

# GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND THE PROVISION OF INSTALLATION WORKS ("GTC") (Version 01.2025)

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## 1. Scope of Application

- 1.1 These General Terms and Conditions ("GTC") shall apply as the basis for any binding Proposal and any contract concluded by CellCube Energy Storage GmbH, IZ NÖ-Süd, Straße 3, Objekt M36, 2355 Wiener Neudorf, Austria ("CellCube") relating to the supply of goods, installation works and related services with a customer ("Agreement") as well as all further contracts for the current and future supply of products and/or provision of works and services to its customers ("Customer"; products, works and services together also "Services"). These GTC shall therefore also apply to future services of CellCube to Customer without a separate agreement, unless expressly agreed otherwise.
- 1.2 These GTC of CellCube apply exclusively, thus deviating, conflicting or supplementary general terms and conditions or other standardised contract forms of the customer (hereinafter "Customer GTC") shall only be effective if expressly agreed in writing between CellCube and the Customer. An implied agreement of, or inclusion into the Customer GTC into an Agreement is excluded. The manner of fulfilment of any contract by CellCube and the Customer and commercial customs do not constitute a change of these GTC.
- 1.3 CellCube may amend these GTC from time to time. The GTCs as amended at the time of the conclusion of the Agreement and provided or updated on CellCube' website, available at <https://www.cellcube.com/legal-information/>, become part of the respective Agreement.

## 2. Offers

- 2.1 Unless expressly designated as binding, Proposals made by CellCube ("**Proposal**") are subject to change without notice and are non-binding: non-binding Proposals constitute an invitation to a potential customer or existing Customer to submit a Proposal request to CellCube.
- 2.2 Binding Proposals by CellCube are valid for a period of one (1) month from the date of the Proposal, unless otherwise agreed in writing.
- 2.3 All catalogues, specifications, price lists or similar documents prepared by CellCube are for information purposes only and are not deemed to be a Proposal. CellCube believes that these documents are complete and correct at the time of printing; however, CellCube does not guarantee that these documents are free of errors. CellCube accepts no responsibility for any damage resulting from such documents or similar.

## 3. Conclusion of contract

- 3.1 If the customer submits a Proposal request to CellCube following a non-binding Proposal, a contract is concluded by means of signing an Agreement satisfactory to CellCube and Customer regulating in detail all applicable terms and conditions.
- 3.2 Binding Proposals of CellCube shall be accepted by the customer in writing (including by electronic means, e.g. by e-mail), followed by signing an Agreement satisfactory to CellCube and Customer regulating not only the contents of the accepted Proposal but all applicable terms and conditions in detail. A mere confirmation of receipt of the Proposal by the customer is not deemed to be an acceptance of the Proposal.
- 3.3 Deviations from a binding or non-binding Proposal made by CellCube or other requests or instructions of Customer, such as delivery requests, deadlines, discounts, shall be treated as non-binding suggestions of the customer. They shall only become part of the Agreement if they are expressly accepted by CellCube in writing within the scope of the order confirmation. The agreement shall be deemed concluded at the moment in time when CellCube sends off the order confirmation to the Customer.
- 3.4 If the customer includes certain specifications, configurations and other requirements for Services as well as their functionality and compatibility with other Services (not authorised by CellCube) and their suitability for a certain use in his order or if these become part of the contract, the customer is solely responsible for the correctness, accuracy and completeness of these and the information on which these specifications are based. Customer warrants that all information provided to CellCube for preparing a Proposal or an Agreement or within the frame of performing an Agreement is complete, accurate and truthful and acknowledges that CellCube may not be able to fully perform obligations or exercise rights under an Agreement if it fails to provide CellCube with complete, accurate and truthful information or instructions. Any duty of CellCube to warn the customer in the event of incorrect instructions or unsuitable materials provided by the customer is expressly excluded. CellCube does not assume any liability for these specifications.

## 4. Compliance with laws and regulations

- 4.1 If Services are provided on site or at the customer's premises, the customer must comply with the legal and official regulations for the protection of the health and safety of persons and the premises, as well as respect CellCube' internal regulations, common practices and other internal company regulations. Customer confirms that he is aware of these legal and official regulations and ensures that they are followed by his personnel.

- 4.2 Customer undertakes to bear all adverse financial and other consequences resulting from non-compliance with this clause and to indemnify and hold CellCube harmless from any damages CellCube and/or its personnel and/or its sub-contractors may (have) suffer(ed) and any claims of third persons.

