

### I. General scope

The present terms and conditions apply to all of our deliveries and services. Furthermore, they apply to initiating and handling all of the business transactions - also future ones - with the buyer. We will not recognize the buyer's opposing conditions of purchase or opposing conditions of contract unless we would have expressly consented to their validity in writing. The present terms and conditions also apply whenever we make deliveries or provide services to the buyer while being aware that the buyer's conditions conflict with our terms and conditions, or differ from them.

These terms and conditions only apply to business enterprises, legal entities according to public law, or special assets according to public law.

### II. The written form

(1) E-mails, faxes, electronic data-processing printouts or electronic declarations also suffice for this form within the framework of customary commerce, insofar as these terms and conditions require written declarations as a prerequisite. Data transmissions by E-mail will be executed at the risk of the buyer.

(2) No collateral agreements have been made verbally. Every alteration of a contract requires to be made in the written form. An agreement about diverging from the written form itself requires the written form, too. The possibility of proving any individual verbal agreements remains unaffected.

### III. Materialization of the contract

Our quotations are always given without engagement and they are subject to change without notice. Contractual commitments only arise when our written confirmation of order has been received by the buyer. Our sales representatives are only authorized to initiate business transactions and they are not authorized to conclude contracts.

### IV. Foreign economic provisions

(1) A reasonable period is vested in us for further checking of these circumstances, in the case that we establish circumstances after concluding the contract which justify the assumption of a present or future infringement of the national, European or supranational regulations, as well as infringement of the American export law or of the existing requirements for acceptance and this infringement is declared to the buyer immediately and credibly. The onset of a delay in performance will be amicably excluded for the duration of this checking period and for conducting a requisite acceptance procedure. A right to refuse performance and a right of withdrawal from the contract are vested in us, insofar as a requisite acceptance will not be given, or it cannot be given for other reasons.

(2) Agreement is also required in every case for reselling [the goods] in countries that are subject to an embargo (total embargo or partial embargo) or for reselling to barred persons. The buyer undertakes not to utilize the delivered goods for military or nuclear purposes of any kind, nor to sell these goods to third parties with the aforementioned final utilizations, nor to procure such third parties directly or indirectly in another way.

(3) The buyer will immediately forward to us in response to our demand, or within a maximum period of ten working days (Mondays to Fridays), the appropriately conclusive, remaining, final-use documents or 'end-use certificates' (EUC) in the form that is specified by the Federal Office of Economics and Export Control (BAFA).

(4) It is incumbent upon the buyer to ensure compliance with the relevant foreign economic provisions and the other laws of his country and of the country in which the delivery shall be made and he has to ensure that they are implemented. He has to advise us in writing about any special features that arise from these provisions when concluding the contract, e.g., vis-à-vis the German export list, the Appendices I and IV of the European Union's dual-use ordinance, or the American commerce-control list.

(5) The buyer will be liable to us for damages in cases that are caused by not complying with the regulations in Paras. 2 to 4 and he has to exempt us on first demand

from any third-party claims that arise in the external relationship concerning this matter

### V. Export certificate

If the buyer, who is resident outside the Federal Republic of Germany or his agent collects the goods and he transports or despatches them abroad, then the buyer has to provide us with the export certificate that is required for tax purposes. If this certificate is not provided, then the buyer has to pay the rate of turnover tax on the invoiced amount that applies to deliveries within the Federal Republic of Germany.

### VI. Time limits for delivery; force majeure; partial delivery and delayed delivery; passage of risk

(1) Our deliveries are basically made as ex-works according to the EXW clause in the Incoterms 2010, either by means of the buyer's collection or through despatch according to 'freight forwarded unpaid' on request. We will notify the buyer promptly about the point in time for the collection in such a way that the buyer can take the measures that are usually necessary. The point in time when the despatch is made ex-works or when the notice about the preparedness for collection was given respectively is decisive for complying with the times of delivery and the dates of delivery. The agreed date of delivery will be complied with, if the items to be delivered are ready for despatch ex-works on the date of delivery. The dates of delivery apply as complied with, if the notification of preparedness for despatch was given; even if the goods cannot be despatched promptly through no fault of our own. The periods of delivery are approximate time limits and they are quoted as weekly deadlines in the acknowledgement of order; they are only binding if we consent to them in writing. It is a prerequisite for complying with the time limits for deliveries and services that all of the documents, requisite licences and approvals which the buyer has to deliver are obtained and provided punctually, as well as that the buyer complies with the agreed terms of payment and other obligations. If these prerequisites are not fulfilled promptly, then the time limits will be prolonged reasonably.

