



## Terms and Conditions of Sales

For use in business relationships with companies and legal entities (B2B).

Valid as of January 1, 2024.

### I. General and Acceptance of Terms

1. These Terms and Conditions of Sales ("T&C") shall apply to all business relationships of Mi-Jack Europe GmbH ("Mi-Jack Europe") with business customers in the meaning of Section 310 Para. 1 German Civil Code (BGB) ("Customers") and govern the provision of services, and delivery of products, of any kind ("Performances") towards its Customers.
2. With respect to pre-contractual relationships or through-deliveries (*Durchlieferung*) to end customers, these T&C shall be understood as disclaimer (and to give shape to any existing legal relationship under the applicable statutory law), in each case, if and to the extent permitted under the applicable statutory law. However, nothing in these T&C is to be understood as an offer or acceptance to conclude a binding agreement.
3. These T&C shall apply exclusively to any legal relationships of Mi-Jack Europe with other terms and conditions to the extent these conflict with these T&C not applying unless Mi-Jack Europe has expressly agreed to their validity in writing. Mi-Jack Europe rendering Performances or accepting payments without rejection of the conflicting terms and conditions is not to be understood as their acceptance.
4. Within an ongoing business relationship, these T&C shall also apply to all future Performances without us having to refer to the applicability of these T&C in the individual case.
5. If these T&C provide for certain terms being clarified by German words written in brackets after the relevant terms, only the German words shall be legally binding for the interpretation of these T&C.

### II. Offer and Binding Agreement

1. Any offers made by Mi-Jack Europe are non-binding and subject to Mi-Jack Europe's acceptance. Validity periods or similar specified in the offer refer exclusively to the quoted price. A binding agreement shall only come into existence when Mi-Jack Europe sends an email order confirmation (*Auftragsbestätigung*) in response to a Customer's

offer-related order (*Angebot*). Mi-Jack Europe shall be under no obligation to accept any order from a Customer.

2. The binding agreement, including these T&C, shall within its scope as determined by the contract documents or the order confirmation (*Auftragsbestätigung*) conclusively govern the legal relationship between Mi-Jack Europe and the Customer. Limited to its subject matter, the binding agreement includes all agreements made between Mi-Jack Europe and the Customer. This results in verbal promises made by Mi-Jack Europe prior to the conclusion of the binding agreement, or any verbal agreements made by Mi-Jack Europe and its Customer within the subject matter of the binding agreement, not being legally binding but instead being replaced by the binding agreement, unless expressly agreed otherwise in the binding agreement.
3. Any modifications made to the binding agreement, including these T&C, require the written form to be effective. Only the managing directors (*Geschäftsführer*) of Mi-Jack Europe and its authorized signatories (*Prokurist*), but not its employees, are entitled make verbal agreements deviating from the binding agreement. To comply with the written form, email or text form (*Textform*) shall be sufficient.
4. Insofar, as the offer, order confirmation, binding agreement or any other document of Mi-Jack Europe provides for technical specifications, details or illustrations, such as, among others, weights, dimensions, utility values, load capacity, tolerances and technical data as well as drawings and illustrations, these shall be understood as approximate only, unless the usability for the contractually intended purpose requires exact conformity. In any event, these are not understood as guaranteed or warranted characteristics but descriptions or identifications of the Performances to be rendered by Mi-Jack Europe. The replacement of components with equivalent or comparable parts shall be permissible insofar as they do not impair usability for the contractually intended purpose. The same applies relating to customary (*handelsüblich*) deviations and other deviations that occur due to a change in legal regulations or represent technical improvements.

### **III. Obligation of Customer to Cooperate, Customer-related Changes**

1. The Customer is obliged to provide Mi-Jack Europe with any and all information and data (the "Information") that are necessary to deliver the agreed upon Performances. With respect to our integrated software and hardware solutions or any product customized for our Customers (together, the "Solutions") this particularly relates to technical specifications of the systems and applications used by the Customer as well as data regarding the surroundings of the venue where the Solution is to be used, and any changes to such Information due to changes to, among others, the Customer's systems, applications and surroundings.
2. The obligation of the Customer to provide Information shall encompass giving complete and correct Information upon request of Mi-Jack Europe and the self-sufficient

furnishing of Information if it is reasonable to assume that such Information is necessary for Mi-Jack Europe to render its Performances towards the Customer. Mi-Jack Europe is under no obligation to verify any Information supplied to it by the Customer for completeness and correctness.

