

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## FRITSCH GMBH

IN BUSINESS TO BUSINESS



### § 1 General scope / Validity of further conditions

1. These General Terms and Conditions of Purchase ("T&Cs of Purchase") apply to **Fritsch GmbH** ("we/us").
2. Our T&Cs of Purchase shall apply exclusively. We do not recognise General Terms and Conditions of the contracting partner (hereinafter referred to as **Contractor**), which are contrary to or differ from our T&Cs of Purchase, in particular in the form of General Terms and Conditions of Delivery and Sale, unless we have expressly consented to their validity; otherwise they shall be rejected. Our T&Cs of Purchase shall apply exclusively, even if we accept the Contractor's delivery and/or service without reservation in the knowledge of terms and conditions of the Contractor which are contrary to or differ from our T&Cs of Purchase.
3. Upon the Contractor's delivery or service for the first time based on these T&Cs of Purchase, these T&Cs of Purchase shall also apply to all further deliveries and/or services of the Contractor to us.
4. If framework contracts or individually negotiated contracts or contract clauses are concluded between ourselves and the Contractor, these shall take precedence over the T&Cs of Purchase. Unless more specific provisions are made therein, they shall be supplemented by these T&Cs of Purchase.
5. All agreements made between ourselves and the Contractor for the purpose of executing the contract shall be set down in writing or text form in the contract. Section 305b *BGB* [German Civil Code] (*precedence of the individual agreement*) shall remain unaffected for individual agreements of whatever form.
6. Our T&Cs of Purchase apply *exclusively* to businesses pursuant to Section 14 *BGB* i.e. to such natural persons or legal entities or partnerships having legal capacity, which are performing their commercial or independent professional activities when concluding the contract.

### § 2 Data, illustrations, formulas, drawings, calculations provided

1. We reserve the exclusive property right and copyright to illustrations, formulas, manufacturing instructions or instructions for use, drawings, calculations and other documents and data on our part, which we or our vicarious agents on our behalf provide to the Contractor. They may not be made accessible by the Contractor to third parties without our express consent, unless there is a statutory or official obligation of disclosure. Furthermore, they are to be used *exclusively* for processing our purchase order respectively for implementing the contractual relationship entered into with us and they are to be returned to us after processing of the purchase order

and, in the case of continuous obligations, when they end, without being asked to do so, including all copies, free of charge, or at our request destroyed (in the case of data by overwriting), unless there is a statutory retention obligation, which does not affect the Contractor's obligation of confidentiality. They must be kept secret by the Contractor *vis-à-vis* third parties, unless the Contractor has an official or statutory obligation of disclosure. If these illustrations, formulas, drawings, calculations and other documents are embodied in data, these shall be deleted completely by overwriting at any time at our request and their deletion confirmed to us immediately by the Contractor in writing or text form.

2. Products, produced by the Contractor or the Contractor's vicarious agents, according to documents and/or templates and/or data (e.g. drawings, samples or models and the like) created by us and/or our vicarious agents or according to information provided by them, designated as confidential or identified as secret, or with such characteristics and/or properties of a product or their tools not known to the general public or reproduced tools may neither be used by the Contractor itself nor for the benefit of third parties outside our order nor offered or supplied to third parties. The Contractor shall agree that the vicarious agents the Contractor uses shall be bound by this as well and for our benefit as third-party beneficiary contract and shall prove this to us at our first request.

### § 3 Contractor's quotations / Performance by the Contractor strictly itself

1. The Contractor's quotations shall be given in writing or text form. They are not binding and free of charge for us, also in the form of cost estimates.
2. The Contractor's quotations must describe the delivery item/service in full and include a full list of all additional products and/or services, necessary for the safe and economically efficient use of the delivery item/service or the offered service by us, and specify their price in full in the Contractor's quotation.
3. Goods or components of goods and/or services or service components, which are not listed in the Contractor's quotation but which are indispensable for the safe and intended operation or relevant use of the goods and/or service to be supplied pursuant to the agreed properties, shall, unless otherwise agreed, be deemed an integral part of the delivery item and/or service and as owed by the Contractor together with the delivery item and/or service.
4. The Contractor must indicate risks and environmental hazards or the potential infringement of third-party rights connected with the delivered goods or provision of the agreed service and any necessity for

special handling of the goods (especially in relation to storage or further processing) with the Contractor's quotation and, in the event of new knowledge of the Contractor after conclusion of the contract, immediately upon knowledge thereof, expressly in writing or text form.

5. Unless otherwise expressly agreed, the performance owed by the Contractor shall be performed by the Contractor "strictly itself" i.e. in the case of legal entities exclusively with own employees.

**§ 4 Declaration of acceptance, conclusion of contracts, order processing, obligation to hold available and maintain**

1. To enable our orderly controlling of the contract, only purchase orders in writing and text form provided with our sender identification shall be valid on our part.

Amendments to and modifications of our purchase order shall only be valid when given in writing or text form. This shall also apply to the waiver of the written form requirement itself, whereby the precedence of the individual agreement pursuant to Section 305b *BGB* for individual agreements of any form shall remain unaffected. Our silence regarding the Contractor's quotations, requests or other declarations shall only be deemed our consent if this was expressly agreed. The order shall be based, unless otherwise expressly agreed with us, exclusively on the content of the purchase order if the Contractor provides performance.

2. The Contractor shall be obliged to specify our purchase order number and/or the ordering party exactly on all shipping documents and delivery notes. If the Contractor fails to do so, we shall not be responsible for delays in processing and payment.

3. The Contractor must confirm the purchase order in writing or text form within 5 working days (at the Contractor's registered office) after receipt of the purchase order, in the case of a purchase order placed by us on an electronic ordering platform of the Contractor within 3 working days (at the Contractor's registered office), whereby timeliness shall be determined by our receipt of the confirmation. After expiry of this period, we shall be entitled as legal consequence, in the absence of other agreement, to revoke our purchase order. Claims by the Contractor based on a valid revocation for this reason shall be excluded.

4. In the case of recurring purchase orders on our part, in particular call-offs for delivery/service, the Contractor shall be obliged to confirm the purchase order to us in writing or text form within 5 working days (at the Contractor's registered office) after receipt of the purchase order (in the case of a purchase order by us on an electronic ordering platform of the Contractor, within 3 working days at the Contractor's registered office), whereby receipt of the confirmation by us shall determine compliance with the time limit. After this time limit expires, we shall be entitled as legal consequence, in the absence of other agreement, to revoke our purchase order. Claims by the Contractor, based on revocation for this reason, shall be excluded.

5. In ongoing business relations between ourselves and the Contractor, our call-offs for delivery/service can be adjusted in respect of the timing of our customer's call-offs for delivery/service, for which the Contractor's delivery/service is being procured, if this is reasonable for the Contractor from a logistical point of view, we

inform the Contractor of this immediately after becoming aware of our customer's call-off for delivery/service and a reasonable period for the delivery/service remains and we make up for economic burdens of the Contractor connected herewith. Paragraph 4 shall apply *mutatis mutandis* to the Contractor's possibility of objection.

6. We ask the Contractor to submit a single copy of the order confirmation. The Contractor shall be obliged to specify our purchase order number and/or the ordering party exactly on the order confirmation, all shipping documents and delivery notes. If the Contractor fails to do so, we shall not be responsible for delays in processing as a result of this. We request invoices in electronic form.

7. As regards quantities, weights, dimensions and quantities delivered, values determined by authorities, or in the absence of such, values determined by us after receipt of the goods shall prevail, unless otherwise agreed and subject to other proof. For all shipments, weights must be stated in the shipping documents accompanying the goods if these are customary in the trade or have been agreed with us, or the remuneration is calculated according to weight.

8. If our purchase order or documents or data on which this is based contain errors, mistakes, typing and calculation errors, which are obvious or recognised or recognisable by the Contractor, we shall not be bound in this respect. On the contrary, in such cases, the Contractor shall be obliged to notify us immediately in writing or text form of the relevant errors to allow us to correct and replace our purchase order. If documents which are recognisably required have not been sent with the purchase order, this obligation shall apply accordingly.