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(2) Force majeure applies as those circumstances and events which could not be prevented by taking the due care and diligence of a prudent businessman in operational management. Force majeure of any kind, unforeseeable interruptions of operations, traffic or despatch, or damage caused by fire, or flooding, or unforeseeable amounts of manpower, energy, i.e., electricity, raw materials or auxiliary materials, strikes, lock-outs, official regulations, or other hindrances for which we are not responsible and which reduce, delay or make it unreasonable to manufacture, despatch, accept or use the goods, exempt us from the obligation to deliver or accept the goods for the duration and extent of the interruption. If the interruption results in the period of delivery or the acceptance, or both, being exceeded by more than eight weeks, then we will be entitled to withdraw from the contract. We will not be obligated to cover this shortage by means of third-party upstream suppliers in the case that our sources of supply cease partly or entirely. In this case, we will be entitled to distribute the available quantities of goods subject to considering our own demand. The buyer does not have any other claims.

(3) Compliance with the times of delivery is subject to correct and prompt self-delivery.

(4) Partial deliveries and accounting for them are permissible insofar as no disadvantages arise from them for implementing the contract.

We are entitled to diverge by up to 10 % from the quoted quantity in the case of delivering a huge number of acceptable articles (unascertained goods, especially small parts).

(5) We will only fall into delay with the delivery or service if the delivery or service is due to provided and if an express written reminder has been issued. If we fall into delay with the delivery or service and the buyer incurs damage as a result, then he can demand compensation for every complete week of the delay at the rate of 0.5 % in each case but not exceeding 5 % of the total price of the part of the deliveries and services which is delayed.

(6) Not only the buyer's claims for compensatory damages because of delayed delivery or service but also the claims for compensatory damages instead of the delivery or service which exceed the limits that are mentioned in the aforementioned Clause (5), are excluded in all cases of delayed delivery or service; even after any statutory time limit which has been set for us to provide the delivery or service has expired. This rule does not apply to cases of (criminal) intent or gross negligence in this respect, or if we are compulsorily liable for injury to life, limb or health. The buyer can only withdraw from the contract within the framework of the legal provisions insofar as we are responsible for the delayed delivery. No alteration of the burden of proof to the buyer's disadvantage is connected with the aforementioned regulations.

(7) The place of performance (domicilium executandi) for the delivery is the registered office of our respective delivery works. The place of performance for the payment is our registered business address.

(8) (a) The point in time when the passage of risk occurs is determined according to the EXW clause in the Incoterms of 2010. According to that, the risk of accidental destruction and of accidental deterioration of the items to be delivered, or of processing the entrusted goods that is done by us according to a work contract (refinement or improvement), will pass to the buyer when he is notified about the preparedness for collection. The notification of the preparedness for collection is equivalent to handing over the consignment to the transporting person, i.e., carrier or driver, or it is equivalent to the purchased article leaving our works or warehouse by the purposes of despatch, insofar as the goods will be despatched at the buyer's request. All consignments will be sent at the buyer's risk from the moment when they leave our delivery works or warehouse; even if a delivery that is free of freight charges has been agreed.

(b) If the collection or the despatch is delayed at the buyer's request or because of another reason for which he is responsible, or if it is impossible for us to accomplish through no fault of our own, then the risk will also pass to the buyer when the notification

of preparedness for collection or preparedness for despatch has been given to him. We are entitled to store the goods at our discretion and at the buyer's cost and risk in this case, as well as to take all of the measures that we consider are suitable for maintaining the goods and to invoice the buyer for the goods as if they had been delivered. The legal regulations about delayed acceptance remain unaffected. Furthermore, we are entitled to dispose of the article to be delivered in another way after a reasonably set time limit for collection has expired fruitlessly and we entitled to supply the buyer with the goods according to a reasonably prolonged time limit, or to supply the buyer at his own cost and risk.

