



# Siempelkamp NIS – Terms of Delivery

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## Terms and Conditions for Products and Services Delivered Siempelkamp NIS Ingenieurgesellschaft mbH -- Date: March 06th, 2019

### I. Applicability of the Siempelkamp NIS Terms of Delivery, Offers and Contracts

1. All deliveries of products and services by Siempelkamp NIS are subject solely to the following terms and conditions unless otherwise specified by separate written agreement. General business terms and conditions of the ordering party which conflict with or deviate from these terms and conditions shall not apply. The provision of products or services by Siempelkamp NIS without express reservation of rights under these terms and conditions does not imply recognition of the ordering party's business terms and conditions.
2. These terms and conditions for products and services shall also apply to all future legal business transactions with the ordering party involving products or services provided by Siempelkamp NIS, even in cases in which these terms and conditions are not specifically cited.
3. Secondary agreements shall apply only if approved in writing.
4. All offers submitted by Siempelkamp NIS are non-binding and subject to change without notice – particularly with respect to price, quantity, delivery date, form of delivery and supplementary services – unless expressly designated as binding. This also applies to technical descriptions and other information contained in offers, brochures and other informative material. Unless otherwise specified by separate agreement, a contract shall not be regarded as concluded until confirmed in writing by Siempelkamp NIS.
5. Information described in section I. 4. and public statements issued by Siempelkamp NIS, product manufacturers and/or their personnel (Art. 434, Para. 1, Sentence 3 German Civil Code (BGB)) are not to be regarded as component parts of the description of products/services unless specific reference thereto is made in the contract.

### II. Scope of contract products and services; obligations of the ordering party

1. The scope of products or services to be provided is determined solely by the provisions of the concluded contract. Siempelkamp NIS reserves the right to make changes in design, form and colour based upon improvements in the state of technology or legal requirements, provided the changes are not essential or do not impose an unreasonable burden or inconvenience on the ordering party.
2. If the ordering party can reasonably be expected to accept partial product deliveries or incremental services, partial deliveries or incremental services will be provided and billed as such.
3. Siempelkamp NIS is entitled to have products or services it is contracted to deliver provided by carefully selected, qualified third-parties.
4. If otherwise reliable suppliers contracted to provide products/services to Siempelkamp NIS intended to cover orders to customers fail to deliver said products/services, Siempelkamp NIS shall be absolved of its obligation to deliver accordingly and shall have the right to cancel the contract.
5. Should it be determined after conclusion of a contract that the ordering party cannot provide adequate assurance of its ability to pay and Siempelkamp NIS's claim for payment is in jeopardy, Siempelkamp NIS shall be entitled to refuse delivery of products or services until such time as the ordering party effects payment or presents appropriate security. If payment or presentation of security is not effected within twelve working days of receipt of a corresponding notice, Siempelkamp NIS shall be entitled to cancel the contract.
6. If the ordering party fails to request, accept or pick-up products/services in a timely manner or is at fault with respect to a delay in shipment or receipt, Siempelkamp NIS shall be entitled, without effect upon other claims or entitlements, to demand payment of a fee for costs in an amount commensurate with standard local storage costs, regardless of whether the goods are stored at Siempelkamp NIS's facilities or those of a third-party. The ordering party shall have the right to show proof that no damages or only minor damages were incurred as a result of the delay.
7. To the extent applicable, all products and services shall be subject to the regulations issued by the "Verband Deutscher Elektrotechniker (VDE)", to the extent that they relate to the safety and security of products and services delivered. Deviations from these regulations are permissible, provided the same level of safety and security is assured through other means. Siempelkamp NIS reserves the right to make technical changes which have no impact on basic functions or suitability and serve the objectives of technical progress at any time.
8. Accompanying safety devices shall be delivered to the extent required by law or explicit contractual agreement.
9. Siempelkamp NIS reserves unrestricted property, intellectual property and utilization rights to all information provided in offers, cost estimates, price calculations, drawings and other written or printed materials. Such information may not be provided to third parties without the prior consent of Siempelkamp NIS. Drawings and other materials enclosed in offers are to be returned immediately to Siempelkamp NIS on request in the event that Siempelkamp NIS is not awarded a corresponding contract. Sentences 1 and 2 of this paragraph apply accordingly to materials and documents provided by the ordering party. However, these may be made available to third parties contracted by Siempelkamp NIS to deliver products/services on its behalf.
10. If products and technical know-how delivered by Siempelkamp NIS are restricted by an import license for use only in the Federal Republic of Germany and the ordering party wishes to use the products and technical know-how outside the Federal Republic of Germany, the re-export has to be approved by the appropriate authority. It is subject to German foreign trade law, the EG-dual-use decree and U.S. export regulations, with which the customer is expected to be acquainted. Siempelkamp NIS shall notify the ordering party in the event that this restriction applies.

