

# General Terms and Conditions of Purchase (GTCP)

## 1.0 Scope of Validity

1.1 Our orders shall be based on these General Terms and Conditions of Purchase. Other terms and conditions shall not apply, even if we have not expressly objected to them. If we accept goods or services without having expressly objected to them, this shall by no means constitute grounds to assume that we have accepted your terms and conditions of delivery.

1.2 These General Terms and Conditions of Purchase shall apply only vis-à-vis entrepreneurs as defined by § 14 Paragraph 1 of the German Civil Code – BGB. They shall also apply to all future business transactions with you concerning the sale and/or delivery of moveable goods, conditional upon an ongoing business relationship.

## 2.0 Offers, Revocation, Written Form, Confidentiality, Changes, Documentary Evidence of Origin, Copyrights

2.1 The offers made by the Seller shall be binding and free of charge. They shall conform to our inquiries. Alternatives are also desirable. Any deviations from our inquiries shall be clearly marked as such. No remuneration shall be paid for any visits or the development of offers, projects or drafts, or for trial deliveries.

2.2 If you do not accept our order in writing within 14 calendar days after receipt, we shall be entitled to revoke it. If you accept our order with deviations, you must notify us expressly thereof. An agreement shall come into existence only if we have recognised said deviations in writing. Delivery calls shall become binding if you do not object in writing within 2 calendar days following receipt.

2.3 Orders made verbally or by phone shall require our subsequent written confirmation in order to become legally valid. The same shall apply to any oral collateral agreements and contractual changes. Orders, order confirmations, delivery calls, documents concerning incoming goods and invoices may also be made in electronic form.

2.4 You shall be obligated to treat our inquiries, any offers arising thereof and the concluded Agreement confidentially; and you may not refer to the business relations established with us in any publication such as advertising materials and reference lists until permission is granted by us in writing.

2.5 The Contracting Parties shall undertake to treat as trade secrets any undisclosed details of a commercial or technical nature which they have become aware of during the processing of the order or as a result of the established business relationship, and not to make them accessible to any third party. Subcontractors shall also be subject to this obligation. Employees instructed by you to process our order must be subject to an equivalent obligation to observe secrecy. They must be informed of §§ 17, 18 of the German Act against Unfair Competition – UWG. If any of the Contracting Parties realises that an unauthorised third party has obtained unlawful possession of an information that is to be treated confidentially or that a document to be treated secretly has been lost, he or she shall notify the other Contracting Party thereof without undue delay. This obligation to secrecy shall also apply after expiry of this Agreement. It shall not expire until and insofar as the production know-how contained in the documents and/or the know-how obtained has become publicly known.

2.6 Changes to delivery items may be demanded by us even after conclusion of the Agreement insofar as this can be reasonably expected of you. If changes are made, both Parties to this Agreement should take a reasoned approach to the effects resulting thereof, in particular with respect to any additional and/or reduced expenses as well as the delivery dates.

2.7 Any documentary evidence of origin requested by us must be provided by you without undue delay in duly signed form including all required information. The same shall apply to tax-law-related evidence relating to international and intra-Community deliveries. These documents must be submitted to us no later than 10 calendar days before the date of delivery. Upon acceptance of this order, you shall undertake to enable the customs administration to examine any submitted documentary evidence of origin and suppliers' declarations as well as to provide the required information and, if necessary, to furnish any official confirmation (information sheets). In addition, you shall undertake to indemnify us for any damage caused by the fact that the declared origin has not been recognised by the competent authority. You shall notify us immediately of any delivery which, either in part or in whole, is subject to export restrictions imposed by German or any other law.

2.8 You must inform us of any required official permits and duties to report concerning the import and the use of the delivery items.

2.9 We reserve property rights and copyrights over all of our illustrations, drawings, calculations, and other documents.

## 3.0 Prices, Scope of Delivery, Transfer of Title, Public Price Auditing, Over-Deliveries and Under-Deliveries, Shipping, Transfer of Risk, Packaging

3.1 The agreed prices shall be fixed prices plus statutory value-added tax. Subsequent price increases and additional remuneration for ancillary services shall be excluded. Prices shall include packaging cost and the cost of transportation up to the shipping address and/or place of use as specified by us as well as the cost of customs formalities and customs. If no prices are specified in the order, your list prices less any rebates agreed with us and/or any customary discounts shall apply.