3. In the event that Information or documentation provided by the Customer proves to be faulty, incomplete, ambiguous or non-executable based on objective criteria, the Customer shall bear the full risk of any delays of delivery or Mi-Jack Europe objectively not being able to implement the Solutions or render the Performances as agreed upon, resulting in Mi-Jack Europe to retain its full claim to compensation as if the Solution or Performance would have been delivered as agreed upon and the Customer not having rights for any delays. The same shall apply if the Customer is in breach with its obligation to self-sufficiently furnish information.
4. The obligation of the Customer to cooperate shall also include any other reasonable actions that are indicated by Mi-Jack Europe to be necessary for the rendering of the Performances, such as, among others, granting remote access.
5. Should the lack of complete and correct Information as well as any lack of reasonable cooperation on part of the Customer result in higher costs of Mi-Jack Europe, such as, with respect to time spent, cost of material or additional equipment necessary, Mi-Jack Europe shall be entitled to adjust the quoted price and number of delivery times for the Performances at its reasonable discretion. In any event, Mi-Jack Europe shall also have the right to withdrawal from the Performance against refund of any compensation received less costs reasonably incurred by it to prepare for the Performance, but without any obligation to pay for damages in connection with the withdrawal.

#### **IV. Deliveries and Prices**

1. All deliveries shall be made “ex works” the headquarters of Mi-Jack Products, Inc. in Hazel Crest, Illinois, United States of America (EXW, within the meaning of the INCOTERMS 2020), unless expressly agreed otherwise.
2. Delivery dates or periods communicated by Mi-Jack Europe shall be understood on a non-reliance basis as approximate only, unless a fixed period or date has agreed with the Customer or promised by Mi-Jack Europe making expressly reference to its binding nature. For shipments to the Customer, the handover to the transport person, irrespective of whether it is a third party or personnel of Mi-Jack Europe or affiliates (the “Transport Person”), shall be decisive for compliance with the fixed delivery period or date.
3. Commissioning days are quoted as 8-hour workdays, unless expressly agreed otherwise in the binding agreement. If the actual working time per day is longer, Mi-

Jack Europe shall be entitled to convert the actual days to standard 8-hour workdays which may result in less time spent on site or quicker turnaround times.

4. In the event, that more commissioning days than quoted are required to render the Performance due to events for which Mi-Jack Europe is not solely responsible such as, among others, the failure of the Customer to cooperate as stipulated in Section *III. Obligation of Customer to Cooperate, Customer-related Changes* of these T&C or a lack of machine accessibility or safety clearance, the additional commissioning days and any expenditures on part of Mi-Jack Europe shall be charged based on the quoted prices.
5. After expiry of the warranty period, as described in *IX. Warranty, Quality Defects*, any delivery of spare parts or repair by Mi-Jack Europe is a stand-alone Performance requiring the conclusion of a binding agreement which is at the sole discretion of Mi-Jack Europe, also as regards any quoted prices.

#### **V. Scope of Performances, Training and Instruction**

Unless expressly agreed otherwise, the scope of delivery of any Performance does not include mechanical and electrical installation services, customer PLC programming as well as surveying of sensor positions and machine geometry. Trainings and instructions as well as documentation, is likewise only included if agreed upon or expressly quoted.

#### **VI. Support/Remote Services, Updates, Upgrades**

1. Unless expressly agreed in a binding agreement, support services, such as, among others, remote support, condition monitoring, troubleshooting, including diagnosis and fault searches as well as updates, upgrades, patches and new releases (together, the "Services") are not part of the sale of Solutions. A Customer has only a claim for any Service if it is agreed upon with Mi-Jack Europe in a service level agreement or the binding agreement expressly provides for it, such as, among others, as an add-on. In any event, Services and Solutions shall be treated as separate Performances with separate performance obligations. The provisions of this section *VI. Support/Remote Services* shall apply additionally to the other T&C provisions in the event any binding agreement, service level agreement, offer, order confirmation or similar relates to the Services.
2. The Services are being performed remotely via (online) communication. The provision of Services by Mi-Jack Europe neither replaces nor releases the Customer of any obligation towards itself or others with respect to regular maintenance and safety testing of the Solution.
3. With respect to scope, if not stated otherwise in the description of the Services, they comprise analysis and, if possible, assistance in eliminating system faults and are in principle directed at the maintenance of the Solution. As there is no standardized

practice for the type of Services rendered by Mi-Jack Europe, these are undertaken on an efforts only basis without commitment to any specific result (*Dienstvertrag*), in particular, without guarantee for the diagnosis and repair of system damages and faults nor any subsequent functionality of the Solution. Any dates or deadlines provided in connection to the performance of Services are given on a non-reliance basis.