### III. Supplementary conditions applicable to the delivery of software

1. Siempelkamp NIS shall retain intellectual property, commercial protection and utilization rights to delivered software unless otherwise specified by written agreement. Any notice of reservation of protected rights appearing on the program medium or the packaging – attached by either Siempelkamp NIS or third parties - must be observed. Copies made by the ordering party of original data medium bearing such notices must also bear the same notice.
2. Unless otherwise specified by express agreement, the ordering party acquires non-exclusive, non-transferrable utilization rights, without time limitation, to the software provided on the delivered program media. These media may be copied for purposes of back-up and installation only, and only if absolutely necessary from a technical standpoint. Use of the software in a network requires the award of special rights. Program form and type of data media are described in the respective contractual agreement.
3. Siempelkamp NIS reserves all other rights to programs and documentation, including copies and all subsequent amendments or modifications.
4. The ordering party shall be responsible for proper installation of the delivered software. Neither installation by Siempelkamp NIS nor training and orientation of the ordering party or his operating personnel with respect to use of the software are included in the scope of contract services, unless otherwise specified by agreement. These services are provided only on the basis of a corresponding agreement and are billed separately.

5. If Siempelkamp NIS provides training, consulting or installation services, the ordering party shall be obliged to ensure that the appropriate prerequisites for the provision of such services are met on the customer side, i.e. provide for adequate rooms and infrastructure, materials and personnel. Should the ordering party fail to properly fulfil his obligations as described in sentence 1 of this paragraph, the dead-lines and periods specified in the contract for the provision of these services will be extended by Siempelkamp NIS within reason. Siempelkamp NIS shall be entitled to charge the ordering party for additional costs associated in particular with the extended commitment of personnel and material resources incurred due to the delay. Claims and entitlements accruing to Siempelkamp NIS on the basis of Art 643 BGB shall not be affected.
6. The processing of the software provided under the terms of the contract by the ordering party or third parties is expressly prohibited unless absolutely necessary in order to comply with legal requirements or permitted by special agreement.
7. Decompilation and disassembly (reverse engineering) of software provided under the terms of the contract is also prohibited. Siempelkamp NIS reserves the right to provide the ordering party on request with information required to establish interoperability of the delivered software with other programs for a reasonable supplementary fee. In using this information, the ordering party is obliged to comply with the restrictions specified in Art. 69e, Para. 2 of the German Copyright Act (*Urheberrechtsgesetz*).
8. Siempelkamp NIS shall provide the ordering party with appropriate documentation for each software product delivered. Additional copies of this documentation will be provided to the ordering party for an extra charge.
9. The ordering party is obliged for an unlimited period of time to take all necessary precautions to ensure that the software products and accompanying documentation are not made accessible to third parties, even in expanded or modified form, without the written approval of Siempelkamp NIS.
10. Delivered software products will be maintained and updated by Siempelkamp NIS under standard Siempelkamp NIS conditions, provided a separate maintenance and updating contract has been concluded.
11. If Siempelkamp NIS delivers software, the ordering party shall be required to test such software immediately – in collaboration with an Siempelkamp NIS employee if so requested by Siempelkamp NIS. If the software is found to function essentially in accordance with contract specifications, the ordering party shall submit a written declaration of acceptance without delay. If the software is not tested within at least two weeks of installation for reasons beyond the control of Siempelkamp NIS, the delivered software shall be regarded as accepted.

