

## General Terms and Conditions of CEMTEC Inc.

(Edit 08/2025)

### 1. General

- 1.1. THE SALE OF GOODS (“**GOODS**”) AND PROVISION OF SERVICES (“**SERVICES**”) BY CEMTEC INC. (“**CEMTEC**”) TO CUSTOMER (“**CUSTOMER**”) IS EXPRESSLY LIMITED TO CUSTOMER’S ACCEPTANCE OF THE TERMS OF CEMTEC’S QUOTATION, CEMTEC’S ORDER CONFIRMATION (“**ORDER CONFIRMATION**”) AND THE TERMS AND CONDITIONS CONTAINED HEREIN (COLLECTIVELY, THE “**AGREEMENT**”). CEMTEC EXPRESSLY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN CUSTOMER’S FORMS. NO MODIFICATION OR WAIVER OF ANY OF THESE TERMS AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE EFFECTIVE UNLESS AGREED TO IN WRITING SIGNED BY BOTH PARTIES. NO ORAL AGREEMENT, COURSE OF PERFORMANCE, OR MEANS OTHER THAN SUCH WRITTEN AGREEMENT SIGNED BY BOTH PARTIES EXPRESSLY PROVIDING FOR SUCH WAIVER SHALL BE DEEMED TO WAIVE ANY OF THE TERMS OF THIS AGREEMENT. CUSTOMER’S ACCEPTANCE OF AN ORDER CONFIRMATION SHALL CONSTITUTE CUSTOMER’S ACCEPTANCE OF THESE TERMS.
- 1.2. The Order Confirmation controls with respect to the specifics of the order, including the terms of delivery, over any conflicting provisions that may exist in any other agreements. Deviations from these terms, such as supplementary agreements, or any other informal understandings, will only be binding if they are expressly agreed to by CEMTEC in writing. The same applies to deferred amendments and supplements to already completed contracts for delivery.
- 1.3. In connection with the Order Confirmation, documents from Customer, such as illustrations, drawings, indication on weights, dimensions and performance data, are non-binding unless expressly agreed to in writing. Customer is liable for the correctness of the documents, such as drawings, samples, models, templates and the like which Customer must provide to CEMTEC. If no clear specification of tolerances is provided for by Customer in the drawings or the order, CEMTEC shall produce according to the norms and tolerance limits for the particular production process for the Goods that are customarily experienced by CEMTEC in the line of business for the Goods.
- 1.4. CEMTEC’s silence in regards to any terms and conditions of Customer shall not be deemed as an acceptance. The execution of the purchase order or acceptance of payments does not constitute an acceptance of the terms and conditions of Customer.
- 1.5. CEMTEC’s offers are not binding, unless otherwise provided for in the offer itself. CEMTEC reserves its copyrights and proprietary rights of use and exploitation in regards to cost estimates, drawings and other documents. These documents may only be made available to third parties with the prior consent of CEMTEC.

### 2. Contract

- 2.1. The Agreement between CEMTEC and Customer (Collectively, the “**Parties**”) exclusively consists of the following documents unless CEMTEC’s Order Confirmation expressly provides otherwise.
  - 2.1.1. CEMTEC’s Order Confirmation;

2.1.2. Attachments to the Order Confirmation

2.1.3. These General Terms and Conditions (the “GTC”) of CEMTEC

- 2.2. In case of a conflict or contradiction between the documents listed above, they shall apply in the above-mentioned order. If the Parties generally refer to “Order Confirmation” in correspondence or documents, reference to the entire Agreement between the parties is made.
- 2.3. The Agreement between the Parties is commenced by CEMTEC’s written Order Confirmation. Oral or telephone orders shall only be valid, if they are confirmed in writing by CEMTEC. Should CEMTEC’s written Order Confirmation be omitted in an individual case, the Agreement is commenced by the written order of Customer on the basis of CEMTEC’s offer. Any deviations of the order of the Customer from CEMTEC’s offer shall not become part of the Agreement, unless they are confirmed in writing by CEMTEC.
- 2.4. In case of changes of legal or regulatory requirements, technical standards or judicial decisions after the time of conclusion of the Agreement that lead to changes in CEMTEC’s performance under the Agreement, CEMTEC may adjust the Agreement, in particular in regards to Contract Price and delivery time.
- 2.5. Amendments or supplements of the Agreement by Customer after conclusion of the Agreement shall only be valid if confirmed in writing by CEMTEC. CEMTEC may make adequate adjustments to the Agreement’s terms, especially Contract Price and delivery time. If the Customer refuses such adjustment, CEMTEC may refuse the amendment or supplement of the Agreement and continue the Agreement in the original scope.
- 2.6. A cancellation or suspension of the Agreement by Customer is only permitted with the written consent of CEMTEC. Customer shall bear any costs and disadvantages of CEMTEC in this context. This does not affect the termination rights under Article 17 of the GTC.