## **5. Contract Prices and Terms of Payment**

- 5.1 The prices offered for the respective Services in the submitted Proposal shall apply to determine the Contract Price of an Agreement. All prices are in Euros and exclusive of VAT. The customer shall bear any fees, customs duties and other taxes. The only exceptions to this are any taxes on income (such as income tax, corporation tax); these are to be borne by each contracting party itself.
- 5.2 CellCube reserves the right to adjust prices for Services that have not yet been delivered or performed, upon notice to the Customer, to reflect changes in direct costs, including changes in currency exchange rates and changes in raw material prices, other manufacturing costs, distribution costs and labour costs, energy or transportation, if such changes exceed five percent (5%) of the original direct costs and take effect between the date of the contract and the date of delivery of the Services.
- 5.3 Unless expressly agreed otherwise, payment by the customer shall be made within fourteen (14) days from invoice date to an account to be separately notified by CellCube.
- 5.4 Customer agrees to receive electronic invoices. Electronic invoices are sent to the customer in PDF format by e-mail.
- 5.5 In the case of partial deliveries or partial Services, CellCube is entitled to issue partial invoices.
- 5.6 In the event of default, interest shall be due at a rate of 10% p.a.
- 5.7 CellCube has the right to suspend the performance of its obligations under this contract until full payment of all fees due, without prejudice to any claims for damages or other claims by CellCube and all Key Milestones of CellCube shall be extended for the duration of such suspension.

## **6. Deliveries**

### **6.1 General**

- 6.1.1 CellCube sells Services to the Customer in accordance with the Proposal to which these GTC shall apply in a supplementary manner and in the quantity and within the times specified therein. The risk of damage, theft and/or destruction of any of the supplies including electrolyte is transferred to Customer when delivery takes place under such terms. Customer is responsible for safe storage of all supplies at the Site and to grant CellCube access to the place of storage at any time.
- 6.1.2 All prices are subject to the term "FCA" (Free Carrier) according to INCOTERMS 2020, unless otherwise agreed. CellCube's design of its CellCube's is as of good industry standards. Due to its design the CellCube's do not require any additional transport packaging such as e.g: foil wrapping/packaging, complete coatings with wax, etc. or comparable. Therefore, damage due to transport is foreseeable and therefore does not constitute a defect and CellCube is not required to rectify or compensate for such damages. The same applies to transport-related dirt accumulation.
- 6.1.3 Packaging shall be conducted by CellCube in a customary manner in order to avoid damage to the Services on their way to the specified destination under normal transport conditions. If CellCube incurs costs for necessary or expressly requested packaging (as in the case of special quantities or dimensions), special labelling and division, labelling or positioning work, etc., these shall be added to the contract price in accordance with the expenses incurred by CellCube and shall not be included in the agreed prices in the absence of any other written agreement.

- 6.1.4 Unless expressly agreed otherwise, any delivery periods and dates announced shall be non-binding and shall always be understood as the expected time of provision and handover of the products to the Customer.
- 6.1.5 Customer is not entitled to postpone deadlines/dates for any reason whatsoever without the written consent of CellCube.
- 6.1.6 If the start of the performance or the performance is delayed or interrupted due to circumstances attributable to the Customer, in particular due to the breach of the duties to cooperate pursuant to point 9., performance deadlines shall be extended accordingly, and completion dates shall be postponed accordingly. In this case, the Customer shall pay CellCube all additional costs (e.g. storage costs, additional transport costs, frustrated internal costs, frustrated costs for subcontractors, withdrawal and remobilisation of assembly equipment and personnel) incurred due to such a delay in addition to the agreed price. CellCube has a reasonable mobilisation period of minimum of three (3) weeks in the event of such a delay.
- 6.1.7 Customer is obliged to accept the Services provided by CellCube. The detailed rules for acceptance and the acceptance procedure are regulated in the Agreement.
- 6.1.8 Supplies not accepted by the agreed date will be stored for a period of six weeks at the risk and expense of the Customer. CellCube is entitled to either insist on the fulfilment of the contract or to withdraw from the contract after setting a reasonable grace period.
- 6.1.9 Only material defects (“*Wesentlicher Mangel*”) entitle Customer to refuse or suspend acceptance of particular deliveries or the Services. CellCube shall remedy such defects within a reasonable period of time. “Immaterial defects” are non-conformities or anomalies that do not hinder the operation and intended use of Services according to their specifications; “material defects” shall be defects that are relevant to safety and those that are likely to cause personal injury or that lead to the Services fail to meet agreed performance values by more than the agreed thresholds.

## 6.2 Retention of Title

- 6.2.1 CellCube retains ownership (and title) (“*Eigentumsvorbehalt*”) of all Services until full payment of the Contract Price plus any interest and costs.
- 6.2.2 In order to secure CellCube’ claim for payment of the Contract Price, Customer hereby assigns to CellCube its claims from a resale of products subject to retention of title - even if these have been processed, transformed or mixed - and undertakes to (i) make a corresponding note in its books or on its invoices and (ii) include a respective assignment into all such contracts of sale. Upon request, the Customer must inform CellCube of the assigned claim in addition to the debtor, provide all information and documents required for the collection of the claim and inform the third-party debtor of the assignment.
- 6.2.3 In the event of seizure or other recourse to the products under reservation of title by third parties, the Customer is obliged to point out CellCube’ right of ownership and to notify CellCube immediately.