#### **IV. Prices and payment terms**

1. Prices quoted apply to delivery without emplacement or installation ex works and excluding packing. Mandatory German turnover tax is added at the current applicable rate. Products or services for which no price was set at the time the order was placed will be billed at the list price or fee-table rate in effect on the date the products/services are delivered.
2. If Siempelkamp NIS has provided emplacement or installation services and no agreement to the contrary has been made, the ordering party shall be obliged to cover all secondary costs over and above the specified price, to include in particular travel costs and costs for the transportation of tools and personal luggage.
3. Payments are to be made free of bank charges to the Siempelkamp NIS payment office.
4. All payments are due in full upon receipt of invoice. Deduction of cash discounts requires a prior written agreement. If a cash discount has been specified by agreement, the discount may not be deducted from new payment obligations until all prior payment obligations have been settled. If the ordering party is in arrears with payments, Siempelkamp NIS shall be entitled to charge interest at a rate of 8% above the base interest rate in effect at the time.
5. If the ordering party is in arrears with several payments at a given time and the ordering party has not specified a sequence of liquidation, the overdue debt will be liquidated first. If several payments are overdue, the oldest debt among them will be liquidated first.
6. Cheques and drafts will be accepted by Siempelkamp NIS only on the basis of prior agreement and for purposes of payment. Payment is regarded as effected on the date the cheque or draft is honoured. Siempelkamp NIS is to be reimbursed for discount fees and interest.
7. The ordering party has the right to offset opposing payment obligations/claims or withhold claim amounts from payments only for undisputed claims or non-appealable claims recognized by a court of law.

#### **V. Reservation of rights of ownership**

1. Delivered objects (reserved-ownership goods) shall remain the property of Siempelkamp NIS until all claims for payment deriving from the business relationship with the ordering party have been fulfilled. If the value of all security to which Siempelkamp NIS is entitled exceeds the value of all secured claims by more than 25 per cent, Siempelkamp NIS shall release a corresponding part of the security at the ordering party's request.
2. As long as the reservation rights of ownership remains in effect, the ordering party shall not be permitted to pledge reserved-ownership goods or offer them as security. He may sell the goods only to resellers in the course of normal business operations under the condition that the reseller receives payment for the goods from his customers. The proceeds of sales replace the value of the sold goods. Any costs incurred as the result of intervention are to be borne by the ordering party.
3. If goods are attached, seized or otherwise become subject to disposition or intervention by third parties, the ordering party shall notify Siempelkamp NIS immediately.
4. In the case of non-compliance with contract obligations on the part of the ordering party, Siempelkamp NIS shall be entitled to cancel existing contracts and recover reserved-ownership goods. The ordering party shall be obliged to release such goods. Recovery and/or assertion of claims accruing from rights of reserved ownership do not require Siempelkamp NIS to cancel a contract. Such actions or the attachment of the reserved ownership goods by Siempelkamp NIS do not imply cancellation of a contract unless Siempelkamp NIS has expressly declared the contract cancelled.

#### **VI. Dates of delivery of goods and services**

1. Delivery dates and periods specified by Siempelkamp NIS are approximate and non-binding. Delivery dates are specified subject to the co-operation of the ordering party in compliance with the provisions of the contract. Changes in existing contracts result in corresponding postponements of dates / prolongation of delivery periods, unless otherwise specified by agreement.
2. Compliance with specified delivery dates/periods presupposes the timely receipt of all documents, required approvals and releases to be submitted by the ordering party as well as clarification and approval of plans and compliance with specified payment terms and other obligations. Should the ordering party fail to meet these obligations in a timely manner, the delivery period will be extended within reason.
3. If Siempelkamp NIS or its suppliers fail to meet a specified delivery date or to deliver within a specified period due to causes beyond the control of Siempelkamp NIS (force majeure or other unforeseeable circumstances), the delivery period shall be extended within reason. Siempelkamp NIS agrees to notify the ordering party of such circumstances without delay. Should the delaying circumstances continue to prevail one month after a specified delivery date, either party shall be entitled to cancel the contract. Additional claims deriving from failure to meet delivery deadlines for which Siempelkamp NIS cannot be held responsible are excluded.
4. The delivery date is regarded as met
  - a) in cases of delivery without emplacement and installation if the operationally ready consignment is shipped or picked up within the specified delivery period. If delivery is delayed for causes for which the ordering party is responsible, the delivery date shall be regarded as met if notices of readiness for shipment have been issued within the specified delivery period;
  - b) in cases of delivery with emplacement and installation if these services have been performed within the specified delivery period.

