

## **1. Scope/Customer's differing terms and conditions**

1.1 These General Terms and Conditions of Sale and Delivery of Dipl.-Ing. Dr. E. Vogelsang GmbH & Co. KG apply only to companies within the meaning of Section 14 of the *Bürgerliches Gesetzbuch (BGB)* [German Civil Code] (hereinafter referred to as customer(s)) i.e. natural persons or legal entities that purchase the product or service for commercial or professional use.

1.2 These General Terms and Conditions apply exclusively to our business relations with our customers. Where our General Terms and Conditions are implemented in business with the customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing. Differing general terms and conditions of the customer (e.g. terms and conditions of purchase) shall only apply if and to the extent expressly recognised by us in writing. Our silence regarding such differing general terms and conditions shall not be deemed in particular to be recognition or consent, and this shall also apply to future contracts.

1.3 Our General Terms and Conditions apply in place of any general terms and conditions of the customer, also where, according to such general terms and conditions, acceptance of an order is deemed to be the unconditional recognition of the general terms and conditions, or we deliver after the customer has indicated the validity of its general terms and conditions unless we have expressly waived the validity of our General Terms and Conditions.

1.4 If general agreements are concluded by the parties, they shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations are agreed.

## **2. Information/Properties of the products**

2.1 Information and explanations with respect to our products shall be provided solely on the basis of our experience to date.

2.2 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of our products in quotations and brochures and our advertising shall only represent a property of our products if we have expressly declared the condition to be a "property of the product"; these are otherwise non-binding, general specifications.

2.3 We shall only be deemed to have given a warranty if we have indicated a property and/or outcome of performance as "guaranteed by law" in writing.

2.4 We shall assume liability for the usability of our products for the customer's intended purpose only if we have agreed such usability with the customer in writing.

## **3. Samples**

3.1 Properties of samples of our products which may be produced shall only become an integral part of the contract if this was expressly agreed in writing.

3.2 The customer shall not have the right to use and pass on samples of our products. Our samples shall remain our property unless purchase was expressly agreed and may not be exploited or made accessible to third parties without our written consent. All copyrights, design rights, registered design and utility model rights to samples or specimens shall remain with us despite the samples or specimens being provided.

#### **4. Conclusion of contracts/Scope of delivery/Procurement risk/Guarantee/Acceptance**

4.1 Our quotations are subject to change unless they are explicitly indicated as binding or contain binding promises. They are merely requests to customers to place purchase orders. A contract is created - also in day-to-day business - only when we confirm the customer's purchase order in writing or in text form (i.e. also by telefax or email) (order confirmation). Where delivery is made immediately, our confirmation can be replaced by our invoice.

4.2 Our order confirmation shall prevail over the content of the supply contract.

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

4.4 The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our products.

4.5 We are only obliged to deliver from our own stock.

4.6 Assumption of a procurement risk does not lie solely in our obligation to deliver an object which is only defined by its type. We shall only assume a procurement risk by virtue of a separate written agreement stating "we assume the procurement risk ...".

4.7 If acceptance of our products or their shipment is delayed for a reason, for which the customer is responsible, the customer fails to provide a shipping order by the end of the delivery period, or the customer negligently fails to fulfil its contractually agreed obligation to call off orders, we shall have the right, after setting an extension period of 7 days which has expired, at our option to request immediate payment of the purchase price or to rescind the contract or refuse performance and request damages in lieu of full performance. The time limit must be given in writing but we shall not be required to refer again to our rights under this paragraph.

4.8 If shipment of our products is delayed at the customer's request or for reasons, for which the customer is responsible, we shall have the right to store the products, beginning on expiry of the time limit set in the written notice that the products are ready for shipment, and to invoice the costs incurred thereby at 0.5 % of the net invoice amount of the stored products for each month or part thereof. This shall not affect the assertion of further rights and damages. The customer shall have the right to prove no costs or significantly lower costs were incurred.

Furthermore, we shall have the right, after the time limit expires, to dispose of the contractual products otherwise, and to deliver to the customer again after a reasonable period.

4.9 If the order for delivery or call for delivery is delayed by the customer, we shall have the right to postpone delivery by the same period as the customer is behind schedule plus a reasonable scheduling period of 4 working days.

#### **5. Delivery/Delivery time/Default in delivery**

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

5.2 A commercial transaction for delivery by a fixed date shall only exist if we have expressly confirmed such transaction in writing or the legal requirements for a commercial transaction for delivery by a fixed date exist. Unilateral designation of a delivery as a commercial transaction for delivery by a fixed date merely by the customer shall not be sufficient for this.

