# General terms and conditions for the goods and services of DEEP.KBB GmbH, Bad Zwischenahn (as of January 2018)

**§ 1 Scope**

1. These general terms and conditions and the prioritised supplementary special terms and conditions for goods and services respectively are valid for all transactions with the customer - also for future transactions. Contradictory conditions from the customer, or conditions of the customer which deviate from our terms and conditions will generally not be accepted by us, and without having to specifically reject them individually for incorporation in the contractual relationship in each new instance, unless we have given express written approval of their validity. This also applies to unilateral regulations incorporated in the conditions of the customer whose provisions apply to aspects which are not incorporated within our terms and conditions, insofar as these unilateral conditions do not correspond to general commercial practise or mandatory stipulations. In the event that our terms and conditions do not incorporate an effective regulation, only those mandatory regulations can be applied. This also applies when we supply unconditional services or goods to the customer even when we are aware of contradictory conditions of the customer or conditions of the customer which deviate from our terms and conditions. This does not imply any acceptance of these contradictory or deviatory conditions.
2. Our terms and conditions only apply to entrepreneurs pursuant to Section 14 BGB (German Civil Code), and bodies corporate organised under public law or public-law special funds.
3. Individual agreements naturally override our terms and conditions.

**§ 2 Quote and closure**

1. Our quotes are always non-binding, unless specified otherwise. Binding quotes become unbinding if they are not accepted within two weeks by issuing an order. If the customer makes an order prior to receiving a binding quote, the contract only becomes valid when we have first confirmed the order.
2. If contradictions exist between the quote, the order and/or confirming the contract, our declaration overrides, insofar as the customer has not deliberately and expressly deviated from it. In this case, the divergence requires our express authorisation.
3. All agreements between us and the customer must be made in text form. In the event that one of our employees issues a declaration but does not have power of attorney, the declarations only become binding when first verified by an employee with power of attorney.
4. Obvious errors, typewriting, printing or calculating errors arising from our actions when preparing a quote or verifying a quote are not binding on our part.
5. Changes to the scope, function and form of the object of the contract are subject to reservations on our part insofar as we consider them necessary, they do not affect the quality of the object of the agreement, and are considered reasonable for the customer to accept. Subsequent changes to the object of the contract by the customer require a mutual amendment to the contract including agreement on a reasonable separate remuneration.
6. Our quotes are based on the information and specifications provided by the customer without any additional information on the local and technical situation.

**§ 3 Documentation, protection and user rights, software**

1. The data, samples and documents associated with a quote, such as figures, drawings, weight and dimension details, are only approximately relevant unless expressly labelled as binding. We reserve the right of ownership to such documents and samples. Passing them on to third parties or using them for purposes other than those required to close the contract, require our express prior authorisation.
2. The deliverables elaborated by us as part of our implementation of the contract (documentation, plans, maps, drawings, calculations, expert reports, independent of the nature of the embodiment) become the property of the customer upon being handed over and after full payment of the agreed remuneration. Conditional upon the following regulations, the customer also acquires the exclusive rights to use the deliverables when they become the customer's property.

(a) The intellectual property and know-how ("knowledge") acquired by us prior to or during execution of the contract remains ours exclusively. This applies to property-right-protectable knowledge as well as non-property-right-protectable know-how. We also have the sole right to publish such knowledge.

(b) The customer is granted a simple right of use with respect to our preceding and new knowledge contained in the deliverables. This right incorporates every form of use, reproduction, transfer to third parties, and processing of the deliverables which are required for the use of the object of the contract within the framework of the purpose of the contract sensu stricto, and which were foreseeable during closure of the contract. However, the transfer of the deliverables and rights of use to our competitors is excluded. The granting of these comprehensive rights of use assumes that the contract is fully executed. If not, we will grant the customer the rights of use against payment of an additional reasonable remuneration.
The same applies:
   - to an expansion of the already granted rights of use if this appears necessary at a later stage to satisfy the purpose of the contract,
   - in the event that the customer wishes to use our deliverables and knowledge outside of the purpose of the contract,
   - to the use of the work instruments which we used to prepare the deliverables (programs, processes, systems, etc.).

(c) We are free to use and exploit the knowledge incorporated in the deliverables in future for us and for third parties. We also reserve ourselves a simple right of use of the copies of the deliverables retained for our own purposes insofar as we require these to comply with regulatory stipulations (archiving and verification obligations) or - with the agreement of the customer - wish to use them for advertising purposes. The customer may only decline to agree to the advertising use of the deliverables if this violates the customer's valid interests.

(d) In all instances, the rights to the deliverables and knowledge of the contractor always comply with the law in the Federal Republic of Germany

3. If the scope of goods includes software, the customer is granted a non-exclusive right to use the supplied software including its documentation. It is ceded for use on the deliverable for which it is intended. The use of the software on more than one system is not permitted. The customer may only reproduce, revise, translate or convert from the object code into the source code to the extent allowed by the applicable laws (Section 69a ff. UrhG (Copyright Act)). The customer pledges not to remove the manufacturer's specifications, and in particular the copyright declarations, or not to modify them without having gained our prior written authorisation. We will retain, or the software supplier retains, all of the other rights to the software and the documentation, including the copies. It is forbidden to issue sub-licenses.