### 3. **Scope of Delivery**

- 3.1. The “**Scope of Delivery**” shall mean the CEMTEC’s obligation to deliver Goods under the Agreement and the Order Confirmation. Information contained in general product documentation and price lists of CEMTEC shall only be binding as far as the Agreement expressly and in writing refers to such information.
- 3.2. Production-related deviations in regards to dimensions, weights or technical features within customary tolerances of the industry or within the tolerance limits specified in the applicable technical standards shall be accepted.
- 3.3. Unless otherwise agreed to in writing by the Parties, CEMTEC does not guarantee the usability of the Goods for certain purposes of Customer.
- 3.4. Scope and delivery time of the documentation is determined by the Agreement or CEMTEC’s Order Confirmation. Language of the documentation shall be English according to the choice of the Parties, except if the Parties expressly agree otherwise in the Agreement.
- 3.5. CEMTEC is entitled to use subcontractors to fulfill the Scope of Delivery. CEMTEC remains responsible to Customer for the proper fulfillment of the Agreement.

### 4. **Condition of Goods, Delivery Time and Dates**

- 4.1. Unless the Parties agree otherwise in the Order Confirmation, Deliveries shall be made FCA manufacturer’s place according to Incoterms 2020.

- 4.2. Any delivery times specified in the Order Confirmation shall start from the date of CEMTEC's Order Confirmation, unless agreed otherwise by the Parties. Delivery times of CEMTEC shall be valid under the condition that all required documents, information, permits and releases are provided by Customer to the CEMTEC in time and only if the agreed terms of payment and other contractual obligations of Customer are fulfilled by Customer. If these conditions are not fulfilled properly or in time by Customer, the deadlines for CEMTEC shall be extended to an appropriate extent.
- 4.3. The adherence to agreed delivery times and dates is determined on the basis of the time of readiness for delivery FCA manufacturer's place according to Incoterms 2020.
- 4.4. If no delivery time or date has been specified in the Order Confirmation, the Goods shall be carried out by the CEMTEC within a reasonable time.
- 4.5. Partial deliveries are permitted, unless expressly excluded in the Order Confirmation. In case of partial deliveries, the CEMTEC is entitled to submit partial invoices.
- 4.6. In the event that either party is unable to fully perform its obligations hereunder due to events beyond its reasonable control, including but not limited to, acts of God, action by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, slowdowns), inability to obtain power, material, labor equipment, or transportation, or court injunction or order, CEMTEC shall be relieved of its obligations to the extent it is unable to perform. Contractual obligations of CEMTEC shall be suspended for the duration and scope of the force majeure event. Delivery dates and deadlines shall be extended accordingly. If the delay persists for more than three (3) months, both Parties shall be entitled to terminate the Agreement with respect to the part affected by the delay. No claims against CEMTEC shall be admissible due to such termination. Customer shall pay for Goods and Services provided by CEMTEC until the termination.
- 4.7. If CEMTEC is in default with the timely delivery of the Goods, Customer may claim damages incurred due to delay from CEMTEC, only if a reasonable grace period set by Customer in writing, which must be designated as such, has expired unused by CEMTEC. Customer bears the burden of proof of damages caused by the delay. Liquidated Damages for delay shall not be accepted by CEMTEC, unless otherwise agreed by the Parties. In any case, the liability of CEMTEC for damages due to delay is limited to five percent (5%) of the Contract Price. Any other claims of Customer due to delay or late fulfillment of Contract by CEMTEC shall be excluded.
- 4.8. In the event of delays which are the responsibility of Customer, its agents or other third parties attributable to Customer, Customer shall reimburse CEMTEC for any additional costs and expenses incurred due to the delay.
- 4.9. If Customer can anticipate that it will not be able to take over the Goods or part of them at the agreed time, Customer shall immediately inform CEMTEC in writing. If Customer does not accept the Goods or a part thereof on the agreed date, it nevertheless must pay the part of the Contract Price due on the delivery date and CEMTEC may store the Goods at a suitable place at the expense and risk of Customer. CEMTEC shall invoice the costs associated with storage to Customer and shall be paid by Customer before shipment of the Deliveries.
- 4.10. In the event of a delay of takeover by Customer of more than eight (8) weeks, CEMTEC reserves the right to withdraw from the Agreement in writing in whole or in part after

