

## § 1 Scope

- a. These Conditions of Purchase (hereinafter: "COP") apply to all business relationships between us and our suppliers and contractual partners (hereinafter: "Contractual Partners"), even if not mentioned in any subsequent contracts. The COP shall apply accordingly to works and services. The acceptance of delivered goods can thus be equated to the acceptance of works or services.
- b. Our COP shall apply exclusively for use towards the following:
  - (1) Natural and legal entities that on conclusion of the contract act in pursuance of their commercial or self-employed professional activity (entrepreneurs); and
  - (2) Legal entities of public law or public-law separate assets
- c. We do not accept conflicting, deviating or supplementing general terms and conditions of trade, unless we have agreed to them expressly in writing. Our COP shall apply even if we accept without reservations the services of our Contractual Partners being fully aware that the terms and conditions of our Contractual Partners conflict with or deviate from our COP.
- d. Additional and deviating conditions to our COP which are agreed between us and the Contractual Partners for the execution of a contract shall be recorded in writing in the contract. This also applies to the revocation of this written form requirement.
- e. Any rights that we are entitled to in accordance with statutory provisions and beyond those stated in the COP shall remain unaffected.

## § 2 Conclusion of contract and contractual amendments

- a. Cost estimates and quotations submitted by our Contractual Partners shall be free of charge to us.
- b. An order shall become binding only if it is placed by us in writing or, in the case that an order is placed verbally, by telephone or by any other means of distance communication, is duly confirmed in writing. Transmission by fax or e-mail shall satisfy the written form requirement of this contract, provided that receipt can be proved. Fax journals or acknowledgement of receipt of an e-mail shall be sufficient proof of receipt. Automatic orders shall be valid without signature.
- c. Our silence with regard to quotations, requests and other declarations of the supplier shall not be considered as approval unless expressly agreed otherwise in writing. An order shall not be binding upon us if it contains obvious errors, clerical errors or calculation errors.
- d. If ordered goods are subject to export controls or if free movement of goods is restricted in another way in accordance with regulations applicable in the country of delivery, the supplier shall inform us in writing before concluding the contract. Otherwise we are entitled to rescind the contract without prior setting of a deadline and regardless of whether the supplier is to blame. Our further claims shall remain unaffected.
- e. If the Contractual Partner does not object within ten calendar days of receipt of our order, then its silence shall be regarded as acceptance of the quotation on which our order is based. Provided that we have concluded a framework agreement on future deliveries with the supplier, an order placed by us (overall schedule/delivery schedule) is binding if the Contractual Partner does not object within three calendar days after receipt. We are entitled to make alterations in the order.
- f. Should it become evident during performance of the contract that deviations from the specifications originally agreed are necessary or expedient, the supplier shall inform us immediately and propose amendments. We will thereupon inform the supplier whether we accept amendments and, if so, which amendments in particular shall be implemented to the original order. If this leads to a change in the costs incurred by the supplier in the performance of the contract, both us and the supplier shall be entitled to demand a corresponding adjustment of the agreed prices
- g. Order confirmations, dispatch notes, consignment notes, delivery notes, invoices and other documents issued by the supplier shall show particularly our numbers of article, order, position, material and supplier as well as the order date.
- h. If we cancel an order (partially), then the Contractual Partner shall forthwith stop its work.

## § 3 Foreign trade legislation and restrictions on export

- a. We deliver our products both to domestic and foreign destinations.
- b. Our Contractual Partners must therefore tell us already in their quotation or at the latest upon order acknowledgement whether the goods to be delivered require an export licence in the FRG.
- c. If an export licence is required, the following information must be provided to us upon performance:
  - (1) The relevant list item number under German export legislation
  - (2) Specification of a possible registration of its product under US-CCL and the appropriate list number
  - (3) Information whether the goods ordered require an export licence under the valid EC dual-use regulation; the appropriate list item number
  - (4) Commodity code
  - (5) Country of origin of the goods
- d. Our Contractual Partner shall inform us forthwith if part or all of a delivery is subject to export restrictions under German or other law.
- e. We reserve the right to rescind the contract if we are not granted any necessary export licence. In such a case, we shall be compensated for all services provided by us until the date of rejection. In such a case, the Contractual Partner cannot plead loss of enrichment or the loss of our services.

## § 4 Packaging

- a. The goods shall be packaged at the Contractual Partner's expense.
- b. Transport packaging shall be returned and collected at the Contractual Partner's expense.
- c. The Contractual Partner is obligated by law to take back the packaging. The goods to be delivered shall be packed in such a way that damage in transit cannot occur.

