

# GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY

## FRITSCH GMBH

IN BUSINESS TO BUSINESS



### 1 Scope, general

1.1 These General Terms and Conditions of Sale and Delivery (**General T&Cs**) of **Fritsch GmbH** ("we/us") apply exclusively to businesses within the meaning of Section 14 of the German Civil Code (*BGB*) i.e. (i) natural persons or legal entities that purchase the goods or service for commercial or professional use and (ii) to entities subject to public law and special funds under public law.

1.2 The terms and conditions (**General T&Cs**) set forth below apply exclusively to business relations with our customers, also with respect to information and advice. Where our General T&Cs are implemented in business with a customer, they shall also apply to all further business relations between the customer and ourselves, unless otherwise expressly agreed.

Differing General Terms and Conditions of the buyer and/or ordering party - hereinafter referred to as "**customer/s**" - shall apply only if and insofar as we expressly recognise them; otherwise they shall be rejected. Our silence regarding such differing General Terms and Conditions shall not be deemed in particular to be recognition or consent, and this shall also apply to future contracts.

Our General T&Cs apply in place of any General Terms and Conditions of the customer, especially Terms and Conditions of Purchase (**T&Cs of Purchase**) of the customer, even if, according to such T&Cs of Purchase, acceptance of an order provides for unconditional recognition of the Terms and Conditions of Purchase, or we deliver, after the customer has indicated the validity of the customer's General Terms and Conditions of Purchase, unless we have expressly waived the validity of our General T&Cs vis-à-vis the customer. Exclusion of the customer's General Terms and Conditions shall apply, even if the General Terms and Conditions do not contain a separate provision on individual regulatory points of our General T&Cs. By accepting our order confirmation or the service according to the contract, the customer expressly recognises that the customer waives the customer's legal objection derived from the Terms and Conditions of Purchase that our General T&Cs do not apply.

1.3 If framework contracts or other contracts have been concluded with the customer, these shall take precedence over these General T&Cs. They shall be supplemented there by these General T&Cs, unless more specific provisions have been agreed.

1.4 Where claims for damages are specified below, this shall in the same way also mean claims for the reimbursement of expenses within the meaning of Section 284 *BGB*.

1.5 The terms "products" and "goods" are used in these General T&Cs as having the same meaning.

### 2 Information / Advice / Properties of the products and services / Guarantee / Fault in the case of UN Sales Convention / Cooperation of the customer

2.1 Information and explanations regarding our products and/or services by ourselves or our distributors shall be provided solely on the basis of our experience to date. They do not constitute any agreements on properties or guarantees in relation to our products and/or services.

2.2 If we provide application notes or assembly instructions, these shall be drawn up with the diligence customary in the industry but do not release our customers from the obligation to examine the products and/or services carefully regarding their suitability for the purpose requested by the customers and the problem-free implementation of the assembly instructions. The same shall apply to information provided by us regarding import, customs and/or approval regulations.

2.3 Unless otherwise agreed, the customer shall in any case remain obliged to examine on the customer's own responsibility whether our products and/or services fit for the purpose intended by the customer.

2.4 We assume an obligation to provide advice only in an express, separate consultancy agreement.

2.5 We shall be deemed to have provided a no-fault guarantee only if we have designated a property and/or a contractual performance as "*guaranteed by law*" in writing.

**2.6 Even if the UN Sales Convention (CISG) applies, we shall be liable only for culpable conduct on our part respectively on the part of vicarious agents attributable to us.**

2.7 The customer shall be obliged to provide all necessary cooperation from the customer's sphere in a timely manner and in full, free of charge, to enable us to provide our performance according to the contract, in particular (i) to provide us with all information and data required to perform in due time and in full as a material obligation to cooperate and (ii) to make all necessary arrangements in order to ensure the protection of the delivery items stored properly by us at the assembly site as provided in the contract against respectively usual and foreseeable risks. This includes in particular protection against unauthorised entry and access by third parties, theft and fire as well as the inclusion of deliveries on our part that have not yet become the property of the customer in the customer's existing insurances or insurances to be taken out.

### **3 Specimens / Documents and data provided / Samples / Estimates of cost**

3.1 Properties of samples or specimens shall only become an integral part of the contract if this was expressly agreed. The customer is *not* entitled to utilise and pass on samples.

Where goods are sold by us to the customer based on a sample or demonstration specimens, deviations from this in the delivered goods shall be admissible and shall not entitle the customer to make complaints and claims against us, unless otherwise agreed, if they do not have a sustained impact on the usually intended use of the delivered goods, i.e. do not cause any functional impairment, and the delivered goods comply with any specifications agreed and the goods remain suitable for the purpose provided under the contract.

3.2 We reserve all property rights and copyrights to samples, illustrations, images, photos, drawings, data, estimates of cost and other documents about our products and services disclosed or provided to the customer. The customer undertakes not to make the samples, data, drawings, photos and/or documents specified in the above sentence accessible to third parties, unless we give our express consent. The customer must return them to us immediately upon request, at the latest 4 weeks after receipt, if an order based on them is not placed with us. This shall also apply if entitlement to retain the above-mentioned items and/or data is not otherwise contractually stipulated in favour of the customer.

The provisions in sentences 1 and 2 shall apply accordingly to the customer's documents, drawings or data. We may, however, make them accessible to such third parties, to whom we permissibly transfer deliveries and/or services under the contract with the customer or whom we use as vicarious agents or suppliers.

3.3 Our estimates of cost shall only be binding when they are expressly designated as *binding* and the performance contained therein begins on a contractual basis immediately after receipt of the estimate of cost by the customer but at the latest within 14 calendar days after receipt of the estimate of cost by the customer.

### **4 Conclusion of contracts / Performance owed (scope of delivery and service) / Procurement risk and guarantee**

4.1 Our quotations are subject to change, unless they are expressly designated as binding or expressly contain binding commitments or their binding nature was otherwise expressly agreed with the customer. They are requests for purchase orders by the customer and are not binding quotations on our part.

The customer shall be bound by the customer's purchase order as a contract application for 14 calendar days - in the case of electronic purchase orders 5 working days (in each case at our registered office) - after our receipt of the purchase order, unless the customer must also regularly expect a later acceptance by us (Section 147 BGB). This shall also apply to reorders of the customer.

4.2 A contract is created, also in day-to-day business, only when we confirm the customer's purchase order in writing or text form (i.e. also by telefax or email) by

order confirmation. Where a delivery or service is within the customer's binding period as provided in the quotation, our order confirmation can be replaced by our delivery or service, whereby shipment of the delivery or performance of the service shall be decisive.