unsuccessful expiry of a reasonable grace period. In this case, CEMTEC may recover compensation for the damage caused by the default of Customer including indirect damages and consequential damages.

## **5. Pricing, Taxes**

- 5.1. If the Order Confirmation does not provide otherwise, the prices of CEMTEC (the “**Contract Price**”) are net prices, FCA manufacturer’s place according Incoterms 2020, plus packaging, freight and insurance.
- 5.2. Individual prices listed in CEMTEC’s offer shall only be valid, if the whole scope of the offer is purchased.
- 5.3. Customer shall pay any taxes, levies, custom duties, or other fees incurred in connection with the execution of the Agreement. If taxes, custom duties, etc. are charged directly to CEMTEC, Customer shall reimburse CEMTEC for such costs.
- 5.4. Any value-added-tax (“**VAT**”) treatment of the Goods is subject to the current legal situation of the country in which the transaction is taxable. The charging of VAT on intra-community transactions or exports from the European Union can only be omitted if the legal requirements are met.

## **6. Payment Terms, Invoicing**

- 6.1. Unless otherwise agreed between the Parties, the payment terms as defined in CEMTEC’s offer shall apply.
- 6.2. All payments shall be made in full within fourteen (14) calendar days from the invoice date to a bank account nominated by CEMTEC. Each Party shall bear the bank charges of its own bank. The payment date is the day on which the due amount is irrevocably credited to CEMTEC’s bank account.
- 6.3. CEMTEC reserves the right to renegotiate the terms of payment, in case there is reasonable doubt regarding the solvency or creditworthiness of Customer.
- 6.4. In case of delay of payment of Customer, CEMTEC may recover interest in the amount of ten percent (10%) per annum from Customer. A prior payment reminder from CEMTEC is not required. In case of delay of payment, CEMTEC may suspend the fulfillment of his own obligations under the Agreement until fulfillment by Customer. The assertion of further claims remains reserved.
- 6.5. Customer agrees that at the choice of CEMTEC’s invoices, including any supplements, may be sent by email to Customer. Invoices sent by email are deemed effective when received by Customer.
- 6.6. Any discount period agreed between the Parties will commence on the invoice date. A cash discount shall only be granted in case of full payment of all due liabilities of Customer to CEMTEC at the time of the discounting.
- 6.7. If payment in installments has been agreed, CEMTEC may demand immediate payment of all outstanding debt if Customer is late with payment of an installment.
- 6.8. An offsetting of claims of Customer against claims of CEMTEC shall only be permitted within the scope of the respective Order Confirmation and only if the claim of Customer has been expressly acknowledged in writing by CEMTEC or the claim of Customer has been finally determined by court.
- 6.9. Customer may not withhold due payments because of incomplete delivery, warranty or guarantee claims or other claims under the Agreement.

## **7. Factory Acceptance (prior to delivery)**

- 7.1. If the Parties have agreed on a factory acceptance inspection in the Order Confirmation, such acceptance inspection shall take place at the place of production of the Goods within the normal working time, except as the Parties agree otherwise. Customer shall bear all costs in connection with the inspection.
- 7.2. If the factory acceptance inspection is not carried out, not on time, or incomplete without fault of CEMTEC, CEMTEC may deliver the Goods without acceptance inspection and store and invoice the Goods at the expense and risk of Customer.
- 7.3. If the Goods or a part of them prove to be non-conforming to the Order Confirmation, CEMTEC shall restore the contractual condition of the Goods without delay.
- 7.4. CEMTEC shall remedy minor defects. Minor defects do not prevent acceptance. Customer can only repeat the acceptance inspection if there is a significant defect such as defect which disturbs the functionality of the Goods or limits the performance parameters of the Goods, if such parameters were agreed in the Order Confirmation.