## § 5 Prices

- a. The prices agreed shall be binding for the relevant order.
- b. The prices agreed shall comprise all incidental costs such as customs duty, taxes, levies, costs incurred for import, packaging and transport up to the delivery address or place of use specified by us and for the method of payment agreed etc.
- c. The prices agreed shall comprise anything that is additionally necessary on the part of the Contractual Partner to fulfil its obligation to perform, including any necessary assessments, calculations, certificates, drawings etc. in the language or languages requested by us and agreed.
- d. The prices are as a rule based on DDP place of performance in accordance with the valid version of the INCOTERMS.
- e. The statutory turnover tax/import turnover tax is included in the price.
- f. We shall have to pay for any additional services only if we have ordered them in writing from the Contractual Partner prior to the work.
- g. If in an exceptional case, an ex-works price is agreed, we will only pay the cheapest freight charges. The agreement on the place of performance shall not be affected by the kind of pricing.
- h. Price increases after conclusion of the contract shall be invalid. Formal letters regarding price increases will as a rule not be accepted. The same shall apply to any price lists sent to us. Price increases shall require our written acceptance. If the Contractual Partner reduces its prices before the day of delivery, then the lowest price between conclusion of the contract and day of delivery shall be deemed to have been agreed.
- i. If the Contractual Partner has taken over installation, assembly and/or commissioning, then it shall pay all necessary incidental costs such as travel expenses, overnight accommodation, travel allowances etc. and also the cost of provision, storage and maintenance of the tools, devices and assembly equipment etc.

## § 6 Delivery and performance obligations

- a. The supplier shall note our dispatch requirements. Delivery shall be made by using packaging appropriate to the nature of the respective goods. In particular goods shall be packed in a way which avoids any damages in transit. Packaging materials shall only be used to the extent necessary for this purpose. Only environmentally-friendly, recyclable packaging materials shall be used.
- b. Dispatch of goods from overseas shall be notified immediately in writing. If VELOMAT has agreed to pay the freight charges, this only applies to the costs for the least expensive dispatch option, even if the adherence to the delivery dates or deadlines agreed upon would require faster transportation.
- c. Under-delivery and over-delivery shall as a rule not be permissible.
- d. The reservation of correct and punctual delivery to the Contractual Partner is expressly excluded.
- e. Each delivery shall be accompanied by a delivery note that precisely describes the kind, quantity and weight of the delivery. Our order number and, if applicable, our object designation shall be stated in all delivery notes, bills of lading, invoices and all correspondence.
- f. Partial delivery shall as a rule not be permissible, unless we have expressly agreed in writing or partial delivery is reasonable for us.

## § 7 Date of delivery and performance, delay and compensation for delay

- a. Dates of and deadlines for delivery and performance agreed upon (hereinafter: "Dates" and "Deadlines") shall be binding. The decisive date for adherence to a Date or Deadline shall be the date of receipt of the shipment or other service (hereinafter: "Service") by us.
- b. Any service shall be deemed to have been provided in time only upon completion that can be inspected for acceptance or upon complete delivery of the good or service including the handing-over of the entire documentation required by laws or regulations or contractually agreed in the language required, e.g. approvals, test certificates, declarations of conformity, operating and maintenance instructions, storage and processing instructions, replacement part lists and user manuals.
- c. The Deadlines and Dates agreed upon are binding. The deadlines for delivery and performance shall start upon the date our order is received. The goods shall arrive at the delivery address specified by us within the Deadline or at the Date agreed upon.
- d. Application of section 376, para 1, clause 2, HGB (German Commercial Code) for fixed-date sales is excluded.
- e. We shall be entitled to change the agreed Dates to an extent that is acceptable to the Contractual Partner if such change is necessary to ensure smooth operation of our business.
- f. If the Contractual Partner foresees that agreed Dates or Deadlines cannot be met, then it shall inform us forthwith in writing of the fact, the reason for and expected duration of the delay and of any possibilities to deliver and delivery qualities. The Contractual Partner shall take any and all necessary measures to meet the agreed delivery date or to



cause just a slight delay. The obligation to meet the agreed Dates shall not be affected. If the Contractual Partner is responsible for a delay, we shall be entitled to demand a contractual penalty of 1% of the total order value for each full or partial week but not more than 5% of the total order value. Application of section 341 III, BGB (German Civil Code) is excluded. The contractual penalty shall be imposed no later than with the final payment. Our further claims shall not be affected. Our claim for delivery shall not expire until the supplier pays compensation at our request. Acceptance without reservation of a delayed delivery or service shall not be interpreted as a waiver of the claims for compensation to which we are entitled due to the delayed delivery or performance.