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

5.4 The customer's interest in our performance shall not apply in the absence of other written agreement only if we fail to deliver material parts or deliver with delay.

5.5 If we default in delivery, the customer must first set us a reasonable extension period of at least 14 days - unless unreasonable in an individual case - to perform the contract. If this elapses without effect, damage claims for breach of duty shall exist, for whatever reason, only as stipulated in paragraphs 5.7 and 12.

5.6 If the customer incurs damage as a result of our default, the customer shall have the right to request compensation for default. It shall amount to 0.5 % for each full week of delay but in total to 5 % at most of the net price of the part of the complete delivery which, as a result of the delay, cannot be used in due time or according to the contract. Any further compensation from us for damages due to delay shall be excluded. This shall not apply in the case of any fraudulent or intentional action by us, in the case of damages due to injury to life, limb or health, and in the case of default where a commercial transaction for delivery by a fixed date is agreed (see paragraph 5.2).

## **6. Reservation of delivery subject to own receipt of delivery/Force majeure and other obstructions**

6.1 If, despite proper and sufficient stocking, we do not receive a delivery or service from our suppliers to provide our delivery due under the contract for reasons for which we are not responsible, or it is incorrect or not in due time, or events of force majeure occur, we shall notify our customer of this in due time in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery date or delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded due to events according to paragraph 6.1., the customer shall have the right, after a reasonable extension period has elapsed without effect, to rescind the contract for the part not yet fulfilled if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially damage claims, in this case.

6.3 The above provision according to paragraph 6.2 shall apply accordingly if a customary delivery period was exceeded for the reasons stated in paragraph 6.1, also without contractual agreement of a fixed delivery date.

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

7.1 Unless otherwise agreed in writing, we shall ship our products ex our works uninsured at the risk and expense of the customer.

7.2 We reserve the right to choose the route and means of transport. However, we shall endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result - also where delivery freight paid is agreed - shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the products at the customer's expense and risk. In this case, notice that the products are ready for shipment shall be deemed equivalent to shipment.

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

7.4 The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, the forwarder, carrier or companies otherwise instructed to carry out shipment but at the latest when the products leave our works.

7.5 If shipment is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the products are notified as ready for shipment.

7.6 Where the customer or third parties instructed by the customer take over the products, times/dates for taking over the products must be agreed with us in due time.

## **8. Notice of defects/Breach of duty/Warranty**

8.1 The customer must notify us of recognisable material defects immediately in writing but at the latest 12 days after collection, in the case of delivery ex works, otherwise after delivery. The customer must notify us of hidden material defects immediately in writing after they are identified but at the latest within the warranty period specified in paragraph 8.6. Failure to give notice of defects in due time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of a fraudulent or intentional act by us, the assumption of a guarantee for absence of defects by us or in the case of liability according to the *Produkthaftungsgesetz* [Product Liability Act].

8.2 The transport operator must also be notified of any material defects recognisable on delivery and recording of the defects must be arranged by the transport operator. Notices of defects must include a description of the defect. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty. This shall not apply in the case of a fraudulent or intentional act by us, in the case of injury to life, limb or health, or the assumption of a guarantee for absence of defects or liability according to the *Produkthaftungsgesetz*.

8.3 When handling, processing, combining or mixing with other items begins, the products delivered, where material defects are recognised, shall be deemed approved by the customer according to the contract. This shall also apply if the products delivered are reshipped from their original place of destination. Before any of the activities described above begin, the customer shall be responsible for clarifying, through appropriate checks in terms of scope and method, whether the delivered products are suitable for the processing purposes, process purposes and other purposes of use intended by the customer.

8.4 The customer must give notice in writing immediately of other breach of duty, setting a reasonable time limit for remedy, before the customer asserts further rights.

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

8.6 We shall provide a warranty for material defects, unless otherwise expressly agreed or in the case of Sections 478, 479 *BGB* (right of recourse in the supply chain), for a period of one year, calculated from the date the risk passes (see paragraph 7).

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

8.8 Further claims by the customer for or in connection with defects or consequential damage caused by the defect, for whatever reason, shall exist only subject to the provisions of paragraph 12 unless these are damage claims resulting from a guarantee. In this case too, however, we shall be liable only for typical and foreseeable damage.

8.9 Our warranty and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proved to be due to defective material or defective workmanship or defective instructions on use. Warranty and liability arising therefrom shall be excluded in particular with respect to the consequences of incorrect use, excessive use or inappropriate storage conditions, for example, the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected, average standard influences. This shall not apply in the case of fraudulent or intentional conduct on our part, or injury to life, limb or health, or liability according to the *Produkthaftungsgesetz*.

