

# General Terms and Conditions of Contracts, Delivery and Services of HOESCH Granules GmbH in business transactions with companies November 2020

## **1. Scope, general**

1.1 These General Terms and Conditions of Contracts, Delivery and Services (General T&Cs) apply exclusively to companies within the meaning of Section 14 of the German Civil Code (*BGB*) i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes.

1.2 The terms and conditions set forth below (**General T&Cs**) apply exclusively to our business relations with our customers, also with respect to information and advice.

Differing general terms and conditions of the buyer and/or ordering party, hereinafter referred to as "**Customer(s)**", shall only apply if and insofar as we expressly acknowledge them in writing; otherwise they shall be rejected. Our silence regarding such differing general terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General T&Cs apply in place of any general terms and conditions of the Customer, especially terms and conditions of purchase of the Customer, even if, according to such terms and conditions of purchase, acceptance of an order is deemed to be the unconditional acknowledgement of the terms and conditions of purchase, or we deliver, after the Customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our own General T&Cs vis-à-vis the Customer. Exclusion of the Customer's general terms and conditions shall also apply if the general terms and conditions do not contain a separate provision on individual regulatory points of our General Terms and Conditions. By accepting our order confirmation or the service according to the contract, the Customer expressly recognises that it waives its legal objection derived from the terms and conditions of purchase that our General Terms and Conditions do not apply.

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

1.4 If claims for damages are specified below, this shall in the same way also mean claims for the reimbursement of expenses within the meaning of Section 284 *BGB*.

## **2. Information / Advice / Properties of the products and services / Cooperation of the Customer**

2.1 Information and explanations regarding our products and services provided by ourselves or our distributors shall be provided solely on the basis of our experience to date. They do not constitute any agreements on properties or guarantees whatsoever in relation to our products. Values specified in this context shall be deemed average values of our products.

2.2 *Product specifications* agreed with the Customer *conclusively* determine the properties owed. Further properties of the delivery item or our service affected by this, such as suitability for the intended purpose notified by the Customer or customary properties of such products, are not owed.

2.3 Any information about our products and services, especially information in our quotations and brochures and on the internet and the illustrations, drawings, measurement, property or performance characteristics contained therein and other data, especially technical data or information on ingredients, shall be deemed approximate average values. Data of our products without tolerances too, as included on our website or in our catalogues and/or brochures, are subject to production-related deviations and changes customary in the trade and/or industry, especially due to related materials.

2.4 If we provide instructions for use, these shall be drawn up with the care customary in the industry but do not release our Customer from the obligation to inspect the products carefully regarding the suitability for the purpose intended by the Customer. This shall also apply to information on our part regarding import, customs and/or approval regulations.

Unless otherwise agreed, the Customer shall in any case remain obliged to check on its own responsibility whether our products and/or services can be used for the purpose intended by the Customer.

2.5 We assume an obligation to provide advice only on the basis of an express, separate consultancy agreement.

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

2.7 We shall only be deemed to have given a no-fault guarantee if we have designated a property and/or outcome of performance as "*guaranteed by law*" in writing.

2.8 We shall assume no liability that our products or services can be used and/or registered and/or marketed for the Customer's intended purpose other than liability mandatory by law, unless we have expressly agreed otherwise with the Customer. This shall not affect the provision in para. 11.

2.9 The Customer is obliged to provide us with all information and data required to perform in due time and in full as a material obligation to cooperate.

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

3.1 Properties of samples resp. specimens shall only become an integral part of the contract if this was *expressly* agreed. The Customer has *no* right to utilise and pass on samples.

Where goods are sold by us to the Customer based on a sample or demonstration specimens, deviations herefrom in the goods supplied shall be admissible. They shall not entitle the Customer to make complaints and claims against us, unless otherwise agreed, if they do not have a sustained impact on the usually intended use of the delivered goods and the delivered goods comply with any specifications agreed.

3.2 We shall retain all title and copyright to samples, illustrations, images, photos, drawings, data, estimates of cost and other documents about our products and services disclosed or provided to the Customer. The Customer undertakes not to make the samples, data, photos and/or documents specified in the above sentence available to third parties, unless we give our express consent. The Customer shall return them to us immediately on request if an order based on them has not been placed with us. This shall also apply if entitlement to retain the above-mentioned items and/or data is not otherwise contractually stipulated for the benefit of the Customer.

The stipulations in sentences 1 and 2 shall apply accordingly to the Customer's documents, drawings or data. We may, however, make them available to such third parties, to whom we are permitted to transfer deliveries and/or services under the contract with the Customer or whom we use as vicarious agents or suppliers.

3.3 Our estimates of cost shall only be binding when they are expressly designated as *binding* and the performance included therein begins immediately after receipt of the estimate of cost by the Customer on a contractual basis.

## **4. Conclusion of contracts / Scope of delivery and service / Software / Procurement risk and guarantee**

4.1 Our quotations are subject to change, unless they are expressly designated as binding or expressly contain binding commitments or their binding nature was otherwise expressly agreed with the Customer. They are requests for purchase orders by the Customer and are not binding quotations on our part.