Our order confirmation shall apply only under the condition that payment arrears of the customer still outstanding are settled and that any credit assessment of the customer undertaken by us or on our behalf does not disclose any negative information.

4.3 In the case of call-off orders or acceptance delays caused by the customer, we shall be entitled to procure the material for the entire order and to manufacture the total order quantity of agreed delivery items immediately or to stock up with the total order quantity. After the order is placed, any change requests by the customer can, therefore, no longer be considered, unless this has been expressly agreed with us.

4.4 The customer must notify us in writing or text form in due time prior to conclusion of the contract of any special requirements of our products and/or services. Such notifications shall not, however, extend our contractual obligations and liability.

**4.5 By way of derogation from Section 434 BGB, the delivery item supplied by us shall be free from material defects if it has the properties agreed in the specification as provided in the contract, in the absence of such the properties listed by us in the technical data sheet at the time of conclusion of the contract. Section 434 (2) No 3 and (3) No 4 (accessories and instructions) and Section 434 (3) No 2 (b) (properties from public statements and advertising) as well as Section 434 (3), last paragraph, (seller not being bound by public statements) shall remain unaffected. Further properties of the delivery item, especially (i) customary quality that the buyer can expect of items of this nature, (ii) suitability for the customary use, (iii) quality of a specimen or sample, shall not be owed by us in the absence of express agreement to the contrary.**

**4.6 Unless otherwise expressly agreed, we shall only be obliged to deliver the ordered products as goods which are marketable and eligible for approval in the Federal Republic of Germany.**

**4.7 For deliveries, we shall only be obliged to deliver from our own stock (obligation to deliver from stock).**

**4.8 The assumption of a no-fault procurement risk equivalent to a guarantee within the meaning of Section 276 BGB or a procurement guarantee is not based solely on our obligation to deliver an item which is defined solely by its class.**

**4.9 We shall assume such a procurement risk within the meaning of Section 276 BGB only by virtue of an express, separate agreement stating "we assume the procurement risk..."**

4.10 If there is a delay in acceptance of the products or in their shipment or the acceptance of our service for a reason for which the customer is responsible, we shall be entitled, after the setting and expiry of a grace period of 14 calendar days, at our option to require immediate payment of the remuneration or to rescind the contract or refuse performance and claim damages in lieu of full performance. The period must be set in

writing or text form. We shall not have to refer again in this to the rights under this clause.

In the event of our claiming damages as stipulated above, the damages to be paid shall amount to 20% of the net delivery price in the case of purchase contracts or 20% of the agreed net remuneration in the case of service contracts. The right remains reserved for the customer to prove substantially lower damage (more than 10% lower). There is no connection between the reversal of the burden of proof and the foregoing provisions.

4.11 If the agreed shipment is delayed at the customer's request or for reasons, for which the customer is responsible, or the customer is in default in taking delivery, we shall be entitled to store the goods, beginning upon expiry of the reasonable period set in writing or text form in the notice that the goods are ready for shipment or upon commencement of default in taking delivery, at the customer's risk of loss and deterioration of the goods, and to invoice the customer for the storage costs incurred as a result of this at 0.5% of the net invoice amount of the stored goods for each full week or part thereof. *The stored goods shall be insured only at the customer's specific request.* The assertion of further rights shall remain unaffected. The right remains reserved for the customer to prove that substantially lower costs (more than 10% lower) have been incurred.

Furthermore, we shall be entitled, after the above period pursuant to sentence 1 of paragraph 4.10 expires, to dispose otherwise of the goods covered by the contract and to make a new delivery to the customer after a reasonable period (= original delivery period plus 7 calendar days scheduling period).

4.12 In the event of a delayed delivery and/or service order or call-off by the customer, we shall be entitled to postpone the delivery/service by the same period as the customer is behind schedule plus a scheduling period of 4 working days at the place of our registered office.

If a call-off purchase or service contract has been concluded, we must receive the customer's individual call-offs, unless otherwise agreed, at least 6 weeks prior to the requested delivery or service date, unless a shorter call-off period or delivery/service period was expressly agreed. If no other express agreements have been entered into, the customer shall be obliged to accept the purchased goods or commissioned service in full within 6 months of receipt of the order confirmation. If the call-offs are not made in due time, we shall be entitled to remind the customer of the call-offs and their planning and to set a grace period for making call-offs and planning of 14 calendar days, which must provide for acceptance within 4 weeks of receipt of our request. If the period expires without effect, we shall be entitled to rescind the contract or to claim damages in lieu of performance. We shall not have to refer again in this to the rights under this clause. Paragraph 4.10 (2) shall apply *mutatis mutandis*.

4.13 Unless otherwise expressly agreed in writing or text form or in the event that we are subject to different statutory regulations, we shall owe user information for our products and a product label only in German or, at our option, in English.

4.14 We reserve the right to change the specification of the goods to the extent that statutory requirements make this necessary if such change does not cause any deterioration in terms of quality and usability for the

purpose provided under the contract. If this is not possible, the contract shall be accordingly adjusted. If this is not possible or is objectively unreasonable for a party, e.g. because the customer can no longer use the product as a result of the change or a change cannot be implemented with our production capacities or sources of supply, both parties shall have the right without compensation to rescind the part of the contract not yet fulfilled.

4.15 We shall be entitled to make excess or short deliveries of up to 5% of the agreed delivery quantity.

4.16 Furthermore, we shall be entitled to deliver products with deviations customary in the trade in terms of quality, dimension, weight, colour and equipment. Such goods shall be deemed to be in conformity with the contract.

## **5 Delivery / Place of performance / Delivery and service time / Default in delivery and service / Packaging**

5.1 Binding delivery/service dates and periods must be expressly agreed. We shall use our best endeavours to meet delivery/service dates and periods that are not binding or are approximate (*circa*, about etc.).

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation, in the absence of such and where the order confirmation is replaced by our delivery/service (see sentence 2 of paragraph 4.2 of the General T&Cs) 3 working days at our registered office after receipt of the purchase order from the customer by us and acceptance of the same by us but not before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the customer are met, in particular agreed payments on account or securities and cooperation required have been provided in full. The same shall apply to delivery dates and service dates. If the customer has requested changes after placing the order, a new, reasonable delivery and/or service period shall begin when we confirm the change. Reasonable means a delivery/service period which corresponds to the originally remaining delivery/service period plus the period of change negotiations and a scheduling period of 14 calendar days.