4. In the event of questions that cannot be unequivocally answered with these T&C or based on the binding agreement, Mi-Jack Europe and the Customer shall endeavor to find a joint solution which may include additional compensation on part of Mi-Jack Europe if and to the extent it requires extra efforts which it usually provides only against additional compensation.
5. In the event that issues for which a Customer is seeking support under the Services are due to, or based on, external force, atypical accidents, improper use, failure to observe the installation and environmental conditions specified by Mi-Jack Europe, changes necessitated by law, insufficient or incorrect maintenance, force majeure or comparable events for which Mi-Jack Europe is not predominantly responsible, Mi-Jack Europe may only render the Services against additional compensation if and to the extent the sought support exceeds the efforts typically used for the analysis, assistance or optimization.
6. The Customer is required to maintain the necessary telecommunications, such as, among others, an internet connection according to Mi-Jack Europe's specifications, free of charge. In addition, the installed software with respect to the Solution is to be kept in maintained condition with the Customer not being entitled to any changes to the installed software without Mi-Jack Europe's consent. If and to the extent, Mi-Jack Europe provides an online diagnostics module, it is expected to be kept up to date. If the Customer does not comply with any of the aforementioned obligations, its claim for Services may be voided or the Services may only be rendered at an additional compensation as decided by Mi-Jack Europe in good faith.
7. In the event of failure of the data transmission path between the Customer and Mi-Jack Europe as well as in the event of missing or insufficient data, Mi-Jack Europe shall be deemed to be released from its obligation to perform the Services.
8. With respect to any remote support, the Customer is solely responsible, and assumes responsibility, to comply with any safety obligations relating, in particular, to any risk the remote support poses for life, health, limb or property and confirms to Mi-Jack Europe that the planned measures can be performed safely. In any event, the Customer must secure any systems and machines operated at the site to prevent personal injury or property damage in connection with the performance of the Services.
9. Mi-Jack Europe does not assume any costs relating to the Customer's obligations with respect to the Service. For the avoidance of doubt, neither does Mi-Jack Europe

assume any costs for the Customer's obligations stipulated in the binding agreement, including these T&C.

10. Mi-Jack Europe or the Customer shall have the right to terminate the Services for cause (*außerordentliche Kündigung*). For Mi-Jack Europe cause shall, in particular, be deemed to exist if the Customer
  - (a) is in arrears with two payments being due with respect to the Services;
  - (b) does not meet his other contractual obligations as regards the Services;
  - (c) has made changes to the Solutions without the consent of Mi-Jack Europe;  
or
  - (d) has divested or sold the site or equipment, in each case in an asset deal, for which the Services have been rendered, to a third party.
11. With respect to any auto-extension of the Services, if these have not been terminated to the end of the relevant term, Mi-Jack Europe reserves the right to amend the scope of Services or prices charged for it at its discretion acting in good faith if there are general cost increases, increased deployments, in both cases including the reasonable expectation of those, agreed upon changes to the scope and any other cases in which the equivalence of service and compensation requires an upward compensation adjustment.
12. In the event, that Mi-Jack Europe terminates the Services for cause, it shall be entitled to receive 25 percent of the last valid monthly compensation that would have been due until the agreed upon end of the binding agreement as lump-sum damages (*pauschalierten Schadensersatz*). The Customer may prove that Mi-Jack Europe has suffered less damage resulting in a reduction of the amount to be paid. Mi-Jack Europe reserves the right to assert any further claims for damages arising from the premature termination.

## **VII. Retention of Ownership**

1. Mi-Jack Europe retains ownership in the Performances (the "Retained Performances"), including any rights associated therewith, meaning, for example, ownership of the delivery items and ownership in any works, including any intellectual property rights relating thereto, until the Customer has compensated Mi-Jack Europe for all outstanding current, contingent and future monetary claims under the binding agreement and the business relationship between Mi-Jack Europe and the Customer.
2. In the event, the Customer is in breach of the binding agreement, in particular, with respect to any non-payment of the purchase price, Mi-Jack Europe shall be entitled to withdraw from the binding agreement in accordance with statutory law, or, without withdrawing from the binding agreement, to demand the return or non-use of delivered

Performances (e.g., the return/non-use of delivered items and works, including intellectual property rights) by the Customer. The exercise of both rights is subject to Mi-Jack Europe granting the Customer a reasonable deadline for payment unless such deadline is not required by statutory law.