The Customer shall be bound by its purchase order as a contract application for 14 calendar days - in the case of electronic purchase orders 5 working days (in each case at our registered office) - after our receipt of the purchase order, unless the Customer must also regularly expect later acceptance by us (Section 147 *BGB*). This shall also apply to reorders of the Customer.

4.2 A contract is created - also in day-to-day business - only when we confirm the Customer's purchase order by order confirmation in writing or text form (i.e. also by telefax or email). An order confirmation shall only apply subject to the proviso that payment arrears of the Customer still outstanding are settled and that any credit assessment of the Customer undertaken by us or on our behalf does not disclose any negative information.

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Where delivery is made or a service provided within the period by which the Customer is bound by the quotation, our order confirmation can be replaced by our delivery resp. service, whereby the date on which the delivery is shipped resp. the service is provided shall be decisive.

4.3 In the event of call orders or acceptance delays caused by the Customer, we shall have the right to procure the material for the entire order and to manufacture the total order quantity of agreed delivery items immediately resp. to stock up with the total order quantity. After the order is placed, any change requests by the Customer can, therefore, no longer be considered, unless this has been expressly agreed.

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

**Unless otherwise expressly agreed, we shall only be obliged to supply the ordered products and results of the services owed as goods which are marketable and eligible for approval in the Federal Republic of Germany.**

4.5 We shall only be obliged to deliver from our own stock (**obligation to deliver from stock**).

4.6 The assumption of a no-fault procurement risk equivalent to a guarantee within the meaning of Section 276 *BGB* or a procurement guarantee is not based solely on our obligation to deliver an item which is defined solely by its class.

4.7 We shall assume such a procurement risk within the meaning of Section 276 *BGB* only by virtue of an express, separate agreement stating "we assume the procurement risk...".

4.8 If there is a delay in acceptance of the products or in their shipment or the acceptance of our service is delayed for a reason for which the Customer is responsible, we shall have the right, after the setting and expiry of an extension of time of 14 days, at our option to obtain immediate payment of the remuneration, or to rescind the contract or refuse performance and claim damages in lieu of full performance. The time limit must be set in writing or text form. We do not have to refer again in this to the rights under this clause.

In the event of our requesting damages as stipulated above, the damages to be paid shall amount to 15% of the net delivery price in the case of purchase contracts or 10% of the agreed net remuneration in the case of service contracts. The right is reserved for the Customer to prove substantially lower damage (more than 10% lower). There is no connection between the reversal of the burden of proof and the foregoing provisions.

4.9 If the shipment is delayed at the Customer's request or for reasons, for which the Customer is responsible, we shall have the right to store the goods, beginning upon expiry of the reasonable time limit set in writing or text form in the notice that the goods are ready for shipment, at the Customer's risk of loss and deterioration of the goods, and to invoice the costs incurred for this at 0.5% of the net invoice amount of the stored goods for each full week or part thereof. *The stored goods shall be insured only at the Customer's specific request.* This shall not affect the assertion of further rights. The right is reserved for the Customer to prove that substantially lower costs (more than 10% lower) have been incurred.

Furthermore, we shall have the right, after the foregoing time limit expires according to sentence 1 of para. 4.8, to dispose otherwise of the goods covered by the contract, and to make a new delivery to the Customer after a reasonable period (= original delivery period plus 7 calendar days scheduling period).

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

If a purchase on call is concluded, the Customer's individual calls must, unless otherwise agreed, be received by us at least 6 weeks prior to the requested delivery date, unless a shorter call or delivery period was expressly agreed. Unless otherwise expressly agreed, the Customer shall be obliged to accept the purchased goods in full within one year of receipt of the order confirmation. If the calls are not made in due time, we shall have the right to send a reminder about the calls and their planning and to set an extension of time for making calls and planning of

14 calendar days, which must provide for acceptance within 4 weeks of receipt of our request. If the time limit expires without effect, we shall have the right to rescind the contract or to claim damages in lieu of performance. We do not have to refer again in this to the rights under this clause. Para. 4.8 (2) shall apply accordingly.

4.11 We shall owe user information for our products and a product label only, unless otherwise expressly agreed in writing or text form or if we are subject to different statutory regulations, in German or, at our option, in English.

4.12 We reserve the right to change the specification of the goods if legal requirements make this necessary but this only to the extent that such change does not cause any deterioration in terms of quality and usability for the customary purpose, and if suitability for a specific purpose has been agreed, for that purpose. If this is not possible, the contract shall be accordingly adjusted. If this is not possible or unreasonable for a party, both parties shall have the right without compensation to rescind the part of the contract not yet fulfilled.

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

4.14 Furthermore, we shall have the right to supply products with deviations customary in the trade in terms of quality, dimension, weight, colour and equipment. Such goods shall be deemed to comply with the contract.

