

**GENERAL TERMS AND CONDITIONS OF  
PURCHASE**  
**of**  
**HOESCH Metals and Alloys GmbH**  
**Updated: 09/2015**

**Article 1**  
**General Scope of Application**

1. Our Terms and Conditions of Purchase shall apply exclusively; we will not acknowledge any conflicting terms and conditions of our suppliers which may differ from our Terms and Conditions of Purchase unless we have expressly agreed to their application in writing. Furthermore, our Terms and Conditions of Purchase shall still apply exclusively in cases of our unconditional acceptance of a delivery by the supplier while being aware of terms and conditions of the supplier that oppose or deviate from our Terms and Conditions of Purchase.
2. With the first delivery or performance of services on the basis of these Terms and Conditions of Purchase, the supplier acknowledges the application of these Terms and Conditions, as amended, to all future deliveries. We shall provide the supplier with any updated version of our Terms and Conditions of Purchase free of charge.
3. Where the Parties have concluded framework agreements or individual contracts, they shall prevail. To the extent that they do not provide for more specific terms or conditions, they shall be supplemented by the present Terms and Conditions of Purchase.
4. All agreements which we conclude with the supplier for the purpose of the performance of the contract must be reduced to writing in the contract.
5. Our Terms and Conditions of Purchase shall only apply with respect to undertakings within the meaning of s. 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), that is, with respect to natural or legal persons or partnerships with legal capacity acting in exercise of his or its trade, business or profession when entering into the contract.

**Article 2**  
**Offers by the supplier**

1. The supplier must make its offers in written form or in text form. Supplier's offers shall be submitted free of charge and shall not be binding on us.
2. Supplier's offers must comprehensively describe the goods to be delivered/the services to be performed and list any additional products/services that we will require and include these in the offer and in the price calculation.
3. The supplier must, in writing or text form, expressly indicate any risks or environmental hazards associated with the goods being delivered, as well as any special handling required in relation to the goods.

**Article 3**  
**Conclusion of the contract,  
Performance of the commission, Acceptance**

1. To facilitate an orderly contract controlling system, only orders made in writing or text form have any validity.

The content of the order is exclusively decisive in determining the terms of the commission. Amendments or additions to an order must be made in writing. This also applies to an agreement to waive the written form requirement, without prejudice to the priority of individual agreements of any form pursuant to s. 305(b) of the German Civil Code. Our silence in response to offers, requests or other representations by the supplier can only be deemed to be consent or acceptance where this has been expressly agreed in writing. The supplier shall expressly notify us if an order is only being accepted subject to changes.

2. The supplier shall confirm the order in writing or text form within five working days of receipt. The point in time of the receipt of the confirmation is decisive in determining the timeliness of the confirmation. Once this deadline has passed, we may revoke our offer, unless anything to the contrary has been agreed. The supplier shall not have any right or claim arising as a result of a revocation validly made on this basis.
3. We request that order confirmations be sent to us in a single copy.

The supplier shall include our precise order number and/or the identity of the person placing the order on the order confirmation, all shipping papers and the delivery slip. We refuse to accept any and all liability for delays in processing arising from a failure to do so.