## 7. IP rights and Use of Software

- 7.1 As between the Parties, CellCube shall retain the copyright and other intellectual property rights in any design, plan, drawing, documentation of Services supplied and works performed and services provided, any manuals and other training materials, offer, and other documents made by (or on behalf of) CellCube. Customer may, at his cost, copy, use, and obtain communication of such intellectual property rights only for the purposes of this Agreement. CellCube shall not be liable for any use of such intellectual property rights for any purpose other than that for which they were prepared.
- 7.2 As far as the delivered products contain software, the Customer is granted a non-exclusive right to use the delivered products including the software together with all documentation handed over independent

of its location for the duration of the usage of the product. This documentation is made available for use for the delivery item intended for this purpose. The use of the software on a product not authorised by CellCube is excluded.

- 7.3 Customer may only reproduce, modify, translate or convert object code into source code within the legal limits. Customer must not use the software for purposes other than the operation of the delivered product. Duplication and processing of the software is prohibited. Customer is obliged not to remove manufacturer's information, in particular copyright notices, or to change them without the prior express consent of CellCube. CellCube reserves all other rights to the software and documentation, including copies thereof. The granting of sub-licences is prohibited.

## 8. Common Provisions for Services

- 8.1 Customer may only use the Services for their intended purposes and in accordance with any instructions contained in the manuals, guidelines, warranty terms and conditions and any other general terms and conditions, or instructions given by members of staff employed or subcontracted by CellCube to perform an Agreement.
- 8.2 CellCube may amend the design, materials, fit and finish of the products or change working methods, communication systems, software or other elements of the Services as well as those of the documentation, provided that these changes do not significantly impair the functionality of the Services. Unless otherwise agreed, CellCube does not warrant the availability, accuracy, completeness, reliability, timeliness or performance or result of Services. Customer may only use the Services for the contractually agreed applications and purposes.
- 8.3 Customer may not perform (or permit to be performed) any work on products or software supplied and/or used by CellCube under the Services beyond normal use in accordance with the specifications without CellCube' prior consent. In the event of unauthorised actions, CellCube may suspend the Services until the product or software has been restored to its original, compliant condition and charge the Customer for any costs incurred in making changes. If the Customer has modified the products on his own authority, any warranty, guarantee or damage compensation claims against CellCube are excluded.
- 8.4 Customer expressly acknowledges that certain features and functions of Services depend on the availability and proper provision of external services designated by CellCube, such as energy supply, data storage, network connection and communication. CellCube has no influence on those services and therefore assumes no responsibility or liability in this regard.
- 8.5 Customer is responsible for all information, orders, instructions, materials and activities provided or carried out by himself or by third parties commissioned by him (with the exception of CellCube' subcontractors) in connection with the delivery of Services by CellCube. CellCube has the right to rely on the accuracy and completeness of all information provided by the Customer also in cases where CellCube provides data collection, design or audit services. Upon CellCube' request, the Customer shall promptly provide any other information, services or support that it controls and that is important for CellCube to perform in accordance with the contract.
- 8.6 Notwithstanding any variation procedure agreed in an Agreement, any cancellation, delay or other variation by Customer of a contract shall be subject to CellCube' prior approval and such approval shall be without prejudice to any rights or remedies available to CellCube under the contract or at law. If CellCube, at the request of Customer, consents to any change in the order or any variation of the contract including any cancellation (in part), delay or suspension, addition, omission, alteration, substitution or change in design, quality, standard, quantity, place of manufacture or performance (including sequence, quantities or timing) of any Products or Services (each a "**Change**"), or agrees to a Change due to
- (a) changes in applicable laws, regulations or industry standards,

- (b) emergency situations,
- (c) inaccurate or incomplete information provided by the Customer, or
- (d) failure of the Customer to comply with its contractual obligations,

Customer shall reimburse CellCube for reduced margins and all costs and expenses (including reasonable profit) incurred as a result of such Changes promptly after the first request, and all times for delivery or completion of Services, in particular all Key Milestones shall be extended by a time appropriate for implementing a Change and adjusting the performance of the Services to such Change.