## **5. Delivery / Place of performance / Delivery time / Default in delivery / Packaging**

5.1 Binding delivery dates and periods must be expressly agreed. We shall endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.) to the best of our ability.

5.2 Delivery and/or service periods shall begin with the Customer's receipt of our order confirmation, in the absence of such 3 working days at our registered office after our receipt of the purchase order from the Customer and acceptance of the same by us but not before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the Customer are met, in particular advance payments or securities agreed and cooperation required are made resp. provided in full. This shall apply accordingly to delivery dates and 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. Reasonable means a delivery period which corresponds to the originally remaining delivery period plus the period of change negotiations and a scheduling period of 14 calendar days.

5.3 Deliveries may be made and/or services provided prior to expiry of the time for delivery/service. The date of delivery for obligations to be performed at our place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The date of delivery for obligations to be performed at the Customer's place of business shall be deemed the date of delivery at the agreed place of delivery.

We have the right to make partial deliveries within the delivery period if the partial delivery can be used by the Customer within the scope of the intended use under the contract, the delivery of the remaining ordered goods is assured and the Customer incurs no significant additional expenditure or extra costs as a result, unless we agree to assume such costs. Additional expenditure is significant if it exceeds 5% of the net remuneration for the performance owed under the contract.

5.4 If we default in delivery, the Customer must first set us a reasonable extension of time for performance of at least 14 calendar days. If this elapses without effect, damage claims for breach of duty, for whatever reason, shall exist only as stipulated in para. 11.

5.5 We shall not be in default as long as the Customer is in default in fulfilling obligations towards us, also such obligations under other contracts.

5.6 We shall not be obliged to deliver as long as the means of transport to be provided by the Customer is not available, unless we have undertaken to provide the means of transport, or it has been agreed that the obligation is to be performed at the Customer's place of business. However, we shall have the right, where the shipping order or call order can be carried out, to carry

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out delivery by our own means of transport or hired means of transport. In this case, the goods shall be transported at the Customer's risk.

5.7 If no collection date, which we have confirmed or have to confirm for it to be binding, is specified when the purchase order is placed resp. acceptance does not take place on the agreed collection date, we shall at our option ship the goods covered by the contract with a carrier instructed by us or we shall store the goods covered by the contract at the Customer's expense. We shall invoice the Customer additionally for packaging, transport and insurance costs incurred (the latter if transport insurance was agreed) when the goods are shipped.

5.8 If the goods are stored, the Customer shall pay a storage lump sum of 0.5% of the net remuneration each week for the stored goods. The right is reserved for the Customer to prove that substantially lower costs (more than 10% lower) have been incurred.

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

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

6.1 If we do not receive deliveries or services from our sub-contractors for us to provide a delivery or service which is due from us under the contract, despite proper and adequate stocking prior to conclusion of the contract with the Customer in terms of quantity and quality under our delivery or service agreement with the Customer i.e. in such a way that, upon fulfilment of the supplier obligation towards ourselves, we can fulfil the contract with the Customer according to the nature of the goods, quantity of the goods and delivery time and/or service (*congruent stocking*) or they are incorrect or not in due time for reasons for which we are not responsible or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our Customer 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 within the meaning of Section 276 BGB or a guarantee of delivery. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, epidemics and/or pandemics, transport bottlenecks or obstructions through no fault of our own, in particular general curfews and/or contact bans, as well as company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by us. In the case of release from performance according to the above provision, we shall not be liable for damages and/or reimbursement of expenses or penalties for default.

6.2 If a delivery date or a delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded due to events according to para. 6.1, the Customer shall have the right, after a reasonable extension of time of 14 calendar days has elapsed without effect, to rescind the contract for the part not yet fulfilled. The Customer shall have no further claims, especially claims for damages, in such case.

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

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

7.1 Unless otherwise agreed in writing, delivery shall be made ex works Incoterms 2020. In the case of an obligation to be performed at our place of business and an obligation to be performed at our place of business where we must dispatch the goods, the goods shall be transported at the Customer's risk and expense.

7.2 Unless otherwise agreed, we reserve the right to choose the route and means of transport where shipment is agreed. We shall, however, endeavour to take the Customer's wishes into account with respect to the route and type of shipment without, however, the Customer having a right to this. Any additional costs as a result, also where delivery freight paid is agreed, shall, like the transport and insurance costs, be borne by the Customer.

If shipment to the port of destination agreed between the Customer and ourselves is not possible for reasons for which we are

not responsible, we shall have the right, after prior notice, at our reasonably exercised discretion (Section 315 BGB), to deliver in another port or by land. Additional costs incurred as a result shall be borne by the Customer. The above right to change performance and the obligation to bear the costs shall not apply if we have not assumed a guarantee of delivery or, where performance of the obligation at the Customer's place of business has been agreed, a procurement risk equivalent to a guarantee according to Section 276 BGB. Transport insurance shall be concluded in such case only at the Customer's instruction and expense.