3.2 Delivery shall include any contractually agreed auxiliary materials and operating supplies as well as any documentation such as drawings, quality and test certificates, service manuals, spare parts catalogues, and other manuals. In the case of technical equipment, the scope of delivery shall include comprehensive system presentations and useful assembly and operating instructions. In the case of software products, the scope of delivery shall include the complete system and user documentation. In the case of any software developed exclusively for us, the obligation of delivery shall not be deemed performed until we have been provided with the source code.

3.3 Orders for products from the area of mass/serial production can be over-delivered by a maximum of 3%, but not under-delivered, unless otherwise agreed. Should the 3% be exceeded, we reserve the right to return excess quantities at your expense.

3.4 Upon delivery of the goods, title to the goods shall pass to us. This shall not apply if there is a simple retention of title in your favour. All other forms of retention of title shall be excluded, particularly the expanded and the transferred retention of title, as well as the extended retention of title applicable in the event of further processing. The pricing term shall not affect the agreement on the place of performance as stipulated in clause 19 or any other individual agreement reached on the place of performance. If, due to a contractual agreement, title to the goods to be delivered passes to us while the goods are still being stored on your premises, you shall be obligated to mark properly our property and to store it separately. The risk passes to us only once the goods have been delivered to us. Delivery shall be deemed to have taken place if we are in default of acceptance

3.5 Insofar as the orders concern public authority deliveries which are subject to public price auditing, you shall be obligated to disclose to the auditing authority, without restrictions, any information on how you form your prices, and to acknowledge that the permitted prices are binding on you.

3.6 Shipping instructions, in particular shipping addresses, must be strictly complied with. Any costs incurred due to non-compliance with the shipping instructions shall be borne by you. Shipping notes, delivery notes, consignment notes, invoices, and any correspondence with us must include our order number. You shall be responsible for any consequences resulting from non-compliance with this obligation.

3.7 Shipment shall be effected at your risk. The risk of deterioration, including the risk of accidental loss, shall remain with you until delivery of the products at the agreed shipping address and/or place of use. We shall have no obligation to dispatch delivered goods before receipt of the delivery documents.

3.8 Should we ask you to postpone delivery, you shall be obligated to carefully store and insure the fully packed and labelled products for no longer than three months, for which you shall be entitled to reimbursement of additional expenditure in accordance with § 304 of the German Civil Code – BGB.

3.9 Your obligation to take back packaging shall be subject to statutory provisions. Should you retain title to the packaging, you shall take it back at your expense. Goods must be packaged in a way that damage during transport is avoided. Packaging materials shall be used only to the extent necessary to achieve this goal. Only environmentally friendly packaging materials shall be used.

3.10 Insofar as the interpretation of trade terms is concerned, the Incoterms shall principally apply in the version applicable upon conclusion of this Agreement.

## 4.0 Invoicing, Payment, Certificates

4.1 Invoices shall be sent separately to us in due form after the full arrival of the defect-free goods/after full and defect-free performance, along with any and all documents and data related thereto or in connection therewith. Invoices shall be made out in compliance with the requirements of §§ 14, 14a of the German Turnover Tax Law - UStG. Invoices can be processed by us only if they include – in accordance with the requirements set out in our order – the order number stated therein. Any invoices that have not been duly issued shall not be deemed received until they have been corrected. If you are liable to pay tax on the basis of Article 138 (1a) of the VAT Directive, you must bear the costs. If there are any mistakes in invoices which are your fault, we shall charge you EUR 20.00 per correction of mistake for additional administrative expenditures, irrespective of any other provable costs. The same shall apply to shipping documents and delivery notes.

4.2 Unless otherwise agreed, we pay the purchase price less 3% cash discount within 14 days or net cash within 30 days. We reserve the right to pay the Supplier's invoice by cheque or bill of exchange; any charges and out-of-pocket expenses incurred in connection therewith shall be borne by us.

4.3 Insofar as certificates of material tests, such as certificates of analysis and/or other documentation, have been agreed upon, these are an essential part of the delivery and shall be submitted to us together with the consignment. However, such certificates shall be received by us no later than 5 calendar days after receipt of invoice. The payment term for invoices shall commence upon receipt of the agreed certificates and/or documentation. This shall apply only if not otherwise agreed.

4.4 If you have rendered us any services, the invoice shall include proof of performance, a time sheet, etc., which has to have been confirmed by our inspector.