The Contractor must also indicate to us, highlighted in writing or text form with the order confirmation, where the delivery items are dual-use goods, items, technologies and knowledge, which are used as a rule for civil purposes but can also be used for military purposes and fall within the scope of the EU Dual-Use Regulation. If the Contractor culpably fails to do so, the Contractor shall indemnify us against all third-party claims and damages as well as reasonable, customary and proven costs resulting from this. Section 254 *BGB* (contributory negligence) shall remain unaffected.

9. The Contractor shall, at our request, grant authorities and employers' liability insurance associations, which are responsible for quality management and environmental management, defence against health hazards or the approval of our products, the safety of production and social security matters at our registered office, at the place of delivery and/or service and/or at the Contractor's registered office, access to the Contractor's production facilities and provide us with every support, which is technically, economically or logically reasonable for the Contractor, in this connection if authorities approach us because they are inspecting a product or substance supplied to us by the Contractor and/or a service provided to us by the Contractor or because of supposed legal violations by such products and/or services, on which the Contractor has cooperated with a delivery or sub-contractor services or has thereby enabled the production or our service. We undertake the same vice versa accordingly in favour of the Contractor.

10. If the Contractor accepts our purchase order only with deviations, the Contractor must identify these deviations *clearly and by highlighting them in the*

Contractor's order confirmation. These deviations are otherwise legally irrelevant in any case.

11. The Contractor shall furthermore inform us in writing or text form with the Contractor's quotation of changes to contract terms or purchase order details and/or purchase order conditions.

The Contractor shall notify us of any amendments/extensions of the scope of the contract, the necessity of which only becomes recognisable when the contract is executed, immediately in writing or text form. The amendments/extensions shall only have legal effect upon written consent on our part. The precedence of the individual agreement pursuant to 305 b BGB in any form shall remain unaffected.

The Contractor is *not* authorised, within the scope of the orders placed by us, to change the products or the processes, designs and materials, on which the products are based, or to accept corresponding changes of the Contractor's sub-suppliers, without having first obtained our written authorisation. New costs incurred for the validation of products by us or our customers due to changes by the Contractor (except in the case of requested changes) shall be borne by the Contractor in the absence of other express agreement with us. In such case, we shall determine together with the Contractor the appropriate amount of the validation costs.

12. Unless otherwise expressly agreed with us, the Contractor shall be obliged, when assembly, repair or construction services are commissioned, to inform itself sufficiently before providing the service about the nature of the execution and scope of the service by inspecting the plans available at our company and the local conditions relevant to the service to be provided by carrying out a visual inspection of the construction site and/or place of assembly respectively the place of other services to be provided by the Contractor at the place of performance.

13. The Contractor must specify to us fully and request from us in writing or text form documents to be provided by us in due time before providing the service. The same shall apply to other cooperation on our part.

14. If the Contractor has to provide us with samples of materials, test reports, quality documents or other documents according to the contract or as accessory obligation, the completeness of the delivery and/or service shall also require that such samples, reports and documents are provided in full and in German (unless a different language was agreed with the Contractor).

15. If waste is produced within the scope of the Contractor fulfilling the contract, the Contractor shall, unless otherwise agreed, remove and dispose of such waste at the Contractor's expense according to the relevant provisions of waste legislation. Ownership, risk and responsibility according to waste legislation shall pass to the Contractor at the time the waste arises.

16. *We shall be entitled (notwithstanding other rights of rescission to which we are entitled), where the following, alternative circumstances exist, to rescind the contract without incurring compensation and, in the case of a continuing obligation concluded with the Contractor, to exercise extraordinary termination of the contract without notice, without incurring compensation, if*

*(i) the Contractor, in the case of a quoted price offered by the Contractor with the possibility of a unilateral price increase, for its part increases the price for the goods sold or the service to be provided by the Contractor; and/or*

*(ii) the Contractor files a petition in insolvency or suspends the Contractor's payments or a petition for institution of insolvency proceedings against the Contractor's assets is dismissed for lack of assets, where, in the above-mentioned cases, at the time of rescission the Contractor culpably violates an obligation arising from the contract concluded with us or we cannot be expected, when considered objectively, to adhere to the contract.*

In the above-mentioned cases, the Contractor shall not be entitled to any claims against us, in particular for damages or reimbursement of expenses, because of our rescission or our termination.

17. We shall not accept any reservation subject to the Contractor's own punctual receipt of delivery nor any suspension of the Contractor's performance obligation in the case of changed circumstances if these were abstractly or specifically foreseeable for the Contractor when the contract was concluded (e.g. through so-called hardship clauses and e.g. in the case of acts of war, interrupted supply chains, logistics problems, embargoes, political developments).

18. Furthermore, good cause for extraordinary termination on the part of the Contractor or a right of the Contractor to terminate the contract or a right of the Contractor to withhold performance shall not be given if (i) there is a price increase for raw materials required to fulfil the contract or services purchased from independent contractors and/or (ii) it becomes necessary for fulfilment of the contract to purchase raw materials or services from sources other than the Contractor's previous contractual suppliers.

19. The Contractor undertakes to hold suitable material and human resources available and to maintain contractual relationships with suppliers and sources of raw materials at all times during the term of this agreement in order to meet the Contractor's delivery/service obligation under the agreement concluded with us at all times.

## § 5 Prices, payment, invoice, assignment, set-off, retention, packaging, waste disposal, open book policy

1. Unless otherwise expressly agreed, agreed prices are fixed prices. The price risk, in particular the calculation risk and the risk of changes in the price of raw materials and/or changes in procurement costs for required deliveries/services shall be borne exclusively by the Contractor. For the avoidance of doubt, it is stipulated that such changes in procurement costs and/or changes in the cost of raw materials shall not, in the absence of express agreement to the contrary, establish any entitlement to price adjustment and any right of the Contractor to stop delivery and shall also not constitute any event of force majeure and/or interference with the basis of the transaction.

2. The agreed prices include, unless otherwise agreed in writing, all costs for packaging, transport to the agreed place of receipt respectively shipment (delivery DDP - Incoterms 2020) and for customs formalities and customs. Unless otherwise expressly agreed, the place of delivery shall be deemed our registered office. If we, by way of derogation from sentence 1, have to bear the freight and/or shipping charges, the Contractor must select the lowest priced mode of transportation, unless a special method of shipment is specified by us. If a consignment has to be shipped using a less favourable, because more

expensive, mode of transportation for us (e.g. express rather than freight) as a result of culpable non-compliance with the delivery date by the Contractor, the Contractor alone shall bear the additional costs incurred.

Where orders are subject to the Contractor's price reservation, we shall be entitled to rescind the contract and, in the case of continuing obligations, to termination without notice if the price required by the Contractor due to the price reservation does not meet with our approval.

If no prices are specified by the Contractor, the Contractor's General List Prices applicable at the time of the purchase order shall apply.

3. Unless otherwise agreed with the Contractor, all payments shall be made by bank transfer in EUR after complete and faultless delivery of the goods/provision of the service and delivery of documentation. If customer bills of exchange or promissory notes are given in payment, we shall bear the tax on bills of exchange and the bill discount in the amount to be agreed.

**4. Prices do not include the applicable value added tax, unless the price was expressly designated and agreed as a gross price. The applicable value added tax must be shown separately.**

5. The Contractor's invoice must show our purchase order number and/or details of the ordering party, must be verifiable and state the VAT ID. The invoice must also include a description of the individual invoice items, indicating the item numbers, place of use, the net unit prices for the individual invoice items as well as the place of delivery and type of delivery. If we are charged with the transport costs separately, the originals and copies of the consignment notes, stating full details of the route, number of the rail wagon etc. and the transport invoices must also be attached to the invoices. In the case of a consolidated delivery, these invoices must state the weight and partial amount of the delivered goods.

If such information is not stated, we shall not be responsible for delays in the processing and payment. Invoices are to be sent to us as a single copy when the goods are shipped but separately from them. Invoices are to be sent to us by the Contractor in electronic form.

The Contractor shall make good to us damages and expenses that are incurred by the Contractor's takeover and/or further processing of the goods with an incorrect purchase order number culpably provided by the Contractor or a missing purchase order number.

6. Unless otherwise expressly agreed, we shall pay incoming invoices received by us within 14 calendar days less 3% discount or net within 30 calendar days. The payment period shall commence as of handover of the goods at the place of receipt (shipping address) or acceptance of the service or work performed and receipt of the invoice at the invoice address specified on the purchase order/commission. Discount deductions shall also be admissible where we exercise a right of set-off.

