

Standard Terms and Conditions for Sale, Delivery and Payment of Behr Industry GmbH & Co. KG, Mylau, Germany (BI) (09/2009 edition)

§ 1 Scope of Application

1. All offers, sales, and deliveries by BI are exclusively subject to these present Standard Terms and Conditions for Sale, Delivery, and Payment (hereinafter referred to as "the Standard Terms and Conditions"). Purchase Terms and Conditions of Purchaser or other conflicting provisions shall not apply, unless they have been confirmed in writing by BI.

2. The Standard Terms and Conditions shall also apply in the event that BI provides the Supplies and Services (hereinafter referred to as the "Supplies and Services" or "deliverable") with no reservation, while being aware of the conflicting or deviating terms and conditions. BI hereby expressly objects to references to or counter-confirmations of Purchaser containing references to the Standard Purchase Terms and Conditions of Purchaser.

3. The Standard Terms and Conditions, as amended, also apply to all future transactions with Purchaser.

4. The Standard Terms and Conditions shall apply only to business persons within the range of their business activities, legal entities under public law, and special funds under public law (*öffentlich-rechtliche Sondervermögen*) (cf. § 310 par. 1 German Civil Code (*Bürgerliches Gesetzbuch, BGB*)).

5. BI agrees to take all necessary measures to avoid corruption and other illegal acts. In particular, BI agrees to take all necessary precautions to avoid major misdemeanors. Violations of this clause are subject to the provisions of the liability clause (cf. § 12). Contractual penalties and any termination without notice require the express prior consent of BI.

§ 2 Offer and Conclusion of Contract

1. Offers submitted by BI are subject to change and not binding, unless they are expressly referred to as binding or they are submitted for a limited time period. A contract is entered when signed by BI, confirmed in writing by BI, or when BI ships the ordered Supplies or performs the requested Services.

2. Purchaser is bound by its offer for a period of 14 (fourteen) days. Acceptance shall be declared in written form. If BI carries out the order without issuing a written order confirmation, the contract is automatically concluded upon performance of the Services or receipt of the Supplies by Purchaser or a forwarding agent, including cases where there was not compliance with the mandatory written form requirement. The same applies to any amendments, modifications, or collateral agreements.

3. The quality of the Supplies and Services to be supplied by BI is subject to the information contained in the BI technical specifications. Information contained in catalogs, sales brochures, newsletters, advertisements, illustrations, and price lists does not determine the quality of the deliverable, unless the technical specifications make an express and written reference to a specific piece of information contained in such material. Purchaser shall submit its requirements in writing. Unless otherwise agreed, all drawings shall use the metric measurement system, and all documents and records will be prepared in the German language and in accordance with German / European standards and requirements.

4. BI may deliver / render the Supplies and Services in deviation from the technical specifications, to the extent required by the production process at BI, and Purchaser can be reasonably expected to accept this modification.

5. Information included in the BI technical specifications that is intended to determine the quality of the deliverables shall not be deemed a guarantee, unless this information is expressly and in writing referred to as a guarantee. In the event that technical and legal requirements should change prior to the shipment of Supplies or performance of Services, there will be compliance with the changes. To the extent that this should result in additional expenses for time and materials, BI shall charge Purchaser for such change requests. In the event of drawing changes initiated by Purchaser, the fixed prices contained in the quotation or other documents will be increased accordingly.

6. Unless BI expressly assumes the responsibility for assembly, Purchaser shall bear the sole responsibility. Any drawings or other information regarding the installation of BI deliverables made available by BI shall not be deemed assembly instructions, but merely constitute

information regarding the place where the deliverable is to be installed within the overall system (the vehicle) of Purchaser.

§ 3 Pricing

1. In the absence of a specific agreement, the price quoted ex works (EXW) or site plus the statutory value added tax valid at that time shall apply. Any additional costs, such as for disposable packaging and returnable packaging not returned to BI, transportation, insurance, customs, customs formalities for export and import, obtaining documents, etc., as well as an agreed assembly will also be invoiced separately.

