

# OBRIST GRUPPE

## General Terms and Conditions

Rheinstraße 26-27

6890 Lustenau

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**OBRIST GROUP** Obrist Engineering GmbH / Obrist Powertrain GmbH / Obrist Technologies GmbH  
OET GmbH / Obrist Immobilien GmbH

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## A. GERNERAL TERMS AND CONDITIONS

### 1. SCOPE OF APPLICATION

1.1 These General Terms and Conditions apply to any and all goods deliveries and services between all of the above mentioned companies of Obrist Group (hereinafter shortly referred to as "Obrist") and the contract partner - the latter hereinafter referred to as "Customer". If separate agreements are concluded between the contract parties on individual items, they shall prevail over the relevant provisions of these General Terms and Conditions.

1.2 Obrist's Terms and Conditions for Software shall apply, in addition, to legal transactions relating to software, and Obrist's Terms and Conditions of Assembly shall apply, in addition, to assemblies.

1.3 Deviations from the conditions mentioned in Art. 1.1. and 1.2 shall only be effective if such were acknowledged by Obrist in writing.

1.4 If the deliveries of goods and/or services are made/rendered to consumers within the meaning of Sec. 1 (1) item 2 of the *Konsumentenschutzgesetz* [Consumer Protection Act], *BGBI.* [Office Gazette] 1979/140, the General Terms and Conditions shall apply, unless they are inconsistent with the provisions of the 1 main part of this Act.

### 2. OFFERS

2.1 Obrist's offers are subject to change.

2.2 Information contained in catalogues, brochures, presentation and the like shall only be decisive if explicit reference is made to such in the order confirmation.

2.3 Any and all offer and project documents must not be reproduced nor made available to third parties without Obrist's consent. They shall remain the property of Obrist and shall be returned, at any time, at their request.

### 3. CONCLUSION OF THE CONTRACT

3.1 The contract will only be legally effective upon the written order confirmation of Obrist or the actual delivery to the customer.

3.2 Any subsequent amendments and supplements of the contract may only be agreed upon in writing.

### 4. PRICES

4.1 Prices shall apply ex works or ex warehouse of Obrist, not including packaging, loading and value added tax. Any charges, taxes

or other duties required in connection with the delivery, shall be borne by the Customer.

4.2 In case of a purchase order deviating from the offer, we reserve the right to change the price.

4.3 The prices are based on the costs of material and the wage costs at the time of our first offer. Changes of these costs until the date of the delivery shall entitle to us to a price adaptation.

### 5. DELIVERY

5.1 Agreed delivery periods will commence from the date of the order confirmation, however not prior to the fulfilment of all preliminary services to be rendered by the customer.

5.2 Any permits by authorities or other permits necessary for the delivery in the country of the customer will prolong the agreed delivery periods until they have been presented. The Customer shall obtain them in their country.

5.3 Delivery obligations and periods shall generally be suspended for as long as the customer is in delay with any liability.

5.4 Obrist shall be entitled to make and set off partial or preliminary deliveries.

5.5 The agreed delivery periods shall apply subject to any unforeseeable impairments or those which are independent of the party's will, such as e.g. war, elementary events, interactions and prohibitions by the government or authorities, lack of energy or raw materials, strikes, transport damage or delays, etc. Such impairments will also entitle to a prolongation of the delivery period if they occur with any subcontractors.

5.6 If it proves impossible to send any goods ready for dispatch or if the sending is not desired by the Customer, it may be stored at the Customer's expense and risk. The delivery shall then be considered to be rendered.

5.7 Any compensation for delay of delivery shall only apply in case of a special agreement and shall be restricted to the amount of the agreed penalty if it is attributable to Obrist.

### 6. PERFORMANCE AND TRANSFER OF RISK

6.1 Costs and risks shall be transferred from Obrist to the Customer upon shipment ex works or warehouse, unless otherwise agreed. That shall also apply in case of an assembly performed in the Customer's plant or transport by Obrist.

6.2 If the delivery is delayed by the Customer, the costs and risks shall be transferred to them when the goods are ready for shipment.

6.3 All periods depending on the performance on the part of Obrist shall commence at the specified times, regardless of whether any quality inspections or trial operations have been reserved.