## **9. Cooperation obligations of the Customer**

- 9.1 Customer shall provide CellCube, at its own expense, with all necessary and appropriate information in due time and to the extent required for the performance of the contract and shall immediately fulfil all other necessary cooperation and provision services from its area of responsibility. In particular, the Customer shall provide the preparatory works in accordance with the scope of supplies in a Proposal or the scope of Services in an Agreement.
- 9.2 Customer's obligations to cooperate shall in any case include:
- 9.2.1 Provision of low-value work equipment (e.g. office workstations, writing materials) for on-site work;
  - 9.2.2 Providing unimpeded access to the server infrastructure to perform maintenance and support services;
  - 9.2.3 Provision of physical access to the server infrastructure on site, in particular for the performance of maintenance and support services.
- 9.3 Customer shall provide CellCube with all information and other necessary cooperation services required for the performance of the contract in a timely manner and free of charge. As far as expedient or necessary, the Customer shall cooperate in the planning, installation and implementation work as well as in the maintenance and support services at CellCube' request. In particular, the Customer shall provide the personnel qualified for this in good time and free of charge. If, in the opinion of CellCube, the Customer does not sufficiently fulfil these obligations to cooperate and thus jeopardises the fulfilment of CellCube' obligations, CellCube shall warn the Customer accordingly. If CellCube is unable to properly fulfil its obligations due to the delayed or insufficient cooperation of the Customer, CellCube is not liable for the resulting consequences and damages, but the Customer alone is responsible for these and may be liable to CellCube for costs and/or damages.
- 9.4 Customer shall immediately inform CellCube in writing if circumstances occur and become apparent that may lead to non-compliance with agreed deadlines or dates.
- 9.5 Official permits and any third-party permits required for the execution of installations shall be obtained by the Customer. CellCube does not accept any liability whatsoever for official approval.
- 9.6 As far as special public law regulations or other binding standards apply to the Services at the location where the Customer will use them according to the Agreement, the Customer shall inform CellCube of these asking for a binding Proposal, insofar as CellCube' Services are or may be affected by them. If Customer does not comply with this obligation, he shall be liable to CellCube for all resulting damages, for example for claims of third parties against CellCube due to non-compliance with these regulations or standards; Customer himself shall not have any warranty claims or claims for damages against CellCube.
- 9.7 If the contractual performance depends on the Customer's approval, confirmation or acceptance of a proposal, draft, work product, plan or action to be performed by CellCube, the Customer must declare such approval, confirmation or acceptance within the period stated in the contract or, if no period is

stated, within fourteen (14) days after receipt of a corresponding request by CellCube. If the Customer does not respond within this period, his approval, confirmation or acceptance is deemed to have been declared on the last day of such period.

## 10. Delay

- 10.1 If CellCube is in delay with the delivery or provision of Services, Customer shall grant CellCube a reasonable grace period of at least four (4) weeks for finalising the performance of CellCube' delayed obligation. If CellCube allows the granted grace period to expire without fulfilling the reminded obligation, the Customer is entitled to terminate the contract to the extent reminded or, insofar as a partial delivery/performance is concerned, only to terminate the partial delivery/performance.
- 10.2 If Services cannot be carried out within an agreed period or on an agreed date due to circumstances that lie outside the sphere of tasks and responsibility of CellCube (such as lack of material, no access to the location of the installation, lack of official permits, Customer delay with preparatory works or with making statements or taking action which are conditional for CellCube to perform its obligations in connection with an Agreement), CellCube shall not be in default with these Services. Furthermore, CellCube may charge all additional costs (such as storage costs, frustrated internal costs, frustrated costs for subcontractors) incurred due to such a delay in addition to the agreed price. If CellCube uses its own personnel for this purpose, the hourly rates usually charged by CellCube will be applied.
- 10.3 Compliance with the completion deadlines above shall also be subject to the correct and timely availability of supplies and materials. In the event that a supplier of CellCube does not deliver correctly or on time, the completion time towards customer shall be extended accordingly.
- 10.4 Partial Services, in particular deliveries, are permissible only to the extent that they are reasonably acceptable for Customer.

## 11. Delay of Acceptance (“Annahmeverzug”)

- 11.1 If Customer is in default of acceptance for longer than 2 weeks (refusal of acceptance, non-collection of the products or other), and if Customer has not ensured the elimination of the circumstances attributable to him, which delay or prevent the performance of the service, despite the setting of a reasonable grace period, CellCube may otherwise dispose of the materials and time capacities reserved or planned for the performance of the Service.
- 11.2 In case of delay of acceptance by Customer, CellCube is also entitled to choose between shipping the Services to the Customer at the Customer's expense and risk or storing the Services for the Customer, if CellCube insists on the fulfilment of the contract. In the event of storage, CellCube is entitled to either store the goods itself or to have them stored by third parties in the name of and for the account of the Customer at a storage fee customary in the market. Costs and risks associated with the storage of the Services shall pass over to the Customer from the point in time onwards where delay of acceptance occurs.
- 11.3 If the Customer after having been granted a reasonable grace period and its subsequent expiry is still in delay of acceptance, CellCube also has the right to immediately rescind the contract, to dismantle, remove and resell or otherwise dispose of the Services, in particular components and materials supplied for or as part of the Service.
- 11.4 In any case, the Customer has to pay CellCube all additional costs and compensate any damage (e.g. storage costs, additional transport costs, frustrated internal costs, frustrated costs for subcontractors, withdrawal and remobilisation of assembly equipment and personnel) incurred due to the delay and the subsequent rescission (if any).