4. Official values or, failing this, values measured by us during the inspection of goods on receipt shall be used as a basis for the number of units, mass and dimensions as well as quantities delivered, subject to any contrary agreements or other evidence. For all shipments, in particular where delivery is made by truck, the shipping papers must document the weight.
5. Should our order, documents or data on which an order is based contain obvious errors, spelling mistakes or calculation errors, we shall not be bound to them. In such cases, the supplier shall inform us of the error in writing or text form to allow us to correct and re-issue our order. This obligation shall apply accordingly where documents which are clearly necessary were not supplied with the order.
6. The supplier must, expressly indicate in the order confirmation any risks or environmental hazards associated with the goods being ordered, as well as any special handling required in relation to the goods.
7. The supplier shall inform us of any necessary changes or additions to the scope of the contract in writing or text form with a justification which become apparent during performance of the contract without delay. The changes or additions shall only be binding with our written acceptance. This shall not affect the priority of individual agreements in oral, written or text form pursuant to s. 305(b) of the German Civil Code.
8. The supplier shall inform us, in writing and in good time, of any documents required and request the provision of these documents in writing.
9. Where the supplier is required under the contract or has an ancillary obligation to provide material samples, inspection records, quality documents or other documents, the complete delivery of these documents shall be a prerequisite for full completion of the delivery and/or services.
10. Where waste is produced through the supplier's performance of the contract, the supplier shall, subject to any contrary agreements, remove and dispose of this waste itself and at its own expense in accordance with the applicable waste regulations. Ownership, risk and responsibility under the laws of waste disposal shall be transferred to the supplier on creation of the waste.
11. We may, in the following circumstances, rescind the contract and, in the case of a continuing obligation with the supplier, terminate the contract by extraordinary termination where:
  - (i) The supplier exercises a power to unilaterally increase the price for the goods to be sold or services to be provided and increases the price quoted in its offer; and/or
  - (ii) The supplier files for bankruptcy or stops making payments to its creditors or where insolvency proceedings are opened over the supplier's assets, or an application for the commencement of such proceedings is rejected due to a lack of assets, if in the aforementioned cases, at the point in time of the rescission, the supplier has culpably breached a duty under the contract or where it cannot be expected to comply with the contract.

In such cases, the supplier shall not have any rights or claims against us arising from our rescission or termination, in particular for damages or compensation for expenses.

**Article 4**  
**Prices, payment, invoicing, assignment**  
**Setting-off, retention of title,**  
**packaging, disposal of waste**

1. In the absence of a contrary, written agreement, prices agreed on are fixed prices and shall include all costs for packaging, transport to the place of receipt or dispatch agreed on (DPP delivery - Incoterms in their applicable version at the point in time the order is placed by us), customs formalities and duties. In the absence of contrary agreement, our company seat shall be the place of delivery. Prices shall include the applicable value added tax, unless they are expressly stated as net prices.
2. The supplier shall be under an obligation not to offer us any prices or conditions that are less favourable than those offered to other customers who offer the supplier the same or comparable economic and logistical conditions.
3. In the case of orders with reserved pricing on the part of the supplier, we may rescind the contract if we do not agree with the price in the confirmation.
4. In the absence of contrary agreement, invoices received by us will be paid:
  - within 14 days of receipt of the delivery or acceptance of the services and receipt of the invoice, less a 3% early payment discount; or
  - within 30 calendar days of receipt of the delivery or acceptance of the services and receipt of the invoice in full.

Early payment discounts may also be taken advantage of if we exercise a right of off-set.

5. Payment shall not be deemed to be acceptance of goods/service or a waiver of any right to complain about defects; it does not qualify as acknowledgement of proper performance of the contract.
6. Where deliveries are accepted early, payment shall – in the absence of contrary agreement – fall due on the basis of the delivery date originally agreed on.
7. Where a delivery is incomplete or defective, we may hold payment entirely or proportionally until the delivery has been duly completed.
8. If advance payments have been agreed on, these instalments shall only be payable once the supplier has provided a directly enforceable guarantee to secure these pre-payments issued by a German credit institution or savings bank (Sparkasse) covered by the deposits guarantee fund, and has waived the defence of failure to pursue remedies.
9. The supplier shall only have a right of retention or off-set against us in relation to claims which have been acknowledged by us or legally established as final and absolute.
10. Existing claims had by the survivor may only be assigned with our consent, to the extent that they are not monetary claims.
11. We may off-set any claims had by HOESCH Group companies (HOESCH Metallurgie GmbH, HOESCH Metals and Alloys GmbH, HOESCH Granules GmbH, HOESCH Metals and Alloys (Beijing) Co. Ltd. and HOESCH Metallurgie (Langfang) Co. Ltd.) against the supplier against any claims had by the supplier resulting from individual orders.

