

# General Terms and Conditions of Contracts, Delivery and Services of HOESCH Metallurgie GmbH in Business Transactions with Companies

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## 1. Scope

1.1 These General Terms and Conditions of Contracts and Delivery shall apply exclusively to companies within the meaning of Section 14 BGB [German Civil Code] i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes.

1.2 The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy. Where our General Terms and Conditions are implemented in a transaction with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing.

Differing terms and conditions of the buyer and/or ordering party, hereinafter referred to as "customer", shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, also where such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of its conditions of purchase, or we deliver, after the customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our own General Terms and Conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase.

1.3 If general contracts or other contracts have been concluded with our customers, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations are agreed.

## 2. Information / Consultancy / Properties of the products and services

2.1 Information and explanations regarding our products and services shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our products and services.

2.2. Any information about our products and services, especially information in our quotations and brochures and on the internet and the illustrations, drawings, measurement, performance and equipment data contained therein or performance characteristics and other data, especially technical data, shall be deemed approximate average values. This shall apply accordingly to statements made by our employees unless otherwise agreed in writing. Characteristics without tolerances too, as included on our website or in our catalogues and/or brochures, are subject to deviations and changes which are customary in the industry and/or production related, especially due to tolerances of raw materials and/or technical developments.

2.3 If we provide operating instructions, these shall be drawn up with the care customary in the industry but do not release our customers from the obligation to inspect the products carefully regarding their suitability for the purpose intended by the customers. The customer shall still be obliged in any case, unless otherwise agreed, to check whether our products and/or services can be used for the purpose intended by the customer.

2.4 We only assume an obligation to provide advice exclusively on the basis of a separate, written consultancy agreement.

2.5 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures resp. on the internet and in our advertising shall only represent a property of our products when we have expressly declared the quality to be a "property of the product". These are otherwise non-binding, general specifications of performance. This shall also apply to statements made by our employees unless otherwise agreed.

2.6 We shall only be deemed to have given a guarantee if we have designated a property and/or the outcome of performance as "guaranteed by law" in writing.

2.7 We shall assume no liability for the usability of our products or services for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer. This shall not affect the stipulation in paragraph 11.

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

3.1 Properties of specimens or samples shall only become an integral part of the contract if this was expressly agreed in writing. The customer is not authorised to use and pass on samples. Where goods are sold based on a sample, according to analytical data or other technical data, deviations herefrom in the goods supplied shall be admissible and shall not give cause for complaints if they do not have a sustained impact on the normally intended use, unless otherwise agreed.

3.2 We shall retain all title and copyright to samples, illustrations, drawings, data, estimates of cost and other documents about our products and services. The customer undertakes not to disclose the samples, data and/or documents specified in the foregoing sentence to third parties unless we give our express written consent, and to return them to us on request unless an order based on them has been placed with us.

The stipulations in sentences 1 and 2 shall apply accordingly to the customer's documents, drawings or data. We may, however, disclose them to third parties, whom we may instruct to make deliveries and / or provide services together with the customer under the contract or whom we use as vicarious agents.

## 4. Conclusion of contracts / 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. They are requests for orders.

The customer shall be bound by its order as a contract application for 14 calendar days after our receipt of the order unless the customer must expect to receive our acceptance on a regular basis at a later date (Section 147 BGB).

4.2 A contract is created, also in day-to-day business, only when we confirm the customer's order in writing or text form (i.e. also by telefax or email). Where delivery is made or a service provided within the period by which the customer is bound by the order, our confirmation can be replaced by our invoice.

4.3 In the event of call orders or acceptance delays caused by the customer, we shall have the right to procure the material for the entire order and to manufacture the total quantity ordered immediately resp. to buy the total quantity ordered. After the order is placed, no change requests from the customer can therefore be considered unless this was expressly agreed in writing.

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

4.5 We shall only be obliged to deliver from our order-related production (obligation to deliver from stock).

4.6 Assumption of a procurement risk or a procurement guarantee does not lie solely in our obligation to deliver an object which is only defined by its type.