## **7. PAYMENT**

7.1 1/3 of the price shall fall due for payment upon receipt of the order confirmation, 1/3 after expiry of half of the delivery period and the rest upon delivery, unless specific payment terms were agreed.

7.2 In case of partial set-offs, the relevant partial payments shall fall due upon receipt of the invoice. That shall also apply to payments which shall be made beyond the original sum at completion due to subsequent deliveries or other agreements, regardless of the payment terms agreed for the main delivery.

7.3 Payments shall be made in cash, without any type of deduction, free at Obrist's paying office, in the agreed currency. Any acceptance of cheques or bills of exchange shall always be made on account of payment only. All expenses associated therewith shall be borne by the Customer.

7.4 The Customer shall not be entitled to withhold or set off payments due to warranty claims or other counter-claims.

7.5 In case of a default of payment, Obrist may

a) postpone the fulfilment of their obligations until the due payments has been made;

b) declare that all outstanding payments are due for payment (loss of deadline);

c) set-off default interest of 5 % above the discount rate of the Austrian National Bank from the due date;

d) withdraw from the contract in case of non-compliance with a reasonable grace period.

## **8. RETENTION OF TITLE**

8.1 Obrist retains the ownership in the object of the purchase until the complete fulfilment of all financial obligations of the Customer. This shall explicitly also be applied to intellectual property. The Customer shall comply with all form requirements to safeguard Obrist's ownership.

8.2 In case of pledging or the assertion of other claims, the Customer shall be obliged to inform about Obrist's ownership right and to immediately notify Obrist.

8.3 In case the Customer re-sells the object of purchase which is subject to retention of title, the retained ownership shall cover the future proceeds or the purchase price claim arising from this transaction. In case of such a re-sale, the Customer shall be obliged to report them immediately and to keep the proceeds separate from other proceeds.

8.4 In case the objects of purchase delivered by Obrist are processed or machined and joined with others, Obrist shall be entitled to a co-ownership share in the object resulting from the processing or machining, in proportion of the value of the object of purchase delivered by Obrist to the other goods to be processed at the time of processing or joining.

## **9. WARRANTY**

9.1 Unless otherwise agreed, the warranty period shall be 6 months from the transfer of risk according to Art. 6.1. That shall also apply to the objects of delivery and service which are fixedly connected with immovable objects.

9.2 A claim for warranty shall only arise in case of an immediate written notification on the defect which occurred and will be limited to the repair or the replacement of the defective goods or parts thereof. All others costs associated with the repair shall be borne by the Customer.

9.3 The regulation on presumption set forth in Sec. 924 of the *ABGB* [General Civil Code] shall be excluded. The Customer shall prove that a defect existed at the time of hand-over.

9.4 Defects which are caused by an improper use in violation of the operating instructions or other notes by Obrist or by any use not specified in the contract shall be excluded from warranty. The warranty for goods which were manufactured based on construction data, drawings, models or other specifications of the Customer shall only apply to the performance in accordance with the conditions. Wear parts will not be replaced.

9.5 The warranty will be cancelled if the Customer makes changes or repairs or has them performed by third parties without the consent of Obrist. Invoices for such will not be accepted. The works or deliveries liable due to warranty will no prolong the original warranty period.

## **10. LIABILITY**

10.1 The liability under the product liability act shall be excluded if operating instructions and instruction notes or warning and safety notes provided by Obrist are not observed.

10.2 Outside of the scope of application of the product liability act, claims for damages can only be asserted in case of intent or gross fault of Obrist and, in addition, only for personal injury and for objects directly damaged by the product. Any other claims, in particular, consequential pecuniary damage or lost profit shall explicitly be excluded. The damage must be notified, in writing, within 6 months after the occurrence of the damage, however no later than 2 years after the delivery or the rendering of the service, otherwise they shall be excluded.

10.3 In the event that Obrist has taken out a liability insurance, the liability shall be restricted to the sum insured under this liability insurance which is available to the concrete case of damage. This maximum comprises all claims existing against Obrist, such as, in particular damages and price reduction. The above mentioned maximum amount relates to one insured case. In case of two or several competing damaged customers, the maximum amount for

each individual damaged party shall be reduced in proportion to the amount of their claims.

10.4 Obrist will explicitly not accept any liability for any violations of the industrial property rights (in particular patent rights) of third parties.