Where we have claims against other companies belonging to the same group of companies within the meaning of s 15 of the German Stock Corporations Act (Aktiengesetz), we may withhold payments until our claims against these group companies have been completely satisfied.

12. The supplier shall pack the objects to be delivered exclusively in environmentally friendly packaging material or environmentally friendly containers such that they are protected from

transport damage. The packaging for each shipment shall be included in the price, to the extent that nothing to the contrary has been agreed on in writing with the supplier. Any waste created by the supplier during delivery or assembly shall be disposed by the supplier free of charge.

13. In the exceptional cases in which something to the contrary is agreed on between the supplier and us, the supplier shall charge us for the packaging at cost price. In this case, the supplier shall use the packaging prescribed by us. Should our prescribed packaging not be suitable for the safe and proper packaging of the delivery, the supplier shall inform us of this fact in writing or text form and without delay following receipt of our selections.
14. To the extent that the packaging for a shipment is to be invoiced separately, we may choose to return the packaging in a usable state in exchange for a credit of at least 2/3 of the price of which we were charged for it, unless something to the contrary has been agreed with the supplier. The supplier may prove that the packaging returned to it was considerably less valuable. In this case, the refund shall be adjusted accordingly.
15. In the circumstances provided for under clause 14, above, the packaging will be sent to the supplier at its own costs.

**Article 5**  
**Sub-contracting**

The supplier may generally sub-contract work to the extent that personal performance by the supplier has not been agreed on. The supplier shall inform us of any intended sub-contracting in writing or text form at least 10 working days before awarding the sub-contract. We may, however, withhold our consent to the awarding of a sub-contract by the supplier for good cause where the sub-contract, if awarded, would pose a considerable disadvantage for us. In this case, the supplier must carry out the order itself. Good cause is, in particular, given where the sub-contractor does not objectively appear to offer a guarantee of proper performance of the contract or, to the extent that services are to be performed on our premises, has in the past breached our company safety guidelines.

**Article 6**  
**Delivery, delivery times**

1. The delivery times and deadlines agreed on must be met. The point in time of receipt of the goods by us or at the delivery place agreed on is decisive. Vehicles can only be unloaded between 8:00 am and 3:00 pm from Monday to Friday, to the extent that nothing to the contrary is agreed on in writing in the individual case in question. The supplier shall be liable for any consequences of non-compliance with this obligation.
2. In the absence of contrary agreement, we may require the supplier to delay delivery by up to four weeks free of charge. In this context, the supplier shall not have any rights or claims against us due to the delayed delivery. In the aforementioned period, the goods to be delivered shall be stored at the supplier's risk. Furthermore, we may require the supplier to delay delivery by up to six months, in which the goods will also be stored at the supplier's risk. In such cases, we shall reimburse the supplier for the proven, reasonable and usual storage and goods insurance costs.
3. The supplier shall inform us in writing or text form and without delay if any circumstances arise or if it becomes apparent, that delivery or performance deadlines agreed on may be missed. This also applies where the supplier is not responsible for the delayed performance. Where this duty is breached, we shall have a right to compensation for the loss incurred as a result.
4. In cases of early delivery or performance, we reserve the right to return the shipment or refuse the delivery or performance at the costs of the supplier. Where an early shipment is not sent back, the goods shall be stored until the delivery date at the cost and risk of the supplier.
5. Partial deliveries or performance will only be accepted if expressly agreed to in writing in advance. Where partial deliver-

ies are agreed on, the quantities which are still to be delivered must be clearly indicated.

#### **Article 7 Transfer of risk Documents**

1. In the absence of contrary agreement, deliveries shall be on carriage paid terms with the risk remaining with the supplier until complete receipt of delivery or, in the case of services, acceptance at the place of receipt or use contractually agreed on.
2. The supplier shall deal with each individual order in separate correspondence within the context of this business relationship. The supplier shall include at least the complete order number, order date and customer's reference number as well as our process number in all correspondence such as emails, letters, dispatch notifications, delivery and packing slips, invoices, bills of lading, accompanying documents etc.
3. Invoices, delivery slips and shipping documents shall be sent with the shipment in duplicate. On delivery, these documents must include at least the following:  
  
quantities and units, gross, net and, where applicable, calculated weight, as well as the order number, product name/number, quantities yet to be delivered (in the case of partial deliveries) and our product number.
4. On the day of dispatch of a freight shipment, a dispatch notification shall be sent to us. Should the supplier fail to do so, we shall not be liable for resulting delays in processing and in payment.
5. We may require the supplier to provide free certificates of condition in German or English in relation to the goods delivered.