8. **Transfer of Risk, Retention of Title**

- 8.1. The risk regarding the Goods shall pass to Customer upon delivery at designated place according Incoterms 2020.
- 8.2. If the Order Confirmation includes both erection and commissioning of the Goods by CEMTEC, the risk shall pass to Customer upon acceptance by Customer unless Customer puts the Goods into use before formal acceptance has occurred. In this case, the transfer of risk takes place upon putting the Goods into use by Customer.
- 8.3. In the event of delays in delivery or acceptance, which CEMTEC is not responsible for, the risk shall pass to Customer nevertheless. In this case, CEMTEC may invoice the outstanding final payment to Customer.
- 8.4. CEMTEC reserves the title on the Goods until full payment by Customer. Customer may not pass the Goods on to third parties before transfer of title without the express consent of CEMTEC.
- 8.5. In case of a delivery on terms “FCA manufacturing plant,” transfer of risk and title takes place upon full payment by Customer.

9. **Erection and Commissioning, Performance Test**

- 9.1. If the Agreement includes erection and/or commissioning supervision of the Goods by CEMTEC the terms of this Article 9 shall apply.
- 9.2. Site personnel commissioned by Customer shall strictly obey CEMTEC’s instructions during erection and commissioning. Any cooperation duties of Customer shall be fulfilled on time by Customer to avoid hindering the progress of the erection or commissioning. Any delays during the erection or commissioning of the Goods, which CEMTEC is not responsible for, shall be charged to Customer in addition to the Contract Price according to the daily rates defined in CEMTEC’s General Terms and Conditions for Technical Services.
- 9.3. When the erection has progressed so far that the cold test can be carried out, CEMTEC shall inform Customer in writing about the end of the mechanical erection.
- 9.4. The time between the end of erection and acceptance is called commissioning. During commissioning, the Goods must be available for the commissioning requirements, settings and adjustments of CEMTEC. Commissioning consists of a cold commissioning, a warm commissioning and a subsequent performance test if such test has been contractually agreed to.



- 9.5. The Parties shall take all necessary steps to carry out the cold commissioning immediately after the end of erection. During the cold commissioning, the Goods, are individually checked without load for their correct erection and functionality.
- 9.6. After successful cold commissioning, warm commissioning shall follow, at the latest within seven (7) calendar days. During warm commissioning, the Goods are checked for their ability to function under load respectively for their functionality with material in accordance with the Order Confirmation.
- 9.7. CEMTEC shall timely notify Customer of the beginning of the commissioning tests at least twenty-four (24) hours before the start.
- 9.8. Customer shall ensure that personnel of sufficient number and qualification as well as any required raw materials, materials or consumables, electricity, gas, air and water are available for commissioning. Customer shall provide any operating licenses or other official authorizations required for commissioning or performance test.
- 9.9. The commissioning date can be postponed by mutual consent, but not longer than seven (7) calendar days. If after two (2) postponements of a test, for reasons which Customer is responsible, commissioning is not possible by the agreed date, the Goods shall be deemed to have been put into operation anyway.
- 9.10. If deficiencies are found during commissioning, CEMTEC will eliminate them as soon as possible. If there is a minor defect, the commissioning or performance test process must continue. Minor defects are defects that do not disturb the functional operation or the agreed performance values of the Goods. Minor defects will be remedied by CEMTEC as quickly as possible and in a professional manner.
- 9.11. Performance warranties shall be excluded unless expressly agreed otherwise by the Parties. If the Parties have agreed on the performance warranties for the Goods and a performance test, the following shall apply unless the Parties agree otherwise:
  - 9.11.1. The Parties shall set a date for the performance test within two (2) calendar weeks after warm commissioning. The performance test will be carried out by CEMTEC in the presence of Customer.
  - 9.11.2. The date for the performance test may be postponed by mutual agreement, but not longer than seven (7) calendar days. If, after two (2) postponements of the test for reasons which Customer is responsible, the performance test cannot take place on the agreed date, the performance test shall be deemed to have been performed anyway.
  - 9.11.3. Duration and scope of the performance test must be agreed to in the Order Confirmation. If the performance test must be suspended during the first twenty-five percent (25%) of the required test period, for reasons for which CEMTEC is responsible, the performance test shall be repeated. There shall be no addition of test times before and after an interruption, unless Customer is responsible for the interruption or unless there is only a brief interruption after seventy-five (75%) of the required test period for reasons for which CEMTEC is responsible. A brief interruption is an interruption of a maximum of two (2) hours.
  - 9.11.4. If the contractual performance warranties are not achieved after the third repetition, the performance test is considered unsuccessful.
  - 9.11.5. Customer shall at its own expense provide qualified personnel and all raw materials, electricity, gas, air, water, materials, consumables, equipment and infrastructure as well as any other goods and services required to conduct the performance tests. Any further requirements of Customer shall be defined in the Order Confirmation.