5.3 Deliveries and/or services on our part prior to expiry of the delivery/service time are admissible. The date of delivery for an obligation to be performed at our place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The date of delivery for an obligation to be performed at the customer's place of business shall be deemed the date of handover of the products at the agreed place of delivery.

We are entitled to make partial deliveries within the delivery period if the partial delivery can be used by the customer within the scope of the intended use under the contract, the delivery of the remaining ordered goods is assured and the customer incurs no significant additional expenditure or additional costs as a result, unless we agree to bear such costs. Additional expenditure is significant if it exceeds 5% of the net delivery price for purchase contracts or 5% of the net remuneration for service contracts.

5.4 If we default in delivery/service, the customer must first set us a reasonable grace period for delivery

or service of at least 14 calendar days. If this elapses without effect, claims for damages due to breach of duty, for whatever reason, shall exist only as stipulated in Art. 11.

5.5 We shall not be in default as long as the customer is in default in fulfilling obligations towards ourselves, also such obligations under other contracts.

5.6 As long as the means of transport to be provided by the customer is not available, where an obligation is to be performed at our place of business with our having to ship the goods, we shall not be obliged to deliver, unless we have undertaken to provide the means of transport or an obligation to be performed at the customer's place of business has been agreed. However, we shall be entitled, where the shipping order or call-off order can be executed, to effect the delivery by our own means of transport or hired means of transport. In such case, the goods shall be transported at the customer's risk.

5.7 If no collection date, which we have confirmed or have to confirm for it to be binding, is specified for the purchase order or acceptance does not take place on the agreed collection date, we shall, where it has been agreed that the obligation is to be performed at our place of business with our having to ship the goods or that the obligation is to be performed at the customer's place of business, at our option, ship the goods covered by the contract with a carrier commissioned by us or we shall store the goods covered by the contract at the customer's expense. We shall invoice the customer additionally for packaging, transport and insurance costs incurred (the latter if transport insurance was agreed) at the time of shipment.

5.8 When unloading and retrieving goods, the customer must assist our personnel if this is necessary and technically and logistically reasonable for the customer, in particular the customer must provide a suitable forklift truck.

5.9 Unless otherwise agreed, we shall take back packaging only by reason of and within the scope of our statutory obligation.

## **6 Force majeure / Delivery subject to supply of materials to ourselves**

6.1 If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers to provide our deliveries or services owed under the contract, despite proper and adequate stocking prior to conclusion of the contract with the customer, according to the quantity and quality under our delivery or service agreement with the customer, i.e. in such a way that, upon fulfilment of the supplier or subcontractor obligation towards ourselves, we can fulfil the contract with the customer according to the nature of the goods, quantity of the goods and delivery time and/or service in relation to the goods/service of the supplier (*congruent stocking*), they are incorrect or not in due time or events of force majeure occur (*i.e. exceptional, unforeseeable and unavoidable events, caused externally, outside the business of the company*), we shall notify our customer immediately in writing or text form. In such case, we shall be entitled to postpone the delivery and/or service for the duration of the obstruction and/or to rescind the contract in whole or in part for the part not yet fulfilled in the case of events of not insignificant duration (*i.e. of longer*

than 14 calendar days) if we have met our foregoing duty to provide information and have not assumed a procurement risk within the meaning of Section 276 BGB or a delivery guarantee. Events of force majeure are strikes, lockouts, cyber-attacks, official intervention, energy shortages and shortages of raw materials, epidemics, pandemics, war, transport bottlenecks or transport obstructions through no fault of our own, in particular general curfews and/or contact bans, as well as company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, have not been culpably caused by us and were not specifically foreseeable for us at the time of conclusion of the contract. With the above-mentioned release from performance, the obligation on our part to pay damages, reimburse expenses or pay penalties (especially contractual penalties and/or lump-sum compensation for damage) shall also not apply.

6.2 If a delivery/service date or a delivery/service period has been agreed with binding effect and the agreed delivery/service date or the agreed delivery/service period is not met due to events according to paragraph 6.1, the customer shall be entitled, after a grace period of 14 calendar days has elapsed without effect, to rescind the contract for the part not yet fulfilled. The customer shall have no further claims, especially claims for damages, in such case.

6.3 The above provision pursuant to paragraph 6.2 shall apply *mutatis mutandis* if, for the reasons stated in paragraph 6.1, also without contractual agreement of a fixed delivery/service date, the customer cannot be objectively expected to adhere further to the contract.

## **7 Shipment / Passing of risk / Acceptance**

7.1 Unless otherwise expressly agreed, in the case of deliveries, delivery shall be made ex works, Incoterms 2020. In the case of an obligation to be performed at our place of business and an obligation to be performed at our place of business with our having to ship the goods, the goods shall be transported at the customer's risk and expense.

7.2 Unless otherwise agreed, the right shall remain reserved for us to choose the route and means of transport where shipment is agreed. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment without, however, the customer being entitled to this. Additional costs incurred as a result, also where delivery carriage paid is agreed, shall, like the transport and insurance costs, be borne by the customer.

If shipment is delayed at the customer's request or through the customer's fault with respect to the agreed date, we shall store the goods at the customer's expense and risk. Paragraph 4.11 shall apply *mutatis mutandis* in this respect.

In such case, notice that the goods are ready for shipment shall be equivalent to shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer, in the case of an obligation agreed to be performed at our place of business, upon the products to be delivered being handed over to the customer, in the case of an obligation agreed to be performed at our place of

business with our having to ship the products, upon the products to be delivered being handed over to the freight forwarder, carrier or firms otherwise designated to execute the shipment but at the latest when the products leave our works or our warehouse or our branch or the manufacturer's works. The foregoing shall also apply if an agreed partial delivery is carried out.

Where it has been agreed that the obligation is to be performed at the customer's place of business, the risk shall pass upon the products being made available for unloading at the agreed place of delivery. Paragraph 7.5 shall remain unaffected.

7.4 If a shipment is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or for another reason, for which the customer is responsible, the risk shall pass to the customer at the latest from the date on which the notification is sent to the customer that the delivery is ready for shipment and/or the service is ready to be performed.

7.5 Where acceptance of our goods and/or service is required, this shall determine the passing of risk. Acceptance must be carried out immediately on the agreed acceptance date, in the alternative after notice of readiness for acceptance on our part. The customer may not refuse acceptance where there is a defect which is not significant. Such defects that do not render the function of the delivery item inoperative are not significant.