#### **Article 8 Delays**

1. In the event of delayed delivery, we reserve all of our legal rights. In particular, following an unsuccessful reasonable grace period, we may claim compensation instead of the performance and/or rescind the contract. The supplier shall have a right to prove that it is not responsible for the breach.
2. In cases of delayed delivery and/or performance, we may impose a contractual penalty of 0.5% of the net remuneration for the delayed delivery or performance per full week of delay, however not more than a total of 5% of the net remuneration for the delayed delivery or service; we reserve any additional legal claims, in particular compensation claims, against which the contractual penalty will be off-set.
3. Where delayed delivery or performance is impending or has occurred, the supplier shall, on request, provide us with access to all relevant documents relating to the contract and identify all related sub-suppliers and suppliers. In this context, the supplier is not obliged to disclose operational or business secrets within the meaning of s. 17 of the German Unfair Competition Act (Gesetz gegen den unlautbaren Wettbewerb, UWG).
4. Where we consider it necessary in the event of delayed delivery or performance, the supplier shall allow us to contact all relevant sub-suppliers and suppliers directly in order to prevent the delay in delivery or performance or to minimise it as much as possible.
5. In the circumstances provided for under clauses 2 and 3 above, the total responsibility for the order shall rest with the supplier.
6. The acceptance of delayed delivery does not constitute a waiver of claims for compensation or the right to impose the contractual penalty.

#### **Article 9 Change management**

1. Due to requested changes by end customers, it is not always possible to avoid the need to change the content of an order. Therefore, even after conclusion of the contract, we may require changes to the delivery and/or performance in accordance to the following provisions, as long as the changes are objectively technically and logistically reasonable for the supplier, taking the supplier's type of activities, production knowledge and the order situation into account. The supplier shall review the requested changes without delay and inform us in writing or text form of their effect on the contract. This duty of notification includes a declaration regarding the technical and/or logical feasibility and suitability of the requested changes, as well as a declaration in the form of an offer outlining the effects of the requested changes on the agreements made, such as the concept, deadlines, dates, receipt formalities and payment. We shall then make an immediate decision regarding the carrying out of the changes.
2. Once we have given notice of our agreement, the changed order shall become part of the contract.
3. The supplier shall not request any changes to the terms of the contract in cases of technical changes which are economically significant to the supplier.

#### **Article 10 Acceptance**

The supplier shall inform us of its planned delivery date, the value and the weight of any goods/products ordered by us at least 10 calendar days before delivery and in writing or text form. In relation to delivery and manufacturing orders, we have a right to require suppliers to carry out a joint inspection of the goods/product delivered/produced prior to their delivery, subject to a notice period of seven calendar days; the inspection shall take place at the supplier's premises or, where the supplier has engaged authorised sub-suppliers, at the sub-suppliers' premises. We shall only require inspections during the supplier/sub-supplier's usual business hours. During the inspection, the parties shall jointly determine whether the product fully complies with the characteristics which the supplier was bound to deliver. To the extent that it is necessary, a suitable function test shall be carried out. Where materials or personnel are required for the function test, they shall be provided by the supplier to a sufficient extent free of charge. A written defect record shall be written up for any defects identified during the inspection. The record shall be signed by both us and the supplier.

Where the inspection reveals that the goods/products do not display the characteristics required under the contract, either partially or completely, not taking into account any insignificant defects which do not affect the functionality, the supplier shall not be entitled to make delivery to us or to the third party nominated by us until the defects identified during the inspection and recorded in the defect record have been completely eliminated.