- g. In the case of delayed performance, the Contractual Partner shall also bear the cost of any necessary expedited transport of the goods to us and from us to our customers.
- h. Force majeure, industrial action, disruption of operations through no fault of the Contractual Partner, unrest, measures by the authorities and other unavoidable events shall release the Contractual Partner of its obligation to perform for the duration of such disruption and to the extent of its effect. The Contractual Partner shall be obligated to provide the necessary information without delay within the bounds of what is reasonable and to adjust in good faith its obligations to the changed conditions. We shall be released from the obligation to accept the deliveries or services in whole or in part and in so far be entitled to rescind the contract if due to the delay caused by the circumstances specified above we can no longer use the deliveries or services taking account of commercial aspects.
- i. We shall be entitled to rescind the contract without fixing a time limit if the Contractual Partner becomes finally unable to provide the entire service prior to the passage of the risk. Moreover, we shall be entitled to rescind the contract if for an order the provision of part of the delivery becomes impossible and if we have a justified interest to reject the partial delivery.
- j. Deliveries made before the Date agreed upon shall only be permissible with our prior written consent. If a delivery is made earlier than agreed, we shall be entitled to return the delivery at the Contractual Partner's expense or store the goods at the Contractual Partner's expense and risk. In the case of early delivery, we reserve the right to make payment only on the agreed due date.
- k. If our Contractual Partner is responsible for a delay, we shall be entitled to claim damages instead of performance or to have the delivery or service provided by a third party at the Contractual Partner's expense upon expiry of a reasonable period of grace set by us. This shall also apply if the delay concerns just part of the delivery. The companies employed by us to provide the service owed shall be deemed to be vicarious agents of the Contractual Partner.

## § 8 Acceptance and rejection

- a. We will only accept deliveries if delivery notes and shipping documents are complete and in proper form.
- b. Delivery notes must be complete, i.e. specify the order/order item with article numbers, the place to which delivery was made, whether the delivery was a partial, residual or total delivery and when the delivery was made or the department that has placed the order. Goods which are delivered in parcels must be accompanied by a delivery note in a closed envelope.
- c. We shall be entitled to refuse acceptance of shipments if we have not received proper shipping documents on the day of receipt, in particular if our order designation or article numbers are not or incompletely specified, without us getting into default of acceptance or receipt by this. The costs resulting from the refusal of acceptance shall be borne by the Contractual Partner.
- d. If deliveries are not made within the timeframe agreed by day and hour, a violation of the client's obligation to accept cannot be derived from this. The client shall not be obligated to immediately accept deliveries that are made earlier than agreed. The Contractual Partner shall be liable for all damage, costs, stallage etc. that are incurred due to non-compliance with these provisions.
- e. With regard to quantities, weights, lengths and dimensions or other delivery and measuring units, the values determined by us upon incoming goods inspection shall be decisive subject to other proof. If differences are found with regard to quantities, lengths, dimensions or weight of the goods delivered, then the values determined by our incoming goods inspection or by third parties in the case of delivery as instructed to this incoming goods inspection shall be decisive.
- f. The signing of the Contractual Partner's delivery notes shall not be a statement about the quality of the goods delivered and shall not mean that the Contractual Partner's terms of delivery and payment are accepted.
- g. In the case of over-delivery we shall at our choice be entitled to reject the over-delivery, to store the over-delivery at a third party against reimbursement of the costs by the Contractual Partner or to reduce the price for the excess portion of the delivery. If we accept the over-delivery, the Contractual Partner shall grant us a value for the excess quantity accepted by us which will then be negotiated.
- h. The unloading possibilities of the individual delivery addresses must be observed prior to loading.
- i. Objects necessary to provide a service must be stored on the contractor's premises only in assigned storage areas. The Contractual Partner shall be fully responsible for these objects until the date the risk passes over.