3. Unless the Customer is in arrears towards Mi-Jack Europe or defaulted on payment, it shall, within the ordinary course of business, be entitled to use the Performances that are subject to retention and resell them insofar such right is not excluded by the binding agreement, including these T&C. With respect to any resells the following shall apply:
  - (a) If the Customer resells the Retained Performances, it assigns to Mi-Jack Europe, already today, all claims, together with any ancillary rights, the Customer will have against customers out of the resale, including any balance receivables, as collateral, and Mi-Jack Europe hereby accepts such assignments. If the Retained Performances are sold on together with other items and no individual purchase price has been agreed on with respect to the Retained Performances, the Customer shall assign to Mi-Jack Europe the fraction of the claim attributable to the Retained Performances.
  - (b) With respect to the aforementioned assignment of claims, the Customer remains authorized to collect the claims besides Mi-Jack Europe who undertakes not to collect the claims insofar as the Customer is not in arrears towards Mi-Jack Europe or defaulted on payment, is not otherwise incapable of performing its obligations or Mi-Jack Europe did not exercise its right to withdrawal or return with respect to the Retained Performances. If and to the extent Mi-Jack Europe needs to collect the claims itself, the Customer shall notify it upon demand of the assigned claims, including the relevant debtors, and provide all other information reasonably necessary for collection, including relevant documents, as well as notify the debtors of the assignments.
4. The Customer shall, within the ordinary course of business, be entitled to process, amalgamate or combine the Retained Performances with other items or works, which in any event is made for, and on behalf of, Mi-Jack Europe and with it being assigned manufacturer and originator. Should the Retained Performances be processed, amalgamated or combined with other items that are not in the ownership of Mi-Jack Europe, Mi-Jack Europe shall acquire co-ownership (*Miteigentum*) of the new item based on the value of the Retained Performances compared to the other items at time of processing, amalgamation and combination. With respect to any (co-)ownership held by, or transferred to, Mi-Jack Europe based on the aforementioned, the Customer shall safeguard the new items on behalf of Mi-Jack Europe, without being entitled to any compensation and holding Mi-Jack Europe harmless of any obligations, damages or liabilities arising out of, or in connection with, Mi-Jack Europe's co-ownership due to the retention of ownership. Notwithstanding, the aforementioned transfer or assignment of ownership rights to Mi-Jack Europe shall, however, not apply if and to

the extent such (co-)ownership of Mi-Jack Europe would result in it being subjected to any obligations arising from, or in connection with, laws governing environmental law, property law, security and regulative law which with respect to the relevant item may, in general, result in claims exceeding 10 percent of the purchase value of the Retained Performances.

5. If the realizable value of the collateral (e.g., assigned claims) exceeds Mi-Jack Europe's claims towards the Customer by more than 20 percent, Mi-Jack Europe upon demand by the Customer shall release collateral at its choice.
6. The Retained Performances may not be pledged to third parties or assigned as collateral prior to the payment of the agreed upon purchase price. In the event, the Customer is in default with payments or otherwise expected to be subject to bankruptcy or insolvency proceedings, or if third parties pledged or encumbered the Retained Performances, the Customer shall inform Mi-Jack Europe immediately.

### **VIII. Transfer of Risk, Acceptance, Default of Acceptance**

1. The transfer of risk with respect to loss or deterioration of delivery items being delivered by Mi-Jack Europe, irrespective whether it is part of a Solution or delivered on a stand-alone basis, shall pass to the Customer with the handover of the delivery item to the Transport Person. If the binding agreement stipulates that the Performance is subject to acceptance (*Abnahme*) by the Customer, the acceptance (*Abnahme*) shall be decisive for the transfer of risk, unless completion is sufficient to replace acceptance (*Abnahme*) based on statutory law.
2. With respect to Solutions, the binding agreement may provide for a site acceptance test (SAT) with further details and parameters, including test procedures and performance indicators, being specified in the binding agreement. The SAT is understood to be passed successfully regardless of compliance with the details and parameters of the binding agreement if and to the extent the Solution has the functionality as agreed upon or can be used for the contractually intended purpose, unless usability for the contractually intended purpose requires exact conformity. Passing the SAT shall be understood as acceptance (*Abnahme*).
3. In any event, handover or acceptance (*Abnahme*) are deemed to have occurred if there is a delay on part of the Customer (*Annahmeverzug*). With respect to Solutions, these shall be deemed to have been accepted if the Customer has not accepted the Solution within 3 months upon notification by Mi-Jack Europe of completion. A service shall be understood to have been completed if Mi-Jack Europe considers it (i) to have the functionality as agreed upon or the functionality to be used for the contractually intended purpose or (ii) if such functionality is only outstanding for reasons that are predominantly within the Customer's sphere of risk, such as, among others, a lack of public law approvals, the requirement (under any law) to take further measures,