#### **Article 11 Investigation of defects, Warranty, Liability for defects Limitation period for claims due to material and legal defects**

1. The supplier warrants that all goods/services meet the specifications agreed, technical standards current at the time of conclusion of the contract, the applicable legal regulations, guidelines and administrative directives and statutory occupational accident insurance and prevention body and industry association regulations of the Federal Republic of Germany and the European Union, in particular, to the extent that it is applicable, the European Union Machines Directive, as well as those of the intended country indicated on conclusion of the contract.
2. To the extent that nothing to the contrary is agreed, we shall carry out any quantity and quality inspections of the goods within a reasonable time; a complaint will have been made in good time if made within five working days of receipt of the goods in the case of an apparent defect, or within five working

days of discovery of the defect, in the case of a hidden defect. To this extent, the supplier waives its right to object to a complaint based on a delay in the making of the complaint.

3. We reserve our full legal with regard to defects under the law; in all cases, we shall have a right to our choice of correction of the defect or delivery of a new product.
4. Should the products delivered not meet the standard warranted by the supplier, the supplier shall be liable for any resulting loss including consequential damages. The supplier shall have a right to prove that it is not responsible for the breach.
5. Should the supplier's correction of a defect be delayed, we may charge liquidated damages for the delayed correction at a rate of 0.5% of the net value of the defective delivery and/or performance per each commenced period of 7 calendar days, capped at a total of 5% of the net value of the defective delivery and/or performance, without the need to provide any proof of the actual loss. The supplier may, however, prove to us that there was no loss incurred or that the loss was considerably lower. This shall not affect any other legal or contractual claims which we may have. The aforementioned liquidated damages shall be set off against any other compensation rights that we may have.
6. In order to prevent serious risks for body, life or health and to prevent more serious loss exceeding 100% of the net value of the defective delivery and/or services, if it is not reasonable or possible for us to request correction by the supplier or if the supplier does not immediately comply with such a request, we shall have the right to correct the defect ourselves or have it done by third parties at the supplier's costs. These costs shall be borne by the supplier. This shall not affect any other claims for substitute performance on our part, in particular according to the rules of the agency without specific authorisation.
7. In cases of legal defects, the supplier shall indemnify us against third party rights, including the regular costs of legal defence and the associated administrative costs. To the extent that the supplier's performance is based on documents provided by us, such as models or drawings, or on the basis of our express instructions and could not know that this led to a breach of third party intellectual property rights, the aforementioned duty to hold harmless shall not apply.
8. Should we be obliged to recall a product completed and/or sold by us as a result of a defect in the supplier's performance of the contract, or if any claim of this kind is made against us, we shall have recourse against the supplier; the exercise of this recourse is not subject to setting a further deadline that would otherwise be required. This shall not apply where we have failed to report an apparent defect in accordance with article 11(2).
9. The limitation period for complaints against suppliers on the basis of factual defects shall be 34 months from acceptance and no later than 36 months from passing of risk.
10. The limitation period for claims for legal defects shall be five years after acceptance of the delivery, or where there is no acceptance provided for, five years of delivery of the performance provided by under the contract.
11. The limitation period shall be suspended when our notice of defect is made.
12. Where the supplier submits a defect inspection or an inspection of the correction of a defect with our consent, the limitation period shall be suspended until the supplier provides us with confirmation in writing or text form of the results of the examination, declares the defect to have been corrected or refuses to proceed with the correction.

#### **Article 12 Force majeure**

In cases of force majeure, labour disputes, unintentional operational faults, unrest and other unpreventable events, we shall have a right to partially or completely rescind the contract, without prejudice to any other rights, where the duration

of such events is not inconsiderable (that is, shorter than four weeks) and result in a considerable reduction in our needs, subject to immediate notification of the supplier regarding the situation.