2. The remuneration for the Supplies and Services is set forth in the contract, in the order confirmation or in the offer of BI. Unless provided otherwise, the remuneration for Supplies and/or Services will be charged in accordance with the actual time and materials expenses on the basis of the daily rates as indicated in the BI price list that is current at that time.

§ 4 Payment

1. Payment is due within 14 days after receipt of the invoice or a respective listing of payables with no deductions, and Purchaser shall assume any bank transfer charges. Repair and assembly costs and other services will be charged on a monthly basis and are payable promptly upon receipt of the invoice with no deductions whatsoever.

2. Payment by check is only accepted pending full discharge of the debt. BI is not obligated to present the checks in a timely manner. BI will not accept bills of exchange.

3. Purchaser may only offset or withhold undisputed or finally adjudicated claims arising under the same order or contract. The above clause shall not apply whenever BI violates a contract in a material manner or has already received such portion of remuneration for a non-conforming Supply or Service that matches the value of the respective Supply or Service.

§ 5 Delivery, Delivery Period, Default, and Non-Performance

1. Unless otherwise provided, delivery shall be made from such BI site that manufactures the deliverable for Purchaser. The place of performance for the transportation packaging to be taken back by BI is its respective manufacturing site. In particular, Purchaser shall return returnable packaging to such site. In case returnable packaging is not returned, BI shall charge Purchaser for such material. The calculation of returnable packaging shall be based on the returnable packaging accounts maintained in BI IT systems that are kept based on the vouchers for empty shipping containers/material and the physical receipt and dispatch of packaging containers/material.

2. Periods given for delivery and performance shall not be binding, unless BI refers to them as binding in a written document. In the event that Purchaser fails to provide any records, permits, approvals, releases, etc. which it must obtain within the time period(s) set forth in the agreement, but no less than one (1) month prior to the delivery date specified in writing, the delivery period set forth in writing shall be reasonably extended commencing at such date on which the above records, permits, approvals, releases, etc. are fully received by BI.

3. There shall be compliance with the delivery period if the deliverable has left the BI manufacturing site prior to its expiration, or if BI has advised Purchaser of the readiness for shipment in the event that Purchaser collects the deliverable.

4. If BI is able to show that notwithstanding the careful selection of the suppliers and the conclusion of the necessary contracts with reasonable conditions, a BI supplier fails to make timely delivery to BI and BI is unable to make timely delivery to Purchaser, the delivery period shall be extended by the period of delay that was caused by such delay in delivery on the part of the BI supplier. If the above impairment exists for more than two (2) months, Purchaser may rescind the agreement with regard to such portion that has not been performed. Claims for damages are governed by § 12.

5. BI is not deemed to be in default unless a written notice has been issued. Any notice of default and communication regarding grace periods must be in writing to be effective. Grace periods shall be reasonable, and typically exceed 10 (ten) working days.

6. BI reserves the right to retain subcontractors in the delivery/performance of Supplies and/or Services.

§ 6 Force Majeure

1. If, after the conclusion of a contract, BI is unable to perform its contractual obligations due to unforeseeable, exceptional circumstances that it is unable to avert by applying reasonable care, as determined in light of the specific circumstances, in particular, acts of God, interruption of business operations, strikes and lockouts, delays in the supply of important raw materials, energy supply difficulties, etc., the delivery and performance period shall be extended by a reasonable amount of time. If delivery or performance is prevented by such circumstances, BI is released from its obligations.

2. If the above impairments exist for more than two (2) months, either party may rescind the contract with regard to the portion that has not been performed. BI is not obligated to procure a replacement. Claims for damages by Purchaser against BI are excluded in the case of force majeure.