(c) The buyer has to pay the incurred costs and a storage fee amounting to at least 0.5% of the invoiced amount for every commenced month after issuing the notification of preparedness for despatch.

### VII. Call-forward notices

(1) If a delivery is agreed on the basis of a call-forward notice, then we must be granted reasonable manufacturing times respectively from the point in time when the call-forward notice was issued. If the call-forward notices are ordered, then the dates of delivery for partial deliveries will be agreed subject to considering our planned capacities and the possibility of procuring the upstream materials.

(2) Written agreements about the period of delivery are required for ordering the call-forward notices and for subdividing the delivery. We are entitled to procure the materials for the entire order and to manufacture the entire ordered quantity in the case of ordered call-forward notices.

(3) We will grant a time limit of 6 months from the date of the purchase order in the case of purchase orders that are made on the basis of call-forward notices, if nothing to the contrary has been agreed. If this time limit has expired without a call-forward being ordered, then we will be entitled at our discretion to invoice the products or to withdraw from the contract and to claim compensatory damages

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### VIII. Prices, due date of the prices, cost of transport and arrangements for payment

(1) The purchase price or wage will be recorded in our acknowledgement of order; the statutory turnover tax will be added in the case of inland business transactions, even if it has been overlooked in the acknowledgement of order. If the statutory fiscal charges or fees are increased outside a time limit of

4 months from concluding the contract but before carrying out the contract, which burden the trade in goods or make it more expensive to do the work (especially turnover tax, customs duties, compensatory payments, currency fluctuations and freight charges) or affect the negotiated wage rates, then we will be entitled to increase the price by the calculated extra costs, which we must prove; the same thing applies to purchasing the necessary upstream materials for contracts which are intended to be carried out completely or partly only 7 months after the respective contract has been concluded. The agreed prices apply to basic contracts. If the prices that our purchasing department pays for raw materials increase by more than 5 %, then the agreed price will be adjusted to account for these altered circumstances. The amount of the change will be stipulated by mutual agreement.

(2) Invoices will be due for payment 30 days after the invoicing date without any deduction; in the case of arrears or default, we will be entitled to charge interest amounting to 9 percentage points above the respective basic interest rate according to Article 247 of the German Civil Code. The right remains to claim further damages for default. Commissioned processing transactions and repair work are immediately payable after receiving the invoice (without granting a discount).

(3) The cost and insurance of transporting the goods are not included in our prices insofar as no franco domicile delivery is agreed and they will be charged to the buyer. An insurance policy will only be arranged to cover the transport damage in response to the buyer's request and at his cost. If we have undertaken an obligation to despatch the goods, then such an arrangement does not alter the passage of risk,

place of fulfilment (domicilium executandi) and the aforementioned provisions at all. We will choose the type and means of transport but without guaranteeing the cheapest freight, full exploitation of the payload and the desired or ideal sizes of the waggons and containers. We will specify the carrier or freight-forwarder. Extra costs that arise because of the buyer's diverging requests will be charged to him. These requests must be notified to us promptly before the despatch. The buyer's requests will be considered if at all possible and at his own cost. If the goods are damaged or lost during the transport, then the buyer must arrange for an inventory to be made immediately and to notify us about the result of it in writing immediately after receiving the consignment. The defective delivery must only be sent back to us by prior agreement.

(4) Bills of exchange will only be accepted on account of a separate agreement. Cheques will be accepted subject to them being honoured for the sake of fulfilment. All bills of exchange and discounting expenses will be charged to the buyer. We are not liable for delayed presentation of the bills of exchange or cheques, except in the case of gross negligence. We will establish which debt claims will be fulfilled by the buyer's payments, subject to waiving Articles 366 and 367 of the German Civil Code. The buyer waives the right to determine how to utilize his payments in this respect.

(5) We are allowed to withdraw from the contract, to demand down-payments, or to make our delivery dependent upon pledging securities, whenever we become aware of circumstances after concluding the contract which justify doubts about the buyer's creditworthiness or financial solvency. These rights exist especially whenever any due debt claims are not settled immediately despite a reminder, or if for example an application is made to open insolvency proceedings.