If shipment is delayed at the Customer's request or through the Customer's fault with respect to the agreed date, we shall store the goods at the Customer's expense and risk. Para. 5.8 (2) shall apply accordingly in this respect.

In such case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the Customer, where it has been agreed that the obligation is to be performed at our place of business, upon the products to be delivered being handed over to the Customer, where it has been agreed that the obligation is to be performed at our place of business where we must dispatch the goods, upon the goods being handed over to the freight forwarder, carrier or firms otherwise entrusted with the shipment but at the latest when the goods leave our works, our warehouse, our branch or the manufacturer's works. The foregoing shall also apply if an agreed partial delivery is carried out.

In the case of an agreed obligation to be performed at the Customer's place of business, the risk shall pass upon delivery of the goods for unloading at the agreed place of delivery. Para. 7.5 remains unaffected.

7.4 If a shipment is delayed because we assert our right of retention due to the Customer's default in payment in whole or in part or due to another reason, for which the Customer is responsible, the risk shall pass to the Customer at the latest as of the date on which the notification is sent to the Customer stating that the delivery is ready for shipment and/or the service is ready to be performed.

7.5 Where acceptance of our goods and/or service is required, this shall determine the passing of risk. Acceptance must be carried out immediately on the agreed acceptance date, alternatively after our notice of readiness for acceptance. The Customer may not refuse acceptance where a defect exists which is not material.

## **8. Notice of defects / Breach of duty in the form of defective performance due to material defects (warranty)**

8.1 The Customer must give us notice in writing or text form of recognisable material defects immediately but at the latest 12 calendar days after collection, in the case of delivery ex works or storage location, otherwise after delivery, hidden material defects immediately after they are detected but the latter at the latest within the period of limitation in respect of warranty pursuant to para. 8.6. A notice of defects that fails to comply with requirements of time or form shall exclude any claim by the Customer for breach of duty due to material defects. This shall not apply in the case of fraudulent, grossly negligent or intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee for the absence of defects or a procurement risk pursuant to Section 276 BGB within the meaning of para. 4.6 or other mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Section 478 BGB).

8.2 The Customer must carry out a plausibility check upon taking delivery i.e. check the type of goods, number/weight and condition. The delivering transport operator must also be notified of material defects recognisable upon delivery, recognisable defects in type and/or defects in quantity/weight and the recording of defects in written or text form on the delivery documents/CMR by the transport operator must be arranged on site by the Customer. Failure to arrange for the notice of defects to be recorded vis-à-vis the delivering transport operator in compliance with requirements of time or form 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, an intentional or grossly negligent act on our part, in the event of injury to life, limb or health, or the assumption of a procurement risk pursuant to Section 276 BGB within the meaning of para. 4.6, a guarantee for the absence of defects or liability according to a mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Section 478 BGB).

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If defects in number and weight were already recognisable upon delivery according to the foregoing obligations to inspect, the Customer must make a complaint about these defects to the delivering transport operator upon receipt of the products and have the complaint certified in writing on the delivery documents/CMR. Failure to give notice of defects in due time to the transport operator or failure by the transport operator to issue a certificate in proper form shall also exclude any claim in this respect by the Customer for breach of duty due to material defects. This shall not apply in the case of a fraudulent, grossly negligent or intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee for the absence of defects, the assumption of a procurement risk pursuant to Section 276 *BGB* within the meaning of para. 4.6 or in the case of liability for a mandatory statutory basis for liability and in the event of right of recourse in the supply chain (Section 478 *BGB*).

8.3 Before any of the above activities begin or the products delivered by us are otherwise used, the Customer shall be responsible for clarifying, through inspections that are appropriate in terms of method and scope, whether the delivered products are suitable for the purposes intended by the Customer.

8.4 *The Customer must give notice in writing immediately of other breach of duty on our part, setting a reasonable time limit for remedy, before asserting further rights, otherwise this shall cause the Customer to forfeit the rights resulting therefrom.* This shall not apply in the case of fraudulent, grossly negligent or intentional act on our part, in the event of injury to life, limb or health or the assumption of a guarantee or a procurement risk pursuant to Section 276 *BGB* within the meaning of para. 4.6 or in the case of a mandatory statutory basis for liability.

8.5 When processing, treating, combining or mixing with other items begins, the products delivered shall be deemed approved by the Customer according to the contract.

8.6 The period of limitation for claims arising from breach of duty due to defective performance in the form of material defects is 12 months, unless otherwise expressly agreed, calculated from the date the risk passes (see para. 7.3/7.5), in the case of refusal to accept or take delivery by the Customer, from the date of the notice that the goods are ready for collection. This shall not apply to damage claims arising from a guarantee, the assumption of a procurement risk pursuant to Section 276 *BGB* within the meaning of para. 4.6, claims for injury to life, limb or health, a fraudulent, grossly negligent or intentional act on our part or if in the cases of Section 478 *BGB* (recourse in the supply chain), Section 438 (1) No 2 (construction of buildings and delivery of objects for buildings) and Section 634a (1) No 2 *BGB* (building defects) or insofar as a longer period of limitation is otherwise mandatory by law. There is no connection between the reversal of the burden of proof and the foregoing provision.