§ 7 Passing of the Risk of Loss

Upon delivery at Purchaser's site, relinquishment to the forwarding agent or to the person authorized to collect the goods, the risk of loss or of the deterioration of the goods passes to Purchaser, irrespective of which party assumes the freight charges. If the goods are ready for shipment and the dispatch or taking delivery is delayed for reasons for which BI is not responsible, the risk passes to Purchaser upon Purchaser's receipt of the notice of readiness for shipment.

§ 8 Reservation of Title

1. BI reserves the title of ownership in the goods supplied until full payment of all sums due from the dealings between BI and Purchaser has been effected. Purchaser may dispose of the deliverable within the ordinary and proper course of business, provided that it binds its customers to the above reservation of title. With regard to the reserved property, no pledging or assignment by way of security shall be permissible. Purchaser shall take out an insurance policy for the reserved property at its own expense and enter BI as the beneficiary (theft, breakage, fire, flood and other damages) and provide evidence of such insurance coverage to BI, or, by mutual arrangement, bear the premiums of an insurance policy taken out by BI.

2. Reservation of title also applies to products resulting from the processing, intermixture, or combination of the deliverables with other materials up to their full value, in which case BI shall be deemed to be the manufacturer. If the title of ownership of a third party continues to exist after processing, intermixing, or combining the deliverables with third party goods, BI acquires a pro rata joint ownership right based on its share in the new products' value. The same shall apply accordingly, if BI processes the reserved property on behalf of Purchaser.

3. As of the date of execution of the contract, Purchaser assigns to BI as a security any claims - in their entirety or in the amount of the BI joint ownership rights, respectively - against third parties arising from any disposition regarding the reserved property (par. 2). The assignment also extends to receivables of Purchaser against any of its customers arising out of existing current account agreements or the termination of such arrangements. BI accepts the assignment. Purchaser is authorized to collect receivables on behalf of BI until further notice or until it suspends its payments to BI. Purchaser shall not assign this claim for the purpose of allowing claims to be collected through a factoring agent, unless such agent is bound to transfer the collected receivables directly to BI until all claims of BI against Purchaser have been settled.

4. Upon request of BI, Purchaser shall provide BI with any information required for collecting the receivables, and submit the respective delivery contracts with its customer, the invoice, and a summary of the payments made by such customer. Purchaser shall promptly inform BI verbally of any third party access, in particular, of any judicial execution with regard to goods owned by BI and receivables of BI, and, in addition, by registered mail accompanied by any documentation required for an intervention. All costs incurred through the collection, and defense against third party access, and where applicable, interventions, shall be borne by Purchaser.

5. If Purchaser is in default with its payments to BI twice within 6 (six) months and/or if Purchaser is insolvent and/or if its imminent insolvency becomes apparent from objective criteria, BI may claim the return of the deliverable, and if already sold, collect the receivables that

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have been assigned to BI directly from the customer of Purchaser. The return of the BI deliverables to BI and/or the collection of the receivables assigned to BI do not require prior rescission of the agreement.

6. After the return of the deliverables to which BI retains title of ownership, BI may realize them at its discretion. The sales proceeds – less reasonable costs of realization – shall be deducted from the liabilities of Purchaser. The realization rules of the German Insolvency Act remain unaffected.

7. To the extent that the security rights retained by BI exceed the aggregate of claims to payment that BI may have against Purchaser by more than 10 %, BI shall release, at the discretion of BI, security rights upon the request of Purchaser.

§ 9 Quality Assurance

1. Purchaser shall provide BI with any information required for the performance of the contract in a timely manner, inspect the Supplies and Services promptly, and immediately notify BI of any faults and defects in writing, giving a detailed description of such faults and defects. BI does not, under any circumstances, waive the defense of a time-barred complaint.

2. In the event that BI is dependent on the specifications, information, or permit and approval of Purchasers or third parties (e.g., *Eisenbahnbundesamt, EBA* (German Federal Railway Authority), which are necessary prerequisites for Supplies and Services, Purchaser shall bear the hereof resulting risks of delays and other impairments of the performance of the contract. This shall not apply to the extent that BI is responsible for obtaining such specifications, information, and permit and approval from third parties for the Supplies and Services to be provided by BI.