7. Payments by us shall not be deemed acceptance or waiver of any rights arising from defects and shall not constitute any acknowledgement of performance according to the contract.

8. If early delivery and/or service is accepted, the due date of payment shall be determined, unless

otherwise agreed, by the delivery/service date originally agreed.

9. In the event of incomplete or incorrect delivery and/or service, we shall be entitled to withhold payment in whole or in proportion to the value in the relation between the delivery/service free of defects and the defective partial delivery/service until proper fulfilment.

10. Invoices to be issued by the Contractor shall be sent separately, after fulfilment of the contract according to the respective purchase order, by email to the invoice address stated on the purchase order and, if this is not technically possible, by post. All accounting records must be attached in full. Invoices for partial services must be marked "advance payment invoice", "invoice for partial service", "final invoices". Electronic invoices shall only be deemed properly issued if we have expressly agreed this with the Contractor.

11. If advance payments have been agreed, they shall only be due for an amount over EUR 10,000.-- when the Contractor has provided us with a directly enforceable guarantee securing the advance payment, issued by a German credit institution, savings bank or other credit institution with a rating of at least "A" from Standard & Poor's participating in the Deposit Protection Fund, with registered office in the Federal Republic of Germany, according to German law and with the place of jurisdiction of our registered office.

12. The Contractor shall be entitled to rights of retention and set-off against claims by us only for those claims which have been recognised by us or recognised by declaratory judgment. Set-off shall also be admissible if the counterclaim for set-off is in the synallagma (i.e. in the relationship of reciprocity between two performances in the contract concluded with us) with our claim and is based on the violation of a principal obligation.

13. The assignment of claims against us by the Contractor shall require our prior consent, unless these are pecuniary claims in the course of trade (Section 354a HGB [German Commercial Code]).

14. The Contractor must pack the items/substances to be supplied only in environment-friendly packaging material or environment-friendly containers so as to ensure that damage during transport and/or storage is prevented when handled as customary in the trade. This in compliance with the agreed regulations on packaging and conservation and the specifications on the packaging data sheet according to the contract. The agreed packaging units must be complied with. The Contractor shall supply the products in suitable and, if agreed, only by means of transportation approved by us in order to prevent damage and reduction in quality (e.g. contamination, corrosion, chemical reactions).

Deliveries shall be labelled in such a way that all delivery items can be clearly identified at all times. Each packaging unit (pallet, drum, container ECC) must be marked with tags, labels or stamped until identified, which must include at least the following information: (i) material designation, article designation/number (ii) net weight (iii) batch number (iv) production or durability date (v) consignor.

Packaging of the respective delivery items is included in the price, unless otherwise expressly agreed by us with the Contractor. The Contractor must immediately dispose of waste generated by the Contractor during the delivery or assembly free of charge.

15. If, by way of exception, a cost obligation for packaging has been agreed between the Contractor and ourselves, the Contractor must charge for packaging at cost price. In such case, the Contractor must select the packaging specified by us and request us to make the selection to that effect in due time in text form. If this packaging selected by us is not suitable to package the delivery item safely and adequately, the Contractor must notify us of this immediately in writing or text form prior to packaging with sufficient response time for us.

16. If the packaging used to ship the goods is invoiced separately on the basis of an agreement, we shall be free to make the packaging available again in a serviceable condition, carriage paid, against a credit of at least 2/3 of the calculated net price for this, unless we have expressly agreed otherwise with the Contractor. The Contractor shall remain free to prove that the value of the returned packaging is substantially lower (at least 10% lower). In this case, the refund shall be adjusted accordingly.

17. In the case of paragraph 14 above, we shall be entitled to send the packaging to the Contractor at the Contractor's expense.

18. *The Contractor shall fully disclose to us, on request and with the aim of joint cost reduction and competitiveness, the Contractor's pricing calculation and, within the scope of the open book calculation, advise all costs for raw materials, processing costs, direct and indirect labour costs and overheads, amortisation of investments, selling expenses and profit in return for conclusion of a non-disclosure agreement. Any miscalculations shall be borne exclusively by the Contractor.*

## § 6 Sub-contracts

The Contractor shall be entitled to award sub-contracts *if and insofar as performance by the Contractor strictly itself has not been agreed or insofar as we have not expressly agreed otherwise with the Contractor.* We shall, however, be entitled, in this case of the Contractor's entitlement to award sub-contracts, to object to the placement of sub-contracts by the Contractor for good cause. In such case, the Contractor must perform the order itself or through another suitable sub-contractor. Good cause exists in particular if the sub-contractor does not, when considered objectively, provide a guarantee that the contract concluded by us with the Contractor and the work undertaken by the sub-contractor in this respect shall be fulfilled as stipulated in the contract.

The Contractor must inform us in writing or text form of the use of the sub-contractor in due time, stating all relevant details (e.g. company name, address, qualifications, references) to enable us to check the existence of any good cause at least 7 calendar days before the planned performance and inform the Contractor of the result of the check.

## § 7 Delivery / Service, delivery / service time

1. The agreed delivery dates and/or delivery periods and service periods or service dates are binding. Compliance shall be determined, where it is agreed that the obligation is to be performed at our place of business, by receipt of the goods at our company respectively at the agreed place of delivery. Vehicles can

be unloaded for delivery to us only on Mondays to Thursdays (except on public holidays or works holidays) from 8 am to 12 noon and 1 pm to 3 pm as well as Fridays (except on public holidays or works holidays) from 8 am to 11 am, unless a special arrangement has been expressly agreed in an individual case. The Contractor shall be responsible for all resulting consequences for failure to comply with this obligation.

2. The Contractor shall be obliged to notify us immediately in writing or text form if circumstances arise or become recognisable to the Contractor, indicating that agreed delivery or service dates cannot be met. This shall also apply if the Contractor is not responsible for delays in delivery/service. We shall be entitled to compensation from the Contractor for resulting damage where this obligation is culpably violated. The Contractor can invoke causes of delay, for which the Contractor is not responsible, only if the Contractor has complied with the obligation to notify in due time and in proper form.

3. Where the delivery or service is provided earlier than agreed, we reserve the right of return at the Contractor's expense or refusal of performance of the service or refusal of the delivery. If, in the case of early delivery, goods are not returned, the goods shall be stored at the Contractor's expense and risk until the delivery date.

4. Partial deliveries or partial services by the Contractor shall be admissible only when expressly agreed with us. Where partial deliveries are agreed, the remaining residual quantity must be clearly listed by the Contractor.

5. The Contractor shall be permitted to make excess or short deliveries only with our express authorisation.

6. In the case of shortages of supply, the Contractor shall fulfil our purchase order by preference if this is possible for the Contractor, taking into account the Contractor's other delivery obligations.

## § 8 Passing of risk, documents

1. Unless otherwise agreed with us, delivery must be made DDP (Incoterms 2020) and shall be made at the Contractor's risk until the time of complete handover, and, in the case of services provided under contracts for work, acceptance by us at the contractually agreed place of performance.

2. The Contractor shall be obliged within the context of the business relationship to handle each individual purchase order separately in all correspondence. The Contractor shall be required to specify at least the full purchase order number, purchase order date and ordering party's reference as well as our transaction number in all correspondence e.g. emails, letters, dispatch notes, delivery and packing notes, invoices, consignment notes, accompanying addresses and the like. If delivery ex works is agreed, the Contractor must prepare the freight/customs/shipping documents and packing lists in advance 7 calendar days prior to the agreed delivery date and forward them to us within the above-mentioned period.

3. A single copy of the above-mentioned documents such as invoices, delivery notes and packing notes must accompany each consignment. In the case of deliveries of goods, these documents shall at least include quantity and unit of quantity, gross, net and, if

applicable, calculated weight, number of the purchase order, article designation, residual quantity in the case of partial deliveries and our purchase order number as well as our vendor number, the Contractor's order number and our material number.

4. The Contractor shall be obliged, as a material contractual obligation, to render with the delivery of the goods the certificates of origin and inspection with respect to the delivery items in German or English. *Remuneration for this is already included in the remuneration for the principal performance.*

5. The Contractor undertakes to enable verification of proof of origin by the customs administration and to provide both the information necessary for that purpose and supply any confirmation that may be required.

