



GENERAL TERMS AND CONDITIONS

ON DELIVERIES AND PERFORMANCES

of
Julius Pfisterer GmbH & Co. KG
Gewerbestraße 26
75217 Birkenfeld-Gräfenhausen

As of July 2018

1. Scope of Applicability

Our **GENERAL TERMS AND CONDITIONS** underlie the

- ◆ sales contracts that are concluded with us pursuant to Sections 433, 650 (§§ 433, 650 BGB) of the German Civil Code. The performance of our obligations pursuant to the contract is hereinafter referred to as "**Delivery**".
- ◆ contracts to produce a work ("Werkverträge") that are concluded with us pursuant to Sections 631 et seq. of the German Civil Code (§§ 631 ff. BGB). The performance of our obligations pursuant to the contract is hereinafter referred to as "**Performances**".

Our **GENERAL TERMS AND CONDITIONS** shall apply exclusively. Insofar as provisions are not included in our **GENERAL TERMS AND CONDITIONS**, statutory law shall apply. We object herewith to conditions referred to by Customer that are inconsistent with or supplementary to our **GENERAL TERMS AND CONDITIONS**. Customer's conditions shall apply only in case and to the extent that we consent thereto expressly and in written form. Our **GENERAL TERMS AND CONDITIONS** shall apply even if we have notice of Customer's inconsistent or supplementary conditions while we are performing our **Deliveries** or **Performances** and do not express any objection hereto.

- 1.1. Our **GENERAL TERMS AND CONDITIONS** shall also apply to any future business transactions with Customer.
- 1.2. Our **GENERAL TERMS AND CONDITIONS** shall only apply with respect to entrepreneurs, legal entities under public law and public utility funds as defined by Section 310 para. 1 of the German Civil Code (§ 310 Abs. 1 BGB).

2. Offers and Cost Estimates, Subsequent Changes of Contract, Reservation of Being Supplied

- 2.1. Our offers and cost estimates are subject to change without notice and non-binding, unless expressly declared as binding.
- 2.2. We reserve all rights and titles to any bidding or contractual documents left to Customer (in particular to any drafts, drawings, illustrations, samples, models or prototypes), unless Customer is entitled to such rights according to the purpose of the contract or by explicit agreement. Bidding documents as well as samples, models and prototypes shall be handed back to us immediately upon our request, if no order is placed with us. Customer shall have no right of retention insofar.
- 2.3. We may grant access to Customer's documents to third parties to whom we permissibly delegated **Deliveries** and **Performances**.
- 2.4. We reserve the right to amend the **Deliveries** and **Performances** in the following manner even after

conclusion of contract, if this is not unreasonable to Customer:

- ◆ changes in products in the course of permanent product advancement and product improvement;
- ◆ minor and insignificant variations relating to colour, form, design, measures, weights or quantities;
- ◆ deviations customary in trade.

2.5. When placing the order, Customer shall undertake to notify us if his specifications or requested standards may under no circumstances be deviated from.

2.6. As far as reasonable and within our capacities, we endeavour to meet any requests for modifications to such **Deliveries** and/or **Performances** forming the object of the contract which Customer may have after conclusion of the contract.

As far as the examination of such requests or their execution may have an effect on the conditions of the contract, in particular regarding remuneration, stipulated time limits etc., accordant adjustment of the contract shall be made in writing immediately. We may claim a reasonable additional remuneration for the period of interruption resulting from the agreement on the adjustment of the contractual provisions, following the hourly rates of those of our employees who could not be assigned elsewhere due to the interruption.

Additionally, we may also claim a reasonable remuneration for any necessary examination as to whether and what terms the modification requested is feasible provided that we give notice of the necessary examination to Customer and Customer commissions such examination.

2.7. Any liability for damages according to Section 122 of the German Civil Code (§ 122 BGB) requires fault attributable to us.

2.8. The conclusion of the contract is conditioned on the correct and timely **Delivery** to ourselves by our suppliers. This shall apply only in case that we are not responsible for the lack of **Delivery**, especially upon conclusion of congruent covering transaction.

Customer shall be immediately informed of the unavailability of **Deliveries** and **Performances**. The consideration shall be immediately returned.