10.5 Any buyer of the Customer shall be committed to the full contents of this limitation of liability.

#### **11. WITHDRAWAL FROM THE CONTRACT**

11.1 The Customer may withdraw from the contract if the delivery is delayed by more than 60 days, due to the gross fault on the part of Obrist and despite a written grace period.

11.2 Obrist may, apart from cases of default of payment according to Art. 7.5 d), withdraw from the contract

a) if the delivery or service is impossible or will be delayed beyond a reasonable grace period to be specified in writing, for reasons attributable to the Customer;

b) if the Customer's solvency has essentially impaired since the purchase order and if they are neither willing to make pre-payments nor to provide adequate collateral.

The withdrawal for the above mentioned reasons may also be declared with regard to a part of the delivery or service which is still outstanding.

11.3 If the originally agreed delivery period is prolonged by more than half, but at least 6 months due to one of the impairments mentioned in Art. 5.5, each contract party may declare their withdrawal regarding that part of the delivery or service which is still outstanding.

11.4 If insolvency proceedings are initiated over the assets of one of the contract parties or if such proceedings are rejected due to lack of assets covering the costs, the other contract party may declare the withdrawal from the contract with immediate effect.

11.5 In case of a withdrawal for another reason than the one mentioned in Art. 10.1, any services or partial services which have already been rendered shall be billed and paid according to the contract, regardless of any claims for damages of Obrist. That shall also apply, insofar as the delivery or service has not yet been taken over by the Customer, and to any preparatory actions performed by Obrist. Obrist shall, instead of that, also be entitled to request the return of any objects which have already been delivered. Any other consequences of the withdrawal shall be excluded.

#### **12. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT**

12.1 If the goods are manufactured based on construction data, drawings, models or other specifications of the Customer, they shall indemnify and hold Obrist harmless against any violation of property rights.

12.2 All execution documents such as e.g. plans, sketches, technical descriptions, etc. as well as samples, catalogues, brochures, figures and the like shall remain the intellectual property of Obrist, at all times, and shall be subject to the applicable legal conditions

regarding reproduction, imitation, competition, etc. Art. 2.3 shall also apply to execution documents.

12.3 In case of development orders, Obrist retains the title to the intellectual property ("IP") arising from the order. Unless any deviating agreement was made between the parties, even after the complete fulfilment of all obligations on the part of the Customer Obrist remains the only party entitled to the right to the intellectual property arising from the order.

12.4 With regard to all results which arise in the course of a development order, Obrist will grant to the Customer regarding the field of application relevant for the Customer a right of use, free of charge.

12.5 If Obrist develops a patentable idea in the course of a development order, Obrist shall be entitled to file a patent regarding the patentable idea alone and to possess and use this patent registration and/or this patent alone.

#### **13. FINAL PROVISIONS**

13.1 Amendments and supplements shall be made in writing. That shall also apply to the cancellation of this clause.

13.2 If one or several of the provisions of these General Terms and Conditions and/or of any other contracts concluded between the parties are or become ineffective, or if they prove to contain a loophole, the other provisions shall remain in full force and effect and the ineffective provisions shall be replaced and the loophole shall be filled by an adequate, permissible provision which the contract parties would have wanted or should have wanted according to the sense and purpose of the conditions, if they had known the ineffectiveness or loophole.

13.3 The Exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall have the court with competent jurisdiction for Lustenau. Obrist shall, however, also be entitled to sue at the registered office of the Customer.

13.4 The parties may agree on the jurisdiction of an arbitration court.

13.5 Regarding any and all legal relations arising from this contractual relationship, the parties agree on the application of the laws of the Republic of Austria, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

13.6 The Customer hereby gives their express consent that their personal data, such as, in particular, name, address and date of birth, which are known under this business relationship or become known in future, can be processed for the purpose of customer support and can be transmitted and provided to credit protection associations for the purpose of creditor protection.

The Customer may revoke their consent to the data transmission at any time, in writing. This withdrawal shall have no effect on the underlying transaction.