**§ 4 Goods and service times, impossibility, partial deliveries and services, default of acceptance**

1. The agreed goods and service schedules and deadlines cannot be construed as a fixed date transaction, and can be exceeded by us to a reasonable extent, unless we have expressly agreed conditions which deviate from the above.
2. The deadlines start with the contract closure date. If the customer still needs to supply additional information, material or documents for the execution of the contract (e.g. job components, drawings, official certificates, technical information, access to construction sites or similar to be provided by the customer) or still needs to clarify technical or commercial issues, then the goods or service deadlines to which we have contractually agreed only start on the day when we have received all of the information, parts and/or documents to be provided by the customer, or have received clarification of all of the still open questions. A delivery date will be postponed by a period corresponding to the delay and subject to the aforementioned provisions. Delivery schedules and deadlines are satisfied when the goods are sent out by us within the schedule or by the deadline, or are maintained ready for disposal at the agreed delivery location. Unless agreed otherwise, deliveries are executed ex works of our subcontractor as agreed in the contract (EXW, Incoterms 2010), or in the event no specific works are specified, at the time of transfer to the agreed carrier or to the carrier selected by us (FCA, Incoterms 2010).
3. Our delivery obligations are subject to the provision of complete and punctual supply to ourselves unless we are culpable of delaying or frustrating the supply.
4. Temporary hindrances to the delivery of goods and performance of services arising from unforeseeable circumstances which are out of our control (force majeure, in particular: strikes, lock-outs, raw material or energy shortages, as well as operational problems, also with respect to upstream suppliers) exempt us from our delivery and performance obligations for the duration of the problem and to the extent of their consequences. We will inform the customer immediately in the event that such a hindrance to the delivery of goods or performance of services occurs. Both parties can rescind the contract by giving an adequate period of notice if the hindrance lasts more than three months or extends beyond the agreed delivery or performance deadline. In this case, claims for damages because of default, or in lieu of performance, are excluded.
5. If problems with deliveries of the aforementioned kind arise, which means that the goods at our disposal are inadequate to deliver the whole of the ordered quantity, we have the right by waiving a further delivery obligation to make cuts in the quantities to be delivered.
6. Partial deliveries and services are permissible when the scope is considered reasonable.
7. In the case of orders which provide for several separate deliveries of goods or services, the non-fulfilment, faulty or late fulfilment of one of these deliveries does not have any impact on the other deliveries of goods or services.
8. If goods or services are delayed because of a delay in acceptance, or the wishes of the customer, or other circumstances which are under its control, the customer is obliged to pay any costs and disadvantages arising from the delay after we have indicated our willingness to deliver or perform, and after the agreed delivery or performance deadline. In the case of the supply of goods, the purchase price must be paid in accordance with the agreement despite the delay in delivery. If storage is required, this takes place at the risk and expense of the customer. If we have to arrange the storage, reimbursement is a flat rate 1 % of the net invoice amount for each month that has begun. If we have to make staff available, we have to be remunerated in accordance with the agreed or - in the absence of an agreement - our standard time rates in the form of day rates for the employees on stand-by, unless we confirm that we were able to use the staff somewhere else. The customer has the right to prove that we did not accrue any damages or only minor damages. This does not affect the enforcement of higher and additional damages because of the customer's delay in accepting the goods or services.

**§ 5 Prices**

1. Our prices are in Euro plus VAT at the rate valid when the contract was closed, plus packaging and freight, travel expenses and other costs. Customs duties and, where applicable, import turnover tax must be paid directly by the customer. The customer indemnifies us from every claim in this respect.
2. We have the right to implement the following price adjustments if no fixed-price agreement was agreed:

(a) If between awarding the order and completing the delivery or performance, unforeseeable changes occur to any of the major factors in our price calculation - such as energy, human resources, material, freight, or credit costs - we shall inform the customer about these circumstances together with the new prices which will apply to the order. In this event, the customer has the right to withdraw from the contract. If the client does not issue a declaration to rescind the contract for this reason within one week of being informed about the adjusted price, the new price will be considered valid. Accepting our delivery or performance after being informed about a price adjustment also verifies agreement with the price adjustment.

(b) In the case of goods or services delivered or performed over a period of more than one year, we will increase the prices in correspondence to the price increases made by our subcontractors, or to the increase of our list prices during this period. If the increase is more than 5 % of the previously agreed prices, the customer has the right to rescind the contract. The provisions under subsection (a) apply accordingly.

(c) The same applies to increases in taxes implemented after closing the contract.