changes to the Customer's systems, applications or surroundings after commissioning of Mi-Jack Europe or the provision of incomplete or incorrect Information.

4. Acceptance (*Abnahme*) shall also be understood to have occurred if the Customer does not start or finish an acceptance or functionality test to which it is required, or in the event that the results of such test are not notified towards Mi-Jack Europe, or if the Customer operates the Solution in any other way than to carry out an acceptance test.

## **IX. Warranty, Quality Defects**

1. Claims with respect to defects as to quality of the Performances can only be asserted against Mi-Jack Europe within a one-year warranty period (*Gewährleistungsfrist*) commencing with delivery, or if acceptance (*Abnahme*) is required, with acceptance (*Abnahme*). This shall, however, not apply to claims for damages arising from injury to life, limb or health or from intentional or grossly negligent breaches of obligations by Mi-Jack Europe, including its performance agents (*Erfüllungsgehilfe*), for which the statutory provisions shall apply.
2. Any Performances of Mi-Jack Europe are to be carefully inspected after delivery to the Customer or a third party designated by it. With regard to obvious defects and defects which would have been recognizable during an immediate, careful inspection, the Performances shall be deemed to have been approved by the Customer if Mi-Jack Europe does not receive a written notice of defects within seven working days from delivery. For all other defects, the aforementioned period for the notice of defects shall commence with the defect becoming apparent or, if earlier, would have become apparent under normal use of the Performances. Any items delivered that are meant for installation or processing shall, in any event, be inspected prior to installation or processing.
3. Upon request of Mi-Jack Europe, a rejected delivery item shall be returned to it carriage paid (without the Customer being entitled to such a return in any way). In the event of a justified notice of defects, Mi-Jack Europe shall reimburse the costs of the cheapest shipping route, excluding, however, any costs that occur because the delivery item is located at a place other than the place of intended use as agreed upon in the binding agreement. Without prejudice to any claim of the Customer for reimbursement under statutory law, any subsequent performance (*Nacherfüllung*) rendered by Mi-Jack Europe shall not include the dismantling and disassembly of the rejected or defective item nor the installation or assembly of a defect-free item, unless Mi-Jack Europe was originally obliged to perform these services under a purchase agreement (*Kauf-/Werklieferungsvertrag*) or an assembly agreement (*Werkvertrag*). Costs associated with any subsequent performance are only to be reimbursed by Mi-Jack Europe in accordance with the statutory provisions if and to the extent the notice of defects was

justified and insofar as any additional costs resulting from the Customer's non-compliance with its obligations being excluded.

4. Any recourse of the Customer within the scope of Section 445a Para. 1 German Civil Code (BGB), such as, for warranty claims of third party customers, shall be excluded.