## B. Terms and Conditions of Assembly

### 1. SCOPE OF APPLICATION

These General Terms and Conditions are special conditions for the rendering of assembly services, which means electrical installation and commissioning of any device or plant. Unless special provisions are contained herein, Obrist's General Terms and Conditions of Sale and Delivery shall apply. If assembly services are rendered, exceptionally for consumers within the meaning of Art. 1 (1) line 2 of the *Konsumentenschutzgesetz* [Consumer Protection Act] *BGBI.* [Official Gazette] 1979/140, the General Conditions apply, unless they are inconsistent with the provisions of the 1<sup>st</sup> main part of this Act.

### 2. CUSTOMER'S DUTY TO COOPERATE

2.1 The Customer shall, at their expense, do all things necessary so that the assembly work will start in due time and can be performed without interruptions. They shall, in particular, ensure a proper storage of the products delivered for assembly and ensure a pre-assembly of the same. In addition, they shall ensure that the parts necessary for starting and performing the assembly work are at the place of assembly in due time. In addition, the direct access to the construction site must be in a usable condition and the place of assembly must be in a condition ready for the assembly. In case of assembly work to be performed in closed rooms, the building must be in a condition which enables an impeccable assembly under normal working conditions. Prior to the start of the assembly work, the Customer shall provide Obrist with the necessary information on the location of hidden power, gas, water lines or similar installations and about the necessary static information.

2.2 The Customer will bear the expenses of and will provide, in due time, after a coordination on the extent and time of need:

- a) supporting personnel;
- b) construction work;
- c) necessary articles and materials;
- d) operational force, electrical energy, pressurised air and water, everything in a sufficient quality and quantity
- e) rooms of a sufficient size for keeping the machine parts, etc. as well as adequate work and common rooms, including sanitary facilities for the assembly personnel;
- f) protective clothing and protective equipment.

### 3. BILLING AND PAYMENT

#### 3.1 General Information:

Assemblies will be billed at flat-rate prices or according to time and effort. Unless otherwise agreed, the assemblies will be charged according to time and efforts. The following general conditions apply to all calculation types:

- a) The contractual provisions shall apply to billings and payments. Unless otherwise agreed, the commissioning will be charged separately.

b) If the assembly, commissioning or take-over in their own operation is delayed by circumstances not attributable to Obrist, all extra costs arising therefrom will be set off with the Customer.

c) Payments made by the Customer to the assembly personnel have no debt-discharging effect toward Obrist. Exceptional cases require a special agreement.

d) Mutual procurements of material on the construction site must be documented by receipts which must be signed by the assembly manager or by the Customer or their authorised representative. The same shall apply, *mutatis mutandis*, to services and work services.

e) If the assembly personnel are unable to achieve the working time specified in collective bargaining agreements due to the reduction of the working time at the Customer or for other reasons not attributable to Obrist, apart from a strike of their own personnel, the time of the failure will be charged like normal working time according to the rates applicable to assembly, according to time and effort.

f) If Obrist performs work, at the Customer's request, which is not provided for in the contract, this work will be billed according to the provisions for assembly according to time and effort.

g) If Obrist needs to perform work at times or under circumstances which deviate from the work conditions provided for in the contract or which require extra expenses, due to reasons not attributable to Obrist, the Customer shall pay the relevant extra prices, if Obrist has informed them about the change of the work conditions.

#### 3.2 Assemblies according to time and effort:

a) The following will be charged:

- aa) the working time spent according to the rates of Obrist applicable at the relevant time; waiting periods shall be deemed to be working time; travel times and travel preparations shall be deemed to be working time;
- bb) the expenses for releases which Obrist incurs;
- cc) the necessary expenses, e.g. for fare, transport of luggage, hand tools and small material, etc.;
- dd) the material which was demonstrably used at the prices of Obrist;
- ee) the remuneration for the provision of special tools, measuring and test devices according to rates prevailing at Obrist;
- ff) the expenses for an adequate accommodation of the assembly/commissioning personnel at the place of assembly.

b) Releases and expenses will be charged plus any taxes and duties.

c) If the Customer requests work at times or under circumstances which require tariff surcharges, the surcharges to be applied will be charged in the amount of the percentage rates applicable to Obrist under collective agreements, in addition to the cost rates.

d) The working hours performed shall be attested by the Customer at least on a weekly basis. These working hour attestations form the basis of the billing.