(6) The buyer grants us a right of lien over the material that is transferred to us for carrying out the order and over the claims that arise in lieu thereof for securing all of the present and further claims arising from the business relationship with him. If the buyer falls into arrears with payment or if his credit lapses, then we will be entitled to sell the

secured material on the open market at the value that is listed on the stock market, or at the average price on the German market if the secured material is not listed on the stock market, on the day of the defaulted payment or the lapsed credit.

(7) If the buyer is not prepared to make a prepayment or to guarantee security, then we will be entitled to withdraw from this contract after granting a reasonable period of grace and to choose either compensatory damages because of non-fulfilment or reimbursement of expenses.

### IX. Liability for drawings, illustrations, dimensions and weights

Drawings, illustrations, dimensions and weights are only approximately decisive insofar as they have not been expressly described as binding. Divergences from the diameter, weight, dimension, the construction's number of articles and their quality, which are conditional on the raw materials or manufacture, remain reserved for the delivery of goods; the commercially usual excess lengths or short lengths of up to 10 % are permissible, insofar as the DIN, EN or ISO standards do not oppose them and they do not justify complaints and reduced prices. The appropriate EURO standards apply in the absence of such commercial usage, insofar as there are not any DIN standards or material data-sheets.

### X. Intellectual property rights

(1) The buyer undertakes to guarantee that no third-party intellectual property rights will be infringed by the manufacture and delivery, insofar as the contractual products must be manufactured according to the buyer's information.

(2) If a third party does not permit us to manufacture and deliver the goods by means of citing the intellectual property rights that are vested in him, then we will be entitled to suspend or stop the manufacture and delivery and to demand reimbursement of our expenses.

(3) We are not obligated to check the legal position.

(4) The buyer's claims for compensatory damages are excluded in these cases.

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(5) The buyer has to pay compensation for the damages that we incur because of infringing the intellectual property rights and he has to exempt us from third-party claims. An advance payment to cover the costs of legal proceedings must be made to us on demand.

### **XI. Documents and observance of secrecy**

(1) We reserve the right of ownership or copyright over all the issued quotations and estimated costs, as well as the drawings, illustrations, calculations, brochures, catalogues, models, tools, other documents and aids that we have provided to the buyer. The buyer is not allowed to make these articles - either the articles or their contents - accessible to third parties, make them available to third parties without our express written consent, use them himself or via third parties, or to duplicate them. He has to give these articles back to us in response to our demand and he has to destroy any copies that were made of them if he does not need them any more during the ordinary course of business, or if negotiations do not lead to concluding a contract.

(2) Insofar as the buyer comes into contact with our business secrets or expertise, or both, while carrying out the order, he has to maintain silence about them as well as take precautions so that our interests worthy of protection are not infringed and so that our knowledge will only be utilized in connection with the order or with the subsequent use of the article itself according to the order. In particular, the buyer bears the burden of proof that business secrets or expertise, or both, were already known to him beforehand, or that they were at least apparent to the general public.

(3) The buyer is obligated to treat all of the commercial and technical details that are connected with the commission as business secrets. He is also obligated to observe secrecy concerning the documents and information after carrying out the respective contract. Copying of the documents is only permissible within the framework of the operational requirements and provisions according to the law of copyright. A disclosure vis-à-vis third parties is only permissible with our written consent.

### **XII. Tools and non-recurring costs**

(1) Non-recurring costs, like for example the costs of tools and development, will be charged at 50% directly after receiving the order, insofar as nothing else arises from the confirmation of order or from an individual agreement that is made with him. The remaining 50% will be due for payment when the first mass-produced parts are delivered.

(2) The buyer will pay the costs of manufacturing, procuring, altering, repairing or providing the fabricating moulds and tools. We retain the ownership of such moulds and tools, as well as all of the copyrights that are connected with them; even after payment. This rule does not apply if the buyer has provided his own fabricating moulds or tools for carrying out the manufacture, provided that we have not altered them substantially. Any sole right to supply the products that are made with the moulds must be expressly agreed with the buyer. We undertake to keep available the fabricating moulds and tools that have been paid by the buyer until they succumb to natural wear and tear but not for more than a period of two years after the last delivery.