4.5 In case of a defective or incomplete delivery, we shall be entitled to retain the payment pro-rata until the date of proper fulfilment, i.e. without any loss of rebates, cash discounts or similar reductions in price. Insofar as defective deliveries have already been paid for, we shall be entitled to retain other due payments up to the amount of the effected payment.

4.6 Payments effected by us shall be subject to correction if there are any grounds for subsequent claims.

4.7 The acceptance of delivery shall not be regarded as acknowledgement of a defect-free condition. The same shall apply to payments.

## 5.0 Software Developed for Us

5.1 If, in accordance with the order, you develop software customised exclusively for us, you shall grant us any rights to use necessary for the attainment of the purpose of this Agreement. In particular, you shall grant us the temporally and geographically unlimited, transferable, exclusive and sole right to use and exploit the software. We shall be entitled to adapt, to change, to expand, and to reproduce the computer program, the program description and the materials pertaining thereto, as well as to transfer them to other data carriers, to distribute them, either physically or non-physically, including over the Internet, to publish them, to reproduce them by video and audio system, to store them or to otherwise amend, use and exploit them. The right to use shall also include any future forms of use.

5.2 Any transfer of the rights to use shall be included in the agreed remuneration and shall be covered by its payment.

5.3 You shall waive the right to indicate any author's name in the software as well as in the documentation pertaining to the software.

5.4 Your duty to deliver shall not be fulfilled until we have been provided with the source code.

## 6.0 Delivery Dates, Delay in Delivery, Force Majeure, Early Delivery, Partial Delivery

6.1 The delivery dates agreed upon shall be binding and must be strictly complied with. The decisive factor for compliance with the date or period of delivery shall be proper receipt of the goods and/or perfect performance of the service as well as submission of the documentation at the place of receipt and/or place of use stated by us respectively successful acceptance of the goods in due time. Should the period of delivery be deemed or confirmed by you to be "estimated", "approximate", "under usual reserve" or the like, the period between the date specified and the date on which delivery is actually effected, may consist of 8 calendar days at the most. The unconditional acceptance of a delayed delivery shall not constitute a waiver of claims for damages.

6.2 If it becomes evident to you that an agreed date cannot be complied with, you must notify us thereof in writing without undue delay by indicating the applicable reasons and the duration of the delay. In any such case, you shall take all measures necessary to ensure that the agreed date of delivery is complied with or that there is only a short delay in delivery, and you shall notify us in writing of what you have done and what you are still going to do in a particular case. Notification of an estimated delay in delivery in no way changes the originally agreed date of delivery. The risk of procurement lies with you as supplier, a reservation of timely self-supply explicitly is excluded. You shall grant to us the right to intervene with your suppliers, if necessary. Any costs incurred by us due to negligent failure to notify or delayed notification shall be borne by you. Any extra cost for an expedited shipment necessary to ensure compliance with the delivery date shall be borne by you.

**6.3** In the event of any delay in delivery, we shall be entitled to our statutory rights.

**6.4** You shall be entitled to claim the absence of any required documents and/or materials and samples to be submitted to us only if you have reminded us in writing to submit any such documents and/or materials and samples and if you have not received them within a reasonable period of time.

**6.5** A performance that has become impossible due to Force Majeure shall release the Contracting Parties from their obligation to perform for the duration of the interruption and to the extent of their impact. The Contracting Parties shall be obligated to supply the required information without undue delay within the framework of what is reasonably acceptable and to adjust their obligations to the changed situation in good faith. Especially, the supplier shall have to consider the changed situation when placing an offer during an ongoing impediment due to Force Majeure and to submit an offer in view of such changed prerequisites. The risk of a price increase lies with the supplier. A price increase resulting from a shortage of material does not constitute a Force Majeure incident. If these impediments continue to exist for more than three months, each Contracting Party shall be entitled to withdraw from the Agreement without further notice.

**6.6** In the event of any early delivery agreed upon, we shall reserve the right to return the delivered goods to you at your expense. If an early delivery is not returned, the goods shall be stored by us on our premises until the agreed date of delivery at your expense and risk. In case of early delivery, we shall reserve the right to effect payment only on the agreed due date.

**6.7** We accept partial deliveries only upon express agreement. These deliveries must be clearly marked as such in the shipping documents and/or invoices. The remaining quantity must also be stated in said documents. Even if we consent to a partial delivery, the agreed dates of the overall delivery/overall performance shall remain unchanged, meaning that delivery/performance is not complete before complete fulfilment of the Agreement.