3. Prices, Terms of Payment, Reservation of Supplementary Performance

- 3.1. We reserve the right to adequately increase our prices, if, subsequent to the conclusion of the contract, cost increases occur which are beyond our responsibility, in particular due to changes in raw material prices or due to mandatory trade union wage agreements. We shall submit evidence for such occurrences to Customer upon his request.
- 3.2. Unless otherwise agreed upon, our prices are quoted net **ex works** and do not include postage, freight, packaging, customs, insurance nor costs for setting up or assembly. The statutorily prescribed VAT shall be charged separately.
- 3.3. Payments shall be effected free domicile within 30 days after date of invoice. Only in case of payment within 8 day after date of invoice, a discount of 2% shall be granted.
If Customer fails to pay within 30 days from the date of the respective invoice, he shall be deemed to be in delay in payment without any further notices or reminders from us. As for the legal consequences of such delay in payment, the respective statutory provisions shall apply.
- 3.4. In case of deferment we shall be entitled to charge interest for the term of deferment according to the statutory default interest rate.
- 3.5. We are entitled to require reasonable upfront payments from Customer, including statutory VAT, if based on justified reason and if no prevailing interests of Customer are affected. We are entitled to require reasonable down payments from Customer including statutory VAT, as far as such down payment is not considerably higher than the value increase achieved by Customer due to our performance in accordance with the agreements.
- 3.6. Bills of exchange and checks shall only be accepted in lieu of payment; bills of exchange shall only be accepted subject to prior written agreement. Any discount charges, expenses as well as any other costs in connection with the collection of either checks or bills of exchange shall be borne by Customer and shall be due for payment immediately. Debts shall only be deemed discharged upon encashment of the check or the bill of exchange and when we have been released from any liability under that check or bill of exchange.
- 3.7. Customer may set off only such claims as are legally established, undisputed, or acknowledged. Customer may plead the right of retention to fulfil an obligation under the contract only if his claim against us results from the same contractual relationship as his obligation.
- 3.8. In case of our delivery being non- conforming with the agreements, Customer may exercise a right of retention, as far as the retained amount is reasonably commensurate to the non-conformity (especially but without limitation any defects). Customer shall not be entitled to assert any claims and rights for non-conformity if Customer did not effect the payments due and if the amount due but unpaid is reasonably commensurate to the value of the — non-conforming — **Deliveries or Services**.

4. Package, Date of Delivery or Performance, Non-Performance beyond our Responsibility, Delay in Delivery or Performance, Impossibility of Delivery or Performance, Delay in Taking Delivery, Breach of Duty to Cooperate

- 4.1. Unless otherwise agreed, Delivery shall generally be effected “ex works” without package. Even if we agreed to pack the goods, we do not take back any packing material within the meaning of the German Regulation on Packaging (Verpackungsverordnung); pallets and exchange packing material are exempted from this. Customer shall dispose the packing material at his own costs.
- 4.2. Dates of **Delivery or Performance** indicated by us are fixed dates only if they are expressly stipulated to be fixed.
- 4.3. Pre-conditions of compliance with Dates of **Delivery or Performance** are
 - ♦ Customer, correctly and in due time, observing all and any of his obligations to co-operate, especially the submission of documents and information to be provided by Customer;
 - ♦ the clarification of all technical details with Customer; especially the determination of inspection methods in case of agreement on specific inspection parameters;
 - ♦ the receipt of down payments, securities, bank guarantees or the opening of a Letter of Credit, respectively, if so agreed upon;
 - ♦ the receipt of administrative approvals or licenses that may be necessary.We reserve the right to plead non-performance of the contract by Customer.
- 4.4. For the observance of the delivery period, the point of time shall be decisive at which the **Deliveries or Performances** are effected “ex works”.
- 4.5. **Delays in our Delivery beyond our Responsibility**
 - 4.5.1. We shall not be responsible for delays in **Delivery of Performance** due to the following impediments to **Delivery and Performance** – unless, exceptionally, expressly with respect to meeting the deadline or date, the risk of procurement was assumed or a guarantee was provided; the same shall apply if such impediments occur to our suppliers or their sub-suppliers: Incidents of force majeure as well as impediments to **Delivery and Performance**
 - ♦ which occur after conclusion of the contract and which we learn about only after conclusion of the contract for no fault attributable to us, and
 - ♦ with regard to which we prove that they could not have been foreseen and avoided by us even with reasonable care, and with regard to which we have no obligation to bear the risk of their occurrence or to avert or to prevent their occurrence.Provided that the above conditions are fulfilled – i.e. occurrence or faultless learning of such circumstances only after conclusion of the contract, unforeseeable and unavoidable occurrence to be proven by us – the above exclusion of responsibility shall in particular, but without limitation, apply to the following circumstances:

Legitimate labour struggle (strikes and lock-outs); operating troubles and breakdowns; shortage in or lack of raw material; shortage in or lack of operating supply items.

4.5.2. In the event of delay in **Delivery** under cl. 4.5.1. above, any claims for damages of Customer are excluded.

4.5.3. In the event of a definite impediment to **Delivery** or **Performance** within the meaning of cl. 4.5.1. above, either party shall be entitled to immediately rescind the contract in accordance with the statutory provisions.

4.5.4. In the event of a temporary impediment to **Delivery** within the meaning of cl. 4.5.1. above, we shall be entitled to postpone **Delivery** for as long as the impediment may last. This period of postponement shall also include a reasonable start-up time. If we can prove an unacceptable impediment to **Delivery**, we shall have the right to rescind the contract. Customer, however, shall have the right to rescission only under the conditions laid down in cl. 4.7. below.

4.6. **Delays in Delivery or Performance within the Scope of our Responsibility**

If a higher degree of liability (especially a liability regardless of fault) or a lower degree of liability can neither be determined nor inferred from the other content of the contract, we shall be liable for damage caused by delay due to intentional or negligent breach of obligations as follows:

4.6.1. In case of intent we shall be liable according to the statutory provisions.

4.6.2. We are liable for damage caused by delay according to the statutory provisions; our liability for such damages, however, is limited to the foreseeable damage, typically arising under contract:

- ◆ in case of gross negligence on the part of our legal representatives, executive employees and other vicarious agents;
- ◆ in case of slight (i.e. non-gross) negligence on the part of our legal representatives, executive employees and / or other vicarious agents, if they breach essential contractual obligations (cf. definition in cl. 8.8.2. below). This is in particular the case if the existing contract is a transaction where time is of the essence ("Fixgeschäft") or if Customer may assert that his interest in the performance of the contract has ceased to exist due to delay in **Delivery** or **Performance** for which we are responsible.