- 9.11.6. Customer shall bear the costs for the first three (3) repetitions of the performance tests. The costs of any further repetition shall be borne by the Party responsible for the failure of the prior performance test.
- 9.11.7. If the performance warranties are reached outside a performance test during the operation of the Goods, the performance warranties shall be deemed to have been met, even if no performance test has been performed.
- 9.12. CEMTEC shall have the full opportunity to fulfill its contractual obligations regarding measurement, alignment, adjustment and modification of Goods until acceptance. The production has a secondary importance during commissioning.
- 9.13. For the erection, commissioning, and other services of CEMTEC in connection with the Goods, the current edition of CEMTEC's General Terms and Conditions for Technical Services shall apply.

#### 10. **Acceptance**

- 10.1. Acceptance of the Goods by the Customer shall take place upon delivery of the Goods, unless otherwise agreed by the Parties.
- 10.2. If the Agreement includes erection and/or commissioning supervision of the Goods by CEMTEC the following shall apply: The acceptance of the Goods shall take place after successful commissioning. The acceptance shall be formalized by an acceptance protocol signed by both Parties. Signing of the acceptance protocol shall not be withheld for unreasonable grounds nor for minor defects. Any existing minor defect shall be documented in the acceptance protocol. CEMTEC shall remedy such defects within a reasonable period of time.
- 10.3. Until acceptance, the operation of the Goods by the Customer is only permitted with the written consent of CEMTEC. If such operation is permitted, the operation shall be at the risk of Customer. Wear and tear of the Goods during operation shall be on Customer's account and shall be taken into account in a later performance test.
- 10.4. In each of the following cases, the acceptance is deemed to have taken place:
  - 10.4.1. The warm commissioning was successful, but the signing of a protocol was nevertheless omitted by the Parties without the fault of CEMTEC;
  - 10.4.2. In case performance warranties are applicable on the Contract: The performance test shows that all contractual performance warranties have been fulfilled, but the signing of a protocol was nevertheless omitted by the Parties without the fault of CEMTEC;
  - 10.4.3. The performance warranties have been achieved outside a performance test during operation of the Goods;
  - 10.4.4. In case of Article 9.9 and 9.11.2. of the GTC;
  - 10.4.5. After the third unsuccessful repetition of performance test, if the failure of performance test is due to reasons Customer is responsible for. If the failure is due to reasons for which CEMTEC is responsible, the acceptance shall be deemed to have taken place upon payment of liquidated damages if agreed so by the Parties;
  - 10.4.6. If, for reasons that CEMTEC is not responsible for, the commissioning or performance test cannot be successfully completed within twelve (12) months from last delivery; or
  - 10.4.7. If Customer uses the Goods productively or if Customer has commissioned the Goods or part of the Goods without the attendance of CEMTEC.

- 10.5. The partial or total lack of documentation does not entitle Customer to refuse acceptance. The outstanding parts of the documentation shall be listed in the acceptance protocol and submitted by CEMTEC within a reasonable period of time.