8.10 Claims based on defects shall not exist in the case of only a minor deviation from the agreed or customary condition or usefulness.

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

9.1 All our prices are in principle quoted in EUROS including packaging, freight and excluding value added tax at the legally valid rate to be borne by the customer. Prices and additional charges are determined by our general price list, valid at the time the contract is concluded, unless otherwise agreed.

9.2 Services that are not part of the scope of our quotation shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.3 We shall have the right to increase our prices unilaterally and reasonably (Section 315 *BGB*) where material procurement costs or production costs, taxes, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than four months elapses between conclusion of the contract and delivery. An increase for the above purpose shall be excluded if the cost increase for the factors mentioned is cancelled out by a cost reduction for other of the factors mentioned with respect to the total cost charged for the delivery.

9.4 Our invoices are payable immediately within 14 working days after delivery of the products without any deduction unless otherwise agreed in writing.

9.5 In the absence of payment, the customer shall be in default in payment, even without notice, within 15 working days of delivery.

9.6 Once in default, default interest of 9 percentage points above the respective base interest rate when the claim for payment falls due shall be calculated.

9.7 The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this.



9.8 Default in payment by the customer shall cause all payment claims from the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments or agreements on payment by instalment, in this case all the customer's liabilities due to us shall become due for payment immediately.

9.9 If payment terms are not met or circumstances known or recognisable which, in our proper commercial judgement, give rise to justified doubt as to the customer's creditworthiness, also including such facts that already existed when the contract was concluded but which were not known or did not have to be known to us, we shall have the right, notwithstanding further statutory rights in such cases, to cease further work on current orders or the delivery and to request advance payments or the provision of securities which are acceptable for us for deliveries still outstanding and, after expiry of a reasonable extension period to provide such securities without effect, to rescind the contract, irrespective of further statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

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

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

9.12 Any prohibition of assignment or limitation of assignment provided for in the customer's general terms and conditions are herewith expressly contradicted, in particular also if the assignment is made dependent on the customer's prior consent.

## **10. Retention of title**

10.1 We retain title to all products we deliver (hereinafter referred to as a whole as "goods subject to retention of title") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current invoice (current account) and the balance has been established.

10.2 The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to the goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.

10.3 The customer shall have the right to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell only under retention of title.

The right to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us.

10.4 The customer herewith assigns to us all claims including securities and ancillary rights that accrue to it against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its buyers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the purchase price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The customer shall have the right to collect a claim assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer shall be obliged to give us information and documents required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment to us.

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

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

In the case of unreal factoring, we shall have the right to rescind the contract and request the surrender of products already delivered. This shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through fault of the customer, especially in the case of default in payment, we shall have the right, without first having to rescind the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to surrender the goods subject to retention of title immediately. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is expressly prescribed by obligatory statutory provisions. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or any claim assigned to us.

10.9 If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10 %, we shall be obliged at the customer's request in this respect to release securities at our option.

10.10 We handle and process the goods subject to retention of title as manufacturers within the meaning of Section 950 *BGB* without any obligation for us. If the goods subject to retention of title are processed or combined inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or combined items. If our goods are combined with other movable items into a uniform article that is deemed the principal article, the customer shall already now assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to pursue our ownership or co-ownership rights.

## **11. Rental of spoked wheel reels/Return/Passing on of the rental contract**

11.1 If agreed in an individual contract, products (especially pipes) shall be made available to the customer on spoked wheel reels (hereinafter referred to as Spoked Wheel Reels). We ourselves rent the Spoked Wheel Reels from the reel owner, e.g. TVG Transport- und Verpackungsservice GmbH, Oberhausen (hereinafter referred to as TVG). A rental period for the Spoked Wheel Reels (as a rule for the period of 3, 6 or 12 months) shall be agreed with the customer in the individual contract which shall correspond to our rental period with TVG. Rental of the Spoked Wheel Reels to the customer shall be determined, therefore, apart from by the provisions of these General Terms and Conditions, in addition also by the General Terms and Conditions of TVG which are available at <http://tvg-oberhausen.de/index.php/agb> (hereinafter referred to as General Terms and Conditions of TVG).

