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# GENERAL TERMS AND CONDITIONS

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as of: 20.02.2020

## I. General Part

### 1. General and scope of application

- 1.1. These General Terms and Conditions („GTC“) apply to all of our business relationships with our contractual partners. All offers and contracts, also in ongoing and future business relationships, shall be governed by these GTC. They only apply where the contractual partner is a Business Customer (s. 14 German Civil Code, “BGB”), a legal entity under public law or a special fund under public law.
- 1.2. Unless agreed otherwise, these GTC in the version valid at the time of our declaration of intent to conclude the contract with the contractual partner or, at least, in the version most recently communicated to the contractual partner in text form, apply as a framework agreement also for similar future contracts without us having to refer to them again in each individual case.
- 1.3. These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the contractual partner shall only if and insofar become part of the contract as we have expressly agreed to their applicability. This requirement of express agreement shall apply in any case, even if for example we execute the order or service to the contractual partner without reservation or accept its deliveries without reservation in the knowledge of the contractual partner’s general terms and conditions.
- 1.4. Individual agreements made with the contractual partner in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.5. Legally relevant declarations and notifications of the contractual partner with regard to the contract (e.g. setting of a deadline, notification of defects (“Mängelanzeige”), withdrawal (“Rücktritt”) or reduction (“Minderung”) shall be made in writing, i.e. in written form (“Schriftform”) or text form (“Textform”) (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
- 1.6. References to the applicability of statutory provisions only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless these GTC directly amend or expressly exclude them.
- 1.7. **In addition to the conditions of this General Part apply**
  - a. **our Conditions of Sale („CoS“) in clause II of these GTC** insofar as we sell or deliver movable goods (“Goods”) to our contractual partner (“Buyer”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (ss. 433, 650 BGB); insofar the CoP in clause III do not apply.
  - b. **our Conditions of Purchase (“CoP”) in clause III of these GTC** insofar as contractual partners (“Sellers”) sell or deliver movable goods (“Goods”) to us, irrespective of whether Sellers manufacture the Goods themselves or purchase them from suppliers (ss. 433, 650 BGB); insofar the CoS in clause II do not apply.

### 2. Applicable Law and place of jurisdiction

- 2.1. These GTC and the contractual relationship between us and the contractual partner shall be governed by the laws of the Federal Republic of Germany under exclusion of the international uniform law, in particular the UN Convention on the International Sale of Goods (CISG).

- 2.2. If the contractual partner is a merchant in the meaning of the German Commercial Code (“HGB”), legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Alsdorf. The same applies if the contractual partner is a Business Customer as defined in s. 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance or general jurisdiction of the contractual partner. Overriding statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected

## II. Conditions of Sale („CoS“)

### 1. General, Applicability

- 1.1. These Conditions of Sale (CoS) apply to all our business relationships with our customers („Buyers“). These CoS only apply where where the contractual partner is a Business Customer (s. 14 German Civil Code, “BGB”), a legal entity under public law or a special fund under public law.
- 1.2. These CoS apply for contracts on the sale and / or delivery (“Lieferung”) of movable goods (“Goods”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (ss. 433, 650 BGB). Unless agreed otherwise, these CoS in the version valid at the time of the Buyer’s order or, at least, in the version most recently communicated to the Buyer in text form, apply as a framework agreement also for similar future contracts without us having to refer to them again in each individual case.
- 1.3. These CoS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only if and insofar become part of the contract as we have expressly agreed to their applicability. This requirement of express agreement shall apply in any case, even if for example we execute the order to the Buyer without reservation in the knowledge of the Buyer’s general terms and conditions.
- 1.4. Individual agreements made with the Buyer in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these CoS. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.5. Legally relevant declarations and notifications of the Buyer with regard to the contract (e.g. setting of a period, notification of defects (“Mängelanzeige”), withdrawal (“Rücktritt”) or reduction (“Minderung”) must be made in writing, i.e. in written form (“Schriftform”) or text form (“Textform”) (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
- 1.6. References to the applicability of statutory provisions only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless these CoS directly amend or expressly exclude them.