8.7 If the Customer or a third party rectifies the products supplied by us incorrectly and the defect is based on this, 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 damages caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 11.

8.9 Our warranty (*claims for breach of duty due to defective performance in the case of material defects*) and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proved to be due to defective material, defective design, defective execution or defective manufacturing materials, or, if owed, defective instructions on use. Warranty and liability arising therefrom due to breach of duty for defective performance in particular shall be excluded with respect to the consequences of incorrect use of the delivery item, inappropriate storage conditions of the same, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences on the delivery item that do not correspond with influences provided for, which are inherent in the contract. The above shall not apply in the case of a fraudulent, grossly negligent or intentional act on our part, or injury to life, limb or health, the assumption of a guarantee, a procurement risk pursuant to Section 276 *BGB* within the meaning of para. 4.6 and/or liability according to a mandatory statutory basis for liability.

Any warranty and liability shall be excluded if the Customer fails to observe the technical regulations or instructions for use

specified by us in accordance with the contract concluded or our technical regulations or instructions for use specified in this respect if the defect is based on this.

8.10 Claims based on defects shall not exist in the case of only a minor (i.e. hardly visible/perceptible) deviation from the agreed or customary quality or usability.

8.11 We give no warranty according to Section 478 *BGB* (recourse in the supply chain - recourse against suppliers) if the Customer has treated or processed or otherwise changed the products supplied by us under the contract, unless this corresponds to the intended use of the products agreed under the contract.

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

9.1 Unless otherwise agreed, all prices are quoted net in EURO, ex works resp. warehouse, excluding packaging, freight, postage and, if a transport insurance was agreed, insurance costs, plus value added tax (if applicable by law), which shall be borne by the Customer at the respective legally valid rate when payment is due, plus any country-specific charges in the case of delivery to countries other than the Federal Republic of Germany, and plus customs duties and other fees and public charges for the delivery/service.

9.2 Payment methods other than cash payment or bank transfer shall require separate, express agreement between ourselves and the customer; this shall apply in particular to the issue of cheques and bills of exchange.

9.3 If taxes or charges are incurred by the Customer or ourselves on the performance provided by us (withholding tax), the Customer shall indemnify us against such taxes and charges.

9.4 We shall have the right to issue partial invoices according to the progress of order processing and / or obtain payments on account corresponding to the progress of processing.

9.5 Unless otherwise agreed, the purchase price shall be due for payment, where it has been agreed that the obligation is to be performed at our place of business, 30 calendar days after receipt of notification that the goods are ready for collection, where it has been agreed that the obligation is to be performed at our place of business where we must dispatch the goods, 30 calendar days after handover of the goods to the carrier, and, where it has been agreed that the obligation is to be performed at the Customer's place of business, 30 calendar days after delivery of the goods.

9.6 If, where expressly agreed, the Customer pays in a currency other than EUROS, payment shall only be satisfied when the foreign currency payment corresponds to the agreed EURO amount on the date of receipt of payment.

9.7 Services that are not an integral part of the agreed scope of delivery shall, unless otherwise agreed, be performed by us on the basis of our respectively valid general price lists for such services.

9.8 We shall have the right to unilaterally increase the remuneration accordingly where material production costs and/or material costs and/or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental charges and/or currency regulations and/or changes in customs duties and/or freight rates and/or public charges increase if these have a direct or indirect impact on the manufacturing costs of the goods or procurement costs or costs of our contractually agreed deliveries and services and if more than 4 months elapse between conclusion of the contract and delivery. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the mentioned factors in relation to the overall cost burden for the delivery (*balancing*). If the above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase in other of the above-mentioned cost factors, the reduction in costs shall be passed on to the Customer through a price reduction.

If the new price based on our right to adjust prices as stated above is 20% or higher than the original price, the Customer shall have the right to rescind contracts not yet fulfilled in full for the part not yet fulfilled. The Customer can, however, assert this right only immediately after notification of the increased price.

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

9.10 Unless otherwise agreed, payment periods agreed shall run from the date of delivery.

9.11 Once in default, default interest of 9%points above the respective base interest rate (Section 247 *BGB*) shall be charged when the claim for payment falls due. We reserve the right to assert damage in excess of this.

9.12 Where a bank transfer is agreed, the date payment is received by us or credited to our account resp. the account of the place of payment specified by us shall be deemed the payment date.