11.5 The aforementioned rights apply in addition to CellCube's other statutory claims in the event of default by the Customer. The assertion of other rights and claims by CellCube remains expressly unaffected.

## **12. Warranty**

12.1 The term "warranty" hereunder refers to CellCube's liability for the defectiveness of the Services at taking-over, irrespective of fault. The term "Warranty" does not include an independent promise of a guarantee.

12.2 The remedies (improvement/replacement, price reduction, conversion) of the warranty are intended to restore the subjective equivalence.

### **12.3 Principle**

CellCube warrants that the Services are free of material defects and free of "defect of title" existing at the time of taking-over the Services. CellCube warrants to its best knowledge that ownership (*Eigentum*) to the Services can be validly transferred to Customer upon full payment of the Contract Price to CellCube. The burden of proof for the existence of a material defect or defect of title lies with the Customer in any case. A presumption of defectiveness is excluded.

### **12.4 Defects of Quality of New Delivered Goods**

All those parts of the Services which are proven by Customer to be defective within the warranty period, shall at the discretion of CellCube be repaired free of charge or replaced by new parts. If Customer identifies a defect, it shall notify CellCube in writing without undue delay. Any parts of the Services that have been replaced become the property of CellCube.

Following a notification of a defect, the Parties shall discuss the best way to cure this defect and Customer shall grant CellCube a period appropriate to carry out all repairs and replacement which CellCube deems necessary. If CellCube cannot commence curing a defect immediately after its notification, CellCube is released from the liability for any consequences resulting therefrom. Only in cases of urgency where the operational safety of the ESS is endangered if Customer waits for CellCube to remedy the defect, Customer is entitled to remedy the defect by himself or by third parties on the costs of CellCube. However, CellCube does not assume any liability for consequences for the Services by such acts by Customer or third contractors.

CellCube shall bear the costs arising from the repair or replacement delivery – insofar as the claim is justified – namely the costs of the replacement including dispatch as well as the reasonable costs of disassembly and installation, and further to this the costs of any provision of fitters and support staff, if this can be reasonably expected in the given circumstances.

If Customer removes any part of the Services in whole or in part from a contractually agreed installation site to another location, Customer shall reimburse to CellCube additional costs arising therefrom, in particular travel expenses.

In the case that customer or a third party repairs the Services incorrectly, CellCube shall assume no liability for the consequences thereof. This shall also apply to modifications to the object of delivery carried out without the prior consent of CellCube.

### **12.5 IP rights**

Furthermore, CellCube warrants to its best knowledge that the contractual use of the Services by Customer does not interfere with the rights of third parties.

If the provision of the agreed Services by Customer leads to an infringement of IP rights or copyright of third parties, CellCube shall, at his own cost, grant Customer a right for continued use, or modify the Services in a manner acceptable to Customer, so that an infringement of IP rights no longer exists. If this cannot be done at economically reasonable conditions or within a reasonable period, both Customer and CellCube shall be entitled to terminate the Agreement and CellCube shall hold Customer harmless from any claims asserted by the IP holder which are undisputed by CellCube or have been decided in a final and binding way.