3. Purchaser shall examine all Supplies and Services with respect to freedom from defects and fitness for the intended use before the start of their productive use. Purchaser shall monitor the BI Supplies and Services in accordance with the state of the art, and, if applicable, issue a warning to BI regarding any risks that may be caused by such Supplies and Services. Purchaser is advised that it has a statutory duty to monitor the respective product and to issue warnings.

§ 10 Defects

1. Unless otherwise agreed, BI warrants that the Supplies and Services are fit for the customary use. The contracting parties are aware that – based on the state-of-the-art – it is often impossible to develop technical solutions that are absolutely free from defects. Purchaser shall not refuse to take delivery of Supplies and Services in the event of minor defects.

2. Any impairment of a function resulting from defects in Purchaser's contributions, environmental conditions not included in the Supplies and Services, data corruption and inaccurate information, or any other reasons for which Purchaser is responsible, shall not be deemed a defect within the meaning of the agreement (cf. § 11 par. 4 for defects as to quality). BI advises Purchaser that even minor changes in the deliverables may result in substantial, unforeseeable problems in the operation of the deliverables. BI, therefore, expressly warns Purchaser not to modify the deliverables without prior consultation with BI.

3. The duty to inspect the goods and to notify BI of any non-conformity is subject to § 377 through § 381 German Commercial Code (HGB). If large quantities of the same and identical deliverable are supplied, the entire shipped batch may only be rejected as being defective if the non-conformities were determined using a recognized, representative sampling procedure.

§ 11 Claims for Damages

1. BI has the right to initially discharge its warranty obligations by subsequent performance. Subsequent performance shall mean, at the discretion of BI, shipment of a new deliverable, removal of the defect by BI, or repetition of the Services.

2. If the subsequent improvement fails after two attempts, Purchaser may, at its discretion, rescind the agreement or reduce the remuneration. Claims for damages and reimbursement of wasted expenditures are governed by § 12. BI will not reimburse Purchaser for a loss of profit or for interests. If the defect is a minor defect, Purchaser only has the right to reduce the remuneration in case of a failure of subsequent performance.

3. If BI opts for subsequent improvement, BI shall bear the costs arising in connection with the subsequent improvement. Purchaser shall assume all costs that are due to the fact that the deliverable has been removed to a location other than Purchaser's registered office or contractually agreed place of performance. If, with the prior consent of BI, subsequent improvement is performed by Purchaser, Purchaser's claim to reimbursement of costs is restricted to the pro-rata labor and material costs actually incurred in connection with Supplies and Services provided by BI. BI shall not reimburse Purchaser for lost profits.

4. Purchaser does not have the right to assert claims for damages regarding defects as to quality,

- in the event of an incorrect assembly or put into operation by Purchaser or any third party;
- in the event of normal wear and tear and incorrect or careless treatment, in particular, when maintenance has not been conducted in due form, inappropriate supplies and facilities, defective construction work, chemical, mechanical, electrical, or other technical or natural influences, to the extent that BI is not responsible for them;
- in the event that defects are due to improper treatment or excessive use by Purchaser or its customers;
- in the event that the deliverable is altered by third parties and/or the installation of third party components, unless it can be shown that the defect was not caused by such alteration;
- in the event that Purchaser or its customers fail to comply with statutory provisions regarding the installation and treatment or such rules imposed by BI, unless it can be shown that the defect was not caused by such non-compliance;
- in the event of operator or application errors;
- if the Supplies and Services are used for a particular purpose that is not apparent from the order confirmation or a written manual accompanying the Supplies or Services or that is not customary.

5. If it becomes apparent that the defect is due to circumstances for which BI is not liable, Purchaser shall indemnify BI for any costs incurred in connection with the alleged defect.