3. Discounts, such as cash discounts, early payment discounts or other price reductions will only be granted on the basis of a special agreement. A cash

payment is defined as a cash payment at the latest upon receipt of the goods or services. Any discounts which may be agreed, assuming they were calculated from the value of the goods or service, are only granted on the pure net value of the delivered goods or service (excluding packaging, freight, reimbursement of expenses and turnover tax). The right to be granted such discounts only applies when all of the delivered goods or executed services are paid completely and punctually.

4. Partial deliveries and services can be invoiced by us separately. Even without special contractual agreements, we can demand the payment of instalments from the customer for autark parts of the goods or services when and insofar as the customer has been assigned ownership of the parts of the work, or the materials or the components, or has issued corresponding securities. We can also demand the payment of reasonable instalments if the order involves us in significant financial expenditure. Services which have been executed can be invoiced monthly.
5. Our invoices are considered to have been accepted if not objected to in writing within two weeks of receipt.

**§ 6 Payment terms**

1. The payment of the contractual price must be made in Euro by the date specified in the invoice and at no expense to us. Payment is only considered to have been rendered when we have unimpaired rights to the invoice amount. Money orders, cheques and bills of exchange are only accepted on the basis of a special agreement and only on account of performance after deducting all collection costs or discount charges. Credit notes against bills of exchange and cheques are issued at the value on the day when we have control of the equivalent value. The transfer and prolongation are not valid in lieu of performance.
2. If our invoices are not paid within the payment deadline which we have specified, we have the right to demand maturity interest charged at an annual rate of 8 percentage points above the relevant base interest rate pursuant to Section 247 BGB, unless the customer can provide proof that we did not suffer any damages or only lower damages as a consequence of the payment arrears. The same applies to interest on arrears. The right to enforce other damages remains unaffected.
3. The customer is considered to be in default 30 days after the due date and receipt of an invoice without having to be issued with a warning letter.
4. Deferment agreements are subject to making punctual payments. If a payment deadline is not met, the deferred amounts are due immediately and without any explanation on our part. In the case of payment arrears and justified doubts about the solvency of the customer (e.g. for non-insurability for our credit insurance), we are empowered - with no effect on our other rights - to demand payments in advance or securities for outstanding goods or services, and to immediately demand all due claims arising from the business relationship.
5. In the event that a documentary letter of credit has been agreed, it is covered by the latest relevant ICC regulations (ERA 600, ISBP).
6. Rights of retention and offsetting rights can only be claimed by the customer when its counter-claims have been legally verified, are undisputed or are accepted by us. Rights of retention because of defects remain unaffected but are limited to amounts corresponding to a reasonable proportion of the defect. Moreover, rights of retention are always based on a counter-claim from the same contractual relationship.
7. The customer is not permitted to transfer receivables or claims due from us to third parties without our agreement. This does not apply to monetary claims.

**§ 7 Rescission, compensation**

1. Insofar as there are no legal rights to rescind, the customer may only cancel an order with our prior agreement. In every case when we cannot be held to account for the premature rescission of a contract, we have the right, without any impact on other claims for payment of the contractual price, to invoice the customer for all work and expenses which have already been realised, already entailed costs, and any future costs which cannot be avoided, as well as any additional costs arising from the rescission of the order.
2. If the start, continuation or completion of our contractual fulfilment is delayed for reasons which can be attributed to the customer, and if the customer does not respond to our request for remedy immediately, we have the right to issue the customer a reasonable deadline to fulfil the contract, and then to rescind the contract after the deadline has expired if no adequate response is forthcoming.
3. Insofar as we can demand damages in lieu of performance or lost profit pursuant to statutory regulations (in particular with respect to claims for remuneration when taking into account any unincurred expenses), we have the right to demand a flat rate sum corresponding to 20 % of the net price without having to confirm the actual damage or profit. The onus is on the client to prove that no damages or profit or only minor damages or profit have arisen or were lost. We have the right to make a claim for the actual damage or lost profit instead of the flat rate damages or profit.