#### **7.0 Warranty, Remedy of Defects, New Delivery, Withdrawal, Reduction of Purchase Price, Damages, Serial Defects, Right to Remedy Defects Oneself, Time Limits for Lodging Complaints**

**7.1** Without prejudice to other warranty, defect and guarantee claims under the contract or on other legal grounds, all deliveries/services shall be provided to us free of material defects. They must comply with the quality agreed upon and be in conformity with the latest state of the art, the applicable European and German legal provisions, and the rules and regulations of public authorities, employers' liability insurance associations, and trade associations. In addition, all goods delivered/services rendered must be suitable for the purpose of use specified in the Agreement or, if no such purpose has been specified, for the customary purpose of use. All goods must be in conformity with the latest version of safety regulations and, upon delivery, shall have been approved by the competent test authorities and for the intended purpose of use. In particular, the goods delivered/services rendered must comply with the occupational health and safety regulations, the provisions of the German Equipment and Product Safety Law, the regulations for the prevention of accidents, the fire safety regulations as well as the provisions of environmental law. Further, you shall abide by our code of conduct for suppliers, which we shall be pleased to send you upon request. Should any deviations from the above regulations become necessary in a particular case, you must obtain our written consent. Your liability for defects shall not be affected by this consent. If you have any concerns about the type of performance requested by us, you must inform us immediately in writing.

**7.2** If you non-accidentally deliver goods/render services that are not free from rights of third parties in Germany or, if you have been informed about this, in the country of destination, you shall be liable for any resulting financial damage suffered by us.

**7.3** With respect to the goods delivered by you/services rendered by you, including subcontracted supplies or ancillary services rendered by third parties, you shall undertake to use products and processes that are environmentally friendly and sustainable insofar as they are technically possible and economically feasible. In providing your services, you shall meet your responsibilities to humanity and the environment, improve the energy efficiency of your processes and avoid or reduce energy waste where technically possible and economically viable.

**7.4** Subject to the provisions in sub-clause 7.11, you shall remedy any reported defects in the goods delivered/services rendered during the warranty period, which also include the non-achievement of guaranteed data and the lack of warranted qualities; you shall remedy these defects upon our request without undue delay and free of charge, including any ancillary costs, either by repairing the defect or, at our option, by replacing the defective parts and/or by performing a new delivery/new production. In the event of a contract for work and services, you have the option of providing repair or replacement. If subsequent performance cannot be carried out immediately, you must take remedial action mutually agreed upon as soon as possible. In particular, you shall bear any expenses resulting from and arising in connection with the discovery and remedy of said defects, even if these expenses are incurred by us, particularly inspection costs, the cost of assembly, disassembly, and reassembly of defective parts, labour and material costs as well as the cost of transportation and any other costs incurred in exchanging defective parts, excluding our regular costs incurred during proper inspection as defined by § 377 of the German Commercial Code – HGB. This shall apply even if expenses increase due to the fact that the delivery item had to be transferred to a place different from the place of performance, however not when disproportionate costs arise.

**7.5** Subsequent performance must, in case of emergency, be effected by you through multiple shift operations, or by working overtime or on public holidays if this is necessary and reasonable for urgent operational reasons on our side.

**7.6** Subsequent performance shall be deemed to have failed after a second fruitless attempt. In this case, we shall be entitled to withdraw from the Agreement and to reduce the purchase price. The same shall apply if a reasonable period of time allowed by us for subsequent performance has elapsed without any result. Any agreed time period for subsequent performance shall have the same legal effect as a time limit set by us.

**7.7** Insofar as we are entitled to withdraw from the Agreement and if the non-delivery/performance or nonconforming delivery/performance relate to a clearly distinguishable part of delivery/performance, withdrawal from the Agreement may be restricted to this part with the remainder of the Agreement remaining unaffected thereby.

**7.8** We shall reserve the right to claim damages in each and every case.

**7.9** If more than 5% of delivered parts/goods show the same kind of defect ("serial defects"), we shall be entitled to reject the overall delivery quantity as defective and to assert the statutory and contractually agreed claims for defects.