## **8 Notice of defects / Breach of duty in the form of defective performance due to material defects and/or defects of title (warranty)**

8.1 The customer shall give us notice in writing or text form of recognisable material defects immediately but at the latest 12 calendar days after collection, in the case of delivery ex works or place of storage, otherwise, where it has been agreed that the obligation is to be performed at our place of business with our having to ship the goods, after handover of the goods to the carrier, and, where it has been agreed that the obligation is to be performed at the customer's place of business, after delivery, and of hidden material defects immediately after they are detected but the latter at the latest within the limitation period in respect of warranty according to paragraph 8.6. *A notice of defects that fails to comply with requirements of time or form shall exclude any claim by the customer arising from breach of duty due to material defects.* This shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee for the absence of defects or a procurement risk according to Section 276 BGB or other mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Sections 478, 445a BGB).

8.2 The customer must carry out a plausibility inspection upon taking receipt of our delivery i.e. check the type of goods, number/weight and condition. The delivering transport operator must also be notified of material defects, defects in type and/or defects in quantity/weight, recognisable upon delivery or handover, and the recording of defects in written or text form on the delivery documents/CMR by the transport operator must be arranged on site by the customer. Failure to arrange for the notice of defects

to be recorded vis-à-vis the delivering transport operator in compliance with requirements of time or form shall exclude any claim by the customer arising from breach of duty due to material defects. This shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, in the event of injury to life, limb or health or the assumption of a procurement risk according to Section 276 BGB, a guarantee for the absence of defects or liability according to a mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Sections 478, 445a BGB).

If defects in number and weight were already recognisable upon delivery according to the foregoing obligations to inspect, *the customer must make a complaint about these defects to the delivering transport operator upon receipt of the products and have the complaint certified in writing on the delivery documents/CMR. Failure to give notice of defects in compliance with requirements of time to the transport operator or failure by the transport operator to certify this in compliance with requirements of form shall also exclude any claim in this respect by the customer arising from breach of duty due to material defects.* This shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee for the absence of defects, the assumption of a procurement risk according to Section 276 BGB or in the case of liability for a mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Sections 478, 445a BGB).

8.3 Before any of the above activities begin or the products delivered by us are otherwise used, the customer shall be responsible for clarifying, through inspections that are appropriate in terms of method and scope, whether the delivered products fit for the purposes intended by the customer.

8.4 *The customer shall give a warning notice in writing or text form immediately of other breach of duty on our part, setting a reasonable period for remedy, before asserting further rights, otherwise this shall cause the customer to forfeit the customer's rights arising from the breach of duty.* This shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee or a procurement risk according to Section 276 BGB or in the case of a mandatory statutory basis for liability, especially the Produkthaftungsgesetz [German Product Liability Act].

8.5 *When processing, treating, combining or mixing with other items begins, the products delivered shall be deemed approved by the customer as provided in the contract.*

8.6 The limitation period for claims arising from breach of duty due to defective performance in the form of material defects and/or defects of title is 12 months, unless otherwise expressly agreed, calculated from the date of the passing of risk (see paragraphs 7.3 - 7.5), in the case of the customer's refusal to take delivery or refusal of acceptance, from the date of the notice that the goods are ready to be taken over. This shall not apply to claims for damages arising from a guarantee, the assumption of a procurement risk within the meaning of Section 276 BGB, claims for injury to life, limb or health, a fraudulent, grossly negligent or an intentional act on our part, or if in the cases of Sections 478, 445a BGB (recourse in the supply chain), Section 438 (1) No 2 BGB (construction of



buildings and delivery of objects for buildings) and Section 634a (1) No 2 BGB (building defects) or if otherwise a longer limitation period is mandatory by law. There is no connection between the reversal of the burden of proof and the foregoing provision.

8.7 If the customer or a third party rectifies the products delivered by us incorrectly and the defect is based on this, we shall not be liable for the resulting consequences. The same shall apply to changes in the delivery item undertaken without our prior consent.

8.8 Further claims by the customer for or in connection with defects or consequential damages caused by a defect, for whatever reason, shall exist only subject to the provisions of Art. 11.

8.9 Our warranty (claims arising from breach of duty due to defective performance in the case of material defects and/or defects of title) and liability arising therefrom shall be excluded if defects and damage connected therewith cannot be proved to be due to defective material, defective design or defective execution or defective manufacturing materials, or, if owed, defective instructions for use. This shall not apply if the defect is due to the fact that the product covered by the contract does not have properties which we owe pursuant to our advertising statements about the product concerned. In particular, warranty and liability arising therefrom due to breach of duty for defective performance shall be excluded with respect to the consequences of incorrect use, inappropriate storage conditions and the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond to influences provided for, which are inherent in the contract. The above shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, or injury to life, limb or health, the assumption of a guarantee, a procurement risk according to Section 276 BGB and/or liability according to a mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Sections 478, 445a BGB).

Any warranty and liability on our part shall be excluded if the customer does not comply with the technical regulations or instructions for use for the delivery item stipulated by us in conformity with the contract concluded or our technical regulations or instructions for use for the delivery item specified in this respect if the defect is based on this.

8.10 Claims by the customer for expenses required for the purpose of supplementary performance, in particular transport, travel, labour and material costs, shall be excluded if the expenses increase because the delivery item has been subsequently transferred to a place other than the customer's delivery branch, unless the transfer corresponds to its intended use. Section 439 (3) BGB (seller bears the installation and dismantling costs for defective products) shall remain unaffected.

8.11 Claims based on defects shall not exist in the case of only an insignificant (i.e. hardly visible/perceptible) deviation from the agreed or customary quality or usability.

8.12 We give no warranty according to Sections 478, 445a BGB (recourse in the supply chain - recourse against suppliers) if the customer has treated or processed or otherwise changed the products delivered by us under the contract, unless this corresponds to the intended use of the products agreed under the contract.

8.13 Recognition of material defects shall require an express declaration of recognition on our part.

## **9 Prices respectively remuneration / Payment terms / Objection of uncertainty**

9.1 Unless otherwise expressly agreed, all prices are quoted net in EUROS, excluding packaging, freight, postage and, if transport insurance was agreed, insurance costs, exclusive of value added tax (if applicable by law) to be borne by the customer at the respective legally valid rate when payment is due, ex our works respectively warehouse, exclusive of any country-specific charges in the case of delivery to countries other than the Federal Republic of Germany, and exclusive of customs duties and other fees and public charges for the delivery/service. Unless otherwise agreed with the customer, the valid prices follow from our general price list respectively valid when the contract is concluded between ourselves and the customer, which we shall provide to the customer free of charge immediately upon first request.