6. In the case of contracts for work and such purchase contracts, where acceptance of the delivery item has been agreed, the risk shall pass only upon our formal acceptance of the service and/or delivery. Otherwise the risk shall pass upon the delivery item being handed over to us respectively at the agreed place of delivery and service. Fictitious acceptance shall be excluded.

## **§ 9 Default / Supply capacity**

1. In the event of culpable default in a delivery and/or service by the Contractor, we shall be entitled to full statutory claims. In particular, we shall be entitled, after a reasonable period has expired without effect, to rescind the contract and/or claim damages in lieu of performance.

2. In the event of culpable default in a delivery and/or service by the Contractor, we shall be entitled to require a contractual penalty of 0.5% of the net remuneration for the delivery respectively service, for which the Contractor is in default, for each full week of default but not more than a total of 5% of the net remuneration of the total net remuneration agreed for the order. The right to further statutory claims, in particular claims for damages, but subject to the contractual penalty being set off in full, shall remain reserved for us. We can assert the contractual penalty within 3 months of becoming aware of default.

3. In the event of a delay in delivery and/or service that is imminent or has already occurred, the Contractor shall allow us on request to inspect all the Contractor's relevant documents in connection with the legal relationship, on which the delivery or service is based vis-à-vis the Contractor's suppliers and/or sub-contractors, and shall specify to us all sub-suppliers and suppliers in this respect as client entitled to inspect. The Contractor shall be obliged to disclose trade secrets within the meaning of Section 2 of the German *Gesetz zum Schutz von Geschäftsgeheimnissen* (*GeschGehG*) [German Law on the Protection of Trade Secrets], i.e. such information and/or data, which are known only to a narrow group of persons, bear a relation to the Contractor's company, have an economic value and can be identified, and for which the Contractor has taken appropriate protective measures, in this respect, however, only based on an offer in the Contractor's possession by us of a non-disclosure agreement, which binds us in favour of the Contractor in respect of the information to be disclosed.

4. If, in the event of a delay in delivery or service by the Contractor, there is an objective reason for this in our favour (e.g. time-critical order), the Contractor shall

grant us the rights to contact all sub-suppliers and suppliers in question on the Contractor's part within the scope of order processing for us directly in order to avert respectively reduce as far as possible any resulting delay in delivery and/or service. The Contractor shall provide us with the contact details for this free of charge at first request.

5. In the event of the situation according to paragraph 3 and 4 above, full responsibility for the order shall remain with the Contractor.

6. Acceptance of a late delivery shall not constitute any waiver of claims for damages and any contractual penalty agreed in our favour.

7. The Contractor undertakes to make adequate production and supply capacities available in order to enable production of the number of products contractually determined as target capacity per calendar year plus 15% in due time and delivery to us.

8. To cover any additional immediate requirement, the Contractor shall hold at our request a suitable quantity of the product to be agreed in stock at the Contractor's expense. If there is no phase-out scheduling, we shall be obliged, when the supply relationship ends, to purchase such products if they are according to the contract and the Contractor cannot otherwise utilise them. The Contractor undertakes to conclude a corresponding storage agreement with us at our first request.

## **§ 10 Change management**

1. The need for changes to the order content cannot always be avoided, also due to change requests from our final customers. We shall be entitled, therefore, to request changes to the delivery item and/or service, in particular with regard to construction, execution, quantity and delivery/service time, also after the contract has been concluded, according to the regulations set forth below, if, when considered objectively, the deviations, taking into account the Contractor's business and the Contractor's production respectively service knowledge and the Contractor's order book, they are technically and logically reasonable for the Contractor. The Contractor must examine the change request immediately and notify us immediately in writing of its effect on the contract framework. This notification duty shall include a declaration as to whether the requested changes are at all feasible technically and/or logically and relevant and a declaration concerning the effects of the change requests on the contract framework agreed by then, such as the concept, periods, dates, acceptance procedures and the remuneration in the form of a quotation. We must then decide immediately on the implementation of the changes vis-à-vis the Contractor.

2. In the case of a positive decision and agreement on the changes to the contract terms, the change to the purchase order shall become an integral part of the contract.

3. Where changes are technically and for the Contractor economically insignificant, the Contractor cannot request a change to the contract terms.

## **§ 11 Acceptance**

1. All services provided by the Contractor, for which acceptance is possible (e.g. work performed), are

subject to *formal* acceptance. If the inspection of the Contractor's services requires the commissioning of a system or machine, acceptance shall take place only after successful completion of the agreed functional tests. If a functional test has not been agreed for delivered machines, we shall be entitled to carry out a 14-calendar day functional test prior to acceptance. Otherwise the test period for us shall be 12 calendar days after receipt of notification of completion, unless otherwise expressly agreed. The Contractor shall waive the objection of a delayed notice of defects in this respect.

2. If the Contractor has to provide a service that requires our acceptance, the Contractor shall be obliged to notify us in writing or text form of the Contractor's request for acceptance at least 14 calendar days prior to the acceptance date to be agreed.

3. If defects are determined at the acceptance test, partial acceptance of services which are free of defects shall be possible after agreement with us and at our option, without the Contractor having a legal entitlement to this. This partial acceptance shall not, however, be deemed final acceptance within the meaning of Section 640 BGB.

4. Acceptance inspections shall require an acceptance report in writing or text form, signed by the parties. Fictitious acceptance shall be expressly excluded if we do not use the work result as intended commercially on a continuous basis for purposes other than for test purposes for more than 30 calendar days.

**§ 12 Inspection for defects, warranty (breach of duty due to defective performance in the case of material defects and/or defects of title), liability for defects, statute of limitation of claims due to material defects and defects of title / Alternative performance**

1. The Contractor warrants and within the scope of application of the UN Sales Convention (CISG) guarantees that, in the absence of other express agreement with us, all delivery items (i) in the case of purchase contracts fully comply with the requirements specified in Section 434 BGB and within the framework of the respectively concluded contractual relationship in each case in particular (ii) all deliveries/services fully comply with the agreed specifications, in the case of technical items, conform to the current state of the art at the time of conclusion of the contract, comply at all times with the relevant legal provisions and the regulations and guidelines of authorities, employers' liability insurance associations and trade associations of the Federal Republic of Germany and the European Union, in particular, where applicable, the Machinery Directive of the European Union and the country of use notified by us prior to conclusion of the contract or the country of use recognisable to the Contractor and (iii) are suitable for the purpose notified by us to the Contractor prior to conclusion of the contract or the purpose recognisable to the Contractor and (iv) have such properties, which are usually inherent in delivery items or services of the type commissioned.

The Contractor undertakes to comply with all relevant statutory provisions and guidelines relating to the delivery item and/or the services covered by the contract. If compliance with technical regulations and standards such as CE, CSA or UL and EAC specifications has been agreed for the products or their components, the Contractor shall provide proof of this to us and make this available to us with the invoice as condition for the

remuneration claim to fall due. In addition to the Contractor's contractual obligation, these specifications must be complied with in particular by the Contractor so that the customs regulations can be complied with.

The Contractor warrants all dimensions, mixing ratios and purity grades specified on our part in the purchase order, list, drawing agreed with us for the execution of the contract. This also applies to other technical agreements. If deviations from these provisions are necessary in individual cases, the Contractor must obtain our explicit consent concerning this. Such consent shall not affect the Contractor's warranty obligation.

2. We shall be entitled in full to the statutory claims for defects and, within the scope of application of the UN Sales Convention (CISG), the rights arising therefrom in the event of a defective delivery and/or service.

3. If a delivery lot of the Contractor contains more than 2% defective goods, we shall be entitled to reject the Contractor's entire delivery lot as defective.

If, based on objective grounds, there is reason to suspect a material defect or defect of title in the delivery item, this shall be deemed a material defect or defect of title of the delivery.

4. We shall be entitled in any case of a material defect in a delivery item to require the Contractor, at our option, to remedy the defect or to deliver a new article.

5. If the delivered products do not comply with the warranty provided by the Contractor respectively the guarantee provided within the scope of application of the CISG, the Contractor shall be liable for all damages resulting therefrom including consequential damages to the extent permitted by law or, if the CISG is applicable, to its full extent. Any limitation of liability and any exclusion of liability by the Contractor shall be contradicted, unless this was expressly agreed with us.

