provision only applies in respect of Installation Works:  
Customer shall carry out all the civil engineering, construction and other preparatory work skilfully at its expense and responsibility in accordance with the documentation supplied by BARTEC, if any.
- 8.12 The following provisions only apply in respect of Service Works:
- 8.12.1 Customer shall immediately inform BARTEC about any observed irregularities, damages or deficiencies of Products subject to a Contract which make Service Works necessary and shall indicate the scope of inspection to be done by BARTEC.
- 8.12.2 Necessary Spare Parts shall be obtained by Customer in due time and placed at the disposal of BARTEC's personnel, provided that Spare Parts are not to be supplied by BARTEC pursuant to the Contract. Such Spare Parts must comply with all express or reasonable quality requirements. If the quality is not in accordance with express quality requirements or if BARTEC has reason to believe that the quality of the Spare Parts is such to give rise to difficulties in processing, BARTEC is entitled to suspend the Service Works until being provided with Spare Parts in compliance with quality requirements.
- 8.12.3 Customer is responsible for the environmentally appropriate disposal of replaced parts or consumables (oils, gases, dust, etc.) resulting from the Service Works, if required.
- 8.12.4 With regard to Service Works, Section 8.3, 8.4, 8.5, 8.6, 8.7 and 8.12.3 shall only apply if BARTEC renders Service Works at Customer's premises.

## 9. Rights and Obligations of BARTEC (re Works)

- The following provisions only apply in respect of Works:
- 9.1 In case Customer does not fulfil or only partially fulfils its obligations set forth in Section 8 and BARTEC sets Customer a reasonable deadline for the fulfilment of its obligations which elapses without success, BARTEC will be entitled to remedy such deficiencies either itself or by means of third parties. The ensuing costs shall be borne by Customer. Further, BARTEC will be entitled to rescind the Contract. Any further claims for compensation of BARTEC shall remain unaffected.
- 9.2 If BARTEC's personnel encounter any danger (in particular if the safety of the personnel is not guaranteed on the Customer's premises) or is considerably hindered in carrying out the work due to any reason not attributable to BARTEC, BARTEC is allowed to stop any Works and withdraw the site personnel. In such case, the expenses, i.e. the corresponding hourly/daily rates, are invoiced as waiting time, plus travelling expenses and daily allowances.
- 9.3 In case the Works become unfeasible due to reasons attributable to Customer, BARTEC is entitled to claim the agreed remuneration. The right to assert further claims or rights, in particular compensation for damages, remains reserved.

9.4 In case the Works cannot be carried out or can only partially be carried out as a result of the deterioration or partial deterioration of the Supplies subject to the Works or the Works itself, either (i) for reasons attributable to Customer, or (ii) as result of an instruction of the Customer relating to the performance of the Works, or (iii) as result of Customer's non-compliance with BARTEC's specifications and instructions regarding BARTEC-Products previously made available to Customer, BARTEC is entitled to demand the agreed remuneration and reimbursement of those expenses not included in the remuneration; BARTEC must, however, in this case, allow the deduction of expenses saved as a result of the Works not or not fully being provided, or proceeds earned by using its work resources elsewhere, or any such proceeds which BARTEC fails to realize by acting with malicious intent. It is thus presumed that BARTEC is entitled to 15% of the agreed remuneration due on that part of the service that has not been performed. The same shall apply in case BARTEC rescinds the Contract pursuant to Section 9.1 sentence 3.

In case the Works cannot be carried out or can only partially be carried out as a result of the deterioration or partial deterioration of the Products to be installed or the Works itself due to Force Majeure, BARTEC is entitled to demand a part of the remuneration that corresponds to Works performed and reimbursement of those expenses not included in the remuneration. The right to assert further claims or rights remains reserved.

Section 9.4 shall not apply if and to the extent that the Works become impracticable or deteriorate due to circumstances solely attributable to BARTEC.

9.5 BARTEC undertakes to carry out the Works in a workmanlike manner and with qualified personnel. BARTEC is entitled to subcontract Works to third parties.

9.6 BARTEC is entitled to exchange its service personnel at all times.

9.7 BARTEC shall inform Customer in writing about the Works executed upon conclusion of the works or at the request of the Customer.

9.8 The following provisions only apply in respect of Service Works:

9.8.1 The Products subject to the Service Works will be examined by BARTEC to determine the amount of work and material required, before entering into a Contract. If labor and/or material requirements exceed the agreed scope of the Service Works, they shall – subject to the Customer's approval – also be provided, however, only against remuneration, unless expressly agreed upon otherwise.

9.8.2 Unless agreed upon otherwise, the Service Works shall be performed, at BARTEC's discretion, at Customer's premises or at BARTEC's premises, unless, due to their nature, Service Works must be performed at the Customer's premises.

## 10. Warranty

10.1 The quality and specifications of the Supplies and/or Works are exhaustively and conclusively agreed upon between BARTEC and Customer in the Contract.