## § 9 Documentation and safety data sheets

- a. Contractually agreed documents shall be handed over to us in paper form in triplicate free of charge no later than upon delivery/acceptance and additionally on an electronic data carrier. The storage and reading format must be standard format usual in Germany or in the trade. The documents shall be in the language required and use the international SI system of units.
- b. In case of delivery of plants and machines, the Contractual Partner shall provide to us a complete technical documentation with a complete replacement and wearing part list consisting at least of the documents specified in number 3 of annex V to the EC Machinery Directive including hazard analysis/assessment. The Contractual Partner shall at its expense include original operating instructions and maintenance instructions for qualified personnel in German or the agreed language.
- c. The Contractual Partner as producer or importer shall provide a manufacturer's declaration or a declaration of conformity in accordance with annex II to the EC Machinery Directive and observe the CE marking requirements.
- d. The Contractual Partner shall guarantee and document that the goods delivered comply with the relevant accident prevention and occupational health and safety regulations and the recognised rules of occupational medicine and safety engineering of the country of the Contractual Partner, the Federal Republic of Germany and the country of intended use. In particular, the Contractual Partner shall warrant that the goods delivered comply with the valid versions of the relevant EU Directives and the associated national laws and regulations and that the conformity assessment procedures specified in the Directives have been carried out. If any third party makes a claim on use due to the non-observance of such regulations, then the Contractual Partner shall indemnify us for all costs incurred in this connection on first written demand. We shall be entitled to indemnification regardless of whether the Contractual Partner is to blame.
- e. The Contractual Partner shall be obligated to send us a safety data sheet in accordance with the German Ordinance on Hazardous Substances prior to delivery if the materials ordered contain substance for which a safety data sheet must be drawn up.
- f. If the documentation is not available without faults or not in time together with the goods delivery or at the agreed time, then we shall deem the overall service to be not provided and be entitled to claim the statutory rights resulting from non-performance.

## § 10 Passage of risk and property acquisition

- a. The Contractual Partner shall bear the risk of any deterioration – including shipping – including the risk of accidental loss of the goods until acceptance of the goods by us or our representative at the place to which the goods are to be delivered as per our order.
- b. The risk shall pass to us only upon taking-over or, if acceptance inspection is agreed, not before acceptance without reservations by us or our employees.
- c. Delivery to any place other than the place of receipt designated by us shall not affect passage of risk from the Contractual Partner even if that place accepts the delivery. The Contractual Partner shall pay our additional expenses resulting from delivery to any place other than the agreed place of receipt.
- d. Return deliveries to the Contractual Partner shall as a rule be made at the Contractual Partner's risk. This shall apply even if in an exceptional case ex-works delivery has been agreed in the original order or if we ship the goods for our account.
- e. If the supplier is obliged to carry out installation or assembly of the goods, then risk shall not be passed to VELOMAT until the goods are commissioned.

## § 11 Hazardous substances

- a. The supplier shall observe German Ordinance on Hazardous Substances (GefStoffV) when delivering the goods. In particular, the supplier shall package and mark the respective goods accordingly and expressly refer to hazardous substances in the delivery note.
- b. The supplier shall comply with the directives of the European Parliament and the Council of 8th June 2011 – 2011/65/EU on the Restriction of certain Hazardous Substances (RoHS) in electrical and electronic equipment and 2002/96/EG on Waste from Electric and Electronic Equipment (WEEE) – and their national transpositions, in particular the Electric and Electronic Equipment Act (ElektroG), and shall mark the packaging of the goods accordingly. The supplier shall confirm RoHS-conformity by stating "RoHS-konform/RoHS-compliant" on the delivery note.
- c. In the case of any violation of obligations under clause 11. a. or b., we shall be entitled to refuse acceptance of goods and rescind the contract without prior setting of a deadline and regardless of whether the supplier is to blame. Our further claims remain unaffected.

## § 12 Quality assurance agreements, acceptance criteria, quality assurance of the Contractual Partner

- a. The quality assurance agreement and the acceptance criteria shall be contractually agreed with our Contractual Partners at the beginning of a business relationship and shall be binding to our Contractual Partners. They shall after that apply to the entire business relationship and be essential elements of the contract even without express reference in follow-up contracts. Clause 12. b. shall apply by analogy to amendments.
- b. We will inform our Contractual Partner of any change of the quality assurance guidelines and acceptance criteria. If our Contractual Partner does not object to the advised versions of the quality assurance agreements and acceptance criteria within 4 weeks, then they shall upon expiry of the four-week period be deemed to have been approved of by the Contractual Partner. We will especially point out this legal consequence when sending any changed version.
- c. Quality assurance agreements between us and our Contractual Partner shall apply to the entire business relationship between us and our Contractual Partner.
- d. The Contractual Partner shall install and maintain a state-of-the-art quality assurance system suitable with regard to kind and extent and appropriately documented. Prior to delivery, the Contractual Partner shall carry out an in-depth function and quality inspection and sufficiently record all measures taken to discharge of this duty. The documents shall be archived for a period of not less than 10 years.