### **XIII. Information about quality, advice and testing materials**

(1) We will only promise special properties or features of our delivery or service in response to the customer's express request and we will only then guarantee them if we have expressly mentioned this guarantee in our written acknowledgement of order. Reference to the technical descriptions of products, material indices, DIN standards, sales brochures and similar documents do not represent any guarantee of the properties which are described in them. A property or feature that will be ascertained only after mixing or connecting our product with other substances or articles will not apply as guaranteed in any case. Public statements, recommendations or advertising do not represent any information about the quality of our products.

(2) It is solely incumbent upon the buyer to check the suitability of the delivered goods or the refined, processed or refinished goods for his own operational purposes of use or reprocessing, as well as to check the

choice of quality or grade. This obligation especially applies to complying with the legal and official regulations for utilizing our products.

(3) Any form of advice or recommendation that is given verbally or in writing by us or typically by our sales force, takes place subject to excluding any liability; we do not undertake any contractual duties of advice in this respect. Insofar as we give technical information or recommendations or we act in an advisory capacity and this information, these recommendations or this advice is not part of the written and contractually agreed scope of work that we owe, this service takes place non-remuneratively and it is subject to the exclusion of any liability even regarding any third-party intellectual property rights. The products will be used or applied, utilized and processed outside our possible control and therefore they lie solely within the buyer's area of responsibility.

(4) If the addition of a chemical analysis or physical or technical data is contractually stipulated for sampling a material, then we will only be responsible for its reliability according to the analytical possibilities of our company's laboratory.

### **XIV. Packaging material**

(1) We will specify the type and extent of the packaging insofar as no other agreement has been made. The packaging will be chosen to the best of our judgement and subject to considering the requisite care. Packaging that exceeds the transport's purpose, or another special protection, e.g., for long-term safekeeping or storage, needs to be expressly agreed.

(2) We will only take back the packaging materials insofar as we are obligated to do so according to the Packaging Ordinance and in the case that nothing else is agreed.

### **XV. Obligation to notify defects, material defects, rights of recourse, withdrawal and compensatory damages**

(1) The buyer's rights arising from defective products, as well as all of the contractual claims for compensatory damages because of deliveries, provided services and performed work, require as a prerequisite that he has properly complied with his duties of

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inspection and complaint that are owed according to Article 377 of the German Commercial Code. The defect applies as accepted otherwise. The buyer will inspect the delivered goods or the goods that we have processed to the commercially usual extent after they have arrived and he will complain about any defective materials or processing defects in writing immediately. Latent defects must be criticized immediately after the flaw has been discovered. The buyer will allow the criticized articles to be inspected in response to our demand and he will not make any changes to them by means of re-processing, installation or other operational utilization until we have made the decision about recognizing the complaint or refusing it. Any defects claims will be invalidated if the buyer culpably infringes this duty. The buyer has to immediately give us the opportunity of checking the criticized object of the contract in the case of complaints. We reserve the right to charge the buyer for the costs of freight and trans-shipment, as well as for the checking outlay in the case of unjustified complaints. The regulation in Article 377 of the German Commercial Code applies accordingly to the services and the performed work. The defects claims do not release the buyer from complying with the obligations of payment.

(2) We are liable as follows for the material defects that were already present at the point in time when the risk was passed.

(a) First of all, we must be given the opportunity to repair or replace the goods at our discretion. i.e., supplementary performance, within a reasonable period. If the repair or replacement fails, then the buyer can withdraw from the contract or reduce the remuneration, irrespective of any claims for compensatory damages.

(b) No defects claims will exist in the case of only diverging from the agreed quality insignificantly, or in the case of adversely affecting the agreed utility only insignificantly, or in cases of excessive stress, defective building work or unsuitable building ground, or on account of particular external influences that arise, which are not prerequisites according to the contract. If improper alteration or repair work is done by the buyer or by a third party, then no defects claims will

exist for these modifications, nor for the consequences arising from them.

c) Claims by the buyer due to expenses based on the subsequent fulfilment are excluded to the extent of expenses increasing because the subject of delivery or service was subsequently transported to a different location than the buyer's site, unless the transport complies with its intended usage. This applies accordingly for the buyer's claims of reimbursement according to Section 445a BGB (Recourse of the Seller), provided that the last contract in the supply chain is not a consumable goods purchase.