4.6.3. In other cases of slight liability, our liability for delay in **Delivery** or **Performance** shall be limited to an aggregate compensation for delay to 0.5 percent (0.5%) of the net invoice amount of the delayed **Delivery** or **Performance** for each full week of delay in **Delivery** or **Performance**, but in no event such compensation for delay shall exceed five percent (5%) of the value of the net invoice amount of the delayed **Delivery** or **Performance**.

Further claims and rights of Customer remain reserved.

4.7. **Customers Right to rescind the Contract in case of delay in Delivery or Performance**

If we prove that we are not responsible for any delay, Customer shall be entitled to rescind the contract only

- ◆ if Customer has stipulated that his continuing interest in our **Delivery** or **Performance** shall depend upon a timely **Delivery** or **Performance** by us (time is of the essence – "Fixgeschäft") or

- ◆ if Customer proves that, as a consequence of the delay, his interest in our performance of the contract has ceased to exist or that the maintenance of the contractual relationship cannot reasonably be expected from him.

Otherwise, section 323 paras. 4 to 6 of the German Civil Code (§ 323 Abs. 4-6 BGB) shall apply. As for the legal consequences of the rescission, the statutory provisions Sections 346 et seq. of the German Civil Code (§§ 346 et seq. BGB) shall apply; Customer may reclaim performances which are not owed by him.

The statutory rights to terminate a contract to produce a work ("Werkvertrag") shall remain unaffected.

4.8. If our **Delivery** or **Performance** becomes impossible we shall be liable in accordance with the statutory provisions, however with a limitation as follows:

If no intent or gross negligence is attributable to us, to our legal representatives or to our agents, our liability for damages and for compensation of expenses shall be limited to twenty percent (20%) of the net invoice amount of our **Delivery** or **Performance**; however, in case of gross negligence our liability shall be limited to the foreseeable damage specific to the type of contract. This limitation of liability shall not apply, if we exceptionally assumed the risk of providing the product in any event (procurement risk).

Customer's statutory right to rescind the contract in case of impossibility of our Delivery or Performances shall remain unaffected.

4.9. We are entitled to partial **Delivery** or **Performance**, if and as far as Customer reasonably may be expected to accept this.

4.10. If Customer is in default in taking **Deliveries** or in accepting **Performances** at the place of performance or in collecting goods or in requesting **Delivery** of goods ordered – also with regard to possible partial **Deliveries** – or if **Delivery** is delayed in any other way due to circumstances for which Customer is responsible or if Customer negligently breaches any other duty to cooperate, we shall be entitled to claim compensation of any damages caused insofar including compensation of any additional expenses without prejudice to our further statutory rights. Any further claims shall remain unaffected.

5. **Passing of Risk, Insurance**

5.1. In case the law on contracts for sale of goods ("Kaufrecht") is applicable to our **Delivery** or **Performance** the risk of accidental loss, destruction or deterioration of any goods shall pass to Customer as soon as the goods have been delivered to the person or institution designated to pick up or execute the delivery, no later, however, than when the goods leave our company. **This shall also apply if, in accordance with specific agreements to this effect, we effect Delivery by using our own vehicles, or if Delivery is effected freight**

and packaging paid, and also if we agreed to perform assembly, setting-up or other performances at Customer's premises.

- 5.2. If Customer is in default in taking **Deliveries** or in accepting Performances or in collecting goods or in requesting goods or if **Deliveries** or **Performances** are delayed in any other way due to circumstances for which Customer is responsible, the risk of accidental loss, destruction, or deterioration of the goods shall pass to Customer at the moment that he is in default, or at the moment when **Delivery** or Performances could have been effected if Customer's conduct had been in accordance with his contractual obligations.
- 5.3. Upon Customer's request and at his expense, any **Deliveries** will be insured by us against theft, damage by breakage, by reason of fire, by water, or in transit, as well as against any other insurable risk from the time of the passing of risk.
- 5.4. If, under special agreement with the Customer, we are obligated to organise transport, or if a transport occurs as part of our Delivery or Performance (e.g. transport to galvanisation), we shall be entitled to choose category and means of transport at our discretion and to choose the forwarder/carrier ourselves. Additional costs incurred due to different instructions from Customer shall be borne by Customer. Such instructions shall be communicated sufficiently in advance of transport. In case of damage or loss of the **Delivery** during transport, Customer shall appraise the **Delivery** immediately and inform us in writing about the result.

6. Retention of Ownership

- 6.1. We retain ownership of all goods delivered by us until we receive full payment of any outstanding amounts originating from the business relation with Customer ("Reserved Goods"). In case we grant open account credit terms to Customer, the retained ownership shall also be extended to the confirmed balance with regard to Customer's current account payable to us (Current Account Reservation) until all current liabilities have been discharged. In case of Customer's breach of contract, especially in case of his default of payment, we shall be take back the Reserved Goods. The taking back of the Reserved Goods is deemed a rescission of the contract. After taking back of the Reserved Goods, we are entitled to their realisation; the proceeds from the realisation shall be credited against Customer's liabilities less adequate realisation costs.
- 6.2. Customer shall have the right to resell or use any Reserved Goods in the ordinary course of business; however, by now, he shall assign to us – to the amount of the invoice total (including VAT) – any and all claims that he may have against his customers or against third parties as a result of the resale or the use. If Customer grants open account credit terms to his customers and any claims resulting from a resale of Reserved Goods are entered into this current account, the current account claim shall be assigned to us to the amount of the confirmed balance; the same shall apply to the actual balance if Customer becomes insolvent. Customer shall remain entitled to collect the claims even after their

assignment to us. Subject to the statutory insolvency provisions, our right to collect claims ourselves shall remain unaffected; however we undertake not to collect any payments for as long as Customer himself duly meets his contractual obligations, in particular for as long as Customer is not in default of payment and insolvency proceedings are not filed for and if he does not suspend payment in general. Under this right of resale, Customer shall not be entitled to pledge or transfer by way of security any of the Reserved Goods.