*The deduction of discount shall be admissible only after the customer's express agreement with us and only in terms of content within the framework of the discount agreement.*

9.2 Payment methods other than cash payment or bank transfer shall require separate, express agreement between ourselves and the ordering party. This shall apply in particular to the issue of cheques and bills of exchange.

9.3 If taxes or charges are incurred by the customer or ourselves on the performance provided by us (withholding tax), the customer shall indemnify us against such taxes and charges.

9.4 We shall be entitled to issue partial invoices corresponding to the progress of order processing and/or require payments on account corresponding to the progress of processing and to issue invoices in purely digital form.

9.5 Unless otherwise expressly agreed, the purchase price respectively remuneration shall be due for payment, where it has been agreed that the obligation is to be performed at our place of business, upon receipt of our notification that the goods are ready for collection by the customer, in the absence of such, upon collection of the goods; where the obligation is to be performed at our place of business with our having to ship the goods, upon handover of the goods to the carrier, and, where it has been agreed that the obligation is to be performed at the customer's place of business, upon handover of the goods.

9.6 The payment obligation is in EUROS. If, where expressly agreed, the customer pays in a currency other than EUROS, payment shall only be satisfied when the foreign currency payment corresponds to the agreed EURO amount on the date of receipt of payment.

9.7 Services that are not an integral part of the agreed scope of delivery shall be performed by us, unless otherwise agreed, on the basis of our respectively valid general price lists for such services, which we shall provide to the customer free of charge and immediately upon first request.

9.8 We shall be entitled to unilaterally increase the prices or remuneration accordingly where material production costs and/or material costs and/or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental charges and/or currency regulations and/or changes in customs duties and/or freight rates and/or public charges increase if these have a direct or indirect impact on the manufacturing costs of the goods or procurement costs or costs of our contractually agreed deliveries and/or services and if more than 4 months elapse between conclusion of the contract and delivery. *An increase as defined above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the mentioned factors with respect to the overall cost burden for the delivery and/or service (balancing).* If above-mentioned cost factors are reduced, without the reduction in costs being set off against the increase in other of the above-mentioned cost factors, the reduction in costs shall be passed on to the customer through a reduction in the price or remuneration.

If the new price or new remuneration based on our right to adjust prices or right to adjust the remuneration as stated above is 20% or higher than the original price or remuneration, the customer shall be entitled to rescind contracts not yet executed in full for the part not yet fulfilled. The customer can, however, assert this right only immediately after notification of the increased price or increased remuneration.

9.9 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear the additional costs arising from tariff increases in freight rates after conclusion of the contract, unless otherwise expressly agreed by the customer with us.

9.10 Payment periods agreed shall run from the date of delivery.

9.11 When default occurs, default interest shall be charged of 9% above the respective base interest rate (Section 247 BGB) at the time the claim for payment becomes due. The right remains reserved to assert damage in excess of this.

9.12 Where a bank transfer is agreed, the date payment is received by us or credited to our account or the account of the place of payment specified by us shall be deemed the payment date.

9.13 *The customer's default in payment shall cause all payment claims under the business relationship with the customer to become due immediately. Regardless of agreements to defer payments, agreements on the term of bills of exchange and on payment by instalment, all liabilities of the customer due to us shall in such case be due for payment immediately.*

9.14 If payment terms are not met by the customer or circumstances known or recognisable that, in our proper commercial judgment, give rise to justified doubts as to the customer's creditworthiness, *namely also such facts that already existed when the contract was concluded but were not known to us or did not have to be known to us*, we shall be entitled, notwithstanding further statutory rights in such cases, to cease further work on current orders or stop the supply, and to require advance payments or the provision of a bank guarantee issued by a German credit institution participating in the Deposit

Protection Fund for deliveries still outstanding and, after a reasonable grace period to provide such securities elapses without effect, to rescind the contract with respect to the part not yet fulfilled, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-execution of the contract.

9.15 The customer shall have a right of retention or right of set-off only with respect to those counterclaims that are not disputed or have been recognised by declaratory judgment. This shall apply *mutatis mutandis* 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 concerns the violation of a principal obligation by us.

9.16 The customer can exercise a right of retention only to the extent that the customer's counterclaim is based on the same contractual relationship.

9.17 Incoming payments shall be used first to repay costs, then interest and finally the principal claims according to age.

Any determination to the contrary by the customer when making payment shall be disregarded.

9.18 Timeliness of payment, by whatever method it is made, shall be determined solely by the date on which it is credited to our account. The value date shall be decisive for cheque payments. Payments by the customer must be made in our favour, all postage and charges paid.

9.19 We are entitled to assign all claims arising from the contractual relationship with the customer to third parties without restriction.

## **10 Retention of title, attachment**

10.1 We retain title to all goods delivered by us (hereinafter referred to collectively as "**goods subject to retention of title**") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all of our claims are included in an open account (current account) and the balance has been established.

10.2 The customer must insure goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to goods subject to retention of title are herewith already assigned to us in the value of the goods subject to retention of title.

10.3 The customer shall be entitled to resell the products delivered in the normal course of business. The customer is not permitted to make other disposals, especially pledging or the granting of equitable lien. If goods subject to retention of title are not paid for immediately by the third-party buyer when resold, the customer shall be obliged to resell only under retention of title. Entitlement to resell goods subject to retention of title shall cease immediately if the customer suspends the customer's payment or defaults in payment to us.

10.4 The customer herewith already assigns to us all claims including securities and ancillary rights that accrue to the customer against the final customer or against third parties from or in connection with the

resale of goods subject to retention of title. The customer may not reach any agreement with the customer's buyers that excludes or impairs our rights in any way or nullifies the assignment of the claim in advance. If goods subject to retention of title are sold with other items, the claim against the third-party buyer in the amount of the delivery price agreed between ourselves and the customer shall be deemed assigned, unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The customer shall remain entitled to collect the claim assigned to us until revoked by us, revocation being admissible at any time. At our request, the customer shall be obliged to provide us in full immediately with the information and documents required to collect assigned claims and, unless we do so ourselves, to notify the customer's buyers immediately of the assignment to us.

10.6 If the customer includes claims from the resale of goods subject to retention of title in a current account relationship existing with the customer's buyers, the customer shall already now assign to us any recognised closing balance resulting in the customer's favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title included in the current account relationship.