10.2 BARTEC warrants that the Supplies and/or Works are free of any defects at the time of transfer of risk. In case of defects, BARTEC undertakes, at its choice, to repair or replace the Supplies or perform new Works (together "Rectification") within a reasonable period of time, provided such defects are notified to BARTEC in accordance with Section 7.1. Replaced parts shall become BARTEC's property.

10.3 If the Rectification fails, i.e. after three (3) unsuccessful attempts or if the Rectification is impossible, Customer may claim a reasonable reduction of price or rescind the respective Contract.

10.4 Excluded from BARTEC's warranty and liability for defects are all deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, in particular, but not limited to, those deficiencies resulting from normal wear, improper or negligent maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material or equipment, influence of chemical or electrolytic action, inappropriate foundation soil, non-foreseeable external influences, building, installation or assembly work not undertaken by BARTEC, or resulting from other reasons beyond BARTEC's control.

10.5 In addition to Section 10.4 Customer is not entitled to any warranty rights and claims if and to the extent that (i) Customer has not taken all precautions and/or immediate appropriate measures to prevent an aggravation of the damage to Products subject to the Works, or (ii) Customer did not comply with BARTEC's specifications and instructions regarding BARTEC-Products (cf. Section 9.4) or its obligations set forth in Section 8.1, or (iii) with respect to Service Works, Customer or a third party appointed by Customer carried out modifications or repairs of Products without the prior inspection of the defect and/or written permission of BARTEC.

10.6 The limitation period for warranty claims

- for Supplies is twelve (12) months beginning with the transfer of risk of the Supplies,
- for Installation Works is six (6) months beginning with the Acceptance, but ends not later than twelve (12) months after completion of the Installation Works,
- for Service Works is twelve (12) months beginning with the Acceptance, but ends not later than eighteen (18) months beginning with the Acceptance.

10.7 With respect to any defects or any failure to fulfil express warranties (if agreed upon in a Contract), the rights and remedies set forth in this Clause 10 shall be to the exclusion of and in lieu of any other warranties or remedies express or implied. However, Customer's rights to claim damages or reimbursement of expenditures pursuant to Clause 12 shall remain unaffected.

## 11. Intellectual Property, Copyright, Trademarks

11.1 Customer shall indemnify, defend and hold harmless BARTEC or its officers, directors, employees and agents from and against any and all damages, losses, costs, expenses, claims, demands, suits and judgments arising from actual or alleged infringements of any third party's intellectual property rights caused by:

- BARTEC having followed or used the instructions, specifications, designs or products furnished by Customer to be used in the manufacturing of the Supplies or otherwise in relation with the Supplies;
- Customer's use of or combination of the Supplies in conjunction with other products or services not delivered by BARTEC provided such infringement would not have arisen from the Supplies themselves;
- Modifications of the Supplies not executed or recommended by BARTEC.

11.2 Unless otherwise agreed in writing, the copyright of all documents, reports, software and information produced by BARTEC is vested in BARTEC and the Customers' right to their use is restricted wholly to the purpose for which the Supplies or the Works are provided and no part of the reports, documents, software and information may be used for other purposes without BARTEC's approval.

11.3 Further, all rights, title and interest in and to any work product including but not limited to any reports, drawings, photographs, data and specifications, whether stored on paper, computer disk or otherwise, software programs, derivative works, discovery, designs, invention, patents, know-how or improvements ("Work Products") which may be conceived, created or developed as a result of or in connection with a Contract shall be the sole property of BARTEC. BARTEC may grant a non-exclusive, non-transferable and royalty-free license to Customer to use the Work Products for its internal business purposes.

11.4 Customer is not entitled to use BARTEC's trade-marks without its written consent. If Customer breaches this obligation, Customer shall be liable for all resulting damages incurred by BARTEC on account for such breach. Furthermore, BARTEC is entitled to rescind all Contracts entered into with Customer.

## 12. Limitation of Liability

12.1 BARTEC is only liable in case of fault. However, BARTEC shall – irrespective of the legal basis – in no event be liable for loss of production, loss of use, loss of orders, loss of profit, cost of capital as well as any other incidental, direct or indirect or consequential damages or damages of the aforementioned kind occurring to customers of Customer or to third parties.

12.2 BARTEC's overall liability for all claims of any kind, irrespective of their legal basis, shall in no event exceed the overall aggregate amount of the respective net order value of the Contract

12.3 The limitations of liability described above will not apply in case of intent or gross negligence, in cases of bodily harm or in case of a liability according to mandatory law.

12.4 To the extent that BARTEC's liability is excluded or limited by the provisions above, this shall also apply to the personal liability of BARTEC's office employments, factory workforce, staff members and vicarious agents.

12.5 With regard to BARTEC's liability due to delay, Clause 5.7 shall prevail.

## 13. Subcontracting and Assignment

13.1 Customer is not entitled to subcontract the fulfilment of its obligations to any third party without the prior written consent of BARTEC.

13.2 Customer is not entitled to assign any rights, claims or obligations under a Contract with BARTEC to any third party without the prior written consent of BARTEC.

## 14. Export Control Reservation

14.1 BARTEC may refuse to fulfil its obligations under a Contract with Customer if and to the extent the fulfilment of the contractual obligations is prohibited or impaired by national or international foreign trade law regulations or any embargos and/or other sanctions obstructing the fulfilment.