- e. The Contractual Partner hereby expressly consents to enable quality audits by us at any time and without prior notice in order to assess the effectiveness of its quality assurance system. The Contractual Partner shall, upon request, allow us to view its certification and audit reports as well as inspection procedures including all test records and documents relevant to the delivery. This shall to the same extent apply to environmental management audits.

## § 13 Guarantees

- a. The Contractual Partner represents and warrants that any and all deliveries and services will be state of the art, comply with the relevant legal regulations and the valid regulations and guidelines of authorities, professional associations and employers' liability insurance associations (e.g. DIN, VDE, VDI, TÜV, GL, UL, CSA, CCC, ROHS, WEEE and Gost standards or equivalent international standards) and that only environmentally compatible materials are used that comply with the valid disposal standards and state-of-the-art recycling technologies.
- b. The Contractual Partner represents and warrants that any and all deliveries and services will comply with the latest accident prevention regulations of our employers' liability insurance association applicable to the object ordered (section 2, para 1, clause 1, VGBI) and the GAA ordinance (immission control act).
- c. In addition, the Contractual Partner warrants compliance with the following standards and requirements:
- (1) EC Machinery Directive 98/37/EG including annexes I to VI
  - (2) EC Low-voltage Directive 73/23/EWG
  - (3) EC Electromagnetic Compatibility Directive 89/336/EWG
  - (4) EC Measuring Instruments Directive (MID) 2004/22/EG
  - (5) Electric equipment of machines EN 60204/VDE 0113, part 1
  - (6) Equipment and product safety act, GSG, ProdSG
  - (7) ElektroG (German electric and electronic waste law)
- d. The Contractual Partner represents and warrants that any and all deliveries and services will not be encumbered by third-party rights and that it will be entitled to unrestricted disposal.
- e. Furthermore, the Contractual Partner promises to use materials that are suitable for the purpose and guarantees expert design and construction, correct function and achievement of the agreed ratings under the agreed conditions.
- f. Where in isolated cases deviations from these provisions (clause 11. a. – d.) are necessary, the Contractual Partner shall require our prior written consent. Its warranty obligation shall not be restricted by such consent. If the Contractual Partner has reservations against the kind of design desired by us, then it shall inform us in writing without delay.
- g. The supplier warrants that metallic materials of the goods delivered shall be free from ionizing radiation. This is obtained if the total amount of specific activity of the metallic materials is considerably lower than 0,1 Becquerel per gram (Bq/g) or if suitable measuring instruments do not detect any ionizing radiation which, within the scope of measuring accuracy, exceeds natural environmental radiation at the date of measurements. The supplier shall indemnify us against any and all claims which a third party raises against us or our customers for the infringement of these guarantees.