10.7 The customer must notify us immediately if the customer has already assigned claims arising from the resale of products delivered or to be delivered by us to third parties, especially due to real or unreal factoring, or has made other agreements which can impair our current or future security interests pursuant to Art. 10. In the case of unreal factoring, we shall be entitled to rescind the contract and to require the surrender of products already delivered. The same shall apply in the case of real factoring if, according to the contract with the factor, the customer cannot freely dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through the customer's fault, especially in the case of default in payment, we shall be entitled, after rescinding the contract, to take back all goods subject to retention of title. The customer shall be obliged in such case to surrender the goods immediately. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back goods subject to retention of title shall constitute a rescission of the contract only if we expressly declare this in writing or this is provided for by mandatory statutory provisions. The customer must notify us immediately in writing or text form of any third-party attachment of goods subject to retention of title or claim assigned to us.

10.9 If the value of the securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged at the customer's request in this respect to release securities at our option.

10.10 The treatment and processing of goods subject to retention of title shall be carried out for us as manufacturer but without placing us under any obligation. If goods subject to retention of title are processed or combined inseparably with other items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the net invoice amount for our goods to the net invoice amounts for the other processed or combined items. If

our goods are combined with other movable items into a uniform item that is deemed the principal item, the customer shall already now transfer co-ownership thereof to us in the same ratio. The customer shall preserve ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. At our request, the customer shall be obliged at any time to provide us with the information required to pursue our ownership or co-ownership rights.

10.11 *If, in the case of deliveries by us contractually agreed with the customer to foreign countries outside the Federal Republic of Germany, specific measures and/or declarations are required on the part of the customer in the importing country for the effectiveness of the above-mentioned retention of title or the other rights on our part specified therein, the customer must notify us of this in writing or text form and take such measures and/or make such declarations immediately at the customer's expense. We shall cooperate on this to the required extent. If the law of the importing country does not allow retention of title but permits us to reserve other rights to the delivery item, we can exercise all such rights at our reasonably exercised discretion (Section 315 BGB). If an equivalent securing of claims by us against the customer is not thereby achieved, the customer shall be obliged at the customer's expense to provide us immediately with other securities customary in the trade for the delivered goods at our reasonably exercised discretion (Section 315 BGB).*

10.12 In the event of attachment or other intervention by third parties, the customer must notify us immediately in writing to enable us to bring an action pursuant to Section 771 ZPO [German Code of Civil Procedure]. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred by us.

## **11 Exclusion/Limitation of liability**

11.1 Subject to the exceptions below, we shall not be liable in the case of breach of duties arising from the obligation agreed with the customer, in particular not for claims by the customer for damages or reimbursement of expenses, for whatever legal reason.

11.2 The above exclusion of liability pursuant to paragraph 11.1 shall not apply:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations; "material contractual obligations" are obligations, the fulfilment of which defines the contract and on which the customer may rely;
- in the event of injury to life, limb and health, also by legal representatives or vicarious agents;
- where we have assumed a guarantee for the quality of our goods or the existence of a contractual performance or a procurement risk according to Section 276 BGB;
- in the case of liability under the *Produkthaftungsgesetz* or other mandatory statutory basis for liability.



11.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases in bullet points 1, 3, 4, 5 of paragraph 11.2 above exists, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage.

11.4 Exclusion respectively limitation of liability pursuant to paragraphs 11.1 to 11.3 above and paragraph 11.5 below shall apply to the same extent in favour of our bodies, our executive and non-executive employees and other vicarious agents as well as our subcontractors.

11.5 Claims by the customer for damages arising from this contractual relationship can be asserted only within a preclusion period of one year from commencement of statutory limitation. This shall not apply if we are responsible for intent or gross negligence, in the case of slight negligence, if we have violated a material contractual obligation and in the case of claims due to injury to life, limb or health and in the case of a claim based on a tortious act or an express, assumed guarantee or the assumption of a procurement risk according to Section 276 BGB or where a longer limitation period is mandatory by law.

11.6 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## **12 Place of performance / Place of jurisdiction / Applicable law**

12.1 Place of performance for all contractual obligations is our company's registered office, except where an obligation to be performed at the customer's place of business is assumed or as otherwise agreed.

12.2 Any disputes shall be settled, if the customer is a trader within the meaning of the *Handelsgesetzbuch* [German Commercial Code], exclusively before a competent court of law at the location of our company's registered office. For the avoidance of doubt, this jurisdiction regulation in sentences 1 and 2 shall also apply to such circumstances between ourselves and the ordering party which can give rise to non-contractual claims within the meaning of Regulation (EC) No 864 / 2007. We shall also be entitled, however, to bring an action against the customer at the customer's place of general jurisdiction.

12.3 All legal relations between the customer and ourselves shall be governed exclusively by the law of the Federal Republic of Germany, in particular to the exclusion of the UN Sales Convention (CISG). It is expressly clarified that this choice of law is also to be understood as such a choice within the meaning of Art. 14 (1) (b) Regulation (EC) No 864 / 2007 and shall, therefore, also apply to non-contractual claims within the meaning of that Regulation. If the application of foreign law is mandatory in individual cases, our General T&Cs are to be interpreted in such a way that the economic purpose pursued by them is preserved to the maximum possible extent.

## **13 Property rights, licence; recall and similar measures**

13.1 **Unless otherwise agreed, we shall only be obliged to provide delivery in the Federal Republic of Germany free from industrial property rights of third parties.**

If a third party raises justified claims on account of the infringement of property rights by products delivered by us to the customer, we shall be liable to the customer within the period determined in paragraph 8.6 as follows:

- We shall at our option first try to obtain at our expense either a right of use for the deliveries concerned or change the delivery item, while complying with the properties agreed under the contract, so that the property right is not infringed or exchange the delivery item. If we cannot do so or we refuse this, the customer shall be entitled to the customer's statutory rights which are, however, based upon modification by the contract and these General Terms and Conditions of Sale and Delivery.

- The customer shall only be entitled to rights vis-à-vis ourselves, in the event of an infringement of property rights by our delivery items, if the customer notifies us in writing or text form immediately of the claims asserted by third parties, does not recognise any infringement and all defensive measures and settlement negotiations remain reserved for us.

- If the customer ceases using the products for reasons of damage mitigation or other good cause, the customer shall be obliged to inform the third party that cessation of use is not connected with any recognition of the infringement of a property right.

- If the customer is challenged by third parties for infringement of property rights resulting from the use of products delivered by us, the customer undertakes to notify us of this immediately and to give us the opportunity to participate in any legal action. The customer must support us immediately in every respect in conducting such a legal action with the necessary information from the customer's sphere and the required coordination. The customer must not take any action which could prejudice our legal position.