### 2. Conclusion of Contract

- 2.1. Our offers are subject to alteration and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyrights.
- 2.2. The order of the Goods by the Buyer shall be considered as binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days after its receipt by us.

- 2.3. The acceptance may be declared in written form (e.g. via order confirmation) or by delivering the Goods to the Buyer.

### 3. Delivery period and delivery delay

- 3.1. The delivery period shall be agreed individually, respectively specified by us when accepting the order.
- 3.2. If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance "Nichtverfügbarkeit der Leistung"), we shall inform the Buyer of this immediately and at the same time inform him of the expected new delivery period. If the performance is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part. In this case, we will immediately reimburse any consideration already provided by the Buyer. A case of non-availability of the performance in this sense in particular is considered the non-timely delivery by our supplier, if we have concluded a congruent cover transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.
- 3.3. The occurrence of our delivery delay shall be determined in accordance with statutory provisions. However, in any case a formal reminder ("Mahnung") from the Buyer is required.
- 3.4. The Buyer's rights according to cl. 8 of these CoS and our statutory rights remain unaffected, especially in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance).

### 4. Deliveries, transfer of risk, Acceptance („Abnahme“) and Default of Acceptance („Annahmeverzug“)

- 4.1. Delivery is ex warehouse, which is also the place of performance for the delivery and any supplementary performance. At the request and expense of the Buyer, the Goods will be shipped to another place of destination (sales shipment / "Versendungskauf"). Unless agreed otherwise, we shall be free to determine the mode of shipment (in particular the carrier, shipping route, and packaging material) on our own.
- 4.2. The risk of accidental destruction or deterioration of the Goods shall pass to the Buyer upon Handover ("Übergabe") of the Goods to the Buyer, the latest. In the case of sales shipments, however, the risk of accidental loss or deterioration of the Goods as well as the risk of delay shall pass to the Buyer upon handing over of the Goods to the freight forwarder, carrier or other person or institution designated to carry out the shipment. Insofar as Acceptance has been agreed, this is decisive for the transfer of risk. Also in other respects, the statutory provisions of the law on contracts for works ("Werkvertrag") apply accordingly to an agreed Acceptance. If the Buyer is in Default of Acceptance, this shall be deemed equivalent to a Handover respectively Acceptance.
- 4.3. If the Buyer is in Default of Acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a lump sum compensation in the amount of 0,1 % of the net price (Delivery Value) per calendar day, but in total not more than 5 % of the Delivery Value, beginning with the delivery period, respectively - in the absence of a delivery period - upon notification that the Goods are ready for dispatch. The proof of a higher damage and our statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The Buyer remains entitled to prove that we have incurred no damage at all or only a considerably lower damage than the above lump sum.

## 5. Prices and Payment Conditions

- 5.1. Unless agreed otherwise in the on a case-by-case basis, in each case our prices, respectively current at the time of the conclusion of the contract, apply, and this ex warehouse, plus the statutory VAT.
- 5.2. In the case of sales shipment (cl. 4.1) the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. The Buyer shall also bear custom duties, fees, taxes and other public charges, if any. In accordance with the Packaging Ordinance we do not take back transport packages or any other packages, they become the Buyer's property. Excluded from this are pallets.
- 5.3. The purchase price is due and payable within 14 days from invoicing and delivery or respectively Acceptance of the Goods. However, at any time we are entitled to carry out a delivery in whole or in part only against advance payment; this shall also apply within the scope of an ongoing business relationship. We declare a corresponding reservation at the latest with the order confirmation.
- 5.4. Upon expiry of the above payment period the Buyer is in default of payment. The Buyer has to pay interest on the purchase price during the period of default at the statutory default interest rate applicable at the time. We reserve the right to assert further damages caused by delay. In relation to merchants, our claim for commercial maturity interest (s. 353 HGB) remains unaffected.
- 5.5. The Buyer shall only be entitled to set-off or retention rights insofar as his claim is a final and absolute adjudicated claim or is undisputed. In the event of defects in the delivery, the Buyer's reciprocal rights, in particular out of cl. 7.6 sentence 2 of these CoS remain unaffected
- 5.6. If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is endangered by the Buyer's inability to perform (e.g. due to an application to open insolvency proceedings), in accordance with the statutory provisions we shall be entitled to refuse performance and - if necessary after setting a period - to withdraw from the contract. In the case of contracts for the manufacture of non-fungible items (custom-made products) we may declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a period remain unaffected.