5. If Siempelkamp NIS fails to deliver or provide contract services on time through its own fault, the ordering party shall be entitled – provided he can show credible proof that the delay has caused damages – to demand compensation at a rate of no more than 0.5% for each complete week of delay up to a maximum total of 5% of the contract price for the portion of goods/services which could not be put into purposeful operation due to the delay. No compensation will be made for damages resulting from disruption of production, lost earnings, etc.
6. Claims for compensation for damages by the ordering party due to delayed delivery or delayed provision of services as well as claims for compensation for damages in lieu of performance which exceed the limits specified in section VI. 5. are excluded in all cases of failure to deliver on time or within the period allowed Siempelkamp NIS for delivery. This does not apply in cases of mandatory liability due to malicious intent, gross negligence or death, bodily injury or impairment to health. This does not imply a shift in the burden of proof to the disadvantage of the ordering party. The ordering party may cancel the contract under the conditions established by law only if Siempelkamp NIS is shown to be responsible for the delay in delivery.
7. Claims for compensation for damages by the ordering party due to delay in delivery or provision of services are also excluded insofar as the damages in question are consequential damages which do not relate directly to the delivered goods or services provided (e.g. disruption of production or lost earnings). Section VI. 6., sentence 2 applies accordingly.
8. The ordering party shall be obliged upon request by Siempelkamp NIS to state within an appropriate period of time whether he intends to cancel the contract and/or claim compensation for damages in lieu of performance or insists upon delivery.
9. If shipment or delivery is delayed at the request of the ordering party by more than one month following notification of readiness for shipment, the ordering party can be charged a storage fee of 0.5 per cent of the invoice amount for every full month or increment thereof. The total storage fee is limited to a 5 per cent of the invoice amount. The parties retain the right to show proof of higher or lower storage costs.

#### **VII. Transfer of risk**

1. Risk is transferred to the ordering party as follows for all deliveries (including carriage-paid deliveries):
  - a) in cases of delivery without emplacement and installation when the operationally ready shipment has been shipped or picked up. Siempelkamp NIS will insure consignments against ordinary transport risks, e.g. breakage, transport and fire damage on request and at the ordering party's expense.
  - b) in cases of delivery with emplacement and installation on the date of receipt at the ordering party's facility or, if specified by agreement, upon successful completion of trial operation.
2. If shipment or receipt, the commencement or completion of emplacement of installation work, receipt at the ordering party's facility or trial operation is delayed for causes for which the ordering party is responsible or the ordering party fails to accept the consignment on the specified date for any reason whatsoever, risk for the period of the delay is transferred to the ordering party. Siempelkamp NIS will have related risks insured on request and at the expense of the ordering party.

#### **VIII. Assembly and installation**

##### **A.**

In the absence of agreements to the contrary, every type of assembly and installation is subject to the following requirements.

1. The ordering party is obliged to provide or perform the following in a timely manner at his own expense:
  - a) support personnel and all required tools in the quantities needed;
  - b) all excavation, foundation, construction, lifting, framework, finishing, painting and other work required for assembly/installation outside the competency of the assembly/installation personnel, to include all required materials;
  - c) consumable supplies and materials required for installation and commissioning, including scaffolding boards, wedges, floor panels, cement, finishing and sealing materials, lubricants, fuels, etc.; also scaffolding, lifting equipment and other devices;
  - d) power and water to include all necessary lines and connection to the point of use, heat and general lighting;
  - e) sufficiently large, suitable, dry, lockable rooms at the installation site for machine components, apparatus, materials, tools, etc., and appropriate work and break rooms for installation personnel, to include sanitary facilities suitable for local circumstances; the ordering party is also required to take the same precautions to ensure protection of Siempelkamp NIS property and personal property of the installation personnel at the installation site he would take to protect his own property;
  - f) protective clothing and safety equipment Siempelkamp NIS cannot be expected to supply due to the specific conditions prevailing at the installation site and the nature of the ordering party's operation.
2. Prior to commencement of installation work, the ordering party must voluntarily provide all relevant information pertaining to the location and position of concealed power, gas and water lines or comparable systems in writing along with all required statistical data to Siempelkamp NIS.
3. Prior to the commencement of assembly or installation work, the ordering party must ensure that all required delivered parts and components are in readiness at the installation site. All preliminary masonry, carpentry and other work must have been completed prior to the commencement of assembly and installation to the extent that assembly or installation work can begin immediately upon arrival of the assembly/installation personnel and carried out without interruption; it is especially important that access ways and the assembly or installation site is levelled and cleared at floor height, that the foundation masonry/concrete is set and dry, that foundations have been aligned and back-filled, that walls and ceilings have been finished and especially doors and windows put in at interior sites;
4. If assembly, installation or commissioning is delayed due to circumstances – prevailing in particular at the installation site – beyond the control of Siempelkamp NIS, the ordering party shall bear the costs of waiting time and necessarily additional travel by assembly or installation personnel within reasonable limits.
5. The ordering party is to verify and certify the hours worked by the assembly/installation personnel of Siempelkamp NIS or the subcontractors, to the best of his knowledge. The ordering party shall also be obliged to issue a written confirmation of the completion of assembly or installation work without delay.
6. Siempelkamp NIS shall not be liable for work performed by its assembly or installation employees or other personnel in its service in cases in which the work performed is not related to delivery and assembly or installation or if such work is not performed at the ordering party's request.