## § 14 Warranty

- a. We will inform the Contractual Partner in writing without delay about obvious defects of the delivery as soon as they are found in the course of ordinary business. Our notification shall be deemed to have been without delay at any rate if it is made within five working days after receipt of the delivery or service by us. We will inform you of defects detected later that are not obvious within five working days after detection.
- b. If a delivery is made to a third party directly by the Contractual Partner, then the inspection period shall start on the time the risk passes to the third party. If the third party notifies us of a defect within the five working days mentioned above, then the period for notification of the Contractual Partner shall be deemed to have been adhered to if the notification is passed on to the Contractual Partner without delay.
- c. The Contractual Partner shall remedy defects in the delivery or service including the non-provision of guaranteed data and the lack of warranted characteristics forthwith and free of charge including all incidental costs at our choice by subsequent improvement or substitute delivery. Incidental costs shall in particular include such costs that are incurred due to troubleshooting, dismantling of faulty parts and installation of replacement parts as well as the costs of experts and transportation.
- d. If deliveries include a large number of identically constructed goods, then we shall merely examine a suitable proportion of the delivered goods for defects. Provided that the goods become unmarketable due to the inspection, a suitable random sample of the supplied units shall suffice. If individual random samples of a delivery are defective, then we can, at our own option, require a separation of the defective items by the supplier or assert claims for defects of the entire delivery. We are obliged to carry out separation ourselves for the supplier's account, provided that the supplier does not start separation forthwith. Where defects require an inspection which goes beyond the usual effort of an incoming goods inspection, the costs of the inspection shall be borne by the supplier.
- e. We will, insofar as this is feasible in the regular course of business, examine whether the delivery corresponds to the quantity and the type of goods ordered and whether there are any externally visible transportation damages immediately upon acceptance of the goods. We do not carry out any further incoming goods inspections.
- f. If, due to defects of the goods delivered, a blocking by us becomes necessary, we shall be entitled to charge an administration fee of €250,00 to the supplier, unless the supplier proves that no damage or minor damage has been suffered. Our further claims remain unaffected.
- g. Defective goods shall be returned at the Contractual Partner's expense and risk. We shall also be entitled to send the goods to the Contractual Partner carriage forward after setting of a deadline. Substitute delivery shall be made carriage paid, duty paid and free packaging. Costs caused by the inspection of faulty goods or services shall be borne by the Contractual Partner.
- h. Defects that can be detected only during processing or machining of the goods or when they are used shall additionally entitle us to have the expenses incurred uselessly reimbursed by the Contractual Partner.
- i. If subsequent improvement or substitute delivery are not possible or unsuccessful or if they are delayed or refused beyond a reasonable period of grace set in writing by us, then we shall be entitled to the statutory rights of rescission or diminution. If delivery is not made by the agreed deadlines, then the supplier shall not have right that the recipient takes delivery. Claims for damages are expressly reserved. This shall also apply to claims for damages due to non-performance.
- j. If the Contractual Partner fails to fulfil its warranty obligations of subsequent improvement or substitute delivery within a reasonable period of grace set by us or if in the exceptional statutory cases no such period needs to be set, then we shall be entitled to take ourselves or have taken by a third party the necessary measures at the Contractual Partner's expense and risk without prejudice to its warranty obligation.
- k. In urgent cases, we shall be entitled to effect subsequent improvement at the Contractual Partner's expense and risk by arrangement with the Contractual Partner ourselves or through a third party. Where prior arrangement with the Contractual Partner is not possible, we shall take the necessary measures immediately and without delay inform the Contractual Partner.
- l. We shall be entitled to remedy minor defects without prior arrangement, without prejudice to the Contractual Partner's warranty obligation. We shall be entitled to charge the necessary expenses to the Contractual Partner. The same shall apply if unusually great damage is threatening.
- m. In the cases of clause k we shall also be entitled to demand reimbursement by the Contractual Partner of the expenses that we had to pay in the relationship with our customer because our customer could claim reimbursement of the supplementary performance costs from us, in particular the cost of transport, toll, labour and materials.
- n. The Contractual Partner assigns to us already now – by way of provisional performance – any and all claims that it has against its suppliers due to the delivery of defective goods. We accept the assignment.
- o. In the event of repeated deliveries of faulty goods we shall be entitled to rescind the contract after a written warning and following another faulty delivery, also with regard to parts of the order not yet completed.
- p. If data sheets or technical specifications obviously contain mistakes or insufficient information, then the Contractual Partner shall be obligated to point these out to us in writing forthwith prior to the start of production. Our approval of technical documents and/or calculations of the Contractual Partner shall not affect the Contractual Partner's liability for defects.
- q. The warranty period shall be 36 months starting from the day the risk passes to us. However, in the case of buildings, work on buildings and objects or materials that are usually used for buildings and that cause their defectiveness, the warranty period shall be six years. In the event of subsequent repair or substitute delivery, the limitation period shall begin to run anew.
- r. On expiry of the limitation period, the supplier is obliged to supply us with all spare parts, accessories and tools required for a further period of ten years. Section 438, BGB, shall not be affected.

## § 15 Liability

- a. The Contractual Partner shall be liable to us for such damage that occurs due to the defectiveness of the delivery or service or due to a breach of contractual duties of care, custody and information or other contractual accessory obligations or due to non-observance of contractually agreed deadlines (delay) without the need of any other proof than that of objective neglect of duty, the causal connection with the damage occurred and the amount of damage.
- b. If and in so far as the Contractual Partner's liability in accordance with the statutory regulations depends upon its being responsible for the breach of contract, it may release itself from its liability by proving lack of fault. The Contractual Partner shall be responsible for any fault by its vicarious agents or assistants and by its suppliers in the same way as for its own fault. The Contractual Partner cannot release itself from its liability by proving that it has properly selected or supervised the vicarious agents or suppliers.
- c. If the Contractual Partner is liable in accordance with these provisions, then it shall indemnify us against any and all claims raised by any third party.
- d. The Contractual Partner's liability shall comprise any and all damage, in particular profit lost by us and consequential damage due to delivery bottlenecks and production disruptions.