However, Customer's entitlement to be held harmless shall only be valid, if

- 12.5.1 Customer informs CellCube without undue delay of any claims of IP rights or copyright by third parties, support CellCube to a reasonable extent in defending the asserted claims or enabling CellCube to take steps to modify the Services paragraph 1 of this clause 12.5.
- 12.5.2 the infringement of IP rights or copy right has not been caused by Customer or an instruction or Service requirement of Customer to CellCube,
- 12.5.3 the infringement of IP rights or copy rights has not been caused by unauthorized modifications to or a use not agreed for any part of the Services by Customer.
- 12.6 CellCube shall warrant against any defect existing at the time of taking-over of the Services and arising within twelve (12) months thereafter. In the case of defects of title, the transferor shall warrant if the defect exists at the time of taking-over of the Services.
- 12.7 Regarding original equipment selected for a Project as described in the Agreement and when selling products produced by third parties, CellCube passes on the manufacturer's warranty conditions.
- 12.8 A warranty by CellCube is excluded in the following cases:
  - (a) In the event of improper use of the Services, unauthorised modification or repair by the Customer, in particular in contradiction to this contract and its appendices, to manuals for use and maintenance, warning instructions, cleaning instructions, or other information of which the Customer is or should be aware;
  - (b) in the event of faulty installation or commissioning or faulty or negligent handling, improper maintenance, unsuitable use of equipment, improper construction work, unsuitable foundations, and chemical, electrochemical or electrical faults in commissioning by the Customer or third parties;
  - (c) in the event of overvoltage, undervoltage, power failure, lightning, water damage, floods, fire, explosions, earthquakes, tornadoes, attacks, acts of war or similar phenomena;
  - (d) Defects due to normal or natural wear and tear;
  - (e) Changes to the installation and/or configuration and/or components or software without prior written approval by CellCube;
  - (f) lack of maintenance if the causes for this lies outside the sphere of CellCube;
  - (g) Presence of intentional or unintentional jammers or other sources of interference that interfere with signal transmissions (especially Bluetooth);
  - (h) Theft or destruction of one or more Services;
  - (i) Incidents or accidents related to the installation of the products when the Customer is carrying out the installation;
  - (j) Signal interruption to one or more products or the server infrastructure or other components of the system (power failure, shutdown of one or more such elements) of any BMS, operation control software or EMS;
  - (k) violation of duties to co-operate.

- 12.9 Customer is obliged to inspect the Services and give notice of defects within 10 days after taking-over. Customer must therefore notify CellCube in writing of any defects within 10 days after taking-over. After this period has expired unused, the assertion of any warranty claims and claims for damages due to recognisable defects is excluded. In any case, Customer must notify CellCube in writing of all defects.
- 12.10 In the case of material defects, CellCube has the option in any case to carry out improvement (rectification or addition of what is missing) or replacement. Replaced parts become the property of CellCube. Temporary rectification of defects is also deemed to have taken place if CellCube shows the Customer reasonable possibilities to prevent the effects of the defect.
- 12.11 In the case of defects of title, CellCube also has the option of providing a warranty by means of improvement: CellCube shall, at its discretion, provide Customer with a legally flawless possibility of using the products to the agreed extent or with replaced or modified products of equal performance values.
- 12.12 Customer shall accept new or modified products within the scope of the warranty if the contractual scope of functions of the ESS remains unaffected and this does not lead to significant disadvantages of Customer.
- 12.13 If two consecutive attempts of curing a defect by CellCube fail, Customer shall be entitled to set a reasonable grace period for the rectification of the defect. In doing so, Customer shall expressly point out in writing that he reserves the right to claim a price reduction in the event of repeated failure or - insofar as the defect is not minor - to rescind the contract. If the further improvement also fails, Customer may reduce the contract price accordingly (i.e. by an amount equal to the reduced value of use of the Service) or rescind the Agreement. Customer shall however only be entitled to rescind the Agreement if he can prove a material defect.
- 12.14 The liability for damage caused by defects and consequential damage caused by defects shall be governed by the provisions of point 13.
- 12.15 If CellCube provides Services outside the warranty, e.g. for troubleshooting or fault elimination, without a defect being present, or if it turns out that the fault was caused by the Customer, these will be charged according to the price list of CellCube valid at the time of such services on a time and material used basis.
- 12.16 If the deliveries/Services are produced on the basis of information, drawings, plans, models or other specifications of the Customer, CellCube shall only warrant for the execution in accordance with the conditions. CellCube shall not be liable for defective deliveries and Services of subcontractors, if these have only been commissioned by CellCube at the request or by order of the Customer.
- 12.17 CellCube does not assume any warranty obligations exceeding this Article 12.

### **13. Damages and other Liability**

- 13.1 Except for personal injury CellCube shall be liable for damages due to a failure to fulfil its obligations in relation to an Agreement (“*Schadenersatz*”) only if caused by blatant gross negligence (*krass grobe Fahrlässigkeit*) or by intent. Liability is excluded for damages caused by slight negligence. CellCube shall not be liable for unforeseeable or atypical damages. CellCube is also not liable in the cases of point 12.8.
- 13.2 CellCube shall not be liable for consequential (defect) damage, indirect damage, loss of profit, of turnover or interest, damage from third party claims, as well as damage from loss of data or unlawful use of data.
- 13.3 CellCube shall not be liable in the event of non-compliance by Customer with any conditions for installation, testing and commissioning, and use (as in operating manuals) or the conditions set forth in regulatory permits.