11.2 The rent for the Spoked Wheel Reels is included in the purchase price of the products for the agreed rental period.

11.3 The customer shall be obliged to return the Spoked Wheel Reels to the reel owner at the end of the rental period. The customer also has the right to notify the reel owner prior to expiry of the rental period if the customer no longer requires the Spoked Wheel Reels and can return them to the reel owner (so-called Notification of Availability). In such case, purchase or rental prices shall not be reduced (also not pro rata).

11.4 The customer shall ensure that the Spoked Wheel Reels are handled with care and as specified by the reel owner during the rental period and protected against damages, lost and theft. The customer shall notify the reel owner of losses and/or damages during the rental period immediately in writing. The customer shall reimburse the reel owner for damages to the Spoked Wheel Reels caused by the customer. We reserve the right to assign claims for reimbursement to the reel owner.

11.5 If the Spoked Wheel Reels are not returned after the rental period ends or Notification of Availability in due time by the customer, the rental relationship shall be extended for an indefinite period and shall be transferred/assigned by us to the reel owner. Additional costs due to the rental period being exceeded shall then be invoiced directly to the customer by the reel owner and in accordance with the General Terms and Conditions

## **12. Liability/Exclusion and limitation of liability**

12.1 We shall be liable in principle only for intent and gross negligence by us and our legal representatives and vicarious agents. Our liability and that of our legal representatives and vicarious agents for ordinary negligence shall, therefore, be excluded except in the following cases:

- (a) in the case of violation of material contractual obligations; material contractual obligations are obligations, the fulfilment of which defines the contract, and on which the customer may rely;
- (b) if, in the event of breach of obligations within the meaning of Section 241 (2) *BGB*, it is no longer reasonable to expect the customer to accept our performance;
- (c) in the event of injury to life, limb and health;
- (d) where a guarantee for the quality of performance, the existence of an outcome of performance, or a procurement risk has been assumed,
- (e) fraudulent intent;
- (f) initial impossibility;
- (g) claims under the *Produkthaftungsgesetz* or other cases of liability prescribed by law.

12.2 We shall be liable only for typical and foreseeable damage unless we can be reproached for intentional or grossly negligent breach of duty or a case of injury to life, limb and health or other cases of liability prescribed by law.

12.3 Liability for damage other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims arising from negligence when concluding a contract, due to other breach of duty or due to claims arising from tort for reimbursement of property damages according to Section 823 *BGB*.

12.4 Exclusion resp. limitation of liability according to paragraphs 12.1 to 12.3 above shall apply to the same extent for the benefit of our executive and non-executive employees and other vicarious agents as well as our sub-contractors.

12.5 Claims by the customer for damage from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are culpable of malice, gross negligence or intent and in the case of a claim arising from tort. This shall not affect the limitation period in the case of recourse due to delivery according to Sections 478, 479 *BGB*.



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

### **13. Export control / Intra-Community trade**

13.1 In the absence of other written agreement, the delivered product is intended at all times to remain and to be used in the first country of delivery agreed with the customer.

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

13.3 The customer shall in particular verify and ensure that

- (a) the products provided are not intended for use in armaments, nuclear facilities or weapon technology;
- (b) no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, software and technology;
- (c) no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with original US products without relevant approval;
- (d) no companies and persons are supplied that are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terror List;
- (e) no military recipients are supplied;
- (f) the early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.

The customer undertakes to send us immediately on request but at the latest within 10 days the original relevant end-use certificates in the form prescribed by the *Bundesamt für Wirtschaft und Abfuhrkontrolle* [Federal Office of Economics and Export Control].

13.4 Our products may only be accessed and used if they are consistent with the above verification and comply with the assurance; otherwise we shall not be obliged to perform.

13.5 Where products are passed on, the customer undertakes to oblige other recipients in the same way and to notify them of the need to comply with such legal provisions.

13.6 The customer undertakes to indemnify us against all damages resulting for us from negligent breach of the foregoing obligations pursuant to paragraphs 13.1 to 13.5. The scope of the damages to be reimbursed shall also include the reimbursement of all necessary and reasonable expenses which we incur or have incurred, in particular the costs and expenses for any legal defence and any official administrative fines or penalties.

13.7 In the event of negligent breach of the foregoing obligations according to paragraphs 13.1 to 13.5 by the customer, we shall have the right to rescind the purchase contract.

13.8 The customer confirms the correctness of its VAT ID no. which the customer shall give us without being asked to do so immediately after the contract is concluded. The customer undertakes to notify us and its competent domestic tax authority immediately of any change in its name, address, company name and VAT ID no. If a delivery is regarded as subject to tax due to errors in specifying the name, company name, address or VAT ID no., the customer shall refund the tax to be paid by us as a result.