**§ 8 Retention of title, securities**

1. Insofar as we supply goods, also within the framework of contracts for work and labour, and service contracts, the delivered goods remain our property until payment of the purchase price and amortisation of all of the receivables arising from the business relationship. This also applies when payments are made on specially designated receivables. The placing of any claim on current account or the striking of a balance and recognition of such balance shall not annul the retention of title.
2. In the event of the processing of the goods subject to retention with other goods by the customer, we shall be entitled to co-ownership in the new goods in the relationship of the invoice value of the goods subject to retention compared to the invoice value of the other used goods and the processing value. For the goods emerging from the processing the same provisions apply as for our goods delivered subject to retention. If our ownership is extinguished by combination or commingling of the goods subject to retention with other items which do not belong to us, we gain co-ownership of the new material item in proportion to the value of the goods subject to retention compared to the value of the other commingled items at the time the commingling takes place. If commingling takes place in such a way that the goods of the customer can be considered to be the main goods, it is considered as agreed that the customer accords us pro rata co-ownership. The customer holds the sole ownership or co-ownership which arises in this way in custody for us at no cost to ourselves.
3. The customer has the right to use the goods subject to retention in the ordinary course of business, to process it or to resell it under common business conditions but still retaining the retention of title. However, the customer now assigns to us the pro rata value of all of the receivables which the customer acquires with respect to the purchaser or third parties as a result of the resale corresponding to the final amount (including turnover tax) of our receivables, and independent of whether the goods subject to retention were resold with or without processing, combination, or commingling. If the customer closes a current account agreement with its purchaser so that the receivables from the resale of the goods delivered by us are merged into current account receivables, then the receivables which the customer acquires from the current account relationship, are assigned to us but only to the extent to cover the amount of our receivables. The receivables arising from the resale serve as securities to the same extent as the goods subject to retention.
4. The customer has the right to collect receivables from the resale unless we cancel the collection authorisation. In this case, the customer is obliged to immediately inform its purchaser about the assignment of the receivables to us, and provide us with the information we require for the collection, and to hand over to us the associated documents.
5. If the customer defaults on payments which reach a value of 10 % of our receivables, we have the right to forbid the resale, processing, combination, or commingling and disposal of the goods supplied subject to the retention of title, and to reclaim these goods. The reclamation of the goods subject to retention also effectively means the rescission of the contract. The recovery costs are borne by the customer.
6. We pledge to release the securities extended to us at the request of the customer insofar as the realisable net value of our securities exceed the secured receivables by more than 10 %; we have sole empowerment to choose which securities to release.

**§ 9 General limitation of liability, time of limitation**

1. We are liable for unlimited damage compensation or expense compensation - completely irrespective of the legal basis (especially liability for defects, tort liability, default, impossibility) - and within the framework of the legally defined periods of limitation for deliberate, gross negligence of our company bodies and senior officers, culpable injury to life, limb or health, maliciously concealed defects, and guarantee promises within the framework of the Product Liability Act. We are also liable for the gross negligence of our non-senior officers and vicarious agents, or for minor negligence, insofar as a key provision of a contract has been violated without whose fulfilment it would be impossible to execute the contract in a proper manner, and on whose fulfilment the customer could reasonably rely. In these cases, our obligation to pay is limited to contract-typical and foreseeable damages. Any liability exceeding these aspects and attributable to us are excluded.
2. Insofar as our liability is excluded or limited in the aforementioned manner, this also applies to the personal liability of our employees, staff, workers, representatives and vicarious agents.
3. Insofar as our liability is limited in the aforementioned manner, it is also limited to Euro 5 million per violation for material damage and financial losses. In cases when the damage caused by negligence is due to the same violations, the liability is limited to Euro 5 million in total even when the violations took place over several years.
4. Insofar as our liability is limited in the aforementioned manner, claims for damages taken out against us lapse within 12 months. This also applies to claims for defects for which we are not responsible insofar as they do not concern a structure or a supplied item which was used for a structure in accordance with its usual mode of application and led to its defectiveness. Apart from that, the legally stipulated periods of limitation apply. Supplementary performance acts do not instigate any new extension deadlines.
5. The aforementioned provisions are not connected with any reversal of the burden of proof to the disadvantage of the customer.
6. The customer is obliged to immediately report to us any damage and losses for which we may be liable, and to allow us, if we request it, to record said damage or losses either ourselves or by a third party specified by us.
7. Any claims for damages taken out against us lapse at the latest at the end of the legally stipulated periods of limitation.

**§ 10 Data processing, confidentiality**

1. We draw your attention to the fact that the personal data from the customer gained by us as part of the business relationship will be saved and processed by us in accordance with the regulations stipulated by the German Data Protection Act, insofar as this is necessary for the business relationship. The data - with the exception of obligations which provide information stipulated by laws or authorities - will not be passed on to third parties without the authorisation of the customer.
2. Both contractual partners are obliged to treat as confidential for an unrestricted period the business and operating secrets of the other partner and not to pass these on to third parties or to profit from them in any other way. All of the information in any form whatsoever which the other partner gains access to in the framework of the business relationship may only be used by the other partner for purposes strictly limited to the contractual purpose.
3. All publications by the contractual partners or on their behalf concerning the content of an individual contract, in particular, publications in the press, radio and television, including publications for advertising purposes, must be agreed in advance by the contractual partners before any publication. This excludes publications which the contractual parties are obliged to make to comply with mandatory stipulations or as required by the authorities.

**§ 11 Instruction rights, non-solicitation agreement**

1. The right of instruction with respect to our vicarious agents and employees, in particular the instruction, training and supervision, is exclusively in our hands. The right of the customer to issue building site-related safety and conduct instructions in individual cases remains unaffected.
2. The enticement or attempted enticement of our employees is a serious violation of the contractual obligations of the customer to respect our rights, legal assets and interests, as stipulated in Section 241(2) BGB.