- 6.3. If our obligation under cl. 6.2., not to collect claims ourselves, ceases to exist, we shall have the right – subject to the statutory insolvency provisions –
- ♦ to withdraw Customer's right to resale and to take back and realise the Reserved Goods acc. to cl. 6.1. and / or
 - ♦ to withdraw Customer's authority to collect claims and to demand that Customer discloses to us the claims assigned and the respective debtors (third parties), furnishes us with any and all particulars necessary for direct debit, hands over to us the corresponding documents and notifies the debtors of the assignment.
- 6.4. In case of damage to or loss of the Reserved Goods as well as in case of a change of possession or of residence, Customer shall immediately notify us thereof in writing; the same shall apply in case execution is levied upon the Reserved Goods by a third party or in case of any other interference by a third party so that we are in a position to bring a third party motion to vacate (under a party Section 771 of the German Code of Civil Procedure (§ 771 ZPO) or, if applicable, respective foreign law). If such third party is in no position to reimburse the judicial and extra-judicial costs incurred by us under third party motion to vacate, Customer shall be liable for the costs incurred by us. If the release of the Reserved Goods is achieved without legal proceedings, costs hereby incurred may also be charged to Customer, costs for regaining pledged Reserved Goods shall be included herein.
- 6.5. Any of Customer's processing or transformation of Reserved Goods delivered by us shall always be deemed to be on our behalf only. If Reserved Goods are processed together with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the joint property being defined by the ratio of the value of the Reserved Goods (invoice total plus VAT) to the value of the other goods processed or transformed, such value being assessed at the time of their processing or transformation. Furthermore, any provisions herein which apply to the Reserved Goods shall also apply to the product of such processing or transformation. With respect to the product of such processing or transformation, Customer shall acquire expectant rights corresponding to his expectant rights to the Reserved Goods.
- 6.6. If Reserved Goods are inseparably mixed or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the

joint property being defined by the ratio of the value of the Reserved Goods (invoice total plus VAT) to the value of the other goods which have been mixed or combined, such value being assessed at the time of their mixing or combining. If the mixing or combining of the goods has been done in such a way that Customer's goods are to be considered the main product it is deemed agreed that Customer assigns to us co-ownership of such product on a pro rata basis. Customer shall keep such property which is either owned by us solely or owned jointly with another person properly stored on our behalf.

- 6.7. If our Reserved Goods are resold after having been processed or transformed in any way, Customer shall assign to us as security already as per now any claims resulting from such resale to the amount of the invoice total (including VAT) of our claims.

If, on account of the processing or transformation of Reserved Goods with other goods which are the property of any person other than us or if on account of their mixing or combining with such other goods, we have only acquired co-ownership pursuant to the above clauses 6.5. or 6.6, Customer's claim for the purchase price shall only be assigned to us in advance in the proportion of the total amount charged by us for the Reserved Goods plus VAT to the invoice totals of the other goods which are not our property.

In addition, provisions as laid down in cls. 6.2. to 6.4. above shall apply mutatis mutandis to claims assigned to us in advance.

- 6.8. If under the laws of a foreign country within the borders of which the Reserved Goods are located, a reservation of ownership or an assignment is not legally effective, the security provision which in this jurisdiction corresponds to a reservation of ownership or an assignment shall be deemed agreed upon.

If Customer's assistance is required in order to create such rights, Customer shall be obligated at our request to take all measures necessary in order to constitute and maintain such rights.

- 6.9. Customer shall treat our Reserved Goods properly and keep them in good repair; in particular, Customer shall at his expense sufficiently insure our Reserved Goods against theft, robbery, burglary, fire, and water damage. By now, Customer shall assign to us any and all rights resulting from such insurance and relating to the Reserved Goods. We herewith accept such assignment. Furthermore, we reserve all rights to assert our claims for performance and claims for damages, respectively.

- 6.10. We undertake to release, upon Customer's request, the securities we are entitled to if the value of such securities exceeds the value of our claims to be secured by more than ten percent (10%). We shall have the right to select the securities to be released at our discretion.

7. Acceptance, Termination

- 7.1. In case the law on contracts to produce a work ("Werkvertragsrecht") is applicable to our **Delivery** or **Performance**, Customer shall be obligated, at our choice, to pre-acceptance at our site and/or written acceptance at his site, as soon as he is given notice of the completion of the object of Delivery, or, if **agreed** upon, of the ready-

for-use assembly, or as soon as a testing, if **agreed** upon, will have taken place.

The acceptance may not be denied because of insignificant defects. The acceptance is deemed accomplished, if we have set a reasonable delay for acceptance to the Customer after finalization of the work and Customer has not refused acceptance within that delay by giving notice of not less than one defect of the work.