**7.10** If you fail to comply with your obligations arising from the liability for defects within a reasonable period of time specified by us, we may take the necessary measures either by ourselves or by other third parties' services at your expense and risk. Services rendered by ourselves shall be invoiced by us at full market price. In urgent cases, in which it is no longer possible to inform you of a defect and imminent damage before serious damage is expected to occur, we are entitled to immediately undertake repairs ourselves or engage a third party to carry these out. In the performance of our obligation to reduce damages and/or within the framework of any agreements concluded on this matter, minor defects may be remedied by ourselves without any prior consultation; your obligations arising from the liability for defects shall not be affected thereby. We may then charge you for the expenditures required. The same shall apply if suddenly there is a danger of extraordinarily high damages or if there exist any other cir-

cumstances which, upon weighing our mutual interests, justify our immediate intervention. For the rest, the regulation in § 637 of the German Civil Code – BGB – shall apply to the work or service contract.

**7.11** We shall notify you immediately in writing of any open defects in delivery as soon as they have been detected in the ordinary course of business, however, no later than 5 working days after receipt of delivery. In the case of hidden defects, the time limit for lodging a complaint shall be 3 working days after their detection. In the case of software, the provisions of the individual contract shall apply.

**7.12** Unless otherwise stipulated in the GTCP or the contract, the applicable statutory rights in respect of defects shall apply in addition.

**7.13** The provisions on seller's recourse regulated in § 445a BGB and § 445b BGB shall additionally apply between you and us with the proviso that the item sold by you to us and the item resold by us do not have to be essentially the same item if the item sold by you to us was processed or otherwise transformed by us prior to resale, but only as long as and to the extent that the item resold by us is defective because the item delivered by you to us as part of the item resold by us was already defective.

#### **8.0 Warranty Period, Suspension of Warranty Period, New Commencement**

**8.1** The contractual and statutory limitation period for material defects ("warranty period") is three years, unless expressly agreed otherwise or a longer statutory warranty or limitation period applies in individual cases. This shall also apply in the case of multi-shift operation. It begins with the handover of the delivery item to us or to the third party named by us at the place of receipt or use specified by us.

**8.2** For ordered spare parts, the warranty period is three years after installation/commissioning and ends at the latest five years after delivery.

**8.3** In the case of services for which we have agreed acceptance, the warranty period shall commence on the acceptance date stated in our written acceptance declaration. If the acceptance is delayed through no fault of your own, the warranty period shall be three years after the contractual delivery item has been made available for acceptance. The warranty period for buildings and building materials shall be governed by the statutory provisions unless expressly agreed otherwise.

**8.4** You shall be liable for defects of title in the delivery and/or service. In this case, we are also entitled to claim damages in accordance with § 437 BGB, unless you are not responsible for the defect of title.

**8.5** Upon receipt by you of our written notice of defects, the limitation period for warranty claims shall be suspended until you reject our claims or declare the defect eliminated or otherwise refuse to continue negotiations on our claims.

**8.6** In the case of supplementary performance owed by contract or by law by means of replacement delivery or rectification, the warranty period for replaced and rectified parts shall begin again upon completion of the supplementary performance, unless the supplier was not obliged to take the measure, but only made the replacement delivery or rectification as a gesture of goodwill or for similar reasons. If necessary, acceptance must be requested from us in writing. However, the period shall in no case end before the expiry of the limitation periods for defect claims agreed for the original delivery or service.

#### **9.0 Quality Assurance, Retention Samples, Product Liability**

**9.1** Should you be responsible for damage to a product, you shall indemnify us from claims from third parties insofar as the cause lies in your sphere of authority and organisation and you yourself are liable in relation to external parties. Under your obligation to indemnify, you shall reimburse any expenses, in accordance with §§ 683, 670 of the German Civil Code – BGB, that arise out of or in connection with any recourse taken by third parties including recall campaigns carried out by us. Insofar as it is possible and reasonable, we shall inform you of the content and scope of recall measures to be carried out and give you the opportunity to respond. Further statutory claims shall remain unaffected.

**9.2** You shall be obligated to operate an appropriate quality assurance system corresponding to the state of the art in type and scope, and to document this system for us upon request. You shall conclude with us a corresponding quality assurance agreement, if deemed necessary by us.

**9.3** By checking delivery at the production plant, you shall ensure that your deliveries comply with our Technical Terms of Delivery, which we shall be pleased to send you upon request. You shall be obligated to document the tests carried out and to file all documents regarding the results for testing, measuring, and monitoring for a period of 10 years. We shall be entitled to inspect and make copies of these documents at any time.