13.9 In the case of double taxation - sales and purchase tax in the customer's country, turnover tax in Germany - the customer shall pay to us, waiving the defence of disenrichment, the excess turnover tax paid i.e. the turnover tax not owed due to the duty to pay sales and purchase tax.

#### **14. Third-party property rights**

14.1 We shall only be obliged to supply the products free from third-party rights or claims which are based on industrial property rights or other intellectual property, and which we were aware of when the contract was concluded, or were not aware of as a result of gross negligence, provided that the right or claim is based on industrial property rights or other intellectual property

- (a) according to the law of the Federal Republic of Germany, if our customer has its registered office or branch there; or
- (b) according to the law of a foreign state, if the customer has its registered office or branch there; or
- (c) according to the law of a third country only if we have expressly agreed in writing the use or sale of our products in that third country with the customer.

14.2 If a third party asserts justified claims against our customer concerning the products supplied by us according to paragraph 1 above, we shall be liable to the customer within the time limit determined in paragraph 8.6 as follows:

- (a) We shall at our option first try at our expense to obtain either a right of use for the relevant deliveries or modify the products so that the property right is not infringed or exchange the products. If we cannot do so on reasonable conditions, the customer shall be entitled to its statutory rights which shall, however, be governed by these General Terms and Conditions of Sale and Delivery.
- (b) The customer shall be obliged to notify us immediately in writing of claims asserted by third parties, not to admit any infringement, and to reserve all defensive measures and settlement negotiations for us. If the customer stops using the products for reasons of loss minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of an infringement of property rights. If an action for infringement of property rights is brought against the customer by third parties resulting from the use of products supplied by us, the customer undertakes to notify us immediately and to give us the opportunity to participate in any legal action. The customer shall support us in every way in conducting such a legal action. The customer shall not take any action which could impair our legal position.

14.3 Our obligation according to paragraph 1 shall not cover cases where

- (a) the infringement of property rights results from the fact that, in manufacturing the products, we acted on information or other data that were provided or specified to us by the customer; or
- (b) the infringement of property rights is due to an application of the customer which we could not foresee or is caused by the fact that the products were modified by the customer or mixed or used together with products we did not supply.

14.4 This shall not affect our liability according to paragraph 12.

## **15. Data protection**

We store data arising from the contractual relationship with the customer pursuant to Section 28 *Bundesdatenschutzgesetz (BDSG)* [German Federal Data Protection Act] exclusively for the purpose of data processing and exclusively for the purpose of processing supply contracts concluded with the customer. We warrant to the customer that no personal data beyond this shall be forwarded to third parties. Customers have the right to view their personal data stored and, where applicable, to have them deleted, provided no ongoing supply contract exists.

## **16. INCOTERMS**

If our order confirmation includes a clause stipulated in the INCOTERMS (e.g. freight paid ex works etc.), the INCOTERMS as last amended (currently INCOMTERMS 2010) shall apply to the respective clause unless otherwise stated in our order confirmation.

## **17. Termination/Deterioration of the financial situation**

We shall have the right to rescind the supply contract in whole or in part if the financial situation of the customer deteriorates to such an extent that we may assume that the customer shall not fulfil its contractual obligations or shall not do so within the time stipulated e.g. when the customer's credit ranking at recognised rating agencies such as Creditreform, Moody's, Fitch etc. deteriorates to such an extent that we can justifiably, and taking into account the interests of the customer, assume that the customer shall not fulfil its contractual obligations or shall not do so within the time stipulated. Such deterioration exists in particular if the customer's credit rating index at Creditreform falls below 499 or the rating at international agencies (Moody's, Fitch etc.) falls to CCC (resp. its equivalent) or lower.

## **18. Written form/ Place of performance/Place of jurisdiction/Applicable law**

18.1 All agreements, collateral agreements, warranties and contractual amendments shall only be valid when given in writing. This shall also apply to the waiver of the written form agreement itself. Verbal contractual amendments or contractual modifications are void. This shall not affect the precedence of an individual agreement (Section 305 b *BGB* [German Civil Code]).

18.2 Place of performance for all contractual obligations is our company's registered office in Herten except where an obligation to be performed at the creditor's place of business is assumed.

18.3 All disputes shall be settled exclusively before a court of law which is competent for our company's registered office in Herten. We shall also have the right, however, to bring an action against the customer at its place of general jurisdiction.

18.4 All legal relations between the customer and ourselves shall be governed exclusively by the law of the Federal Republic of Germany, in particular to the exclusion of the UN Sales Convention (CSIG).

**Status: April 2018**