**§ 12 Place of fulfilment, place of jurisdiction, applicable law**

1. The place of fulfilment of all of the mutual rights from the business relationship with the customer is Hannover.
2. The exclusive place of jurisdiction for any disputes between the parties arising from the business relationship is Hannover, insofar as the customer is a merchant, or has no general place of jurisdiction in Germany. However, we have the right to take out court proceedings at the registered office of the customer. The implementation of arbitration proceedings excluding the due course of the law requires our written authorisation for every case of a disputed claim.
3. The contractual relationships are exclusively subject to the law in the Federal Republic of Germany and incorporating the UN Sales Convention.
4. In the event that one or more provisions in our terms and conditions or the other contractual regulations are invalid or become invalid, or in the event that the contract contains legal loopholes, this does not have any effect on the validity of the remaining provisions. The same applies to sub-provisions which can be deleted without causing the remaining part to lose its substantive content. The invalid or incomplete provision will be replaced by laws and legal processes, or supplemented, insofar as the contractual partners cannot agree on an appropriate and new or supplementary regulation in compliance with the contract.

**DEEP.KBB GmbH,**
**Bad Zwischenahn (**January 2018)

# Special terms and conditions for the goods (sales contracts) of DEEP.KBB GmbH, Bad Zwischenahn (as of January 2018)

**§ 1 Deliveries**

1. In the absence of any contradictory agreement, the place of fulfilment and delivery is the factory of our upstream supplier even when we take responsibility for transporting the goods to the agreed destination. In this case, we determine the haulage company and the carrier.
2. Goods reported as ready for dispatch at the agreed date must be collected immediately. Violation of this provision means we have the right to store the goods at our own discretion at the expense and risk of the customer. If the transport of goods ready for dispatch is prevented by force majeure, we also have the right to store the goods at the expense and risk of the customer. We refer here to Section 4 Provision 8 of our General Terms and Conditions (AGB).

**§ 2 Transfer of risk**

1. The risk of loss or damage of the goods is transferred to the customer with the dispatch or transfer to the carrier, or in the case of collection by the customer, with the availability of the goods for collection. At the request of the customer, we can also insure the shipment at the customer's expense against theft, breakage, transport, fire and water damage, as well as other insurable risks.
2. If the dispatch is delayed because of circumstances under the control of the customer, or because of force majeure, the risk is transferred to the customer from the day the goods were made ready for dispatch, however, we are obliged to arrange insurance of the goods at the express wish and expense (prepayment) of the customer.

**§ 3 Condition of goods, claims for defects**

1. Insofar as not agreed otherwise, the contractual condition of the goods will be defined by our product descriptions. Public announcements, recommendations or the advertisements of third parties are immaterial in this context. The details in the documents belonging to our quote, including details on weight, content and dimensions, are only valid as quality guarantees in the sense of Section 443 BGB if we have expressly stated this in writing. Moreover, we also accept no responsibility that the goods are suitable for the determined purpose insofar as this has not been expressly agreed.
2. We have the right to amend the composition and condition of the goods without informing the customer as long as the value-determining contents, form and function remain within the usual commercial qualitative and quantitative tolerances.
3. When delivering bulk goods, the goods volume can vary by +/- 3 % without representing a defect, this variation having no impact on the purchase price.
4. When collecting the goods or prior to shipping the goods, the customer must inspect the goods for any problems with the volumes and defects, and immediately after receiving the goods, check for the presence of transport damage and obvious defects, and immediately inform us about any findings of this kind. Obvious transport damage which is identified or any identified problems with the volumes must be certified on behalf of the customer upon receipt of the goods by the carrier or its representatives. Defects established at a later date must be reported within 14 days of their identification. The notification of defects must be made in writing and include a verifiable description of the defect. If the customer violates its obligation to inspect and report, or fails to have the transport damage or defective amounts certified, and to forward these certificates to us, this renders invalid any liability by us arising from such objections unless we are liable for the gross negligence of a legal representative or vicarious agent.
5. Without impairment of its rights, the customer is obliged to initially accept the goods, even if the goods are identified as having obvious defects, transport damage or if the goods are incomplete, unless we have expressed our agreement for the goods to be returned immediately. The rejected goods must be made available to us at short notice and in suitable form for us to carry out an inspection and safeguard the evidence. Agents given responsibility to inspect for defects are not authorised to accept defects with legal effect against us.
6. If a defect in the goods is established, we initially have the choice to either make a replacement delivery or to make supplementary improvements or in the case of deficient quantities to make an additional delivery. If these measures fail, the customer can make a choice between a reduction in price or rescinding the contract. Rescinding a contract is excluded in the case of minor defects. If the customer decides to rescind the contract, this excludes any additional claims for damages or reimbursement of costs. Insofar as we cannot be accused of malice, claims for damages instead of the service are limited to the difference between the purchase price and the value of the defective goods.
7. We accept no liability for damage caused by improper usage, improper storage, or negligent treatment of the goods. If the goods are used further after identifying a defect, we are only liable for the original defect and damages which have arisen up until the time the defect was identified, but not for those damages which arise from the further use of the goods.
8. Claims for defects taken out against us lapse within one year after the transfer of risk to the customer. This also applies to claims for damages based on defects in our goods and whose maximum amount is limited pursuant to our General Terms and Conditions (AGB) (Section 9(1)).
9. If the customer reports a defect and we inspect the goods and establish that there is in effect no defect, the customer must reimburse the cost and expenses we have incurred to undertake the inspection. In such a case, our activities will be charged in the same way as a service activity.