#### **Article 13 Product liability, indemnity, liability insurance**

1. To the extent that the supplier is responsible for a product defect and in the absence of contrary agreement, it shall indemnify us against any and all third party claims for compensation and damages arising from causes that fall into its area of responsibility and organisation. The in addition to the costs of any compensation payments, the supplier's duty to indemnify us shall also extend to the regular costs of legal defence, recall, testing, installation and disassembly and the administrative and other costs associated with processing the complaints.
2. In the context of its liability for loss within the meaning of clause 1, the supplier shall also be under an obligation to reimburse any reasonable costs pursuant to ss 683, 670, 830, 840 and 426 of the German Civil Code which we incur as a result of or in connection with a recall programme. To the extent that it is possible and reasonable, we shall inform the supplier of the content and scope of the recall measures in advance and give it the opportunity to respond. This shall not affect any other legal or contractual claims.
3. The supplier shall maintain an operations liability insurance policy with coverage of two and a half million euros per case of personal injury/damage to property and one million for financial losses, as well as a product liability insurance policy with coverage of at least five million euros with at least double maximisation annually starting from the conclusion of the first contract with us and ending no sooner than 36 months after the last delivery or performance of services to us. Should we have any other compensation claims, these shall not be affected. The supplier shall provide us with evidence of the aforementioned insurance and payment of the premiums on request. If proof of payment of the insurance premiums is not provided to us within seven calendar days of our first request, we may completely or partially rescind the contracts not yet performed (with respect to the part not yet performed). In such cases, the supplier shall not have any claim against us relating to the rescission.

#### **Article 14 Replacement parts and readiness for delivery**

1. The supplier warrants that replacement parts will be available for delivery to us by it for a period which corresponds to the usual life of the product/services delivered, unless anything to the contrary has been agreed on in writing or text form in relation to the availability of replacement parts. During this period, the supplier shall be under an obligation to deliver the goods under normal market conditions.
2. Should the supplier intend to discontinue the delivery of the replacement parts following the expiry of the aforementioned period, it shall provide us with an opportunity to make a last order at least 30 calendar days before the date of discontinuation. The same shall apply in cases of discontinuation before the expiry of this period; in such cases, we shall not lose our rights to compensation by placing such an order.

#### **Article 15 Third party intellectual property rights**

1. The supplier shall be liable for the infringement of any third party rights in the Federal Republic of Germany, the European Union or the country of use disclosed by us to the supplier with the order in the context of its delivery and/or performance. There shall be no liability where the supplier demonstrates that it was unaware and could not reasonably have been aware of the existence or future creation of such rights at the time of delivery of its performance.
2. Should a third party claim in relation to an infringement of such rights be made against us, the supplier shall indemnify us against these claims, including the regular costs of legal defence and any related administrative costs on our first writ-

ten request; we shall not be entitled to enter into any agreements (in particular settlements) with the third party without the supplier's consent. The supplier shall have a right to prove that it is not responsible for the breach.

3. The duty to hold the supplier harmless shall apply to all costs incurred as a result of or in relation to a third party claim.
4. The limitation period for liability arising from intellectual property right infringements shall commence as soon as the claim arises and we have become aware or ought to have become aware of the circumstances underlying the claim. The limitation period shall be five years.