(d) Claims of recourse of the buyer against us according to Section 445a BGB (Recourse of the Seller) apply only to the extent that the buyer has not concluded agreements beyond the statutory warranty claims.

(e) The period of limitation is 1 year for the claims and rights because of defects in our products, services and performed work, as well as the damages that arise from them. The aforementioned period of limitation does not apply insofar as the law prescribes longer periods in the cases of Article 438, Para. 1, No. 2, Article 445b and Article 634 a, Para. 1 No. 2 of the German Civil Code.

(3) The buyer has to pay this compensation in the case that he withdraws from the contract, even if the delivered item deteriorates through contractual use.

(4) A delivery of used articles or overhauled articles that was agreed with us in an individual case is subject to excluding any warranty for material defects.

(5) The commissioned renovating work will only be done on account of the additional conditions according to our data sheet about commissioned renovating work, insofar as it is agreed.

(6) If an acceptance of the works is agreed, then the acceptance has to take place within the period of a week beginning on the date when we notify our preparedness for the acceptance in our works or in our warehouse. The buyer will pay the cost of acceptance. If the buyer does not accept the delivered article within this weekly period, then that will be tantamount to acceptance. The buyer's rights because of a defect that appears after the buyer has completed the agreed acceptance are excluded, insofar as we do not

undertake any guarantee for the workmanship's quality or we have not fraudulently concealed a defect and the buyer did not complain about the defect although he would have been able to establish it with the agreed type of acceptance, i.e., he has not established the defect on account of his negligence.

(7) Supplementary performance measures, i.e., delivering a flawless article or remedying defects, cannot allow the period of limitations to begin again but they can only suspend the period of limitation that applies to the originally delivered article by the duration of the supplementary performance measure that is being taken. No recognition for the purposes of Article 212, No. 1 of the German Civil Code is implied in doubtful cases because of the circumstance that we carry out the supplementary performance.

(8) No alteration of the burden of proof to the buyer's disadvantage is connected with the aforementioned regulations, i.e. contractual provisions.

(9) Otherwise, Article XVII applies to the claims for compensatory damages (other claims for compensatory damages). The buyer's further claims or his claims other than those in this Article XV against us and our agents or subcontractors because of a material defect are excluded.

(10) The legal provisions about the beginning of the statutory limitation and suspending it, as well as stopping and beginning the period again, remain unaffected insofar as nothing else is specified expressly.

### **XVI. Industrial property rights and copyrights; defects of title**

(1) We are only obligated to provide the delivery or service in the country where the place of delivery is situated if it is free from industrial property rights and copyright, insofar as nothing else is agreed (referred to as "intellectual property rights" hereinafter). We are liable to the buyer within the period that is specified in Article XV, No. (2) (e), as follows, insofar as a third party makes justified claims because a contractually used delivery or service that we have provided infringes intellectual property rights.

(a) We will either obtain a right of use at our discretion and cost in order to alter or

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modify the affected deliveries and services in such a way that the intellectual property rights will not be infringed, or we will replace them. If it is impossible for us to take this action in reasonable circumstances, then the legal rights of withdrawal or reduction will be vested in the buyer.

(b) Our duty to pay compensatory damages is orientated to Article XVII.

(c) Our aforementioned obligations only exist insofar as the buyer immediately notifies us in writing about any claims that a third party has made and if he does not recognize an infringement; we also reserve the right to take defensive measures and compensatory action. If the buyer stops using the delivery or service because of important reasons, to reduce the damage or for other reasons, then he will be obligated to advise the third party that no recognition of infringing an intellectual property right is connected with stopping the use.

(2) The buyer's claims are excluded insofar as he is responsible for infringing the intellectual property right.

(3) Furthermore, the buyer's claims are excluded insofar as the buyer's special instructions cause an infringement of the intellectual property right, or because of a use that we have not foreseen, or the infringement is caused by the buyer changing the delivery or service and it will be used together with products that we have not delivered.