4.7 We shall only assume a procurement risk by virtue of a separate written agreement stating "we assume the procurement risk...".

4.8 If acceptance of the products or their shipment or the acceptance of our service is delayed for a reason for which the customer is responsible, we shall have the right, after setting an extension of time of 14 days which has expired, at our option to request immediate payment of the purchase price resp. remuneration, or to rescind the contract or refuse performance and request damages instead of full performance. The time limit must be given in writing or text form. We shall not be required to refer again in this to our rights under this clause.

In the event of our claiming damages as stipulated above, the

damages to be paid shall amount to 30 % of the net delivery price in the case of sales contracts, or 30 % of the agreed net remuneration in the case of service contracts. This shall not affect any right of either party to prove a different amount of damage or that no damage was incurred. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

4.9 If shipment is delayed at the customer's request or for reasons for which the customer is responsible, we shall have the right to store the goods, beginning on expiry of the period set in the notice in writing or text form that the goods are ready for shipment, and to invoice the costs incurred for this at 1 % of the net invoice amount of the stored goods for each full week or part thereof. This shall not affect the assertion of any further rights. The customer shall have the right to prove that no costs or considerably lower costs were incurred.

Furthermore, we shall be authorised, after the foregoing time limit expires, to dispose of the contract goods otherwise, and to deliver to the customer again after a reasonable time limit.

4.10 If an order or call for delivery is delayed by the customer, we shall have the right to postpone the delivery by the same period of time as the customer is behind schedule plus a scheduling period of 4 working days at the place of our registered office.

4.11 Unless otherwise expressly agreed in writing or text form or we are subject to different statutory provisions, we shall only be required to provide user information for our products and a product label in German / in English.

The customer shall be responsible for providing us with any information regarding the ordered goods within a reasonable period of time to allow the order to be executed according to the contract.

4.12 We shall have the right to make excess or short deliveries of up to 5 % of the agreed delivery quantity.

#### **5. Delivery / Delivery time / Default in delivery / Packaging / Installation and assembly**

5.1 Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments or securities agreed are paid or provided in full. This shall apply to delivery dates and service dates. If the customer requests changes before production begins, a new, reasonable delivery and/or service period shall begin when we confirm the change.

5.3 Deliveries may be made and/or services provided prior to expiry of the time of delivery/service. The date of delivery for obligations to be performed at the debtor's 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.

5.4 If we default in delivery, the customer must set us a reasonable extension of time to perform.

5.5 We shall not be in default as long as the customer is in default in fulfilling obligations towards us; this shall also include obligations under other contracts.

5.6 We shall not be obliged to deliver for as long as the means of transport to be provided by the customer is not available unless we have undertaken to provide the means of transport, or it has been agreed that the obligation is to be performed at the creditor's place of business. However, we shall have the right, where the shipping order or call order can be carried out, to arrange delivery with our own transport or hire transport. In this case, the goods shall be transported at the customer's risk.

When unloading and retrieving the goods, the customer shall assist our personnel if this is necessary and the customer can be expected to do so technically and logistically.

5.7 If no collection date which we have to confirm is given when the order is placed resp. acceptance does not take place on the agreed collection date, we shall ship the contract goods with a carrier instructed by us. We shall invoice the customer for transport and insurance costs incurred.

#### **6. Force majeure / Delivery subject to availability**

6.1 If we do not receive a delivery or service from our subcontractors to allow us to provide our delivery or service which is due from us under the contract, despite due and proper stocking in terms of quantity and quality under our delivery or service agreement with the customer, for reasons for which we are not responsible, or it is incorrect or not in due time, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar

days), we shall notify our customer in writing or text form in due time. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lockouts, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery and/or service date or delivery and/or service period is agreed with binding force and the agreed delivery and/or service date or the agreed delivery and/or service period is exceeded due to events according to para. 6.1., the customer shall have the right, after a reasonable extension of time has elapsed without success, to rescind the contract for that part of the contract not yet fulfilled. The customer shall have no further claims, especially claims for damages, in this case.