**11. Warranty**

- 11.1. CEMTEC warrants that the Goods comply with the Order Confirmation, in particular the contractual specifications, at the time of transfer of risk. CEMTEC assumes no warranty or other liability for characteristics other than those expressly agreed to by the Parties, or a certain usability of the Goods for specific purposes.
- 11.2. CEMTEC assumes no liability for deterioration, loss or improper handling of the Goods that arises after the transfer of risk. CEMTEC's liability or warranty is excluded during, but not limited to, the following cases:
- 11.2.1. Usual wear and tear or excessive use;
  - 11.2.2. Wear and tear on parts that are in contact with material if no lifetime guarantees have been agreed. In case a lifetime guarantee has been agreed, a replacement of parts worn prior to the end of the agreed lifetime shall be on a pro rata basis;
  - 11.2.3. Improper operation or operation that deviates from the underlying design parameters, improper maintenance, failure to follow instructions or recommendations of CEMTEC's personnel or failure to comply with the operation and maintenance manuals or other documentation of the Order Confirmation;
  - 11.2.4. Improper erection by Customer or by a third party attributable to Customer;
  - 11.2.5. Modifications or intervention on the Goods by Customer or by a third party attributable to Customer; or
  - 11.2.6. Installation and Commissioning of the Goods without the attendance of CEMTEC.
- 11.3. Customer shall notify CEMTEC about any defects in the Goods in writing, describing the defect without delay. If Customer fails to notify CEMTEC within seven (7) calendar days after transfer of risk, the Goods are considered approved. For latent defects which were not visible even with careful examination at the time of transfer of risk, a period of seven (7) calendar days from the time of recognizability applies until expiry of the warranty period. Customer shall forfeit its right for warranty claims and other compensation claims, as well as the right to appeal on the grounds of error, if it makes an improper or late notice of defects. Defects which were already recognizable during a factory acceptance inspection (see Article 7 of the GTC) shall be reported in writing to CEMTEC within a maximum of seven (7) calendar days from factory acceptance inspection date. A later notice of defects shall be considered as expired.
- 11.4. Defects notified in due time will be remedied by CEMTEC within a reasonable time at CEMTEC's choice by either repair or exchange of the affected parts. At the request of CEMTEC, the affected parts or a sample thereof shall be provided in advance to CEMTEC for examination. The fulfillment of all warranty obligations of CEMTEC shall be on the basis of the agreed delivery term according to the Order Confirmation, unless CEMTEC considers an on-site repair or return to the manufacturer's workshop or to another place designated by CEMTEC as more appropriate.
- 11.5. Customer shall at his own costs take care and allow CEMTEC the following:
- 11.5.1. Safe access to the concerned parts; if required the parts must be cleaned or cleared from any sticking material to enable safe access
  - 11.5.2. Access to operation and maintenance data



- 11.6. In addition, Customer shall take care of any required procedure on foreign components, as far as this is necessary for the remedy of the defect by the CEMTEC
- 11.7. At the request of CEMTEC, Customer shall return the defective parts to CEMTEC as well as ensure that ownership of the replaced defective parts is transferred to CEMTEC.
- 11.8. If the remedy of defects by CEMTEC is not carried out within a reasonable period of time, Customer may, after providing a reasonable grace period to CEMTEC, which must be designated as such, either remedy the defect itself or have it remedied by a third party or demand a reasonable price reduction. CEMTEC shall reimburse Customer for the direct costs incurred in connection with such remedy of defects, provided costs can be reasonably substantiated by Customer. If CEMTEC is not granted the opportunity to remedy the defect within a reasonable period of time, Customer may not recover compensation for any defect rectification costs.
- 11.9. CEMTEC may reject the remedy of defects if such remedy is not possible or economically reasonable. In this case Customer may demand an appropriate reduction of the Contract Price.
- 11.10. The warranty period is twelve (12) months from the date of delivery or readiness of delivery, if delivery is omitted or delayed for reasons that are not attributable to CEMTEC. The warranty period for repaired or replaced parts of the Goods is twelve (12) months from the date of repair or replacement. The burden of proof that a defect existed before or at the time of the transfer of risk is on Customer.
- 11.11. A contractual guarantee shall only be valid if agreed to separately and in writing between the Parties. If a guarantee is agreed to, the agreed guarantee period shall apply instead of the warranty period. The warranty period of Article 11.9 of the GTC will not be extended.