9.13 *The Customer's default in payment shall cause all claims for payment under the business relationship with the Customer to become due immediately. Regardless of agreements to defer payments, agreements on the term of bills of exchange and on payment by instalment, all the Customer's liabilities due to us shall in this case be due for payment immediately.*

9.14 If payment terms are not met or circumstances known or recognisable that, in our proper commercial judgment, give rise to justified doubts as to the Customer's creditworthiness, also including such facts which existed when the contract was concluded but which were not known to us or did not have to be known to us, we shall have the right, notwithstanding further legal rights in such cases, to cease further work on current orders or stop the delivery and to obtain advance payments or provision of a bank guarantee issued by a German credit institution participating in the Deposit Protection Fund for deliveries still outstanding, and, after expiry of a reasonable extension of time for providing such securities without effect, to rescind the contract with respect to the part not yet fulfilled, irrespective of other legal rights. The Customer shall be obliged to reimburse us for all damage incurred by the non-execution of the contract.

9.15 The Customer shall have a right of retention or set-off only with respect to those counterclaims that are not disputed or have been recognised by declaratory judgment. This shall apply *mutatis mutandis* if the counterclaim for set off is in the synallagma (i.e. in the relationship of reciprocity between two performances in the contract concluded with us) with our claim.

9.16 The Customer can exercise a right of retention only if its counterclaim is based on the same contractual relationship.

9.17 Incoming payments shall first be used to repay the costs, then the interest and finally the principal claims according to age.

Any determination to the contrary by the Customer when making payment shall be disregarded.

9.18 Timeliness of payment, by whatever means it is made, shall be determined solely by the date on which it is credited to our account. The value date shall be decisive for cheque payments. Payments by the Customer must be made for our benefit, all postage and charges paid.

## **10. Retention of title, letter of credit, attachment**

10.1 We retain title to all goods delivered by us (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 are incorporated by us in a current account and the balance has been established.

10.2 The Customer must insure the Goods Subject to Retention of Title adequately, in particular against fire and theft. Claims against the insurance arising from an event of damage relating to Goods Subject to Retention of Title are herewith already assigned to us in the amount of 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 Goods Subject to Retention of Title are not paid for immediately by a third-party buyer when resold, the Customer shall be obliged to resell under retention of title only. The right to resell Goods Subject to Retention of Title shall cease

to apply at once if the Customer suspends its payment or defaults in payment to us.

10.4 The Customer herewith already assigns to us all claims including securities and ancillary rights that accrue to the Customer against the end user or third parties from or in connection with the resale of Goods Subject to Retention of Title. The Customer may not reach an agreement with its customers that excludes or prejudices our rights in any way or nullifies the assignment of the claim in advance. If Goods Subject to Retention of Title are sold with other items, the claim against the third-party customer in the amount of the delivery price agreed between ourselves and the Customer shall be deemed assigned, unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The Customer shall continue to have the right to collect the claim assigned to us until revoked by us, this revocation being admissible at any time. At our request, the Customer shall be obliged to provide us in full immediately with the information and documents required to collect assigned claims and, unless we do so ourselves, notify its customers 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 customers, the Customer shall herewith already assign to us any recognised closing balance resulting in its favour in the amount which corresponds to the total amount of the claim from the resale of our Goods Subject to Retention of Title due in the normal course of business.

10.7 The Customer must notify us immediately if the Customer has already assigned claims to third parties arising from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or has made other agreements which can prejudice our current or future security interests pursuant to para. 10. In the case of unreal factoring, we shall have the right to rescind the contract and obtain the surrender of products already delivered. This shall also apply to real factoring if, according to the contract with the factor, the Customer cannot freely dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through the Customer's fault, especially in the case of default in payment, we shall have the right, after rescinding the contract, to take back all Goods Subject to Retention of Title. The Customer shall be obliged in this case to surrender the Goods Subject to Retention of Title at once. 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 Goods Subject to Retention of Title shall constitute a rescission of the contract only if we expressly declare this in writing or this is provided for by mandatory statutory provisions. The Customer must notify us immediately in writing of any third-party seizure of Goods Subject to Retention of Title or claim assigned to us.

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

10.10 Goods Subject to Retention of Title shall be treated and processed for us as manufacturer but without obligation on our part. If 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 item in the ratio of the net invoice amount for our goods to the net invoice amounts for the other processed or combined items. If our goods are combined with other movable items into a uniform item that is deemed the principal item, 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 for us. 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.

10.11 If, in the case of deliveries abroad, specific measures and/or declarations are required from the Customer in the importing country to ensure the effectiveness of our above-mentioned retention of title or our other rights indicated above, the Customer shall notify us of this in writing or text form and shall take such measures and/or make such declarations immediately at its expense. We shall cooperate on this to the required extent. If the law of the importing country does not allow retention of title but

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allows us to reserve other rights to the delivery item, we can exercise all rights of this nature at our reasonably exercised discretion (Section 315 *BGB*). If equivalent security for our claims against the Customer is not achieved by this, the Customer shall be obliged at its expense to provide us immediately with other securities for the goods supplied which are customary in the trade according to our reasonably exercised discretion (Section 315 *BGB*). Para. 10.13 remains unaffected.

10.12 In the event of attachment or other intervention by third parties, the Customer must notify us immediately in writing to enable us to bring an action pursuant to Section 771 *ZPO* [German Code of Civil Procedure]. If the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action pursuant to Section 771 *ZPO*, the Customer shall be liable to us for the loss incurred by us.