6.3 The above provision according to para. 6.2 shall apply accordingly if, for the reasons stated in para. 6.1, also without contractual agreement of a fixed delivery and/or service date, the customer cannot be objectively expected to adhere further to the contract.

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

7.1 Unless otherwise agreed in writing, delivery shall be ex works, and, where no obligation to be performed at the debtor's place of business or at the creditor's place of business is agreed, shipped uninsured by a carrier instructed by us as obligation to be performed at the debtor's place of business where the debtor must dispatch the goods or remit the money to the creditor. In the case of an obligation to be performed at the debtor's place of business and an obligation to be performed at the debtor's place of business where the debtor must dispatch the goods or remit the money to the creditor, the goods shall be transported at the customer's risk and expense.

7.2 Unless otherwise agreed, we reserve the right to choose the route and means of transport where shipment is agreed or if no collection date is agreed for the abovementioned obligation to be performed at the debtor's place of business where the debtor must dispatch the goods or remit the money to the creditor. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result, also where delivery freight paid is agreed, shall, like the transport and insurance costs, be borne by the customer.

If shipment to the port of destination is not possible for reasons for which we are not responsible, we shall have the right, according to our reasonably exercised discretion (Section 315 BGB), to deliver to another port or to deliver by land. Additional expenses incurred as a result shall be borne by the customer. Transport insurance shall only be concluded at the instruction and expense of the buyer.

If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarding agent, carrier or other firms entrusted with shipping the products but at the latest when the products leave our works, warehouse or branch unless performance of the obligation at the creditor's place of business is agreed. The foregoing shall also apply if an agreed partial delivery is carried out.

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 due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date on which the notice is sent to the customer stating that the delivery is ready for shipment and/or the service can be performed.

7.5 Where acceptance is required, this shall be decisive for the passing of risk. Acceptance must be carried out immediately by the acceptance date, alternatively after the supplier's notice of readiness for acceptance. The customer may not refuse acceptance where a defect is not material.

#### **8. Notice of defects / Breach of duty due to material defects / Warranty**

8.1 The customer must give us notice of recognisable material defects immediately where the obligation is to be performed at the creditor's place of business and immediately after collection

where the obligation is to be performed at the debtor's place of business. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects or other compulsory statutory basis for liability, and in the event of right of recourse in the supply chain (Sections 478, 479 BGB).

8.2 The transport operator must also be notified of any material defects recognisable on delivery, and the recording of recognisable defects in written or text form on the shipping document / CMR must be arranged by the transport operator. The customer must also inform us of the material defects immediately after receipt of the goods in the case of an obligation to be performed at the creditor's place of business and immediately after collection in the case of an obligation to be performed at the debtor's place of business. Failure to have the transport operator arrange the recording of the notice of defects in due time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, or compulsory statutory basis for liability, and in the event of right of recourse in the supply chain (Sections 478, 479 BGB). The customer must carry out a plausibility check upon taking delivery i.e. check the type of goods, number/weight and condition. If defects in number and weight were already recognisable upon delivery by virtue of the foregoing obligations to inspect, the customer must make a complaint about these defects to the transport operator upon receipt of the products, and have this complaint certified in writing on the shipping document / CMR. The customer must also inform us of the defects in number and weight immediately after receipt of the goods in the case of an obligation to be performed at the creditor's place of business and immediately after collection in the case of an obligation to be performed at the debtor's place of business. Failure to give notice of defects in due time to the transport operator shall also exclude any claim in this respect by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, or in the case of a compulsory statutory basis for liability, and in the event of right of recourse in the supply chain (Section 478 BGB).

Complaints concerning material defects can only be asserted if the customer ensures that a sample of the goods subject to complaint is taken. Samples for forwarding to neutral test centres shall only be relevant if they are taken in the presence of a representative appointed by us.