6. If the deliverables supplied are used (second-hand) items, all claims for damages regarding defects as to quality are excluded. This exclusion does not apply to claims for damages based on bad faith, gross negligence or intentional wrongdoing, a violation of material contractual duties (cardinal duties), or injury to life, body and health for which BI is responsible, or if BI has guaranteed a certain quality.

§ 12 Compensation for Damages and Reimbursement of Wasted Expenditures

1. BI shall be liable for damages or reimbursement of wasted expenditures of Purchaser, irrespective of the legal cause, only to the following extent:

- in the full amount in case of intentional wrongdoing, bad faith and if a guarantee was issued regarding a certain guaranteed quality;
- in case of gross negligence, for reimbursement of the foreseeable and typical damages;
- in all other cases, only for violation of a contractual duty that is of such material importance that the attainment of the purpose of the agreement is jeopardized, and for claims arising from defects as to quality or title and default. In the aforementioned cases, BI shall be liable for the foreseeable and typical damages. In this event, however, liability is limited

- for each single damage incident and for all single damage incidents together up to the contract amount;
- in case of a contract for the performance of a recurring obligation (e.g., maintenance contracts) limited to the remuneration payable within any one calendar year,

for all damages resulting from the respective contractual relationship.

2. The liability for damages asserted based on injury to life, body, or health or under the Product Liability Act remains unaffected by the above liability limitation clause. The defense of contributory negligence remains unaffected.

3. The above provisions apply to the conduct of persons employed by BI to perform a duty and its vicarious agents accordingly.

§ 13 Industrial Property Rights

1. BI grants Purchaser the non-exclusive, indefinite, and world-wide right to use the deliverables and Work Results (hereinafter collectively referred to as "Work Results", e.g., drawings, records, software, specifications, development results, circuit diagrams, and plans) for its own purposes, in its own business operations, and to the extent required in the customary use of the deliverables. The right to use also includes the maintenance of the deliverables/vehicles, excluding, however, the copying and transformation.

2. Purchaser has the right to grant its customers a non-exclusive right to use in the Work Results to the extent required for the customary use, provided, however, that

- Purchaser relinquishes its own legal position and does not retain any records or copies of the Work Results;
- Purchaser's customer complies with the non-exclusive right to use defined in par. 1 and agrees in writing to be bound to the terms and conditions regarding the rights to use indicated in par. 1 and, upon request of BI, Purchaser provides a copy hereof to BI.

Purchaser shall not provide Work Results to competitors of BI under any circumstances. The transfer of Work Results to third parties that are not customers of Purchaser (e.g., maintenance enterprises and affiliated companies, etc.) requires the prior written consent of BI.

3. The copyright notices, other proprietary legends or notices, serial numbers, and any other marks included in the Work Results (in particular, in drawings) may not be changed or obliterated. Purchaser will receive software, unless otherwise agreed, as an executable file (machine-readable) only.

4. To the extent that BI provides – in a particular case under an express written agreement – Purchaser with Work Results that have been specifically developed for Purchaser and grants an exclusive right to use, BI reserves the right to develop materials and work results, that are similar to the Work Results provided to Purchaser, and to allow third party access and use.

5. BI will grant Purchaser the rights to use indicated above subject to the condition precedent that full payment of all outstanding amounts has been received. BI has the right to revoke the rights to use granted for cause, in particular, when Purchaser is in default with a substantial amount of remuneration, or if Purchaser fails to comply with the present terms of use (cf. § 16 par. 1).