10.13 If the Customer's place of delivery and/or registered office is located outside the Federal Republic of Germany, we shall alternatively be entitled, waiving our rights from the foregoing retention of title, to obtain from the Customer before performing the delivery an irrevocable documentary credit, issued by a major international bank rated at least AA by Standard & Poor's with place of jurisdiction in the Federal Republic of Germany, in which this bank undertakes to make payment to us upon presentation of the delivery note.

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

11.1 Subject to the exceptions specified below, we shall *not* be liable in the case of breach of duty arising from the obligation, in particular not for claims by the Customer for damages or reimbursement of expenses, for whatever legal reason.

11.2 The above exclusion of liability pursuant to para. 11.1 shall not apply:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations; "*material contractual obligations*" are obligations, the fulfilment of which defines the contract and on which the Customer may rely;
- in the event of injury to life, limb and health, also by legal representatives or vicarious agents;
- where we have assumed a guarantee for the quality of our goods or the existence of an outcome of performance or a procurement risk according to Section 276 *BGB* within the meaning of para. 4.6;
- in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory basis for liability.

11.3 If we or our vicarious agents are responsible only for ordinary negligence and none of the cases specified in bullet points 1, 3, 4, 5 of para. 11.2 above exists, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage. Section 254 *BGB* (contributory negligence) remains unaffected.

11.4 Our liability is limited in amount for each individual event of damage to a maximum liability coverage of EUR 200,000.--. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, in the case of ordinary negligence in the event of violation of a material contractual obligation, for claims due to injury to life, limb or health and in the case of a claim based on a tortious act or an express, assumed guarantee or the assumption of a procurement risk according to Section 276 *BGB* within the meaning of para. 4.6 or in cases of different, higher liability coverage mandatory by law. Any further liability shall be excluded.

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

11.6 Claims by the Customer for damages arising from this contractual relationship can only be asserted within a preclusion period of one year as of commencement of the statutory period of limitation. This shall not apply, if we are responsible for intent or gross negligence, in the case of ordinary negligence if we

have violated a material contractual obligation and in the case of claims due to injury to life, limb or health and in the case of a claim based on a tortious act or an express, assumed guarantee or the assumption of a procurement risk pursuant to Section 276 *BGB* within the meaning of para. 4.6 or where a longer period of limitation is mandatory by law.

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

## **12. Place of performance / Place of jurisdiction / Applicable law**

12.1 Place of performance for all contractual obligations is our company's registered office except in the case of the assumption of an obligation to be performed at the Customer's place of business or other agreement.

12.2 Any disputes shall be settled, if the Customer is a trader within the meaning of the *Handelsgesetzbuch* [German Commercial Code], exclusively before a competent court of law at the location of our company's registered office. For the avoidance of doubt, this jurisdiction regulation in sentences 1 and 2 shall also apply to such circumstances between ourselves and the customer, which can give rise to non-contractual claims within the meaning of Regulation (EC) No 864 / 2007. We shall also have the right, however, to bring an action against the Customer at its place of general jurisdiction.

12.3 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 (CISG). It is expressly stated that this choice of law is also deemed to be such choice within the meaning of Art. 14 (1) b) Regulation (EC) No 864 / 2007 and shall, therefore, also apply to non-contractual claims within the meaning of that Regulation. If the application of foreign law is mandatory in individual cases, our General T&Cs shall be interpreted as meaning that the economic intent they pursue is preserved to the maximum possible extent.

## **13. Property rights, licence**

**13.1 Unless otherwise agreed, we shall only be obliged to deliver in the Federal Republic of Germany exempt from third-party industrial property rights and copyrights.**

If a third party raises justified claims on account of the infringement of property rights by products supplied by us to the Customer, we shall be liable to the Customer within the period specified in para. 8.7. as follows:

- We shall at our option first try at our expense either to obtain a right of use for the deliveries in question or change the delivery item, while complying with the properties agreed under the contract, so that the property right is not infringed, or exchange the delivery item. If this is not possible for us or we reject this, the Customer shall be entitled to its legal rights which are, however, based upon modification by the contract and these General Terms and Conditions of Contracts and Delivery.
- The Customer shall, in the event of an infringement of property rights by our delivery items, only be entitled to rights vis-à-vis ourselves if the Customer gives us notification in writing or text form immediately of the claims asserted by third parties, does not acknowledge any infringement, and all defensive measures and settlement negotiations remain reserved for us.
- If the Customer ceases use of the products for reasons of damage minimisation or other good cause, the Customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of the infringement of a property right.
- If third parties challenge the Customer for infringement of property rights resulting from the use of products supplied by us, the Customer undertakes to notify us of this 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 must not take any action which could prejudice our legal position.