6. In the event of a warranty claim (*breach of duty due to defective performance in the case of material defects and/or defects of title*), the Contractor shall be obliged to bear all expenses required for the purpose of remedying defects or making a substitute delivery. These costs shall also include the costs of sorting, disassembly and reassembly respectively repackaging in respect of the delivery item. The Contractor must also bear such costs that are incurred or increase due to the delivery item being transferred to a place other than our branch. *Place of rectification* shall be the place where the delivery item is located as intended at the time of the notice of defect.

7. We shall be entitled to examine any deviation of the goods in terms of quality or quantity by taking representative random samples if this conforms with the circumstances of the ordinary course of business and the nature and scope of the delivery. These shall then be representative of the quality of the goods.

8. If the Contractor defaults in remedying a defect, we shall be entitled to require a contractual penalty for default in remedying the defect of 0.5% of the net remuneration agreed for the defective delivery and/or service for each full period of default of 7 calendar days but at most 5% of the agreed total net remuneration for the delivery or service, which is the subject of the order, without further proof of damage. The Contractor shall, however, have the opportunity to prove to us that we incurred no damage or substantially less damage (= at least 10% less). Further statutory and contractual claims and, within the scope of application of the UN Sales

Convention (CISG), the rights resulting therefrom on our part shall remain unaffected by this. The above-mentioned contractual penalty shall be set off in full against any claim for damages. We can assert the contractual penalty within three months of becoming aware of the Contractor's default in remedying the defect.

9. In the event of defects of title due to culpable breach of duty by the Contractor or the Contractor's vicarious agents, the Contractor shall indemnify us and our customers against all third-party claims in this respect, including the customary, reasonable and proven costs of legal defence and our administrative costs. Section 254 BGB (contributory negligence) shall remain unaffected. If the Contractor has produced the Contractor's delivery or service according to documents, models or drawings provided by us, or at our explicit instruction, and could not have known that this would infringe third-party property rights, the foregoing obligation to indemnify shall not apply.

10. Claims on our part against the Contractor for material defects shall become statute-barred in the case of purchase contracts 36 months after handover of the goods at the agreed place of delivery, in the case of contracts for work 36 months after acceptance, unless a longer period of limitation in respect of warranty applies by law. In the latter case, this shall apply. If a date of minimum durability has been agreed with the Contractor, this shall apply with regard to our claims concerning the durability of the delivery item. We can, however, assert claims due to lack of durability within the agreed period of limitation of 36 months (see above).

11. The period of limitation for defects of title is 5 years, calculated as of acceptance, in the absence of stipulated acceptance, as of handover of the performance result owed under the contract.

12. If the Contractor submits with our consent to examination of the existence of a defect or the remedy of the defect, limitation shall be suspended until the Contractor has notified us of the result of the examination in writing or text form or declares to us that the defect has been completely remedied in the above-mentioned form or refuses vis-à-vis ourselves to continue the remedy or the remedy itself in writing or text form.

13. The Contractor shall perform a failure analysis immediately after receipt of notification concerning a defect. If required, we shall support the Contractor in the defect detection to the best of our ability. For this purpose, products subject to complaint shall be made available to the Contractor to the agreed extent. The Contractor shall analyse every deviation of the products subject to complaint from the requirements and specifications and perform all necessary tests to identify the source of the failure. The Contractor shall then notify the causes of the deviations and/or defects and the measures taken to remedy and prevent defects and their effects immediately in writing or text form.

14. *We can remedy defects in the delivery item ourselves in fulfilment of our obligation to mitigate damage without prior consultation with the Contractor and charge the expenses to the Contractor, without this affecting the Contractor's warranty obligation, if the cost of remedy does not exceed EUR 250.-- net/individual case.*

### **§ 13 Force majeure**

Force majeure i.e. industrial disputes, operational disruptions through no fault of our own, unrest, epidemics, pandemics, natural disasters, warlike events (domestic and abroad) and other external events beyond our control and not foreseeable by us, which have not been culpably caused by us, shall entitle us, regardless of our other rights, to rescind the contract in whole or in part if such events are not of an insignificant duration (i.e. persist for longer than 2 weeks) and we notify the Contractor of the obstruction immediately and if we have not assumed a guarantee liability.

Supply by the Contractor is also taking place against the background of the current political bloc formation, armed conflicts, such as the Russia-Ukraine war, the threat of disputes between the People's Republic of China and Taiwan and the commercial dispute between the United States of America and the People's Republic of China as well as the European Union and the People's Republic of China and the United States of America and the resulting embargo and logistics problems so that a stable supply for our part is to be ensured by the Contractor. The above-mentioned political developments, embargoes and logistics crises are, therefore, foreseeable for the Contractor and do not constitute any case of force majeure in favour of the Contractor.

### **§ 14 Third-party liability insurance coverage, quality assurance**

1. The Contractor undertakes, as of the date when the first contract is concluded with us, for a period of up to 42 months after the last delivery and/or service provided to us, to maintain a business liability insurance with a minimum coverage amount of EUR 5,000,000.00 per event of personal injury/damage to property and EUR 1,000,000.00 for pecuniary loss - lump sum - if we are entitled to further claims for damages, these shall remain unaffected. The Contractor must provide us with proof of the above-mentioned insurance and premium payment for this at first request. If proof of the insurance and premium payment is not provided to us at our request within 7 calendar days, we shall be entitled to rescind contracts not yet fulfilled in whole or in part (with respect to the part not yet fulfilled).

2. The Contractor must carry out quality assurance appropriate in nature and scope and corresponding to the current state of the art upon conclusion of the contract and shall provide us with proof of this upon request. The Contractor shall conclude a corresponding quality assurance agreement with us if we deem this necessary.

### **§ 15 Rights of use, inventions**

1. If specifications, drawings, individual EDP programs, photographic material, film footage and layouts for print media or other such documents and/or data are created for the deliveries respectively services to be performed by the Contractor on our behalf, we shall have an exclusive, transferable right of use thereto, unlimited in time, location and content, in all types of use, such right being discharged in full by the agreed price.

2. If the deliveries respectively services are protected by the Contractor's copyrights, the Contractor shall grant us the irrevocable, transferable right, unlimited in time, location and content, to use the

delivery or service at our discretion in any known and unknown types of use, free of charge, in particular to reproduce, disseminate, display, modify and process the delivery or service.

3. If copyrighted rights of use, industrial property rights and/or other rights to performance results and other written, machine-readable and other work results arise for the deliveries or services to be performed by the Contractor on our behalf, we shall be entitled to them exclusively and fully as part of performance and they shall be discharged in full by the agreed price. The Contractor shall be obliged to notify us immediately of the existence of such circumstances in text form and to coordinate further action with us.

4. The Contractor shall be further obliged to claim inventions of the Contractor's employees and, if applicable, sub-suppliers at the Contractor's expense, indemnifying us, so that the Contractor can transfer the rights to such inventions to us.

5. If we register the invention as a property right, we shall assume the costs incurred for registration and maintenance of the property right.

6. If we decide against registration in the case of inventions/work results within 6 months of complete fulfilment of the contract by the Contractor at the Contractor's request in writing or text form or we are no longer interested in an existing property right, the Contractor can pursue the registration or maintenance of the property right at the Contractor's own expense. However, in such case a non-exclusive and transferable right of use thereto, free of charge, shall remain with us.

7. If, in the context of our utilising the deliveries or services, it is necessary to use the Contractor's property rights, which already existed for the Contractor before provision of the delivery or service, we shall have a non-exclusive and transferable right of use to such property rights from the Contractor, such right being discharged in full by the agreed price.

#### **§ 16 Spare parts and readiness for delivery**

1. The Contractor warrants that the Contractor shall ensure the supply of spare parts for a period corresponding to the usual period of technical usability for the delivery item but for at least 10 years after handover of the last delivery of the relevant delivery item to us, unless a different availability of spare parts was expressly agreed with us. During this period, the Contractor undertakes to supply these parts to us on customary market economic and legal conditions.

2. If the Contractor intends to discontinue the supply of the spare parts for the delivery item covered by the contract after expiry of the above-mentioned period, we shall be given the opportunity, with a lead time of at least 90 calendar days, to place a final purchase order, which must be able to correspond at least to the last average purchase order quantities for the relevant product of the last three years. The same shall apply where the supply of spare parts is discontinued before expiry of the period, whereby reordering shall not cause us to forfeit our claims for damages.