13.4 The limitation period for claims for damages and other compensation claims is one (1) year after taking-over.

## 14. Termination

14.1 Irrespective of its other rights, CellCube is entitled to rescind an Agreement ("*Rücktritt*"),

- (a) if the performance of the Services or the commencement or continuation of the Services is impossible for reasons for which the Customer is responsible or which lie outside CellCube's sphere of influence or is further delayed despite CellCube setting a reasonable period of grace for Customer;
- (b) if concerns have arisen regarding the Customer's solvency and the Customer does not make an advance payment or provide suitable security prior to delivery at CellCube's request;
- (c) if the extension of the time for delivery or completion of Services due to the circumstances listed in Article 15.3 and 15.4 amounts to more than half of the originally agreed deadlines, but at least 6 months;
- (d) if the Customer does not or not properly fulfil the obligations imposed on him by Article 4 hereof;
- (e) if an insolvency or reorganisation requirement of the Client (or a crisis comparable under the law applicable to the Client) occurs or is imminent; or
- (f) if insolvency proceedings over Customer's assets are opened or the opening of insolvency proceedings is rejected for lack of assets, or a comparable decision is made under the law applicable to the Customer.

14.2 Customer is entitled to rescind from the Agreement, if

- (a) its performance becomes entirely impossible for CellCube before the risk has passed to Customer.
- (b) the execution of a part of the scope of supply becomes impossible and the Customer verifies a legitimate interest in refusing partial delivery/completion. If this is not the case, the Customer is obliged to pay such portion of the contractually agreed price as corresponds to the partial completion.

14.3 In the event of a rescission or other early termination of an Agreement and without prejudice to CellCube's claims for damages including pre-litigation costs, CellCube is entitled to invoice all services or partial Services already rendered when the termination becomes effective. This also applies insofar as the delivery or service has not yet been taken over by the Customer as well as for preparatory actions performed by CellCube. In particular, orders that cannot or can no longer be cancelled are to be paid by the Customer. In lieu of this, CellCube is also entitled to demand the return of products that have already been delivered.

## 15. Force majeure

15.1 Under the condition that it has complied with Article 15.2, neither Party shall be in breach of contract and shall not be liable for any failure or delay in performing the affected obligations if this Party is prevented from performing its obligations by a Force Majeure Event (hereinafter referred to as the "Affected Party"). The time for performance of the affected obligations shall be extended for the duration of the Force Majeure Event and, if the Force Majeure Event continues thereafter, for as long as and to the extent that it continues to have an effect plus an appropriate time for remobilisation of CellCube.

15.2 The Affected Party shall

15.2.1 promptly after the commencement of the Force Majeure Event, inform the other Party of the Force Majeure Event, the date of its commencement, if foreseeable, its probable or possible duration and the effect of the Force Majeure Event on its ability to perform its obligations.

- 15.2.2 make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations.
- 15.3 A Force Majeure Event is any unusual and unforeseeable circumstance beyond the control of a Party, including but not limited to the following:
- (a) storms, floods, droughts, earthquakes or other natural disasters;
  - (b) epidemics or pandemics. Restrictions on entry and on-site work, as well as restrictions due to quarantine regulations in connection with an epidemic/pandemic, shall in any case be deemed to be force majeure events;
  - (c) sabotage, terrorist attacks, civil wars, civil disturbances, rebellion or insurrection, war, threat of war or preparation for war, war, armed conflict, imposition of sanctions, embargo, severance of diplomatic relations, interference with the production or supply chain by civil or military authorities (whether legal or de facto);
  - (d) nuclear, chemical or biological contamination;
  - (e) collapse of production or manufacturing buildings or facilities, fire, explosion;
  - (f) cyber-attack;
  - (g) interruption or failure of utilities;
  - (h) strikes and lockouts;
  - (i) inability to obtain or procure supplies, labour or transportation from a third party if such inability is caused by an event beyond the control of the third party which, if it had happened to the Party, would constitute a Force Majeure Event under this clause. A general shortage of raw materials shall not be considered as a Force Majeure Event.
- 15.4 Apart from and in addition to the foregoing, the COVID-19 epidemic/pandemic (caused by the SARS-CoV-2 virus) and/or its consequences, in particular measures by lawmakers or governments and public authorities on any level against the spread of COVID-19 and other comparable epidemics shall be deemed to be a Force Majeure Event for CellCube to the extent that they delay or prevent the performance of any obligation of CellCube.

## 16. Data protection

- 16.1 The parties undertake to comply with the statutory and Union data protection provisions and to ensure compliance with these provisions, in particular by their employees.
- 16.2 CellCube's privacy policy can be viewed here: <https://www.cellcube.com/data-protection>.

## 17. Confidentiality

- 17.1 Unless more stringent confidentiality obligations are agreed in a non-disclosure agreement, the following shall apply:
- 17.2 Customer shall treat as confidential and keep secret from third parties all information and documents, in particular trade and business secrets, which come to its knowledge in connection with the performance of this contract and which are not generally known. Trade secrets also include technical know-how, operating methods and security measures (hereinafter "**Information**").
- 17.3 Customer will not make Information available to third parties in any way without CellCube's consent.
- 17.4 The confidentiality obligation does not apply to Information that must be disclosed due to enforceable official or court orders or mandatory law. However, the Parties shall promptly agree how to fulfil such disclosure obligations.