13.2 The Customer shall have no claims if it is responsible for infringement of a property right. The Customer shall also have no claims if the infringement of the property right is caused by the Customer's specific requirements, by an application which we

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could not foresee or by the fact that the products are changed by the Customer or used with products not supplied by us, which do not correspond to the intended use, if the infringement of the property right is based on this.

13.3 If the Customer duly fulfils its contractual obligations, it shall have the right to use the services as provided in the contract.

All copyrights, patent rights or other industrial property rights shall remain with us, unless expressly and otherwise agreed. If patentable inventions are made at our company within the scope of implementing the contract, we shall grant the Customer a non-exclusive, non-transferable, and non-licensable right to use them under preferential economic conditions. This shall not affect the Customer's entitlement to have all rights arising from the invention if the achievement of the invention is a main contractual obligation on our part.

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

14.1 In the absence of express contractual agreements to the contrary with the Customer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of Germany, to the agreed country of first delivery (**first country of delivery**).

14.2 The export of certain goods by the Customer from there can be subject to authorisation e.g. because of their nature or their intended purpose or final destination. The Customer itself shall be obliged to check this before exporting the goods from the Federal Republic of Germany or another agreed first country of delivery and to comply strictly with the relevant export regulations and embargos for these goods, especially of the European Union (EU), Germany resp. other EU Member States and, if applicable, the USA or Asian or Arab countries and all third countries involved, if the Customer exports the products supplied by us or has them exported by a third party.

In addition, the Customer warrants to us that before goods are taken to a country other than the first country of delivery agreed with us by the Customer, the required national product approvals or product registrations are obtained and that the requirements set out in the national law of the country in question regarding the provision of user information in the national language are complied with as well as all import regulations.

14.3 The Customer shall in particular check and warrant, and provide proof to us upon request that

- the products provided are not intended for use in armaments, nuclear facilities or weapon technology;
- no companies and persons specified on the US Denied Persons List (DPL) are supplied with goods of US origin, US software and US technology;
- no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with products of US origin without relevant authorisation;
- no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;
- no military recipients are supplied with the products delivered by us;
- no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;
- all early-warning notices of the competent German or national authorities of the respective country of origin of the delivery are complied with.

14.4 Goods supplied by us may only be accessed, used and exported if the above-mentioned checks and assurances have been carried out resp. provided by the Customer; otherwise the Customer must refrain from carrying out the intended export and we shall not be obliged to perform.

14.5 Where goods supplied by us are passed on to third parties, the Customer undertakes to oblige such third parties in the same

way as specified in para. 14.1-14.4, and to notify them of the need to comply with these legal provisions.

14.6 The Customer shall at its own expense ensure, where delivery outside the Federal Republic of Germany is agreed, that the goods to be supplied by us comply with all national import regulations of the first country of delivery.

14.7 The Customer shall indemnify us against all damages and expenses resulting from culpable breach of the foregoing obligations pursuant to para. 14.1-14.7.

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

15.1 A petition for institution of insolvency proceedings of the Customer or the Customer's suspension of payment not based on rights of retention or other rights despite a reminder on our part shall entitle us, in the event of the Customer at that time being in breach of duty with respect to ourselves, to rescind the contract at any time, if the Customer violates a contractual obligation at that time, or to make fulfilment of the contract dependent on the prior fulfilment of the payment obligation. In the case of continuing obligations, we shall have the right, in lieu of rescission, of termination without notice. This shall not affect Section 314 *BGB* (termination in the case of a continuing obligation). If the delivery item was already delivered or our service already provided, the consideration shall be due immediately in the above-mentioned cases. We shall also have the right to reclaim the delivery item in the above-mentioned cases and to retain it until the purchase price is paid in full.

15.2 If commercial terms are agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2020 shall apply.

15.3 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. This shall not affect the precedence of an individual agreement in written, text or verbal form (Section 305b *BGB*).

15.4 If any provision hereof is or shall become invalid / void or unenforceable in whole or in part for reasons relating to the law of general terms and conditions according to Sections 305 to 310 *BGB*, statutory provisions shall apply.

If any current or future provision of the contract is or shall become invalid / void or unenforceable in whole or in part for reasons other than the provisions relating to the law of general terms and conditions according to Sections 305 to 310 *BGB*, this shall not affect the validity of the remaining provisions of this contract, unless the performance of the contract, also in consideration of the following provisions, would present an unreasonable hardship (Section 306 III *BGB*) for one of the parties. This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling.

Contrary to any principle, according to which a severability clause in principle is to reverse the burden of proof only, the validity of the remaining provisions of the contract shall be maintained in all circumstances and, therefore, Section 139 *BGB* waived as a whole.

The parties shall replace an invalid / void / unenforceable provision or gap that requires filling for reasons other than the provisions relating to the law of general terms and conditions according to Sections 305 to 310 *BGB* by a valid provision that corresponds in its legal and economic content to the invalid / void / unenforceable provision and the purpose of the contract as a whole. Section 139 *BGB* (partial nullity) is expressly excluded. If the invalidity of a provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must be agreed for the provision.

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

Neuss, November 2020