**9.4** Unless otherwise agreed, you shall label or mark the items of delivery in such a manner that they can be permanently identified as your products.

**9.5** For the duration of 5 years from the date of delivery you must archive sufficient quantities of retention samples of the delivered articles and upon our request provide them to us free of charge.

**9.6** In addition, you shall be obligated to take out an adequate insurance against all risks of product liability, including the risk of recall, and to submit the insurance policy to us for inspection upon request.

#### **10.0 Liability**

**10.1** Our liability on whatever legal grounds is excluded insofar as we can prove that such claims were not caused intentionally or by gross negligence. This exclusion of liability does not apply to claims for damages based on a breach of material contractual obligations by us. Material contractual obligations in the aforementioned sense are such contractual obligations (1) which relate to rights of the other party arising from the nature of the contract and the removal or restriction of which would jeopardise the purpose of the contract, and (2) the fulfilment of which makes the proper performance of the contract possible in the first place and compliance with which the contractual partner regularly relies on and may rely on. Furthermore, the exclusion of liability does not apply to claims arising from cases of injury to life, limb and health and/or from any applicable product liability legislation.

**10.2** In cases in which the exclusion of liability in clause 10.1 does not apply due to the breach of material contractual obligations, the claim for damages shall be limited to compensation for the typical damage foreseeable at the time of conclusion of the contract.

**10.3** A limitation to the compensation of the typical damage foreseeable at the time of conclusion of the contract shall also apply if the exclusion of liability in clause 10.1 does not apply because simple vicarious agents of us have acted with gross negligence.

**10.4** Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, representatives and vicarious agents (contract for the benefit of third parties).

#### **11.0 Environmental Protection, Harmful Materials, REACH Regulation**

**11.1** In performing your contractual duties, you must strictly observe statutory and government regulations regarding environmental protection. You shall be liable for any incompatibility of the delivered products with the environment and for any consequential damage arising from the violation of your statutory duties of waste disposal.

**11.2** During production of the goods and packages delivered to us, no ozone-degrading materials such as fluorochlorohydrocarbon (FCHC), chlorofluorocarbon (CFC), tetrachlorocarbon (TCC), and trichloroethane may be used.

**11.3** For any materials (substances and preparations) and items (such as goods, parts, technical equipment, uncleaned or contaminated items in storage) which due to their nature, their properties or their condition might present a hazard for human life and health, for the environment and for things and which therefore, according to the applicable regulations, require special treatment in terms of packaging, transportation, storage, handling, and waste disposal, you shall submit to us, along with the offer, a completed safety data sheet in accordance with § 14 German Ordinance on Hazardous Substances – GefStoffv and an applicable accident instruction sheet (transportation). If there is any change in the materials or the legal situation, you shall furnish us immediately with updated data and instruction sheets.

**11.4** You shall comply with the requirements of the REACH (Registration, Evaluation, and Authorisation of Chemical Substances) Regulation as amended in order to guarantee due and constant quality of the contractual products.

#### **12.0 Industrial Property Rights, Rights of Use**

**12.1** You shall not be entitled to use our brands, logos, trademarks or industrial property rights for your own benefit or for the benefit of any third party. You may not use any of the abovementioned either alone or in connection with your own brands, trademarks or logos without our prior written consent. If we grant consent, you must strictly observe regulations concerning size, positioning, and layout of the brands, trademarks and logos that we transfer to you upon our consent.

**12.2** Products which are not included in your standard product line and which have been manufactured by you in accordance with our instructions or drawings and/or technical specifications, may not be offered, sold or delivered to third parties without our prior written consent.

**12.3** Products included in your standard product line may not be offered, sold or delivered to third parties or otherwise be put on the market if our brand, trademark or logo can still be seen on the product. The same shall apply if any third party can assume that the product in question, due to its special shape, colour or other aspects of product presentation, has been put on the market by us.

**12.4** You shall guarantee that all deliveries are free from any industrial property rights of third parties and that no patents, licences or other industrial property rights of third parties are violated as a result of the delivery and the use of the delivery items.

**12.5** We shall inform each other immediately in writing if there are any claims asserted against either Party for the violation of contractually guaranteed industrial property rights.