6. Unless otherwise agreed, BI shall provide the Supplies and Services only in the country of the place of delivery/performance free from third party industrial property rights and copyrights (hereinafter referred to as "Proprietary Rights"). In the event that a third party asserts legitimate claims against Purchaser based on an infringement of Proprietary Rights by Supplies and Services provided by BI and used by Purchaser or its customers in compliance with the agreement, BI is liable as follows:

- a) At its discretion and at its own expense, BI shall obtain a right to use for the Supplies and Services concerned, modify or replace them in such a manner that there is no infringement of a Proprietary Right. In the event that BI is not able to achieve the above at a reasonable expense, Purchaser has the statutory rights to rescission and reduction of the contract remuneration.
- b) The obligation to compensate for damages is subject to § 12.
- c) The above obligations of BI exist only to the extent that Purchaser notifies BI of any third party claims promptly and in writing, and does not acknowledge the infringement and that BI has the right to defend against the claims and negotiate a settlement. In the event that Purchaser discontinues the use of the Supplies and Services in order to minimize the damage or loss or for other material reasons, Purchaser shall notify the respective third party that the discontinued use does not imply the acknowledgement of a Proprietary right.

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§ 14 Purchaser's Duty to Co-Operate

1. To the extent necessary or useful for contract performance, Purchaser shall assist BI free of charge in the performance of the contract by making available, in a timely manner and to the extent required, e.g., employees, the technical environment, in particular, machines and tools, as customary and by co-operating with BI with regard to specifications, tests, acceptance tests, etc.

2. To the extent that BI is responsible for the installation and assembly of the deliverables, Purchaser shall make available to BI facilities and assembly equipment and tools with an infrastructure that meets all necessary technical requirements with regard to the installation. The same applies to power outlets and telecommunication lines and/or equipment that must be fit for use.

3. In the event that Purchaser fails to comply with its duty to co-operate and if this results in additional expenses on the part of BI, e.g., travel, accommodation, and labor expenses, Purchaser shall indemnify BI for any expenses/damages that arise as a result. The waiting time for non-compliance with the duty to co-operate shall be invoiced at the standard hourly rates of BI.

§ 15 Specifications and Contributions

1. In the event that Purchaser requires or contributes, as contractually agreed, the use of certain processing equipment, fixtures, tools and designs, drawings or samples for performance, or in the event that BI creates them on behalf of Purchaser, Purchaser warrants the accuracy of the information provided and the usability of the contributed items. The same applies when BI produces or customizes deliverables in accordance with Purchaser's requirements or integrates third party components or components of Purchaser with the deliverables. Purchaser shall hold BI harmless and indemnify BI for damage claims that third parties may assert against BI in connection with items contributed by Purchaser or third party components for the violation of third party patents, copyrights, trademarks, or other industrial property rights.

2. Order-specific equipment (in particular, tools, cf. par. 1) shall remain the property of BI, unless agreed otherwise between the parties. This shall also apply if Purchaser has reimbursed BI for a certain portion of the costs, however, not for the aggregate amount of costs incurred.

§ 16 Termination and Statute of Limitations

1. Either party has the right to terminate a contract/order for cause. The notice of termination must be in writing to be effective. Cause exists, in particular, if

- the other party suspends its payments, if insolvency proceedings have been instituted or if the opening of such procedures has been rejected due to lack of assets, or if out-of-court composition proceedings are initiated;
- claims of the other party are attached and are not released within two (2) weeks.
- if Purchaser is in default with a substantial amount (1/3 of the contract amount) and for a period of more than one (1) month, or if it fails to comply with the terms of use set forth in § 13 and does not refrain from this conduct.

Prior to the termination for cause, the non-defaulting party shall send a notice of default in which it threatens to terminate the contract unless the breach is cured within a stipulated period of time, except in cases where the non-defaulting party may not be reasonably expected to accept such delay.

2. The limitation period for Purchaser's claims arising from defects is:

- one (1) year for defects as to quality;
- one (1) year for defects in title, unless the defect in title is not caused by a right in rem of a third party based upon which such third party may claim the surrender of the deliverables.

This shall not apply in the event that the law sets forth longer periods (e.g., § 438 par. 1 no. 2, § 479 par. 1, § 634 a par. 1 no. 2 German Civil Code) and with regard to an injury to life, body or health, in the event of an intentional or grossly negligent violation of duties by BI or if a defect has been maliciously concealed or if a certain quality had been guaranteed. In the above cases, the

statutory provisions apply. The statutory provisions regarding the suspension of expiration, suspension, and recommencement of the limitation periods remain unaffected.