## § 16 Manufacturer's liability and recall

- a. If and in so far as the Contractual Partner is liable for product damage, non-observance of legal duties to maintain safety or a defect, it shall be obligated to indemnify us from claims for damages by third parties under domestic or foreign product liability and upon first request in so far as the cause is within its domain and sphere of organization and it is itself liable in its relations to third parties.



- b. If and in so far as the cause of the damage is within the Contractual Partner's sphere of responsibility, it shall have the burden of proof.
- c. If due to defects in the contractual goods delivered by the Contractual Partner we take back products that we have manufactured and/or sold or our purchase price is diminished or claims are made on us in any other way, then we reserve the right to have recourse against the Contractual Partner. Our rights due to defects shall not require any setting of a deadline that would otherwise apply.
- d. If the claimant bases its claim on a product liability act that does not require responsibility by the damaging party (this in particular applies to the product liability acts of the EU member states), then the Contractual Partner shall be liable to us even without being responsible if and in so far as the cause is within its domain and sphere of organisation. Section 5, ProdHG [product liability act], and section 426, BGB, shall apply by analogy.
- e. In the context of its liability for damage within the meaning of the above paragraphs, the Contractual Partner shall also be obligated to refund any expenses in accordance with sections 683, 670, BGB, or sections 830, 840, 426, BGB, that result from or in connection with a recall campaign carried out by us. To the extent this is possible and reasonable, we will inform the Contractual Partner about the content and extent of the recall campaign to be carried out and give it an opportunity to make a statement. Other statutory rights shall not be affected.
- f. If and in so far as the Contractual Partner is liable to pay compensation to us, it shall also be obligated to bear the cost of any litigation or recall campaign.

## § 17 Liability insurance

- a. The Contractual Partner undertakes to take out and maintain and prove to us a product liability insurance with the following minimum covers:
  - (1) Per claim for injury to persons €10 million
  - (2) Per claim for property damage €10 million
  - (3) Per claim for financial loss €5 million
- b. If the sum insured for any of the types and events of loss is lower than the covers demanded, the Contractual Partner shall be obligated to point this out prior to accepting an order or in the case of later changes.
- c. Further claims for damages to which we are entitled shall not be affected.

## § 18 In-production inspections

- a. We reserve the right to inspect the quality of the material used by the Contractual Partner, the accuracy of the parts manufactured and observance of other instructions at the Contractual Partner's or its suppliers' plant(s) during production and prior to delivery.
- b. We reserve the right to carry out a final inspection of the delivery item or service at the Contractual Partner's plant by us or a third party commissioned by us.

## § 19 Shipping and transport insurance

- a. Forwarding, logistics and warehouse insurance policy (SLVS) shall be prohibited. We only bear insurance costs if we have requested the insurance in writing.
- b. The information in our orders and delivery schedules shall apply. The Contractual Partner shall bear our extra costs resulting from delivery to an address other than the agreed place of receipt.
- c. Where weighing is necessary, the weight determined by us on the certified scales.
- d. The legal regulations with regard to transport must be observed, in particular the provisions of the law regarding the transport of dangerous goods and the applicable ordinances on hazardous substances including their annexes.

## § 20 Origin of goods and proofs under fiscal law

- a. On a regular basis, at least once per year at the fiscal year change, and without being asked the Contractual Partner shall provide supplier's declarations for goods delivered with or without preference origin for all articles purchased by us.
- b. For articles that are ordered for the first time, a supplier's declaration must be provided at the latest upon order acknowledgement, provided that the tariff preferences enable the document to be issued.
- c. The Contractual Partner shall without delay provide evidence-of-origin documents that we request with all the necessary information and properly signed. The same shall apply to turnover tax evidence in the case of foreign shipments and intra-Community supply of goods.
- d. We are exempted from the obligation to deduct taxes in accordance with section 48 b, para 1, EStG [income tax law], only if the Contractual Partner presents a valid certificate of exemption with its name issued by the competent tax office. Provision of a copy of the certificate of exemption shall be sufficient.