**12.6** In case of any culpable violation of said obligations (delivery of goods free of defect in title and obligation to inform in accordance with sub-clause 12.5), you shall release us and our customers from any claims made by third parties arising from violations of industrial property rights and you shall bear any costs incurred by us in connection therewith as well as the cost of taking legal action and the cost of recall. Your obligation to grant release shall apply to all expenses inevitably incurred by us in connection with any claims asserted by third parties.

**12.7** If the use of the delivered item/service rendered as specified in this Agreement is affected by industrial property rights of third parties, you shall be obligated, at your own expense, irrespective of any other obligation under this Agreement, to seek the permission to use the delivered item/service rendered unrestrictedly and as specified in this Agreement at no additional cost to us from the person(s) authorised to dispose of the industrial property right. You shall also be entitled to change the parts of your delivery/service rendered subject to industrial property rights in such a way that they are exempt from the scope of industrial property rights, but still comply with the contractual provisions applicable between you and us.

**12.8** Should your efforts made pursuant to sub-clause 12.7 fail, we shall, at your expense and after consultation with you, be entitled to obtain from the authorised person permission to use the delivered item and service rendered for an interim period of no longer than 6 months. If efforts made pursuant to sub-clause 12.7 or 12.8 fail, you shall remove the equipment at your expense and reimburse the remuneration paid by us plus interest in accordance with bank practices. We shall reserve the right to assert statutory claims that go beyond that.

**12.9** Upon delivery of any work subject to copyright protection, you shall grant to us the simple, unrestricted right of use applying to all kinds of use.

#### **13.0 Materials Provisions, Processing, Commingling, Tools**

**13.1** Any materials and other supplies made available to you by us or third parties instructed by us, shall remain our property. They may not be used for any purpose other than the contractual purpose. These supplies shall be marked as our property, stored separately, kept in good condition and insured for the entire period during which we permit their use. Processing of or alterations to the materials shall be made for us.

**13.2** You shall be obligated to inform us immediately if a third party levies execution against the materials provided or if any such measure is expected.

**13.3** All provided materials must be returned to us upon first request.

**13.4** Changes to the provided materials shall be permitted only with our prior written consent and only to the extent permitted.

**13.5** If the goods submitted by us are manufactured with other goods which do not belong to us, we shall acquire co-ownership in the new product in proportion to the value of the goods submitted by us relative to the other manufactured products at the time of production.

**13.6** If the goods submitted by us are combined indistinguishably with other goods which do not belong to us, we shall acquire co-ownership in the new product in proportion to the value of the goods that are submitted by us relative to the other manufactured products at the time they were combined. If the combining is performed in such a manner that the item is to be regarded as your principal product, it shall be agreed that you transfer to us co-ownership on a proportionate basis. You shall hold the sole ownership or the co-ownership on our behalf.

**13.7** If tools, appliances, etc. are produced by you or on your behalf, you shall immediately transfer to us the property rights to them once we have either paid for the tools, appliances, etc. in full or have written them off completely.

**13.8** Tools provided by us shall remain our property. You shall be obligated to use the tools exclusively for the production of the goods ordered by us. In addition, you shall be obligated to insure our tools against damage caused by fire, water, and burglary at your expense. In the case of any breakdown, you must notify us immediately. If you fail to do so, you shall be obligated to compensate us for any damage resulting thereof.

#### **14.0 Confidentiality**

**14.1** All documents and records that have been provided to you by us shall remain our property and may not be made available to third parties unless we have expressly consented thereto in writing. Upon completion of the order, all documents and records must be returned to us free of charge. You shall in no case have the right to retain said documents and records. The confidentiality agreement shall only expire if and insofar as the knowledge in the documents provided has become public.

**14.2** Any goods or documents which have been produced or prepared according to your specifications, drawings, and models, may not be transferred to third parties for use without our written consent.

**14.3** If we have granted consent to the transfer to third parties, you shall be obligated to impose the obligations specified in sub-clauses 14.1 and 14.2 on the relevant third party.

#### **15.0 Transfer of Contract, Change of Firm Name, Change of Production, Deliverability, Data Protection, Partial Invalidity**

**15.1** You shall notify us immediately of any transfer of this Contract and any change of your firm name which have become legally effective.

**15.2** Should you intend to change or terminate your production, you shall notify us thereof without any delay. In the event of termination of production, you shall ensure deliverability of the materials delivered to us so far for a period of no less than 6 months following your notification.