- 7.2. Upon acceptance, our liability for obvious defects ceases, to the extent Customer has not reserved the assertion of his rights resulting therefrom at the time of the acceptance.

- 7.3. In case a testing is agreed upon, Customer shall be obligated to test the functioning of the object of **Delivery** for the stipulated time. Those tests must include, beyond the functioning, also, if applicable, a safety-related examination in order to comply with the provisions applicable to the respective industry sector (e.g. VDE, Machine Protection Act).

- 7.4. We may also demand partial acceptances to the extent no sensible reasons are opposed thereto and it is acceptable to Customer.

- 7.5. In case the law on contracts to produce a work ("Werkvertragsrecht") is applicable to our **Delivery** or **Performance**, we shall be entitled to terminate for cause in accordance with statutory provisions. Our right to claim compensation of damage shall not be excluded by such termination.

8. Specifications, Warranty

- 8.1. **The requirements contained in our specifications exhaustively and conclusively define the quality of our Deliveries and Performances. But for stipulations to the contrary, these specifications shall only constitute stipulations about the quality and not guarantees or covenants. In case of doubt, statements from our part in the context of the contract do not constitute guarantees or covenants in terms of an aggravation of liability or the assumption of a special obligation to meet claims. With respect to guarantees or covenants, in case of doubt, only explicit written statements from our part shall be applicable.**

- 8.2. We assume no liability for any damages due to the following reasons: inappropriate use or operation, faulty assembly by Customer or third parties, common wear and tear, faulty or negligent handling, use of inappropriate operation supply item, faulty construction works, inappropriate building grounds, substitute material, chemical, electrochemical or electric influences (unless we are responsible for those), inappropriate alterations or repair works carried out by Customer or third parties without our prior consent.

- 8.3. Customer shall not have any warranty claims in case of only insignificant deviations from the quality agreed upon or in case of only insignificant impediments to the use of the **Delivery** or of the **Performance**.

- 8.4. Customer may only assert warranty claims if he has duly observed his duties to examine the **Deliveries** and to give notice of any defects in accordance with Section 377 of the German Commercial Code (§ 377 HGB). We shall then

notify Customer without delay whether the **Delivery** which is subject to a complaint or parts hereof shall be returned to us or whether Customer shall wait until the **Delivery** is either collected by us at his site or is inspected by us on site. If we request return to us, Customer shall use the same means of transportation as we did when shipping the goods.

- 8.5. In case of a defect of the product, we shall be entitled to supplementary performance (“Nacherfüllung”), at our option, either by remedying the defect or by delivering a substitute product without defects. Should one or both of these two types of supplementary performance be impossible or unreasonable, we shall be entitled to refuse it or them, respectively.

We may also refuse supplementary performance, as long as Customer fails to fulfil his payment obligations vis-à-vis us to an extent commensurate with the non-defective portion of our **Delivery**.

We shall bear all expenses necessary for the purpose of supplementary performance, especially costs for transportation of man and material, working and material costs. If the Customer, in accordance with the type and the purpose of use of the product, has integrated in another object or has affixed the product to another object, we shall be obligated as part of our obligation of substitute performance to compensate any expense of Customer necessary for the removal of the defective and the integration resp. fitting of the substituted or repaired product. This obligation shall not apply as far as those expenses are increased due to the fact that the defective product was moved to different place than the place of performance, unless such moving to a different place was necessary for the presupposed use of the product.

We shall be entitled to remedy defects by third parties on our behalf. Replaced parts shall become our property.

Customer shall be obligated to collaborate to a reasonable extend in the substitute performance (Nacherfüllung), against reimbursement of costs and in accordance with our instructions.

Only in urgent cases, e.g. if there is a risk of excessive damage or danger to operation safety, shall Customer be entitled to perform substitute performance (Nacherfüllung) himself or through third parties. Customer shall inform us immediately and ask for our consent to that. Such consent may be dispensable only, if we can not be reached in time.

- 8.6. In case of impossibility or failure of supplementary performance, of delay by our fault, unreasonable delay or our serious and definite refusal of supplementary performance, or unreasonableness of supplementary performance for Customer, the latter shall be entitled, at his option, to either commensurately reduce the purchase price (“Minderung”) or to rescind the contract (“Rücktritt”).

- 8.7. As far as, with regard to the preconditions and consequences of supplementary performance, price reduction, and rescission, these **GENERAL TERMS AND CONDITIONS** do not contain any provisions at all or do not contain provisions deviating from statutory law, the provisions of statutory law shall apply with respect

thereto. Regarding the Customer’s recourse against us due to expenses made in connection with defective new products, the statutory provisions shall apply.

- 8.8. Customer’s claims for damages and reimbursement of expenses in connection with defects shall be governed – regardless of the legal nature of the claim – by the following provisions of cls. 8.8.1. to 8.8.4 inclusively; the aforementioned provisions shall apply especially also with respect to warranty claims, claims for breach of obligations, and claims in tort.

- 8.8.1. We shall be unlimitedly liable – pursuant to the applicable provisions of statutory law – for damage in case of:

- ♦ intent;
- ♦ culpable infringement of life, body or health;
- ♦ defects and other facts that have been fraudulently concealed; or
- ♦ defects whose absence has been guaranteed, or insofar as the quality of goods has been guaranteed.