**§ 4 UN Sales Convention, liability**

1. If the UN Sales Convention is applied to the goods, our liability is limited in every case to material violations and obligations. None of the provisions in these terms and conditions can be construed as extending our liability beyond the legal framework.

**DEEP.KBB GmbH**
Bad Zwischenahn January 2018

# Special terms and conditions for the services (work and labour contracts, and service contracts) of DEEP.KBB GmbH, Bad Zwischenahn (as of January 2018)

**§ 1 Cooperation obligations**

1. The customer has to do all in its power to assist the services we have to fulfil throughout the whole of the business relationship by providing the necessary cooperation services. In the absence of any contradictory agreement in individual cases, the customer will ensure in particular that the following are provided punctually at its expense and in its own human resources, organisational, technical and engineering responsibility:
   (a) that the technical and engineering specifications and requirements demanded of our services and which form the basis of our offer have been described correctly, completely and finally;
   (b) in addition, in order for us to properly execute the contractual services, to make available error-free and non-contradictory all the necessary documents, in particular planning and design documents, specifications, documentation, as well as certificates from authorities and other certificates, in addition to data and information, which is free from contradictory rights of third parties, e.g. on existing structures and components, installations, equipment, parts, connections, hardware, programs, program parts and interfaces, which are part of the service to be provided, and to work together with the persons providing said services, as well as information on any amendments to statutory regulations and other rules, especially safety regulations, which come into force after the contract has been closed and are material for fulfilment of the contract;
   (c) to ensure that our employees have the required extent of access to the customer's operational facilities and offices as well as the associated subject and place of service of the services to be executed, to enable them to implement the services;
   (d) to punctually realise all of the registrations of our employees at the place of work that are necessary for activities of our employees which take place outside of the Federal Republic of Germany, and to ensure that all of the necessary work or stay authorisations, and any other authorisations or licenses required from the authorities for us to execute our services are punctually acquired and remain valid for the duration of our work;
   (e) to punctually inform us about all minimum working and/or wage conditions mandatorily stipulated for the place of work, together with detailed information on the mandatory working conditions;
   (f) to provide the preceding services and ancillary services required for us to execute the services with all due diligence, in particular that the customer makes available all the structures and components, installations, equipment, parts, energy connections and other peripheral connections, electronic or other interfaces, hardware and software related system specifications, as well as tools and consumables, the necessary safety measures applying to the existing structures, installations, equipment, components, programs and similar items, and in particular, the securing and saving of data, the necessary equipment and system times;
   (g) to make available on its behalf the necessary properly qualified staff and the equipment needed for us to carry out the services with all due diligence;
   (h) to ensure that the sites scheduled for the provision of the services have free and unhindered access to the necessary extent, and are equipped with the necessary structural and static specifications, transport paths and storage sites, utility supplies, and in particular, with energy, air, water and telecommunications equipment, as well as consumables and materials to the necessary extent to enable us to properly carry out our services with all due diligence, and that said sites include appropriate, thief-proof working rooms and amenities, including sanitary facilities for our staff, as well as having suitable, sufficiently large, dry and lockable rooms or areas for the storage of materials and consumables;
   (i) that our employees and our property is incorporated in the customer's operational safety concepts, and instructed in same as well as in the customer's construction site regulations;
   (j) that we are instructed in a suitable way about any special conditions and circumstances affecting the place where the work is carried out or concerning the operational procedures, insofar as these are associated with special obligations to take extra care. The same applies to any special local regulations;
   (k) that any waste including all old components, equipment, installations, parts and pieces which arise during implementation of the service are all disposed of in a manner complying with official regulations;
   (l) that we are immediately informed in a transparent and reproducible way about any defects and malfunctions determined on any of the items which we come into contact with during the course of executing our services.
2. If the customer defaults on fulfilling its cooperation obligations, those affected parts of our service obligations which cannot be executed without this cooperation service or only with an unreasonable amount of extra effort, shall be suspended for the duration of the default. Such a suspension for the aforementioned reasons will also give rise to associated deferments in schedules or deadlines, which also include an adequate run-up time for the work to restart. Any extra expense confirmed by us which arises because of the default, must be reimbursed to us by the customer in addition to the already agreed remuneration. All other additional claims for damages remain unaffected. Moreover, we are entitled to execute or have someone execute the necessary services at the expense of the customer, or, to rescind the relevant separate agreement for important reasons, or notwithstanding the customer issuing an appeal against the absent due provision and/or the objection of failing to fulfil the contract, to demand the remuneration scheduled for the next single contract after the relevant single contract referred to above, when the customer still fails to make good the cooperation service for which the customer is in default, despite being requested to do so and being given an appropriate extension and raising the option of implementing a substitute performance, rescinding and demanding remuneration. In the event that we rescind the contract, the customer is obliged to pay the costs incurred as a result of the extraordinary rescission.
3. Prior to reusing them, and in particular, prior to processing, the customer is obliged to carry out tests to check our services to ensure that they have been properly executed. Minor variations in quality which are always associated with that kind of services, do not give the customer the justification to decline acceptance or to make claims for damages. Damage arising from the re-use of defective services caused by a violation against the aforementioned obligation to conduct tests, will not be replaced by us.