**15.3** With respect to the delivery of purchased and standard parts as well as of products manufactured by yourself, you shall guarantee deliverability for a period of 24 months.

**15.4** We shall be entitled to collect, process, and use any data obtained in connection with the performance of this Agreement as defined in the German Federal Data Protection Act – BDSG.

**15.5** If individual parts of these General Terms and Conditions of Purchase are invalid, the validity of the remaining provisions shall not be affected thereby.

#### **16.0 Transfer of Order, Prohibition of Assignment, Set-Off, Right of Retention**

**16.1** You can only assert rights of retention insofar as they are based on the same contractual relationship.

**16.2** You may not make any setoff against claims unless these are uncontested or have been recognised by declaratory judgment.

**16.3** You shall not be entitled to exercise any right of retention unless such a right is based on the same contractual relationship.

#### **17.0 Contracting Language, Correspondence**

The contract language shall be English. All correspondence and other documents and materials must be written in English. This shall also apply to all the remaining documentation, such as advance payment and defects liability guarantees. In deviation from the foregoing, we shall be entitled to demand the submission of all documents and correspondence in connection therewith in German. In the event that the Contracting Parties use another language, the English wording shall prevail.

#### **18.0 Suspension of Payment, Insolvency**

If you suspend your payments, if an insolvency administrator is appointed, if insolvency proceedings with respect to your assets have been instituted, or if any protests have been made against bills of exchange or cheques issued by you, we shall be entitled to withdraw from the Contract or to terminate the Contract in full or in part without any notice of termination. In such a case, no claims shall arise thereof that can be asserted against us. If the Contract is terminated by us, the services rendered until the date of termination shall be invoiced at the contractually agreed prices insofar as they can be used by us for the intended purpose. Any damage suffered by us as a result of termination shall be taken into consideration when settling the accounts.

#### **19.0 Place of Performance**

Unless otherwise expressly agreed, the place of performance with respect to the obligation of delivery/performance shall be the shipping address and/or the place of use. With respect to all remaining obligations of both Parties to this Agreement, the place of performance shall be Seevetal-Hittfeld, Germany.

#### **20.0 Compliance**

**20.1** You and the persons employed by you as well as your management are generally and for the duration of the business relationship obliged to comply with all laws, ordinances and regulations concerning you and the business relationship with us, including (but not limited to) those concerning the prevention of corruption and cartel violations, the minimum wage, environmental protection and food law.

**20.2** You, your management and your employees will not (1) promise, envisage or give any unlawful advantage to any public official, potential customer or their employees or any third party and (2) accept any unlawful advantage from any potential customer, their employees or any third party.

**20.3** You assure that the delivery item has not been produced by child labour, prison labour or forced labour, nor in a slave-like, health-damaging or exploitative manner, or otherwise violated the general ethical principles, in particular human dignity. You further affirm that you will not tolerate discrimination and harassment of your employees and will take countermeasures if necessary. You will always provide a safe working environment, comply with all applicable quality, health and safety regulations, and give due consideration to environmental concerns. You will not use prohibited or unsafe materials or components and will always ensure environmentally sound and safe disposal of waste materials.

**20.4** You are obliged to notify us immediately in writing of any breach of any of the above obligations and to explain how the breach has been remedied and what measures you have taken to ensure that the breach does not recur. In the event of a serious or repeated breach of the obligations under this clause 20, we shall be entitled to withdraw from or terminate all legal transactions with you without notice.

**20.5** If, on the occasion of the contract or an individual order, you are proven to have entered into an agreement which constitutes an unlawful restriction of competition or an unfair practice, you shall pay us 5% of the order amount as liquidated damages, unless the damage is proven to be in a different amount.

#### **21.0 Place of Jurisdiction, Applicable Law**

**21.1** For all present and future claims arising from the business relationship with merchants ("Kaufleute"), including any claims arising from bills of exchange or cheques, the exclusive place of jurisdiction shall be Hamburg, Germany. The same shall apply if you do not have a general place of jurisdiction in Germany, if after termination of the Agreement your place of residence or place of ordinary residence has been transferred to a place outside of Germany or if at the time of bringing an action before court your place of residence or place of ordinary residence is unknown. However, we shall reserve the right to assert our claims at any other permitted place of jurisdiction.

**21.2** The legal relations between the parties shall be exclusively governed by German law to the exclusion of the UN Convention on the International Sale of Goods (CISG).