8.3 When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall also apply if the products are shipped on from their original destination unless this corresponds to the normal use of the delivered goods.

Before any of the above activities begin, the customer shall be obliged to clarify, through appropriate checks in terms of scope and method, whether the delivered products are suitable for the processing purposes, process purposes and other purposes intended by the customer.

8.4 The customer must give notice in writing immediately of any other breach of duty, setting a reasonable time limit for remedy, before asserting any further rights, otherwise this shall cause the customer to forfeit the rights resulting herefrom. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee or procurement risk or a compulsory statutory basis for liability.

8.5 Unless breach of duty by way of exception relates to the performance of work by us, the contract may not be rescinded if our breach of duty is not material.

8.6 We shall provide a warranty for material defects, unless otherwise expressly agreed in writing or text form, for a period of 12 months, calculated from the date the risk passes (see para. 7), in the case of refusal to accept or take delivery by the customer from the date of the notice that the goods are ready to be taken over. This shall not apply to damage claims resulting from a guarantee, from the assumption of a procurement risk, for injury to life, limb or health, an intentional, grossly negligent or fraudulent act, or if, in the cases of Section 478 BGB (recourse in the supply chain), Section 438 (1) No. 2 (buildings and objects for buildings), and Section 634 a (1) No. 2 BGB (building defects), a longer period is stipulated by law. This shall not affect Section

305 b BGB (precedence of an individual agreement in verbal or written form).

8.7 If the customer or a third party rectifies a defect incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any changes of the delivery item undertaken without our prior consent.

8.8 Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 8.10 and 11.

8.9 Our warranty (claims for breach of duty due to defective performance in the case of material defects) and liability arising herefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to defective material or defective execution. Warranty and liability arising herefrom shall be excluded in particular with respect to the consequences of incorrect use or inappropriate storage conditions, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected average standard influences in the product description, operating manual or the safety data sheets. This shall not apply in the case of a fraudulent, grossly negligent or intentional act by us, or injury to life, limb and health, or the assumption of a guarantee, a procurement risk or liability due to a compulsory statutory basis for liability.

8.10 Claims by the customer for expenses required for subsequent performance, in particular transport, travel, labour and material costs, shall be excluded if the expenses increase because the delivery item has been transferred subsequently to a location other than the customer's branch unless in doing so this complies with its intended use.

8.11 Goods delivered shall be deemed to conform with the contract if they correspond to a sample provided to the customer which the customer has correspondingly recognised as contractually agreed specifications.

8.12 Recognition of breach of duty in the form of material defects shall only be valid when given in writing.

8.13 If the customer returns goods due to a complaint and it is determined that there is no defect, the customer shall bear the costs for the sending and return of the goods and the risk and costs if the goods are lost. The customer shall bear the burden of proof with regard to a defect in the goods.

## 9. Prices / Payment terms / Objection of uncertainty

9.1 All prices are on principle quoted net in EURO, ex works, and exclude packaging, freight, insurance costs, and value added tax at the legally valid rate which shall be borne by the customer.

9.2 We are authorised at our equitable discretion to increase the remuneration unilaterally and reasonably where material procurement costs, wage and ancillary wage costs as well as energy costs and costs due to environmental charges, currency fluctuations and/or currency regulations and/or changes in customs duties are increased, if more than 4 months elapses between conclusion of the contract and delivery. Such an above-mentioned increase shall be excluded if the increase in costs for the above-mentioned factors is set off by a reduction in costs of other above-mentioned factors with respect to the overall cost burden for the delivery. If above-mentioned cost factors are reduced without the increase in costs being set off by the increase in other above-mentioned factors, this reduction in costs shall be passed on through a price reduction.

9.3 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear the additional costs arising from increases in freight rates after the contract was concluded.

9.4 Unless otherwise agreed, our invoices shall be payable net within 30 calendar days of the invoice date; where the customer collects the goods itself, as of the customer's receipt of our notice that the goods are ready for delivery.