#### **§ 17 Provision of materials, co-ownership, retention of title**

- Raw materials, tools, materials, parts, containers and packaging provided by us may be used by the Contractor only for their intended purpose for the Contractor's execution of the order placed by us. If they are passed on to sub-suppliers, the Contractor shall also ensure this on the part of the sub-suppliers as contract for our benefit and shall prove this to us without being requested to do so.

- Raw materials, tools, materials, parts, containers and packaging provided by us shall remain our property.

- If we provide parts to the Contractor, we shall retain title to them (**goods subject to retention of title**). The Contractor shall undertake processing or transformation of them on our behalf. If our goods subject to retention of title are processed with other items that do not belong to us, we shall acquire co-ownership of the new article in the ratio of the gross value of our item (purchase price plus value added tax) to the other processed items at the time of processing.

- If the article provided by us is inseparably mixed with other items that do not belong to us, we shall acquire co-ownership of the new article in the ratio of the gross value of the article subject to retention of title (purchase price plus value added tax) to the other mixed items at the time of mixing. If mixing is carried out in such a way that the Contractor's article is deemed to be the principal article, it shall be deemed agreed that the Contractor shall transfer co-ownership to us on a pro rata basis in the above-mentioned ratio. The Contractor shall safeguard sole ownership or co-ownership on our behalf.

- The Contractor shall be obliged to insure the raw materials and tools made available to the Contractor, which belong to us, at their replacement value at the Contractor's own expense against damage caused by fire, water and theft. At the same time, the Contractor already assigns to us now all claims for compensation under this insurance. We herewith accept the assignment.

- The Contractor shall also be obliged to carry out any required maintenance and inspection work and all repair and servicing work on our tools made available to the Contractor in due time at the Contractor's own expense and to prove to us that this has been carried out. The Contractor must notify us immediately in writing of any failure of the machines and/or tools provided. If the Contractor culpably fails to do so, we shall be entitled to claim for damages in the event of damage.

- If the security interests, to which we are entitled according to paragraph 1 to 6, exceed the purchase price of all our goods subject to retention of title, which are not yet paid for, by more than 10%, we shall be obliged, at the Contractor's request, to release the security interests at our discretion.

#### **§ 18 Third-party property rights**

- The Contractor warrants and guarantees within the scope of application of the CISG that no third-party rights within the Federal Republic of Germany and the European Union and the country of delivery or use of the delivery item and/or service made known to the Contractor by us with the purchase order are infringed in connection with the Contractor's delivery and/or service. Liability shall be excluded outside the guarantee liability given under the CISG if the Contractor proves that the Contractor neither knew nor could know

about the existence of such rights or their occurrence in the future when the delivery item was handed over or the service provided.

2. If a claim is made against us by a third party due to a (culpable) infringement (outside the scope of application of the CISG) of such rights according to paragraph 1 by the Contractor, the Contractor shall be obliged to indemnify us at first written request against such claims. We shall not be entitled to enter into any agreements with the third party, in particular to conclude a settlement with the holder of the rights, without the Contractor's consent. Section 254 BGB (contributory negligence) shall remain unaffected.

3. The Contractor's obligation to indemnify shall apply to all necessary, reasonable and proven expenses that we necessarily incur from or in connection with any claim made by a third party.

4. The period of limitation for liability arising from the infringement of property rights shall commence as soon as the claim has arisen and the circumstances on which the claim is based have come to our knowledge or should have come to our knowledge without gross negligence. The period of limitation for such claims on our part is 5 years.

#### **§ 19 Documents and confidentiality**

1. All business or technical or product-related information, calculation data, manufacturing specifications, performance and/or production and other operational internal information and data of whatever kind made accessible by us to the Contractor, including other development or manufacturing characteristics laid down in writing as samples, properties or as data, which may be taken from items, documents or data provided by us or our vicarious agents to the Contractor, and other know-how or experience and data on our part or of our customers provided to the Contractor must be kept confidential by the Contractor with respect to third parties, unless and until they are proven to be in the public domain or a statutory or official obligation of disclosure exists, and may only be made available to those persons in the Contractor's own company who must necessarily be involved in their use for the purpose of the delivery or service to us and who are likewise obliged in writing to respect confidentiality. They shall remain exclusively our property. This irrespective of whether they constitute trade secrets within the meaning of Section 2 GeschGehG or not. The provisions of the GeschGehG shall remain unaffected and, insofar as they are of a mandatory nature, shall take precedence over the provisions under Art. 19.

2. Such information and/or data may not be reproduced or used commercially, other than for deliveries/services to us, without our express prior consent. The above non-disclosure agreement shall also survive termination of the supply respectively service relationship until it lawfully enters the public domain but at most for 5 years after termination of the contract processing (excluding the period of limitation in respect of warranty) between ourselves and the Contractor in relation to the contract, in connection with which the relevant information was disclosed or provided to the Contractor. The above obligation of confidentiality shall not exist if the Contractor can prove that the Contractor has itself developed the transmitted information in a lawful manner before disclosure or already had knowledge of the information (in which case the

Contractor shall notify us immediately in writing or text form after transmission of the information, at the latest within 14 calendar days thereafter, otherwise the Contractor can no longer invoke this exception) or the information has become public knowledge as a result of a written declaration on our part or there is an official or statutory obligation of disclosure.

3. At our request, all information and data originating from us (if produced, including copies or records made) and items provided on loan shall be returned to us immediately and in full or destroyed and their destruction confirmed in writing or text form. If information provided to the Contractor is embodied in data, such data shall be deleted in full by overwriting any time at our first request, and deletion confirmed immediately in writing or text form.

4. In the case of data transmitted by us to the Contractor, we shall also be entitled to have the Contractor make a declaration to us to cease and desist with a penalty clause, which shall include a contractual penalty for each culpable case of contravention of the obligation to cease and desist from further usage of the data transmitted by us or copies thereof, their return and/or deletion by the Contractor, and which can be determined by us at our reasonably exercised discretion (Section 315 (1) BGB) relative to the Contractor's remuneration from the contractual relationship concluded with us and the economic damage propensity of the Contractor's violation of the obligation. At the Contractor's request, this may be reviewed and reduced by a court of law (Section 315 (3) BGB). The Contractor shall not be obliged to cease and desist thereby if the Contractor is subject to an official or statutory disclosure obligation or data usage obligation.

5. We reserve all rights to such information and data (including copyrights and the right to register industrial property rights such as patents, utility models, trademark protection etc.). If such information and data were made accessible to us by third parties, this reservation of rights shall also apply in favour of such third parties.

6. Licences or warranties shall not be connected to the samples, models, information and/or data transmitted to the Contractor.

7. Products manufactured according to documents drafted by us e.g. formulations, drawings, samples or models and the like or according to our confidential information or with our formulas that are not in the public domain or our tools or reproduced tools may neither be used by the Contractor itself nor offered or supplied to third parties.

8. If a separate non-disclosure agreement has been concluded between ourselves and the Contractor, its provisions shall, in the event of an inconsistency or further provisions, take precedence over the foregoing provisions of this Art. 19.

#### **§ 20 Safety provisions, other requirements of deliveries and services**

1. For the Contractor's deliveries, the Contractor must comply with the safety regulations, which are valid in the Federal Republic of Germany and the European Union and the country of delivery or use notified to the Contractor prior to conclusion of the contract, and with the technical data or limits corresponding to the current state of the art at the time

of conclusion of the contract or further technical data or limits agreed and our respectively valid Supplier Code made known to the Contractor when delivery/providing services to us.

2. The Contractor undertakes to use exclusively materials that comply with the respectively applicable, relevant statutory safety requirements and provisions within the European Union, in particular for poisonous and hazardous substances. This shall also apply to environmental protection regulations and regulations with regard to electricity and electromagnetic fields. The above obligation shall include all relevant regulations applicable to the Federal Republic of Germany, the European Union and the country of use notified to the Contractor prior to conclusion of the contract in relation to the delivery and/or service covered by the contract, and, if deviating from these, also the regulations of customer countries notified to the Contractor prior to or together with the purchase order. The Contractor shall provide us with proof of compliance with these regulations at first request and cooperate in providing corresponding proof to the respectively competent authorities.