(4) The buyer's claims that are regulated in Number (1) (a) apply in the case of infringing the intellectual property rights and the provisions of Article XV, No. (2) (b) and (d) apply accordingly otherwise.

(5) The provisions of Article XV apply accordingly if other defects of title are present.

(6) The buyer's further claims or his claims against us and our agents or subcontractors because of a defect of title are excluded, other than those claims that are regulated in this Article XVI.

### **XVII. Other claims for compensatory damages**

(1) The buyer's claims for compensatory damages and reimbursement of outlay (referred to as "claims for compensatory damages" hereinafter) are excluded irrespective

of whatever legal reason, especially because of infringing the duties arising from the obligatory relationship and from impermissible action.

(2) This rule does not apply insofar as there is compulsory liability, e.g., according to the Product Liability Law, or in cases of (criminal) intent, or because of injuring the life, limb or health, or because of infringing essential contractual duties. However, the claim for compensatory damages arising from infringing the essential contractual duties is limited to the contractually typical and foreseeable damage, insofar as no (criminal) negligence or gross negligence is present, or because there is not any liability for injury to life, limb or health. No alteration of the burden of proof to the buyer's disadvantage is connected with the preceding regulations.

(3) Furthermore, the compensatory duty is excluded insofar as the buyer has effectively limited his liability vis-à-vis his own customer. Nevertheless, the buyer will also strive to agree the limitations of liability in our favour to the legally permissible extent.

(4) Insofar as claims for compensatory damages are vested in the buyer according to Article XVII, these claims will be time-barred when the period of limitation that applies to claims for damages arising from material defects has expired according to Article XV, No. (2) (e). The statutory regulations about the period of limitation apply if we have fraudulently concealed the defect in the case of claims for compensatory damages arising from (criminal) negligence, or if we have undertaken a guarantee for the quality of the article, or if claims for compensatory damages are made because of injury to a person's life, limb, health or liberty, i.e., freedom of movement, if claims arising from the Product Liability Law are made, if there is a grossly negligent infringement of duty, or if essential contractual duties are culpably infringed, as well as in the case of applicable legal regulations in the Sale of Consumable Goods Law.

### **XVIII. Reservation of ownership**

(1) All of the delivered articles remain our property until our debt claims against the buyer for the purchase price or wage have been paid in full (also those debt claims

which result from earlier business transactions or subsequent business transactions) as well as any ancillary debt claims (interest on arrears and expenses of sending reminders). The reservation of ownership also applies to debt claims that are not due yet or to deferred debt claims, as well as to debt claims against the buyer that we possess or acquire for a legal reason other than a contract of sale, a contract for work and materials or a contract for work, especially for compensating the aforementioned debt claims by means of abstract debt claims for bills of exchange or cheques. The buyer is only entitled to dispose of the conditional commodities during the ordinary course of business transactions, especially for reselling or reprocessing, until we have recalled them.

(2) The buyer will process the conditional commodities for us without the buyer acquiring claims for wages against us as a result. If a new article or a combined article is created through connecting the conditional commodity with parts that are not subject to our ownership, then we will acquire a quota of co-ownership in it according to the ratio of our invoiced value for the conditional commodity with the manufactured value or purchase value of the foreign parts. The buyer will safely keep the conditional commodity for us non-remuneratively. He has to insure it to the customary extent against the usual risks like for example fire, theft and water. The buyer assigns to us herewith his claims to compensation amounting to the invoiced value of the goods, which are vested in him and arise from damage of the aforementioned kind, against the insurance companies or other persons or legal entities that are obligated to pay compensation. We accept the assignment.

(3) The buyer assigns the debt claims arising from reselling the conditional commodities to the second buyer, i.e., his own customer, to us in advance, or proportionately in the case of co-owned goods according to the ratio of value in Paragraph (2), Line 2 (extended reservation of ownership). If the conditional commodity has increased in value because the buyer processed it or he has taken other refining or improving measures, then the advance assignment will be limited to the amount of our invoiced value plus 10 %. The buyer will not assert