9.5 If the customer fails to make payment in due time, the customer shall be in default in payment, also without notice, where the due date is or can be determined on a calendar basis.

9.6 Once in default, default interest shall be charged of 8% above the respective base rate of the European Central Bank when the claim for payment falls due. We reserve the right to assert damages in excess of this.

9.7 The date payment is received by us or credited to our account resp. the account of the place of payment specified by us shall be deemed the payment date.

9.8 The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange and

payment by instalment, all the customer's liabilities due to us shall in this case become due for payment immediately.

9.9 If payment terms are not met or circumstances known or recognizable that, in our proper commercial judgment, give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall have the right, notwithstanding further statutory rights in such cases, to cease further work on current orders or stop the delivery, and to request advance payments or the provision of appropriate, customary securities, e.g. in the form of a bank guarantee issued by a German credit institution participating in the Deposit Protection Fund, for deliveries still outstanding, and, after expiry of a reasonable extension of time to provide such securities without result, to rescind the contract, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

9.10 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.

9.11 The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

9.12 If the customer fails to return bank guarantees and/or guarantees received from us in due time, the customer shall reimburse us for all resulting costs and charges incurred by us as of the date of default in returning the guarantees.

9.13 Incoming payments shall first be used 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.

#### **10. Retention of title / Right of lien**

10.1 We retain title to all goods we deliver (hereinafter referred to as a whole 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 claims by us are incorporated in a current account and the balance has been established.

10.2 The customer must insure the 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 assigned to us in the value of the goods subject to retention of title.

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

10.4 The customer herewith assigns to us all claims including securities and ancillary rights that accrue to the customer against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its purchasers that excludes or impairs our rights in any way or nullifies the assignment of the claim in advance. When the goods subject to retention of title are sold with other items, the claim against the third-party purchaser amounting to 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 be entitled to collect claims assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer shall be obliged to give us the information and documents in full required to collect assigned claims and, unless we do so ourselves, notify its purchasers immediately of the assignment to us.

10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its purchasers, the customer shall herewith assign to us any recognised closing balance resulting in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

10.7 The customer must notify us immediately if the customer has already assigned claims to third parties arising from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to para. 10. In the case of unreal factoring, we shall have the right to

rescind the contract and request the products already delivered to be surrendered. This shall also apply to 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 have the right, without rescinding the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to surrender the goods subject to retention of title automatically. 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 the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is prescribed by compulsory statutory provisions. The customer must notify us immediately in writing of any third-party attachment of goods subject to retention of title or any 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, to release securities at our option.

10.10 We handle and process the goods subject to retention of title as manufacturers but without obligation on our part. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into a uniform item that is deemed the principal item, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain 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. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

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

11.1 We shall not be liable, in particular not for claims by the customer for damages or reimbursement of expenses, for whatever legal reason, and/or for breach of duty from the obligation or tort.

11.2 The above exclusion of liability shall not apply if statutory liability is obligatory, and:

- 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 that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose. Material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, and where the customer regularly relies on and may rely on compliance with such obligations;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of our goods or the existence of an outcome of performance, or a procurement risk;
- in the case of liability under the Produkthaftungsgesetz [German Product Liability Act] or other compulsory statutory liability in the country of production.

11.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in para. 11.2 bullet points 1, 3, 4, 5 and 6 above exist, we shall be liable in the case of violation of material contractual obligations too only for damage typical for the contract and for foreseeable damage.

11.4 Our liability is limited for each individual case of damage to a maximum liability coverage of EUR 250,000.00. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health, and in the case of a claim arising from tort or an express, additional guarantee or the assumption of a procurement risk or in cases of different higher liability coverage prescribed by law. Any further liability shall be excluded.

11.5 Exclusion resp. limitation of liability according to para. 11.1 to 11.4 above and para. 11.6 shall apply to the same extent for the benefit of our bodies, executive and non-executive employees and other vicarious agents as well as our sub-contractors.