13.2 The customer shall have no claims if the customer is responsible for infringement of a property right. The customer shall furthermore have no claims if infringement of a property right is due to the customer's special requirements and/or an application which we could not foresee or is caused by the fact that the products are changed by the customer or used together with products not delivered by us, which do not correspond to the intended use, if the infringement of the property right is based on this.

13.3 Upon proper fulfilment of the customer's contractual obligations, the customer shall have the right to use the services as provided in the contract.

All copyrights, patent rights or other industrial property rights to the manufactured and/or delivered products shall remain with us, unless expressly and otherwise agreed.

If patentable inventions are made at our company within the scope of performing the contract, we shall grant the customer a non-exclusive and non-transferable right of use thereto under economically preferential conditions. The customer's right to have all rights pertaining to the invention in the event that the achievement of the invention is a principal contractual obligation on our part shall remain unaffected.

13.4 If a party to the contract has indications that a recall of the goods delivered by us or a logistically comparable action (hereinafter referred to collectively as "action") is necessary, that party must inform the

other party immediately of that party's reasons for this in writing or text form as well as provide at least a copy of the documents supporting that party's opinion. The other party must comment immediately on the indications and any possible action. Should the parties fail to reach any agreement in writing or text form about the necessity for action, the scope or costs to be borne, a party can determine an appropriate date for an immediate meeting at the registered office of a party, at which persons authorised to make a decision from each party must attend. If one of the parties fails to act according to this schedule, that party cannot invoke vis-à-vis the other party that the action was objectively necessary or not necessary, unless the other party has failed to recognise this intentionally or through gross negligence.

13.5 We shall provide the customer, if the customer is subject to measures by market surveillance authorities, with all necessary information from our sphere and provide any economically and logistically reasonable assistance from our sphere, which the customer needs in order to avert corresponding measures by the authorities in relation to our delivery items. Any costs or expenses of the customer shall be reimbursed exclusively according to Art. 11.

#### **14 Return / Export control / Product approval / Import regulations**

14.1 In the absence of contractual agreements to the contrary with the customer, the goods delivered are intended for placement on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of Germany, to the country of first delivery (*first country of delivery*) agreed by the customer with us.

14.2 We advise the customer that European and German foreign trade law applies to the transfer/export of products (goods, software, technology) and to the performance of services with cross-border reference for the fulfilment of the contractual obligation and individual deliveries and technical services can be subject to restrictions and prohibitions under export control law. This applies in particular to so-called armaments and dual-use items. Furthermore, European and other global national embargo regulations exist against certain countries and persons, companies and organisations which can prohibit the delivery, provision, transfer, export or sale of goods and the performance of services or make this subject to authorisation. For cross-border delivery respectively provision, official authorisations or other certificates may, therefore, have to be obtained by us. Further rights and obligations in this context are respectively governed by the following provisions. For certain transactions in connection with US goods or other US code, US (re-)export law can also apply due to extraterritorial effect and lead to prohibitions or authorisation requirements, which we must comply with and implement in order not to be sanctioned on our part by US authorities.

14.3 The customer is obliged to verify the existence of and compliance with export and import control regulations for the delivery item and the export and import of the same and to comply strictly with the relevant export regulations and embargos for such goods, in particular of the European Union (EU), Germany respectively other EU Member States and, if applicable, the USA or Asian or Arab countries and all

third countries concerned, if the customer exports the products delivered by us or has them exported by us.

14.4 The cross-border return of goods, samples, tools, software, material and also technology, in the form of drawings, instructions, data etc. as well, to the customer can also in individual cases be subject to provisions under foreign trade law and be dependent on official authorisation procedures. Before transfer of the products and their components and/or accessories delivered by us to the customer into a first country of delivery other than that agreed with us, the customer warrants that the customer shall obtain the necessary national product approvals or product registrations in due time and that the requirements embodied in the national law of the country concerned for providing user information in the national language as well as all import provisions and export control regulations have been fulfilled.

14.5 Compliance with the delivery obligation can require the approval respectively granting of export licences or transfer authorisations or other foreign trade certificates by the competent authorities.

If we are prevented from delivering in a timely manner due to the duration of the necessary and proper execution of a customs or foreign trade application, authorisation, or verification procedure through no fault of our own, the delivery time shall be appropriately extended by the duration of the delay caused by such official procedure. We cannot in general specify a fixed period for the above procedures on the part of the authorities. We shall notify the customer immediately about such procedures as well as circumstances and measures in individual cases. Claims for damages by the customer for delays through no fault of our own for this reason shall be excluded vis-à-vis ourselves, unless we have assumed a guarantee liability contractually towards the customer.

14.6 The customer is obliged to provide us with full information truthfully in due time in writing or text form concerning the end use and an end user of the goods to be delivered or service to be provided differing from the end user named to us compared with the initial statements, if applicable, immediately after conclusion of the contract. Any delivery period or service period shall not start to run prior to this. This includes in particular issuing any necessary end-use certificates (so-called EUCs) and transmitting the originals to us in order to verify the end use and intended use of the goods or services and to provide proof to the competent authorities for customs and export control purposes. If potential violations of export bans or embargo regulations result from the above-mentioned documents, we shall be entitled to rescind the contract without compensation.

14.7 The customer must comply with any re-export requirements arising from authorisations granted to us by the competent authorities or courts. The customer must accordingly oblige the customer's buyers contractually and provide us with proof of this upon request. We shall inform the customer of the scale and scope of such requirements placed on us at the latest with the delivery.

14.8 If we or already our suppliers are not granted any necessary export licences or transfer authorisations or other necessary approvals by the competent authorities through no fault of our own or not in due time or other obstacles prevent the fulfilment of the contract or the delivery in whole or in part through no fault of our own due to customs, foreign trade and

embargo regulations to be complied with by us as exporter or transferor or by our suppliers according to law applicable to them, we shall be entitled to rescind the contract or withdraw from the individual delivery or service obligation, unless we have expressly assumed a no-fault guarantee liability for their provision.

This shall also apply if corresponding export control and embargo obstacles only arise, through no fault of our own, between conclusion of the contract and the delivery or performance of the service and in the assertion of warranty rights - e.g. through a change in the legal situation - and make the performance of the delivery or service temporarily or permanently impossible. This may be the case because export licences or transfer authorisations or other foreign trade authorisations or approvals granted to us or our suppliers are revoked by the competent authorities through no fault of our own or other legal obstacles due to customs, foreign trade and embargo regulations to be complied with prevent fulfilment of the contract or the delivery or service through no fault of our own. Claims for damages of the customer for this reason shall be excluded, unless we have expressly assumed a no-fault guarantee liability for the provision of the above-mentioned authorisations or documents.