**§ 2 Transferability**

1. We have the right to make use of suitably qualified subcontractors and/or freelance staff to fulfil the relevant contract.
2. The customer is not permitted to transfer its rights and claims arising from the contract closed with us to third parties without our express authorisation.

**§ 3 Changes in the service (change request)**

1. Changes and additions to the content or the scope of the services to be provided by us in accordance with the relevant individual contract can be requested by each of the contractual parties from the other contractual party within the period until the completion of all of the services as long as this request is made in writing together with an objective specification of the change or addition, a technical and/or engineering justification, as well as the forecast impact on schedules or deadlines and on the remuneration (change request).
2. If the customer submits a change request, we will undertake checks within a suitable period to determine whether the change request is technically realisable and reasonable for us with respect to the associated work involved and the requested modification to the schedules or deadlines. If this is not considered to be the case, we have the right to decline to implement the changes or additions. Otherwise, we will submit to the customer a binding change or addition offer including the increase or decrease in the remuneration and the changes to schedules or deadlines arising from the addition or change request. If the customer declines our quote or does not respond within an appropriate notice period, the originally agreed services will be undertaken without any changes.
3. If we consider it necessary for the contract to be amended to incorporate the additions or changes to our services, so as to re-establish the original purpose of the contract, and if the customer does not agree to this amendment, we have the right to rescind the contract after giving a reasonable period of notice and to invoice the customer for the agreed remuneration minus any possible savings which may result from the rescission. In either case, the customer bears sole responsibility for the negative consequences arising from non-implementation of the change request.
4. We have the right to claim additional work-related remuneration for any extra work arising from the implementation of the change request procedure, and based on the standard rates agreed in the individual contract.

**§ 4 Reimbursement of expenses, work verification**

1. Insofar as our employees have to make an overnight stay away from home in order for them to implement the contract because returning to their place of residence on the relevant working day is unreasonable pursuant to the stipulations in the Working Hours Act, we have the right to charge the customer extra expenses for food and the costs of overnight accommodation amounting to the relevant valid flat rates plus turnover tax as approved by tax law.
2. Moreover, we also have the right to charge for the actual travel costs when journeys are undertaken in private cars, again applying the flat rates applicable in each case which are valid and approved according to tax law, and in doing so, to charge the agreed hourly rate for the employee for the associated travel time.
3. Insofar as we arrange contracts on behalf of the customer, the customer renders us harmless of all of the obligations associated with these contracts.
4. Billing for the working hours undertaken by our employees is managed on the basis of the job sheets. The customer is obliged to immediately check the job sheets presented to the customer and to sign them. One copy of the job sheet is retained by the customer for accounting verification purposes. If the customer fails to fulfil its obligations pursuant to Sentence 2 above, and if it is responsible for this violation, the job sheets prepared by the employee are considered to be authorised; this does not apply if within one week of receiving the invoice which bills the relevant working hours of the employee, the customer makes written justified objections to the correctness of the details recorded in the job sheet.

**§ 5 Claims for defects**

1. The deliverables which we are obliged to provide in accordance with the contract are exclusively based on the agreed contract taking into consideration the technical options available and the generally accepted engineering and technical standards, as well as the general level of due diligence expected in this sector. Any quality properties or function properties of the deliverables promised by us are only valid as guarantees in the sense of Section 639 BGB if they have been expressly stated as such by us.
2. Insofar as subsequent servicing work and adjustment work may be necessary in each case in accordance with standard engineering practise, this cannot be construed as a defect. Such services are part of the original scope of work and must be remunerated by the customer pursuant to the contract.
3. The customer must inform us immediately in writing - after three days at the most - about any obvious defects revealed after accepting the deliverables. Complaints about concealed defects must be made in writing immediately after identification. The defects must be described in a verifiable manner. A violation of the complaint obligation releases us from our responsibilities with respect to liability for defects as long as we cannot be accused of gross negligence.
4. The customer must grant us sufficient time and opportunity at our reasonable discretion to remedy the defect. In particular, the customer has to ensure that the questionable article is made available for investigation and executing the improvements. We are not obliged to carry out any improvements in the case of minor defects. The same applies when remedying the defects is not possible under the given circumstances. In these cases, the customer only has the right to reduce our remuneration.
5. The customer is obliged not to use the object of performance until the inspection has been completed. If the customer operates the object of performance after having reported a defect, we cannot be held responsible for any damages which

arise as a result. The customer bears the burden of proof to demonstrate that the damage was not attributable to the commissioning of the object of performance.