## **X. Intellectual Property Rights**

1. Any ownership in intellectual property rights and know-how associated with the Performances to be rendered by Mi-Jack Europe as well as with respect to any documentation, such as, among others, drawings, designs, technical descriptions, shall remain with Mi-Jack Europe at all times. Unless agreed otherwise in the binding agreement, Mi-Jack Europe grants to the Customer, insofar it is necessary for the Customer to lawfully make use of the Performances, by way of a license a non-exclusive, non-transferable, non-sublicensable, non-assignable worldwide right to use the Performances for the contractually intended purpose and, if made available, in accordance with any documentation provided by Mi-Jack Europe (the "License"). If the contractually intended purpose refers to the use of the Performance at a certain site, the right of use is limited to such site.
2. The License shall be subject to the retention of ownership pursuant to Section VII. *Retention of Ownership* of these T&C. In the event, that Mi-Jack Europe ends the binding agreement due to an exercise of statutory rights, the License shall be deemed revoked and not grant the Customer any further rights of use. This shall also apply in the event that, as part of a warranty or similar, the Performance is modified, in which case, the License shall only grant the Customer the aforementioned right of use with respect to the modified (current) version of the Performances.
3. With respect to the Solutions and Services, any intellectual property rights and know-how created in connection with their performance by Mi-Jack Europe, including any implementation, shall exclusively be assigned to Mi-Jack Europe and be covered by the License as granted to the Customer. Insofar, this requires a transfer by the Customer to Mi-Jack Europe, such transfer is deemed to be made already today and the Customer shall ensure that it retains or is assigned all intellectual property rights and know-how from employees or third parties working on its behalf with Mi-Jack Europe.
4. Unless expressly agreed otherwise, Mi-Jack Europe will only deliver software in object code. Without limitation to the rights conveyed by Section 69g German Copyright Law (*UrhG*), the Customer shall not be entitled to adapt, amend, modify, copy, reproduce, reverse engineer, translate, disassemble, fragment parts of, or perform similar actions on, the software provided unless this is reasonably necessary to make us of the Solutions provided by Mi-Jack Europe. Upon request, Mi-Jack Europe will provide a list with all used open-source software, including open-source licenses and reference links for download. With respect to third party software that forms part of the software

delivered by Mi-Jack Europe and is not open-source software, the Customer shall also comply with the terms and conditions underlying such software which will be made available by Mi-Jack Europe upon request.

5. As regards the provision and use of the software, the Customer shall
  - (a) not remove alphanumeric or other identifiers from any data medium and shall transfer such identifier without change to any back-up copy;
  - (b) protect in adherence to industry-standards the software and related documentation, such as, the know-how from unauthorized use, misuse, reproduction, distribution or publication; and
  - (c) notify Mi-Jack Europe without undue delay if it becomes aware of any infringement on the software delivered by, or intellectual property rights of, Mi-Jack Europe, or parts thereof, including any breaches of security and unauthorized uses.
6. Updates and upgrades as well as patches and fixes are not part of any software delivery by Mi-Jack Europe. Instead, the availability of updates, upgrades and new releases to the Customer are conditional upon the existence of a valid service level agreement or similar detailing the provision of such. The same applies to customer service, support and troubleshooting; in this regard see Section VI. *Support/Remote Services, Updates, Upgrades* of these T&C.
7. If and to the extent, Mi-Jack Europe requires any intellectual property rights or know-how of the Customer in order to render the Performances, the Customer already today grants Mi-Jack Europe for such purpose a non-exclusive, non-transferable, non-sublicensable right of use for such purpose during the term of the binding agreement governing the relevant Performance.

#### **XI. Contractual Right of Mi-Jack Europe to Withdrawal**

Mi-Jack Europe shall have the right to withdraw from any binding agreement, however only until it starts with the implementation of the Solution at the Customer's site, if it

- (a) after a thorough examination, has doubts about the feasibility of the project or the contractually intended purpose is technically impossible to achieve; or
- (b) determines that it is unable to deliver, whether due to a lack of development capacity, personnel or technical resources, including know-how, or due to a supplier not delivering the necessary (hardware) components or works.

In both cases, Mi-Jack Europe shall inform the Customer immediately after becoming aware of the aforementioned lack of feasibility, impossibility or non-availability and shall without undue delay reimburse any consideration already received by the Customer.

In the event, Mi-Jack Europe exercises its withdrawal right, it shall not be liable for damages due to non-performance or due to a breach of ancillary obligations (*Nebenpflichten*), such as, among others, a breach of the obligation to provide information, unless there is intent or gross negligence on part of Mi-Jack Europe with respect to the reasons, as mentioned under (a) and (b), justifying the withdrawal.