##### **B.**

If Siempelkamp NIS has performed assembly or installation under a separate payment agreement, the following requirements apply in addition to those specified in section A.

1. The ordering party shall pay Siempelkamp NIS the wage rates and surcharges for overtime, night work, Sunday and holiday work, work performed under difficult conditions, planning and monitoring specified in the confirmed work order.
2. The ordering party shall also reimburse Siempelkamp NIS for the following costs:
  - a) travel costs, costs for hand-tool transport and personal luggage;
  - b) personnel allowances for working time, days off and holidays.

#### **IX. Acceptance of delivery**

The ordering party may not refuse to accept delivery due to minor deficiencies.

#### **X. Deficiencies in goods and materials**

**A.**

Siempelkamp NIS shall be liable for deficiencies in goods and materials, subject to the following conditions:

1. All delivered goods and services which exhibit deficiencies within the warranty/expiration period – regardless of how long they have been in operation – are to be repaired/rendered free of deficiencies, replaced or provided anew by Siempelkamp NIS – at its own discretion – under the condition that the cause of such deficiencies was in effect at the time of transfer of risk.
2. Claims for deficiencies in goods and materials are subject to a twelve-month expiration period. This does not apply in cases where the law, e.g. Arts. 438, Para. 1, No. 2, 479, Para. 1 and 634a, Para. 1, No. 2 BGB, provide for longer expiration periods (statute of limitations).
3. The ordering party is obliged to comply with the provisions of Art. 377 German Commercial Code (HGB) with respect to inspection and complaints relating to deficiencies in goods and materials. The ordering party must notify Siempelkamp NIS in writing of all deficiencies in goods and materials without delay.
4. If complaints have been filed, the ordering party is entitled to withhold payments to Siempelkamp NIS in amounts commensurate with the value of the detected deficiencies. The ordering party may withhold payments only if an indisputably justified complaint has been filed. If a complaint is not justified, Siempelkamp NIS is entitled to demand reimbursement for resulting costs from the ordering party.
5. Siempelkamp NIS must be given the opportunity to rectify deficiencies within a reasonable period of time before any other action is taken.
6. If Siempelkamp NIS fails to rectify a deficiency, the ordering party may cancel the contract or reduce payment. This has no effect on potential claims for compensation for damages pursuant to Section XIII.
7. Claims based upon complaints will not be recognized in cases involving insignificant deviations from specified characteristics, insignificant impairment of function, natural wear and tear or damage incurred after transfer of risk due to improper or negligent treatment, excessive use, unsuitable operating supplies, deficient construction work, unsuitable construction ground or extraordinary external influences not provided for in the contract. If improper modifications or maintenance work are performed by the ordering party or third parties, no claims for these deficiencies or their consequences will be recognized.
8. The costs of rectifying deficiencies, specifically labour and material costs, are to be borne by Siempelkamp NIS. If rectification can be accomplished only at incommensurate expense, Siempelkamp NIS is entitled to refuse to rectify.
9. Legal claims for redress against Siempelkamp NIS are recognized only if the ordering party has not entered into agreements with his purchasers which go above and beyond the legal provisions governing claims for deficiencies in goods and materials.
10. Section XIII. applies to claims for compensation for damages. (Other claims for compensation for damages).
11. Further claims by the ordering party based on deficiencies in goods and materials vis-à-vis Siempelkamp NIS and organizations or individuals providing services on its behalf not listed in this section X. are excluded.