6. The customer only has the right to remedy a defect itself or by an authorised third party at our expense when we failed to comply with a reasonable deadline to remedy the defect or if there is a considerable safety risk involved or a disproportionately high risk of damage occurring. Prior to remedying the defect itself, we must be informed about the situation.
7. We bear the costs for remedying defects insofar as these are not disproportionate. If the costs are disproportionate, we will only undertake to remedy a defect if the customer pays a share of these costs.
8. The lapsing of the claims for damages begins with the acceptance or the legal fiction of their acceptance.
9. Claims for defects do not apply when and insofar as
   (a) the customer refuses without any reasonable justification to allow us to carry out the improvement work,
   (b) the customer remedies or authorises a third party to remedy the supposed defects without giving us an opportunity for improvements,
   (c) the defects can be attributed to the service description, or to the instructions issued by the customer, or to consumables ordered by the customer, or to preceding work carried out by other companies, or the use of the object of performance by the customer.

**§ 6 Acceptance, transfer of risk**

1. The acceptance of the object of performance must be implemented within five working days of being informed about the completion of our services and readiness for acceptance. The results of the joint acceptance inspection must be documented.
2. Insofar as partial services could not be completed due to circumstances under the control of the customer, an interim acceptance inspection must be carried out on the already completed services.
3. The obligation to accept our services is independent of the fulfilment of the service obligations of third parties.
4. Acceptance cannot be refused merely because of an insignificant defect. If the acceptance is delayed for reasons beyond our control, acceptance is taken as given after a time limit of ten working days after being informed about the completion of the service.
5. Risk of loss or damage to the object of performance is transferred to the customer after acceptance or the legal fiction of its acceptance. If the readiness for acceptance cannot be announced for reasons beyond our control, the risk transfers to the customer after the fruitless ending of a time limit of 20 working days after the receipt of our request to remove the hindrances to establishing readiness for acceptance. In parallel, the services undertaken up until that time are also considered to be accepted.
6. Objections to the services provided by us must be raised immediately in writing and at the latest within four weeks of receipt, and must be described in detail. If no objections are raised by the customer within four weeks of receiving the services, then our services will be considered to have been executed and confirmed in accordance with the contractual provisions. If objections are raised, the customer grants us enough time and opportunity at our reasonable discretion to subsequently satisfy the objections. If the customer refuses to do so, this releases us from the obligation to undertake the supplementary performance.

**§ 7 Contractual term and rescission**

1. Insofar as nothing to the contrary is defined in a services contract, said services contract is always closed for an unlimited term. Both contractual parties have the right to rescind it after a three-month period of notice. If the customer prevents the fulfilment of the contract before this rescission time limit has fully run, the customer is obliged to pay us the agreed remuneration for every working hour not accepted until the end of the notice period for our employee/s assigned for the fulfilment of the relevant contract.
2. The right of both contractual partners to rescind the contract without notice for a material reason remains unaffected. A material reason in this case for us to rescind the contract without notice is considered to exist when a) the customer stops making its payments or applies for the instigation of court or extrajudicial insolvency proceedings b) the customer defaults on fulfilling its liabilities with respect to us from another contractual relationship and continues to default despite being accorded a reasonable extension or c) we are unable to carry out our work because of a strike, lock-out, force majeure and/or other reasons.
3. If the customer rescinds a contract for work and labour, for reasons which are out of our control, it owes us the remuneration for the services executed prior to rescission. Moreover, we also have the right to an additional remuneration corresponding to 15 % of the agreed remuneration for the services which can no longer be executed as a result of the rescission. We also have the right pursuant to Section 649 (2) BGB to claim for remuneration which exceeds the aforementioned figure. The customer has the right to prove that we actually had higher savings for the work not carried out and other revenues. The total of all of the payments including the aforementioned remunerations, must not exceed the contractual price.

**§ 8 Supplementary liability provisions**

1. In the event that we damage the property of the customer during the course of undertaking our services, we initially have the right to repair the property or to replace it. The customer only has the right to additional claims if it proves impossible to remedy such damage or the remedy fails.
2. If the equipment or tools provided by us become damaged at the workplace when working outside of our own premises and for reasons which are out of our control, or if they become lost for reasons which are out of our control, the customer is then obliged to replace this damage. This does not include damage attributable to normal wear and tear.

**DEEP. KBB GmbH**
Bad Zwischenahn (January 2018)