#### **Article 16 Documents and confidentiality**

1. Any commercial, technical or product-related information, in particular calculation data, production instructions, internal production information and data, irrespective of their type, including other development or manufacturing characteristics which can be ascertained from any objects, documents or data provided and other knowledge or experience disclosed to the supplier shall, as long as and to the extent that they are not demonstrably in the public domain or subject to a legal or administrative duty of disclosure, be treated with confidentiality and not disclosed to third parties; they shall only be made available to necessary personnel at the supplier's own operations for use for the purposes of the production of the product or performance of the services; such personnel must be subject to a written duty of confidentiality (in the case of employees, to the extent permissible under labour law); such information and data shall remain exclusively our property.
2. Without our prior consent in writing or text form, such information must not be reproduced or used commercially, except for deliveries to us. The aforementioned confidentiality agreement shall continue to apply after the end of the supplier relationship until the information lawfully enters the public domain, but no longer than five years after the delivery and/or performance. The aforementioned duty of confidentiality shall not apply to the extent that the supplier can prove that it developed the information lawfully before disclosure or already had knowledge of it (and informs us of this in writing or text form and without delay following transmission of the information), or to the extent that this information is made publicly available by us in writing or is subject to an administrative or legal duty of disclosure.
3. On our request, all information and data sourced from us (if applicable including any copies or records) and objects lent to the supplier shall be returned to us completely and without delay or to be destroyed, such destruction being confirmed in writing. Where the information provided to the supplier is in the form of data, the data must be deleted completely on our first request which may be issued at any time; such deletion shall be confirmed in writing and without delay.
4. In the case of data transmitted by us, we shall also have a right to a solemn undertaking from the supplier, any individual culpable breach of which will be punishable by means of a reasonable contractual penalty, in which it undertakes not to make any further use of data provided by us or copies thereof whose return or deletion we have requested.
5. We shall retain all rights to such information and data (including copyright and the right to register commercial property rights such as patents, utility patents, trademark protection etc.). Insofar as these have been provided to third parties, this reservation of rights shall also apply to these third parties.
6. There shall not be any licences or warranties associated with the information and/or data provided to the supplier.
7. The supplier must not make personal use of any products produced on the basis of documents prepared by us, e.g. drawings, prototypes, models and the like, or on the basis of confidential information, formulae not in the public domain or tools belonging to us or tools modelled on tools belonging to us nor offer or supply them to third parties.

#### **Article 17 Safety provisions**

##### **Other requirements for deliveries and performance**

1. The supplier shall comply with all safety regulations applicable in the Federal Republic of Germany, the European Union and any country of intended use disclosed before conclusion of the contract, as well as the state of the art on passing of risk, as well as any additional technical specifications or permissible values agreed on.
2. The supplier shall only use materials which meet the applicable legal safety requirements and regulations, in particular in relation to poisonous and hazardous materials. The same shall apply for environmental protection regulations and electricity and electromagnetic field regulations. The aforementioned obligation includes all regulations applicable in the Federal Republic of Germany, the European Union and the country of intended use disclosed before conclusion of the contract as well as (to the extent that they differ) any regulations of the country of receipt disclosed to the supplier before or on placement of the order.
3. Should the supplier's products not meet the requirements provided for under clauses 1 and 2, we may rescind the contract if supplementary performance is not required or has failed. This shall not affect any additional rights to compensation.
4. We must be informed in writing or text form of any Intended changes to the product or performance to be delivered. These shall require our prior written consent.

#### **Article 18 Quality and documentation**

1. In the absence of contrary agreement, the costs of conformity declarations shall be borne by the supplier. The conformity declarations shall be provided to us with each delivery, without any delay and in English or German.
2. Irrespective of this, the supplier shall continually monitor the quality of the product/performance. We must be informed of any possible improvements without delay. The supplier shall inform us of any apparent errors in instructions or foreseeable complications in writing or text form and without delay.
3. In the absence of contrary agreement, where minimum or maximum values for parameters are provided during an order, the aforementioned values must not be breached at any point in any area of the performance or product.  
  
This shall be monitored and documented using suitable testing and measuring processes. We shall be entitled to request in writing or text form disclosure of the results of this review from time to time without any additional costs.
4. Without any additional cost, the following shall be included in the scope of delivery: product-specific and/or technical documentation, conformity declarations and any other documents, certifications or user manuals required for the product or its use, either in German or English (at our discretion), as well as any labelling of the parts/product/packaging required under law.
5. The supplier shall ensure that precise batch tracing is possible in relation to its performance.

#### **Article 19 Software**

1. Where the performance includes the provision of software, we receive the right to use the software across the whole company group and to reproduce it and, for payment, to provide it to third parties along with the product delivered worldwide, without having to pay any remuneration going beyond the remuneration agreed on. The HOESCH group companies entitled to a licence are: HOESCH Metallurgie GmbH, HOESCH Metals and Alloys GmbH, HOESCH Granules GmbH, HOESCH Metals and Alloys (Beijing) Co. Ltd. and HOESCH Metallurgie (Langfang) Co. Ltd.