## **12. Liability**

- 12.1. CEMTEC shall only be liable for damages arising from or in connection with the Agreement, in cases of intent or gross negligence. Such liability shall be limited to fifty percent (50%) of the Contract Price. Further liability of CEMTEC is excluded.
- 12.2. In no event shall the CEMTEC be liable for indirect or consequential damages (such as but not limited to business interruptions, loss of production or similar), loss of profit, unearned revenues, capital costs, interest losses, or pure financial losses.
- 12.3. In case of bodily harm by the fault of CEMTEC, CEMTEC shall be liable according to the legal provisions as per Article 19 of the GTC.
- 12.4. Customer bears the burden of proof that damage is the fault of CEMTEC. All claims of Customer arising out of or in connection with the Order Confirmation shall expire no later than thirty-six (36) months after transfer of risk of the Goods.

## **13. Export Control Regulations**

- 13.1. CEMTEC's fulfillment of the Scope of Delivery is subject to the condition that any necessary export control approval will be granted and that the fulfillment of the Scope of Delivery will not be impeded by other national or international foreign trade law requirements, embargoes and/or other sanctions.
- 13.2. If required by CEMTEC, Customer will provide CEMTEC with any documents and information necessary in connection with export control proceedings within a reasonable period of time.

## **14. Industrial Property Rights and Copyrights**

- 14.1. CEMTEC guarantees that the Goods do not violate industrial property rights or copyrights (the “**Property Rights**”) of third parties in the place of destination that has been named by Customer when concluding the Order Confirmation.
- 14.2. If a third party raises a legitimate claim against Customer due to the infringement of Property Rights by CEMTEC’s delivery of Goods, under the condition that the Goods are used by Customer in accordance with the Order Confirmation, CEMTEC shall be liable as follows:
  - 14.2.1. CEMTEC shall, at its choice and at its own expense, either obtain a right of use for the Goods in question, change them so that any Property Right is no longer violated or replace them. If this is not possible for CEMTEC with reasonable effort, CEMTEC shall take back the concerned part of the Goods and refund Customer the price for this part deducting an appropriate compensation for use.
- 14.3. CEMTEC’s obligations mentioned above shall only be valid, if Customer immediately notifies CEMTEC in writing about the claims asserted by the third party, if Customer does not acknowledge a breach of Property Rights toward the third party and if it reserves all defensive measures and settlement negotiations to CEMTEC.
- 14.4. Claims of Customer are excluded, if Customer is responsible for the infringement of Property Rights, in particular if the infringement of property rights is due to special requirements by Customer or due to the use of the Goods by Customer in a way that is not foreseeable by CEMTEC or if it is the result of changes of the Goods by Customer or the use of the Goods with equipment not supplied by CEMTEC.
- 14.5. Claims or Rights of Customer other than those referred to in this Article are excluded.
15. **Confidentiality**
  - 15.1. Any business matters brought to the other Party by either Party in connection with the Agreement and its execution, in particular business and trade secrets, as well as know-how, data and other information shall be treated confidentially and shall not be made available to third parties unless:
    - 15.1.1. they are publicly known;
    - 15.1.2. they were known by the receiving Party prior to the Order Confirmation without any obligation of confidentiality;
    - 15.1.3. they are made available to the receiving Party by a third party without breach of a confidentiality obligation;
    - 15.1.4. the receiving party develops them independently; or
    - 15.1.5. they are to be disclosed on the basis of an administrative or judicial order.
  - 15.2. This confidentiality obligation shall survive the expiration of the Agreement.
  - 15.3. Intellectual property rights to the confidential information, such as intellectual property, trademarks and copyrights, remain with the Party that has provided the information. A right of use exists exclusively for the purpose of the Agreement. Any further use requires the express written agreement of the Parties.
16. **Data Protection**
  - 16.1. Customer agrees that information that falls under any data protection law, in particular personal data, which CEMTEC acquires in the course of his activities for Customer, may be processed in accordance with the applicable data protection law. Customer further agrees that the data shall be retained by CEMTEC beyond the fulfillment of the Order Confirmation for the fulfillment of legal requirements and for information purposes in regards to the business relationship with Customer.