**B.**

Liability on the part of Siempelkamp NIS for deficiencies in software products are also subject to the following conditions:

1. The ordering party is aware that, given the diversity of possible applications, software cannot ordinarily be developed in such a way that it functions perfectly under conditions prevailing in all applications. Siempelkamp NIS specifically provides no assurances with respect to the compatibility of the delivered software with products already in use by the ordering party, especially software applications, unless otherwise specified by special agreement.
2. The ordering party is solely responsible for the selection, installation and use of the software and for the results achieved thereby, unless otherwise specified by special agreement.
3. Siempelkamp NIS guarantees use of the software in compliance with the provisions of the contract and as specified in the software product description provided upon conclusion of the contract.
4. Liability for deficiencies in software products includes diagnosis and correction/elimination of errors for the duration of the warranty period as specified in X. A. 2.
5. Siempelkamp NIS has the option of correcting errors, i.e. deviations from specifications in the respective software product description which occur despite compliance with operating instructions, by delivering a new software version or a new variation of the software product. Precondition for replacement with new software is that the error is reproducible and appears in the most recent software product version or software product variation acquired by the ordering party.
6. The ordering party shall assist Siempelkamp NIS in identifying and correcting errors to the extent possible. The ordering party agrees to give Siempelkamp NIS immediate access to documentation/records which provide descriptive information regarding the circumstances under which the error appeared.
7. Until such time as a new software product version / software product variation in which the error does not appear can be provided to the ordering party, Siempelkamp NIS may provide an interim solution which circumvents the error if it is possible to do so at a reasonable expense and in cases in which the ordering party cannot perform urgent tasks due to the error.
8. Siempelkamp NIS shall be exempt from liability for a software product that has been modified by the ordering party or third parties unless the ordering party can demonstrate in a trial run of the unaltered software product that there is no causal relationship between the modification and the error in question.
9. Siempelkamp NIS shall not be liable for replacement or loss of data due to a software delivery. The ordering party is obliged to employ appropriate measures to secure all data, especially regular data back-ups.
10. In cases in which Siempelkamp NIS purchases standard software (e.g. from Microsoft, Oracle, etc.) for delivery to the ordering party, Siempelkamp NIS shall not be liable for deficiencies in these software products.

**C.**

1. Other claims relating to deficiencies in goods and materials by the ordering party against Siempelkamp NIS and organisations or individuals acting on its behalf are excluded, including in particular claims for compensation for damages which do not affect the delivered product itself. This does not apply to cases in which liability is mandatory due to malicious intent, gross negligence, or death, bodily injury or impairment to health.
2. Sections X. A. 1. – 11. and X. B. 1 – 10 apply accordingly to claims presented by the ordering party for rectification, replacement or compensation for damages resulting from proposals or advice given within the framework of the contract or from violations of secondary contractual obligations by Siempelkamp NIS.

**XI. Commercial protected rights and intellectual property rights, deficiencies in title**

1. Unless otherwise specified by agreement, Siempelkamp NIS shall be obliged to deliver products/services unencumbered by protected rights and intellectual property rights of third parties (referred to hereinafter as protected rights) only in the country in which the delivery site is located. If a third party files justified claims against the ordering party due to violations of protected rights by products/services delivered by Siempelkamp NIS and used in compliance with the provisions of the contract, Siempelkamp NIS shall be liable to the ordering party within the limits of the period specified in section X. A. 2. as follows:
  - a) Siempelkamp NIS shall, at its own discretion and expense, either acquire a right of utilization for the product in question, modify the product in such a way that the protected right is not infringed upon or replace it with another product. If none of these options are available to Siempelkamp NIS under acceptable terms and conditions, the ordering party shall be entitled to cancel the contract or reduce payment accordingly.
  - b) Siempelkamp NIS's obligation to make compensation for damages is based on the provisions of section XIII.
  - c) The obligations of Siempelkamp NIS cited above are recognized only if the ordering party notifies Siempelkamp NIS in writing immediately of claims filed by the third party and refuses to acknowledge infringement; furthermore, Siempelkamp NIS must retain

the right to file defences and negotiate settlements. Should the ordering party discontinue use of the product in order to minimize damages or for other important reasons, he shall be obliged to notify the third party that said discontinuation of use implies no acknowledgement of infringement of protected rights.

2. All claims by the ordering party are excluded in case in which he is responsible for the infringement of protected rights.
3. All claims by the ordering party are excluded in cases in which the infringement of protected rights results from extraordinary specifications by the ordering party, from an application Siempelkamp NIS could not have foreseen, modification of the product by the ordering party or use of the product in combination with products not delivered by Siempelkamp NIS.
4. In cases of infringement of protected rights the provisions of sections X. A. 4., X. A. 5. and X. A. 9. apply accordingly for claims by the ordering party covered by section XI. 1. a).
5. The provisions of section X. apply accordingly to other deficiencies in title.
6. Claims relating to deficiencies in title by the ordering party against Siempelkamp NIS or individuals or organizations providing services on its behalf which go beyond or differ from the claims covered by this section XI are excluded.