14.9 The customer must carry out checks in relation to our deliveries and services to the customer in order to prevent transactions with parties sanctioned by embargo lists of the EU, the Federal Republic of Germany or the USA or by other relevant sanctions. The customer shall in particular check and warrant and provide proof to us upon request that

- the products provided shall not be sold and supplied, either directly or indirectly, to Russia, Belarus or territories of Ukraine occupied by Russia;
- the products provided shall not be used, either directly or indirectly, in connection with the development, manufacture, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile technology (e.g. missiles) or in connection with military end use (e.g. installation in military equipment) or civil nuclear end use (e.g. use in connection with the operation of a civil nuclear installation);
- the products provided are not intended for use in armaments, nuclear facilities or weapon technology;
- no companies and persons specified on the US Denied Persons List (DPL) are supplied with goods of US origin, US software and US technology;
- no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with products of US origin without relevant authorisation;
- no companies and persons are supplied that are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organisations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export control;
- no military recipients are supplied with the products delivered by us;
- no recipients are supplied where there is a violation of other export control regulations, especially of the EU or the ASEAN countries;

- all early-warning notices of the competent German or national authorities of the respective country of origin of the delivery are complied with.

The customer is also obliged to comply fully with any sanctions programme decided by the United Nations Security Council, the European Union and the Federal Republic of Germany or a comparable sanctions programme decided by another administrative body or a government competent for us or the customer. We can apply the export control regulations applicable to us in relation to the customer as well and, in addition to a trade sanctions regime, introduce trade restrictions for the distribution of our products in certain countries and the customer shall be obliged to comply with them. If the customer violates them, paragraph 14.15 shall apply accordingly.

The customer is furthermore obliged to comply fully with all applicable export control regulations or laws, especially of the Federal Republic of Germany, the United States of America, the United Nations, the European Union, Japan and all such restrictions imposed on us and notified to the customer. In addition, the customer is obliged not to deliver the goods supplied by us directly or indirectly to Russia and Belarus or have them delivered directly or indirectly.

The customer warrants to us that the customer's customers comply fully with all the above-mentioned embargos and trade restrictions in relation to our products.

14.10 The customer undertakes in turn to prove this obligation to the customer's buyers for the goods delivered by us and to prove this to us upon request.

14.11 Goods delivered by us may be accessed, used and/or exported only if the above-mentioned checks and assurances have been carried out or provided by the customer; otherwise the customer must refrain from carrying out the intended export and we shall not be obliged to perform.

14.12 Where goods delivered by us are passed on to third parties, the customer undertakes to oblige such third parties in the same way as the customer in paragraphs 14.1 - 14.11 and paragraph 14.3 and to notify them of the need to comply with such legal provisions.

14.13 The customer also warrants at the customer's expense, where delivery outside the Federal Republic of Germany is agreed, that the goods to be delivered by us comply with all national import regulations of the first country of delivery fully and in a timely manner without cost to us.

14.14 The customer shall indemnify us against all damages and proven, customary and reasonable expenses, which result from the culpable violation of the foregoing obligations pursuant to paragraphs 14.1 - 14.13. Costs for own employees are excluded. Section 254 BGB (contributory negligence) shall remain unaffected.

14.15 If we become aware of facts or circumstances which result in the performance of an individual contract not being in conformity with the embargos, sanctions, trade provisions agreed with the customer or relevant for execution of the individual contract, we can rescind the contract concerned without compensation or terminate the contract concerned (also after confirmation of the contract) at any time for good cause without complying with a notice period in the case of continuing obligations and stop the delivery of products or require the return of products

already delivered without warning notice. In such case, the customer can reclaim the purchase price already paid, unless the products concerned were customised for the customer, in which case we shall not be obliged to reimburse the purchase price. The customer's claims for damages and/or reimbursement of expenses in this respect are excluded. This shall also apply if embargo, sanctioning, trade provisions or internal compliance guidelines change after conclusion or confirmation of the contract or if the customer is subject to additional or further embargo, sanctioning or trade provisions.

#### **15 Institution of insolvency proceedings / Incoterms / Written form / Severability clause**

15.1 A petition for institution of insolvency proceedings of the customer or the customer's suspension of payment not based on rights of retention or other rights despite a warning notice on our part shall entitle us, in the event of the customer at that time being in a state of breach of duty with respect to ourselves, to rescind the contract at any time, if the customer is violating a contractual obligation at that time, or to make fulfilment of the contract dependent on the prior fulfilment of the payment obligation. In the case of continuing obligations, we shall be entitled, in lieu of rescission, to termination without notice. Section 314 *BGB* (termination in the case of continuing obligations) shall remain unaffected. If the purchased item has already been delivered or our service already performed, the consideration shall be due immediately in the above-mentioned cases. We shall also be entitled to reclaim the purchased item in the above-mentioned cases and to retain it until the purchase price is paid in full.

15.2 If commercial terms are agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2020 shall apply.

15.3 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to waiver of the written form requirement. The precedence of an individual agreement in written, text or verbal form (Section 305b *BGB*) shall remain unaffected.

15.4 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 any current or future provision hereof is or becomes invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law of General Terms and Conditions according to Sections 305 to 310 *BGB*, this shall not affect the validity of the remaining provisions hereof, unless the performance of the contract, also in consideration of the following provisions, would present an unreasonable hardship (Section 306 III *BGB*) for one of the parties. The same shall apply if, after the contract has been concluded, it is found to have a gap that requires filling.

Contrary to any principle, according to which a severability clause in principle shall reverse the burden of proof only, the validity of the remaining contractual provisions shall be maintained in all circumstances and, therefore, Section 139 *BGB* waived as a whole.

The parties shall replace an invalid/void/unenforceable provision or gap that requires filling for reasons other than the provisions relating to the law of General Terms and Conditions according to Sections 305 to 310 *BGB* by a valid provision that corresponds in its legal and economic content to the invalid/void/unenforceable provision and the purpose of the contract as a whole. Section 139 *BGB* (partial nullity) is expressly excluded. If the invalidity of a provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way shall be agreed for the provision.

#### **Note:**

**Pursuant to the provisions of the EU GDPR and the Bundesdatenschutzgesetz [German Federal Data Protection Act], we draw attention to the fact that contracts are processed at our company on EDP equipment and that we also in this context store data received as a result of the business relationship with the customer.**