- 8.8.2. Moreover, we are liable for damages pursuant to the provisions of statutory law. With the exception of cases stipulated in cl. 8.8.1. above, our liability for damages on the basis of statutory law is, however, limited to the foreseeable damage typically arising under contract in the following cases:

- ♦ gross negligence on the part of our legal representatives, executive employees, and other vicarious agents; and
- ♦ slight (i.e. non-gross) negligence on the part of our legal representatives, executive employees, and other vicarious agents – provided that any of the latter commit a breach of essential contractual obligations (i.e. obligations whose performance makes the proper implementation of the contract only possible at all and in whose observance the co-contractor may regularly trust).

- 8.8.3. Any liability that applies to our enterprise by virtue of mandatory law, especially the liability according to the German Products Liability Act (“Produkthaftungsgesetz”), remains unaffected.

- 8.8.4. Any further claims are excluded unless otherwise provided for in this cl. 8.8.

9. Liability for Collateral Duties

If, due to our fault or due to the fault of our legal representatives or agents, the product delivered cannot be used as contractually intended as a consequence of a lack or deficiency of advice or information rendered prior to the conclusion of the contract or as a consequence of lack or deficiency other collateral duties (especially instructions for use and maintenance of the product), the provisions of cl. 8.8. above shall apply accordingly excluding any further claims of Customer.

10. Conformity with applicable law, Regulations and Rules by our Enterprise, Compliance

- 10.1. Guarantees, obligations, confirmations and declarations required by Customer with regard to our Compliance with national or foreign public law, regulations and rules by our enterprise, including but not limited to criminal law, anti-corruption law, competition law, environmental law, human rights, security of working and minimum wages, shall only constitute a contractual obligation vis-à-vis

Customer if we have explicitly agreed to them in writing. The same shall apply with regard to any conformity requested by Customer with non-statutory standards by our enterprise.

If we breach the public law rules applicable to our enterprise, our Customer shall have only the recourse that is statutorily provided against us, unless we have previously explicitly agreed in writing otherwise. This shall especially apply to rights of termination or rescission, liquidated damages, claim for damage compensation, compensation of expenses and obligations to hold free and harmless. In case of non-binding standards, Customer shall only be entitled to assert claims that previously have been explicitly agreed upon in writing.

- 10.2. Any controlling and audit rights of Customer with the purpose of auditing our compliance in connection with the areas mentioned in cl. 10.1 above (breaches against compliance) shall be permissible only on the basis of written explicit agreement. The same shall apply in connection with any obligations of notification and information in this respect.
- 10.3. We shall not be liable for any breaches of compliance by third parties, especially, but without limitation, our sub-suppliers, unless such liability has been previously agreed to explicitly in writing.

11. Aggregate Liability, Rescission of Contract by Customer

- 11.1. The following provisions apply to Customer's claims other than warranty claims. These provisions shall neither constitute a limitation nor a waiver of our statutory or contractual rights and claims.
- 11.2. Any liability for damages shall be governed analogously by the provisions in cl. 8.8. above – except for the liability for damages due to delay in **Delivery** as provided for in cl. 4.6. above as well as impossibility of **Delivery** as provided for in cl. 4.8 above. As far as a statutory liability applies the foreseeable damage typically arising shall apply and not the damage typically arising under contract. Any further liability for damages shall be excluded – regardless of the legal nature of such liability. This shall apply in particular to claims for damages in addition to performance and claims for damages in lieu of performance for breach of obligations, as well as to claims in tort for compensation of damage to property under Section 823 of the German Civil Code (§ 823 BGB).
- 11.3. The limitation contained in cl. 11.2. above does also apply if Customer claims compensation of expenses incurred.
- 11.4. Any fault of our legal representatives and vicarious agents may be attributed to us.
- 11.5. The statutory rules on the burden of proof remain unaffected.
- 11.6. As far as our liability is excluded or limited, such exclusion or limitation does also apply to the personal liability of our staff, employees, legal representatives and vicarious agents.
- 11.7. Customer shall be entitled to rescind the contract, subject to the applicable statutory provisions, only in case we are responsible for the breach of obligation. In the cases provided for in cl. 8.6. above (failure of supplementary performance etc.) and in cases of impossibility, however, the statutory provisions shall apply exclusively; as for

Customer's right of rescission on grounds of delay in **Delivery** or Performance, the provisions contained in cls. 4.5.3., 4.5.4. and 4.7. above shall apply. Upon our request, Customer shall declare within a reasonable time limit, whether, as a result of the breach of obligation, he will rescind the contract or insist in our **Delivery** under the contract.

12. Rights to Know-How and Inventions

We reserve all rights an title to any valuable, new, and confidential information (know how) that we are in possession of or in gain during the performance of any contracts concluded with us, as well as to inventions and any intellectual or industrial property rights that may exist insofar, unless otherwise agreed, and subject to the use of the products delivered to which Customer is entitled according to the spirit and purpose of the respective contract.