## 6. Retention of Title

- 6.1. Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claim) we reserve title to the Goods sold.
- 6.2. The Goods subject to retention of title shall not be pledged to third parties nor be transferred by way of security before full payment of the secured claims. The Buyer shall inform us immediately in writing if and to the extent that an application for the opening of insolvency proceedings is filed or if third parties (e.g. attachments) seize the Goods belonging to us.
- 6.3. If the Buyer acts in breach of contract, in particular if he fails to pay the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the retention of title and the withdrawal. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to merely demand the return of the Goods and to reserve the right to withdraw. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable period for payment without success or if such setting of a period is dispensable according to the statutory provisions.
- 6.4. The Buyer is entitled to resell and / or process the Goods subject to retention of title in the ordinary course of business until revocation according to bellows c). In this case, the following provisions shall apply in addition.

- a. The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our Goods, whereby we are considered the manufacturer. If a third party's right of ownership remains in effect after processing, mixing or combining with goods of said third party, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In other respects, to the resulting product the same applies as to the Goods delivered under reservation of title.
- b. The Buyer hereby assigns to us as security all claims against third parties arising from the resale of the Goods or product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.
- c. In addition to us, the Buyer remains authorised to collect the claim. We undertake not to collect the claim as long as the Buyer fulfils his payment obligations to us, there is no lack of his ability to perform and we do not assert the reservation of title by exercising a right according to paragraph 3. Should this, however, be the case we can demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Buyer's authority to further sell and process the Goods subject to retention of title.
- d. If the feasible value of the securities exceeds our claims by more than 10 %, we will release securities of our choice at the request of the Buyer.

## 7. Buyer's claims for defects

- 7.1. The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including wrong and short delivery as well as improper installation or faulty installation instructions), unless otherwise specified below. In any and all cases, the special statutory regulations remain unaffected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse according to ss. 478 BGB). Claims from supplier recourse are excluded if the defective Goods have been further processed by the Buyer or another Business Customer, e.g. by installation in another product.
- 7.2. The basis of our liability for defects is above all the agreement reached on the quality of the Goods. The product descriptions designated as such, which were provided to the Buyer prior to his order or which were included in the contract in the same way as these CoS, shall be deemed to be the agreement on the quality of the Goods.
- 7.3. If the quality has not been agreed upon, the statutory regulation shall be applied to determine whether a defect is present or not (s. 434 para. 1 sentence 2 and 3 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) which the Buyer has not pointed out to us as being decisive for his purchase.
- 7.4. The Buyer's claims for defects require that he has complied with his statutory obligations to inspect and give notice of defects (ss. 377, 381 HGB). In the case of building materials and other Goods intended for installation or other further processing, an inspection must - in any case - be carried out immediately before processing. If a defect is discovered during the delivery, the inspection or at any later time, we must be notified of this in writing without delay. In any case, apparent defects must be reported in writing within five working days after delivery and defects not detectable during inspection must be reported in writing within the same period from the time of their detection. If the Buyer omits to do the proper inspection and/or notification of defects, our liability for the defect not notified or not notified in time or not properly is excluded according to the statutory provisions.
- 7.5. If the delivered Goods are defective, we may initially chose whether we provide supplementary

performance by eliminating the defect (rectification of defects, “Nachbesserung”) or by delivering a defect-free item (replacement delivery, “Ersatzlieferung”). Our right to refuse supplementary performance under the statutory conditions remains unaffected.