#### 3.3 Assembly at flat-rate prices:

a) The flat-rate price covers the agreed services under the work conditions and other circumstances notified to Obrist at the time of conclusion of the contract. It is based on the weekly working hours

applicable at Obrist as specified in the collective agreement, unless otherwise agreed.

b) The Customer will, at Obrist's request, present a record on the working hours performed by the assembly personnel on a weekly basis, at their best knowledge and belief, however in a non-binding manner.

3.4 Extra hours, work during nights, on Sundays and public holidays: extra hours mean working hours going beyond the normal daily work time or work performed on Saturdays, they will be charged at the rates for extra hours, and work during nights (work performed in the period from 7 pm to 6 am) will be charged at the rates for night work. Work performed on Sundays and public holidays will be charged at the rates for work on Sundays and public holidays. Any public holidays which are not prescribed by law shall be deemed to be work days and will be charged as such, even if the deployed workers are unable to work at the Customer's order or for any other reason not attributable to Obrist. In case extra hours or night hours or work on Sundays and public holidays were requested by the Customer for assemblies performed at flat-rate prices, the differences between the rates for normal hours and those for extra work, work during nights or on Sundays and public hours will be set off separately.

#### **4. ASSEMBLY OF PROVIDED OBJECTS AND MATERIALS**

4.1 Obrist warrants the assembly in accordance with the contract. It will, however, not be liable for the quality and fitness of objects and materials provided by the Customer. If Obrist has doubts regarding their quality and fitness, they shall immediately inform the Customer thereof. If these concerns are not taken into account, Obrist may reject the affected works in serious cases.

4.2 The risk of an accidental destruction and accidental impairment of the objects and materials provided shall be borne by the Customer.

#### **5. ACCEPTANCE**

5.1 The Customer shall be obliged to accept the assembly service, as soon as they were informed about their completion and when a trial of the assembled deliverable has been performed which might be provided for in the contract. If the assembly proves to be in non-compliance with the contract, Obrist shall be obliged to eliminate the defect within a reasonable period. That shall not apply if the defect is insignificant for the interests of the Customer or is based on circumstances attributable to the Customer. If an insignificant defect applies, the Customer may not reject the acceptance if Obrist explicitly recognises their obligation to eliminate the defect.

5.2 If the acceptance is delayed without any fault on the part of Obrist, the acceptance shall be deemed to be made after the expiry of two weeks after the notification on completion of the assembly.

5.3 After the acceptance, no liability shall apply to recognised defects, unless the Customer has explicitly reserved the assertion of such claims prior to or upon acceptance.

#### **6. ASSEMBLY BY THE CUSTOMER OR THIRD PARTIES**

If the contract specifies that the assembly will be made by the Customer or by third parties engaged by them, and if Obrist only

performs the commissioning of the plant or of the equipment, the following shall apply:

6.1 The assembly must be completed properly and in full.

6.2 Extra expenses which Obrist incurs due to defective or incomplete assembly will be invoiced according to time and efforts, in particular if the commissioning was agreed at a flat-rate price.

6.3 If the commencement of the commissioning is delayed due to an incomplete or defective assembly, any extra expenses arising therefrom will be charged separately to the Customer according to the required time and effort.

6.4 If an inspection of the assembly performed by the Customer is agreed in the contract, any defects in assembly detected during such inspection shall be eliminated by the Customer prior to the commissioning.

6.5 The Customer shall solely be responsible for any defect or damage which arise due to an improper assembly of the delivered plant or the delivered equipment.

## C. TERMS AND CONDITIONS FOR SOFTWARE

### 1. SCOPE OF APPLICATION

These General Conditions are special conditions for the delivery of software. Unless specific provisions are contained herein, Obrist's General Terms and Conditions of Sale and Delivery shall apply. If software is, in exceptional cases, delivered to consumers within the meaning of Sec. 1 (1) line 2 of the *Konsumentenschutzgesetz* [Consumer Protection Act], *BGBI.* [Official Gazette] 1979/140, the General Conditions shall apply insofar as they are not inconsistent with the provisions of the 1<sup>st</sup> main part of this Act.