14.2 In case BARTEC is in delay with its obligations under a Contract caused by application, licensing or similar requirements or procedures of the applicable foreign trade law, the time of performance of such obligations shall be extended accordingly. Claims for damages by Customer based on such delays are excluded if and to the extent such delays are not attributable to BARTEC.

14.3 In the event the fulfilment of BARTEC's obligations under a Contract is prohibited or impaired by applicable national or international foreign trade law for a period of eight (8) months or longer, BARTEC shall be entitled to cancel or rescind the Contract without notice, provided however, that the abovementioned circumstances are not attributable to BARTEC.

## 15. Confidentiality

15.1 Customer shall undertake to keep confidential knowhow, trade secrets and other information received from BARTEC in connection with the execution of this contract ("Information"). Customer receiving the information is in particular not authorised to forward such information to third parties or grant access to such information to third parties without prior written approval by BARTEC. Customer shall undertake to commit its employees as well as other individuals who receive access to the information to confidentiality to the same extent.

15.2 The obligation indicated in the abovementioned Clause does not include information which

- a) was already verifiably known to Customer at the time of the conclusion of the Contract or which were subsequently disclosed by a third party without violating a confidentiality agreement;
- b) are public knowledge at the conclusion of the Contract or which are subsequently disclosed to the public without violating the provisions of this Contract;
- c) is required to be disclosed due to legal obligations or due to court order or an administrative order.

## 16. Extraordinary Circumstances (re Works)

The following provision shall apply in respect of Works:

In case unpredictable and exceptional circumstances occur, which change the commercial value of the Works considerably or affect the operations of BARTEC considerably, to the extent that performance of the Works becomes unreasonable for BARTEC, and which are not attributable to BARTEC or Customer, the respective Contract between BARTEC and Customer shall be amended reasonably. If this cannot be reasonably justified from an economic perspective, BARTEC is entitled to cancel the Contract wholly or in part. Customer has no right to claim for compensation as a result of such cancellation. In case BARTEC decides to make use of its right of cancellation, it shall inform Customer immediately after the consequences of the unpredictable and exceptional circumstances have been recognized, even if an extension of the installation time had been agreed with Customer.

## 17. No Waiver

17.1 No failure or delay by BARTEC in exercising any right, power or remedy shall operate as a waiver thereof or otherwise impair any of its rights, powers or remedies, unless stated otherwise in the Conditions. No single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right shall be effective unless given in writing.

17.2 The rights or remedies provided for herein are cumulative and, except as specifically provided herein, are not exclusive of any other rights, powers or remedies provided by law or in equity. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion of any other appropriate right or remedy.

## 18. BARTEC Code of Conduct

Acceptance of these Conditions constitutes acceptance of and a promise to adhere to the BARTEC Code of Conduct ([www.BARTEC.de/en/company/compliance](http://www.BARTEC.de/en/company/compliance)). In case of violation of BARTEC's Code of Conduct, BARTEC is entitled to terminate the Contract with immediate effect and without further obligations and liability towards the Customer. The Customer shall fully indemnify BARTEC from all damages, losses, restraint of payments, claims of third parties, resulting from or in connection with the termination of the Contract.

## 19. Force Majeure

In case of unforeseeable circumstances beyond the control of BARTEC, i.e. an event of force majeure, such as strikes, malfunctions, wars, rioting or sabotage, accidents, illnesses, actions or omissions by local or state authorities, unforeseeable transportation hindrances, fire, explosion, acts of God as well as unpredictable difficulties in material procurement and unpredictable operation disruptions or other un-foreseeable, unavoidable or extraordinary events outside of BARTEC's sphere of influence ("Force Majeure"), the agreed Time-Limits will be extended for the duration of the corresponding event. In case the duration of such events exceeds three (3) months, BARTEC will be entitled to rescind the Contract and/or terminate a Contract for the performance of a continuing obligation. Customer is entitled to the same rights.

## 20. Governing Law and Arbitration

20.1 These Conditions and any and all contract between BARTEC and Customer shall be governed by and interpreted, construed and enforced in accordance with the laws of Switzerland. The Application of the United Nations Convention on the International Sale of Goods (CISG) and the rules of international private law/conflict of laws or any other provisions which refer to the applicability of foreign law, shall be excluded.

20.2 Any and all disputes arising out of or in connection with these Conditions or any Contract between BARTEC and Customer shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators in accordance with the said rules. The chairman of the tribunal shall be appointed by the party appointed arbitrators. The seat of arbitration is at the place of the registered office of BARTEC. The language of the arbitration proceedings shall be English. The Emergency Arbitrator Provisions shall not apply.

## 21. Final Provisions

21.1 These Conditions may not be altered, amended or modified except for a written agreement executed by duly authorized representatives of BARTEC and Customer.

21.2 Any provision of these Conditions which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Such prohibited or unenforceable provisions shall be replaced by valid and enforceable provisions, which most closely achieve the commercial intent and purpose of the Contract.