## **XII. Liability for Damages**

1. Any liability for damages of Mi-Jack Europe that require fault based on any legal grounds, such as, among others, for impossibility, delay, defective or incorrect delivery, breach of contract or pre-contractual obligations, including obligations with respect to contract negotiations, and tort, shall be excluded and limited as set out in this Section *XII. Liability for Damages*, with, however, the following exclusions and limitations not applying to Mi-Jack Europe's liability for
  - (a) damages caused by intent (*Vorsatz*);
  - (b) damages caused by gross negligence (*grobe Fahrlässigkeit*) of its managing directors (*Geschäftsführer*) or senior executives (*leitende Angestellte*);
  - (c) guaranteed qualities (*Beschaffenheitsmerkmale*); and
  - (d) injury to life, limb and health, or under the German Product Liability Act (*Produkthaftungsgesetz*).
2. Mi-Jack Europe shall not be liable for simple negligence, including for performance agents (*Erfüllungsgehilfen*), unless the liability relates to a material breach of contract (*Kardinalspflichten*). A material breach of contract is to be understood as breach of any obligation, the performance of which is essential for the proper execution of the contract and with the contractual partner regularly reasonably relying on its observance.
3. In case of Mi-Jack Europe being liable for damages, any liability is limited to damages which are, at the time of conclusion of the binding agreement, foreseeable by Mi-Jack Europe when exercising due care. With respect to indirect damages and consequential damages caused by the delivery item or Service, Mi-Jack Europe shall only be obliged to pay compensation for damages if and to the extent such damages are typically to be expected in connection with the Service or when the delivery is used for the contractually intended purpose.
4. With respect to the liability for damages caused by simple negligence, any liability of Mi-Jack Europe for damages to the property of the Customer or third parties as well as indirect and consequential damages is limited to an amount of EUR 950,000 per

damaging event or for project agreements, if higher, the total contract value of the relevant Performances if the whole project is affected.

5. The aforementioned liability exclusions and limitations apply to the same extent
  - (a) in favor of the managing directors, senior executives, employees and performance agents of Mi-Jack Europe as third-party beneficiaries, and
  - (b) with respect to direct damages of the Customer if and to the extent these are based on indirect or consequential damages of its end customer insofar as the liability of the Customer for these could have been excluded based on the relevant statutory law.
6. If and to the extent, Mi-Jack Europe provides any (technical) information or acts in an advisory capacity which in either case is not part of the contractually agreed scope of Performances to be rendered by Mi-Jack Europe and done free of charge, any liability by Mi-Jack Europe shall be excluded.

### **XIII. Customer's Indemnity Undertaking, Upstream Supply**

1. The Customer shall be obliged to exclude and limit its liability in agreements with its customers, for which Mi-Jack Europe indirectly renders Performances towards the Customer, among others, as supplier, performance agent (*Erfüllungsgehilfe*) or service provider, irrespective of whether Mi-Jack Europe provides its Performances as through-delivery (*Durchlieferung*) to the customer, as far as legally permissible, and if it fails to do so, to hold Mi-Jack Europe harmless and indemnify it with respect to any claims for damages brought by the customer towards Mi-Jack Europe.
2. If and to the extent, Mi-Jack Europe renders Performances towards its Customer as through-delivery (*Durchlieferung*) to a contractual partner of the Customer, the Performances shall be deemed to be rendered towards the Customer only without Mi-Jack Europe taking on any obligations that may exist between the Customer and its contractual partner. Mi-Jack Europe shall only be liable towards the contractual partner based on statutory provisions with the aforementioned Section *XII. Liability for Damages* of these T&C applying.

### **XIV. Third Party Rights**

1. Unless expressly agreed otherwise in the binding agreement, Mi-Jack Europe shall only ensure that the Performances are rendered in compliance with and not infringe on the intellectual property rights that are protected in the country in which the Performances are used by the Customer based on the binding agreement.
2. The Customer shall notify Mi-Jack Europe by email without undue delay in the event that claims are asserted against it due to the Performances allegedly infringing on intellectual property rights of third parties. It shall not be understood as an infringement

of third-party intellectual property rights if and to the extent such infringement is based on fault of the Customer, on specifications provided by the Customer or due to the Performances being used or modified by the Customer in a manner that was not agreed upon. Nonetheless, the Customer's notification obligation shall also apply in these cases.

3. If and to the extent the Performance infringes an intellectual property right of a third party, Mi-Jack Europe will, at its discretion and at its expense, modify or replace the Performance in such a way that the rights of third parties are no longer infringed but the Performance can be used within the limits of the agreed upon functionality, or procure by concluding a license agreement with the third party any rights necessary for this. If Mi-Jack Europe fails to remedy the aforementioned infringement within a reasonable period of time, the Customer shall be entitled to withdraw from the binding agreement or to reduce the compensation paid for the Performance appropriately. Any claims of the Customer are subject to the limitations of Section *XII. Liability for Damages* of these T&C.
4. In the event, aforementioned infringements relate to products or components manufactured by third parties and supplied by Mi-Jack Europe to the Customer, either stand-alone or as part of a Solution, Mi-Jack Europe shall, at its direction, assert its claims against the manufacturer or supplier of these for the account of the Customer or assign its claims to the Customer. In such cases, claims against Mi-Jack Europe shall only exist in accordance with this Section *XIV. Third Party Rights* if and to the extent the assertion of claims against the manufacturer or supplier was unsuccessful or has no prospect of success, such as, among others, in case of insolvency.