Other claims for damages (e.g., violation of other obligations, of delay and default in delivery) that do not concurrently entitle to claims based on defects as to quality and defects in title, come under the Statute of Limitations within 1 (one) year after the end of the year in which the claim arose and Purchaser became aware, or, in the absence of gross negligence, should have become aware of the circumstances giving rise to the claim, provided, however, that the limitations period shall not be longer than the statutory maximum periods (cf. § 199 par. 2, 3 German Civil Code). In the event that the other claims for damages are based on intentional wrongdoing or gross negligence, or an injury to life, body or health the statutory provisions apply.

§ 17 Information Exchange and Confidentiality

1. Plans, drawings, and technical documents that are provided to Purchaser remain the property of BI. Purchaser shall not use, copy, reproduce, provide, allow access to, or disclose them to third parties, unless the prior consent of BI has been obtained. This shall also apply to documents that are not marked as confidential.

2. Purchaser shall designate a contact person who shall be authorized to make and receive all declarations and statements necessary for the execution of the contract in a binding manner and inform BI of the name, e-mail account, and telephone number of such person. This contact person shall act as a co-ordinator on the side of Purchaser, in particular, if several companies, divisions/departments, or other bodies of Purchaser are involved in the performance of the contract or are joint customers. BI will charge Purchaser for additional expenses arising from the necessary communication with several parties on the side of Purchaser, which has not been defined as a contractual service and is not included in the agreed remuneration, on a time and materials basis.

3. Unless there is a conflict with substantial confidentiality interests of BI, Purchaser has the right to inspect - upon prior notice (48 hours) and to the extent that is customary, within the regular business hours - the contractual performance of the Supplies and Services on the premises of BI. At any time, either party shall inform the other party of the state and progress of the Supplies and Services, and shall permit, subject to its confidentiality concerns, the inspection of relevant documents. The duty of BI to inform the other party shall be limited to the customary extent with regard to frequency, intensity, and duration. If Purchaser requests additional information, in particular, after the performance of the contract, and such additional piece of information requires more than only minor research, this work will be invoiced on a time and materials basis.

4. The parties agree to keep confidential all information and records that are disclosed to them by the other party or that they become aware of in the course of the performance of the contract. Confidential information shall not be disclosed to third parties not involved in the performance of the contract. The parties shall store and secure confidential information in such a manner that any misuse by third parties is precluded.

5. This duty of confidentiality does not extend to information and records that are in the public domain at the time of their disclosure, that were already known to the receiving party at the time of disclosure, or that were disclosed to such party by a third party not bound to any duty of confidentiality. The duty of confidentiality shall survive the termination of the contract.

§ 18 Final Provisions

1. To the extent that the present Standard Terms and Conditions or other agreements concluded by and between the parties prescribe the written form, the mandatory written form requirement may only be altered by an express written document signed by each of the parties. The parties may comply with the written form requirement by transmitting documents via fax or e-mail (textual form).

2. The place of performance for all payments is Stuttgart, Germany, and for any delivery, the location of the BI manufacturing site where the deliverables are manufactured for Purchaser.

3. These Standard Terms and Conditions and all dealings between BI and Purchaser are governed by the Law of the Federal Republic of Germany. The UN Convention on the International Sales of Goods (CISG) is excluded.

4. The exclusive venue for all disputes arising directly or indirectly from the contractual relationship is Stuttgart, Germany, and, at the discretion of BI, the legal venue of Purchaser.

5. If any provision of the present Standard Terms and Conditions or of the contract should be or become invalid, or if these documents should be incomplete, the remaining terms and conditions shall not be affected. The parties shall replace the invalid provision with such a provision that economically most closely matches the meaning and purpose of the invalid provision and is legally valid. The same applies in the event of a gap in the contract.