- 7.6. We are entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.
- 7.7. The Buyer shall give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Supplementary performance does not include the removal of the defective item nor the reinstallation if we were not originally obliged to install it.
- 7.8. We bear the expenses necessary for the purpose of testing and supplementary performance, in particular transport, travel, labour and material costs, if a defect actually exists. If, however, the Buyer's request for rectification of defects turns out to be unjustified, we can demand reimbursement of the costs incurred by the Buyer.
- 7.9. In urgent cases, for example if operational safety is endangered or to prevent disproportionate damage, the Buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We are to be informed immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.
- 7.10. If the supplementary performance has failed or a reasonable period to be set by the Buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the Buyer may withdraw from the contract or reduce the price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.
- 7.11. The Buyer's claims for damages or compensation for futile expenses even in the case of defects shall only exist in accordance with cl. 8 of these CoS and shall otherwise be excluded.

## 8. Other liability

- 8.1. Unless otherwise provided for in these CoS including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 8.2. We shall be liable for damages - regardless of the legal grounds - within the scope of liability for culpable intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; minor breach of duty):
  - a. for damages resulting from injury to life, body or health,
  - b. for damages resulting from the violation of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.
- 8.3. If a liability consisting of simple or gross negligence exists in principle on our part, our obligation to pay compensation is limited to a maximum of EUR 3,000,000.00 per claim in cases of personal injuries and material damages or financial losses resulting thereof and to a maximum of EUR 150,000.00 per claim in cases of financial losses. The maximum liability on our part per calendar year - if several cases of damage occur in one calendar year - is limited to a maximum of EUR 6,000,000.00 in cases of personal injuries and material damages in total and to a maximum of EUR 300,000.00 in cases of financial losses.

- 8.4. The limitations of liability resulting from para. 2 shall also apply to breaches of duty by or in favour of persons for whose fault we are responsible for under statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods. The same applies to claims of the Buyer under the German Product Liability Act (“Produkthaftungsgesetz”).
- 8.5. The Buyer may only withdraw or terminate the contract on account of a breach of obligation which does not consist of a defect if we are responsible for the breach of obligation. A free right of termination by the Buyer (in particular in accordance with ss. 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## 9. Time Limitation

- 9.1. Notwithstanding s. 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If Acceptance has been agreed, the limitation period shall commence upon Acceptance.
- 9.2. If, however, the Goods are a building or an object that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material, “Baustoff”), the period of limitation shall be 5 years from delivery in accordance with the statutory regulation (s. 438 para. 1 no. 2 BGB). Other statutory special regulations on the statute of limitations (in particular s. 438 Para. 1 No. 1, Para. 3, ss. 444, 445b BGB) also remain unaffected.
- 9.3. The aforementioned limitation periods of the sales law shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the Goods, unless the application of the regular statutory limitation period (ss. 195, 199 BGB) would lead to a shorter limitation period on a case-by-case basis. However, claims for damages of the Buyer pursuant to cl.8.2 sentence 1 and sentence 2 a) as well as under the Produkthaftungsgesetz shall be subject only to the statutory limitation periods.

## III. General Conditions of Purchase (“CoP”)

### 1. Conclusion of Contract

- 1.1. Our orders shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall notify us of obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed to not have been concluded.
- 1.2. The Seller is obliged to confirm our order in writing within a period of 5 days. A delayed acceptance shall be considered as a new offer and requires our acceptance.

### 2. Delivery period and delivery delay

- 2.1. The delivery time stated by us in the order is binding. The Seller shall inform us immediately in writing if he is expectedly unable to meet the agreed delivery times - for whatever reason.
- 2.2. If the Seller does not render his performance or does not render it within the agreed delivery period or if he is in default, our rights - in particular to withdraw from the contract and claim damages - shall be determined in accordance with the statutory provisions. The regulations in paragraph 3 remain unaffected
- 2.3. If the Seller is in default, we may demand a contractual penalty of 1% of the net price per completed calendar week, but not more than 5% of the net price of the Goods delivered late. We shall be entitled to demand the contractual penalty in addition to performance and as a minimum amount of damages owed by the Seller in accordance with the statutory provisions; this shall not

affect the right to claim further damages. If we accept the delayed performance, we must claim the contractual penalty at the latest with the final payment.