### 2. SUBJECT OF THE CONTRACT

#### 2.1 Software:

Software within the meaning of these Conditions means programs provided by the customer for use in, for the operation or for the control of electro-technical, electro-mechanical and/or electronic facilities and systems, including documents provided for such. The Customer may use software only based on a software license granted by Obrist. Insofar as the data carriers provided to the Customer contain, for technical reasons, any software which is not covered by the license granted to the Customer, this software may only be used based on a separate license. The software may contain technical precautions to prevent the access to such non-licensed software.

#### 2.2 Software in connection with delivered hardware:

If software is provided for the operation of systems or equipment (hardware) delivered by Obrist, the Customer will receive the non-transferable and non-exclusive right to use the software by complying with the contractual specifications at the agreed place of installation, exclusively for the operation of the hardware forming the subject of the contract. All other rights to the software shall remain reserved for Obrist; the Customer shall, in particular, not be entitled to reproduce, amend, make the software accessible to third parties or to use them on any other hardware than the one forming the subject matter of the contract, without Obrist's prior written consent.

#### 2.3 Independent software:

In case of a provision of software which is not connected with hardware deliveries, the Customer may use it only on those systems and equipment which are specified in the license agreement in terms of type, number and place of installation. Otherwise, Art. 2.2 shall apply *mutatis mutandis*.

#### 2.4 Additional services:

Additional services will be invoiced separately.

This includes, *inter alia*:

- work to duplicate, translate or generate the software as well as services according to Art. 4.4;
- data carriers delivered by Obrist, unless they form part of a hardware delivered by Obrist;
- analysis and elimination of faults which were caused by improper handling, operating errors or other circumstances for which Obrist is not responsible;
- introduction and training, unless the contract contains any provisions relating thereto;
- improvements, which means offered further developments which simplify the operation, shorten the hardware's occupancy times or expand the specifications and options for application of the software.

### 3. CHANGES, NEW VERSIONS, COPIES

3.1 The Customer may only change the software for the operation on the licensed system in a machine-readable form, or jointly it with other software. The software will still be governed by these General Conditions, even when it forms part of such adaptations.

3.2 Any software license granted by Obrist will exclusively entitle to the use of the licensed version. New versions may only be used based on a separate license granted by Obrist or according to the provisions of a software maintenance agreement concluded with the Customer.

3.3 If the Customer is granted a software license, in writing, without data carrier, they will receive the right to copy any version of the software which has already been licensed and provided to them for the purpose of operating it on a system which has formerly not been licensed. An additional software license shall be issued on that fact in which the other licensed hardware shall be specified.

### 4. INDUSTRIAL PROPERTY RIGHTS, SECRECY

4.1 The Customer shall be obliged to safeguard any and all rights of Obrist in the software, in particular industrial property rights and the copyright, including the right for the copyright notice. They shall attach Obrist's copyright notice on all complete or partial copies, adaptations and transfers of the software in the same manner as it is attached on the original version of the licensed software.

4.2 The Customer shall be obliged to keep in strict confidence any and all information on the software, the materials and processes used. They shall commit their employees and vicarious agents to comply with the same obligation. The duty of confidentiality shall continue to apply after the software was changed or joined with other programs. The Customer must not apply any processes of any type to recover source programs or parts thereof from binary software or to gain knowledge on the concept or preparation of the software or of hardware or firmware implementations of the software.

4.3 The Customer shall be obliged to keep records which contain the licensed software, including the relevant version, the serial number of the licensed system, the place where the licensed software is located, and the number of copies prepared. They shall present these records to Obrist, at request. Obrist will only use this right if justified circumstances indicate that the Customer uses (has used) the software contrary to the provisions of this contract.

4.4 Upon termination of the software license agreement, the Customer shall return to Obrist any and all software certificates and shall destroy any and all copies of all software versions provided to them, even insofar as they are part of adaptations and confirm it to Obrist in writing. The duties of secrecy according to Art. 4.2 shall also survive the termination of the software license agreement.

### 5. DELIVERY, RISK ASSUMPTION AND ACCEPTANCE

5.1 Obrist will provide the Customer with a version of the software that is valid at the time of delivery.

5.2 Unless otherwise agreed, the software and data carriers shall be shipped at the Customer's expense and risk.

5.3 If the software in the Customer's possession is damaged, in full or in part, or was accidentally deleted, Obrist will provide a replacement against the settlement of adequate prices for processing, data carrier and shipment, to the extent that such is available and reasonable.