3. The Contractor warrants that the Contractor's deliveries, if relevant, comply with the provisions of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation). The substances contained in the Contractor's products are, as far as required by the provisions of the REACH Regulation, pre-registered respectively registered after expiry of the transition periods, unless the substance is exempt from registration. The Contractor shall provide safety data sheets pursuant to the REACH Regulation respectively the information required pursuant to Article 32 of the REACH Regulation. On request, the Contractor must also notify the information according to Article 33 of the REACH Regulation to us.

4. If the Contractor's products (outside the scope of application of the CISG culpably) do not comply with the requirements of paragraph 1 to 3, we shall be entitled to rescind the contract. Further claims for damages and claims for the reimbursement of expenses on our part shall remain unaffected.

5. We must be notified in writing or text form of intended changes to the delivery item and service. Such changes shall require our prior written consent.

6. We draw attention to the fact that all external persons who enter our company or our company premises shall also be subject to the codes of practice of our internal regulations. Where such codes are violated, we reserve the right to remove the person from the company premises. When the Contractor is working on our company premises on our behalf, the Contractor must provide all facilities, make all arrangements and take all measures to prevent accidents at work, which comply with the provisions of the relevant regulations for the prevention of accidents and the other generally accepted rules on safety and occupational health. The labour guidelines of our employers' liability insurance association must be complied with when working on our company premises.

7. The Contractor must ensure the Contractor's employees and independent contractors comply with the necessary safety rules for contractors and monitor their compliance. Before commencing work, the Contractor must confirm that the Contractor has taken cognisance of the "Safety Rules for Contractors" by

delivering the signed "Confirmation of Cognisance" (last page) to us.

## § 21 Quality and documentation

1. Unless otherwise expressly agreed, the Contractor shall bear the costs for declarations of conformity, certificates of origin, other certification (e.g. where relevant ISO 9001, ISO 13485, CE, CSA or UL specifications). Declarations of conformity shall be submitted to us immediately in German and English with each delivery.

2. Notwithstanding the foregoing, the Contractor must comply with and continuously verify the quality of the delivery item until handover within the framework of a quality assurance system to be maintained by the Contractor in conformity with the current state of the art at the time of conclusion of the contract. The Contractor must notify us immediately in writing or text form of any errors in specifications recognisable to the Contractor and any foreseeable complications as a result.

This shall be ensured and documented by suitable test and measurement procedures. We shall be entitled to require disclosure of the results of such verification in writing or text form at any time and without additional costs.

3. The scope of delivery shall include product-specific and/or technical documentation, certificates of conformity (at our option in German and/or English) and other documents and certificates, operating instructions, product labels, warning notices and other user information necessary for the ordered item or its use, at our option in German and/or English, as well as the labelling of the parts and product and/or its packaging required by law within the EU and the country of destination for the delivery item made known to the Contractor prior to conclusion of the contract.

4. The Contractor also warrants that the delivery items can be traced exactly through batches or series numbers.

## § 22 Software

1. If the delivery item contains software produced for us, we shall, without any special further remuneration, receive the source code commented in a manner that is comprehensible for an average programmer and have the right to use the software, also at companies affiliated with us pursuant to Section 15 AktG [German Stock Corporation Act] or otherwise under company law, reproduce and modify it at our discretion and to provide it together with the delivery item to third parties worldwide against payment or free of charge.

2. We shall be entitled to decompile the above-mentioned software for maintenance and further development purposes. If the Contractor develops individualised software for us, we shall be entitled to use and utilise the source code without restriction at our discretion.

3. Remuneration for software shall be due only after formal acceptance procedure has been carried out with written declaration of acceptance on our part.

4. When supplying software, supplementary performance with a new version of the program or a

permanent workaround for a defect shall be admissible only with our express prior consent. If our consent is given, the Contractor shall be obliged to instruct our employees free of charge in the new version of the program at the Contractor's expense.

### **§ 23 Auditing**

1. We, and as third-party beneficiary contract within the meaning of Section 328 BGB also our customers (parties with authorisation to audit), shall be entitled, also with respect to any own certification, but shall not be obliged, to perform an audit of the Contractor ourselves or have an expert and/or advisor of our choice perform the audit. This shall include an inspection of the Contractor's company, the quality of delivery and quality assurance system and a subsequent assessment. The Contractor shall ensure, within the framework of the Contractor's legal means, that the Contractor's sub-suppliers grant us and our customers the same right to audit. Knowledge gained in the process shall form the basis for awarding further orders and for internal classification (rating) of the company by us.

2. We and the parties with authorisation to audit specified in paragraph 1 shall be entitled to make announced inspections of the Contractor's regular business operations and to monitor quality assurance measures during the Contractor's normal business hours and with prior notification.

3. We shall have a right, if we prove a justified legal interest, to inspect the Contractor's relevant documents. Such justified interest shall exist in particular where such an inspection might yield knowledge which can enable us to assess the necessity and scope of a recall.

4. Within the scope of our exercising rights pursuant to paragraphs 1 to 3 above, the Contractor shall not be obliged to disclose trade secrets within the meaning of Section 2 GeschGehG (see Art. 9 (3)), unless the conclusion of a non-disclosure agreement regarding the above-mentioned trade secrets within the meaning of Section 2 GeschGehG was offered in writing or text form to the Contractor by the party with authorisation to audit who is exercising the right to audit.

### **§ 24 Mindestlohngesetz [German Minimum Wage Law]**

1. The Contractor undertakes to comply fully with the requirements of the Mindestlohngesetz (MiLoG) for the Contractor's employees and ensures compliance with the provisions of the MiLoG, also in the case of any sub-contractors used.

2. If the Contractor culpably violates an obligation arising from paragraph 1 above, the Contractor shall be obliged to indemnify us against any third-party claims in this respect. Furthermore, we shall be entitled in such case to rescind all contracts with the Contractor with regard to the part not yet fulfilled. The Contractor shall have no claims because of the rescission.

3. The Contractor undertakes to prove compliance with the provisions of the MiLoG regarding the Contractor's employees or the employees of sub-contractors used immediately to us at first request by providing corresponding proof of wage payments. If the Contractor is in default with this for longer than 30 calendar days, sentence 2 of paragraph 2 above shall apply *mutatis mutandis*.

### **§ 25 Shipping documents, customs duties, export control**

1. The country of origin of goods shall be documented by a contractor established in the EU by a valid (long-term) supplier's declaration (according to the latest version), by a contractor not established in the EU by proof of preferential treatment status or certificate of origin. Items of information required for the (long-term) supplier's declaration are our article numbers, the precise country of origin and the customs tariff number.

2. Notification of any change in the country of origin of the goods must be given to us immediately and without being requested to do so in writing or text form.

3. If the issue of a (long-term) supplier's declaration is not possible, a certificate of origin must be attached to the delivery without being requested to do so and free of charge.

4. The Contractor shall indemnify us against all costs and claims of third parties arising as a result of culpably incorrect, incomplete or erroneous documents or statements of origin on the Contractor's part. Section 254 BGB (contributory negligence) shall remain unaffected. In this respect, the Contractor shall also bear the reasonable, customary and proven costs for legal defence (up to EUR 350 net/hour).

5. We must receive a valid supplier's declaration (according to the latest version) and all product information relevant for the (international) movement of goods from the Contractor with the first delivery. If the Contractor supplies goods to us, which are subject to export control, the Contractor undertakes to send us immediately all further documents and information necessary for applying for authorisation. This obligation to notify shall also continue to exist for the Contractor after the business relationship ends.

6. The Contractor declares the Contractor to be an authorised economic operator (AEO) or to have established at least equivalent security and safety standards pursuant to Art. 14k of Regulation (EC) No 1875/2006 at the Contractor's company.

### **§ 26 Sustainability and occupational health and safety**

1. The Contractor undertakes in the Contractor's production facilities to comply with the respectively applicable legal systems and internationally recognised human rights. The Contractor warrants that the production and working conditions existing there are according to the ILO Conventions, the UN Global Compact, the OECD Guidelines and the United Nations Universal Declaration of Human Rights and the UN Conventions on the Rights of the Child. If different regulations apply side by side, the Contractor shall apply in each case the one that provides employees with the highest degree of protection and safety.

2. If products to be supplied to us by the Contractor or their primary products are manufactured outside the European Economic Area (EEA), the Contractor must provide us additionally with proof of a valid social standard certificate, issued by a recognised and independent certification institute, this at least according to standard SA 8000 or a comparable standard (in particular BSCI or Sedex), (i) both for the Contractor and (ii) for all sites upstream of the

Contractor in the supply and production chain for the sites located outside the European Economic Area.