## **XII. Contract adjustment**

In the event of unforeseen events as defined in section VI. 3. which significantly affect the economic importance or the content of the products or services or have a significant impact on Siempelkamp NIS operations, the contract shall be adjusted accordingly in good faith. If such adjustment is not economically justifiable, Siempelkamp NIS shall have the right to cancel the contract. Should Siempelkamp NIS decide to exercise this right of cancellation, it shall be obliged in awareness of the ultimate consequences of the event to notify the ordering party immediately, even in the event that an extension of the delivery period has been previously negotiated with the ordering party.

## **XIII. Other claims for damages**

1. Claims for compensation for damages and costs by the ordering party (referred to hereinafter as "claims for damages"), regardless of their legal basis, particularly for failure to meet contractual or legal obligations and in cases involving illegal acts, are excluded.
2. This does not apply in cases in which liability is mandatory, e.g. where product liability law is applicable, in cases involving malicious intent, gross negligence or death, bodily injury or impairment to health or failure to comply with essential contractual obligations. Claims for compensation for damages due to failure to comply with essential contractual obligations is limited to foreseeable, contract-related damages unless liability is mandatory due to malicious intent, gross negligence or death, bodily injury or impairment to health.
3. If Siempelkamp NIS is liable under the provisions of section XIII. 2., liability is limited to the following maximum amounts:
  - 0.5 million EUR for property damage per claims event, limited to a maximum liability of 1.5 million EUR per year.
4. Siempelkamp NIS shall not be held liable for damages the ordering party could have avoided by taking reasonable precautionary measures – specifically program and data back-ups, anti-virus checks, mechanical securing of systems, purchase of back-up systems, preparation of emergency plans and sufficient product training for users.
5. Siempelkamp NIS shall not be held liable for consequential damages which do not relate directly to delivered goods or services provided (e.g. lost production time and output or lost earnings). Section VI. 6, sentence 2 applies accordingly.
6. In the event of a violation of precontractual obligations or an obstacle to fulfilment already in effect at the time the contract was concluded (Art. 311, Para. 2, 311a BGB), the obligation to compensate is restricted to damages caused by breach of trust.
7. To the extent that Siempelkamp NIS's liability is excluded or restricted, this also applies to the personal liability of all Siempelkamp NIS employees and representatives and all persons providing services on behalf of Siempelkamp NIS.
8. The above provisions do not imply a shift in the burden of proof to the disadvantage of the ordering party.
9. If the ordering party is entitled to file claims for damages under the provisions of this section XIII. such claims expire at the end of the statute of limitations (expiration period) specified in section X. A. 2.
10. If Siempelkamp NIS purchases standard software (e.g. from Microsoft, Oracle, etc.) for delivery to the ordering party, Siempelkamp NIS shall be exempt from all liability with respect to this software.

## **XIV. Assignment of claims**

Neither this contract nor individual claims or entitlements deriving from this contract may be assigned or transferred to third parties partially or in full without the express written approval of Siempelkamp NIS.

## **XV. Separability clause**

In the event that individual provisions in these Terms of Delivery are found or rendered partially or wholly invalid or infeasible, this shall have no effect on the remaining provisions. Upon recognition of invalidity or infeasibility, the parties are obliged to replace the invalid or infeasible provision with a provision that is economically as nearly equivalent as possible to the invalid/infeasible provision.

## **XVI. Privacy Notice**

Within the scope of the business relationship, personal data is collected and processed on the basis of the General Data Protection Regulation (GDPR). In accordance with the duty to inform pursuant to Art. 13 para. 1 GDPR, the "Data protection information for our business partners (information on the processing of your personal data)" applies.

## **XVII. Applicable law, court of jurisdiction**

1. The legal relations between the parties to this contract are subject to the law of the Federal Republic of Germany. The application of the law on the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
2. Sole court of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Aschaffenburg, provided the ordering party is an entrepreneur as defined by the HGB, a legal entity under public law or a special fund under public law. Siempelkamp NIS also has the right to choose other eligible general or special court jurisdictions.