13. Tools, Special Equipment, Manufacturing Material Supplied or Prescribed by Customer, contractual Lien

- 13.1. The tools developed by us for the manufacture of the objects of **Delivery** shall remain, notwithstanding particular stipulations, our property, even if Customer has taken a share in their costs. This shall also apply, if the Customer alone fully bears the costs hereof and if the development is based on Customer's requirements.
- 13.2. In case, as a result of ordinary wear and tear or of the manufacture of the objects of **Delivery**, a tool must be maintained for the Customer or substituted in whole or in part, we shall be entitled to compensation of the costs thereof pursuant to the ratio of Customer's original share in the costs of the tool.
- 13.3. In case a modification or a substitution of the tool becomes necessary due to Customer's changed requests with respect to the objects of **Delivery** to be manufactured, Customer shall bear the costs resulting therefrom.
- 13.4. Tools and special equipment, that is Customer's property according to specific agreement with us, remains in our possession for as long as we need it for the fulfilment of our contractual obligations. If something different is agreed upon, withdrawal of the Tools by Customer constitutes a cease of our obligation to supplier products manufactured with these Tools or special equipment. Rights and Claims (including claims for compensation of damages and expenses) in connection with such withdrawal shall be in accordance with statutory provisions, unless explicitly agreed otherwise. Customer shall reimburse any costs we incur for storage of tools and special equipment as long as Customer does not request to get them back from us after we have completely fulfilled our contractual obligations for which the tools or special equipment is needed, and if Customer does not collect them at his own expense. After termination of the contract or, in case we accepted to provide spare parts for a certain period of time, at the end of such period of time, we shall be entitled to otherwise use the tools or special equipment or scrap them, if Customer has not collected them despite our prior written request to do so within a defined period of time and our information to Customer of consequences

of failure to collect. Customer herewith waives any and all claims insofar.

13.5. Customer shall be solely responsible for suitability of any manufacturing means (esp. material) made available to us for the production/ manufacture of the contractual products. Customer shall supply us with such manufacturing means at his own cost and risk. We shall inspect incoming manufacturing means only with regard to number of pieces, identity and apparent transportation damages. We shall be obligated to examine manufacturing means supplied by Customer in regards of their conformity with the specifications made by Customer only if there is an apparent reason to believe it is necessary. However, an examination of conformity may explicitly be agreed upon, in which case Customer shall bear all costs incurred insofar.

13.6. We shall be obligated to substitute manufacturing means, tools or special equipment supplied by Customer in case of loss, damage or destruction only if we are accountable for it.

13.7. We shall have a right of retention regarding manufacturing means, tools or special equipment owned by Customer and supplied to us, for as long as Customer does not fulfil his payment obligations resulting from the business relation with us.

13.8. The provisions of these present **GENERAL TERMS AND CONDITIONS** on **Deliveries** and **Performances** shall also apply to tools and special equipment manufactured for and sold to the Customer subject to specific agreement.

13.9. Besides the right of lien under statutory law, we shall have a contractual right of lien on any manufacturing means, tools or special equipment Customer supplied to us in connection with the contract, as well as a contractual right of lien on any tools and special equipment manufactured for and sold to Customer, as a security for all claims against Customer out of or in connection with any contract concluded with us. The lien may also be asserted for claims out of or in connection with previous **Deliveries** or **Performances** if and as far as they are connected with the contractual object of **Delivery** or **Performance**. For all other claims such lien shall apply if and as far as such claims are undisputed or determined by final judgment. Para. 1204 et seq. German Civil Code and para. 50 cl. 1 German Insolvency Act shall apply.

14. Export Control and Customs, Obligation to hold harmless

14.1. With regard to the goods provided by Customer for processing, Customer shall be obligated to inform us in writing and in good time on potential requirements for permissions or restrictions of (re-)exports under German, European or US import or export or customs regulations as well as export or customs regulations of the country of origin of the goods provided by Customer for processing. Customer shall be obligated to make available in time the following information:

- ◆ material, documentation or other identification numbers of Customer,
- ◆ description of the goods provided by Customer for processing,

- ◆ any export list numbers applicable to the goods provided by Customer for processing including the export control classification number under US commerce control list (ECCN),
- ◆ country of origin of the product under international trade politics,
- ◆ statistical number of product (HS code),
- ◆ a contact person in its enterprise for the purpose of clarification of potential questions.

14.2. Customer shall be obligated to inform us without any delay about potential changes of permission requirements with regard to the goods provided by Customer for processing, whether it be technical or statutory changes or any prescriptions of authorities.

14.3. Customer shall be liable for all additional costs and expenses that we incur due to the non-conformity of Customer with the aforementioned obligations and shall hold us free and harmless insofar upon first request.

15. Inspection Parameters

Our inspection parameters shall apply unless otherwise explicitly agreed upon by the Parties.

16. Infringement of Third Parties' Rights

16.1. We do not warrant that the use, installation or resale of any of our products does not infringe third parties' industrial property rights. However, we warrant that we have no knowledge of the existence of any such third parties' rights with regard to our products.

16.2. Customer guarantees that no third parties rights (esp. patents, licences or other IP rights) are infringed in connection with Customer's specifications or manufacturing means, tools or special equipment supplied or prescribed by Customer or in connection with sub-suppliers or recipients of our performance that Customer has involved in the fulfilment of our contract obligations.

16.3. If any claims are asserted against us by third parties in connection with an infringement by Customer's specifications or manufacturing means, tools or special equipment supplied by Customer or procured by us upon Customer's request, Customer shall hold us free and harmless from any such claims on first written demand and shall bear any and all costs we incur insofar. We shall be entitled to cease manufacture and **Delivery**, without Customer being entitled to assert any claim against us insofar.

16.4. As the case may be, Customer shall provide judicial support to us or shall, upon our request, enter into any judicial proceedings at his own expense.