3. The use of child labour, as defined in the ILO and UN Conventions and/or relevant nationally applicable law, shall not be accepted by us. The minimum age for the employment of minors to be complied with by the Contractor is 15, unless ILO derogations apply. The Contractor must also comply with all other regulations for the protection of children and adolescent employees. All forms of forced, slave and prison labour by the Contractor are inadmissible. No employee may be compelled into employment, either directly or indirectly, by coercion or force.

4. The Contractor shall refrain from discrimination. This includes discrimination on the basis of race, religion, age, nationality, social or ethnic origin, sexual orientation, gender, disability, political opinion, membership of a labour organisation or trade union or other personal characteristics (e.g. skin colour). Furthermore, the Contractor shall observe the equal opportunities of the Contractor's employees.

5. Employees must have an employment contract in written form from the Contractor. Minimum requirements for this are: name, date and place of birth, home address, start of employment, duration of the employment contract, working hours, substance of performance owed, remuneration, vacation entitlement, conditions for termination, signature of employee and employer. In the case of personnel leasing, the Contractor must ensure that the Contractor's contracting partner fulfils these requirements.

6. The Contractor's wages may not in any case fall below the local minimum wages. Social security contributions required by law must be granted. Illegal and unjustified wage deductions, especially in the form of disciplinary measures, are not permitted.

7. The Contractor shall comply with the maximum working hours required by law.

8. The Contractor shall ensure in particular safe and health-compliant working conditions. The Contractor must carry out regular occupational health and safety exercises and measures to ensure that accidents and occupational diseases are prevented.

9. The Contractor is prohibited from carrying out any kind of corporal punishment, threat of violence and harassment, intimidation or abuse, especially in a physical, sexual, psychological or verbal form. Disciplinary measures may be taken only according to national laws and internationally recognised human rights.

10. The Contractor must ensure in the Contractor's companies and at company level across the entire supply and production chain used by the Contractor the establishment of effective complaint mechanisms for employee grievances about negative effects arising from employee work situations. Employees who lodge a complaint based on principles to be complied with of Art. 26 of these T&Cs of Purchase and/or applicable national/international law may not be subjected to any form of disciplinary or retaliatory measures by the Contractor.

11. The Contractor must comply with the environmental standards respectively applicable to the Contractor and strive in addition, pursuant to the principles of sustainable development of the Rio Declaration of 1992, for the continuous reduction and

prevention of environmental pollution as well as the continuous improvement of environmental measures.

12. Waste management, the handling and disposal of chemicals and other hazardous substances, emissions and wastewater treatment by the Contractor must comply at least with respectively applicable statutory provisions and standards. Environmentally and socially responsible production is to be promoted by the Contractor.

13. If the products to be delivered or their primary products are manufactured outside the European Economic Area, the Contractor must submit to us a current environmental certificate, at least according to the standard of DIN ISO EN 14001 or a comparable standard, issued in each case by a recognised and independent certification institute, for the Contractor and for all sites upstream of the Contractor in the Contractor's supply and production chain relating to the delivery to us for the sites located outside the European Economic Area.

14. The Contractor is obliged across the Contractor's entire supply and production chain to carry out appropriate controls in the production facilities concerned at regular intervals for assuring the requirements which relate to compliance with Art. 26 of these T&Cs of Purchase.

15. We only conclude contracts with contractors that comply with minimum social and environmental standards according to the Lieferkettensorgfaltspflichtgesetz (LkSG) [German Act on Corporate Due Diligence in Supply Chains]. The Contractor shall ensure the establishment of risk management in this respect within the meaning of the LkSG, the performance of regular risk analyses for this purpose, the implementation of preventive measures in the Contractor's own business area vis-à-vis direct suppliers, the adoption, where applicable, of corrective measures immediately and the establishment of a suitable complaints procedure for this purpose and the performance of the due diligence obligations of the LkSG, also with respect to indirect suppliers, as well as the proper documentation of the above-mentioned measures and the provision of proof to us in an appropriate form at first request.

16. In the event of a violation of the obligations arising from this Art. 26, the Contractor shall implement appropriate corrective measures immediately, shall document them and provide us with proof of them immediately.

17. If the Contractor culpably violates an obligation arising from paragraphs 1 to 16 above, the Contractor shall indemnify us in respect of all damages, costs and expenses (regarding costs and expenses, if these are customary, reasonable and proven). The objection of contributory negligence (Section 254 BGB) shall remain unaffected.

18. If the Contractor culpably violates an obligation arising from paragraphs 1 to 16 above, the Contractor shall owe us a contractual penalty, the amount of which shall be determined by us at our reasonably exercised discretion (Section 315 (1) BGB), taking into account the Contractor's remuneration for the performance under the contract and the damage propensity of the violation of the obligation. The Contractor's right to review and reduction of the contractual penalty by a court of law (Section 315 (3) BGB) shall remain unaffected. The assertion of further or other rights, especially to reimbursement of expenses and damages (subject to

the contractual penalty being set off in full) shall remain unaffected for us. The contractual penalty may not exceed the amount of EUR 30,000 in an individual case and EUR 300,000 for all conceivable cases of its occurrence.

**§ 27 Advertising reference, severability clause, place of jurisdiction / Arbitration tribunal / Choice of law, data storage**

1. The business connection with ourselves may be indicated to third parties for advertising purposes or as reference only with our express consent.

2. If any provision hereof is or becomes invalid/void or unenforceable in whole or in part for reasons relating to the law of General Terms and Conditions according to Sections 305 to 310 BGB, statutory provisions shall apply.

If the invalidity of a provision hereof is based exclusively on another reason, the following shall apply:

The invalidity or unenforceability of one or several provisions hereof shall not affect the validity of the remaining provisions hereof. The same shall apply if the agreement does not contain a provision which is as such necessary. The parties shall in such case replace the invalid or unenforceable provision or gap in a provision by a legally admissible and enforceable provision which most closely corresponds economically to the economic meaning and purpose of the invalid, unenforceable or missing provision as intended by the parties. The legal principle of Section 139 BGB shall not apply, also within the meaning of a rule governing the burden of proof.

3. The law of the Federal Republic of Germany exclusively shall apply. If the requirements of Art. 1, 3 CISG are fulfilled, the provisions of the UN Sales Convention (CISG) shall apply.

4. The language of contract, proceedings and official language in court is German if legal proceedings are conducted in the Federal Republic of Germany.

5. Place of performance is the agreed place of delivery/service, in the absence of such agreement, our registered office.

6. The place of jurisdiction is the location of our company's registered office. If the Contractor's registered office is located outside the Federal Republic of Germany but inside the European Union, the exclusive place of jurisdiction shall likewise be the location of our company's registered office. We shall, however, also be entitled at our option to bring an action against the Contractor at the location of the Contractor's registered office or at the place of performance.

If the Contractor's registered office is located outside the European Union, the following shall apply:

A final decision on all disputes of whatever nature between the parties arising from the contract concluded or in connection with its implementation, including such disputes regarding the validity of the contract and this arbitration clause, shall be made without recourse to ordinary courts of law by three arbitrators according to the Arbitration Rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) [German Institution of Arbitration], including the rules for expedited arbitration proceedings, applicable at the time of receipt of the request for arbitration at the DIS. The language of the arbitration proceedings is

English. An arbitration award made can on application be declared enforceable by the competent national court. There is no appeal against the award of the arbitration tribunal. The award shall also include a decision on the costs of the proceedings, including the remuneration of the arbitrators. Place and place of jurisdiction of the arbitration tribunal is Velbert, Federal Republic of Germany. For the avoidance of doubt, the parties stipulate that the national courts remain competent for measures ordered by way of interim relief. In this respect, the parties agree that the exclusive place of jurisdiction is Velbert.

*The above arbitration proceedings shall not apply if we choose to take legal action against the Contractor before the competent ordinary court of law. Exercise of the right of choice must be notified by us to the Contractor in writing or text form before initiation of litigation.*

7. We store data arising from the contractual relationship pursuant to Section 26 *Bundesdatenschutzgesetz* [German Federal Data Protection Act] and the EU General Data Protection Regulation for the purpose of data processing.