11.6 Claims by the customer for damages arising from this con-

tractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health, and in the case of a claim arising from tort or an express additional guarantee or the assumption of a procurement risk.

11.7 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

## **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 creditor's place of business is assumed.

12.2 Any disputes shall be settled exclusively before a court of law having jurisdiction over our company's registered office. We shall also have the right, however, to bring an action against the customer at its place of general jurisdiction.

12.3 The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the customer and ourselves, to the exclusion in particular of the UN Sales Convention (CSIG).

## **13. Property rights**

13.1 Unless otherwise agreed, we shall be obliged only to deliver goods in the Federal Republic of Germany that are exempt from third-party industrial property rights and copyrights. If a third party raises justified claims on account of infringement of property rights by products delivered by us to the customer, we shall be liable to the customer within the time limit specified in 8.7. as follows:

- We shall first at our option try to obtain a right of use at our expense for the deliveries in question 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 on reasonable conditions, the customer shall be entitled to its legal rights which shall be defined on the basis of these General Terms and Conditions of Contracts and Delivery.
- The customer shall, in the event of infringement of property rights by our delivery items, only be entitled to rights if the customer gives us written notification immediately about the claims asserted by third parties, does not admit any infringement and all defensive measures and settlement negotiations are reserved for us.
- If the customer stops using the products for reasons of damage minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of a property right infringement.
- If an appeal is filed by third parties against the customer for infringement of property rights resulting from the use of products delivered by us, the customer undertakes to notify us of this immediately and give us the opportunity to participate in any legal action. The customer must support us in every way in conducting such a legal action. The customer must not take any action which could impair our legal position.

13.2 The customer shall have no claims if it is responsible for infringement of a property right. The customer shall also have no claims if the infringement of the property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products are changed by the customer or used with products we did not deliver, if the infringement of the property rights is based on this.

## **14. Export control / Product approval**

14.1 In the absence of any other contractual agreements with the customer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany (first country of delivery).

14.2 The export of certain goods may be subject to authorisation e.g. because of their nature or intended purpose or final destination. The customer itself shall be obliged to comply strictly with the relevant export and import regulations and embargos for these goods, especially of the European Union (EU), Germany resp. other EU Member States and, if applicable, the USA or Asian countries.

Furthermore, the customer shall be obliged, if the goods are transferred to a country which is different to the first country of delivery agreed with us, to obtain the required national product approvals or product registrations and to ensure that the specifications set out in the national law of the country in question re-

garding the provision of user information in the national language are complied with unless otherwise agreed.

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

15.1 A petition to institute insolvency proceedings filed by the customer or the customer's suspension of payment which, despite notice, is not due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of the delivery item or our service dependent on the prior fulfilment of the payment obligation. If the delivery item was already delivered or our service already provided, the consideration shall be due immediately in the abovementioned cases. We shall also be entitled to reclaim the delivery item in the abovementioned cases and to retain it until the purchase price is paid in full.

15.2 If trade terms were agreed according to the International Commercial Terms (INCOTERMS), the INCOTERMS as last amended 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 cancellation of the written form requirement. This shall not affect the precedence of individual agreement in written, text or verbal form (Section 305 b BGB).

15.4 If any provision of this Agreement is or shall become 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 of the contract is or shall become 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 of this contract unless the performance of the contract, also in consideration of the following provisions, would present an unreasonable hardship for either party. This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling.

Contrary to the principle of the judicial decisions of the Federal High Court of Justice, according to which a severability clause in principle only reverses the burden of proof, the validity of the remaining provisions of the contract shall be maintained in all circumstances and therefore Section 139 BGB waived as a whole. The parties shall replace any 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 any 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 must be agreed for this provision.

### **Note:**

**In accordance with the provisions of the Datenschutzgesetz [German Data Protection Act], we draw attention to the fact that contracts are processed in our company on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.**

Düren, December 2013