2. For maintenance and development purposes, we may back-translate the software.
3. The payment for software shall only become due once formal acceptance has occurred with a written declaration of acceptance issued by us.
4. On delivery of software, supplementary performance by means of delivery of a new version of the program shall only be permissible with our prior written consent. Where we have given our consent, the supplier shall provide our employees with training for the new version of the program at its own cost.

**Article 20  
Auditing**

1. We shall, also with respect to any certifications that we hold, be entitled, but not obliged to audit the supplier personally or through engaged professionals and/or consultants of our choice. This comprises an inspection of the supplier's premises and quality assurance systems and results in an evaluation. The information collected during the inspection will form the basis for the awarding of future contracts and our internal rating for the supplier.
2. We shall be entitled to carry out announced inspections of the supplier's ongoing operations and to monitor the quality assurance measures during regular business hours.
3. Where we can establish good cause, we shall have a right to inspect the supplier's relevant records. Such good cause shall, in particular, exist where information which would allow us to assess the need for and potential scope of a recall can be ascertained.
4. In the context of the exercise of our rights under clauses 1 to 3 above, the supplier shall not be obliged to disclose any business secrets.

**Article 21  
Occupational health and safety, accident prevention**

We note that all visitors, even external visitors, to our plants or premises are subject to the code of conduct under our company rules and regulations. We reserve our right to expel people breaching these regulations from the premises. The supplier shall, when engaged for work on our premises, make use of all equipment/installations, give all instructions and take all measures required to prevent occupational accidents provided for under the provisions of the applicable occupational health and safety regulations and all other recognised safety and labour medical guidelines. Our statutory occupational accident insurance and prevention body's (Berufsgenossenschaft) occupational health and safety guidelines must be complied with.

**Article 22  
General provisions  
Severability clause  
Choice of forum  
Choice of law  
Data storage**

1. The supplier may only disclose the business relationship with us for advertising purposes or as a reference to third parties with our prior written consent.
2. Should a term of this contract be or become fully or partially invalid/void or not performable as a result of the law on general terms and conditions provided for under ss 305 to 310 of the German Civil Code, the legal regulations shall apply.

Should current or future terms of the contract be or become fully or partially invalid/void or not performable for any reason other than as a result of the law on general terms and conditions provided for under ss 305 to 310 of the German Civil Code, this shall not affect the validity of the remaining provisions of this contract to the extent that the performance of the contract - notwithstanding the following provisions - would result in unreasonable hardship on one of the parties. The

same shall apply where a gap in the contract requiring filling becomes apparent after conclusion of the contract.

In contrast with the jurisprudence of the German Federal Court of Justice which has found that a severability clause generally merely serves to reverse the burden of proof, the effectiveness of the remaining provisions should be upheld in all cases, thus completely excluding the application of s 139 of the German Civil Code.

With the exception of terms which are invalid/void or not performable as a result of the law on general terms and conditions provided for under ss 305 to 310 of the German Civil Code, the parties shall replace invalid/void or not performable terms or fill gaps in the contract using a valid term which in its legal and commercial content as closely as possible meets that of the invalid/void or not performable term and the overall object of the contract. The operation of s 139 of the German Civil Code (severability) is expressly excluded.

Should the invalidity of a term relate to the volume of the performance or the time (period or deadline) provided for in that term, the provision shall be agreed on with the lawful value which most closely matches the original value.

3. The law of exclusive application is that of the Federal Republic of Germany.
4. The language of the contract, proceedings and courts shall be German.
5. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
6. The place of performance shall be the agreed place of delivery or performance of services.
7. The courts of jurisdiction shall be the courts of the place of our Company's seat. We may, however, bring proceedings against the supplier at its company seat or the place of performance.
8. Data from the contractual relationship saved for processing is done so in accordance with s 28 of the German Federal Data Protection Act (Bundesdatenschutzgesetz).

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