## **XV. Confidentiality**

1. Mi-Jack Europe and the Customer undertake towards each other to treat any information, including (pre-existing) work results and documentation (the "Confidential Information"), which become known to them in the course of their business relationship confidential, irrespective of these being marked as "secret" or "confidential", and, in particular, not make them accessible to third parties, protect them for third-party access and not to make them the subject of their any registration or application for intellectual property rights. Affiliates of Mi-Jack Europe shall not be deemed as third parties with the transfer of Confidential Information to these being permitted if these maintain the same confidentiality standards as stipulated in these T&C.
2. With respect to any third parties, including employees of the Customer, having access to the Confidential Information, the Customer ensures that these are bound by market standard confidentiality undertakings but, in any event, at least by the confidentiality standards as stipulated by these T&C. Disclosures made by the Customer to third parties and employees shall in any event be limited to a "need to know" basis. Nothing in this provision shall convey to the Customer any third-party access or disclosure right

with respect to the Confidential Information, including software, if and to the extent such right has not been granted in the binding agreement, including elsewhere in these T&C.

3. The aforementioned confidentiality obligations shall not apply to Confidential Information that
  - (a) was disclosed by the recipient with the prior written consent of the disclosing party;
  - (b) was already public knowledge at the time of disclosure without any infringement of the confidentiality undertakings within the binding agreement, including these T&C;
  - (c) was independently developed by the recipient without recourse to any Confidential Information which the recipient is able to prove based on written records;
  - (d) has been obtained from a third party provided that the recipient had no reason to presume that its source is in breach of a confidentiality undertaking.
4. If and to the extent, the Customer is obliged to disclose Confidential Information based on statutory law, including with respect to public authorities and in court or arbitration proceedings, the Customer shall notify Mi-Jack Europe in due time (if possible, prior to the disclosure), limit the disclosure to the greatest extent possible and ensure that the disclosed information are treated as confidential as possible by the third-party recipient.

## **XVI. Data Protection**

1. The Customer acknowledges that Mi-Jack Europe in the course of the business relationship may process personal data of employees and other third parties, in each case as made available to it by the Customer, in the context of the current and prospective business as well as contractual relationships, and transfer such data to its affiliates and other third parties as permitted or required by statutory law (the "Data Processing").
2. The Customer shall notify and make aware such persons of the Data Processing and, if and to the extent, Mi-Jack Europe is to be held liable by any of these persons with respect to these basing their claims on a lack of notification which could have been

prevented by a notification of the Customer, shall hold Mi-Jack Europe harmless of any such claims.

3. The Customer is only allowed to process and transfer personal data provided to it by Mi-Jack Europe in the course of the business relationship in accordance with the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679).

#### **XVII. No Assignment of Claims**

The Customer is not entitled to assign (*abtreten*) any of its claims, other than monetary claims, against Mi-Jack Europe, unless Mi-Jack Europe consented to it.

#### **XVIII. Governing Law, Legal Venue**

1. These T&C and any legal relationships between Mi-Jack Europe and the Customer shall be governed by German law (excluding the conflict of law rules and the United Nations Convention for the International Sale of Goods, CISG).
2. Without limitation to mandatory statutory provisions, the exclusive place of jurisdiction for any claims shall be Mi-Jack Europe's registered office, *i.e.*, Karlsruhe, Germany. Notwithstanding, Mi-Jack Europe shall be entitled to bring any claims against its Customer at the place of performance (*Erfüllungsort*), the legal venue of the Customer or any other legal venue as agreed upon in the binding agreement.

#### **XIX. Severability**

1. Should any provision of these T&C be or become invalid, ineffective or unenforceable as a whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby.
2. If and to the extent, the binding agreement or these T&C contain any gaps, the gap shall be deemed replaced by such valid, effective and enforceable provision to which Mi-Jack Europe the Customer would have agreed in accordance with the economic intent and purpose of the binding agreement, including these T&C, if they had been aware of the gap.