### 3. Deliveries, transfer of risk, Acceptance („Abnahme“) and Default of Acceptance („Annahmeverzug“)

- 3.1. Without our prior written consent, the Seller shall not be entitled to have the performance (“Leistung”) owed by him rendered by third parties (e.g. subcontractors). The Seller shall bear the procurement risk (“Beschaffungsrisiko”) for his performances, unless the Goods are custom-made.
- 3.2. Delivery shall be made within Germany "free domicile" to the place specified in the order. If the place of destination is not specified and unless otherwise agreed, delivery shall be made to our registered office in Alsdorf. The respective place of destination (“Bestimmungsort”) is also the place of performance (“Erfüllungsort”; obligation to be performed at the place of delivery, “Bringschuld”).
- 3.3. The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (item number and quantity) and our order identifier (date and number). If the delivery note is missing or incomplete, we are not responsible for any delays in processing and payment resulting from this.
- 3.4. The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon Handover (“Übergabe”) at the place of performance. If Acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work (“Werkvertrag”) shall also apply accordingly in the case of Acceptance. If we are in Default of Acceptance, this shall be deemed equivalent to Handover or Acceptance.
- 3.5. The statutory provisions shall apply to the occurrence of our Default of Acceptance. However, the Seller must also expressly offer us his performance if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in Default of Acceptance, the Seller can demand compensation for his additional expenses in accordance with the statutory provisions (s. 304 BGB). If the contract concerns a non-fungible item to be manufactured by the Seller (custom-made product), the Seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

### 4. Prices and Payment

- 4.1. The purchase price stated in the order is binding. All purchase prices include statutory VAT, unless this is shown separately.
- 4.2. Unless otherwise agreed on a case-by-case basis, the purchase price shall include all services and ancillary services provided by Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance). The Seller shall take back packaging material at our request.
- 4.3. The agreed purchase price is due for payment within 30 calendar days from complete delivery and performance (including any agreed Acceptance, the certificates and documentation, if necessary) and receipt of a proper invoice. If we arrange for payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice.
- 4.4. In the case of bank transfer, payment shall be deemed to have been made on time if our bank receives our transfer order before the expiry of the payment period; we shall not be responsible for delays caused by the banks involved in the payment process.
- 4.5. We do not owe any interest on maturity (“Fälligkeitszinsen”). The Seller's claim for payment of default interest remains unaffected. The statutory provisions shall apply to the occurrence of our default. In any case, however, a formal reminder from the Seller is required.

- 4.6. We are entitled to the rights of set-off and retention as well as the defence of non-performance of the contract (“Einrede des nicht erfüllten Vertrages”) to the extent permitted by statutory provisions. In particular, we shall be entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective performance against the Seller.
- 4.7. The Seller has a right of set-off or retention only in the case of counterclaims which have become a final and absolute adjudicated claim or are undisputed.

## 5. Confidentiality and Retention of Title

- 5.1. We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents shall be kept secret from third parties, even after termination of the contract. The obligation of confidentiality shall not expire until and only insofar as the knowledge contained in the documents provided has become generally known.
- 5.2. The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such items shall - as long as they are not processed - be stored separately at the Seller's expense and insured to the usual extent against destruction and loss.
- 5.3. Any processing, mixing or combination (“further processing”, “Weiterverarbeitung”) of provided items by the Seller shall be carried out for us. The same shall apply if the Goods supplied are further processed by us, so that we shall be deemed to be the manufacturer and shall acquire title to the product at the latest upon further processing in accordance with the statutory provisions.
- 5.4. The transfer of ownership of the Goods to us must take place unconditionally and without regard to the payment of the purchase price. If, however, we accept on a case-by-case basis an offer of transfer of title conditional upon payment of the purchase price from the Seller, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the delivered Goods. In the ordinary course of business, we shall remain entitled to resell the Goods even before payment of the purchase price and to assign the resulting claim (alternative application of the simple reservation of title extended to resale). With this, at least excluded are all other forms of retention of title, in particular the extended, the forwarded and the extended retention of title for further processing.