- 16.2. Customer may request from CEMTEC, free of charge, information about the personal data stored about Customer. In addition, Customer may correct data, restrict, revoke, oppose, and delete personal data, so long as this does not preclude a statutory retention obligation.
- 16.3. Upon conclusion of the Agreement, Customer agrees that CEMTEC may provide any data in connection with the execution of the Order Confirmation to its subcontractors.
- 16.4. Customer agrees that CEMTEC may name Customer as reference customer for tenders, publications, lectures, etc.
- 16.5. CEMTEC may produce images and/or video material from the Goods of CEMTEC at any time prior to handover of the Goods to Customer and to use the image and/or video material for documentation, quality assurance or research purposes as well as to use in publications for advertising or reference purposes. CEMTEC may make publications on the Goods to Customer. Customer shall only be named in such publications with Customer consent.

#### **17. Termination Rights**

- 17.1. Each party may terminate the Agreement in whole or in part with immediate effect by written notice if a good reason arises. The following cases constitute a good reason:
  - 17.1.1. If the other Party breaches a material obligation and fails to remedy the breach in accordance with the terms of the Agreement despite a written request from the other Party within a reasonable grace period, which must be stated as such;
  - 17.1.2. if a claim for restitution or insolvency proceedings or proceedings similar in its effects is applied for or opened on the assets of the other Party or if the opening of such proceedings is refused due to insufficient assets;
  - 17.1.3. if there are legitimate concerns regarding the creditworthiness of Customer and Customer fails to make an advance or partial payment or other payment security within a reasonable period of time despite the request of CEMTEC;
  - 17.1.4. if there is a significant change in the shareholder structure or corporate structure of Customer or if the technical, legal or economic conditions of the Scope of Delivery change in such a way that adhering to the Order Confirmation becomes unacceptable for CEMTEC; or
  - 17.1.5. if, after commencement of the Order Confirmation, the material that should be processed for the Scope of Delivery induces an unacceptable health risk.
- 17.2. A termination by Customer shall not cover the part of the Goods, which has already been performed according to the Order Confirmation prior to the termination.
- 17.3. Already tendered Goods by CEMTEC shall be paid according to the agreed Contract Price, deducting the costs saved due to the early termination of the Agreement. Customer shall immediately upon termination return to CEMTEC all data and documents provided by CEMTEC.
- 17.4. If CEMTEC terminates the agreement, CEMTEC may recover compensation for damages and wasted expenses incurred due to the early termination. CEMTEC reserves all other termination rights in accordance with applicable law and the GTC.

#### **18. Miscellaneous**

- 18.1. Place of performance of the Agreement is the registered office of CEMTEC, if the Parties do not agree otherwise in the Order Confirmation.
- 18.2. The assignment of a claim of Customer under the Agreement is only permitted with the express consent of CEMTEC.

- 18.3. The transfer of the Agreement or part of it, including the rights and obligations therein, to third parties is only permitted with the prior written consent of CEMTEC.
  - 18.4. Changes and additions to the Order Confirmation or the GTC must be in writing to be effective. Same applies for the cancellation of this formal requirement.
  - 18.5. Should any or several provisions of the GTC or an underlying Order Confirmation in whole or in part, be invalid, ineffective, unlawful or unenforceable, this shall not affect the validity of the remaining provisions. In such event, the Parties shall replace the invalid, ineffective, unlawful or unenforceable provision with one that achieves most closely the economic purpose of this provision to the extent permitted by law.
  - 18.6. Contractual language is German or English at the choice of the Parties.
  - 18.7. In case of a regulatory gap in the GTC or an underlying Order Confirmation, only the applicable law according to Article 19 of the GTC shall apply.
19. **Applicable Law, Jurisdiction**
- 19.1. The Order Confirmation, the GTC and all disputes arising out of or in connection therefrom shall be governed by the laws of the state of North Carolina. The Convention on the International Sale of Goods (“**CISG**”) is expressly excluded
  - 19.2. Any claim or controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party irrevocably and unconditionally agrees that such binding arbitration shall take place in Mecklenburg County in the state of North Carolina.