5.4 The software shall be deemed to be accepted if

- the Customer confirms the compliance with the contractual specifications; or
- the Customer fails to report, in writing, major defects within a test period of two weeks; or
- the Customer uses the software after the expiry of the test period; or
- the software's readiness for operation cannot be achieved within an adequate period to be specified by Obrist for reasons not attributable to Obrist.

5.5 If no formal acceptance was provided, the acceptance shall be replaced by the time of the delivery.

## **6. WARRANTY, MAINTENANCE, CHANGES**

6.1 For software for which the warranty has not been excluded, Obrist will warrant the compliance with the specifications prevailing at the time of delivery of the software, if the software is used according to the installation requirements prevailing at the relevant time and under the usage conditions prevailing at the relevant time.

6.2 The warranty comprises

- error diagnosis;
- elimination of error and faults

during the term of the warranty obligation. Unless otherwise agreed, a warranty period of three months shall apply from the acceptance according to Art. 5.4 and 5.5.

The elimination of errors, which means deviations from the applicable specifications which impair the function, shall be done as follows

- Obrist's technical personnel will support and instruct the Customer regarding the elimination of the error, preferably by a data connection with the customer (modem, postal service); if that is impossible,
- delivery of a new, improved software, if that is impossible
- elimination of the error (change of the program) on site.

Precondition for each elimination of an error is that the error impairs the function, that the latter can be reproduced, that the customer has installed the new versions which might be offered, free of charge, within the warranty period, the customer has provided all documents and information necessary for the elimination of the error and that Obrist is given access to the hardware and software during the normal working hours.

The Customer shall be obliged to cooperate in the elimination of the error insofar as they must provide a qualified expert whose training corresponds to the complexity of the system and who cooperates in the elimination of the error.

6.3 Insofar the Customer concludes a software maintenance agreement, Obrist will perform the services agreed therein for the term of such agreement.

6.4 No warranty shall apply to software which was changed by the customer or third parties without Obrist's prior written consent, even if the error occurs in a part that was not changed. If it is found, during the error diagnosis, that no case of warranty applies or that the error was not caused by the delivered software, the Customer shall bear all costs incurred thereby.

6.5 Obrist will accept no warranty that the software function meets all requirements of the Customer that the programs are compatible with other programs selected by the Customer that they run uninterruptedly or error-free and that all software errors can be eliminated.

6.6 If the software fails to comply with the specifications in manner impairing their function during the warranty period and if Obrist is unable to bring about the compliance with the specifications within an adequate period and if the Customer is, therefore, unable to use the software, either contract partner shall be entitled to cancel the contract for the affected software against reimbursement of the payments received, with immediate effect.

6.7 Defects in individual programs will not entitle the Customer to cancel the contract also with regard to the other programs.

6.8 Other claims arising from the title of warranty as well as the liability for consequential damage shall be excluded.

## **7. LIMITATION OF LIABILITY**

7.1 The Customer has the sole control over the use and the application of the licensed software, they shall, therefore, also bear the sole responsibility for the expediency and safety of the use of the software selected by them. Any liability of Obrist from fault at the conclusion of the contract or positive violation of the claim shall be excluded.

7.2 Obrist will not accept any liability for general freedom from errors or a certain performance of the software, unless such was explicitly assured for a certain field of application.

7.3 Otherwise, the limitations of liability according to Art. 9 of Obrist's General Terms and Conditions of Delivery shall apply. The Customer will release Obrist of all claims of third parties which go beyond the liability under these Conditions.

## **8. THIRD PARTY PROPERTY RIGHTS**

Obrist will support the customer in the defence against all claims which are based on the fact that the software used in compliance with the contract violates any industrial property rights or copyrights of third parties. The Customer will immediately notify Obrist of any alleged violation of legal provisions and will announce the dispute. If claims for violation have been asserted by third parties, Obrist may change or exchange the software or obtain a right of use at its own costs. If that is impossible with a reasonable effort, the Customer, at Obrist's request, shall immediately return the original and all copies of the software, including the documents provided against a reimbursement of their payments, reduced by a write-down for use or any adequate usage fee. Any claims of the Customer against Obrist going beyond that for the violation of third party industrial property rights or copyrights shall be excluded.