## 6. Claims for defects

- 6.1. The statutory provisions shall apply to our rights in the event of material defects and defects of title of the Goods (including incorrect and short delivery (“Falsch- und Minderlieferung”)) as well as improper assembly (“unsachgemäße Montage”), defective assembly (“mangelhafte Montage”), user or operating instructions (“Betriebs- oder Bedienungsanleitung”) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.
- 6.2. In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality (“vereinbarte Beschaffenheit”) at the time of transfer of risk (“Gefahrübergang”) to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or which have been included in the contract in the same way as these CoP shall be deemed to be an agreement on quality. It makes no difference whether the product description originates from us, the Seller or the manufacturer
- 6.3. Notwithstanding s. 442 para. 1 sentence 2 German Civil Code (“BGB”), we shall be entitled to claims for defects without restriction even if the defect remained unknown to us at the time of

conclusion of the contract due to gross negligence.

- 6.4. The statutory provisions (ss. 377, 381 German Commercial Code "HGB") shall apply to the commercial duty to inspect and give notice of defects, subject to the following provisions: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under external appraisal including the delivery documents and during our quality control by random sampling (e.g. transport damage, wrong and short delivery). Insofar as Acceptance has been agreed, there is no obligation to inspect. In other respects, it depends on the extent to which an inspection is feasible in the normal course of business, taking into account the circumstances of the individual case.
- 6.5. Our obligation to give notice of defects discovered later remains unaffected. In all cases, our complaint (notification of defects) shall be deemed to be immediate and timely if it is received by the Seller within 5 working days.
- 6.6. Supplementary performance shall also include the removal of the defective Goods and their reinstallation, provided that the Goods have been installed in or attached to another item in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and supplementary performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the removal of defects shall remain unaffected; however, in this respect we shall only be liable if we have recognised or grossly negligently failed to recognise that there was no defect.
- 6.7. Notwithstanding our statutory rights and the provisions in the above clause 6, the following shall apply: If the Seller fails to fulfil his obligation to provide supplementary performance - at our discretion either by rectifying the defect ("Nachbesserung") or by delivering a defect-free item (replacement delivery, "Ersatzlieferung") - within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and to demand from the Seller reimbursement of the necessary expenses or a corresponding advance payment. If the supplementary performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no period need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.
- 6.8. Otherwise, in the event of a material defect or defect of title, we are entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

## 7. Supplier regress

- 7.1. We are entitled without restriction to our statutorily determined rights of recourse within a supply chain (supplier recourse according to ss. 445a, 445b, 478 BGB) in addition to the claims for defects. In particular, we are entitled to demand from the Seller exactly the type of supplementary performance (rectifying the defect or replacement delivery) that we owe to our customer in the specific case. Our statutory right of choice (s. 439 para. 1 BGB) is not restricted by this.
- 7.2. Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with ss. 445a para. 1, 439 para. 2 and 3 BGB), we will notify the Seller and giving a brief description of the facts request a written statement. If a substantiated statement is not made within a reasonable period and no amicable solution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our customer; in this case, the Seller shall be responsible for providing proof to the contrary.
- 7.3. Our claims from supplier regress also apply if the defective Goods have been further processed by us or another company, e.g. by installation in another product.

## 8. Manufacturer Liability

- 8.1. If the Seller is responsible for a product damage, he shall indemnify us from third party claims to the extent that the cause lies within his sphere of control and organisation and he himself is liable in the external relationship.
- 8.2. Within the scope of his indemnity obligation ("Freistellungsverpflichtung"), the Seller shall reimburse expenses pursuant to ss. 683, 670 BGB which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the Seller - as far as possible and reasonable - about the content and scope of recall measures and give him the opportunity to comment. Further legal claims shall remain unaffected.
- 8.3. The Seller shall take out and maintain a product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/material damage.

## 9. Time Limitation

- 9.1. The mutual claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- 9.2. Notwithstanding s. 438 para. 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If Acceptance has been agreed, the limitation period shall commence upon Acceptance. The 3-year limitation period shall apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims for restitution in rem of third parties (s. 438 para. 1 No. 1 BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right - in particular in the absence of a time limitation - against us.
- 9.3. The limitation periods of the sales law including the above extension apply - to the statutory extent - to all contractual claims for defects. Insofar as we are additionally entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (ss. 195, 199 BGB) shall apply here, unless the application of the limitation periods of the sales law leads to a longer limitation period in individual cases.