- 17.5 The confidentiality obligation shall remain in force for five (5) years after the termination of the Agreement or, irrespective of a contract, for five (5) years after CellCube has made a Proposal.

## **18. Re-Export / Export Clause**

- 18.1 In the case that the Customer intends to resell the equipment or parts thereof to another nation, the Customer shall inform CellCube thereof in writing by registered mail or by courier at least 40 days before the execution of the sale or shipment.
- 18.2 CellCube reserves the right to prohibit the resale or transfer within 30 days for good cause by replying to the sender's address (potential IP-infringement, known export embargos, etc.).
- 18.3 However, CellCube is not obliged to verify the legitimacy of the re-export with regard to manufacturer-related or legal export restrictions or uni-, bi-, /multilateral embargoes.
- 18.4 CELLCUBE ADVISES THE CUSTOMER THAT IN THE EVENT OF REEXPORT, THE CUSTOMER MAY BE LIABLE TO PROSECUTION FOR VIOLATING EXPORT BANS OR EMBARGOES. IN ADDITION, THE CUSTOMER IS LIABLE TO CELLCUBE AND MANUFACTURER OF COMPONENTS USED FOR THE ASSEMBLY OF THE EQUIPMENT FOR BREACH OF CONTRACT IN THE EVENT OF REEXPORT.

## **19. Final provisions**

- 19.1 The non-exercise of a right under this contract by one of the parties shall not constitute a waiver of the future assertion of that right.
- 19.2 Customer waives the possibility of set-off of claims. Any total or partial assignment of an Agreement by one party is prohibited, except when the assignment is made to a 100% affiliated company or with the prior written agreement of the other party.
- 19.3 Customer is not entitled to withhold payments. In particular, the Customer is not entitled to withhold payments due to warranty claims or other counterclaims.
- 19.4 Customer expressly waives the right to contest an Agreement on the grounds of shortening by more than half ("*Verkürzung über die Hälfte*" or "*laesio enormis*"), error ("*Irrtumsanfechtung*") and loss of the commercial basis of the transaction ("*Wegfall der Geschäftsgrundlage*"). CellCube may use the name of the customer and the designation of the project as a reference project on its publications such as websites, in sales brochures and in offers.
- 19.5 Amendments and supplements to this contract must be in writing and shall be made in accordance with the procedures provided for in this contract. This shall also apply to any waiver of this written form requirement.
- 19.6 If any provision of this Agreement is or becomes invalid, void or unenforceable, this shall not affect the validity or enforceability of the remaining provisions of this Agreement, but such provision shall be deemed replaced by a valid, effective and enforceable provision the commercial effects of which are closest to the replaced provision.
- 19.7 To the extent that any provision of these GTC conflicts with any provision of the Proposal or any Annex to the Proposal, the conflicting provision of the Proposal or its Annex shall prevail over these GTC. To the extent that any provision of a Proposal conflicts with any provision of an Annex to the Proposal, the conflicting provision of the Proposal shall prevail.

- 19.8 CellCube is entitled to use subcontractors and other third parties or to be represented by third parties for the purpose of fulfilling its obligations under this contract without the consent of the Customer.
- 19.9 These GTC and the contractual relationship between CellCube and the Customer as well as the forum clause in these GTC shall be governed exclusively by material Austrian law, excluding its conflict of laws rules and the UN Convention on Agreements for the International Sale of Goods.
- 19.10 Subject to Clause 19 (11) below, any dispute or claim arising out of or in connection with this Agreement, including any dispute as to its validity, breach, termination or nullity which cannot be settled amicably, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one arbitrator appointed in accordance with the said Rules (Article 17 Vienna Rules). The language to be used in the arbitration shall be English. The provisions of the Vienna Rules on Expedited Procedure shall apply.
- 19.11 This arbitration clause shall be applicable only with regard to Customers with their corporate seat or main residence outside the application of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. With regard to Customers having their corporate seat or main residence within the application of the aforementioned Regulation, the court having jurisdiction for trade matters in Vienna (*zuständiges Gericht in Handelssachen in Wien*) shall have exclusive jurisdiction.
- 19.12 The Parties shall oblige the arbitrator(s) to keep all information about this Agreement, the Parties and the dispute which they obtain during the course of or in connection with the arbitration strictly confidential (Article 16 paragraph 2 Vienna Rules). The Parties shall keep strictly confidential and shall effectively oblige all [their staff, sub-contractors, advisers, and/or experts] to keep strictly confidential, all information about this Agreement, the Parties and the dispute which they obtain during the course of or in connection with the arbitration.