16.5. We reserve the right to claim additional damages from Customer.

16.6. The limitation period of any claims under this present no. 14 shall be five years commencing with the conclusion of the respective contract.

17. Recourse against us regarding product related claims against Customer

We shall be liable for compensation of damage and expenses that Customer may have or accepts to bear under contract or law in connection with the violation of product related domestic or foreign public law statutes, administrative decisions or rules – including but not

limited to rules on product security, ecology or reduction of emission – only in the frame of statutory obligations applicable for us. Any greater liability for us shall only apply as far as we have explicitly accepted it. Our liability for non-conformance according to the agreements concluded with the Customer as well as our mandatory liability under law shall remain unaffected.

18. Product Liability of Customer

- 18.1. Regarding Customer's specifications or manufacturing means, tools or special equipment supplied to us by Customer, Customer shall be liable to us in accordance with the applicable statutory law on product liability and tort. If, directly or by way of recourse a claim is asserted against us based on product liability under domestic or international law, Customer shall in addition be obligated to release us and hold us free and harmless from these claims upon first demand as far as these claims are made in connection with Customer's specifications or manufacturing means, tools or special equipment supplied to us by Customer or procured by us upon Customer's request.
- 18.2. Customer shall maintain an adequate comprehensive general liability and product liability insurance with an adequate for every single case of damage to a person or to property or to the product. Additional claims for damage remain unaffected.
- 18.3. The limitation period of any claims under this present no. 18 shall be five years commencing with the conclusion of the respective contract.

19. Limitation of Actions

- 19.1. The limitation period for rights and claims based on warranty for defects of **Deliveries** or **Performances** and other cases of non-conformity, no matter on what legal ground, shall be, notwithstanding cl. 19.3. below, one (1) year.
- 19.2. The limitation period laid down in cl. 19.1. above shall also apply to any and all claims for damages against us.
- 19.3. The limitation period according to cl. 19.1. above shall in principle not apply in case of intent. It shall neither apply in case of fraudulent concealment of a defect nor in case of guarantee for the quality of goods. The limitation period for claims for damages according to cl. 19.1. above shall not apply in the cases of cls. 8.8.1., 8.8.2. and 8.8.3. above, and in cases of recourse claims of Customer against us due to defective products newly produced by us; the statutory limitation periods shall apply insofar.
- 19.4. Unless otherwise expressly provided for, the statutory provisions about the commencement of the limitation period, about the suspension of expiry of the limitation period, about the suspension of the limitation period and about the re-commencement of the limitation period shall remain unaffected.
- 19.5. The claims for reduction of the purchase price ("Minderung") and the right to rescind the contract ("Rücktritt") are excluded, if the claim for supplementary performance ("Nacherfüllung") is barred by limitation. In that case, Customer may, however, refuse payment of the purchase price insofar as he would have been entitled to on the basis of his right to reduce the purchase price or his right to rescind the contract.

20. Assignment by Customer

Customer shall assign claims against us arising from or in connection with our **Deliveries** or **Performances** to any third party only with our prior written consent.

21. Confidentiality, Prohibition of Exploitation

- 21.1. Customer shall be obligated to keep confidential all commercial and technical details which Customer becomes aware of throughout the business relationship with us, which are marked as confidential or which may be regarded as confidential, but especially our know-how ("Confidential Information"). Confidential Information may only be used for the purpose of the relevant contract and may not be disclosed to or otherwise made available to third parties. Reproduction shall only be made in the context of operational requirements as well as in accordance with applicable copyright laws. If Customer becomes aware that Confidential Information has come into the possession of an unauthorised third party or has been lost, he shall inform us immediately.
- 21.2. The obligation under no. 21.1 above shall not apply to information, that the public had access to at the time it was received by Customer, or that became accessible to public during the contract term without Customer's fault. The same shall apply if Customer can prove that the information was already in Customer's possession at the time of reception from us.

22. Export Declaration, Compliance with Export Law

- 22.1. If a Customer, whose business residence is outside Germany, or his representative collects a delivery and exports it outside Germany, Customer shall submit to us the export declaration required under applicable tax law. If this declaration is not submitted, Customer shall pay the turnover tax applicable under German Law for the delivery.
- 22.2. Compliance and fulfilment of all relevant export law regulations, e.g. export licences, currency exchange licences and other requirements applicable in Germany, shall be the sole responsibility of Customer.

23. Place of Performance, Place of Jurisdiction, Applicable Law, Purchase within the EU, Severability Clause

- 23.1. Unless otherwise agreed upon, place of performance shall be our place of business exclusively.
- 23.2. If Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – herein included liabilities from checks and bills of exchange – shall either be our principal place of business or, at our sole option, the location of Customer. This provision as to the place of jurisdiction shall also apply to Customers having their location in a foreign country.
- 23.3. To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and Customer, German law, excluding the UN Sales Convention (CISG: United Nations Convention on Contracts for the International Sale of Goods, of April 11, 1980), shall apply exclusively, without regard to German conflict of laws rules.

- 23.4. Should individual provisions of these **GENERAL TERMS AND CONDITIONS** or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.
- 23.5. Customers from EU member states shall be obligated to compensate for all and any damage which may be incurred to us due to:
- ◆ tax violations committed by Customer himself or
 - ◆ false information given by Customer or information which has been withheld by Customer about his situation which is relevant for taxation.
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