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Röchling Roding GmbH  
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the unassigned parts of the debt claim(s) to our disadvantage. The buyer is entitled to collect the debt claims himself during the ordinary course of business transactions, provided that we do not issue any instructions to him. He must pay us the amounts that he has collected immediately, insofar as our debt claims are due. However, the buyer is obligated to surrender them to us in response to the demand of third-party creditors and he has to notify the assignment to them. Our authority to collect the debt claim(s) ourselves remains unaffected because of that. However, we will not collect the debt claim(s), provided that the buyer complies with his payment obligations arising from the proceeds collected if he is not in arrears with payment and especially if no application has been made to open insolvency proceedings, if the payments are suspended or bankruptcy occurs. If the buyer assigns the debt claims arising from the resale of the conditional (co-owned) commodities beforehand in favour of third parties (especially lending banks) before he assigns them to us, then this assignment does not apply as a sale during the normal course of business transactions. The utilization (of the conditional commodity) in order to fulfil the contracts for work also applies as a resale for the purposes of this Para. 3.

(4) The buyer will immediately notify us about a seizure of our conditional commodity or another adverse effect on it, or about the debt claims by third parties that have been assigned to us (partial debt claims) in advance and which arise from this resale. The buyer will permit us to enter his business premises on demand in order to establish, identify, separately store or remove the conditional commodities. The buyer undertakes to give us the information that is required for making debt claims that have been assigned in advance against the second buyer, i.e., his own customer and he will provide the records from his business vouchers that are needed for photocopying the documents concerning this matter.

(5) Insofar as our rights arising from the simple or extended reservation of ownership exceed our debt claims arising from the business relationship by more than 10 % of

the value in connection with any other real securities that the buyer has pledged to us, we will release the securities at our discretion in response to the buyer's demand.

(6) If the reservation of ownership that is agreed in this Clause XVIII is impermissible with the same effect as German law states in the case of sales abroad, then the goods will remain our property until all of our debt claims arising from the contractual relationship through the sale of the goods have been paid. If the reservation of ownership is impermissible with the same effect as in German law but it is permitted to retain other rights to the goods instead, then we will be entitled to exercise these rights. The buyer is obligated to cooperate with the measures that we want to take for protecting our proprietary right, or to protect another right to the goods that substitutes it.

### **XIX. Right of setoff and right of retention**

It is excluded to set off our claims for payment insofar as the matter does not concern the buyer's counter-claims that are recognized by us, or which are undisputed or legally established.

The exercise of a right of retention is not vested in the buyer because of his counter-claims arising from a contractual relationship other than the definitive one.

### **XX. Applicable law and place of jurisdiction**

(1) The contractual relationships with the buyer are subject to the law of the Federal Republic of Germany and exclude the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) The sole local and international place of jurisdiction (domicilium disputandi) is our registered office - if the buyer is a businessman - for settling all disputes arising from the contractual relationship directly or indirectly. This rule also applies to the disputes that arise in legal proceedings about documents, bills of exchange or cheques. However, we are also entitled to sue the buyer at his registered office

(3) If a provision of these General Terms and Conditions of Sale and Delivery is inoperative or ineffective, or if it becomes so, then the contract's validity will not be affected otherwise because of that.

### **XXI. Advice about data-protection and in the case of electronic commerce**

(1) We collect and process data according to EU Data Protection Act and the Federal Data Protection Act.

We collect, process and use your personal data, particularly contact data, as well as your email address, if provided by you to conclude the business relationship. We are entitled to consult information (e.g. also a so-called score value) from external service providers to assist in the decision-making process with respect to the credit check and base the payment method upon the result. We reserve the right to transmit the data to third parties (e.g. insurances) if required for the fulfilment of the agreement. Please use the following link for further information in our General Data Protection Regulations: <https://www.roechling.com/de/datenschutz/>.

(2) We use a tele-service or media service (contract in the electronic business transactions) in the sense of Article 312i of the German Civil Code for the purposes of concluding a contract about delivering the goods or about providing the services. The buyer waives that:

- a. reasonable, effective and accessible technical device will be provided, with the help of which the buyer can detect and report on input mistakes before issuing his purchase order,
- b. the information which is specified in Article 246c of the introductory law to the German Civil Code will be clearly and understandably notified punctually before issuing his purchase order and
- c. the access to his purchase order will be immediately confirmed by electronic means.

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