## § 21 Rights to use software

- a. We shall be given the irrevocable, exclusive right to use any software or parts of any software developed for us throughout the universe in perpetuity in any way now known or hereafter devised, including the right to modify, reproduce, change or extend the software and to grant simple rights of use to third parties, unless any restriction results from the paragraphs below.
- b. The Contractual Partner undertakes to deliver to us the manufacturer's documentation without being asked, in particular the source code in a form in which we can read and use it if the user software has been developed especially for us.
- c. Where a contract or amendment to a contract includes software and/or consulting services, the Contractual Partner shall without delay agree with us upon a performance specification in which the deliveries and/or services to be provided by the Contractual Partner shall be specified in detail.
- d. Software shall be handed over to us on usual commercial data carriers in a machine-readable code and with user documents. Source code and manufacturer's documentation shall be handed over to us at the latest upon acceptance inspection and must correspond to the program version at the end of the testing phase and the acceptance procedure. The Contractual Partner shall without delay incorporate into the source code and the manufacturer's documentation any changes to the software that may be made in the context of warranty. The Contractual Partner shall without delay and without being asked give us a copy of the updated version.
- e. Where software is part of the delivery that is not developed especially for us, we shall upon acceptance acquire a non-exclusive right of use comprising any and all kinds of use now known or hereafter devised which shall also include the right to grant simple rights of use to third parties.

## § 22 Licences for deliveries and services

Where rights of use beyond the provisions of clause 21 are required for a delivery or service, we shall receive them upon passage of the risk. We shall have a right to use the delivery or service throughout the universe in perpetuity in any way now known or hereafter devised, including the right to modify, reproduce, change or extend the delivery or service and to grant simple rights of use to third parties.

## § 23 Industrial property rights, laws, regulations, conditions imposed by the authorities

- a. The Contractual Partner warrants that no third-party rights are infringed upon by or in connection with its delivery or service.
- b. Such third-party rights in particular include patents, industrial property right certificates, brands, utility models, registered designs, copyrights, intellectual property rights, statutory regulations and conditions imposed by the authorities, under public law or by trade associations.
- c. We shall not be obligated to investigate whether the delivery or service provided by the Contractual Partner is subject to third-party industrial property rights.
- d. Should claims be made on us by a third party with regard to this, the Contractual Partner shall be obligated to indemnify us against such claims on first written demand. This shall include the early defence against threatening claims such as necessary defensive action or litigation. We shall not be entitled to conclude any agreement with the third party, in particular no settlement, without the consent of our Contractual Partner.
- e. The Contractual Partner's obligation to indemnify us shall refer to any and all expenses we necessarily incur due to the claim by a third party.
- f. We shall be entitled to obtain, at the Contractual Partner's expense, authorisation from the holder of an industrial property right to deliver, set into operation or use the objects delivered.
- g. The above claims shall become statute-barred not before the expiry of two months after the time at which we have satisfied the claims made on us due infringement of an industrial property right. This suspension shall end at the latest five years after the time at which our Contractual Partner has provided the delivery or service.

## § 24 Requirements regarding invoices issued by our Contractual Partners

- a. For each delivery, a separate invoice as a single copy, separated from the goods delivery, shall be sent to our invoice verification department or, if a different agreement has been made, to the department that has placed the order.
- b. Invoices shall correspond to our order designations and contain our order and article numbers. Invoices which do not comply with our requirements, in particular in the case of missing order numbers or non-observance of the euro-requirement, will be immediately sent back to the Contractual Partner by us. In this case, the discount period shall not commence until a correct invoice has been received.
- c. The Contractual Partner's VAT identification number or the tax number assigned to the Contractual Partner by the competent tax office shall be stated.
- d. Invoices shall be issued in euros. Invoices in foreign currency shall require our prior consent.
- e. Invoices shall be sent to us separately after provision of the delivery or service together with all associated documents and evidence and in an auditable form. If invoices are not submitted in proper form, they shall be deemed to have been received by us only on the day of correction.

## § 25 Terms of payment and payment

- a. Invoices are paid by us within 14 days with 3% discount or within 30 days without discount.
- b. The payment periods that apply to us shall start only upon receipt of the delivery item or provision of the service and the corresponding proper and auditable invoice and (in the case of shipment) the proper shipping documents. The point in time when these conditions are met shall be the time at which our payment period shall start to run (hereinafter: "Start of Period").
- c. If our Contractual Partner provides the services owed by it before the agreed date, then the payment term shall not start before the contractually agreed date.



- d. We shall make payments at our choice by means of cash payment, payment by cheque or note, credit transfer, 3-month bill of exchange or set-off against counterclaims.
- e. Payments shall be deemed to have been made in time if the cheque is sent by post on the due date or if the bank is instructed on the due date to transfer the amount.
- f. In any explanation for default of payment, the receipt of an invoice or other payment schedule shall not be in lieu of the receipt of the purchased item.
- g. Our payments are made with the reservation of invoice verification. Our payments shall not mean acknowledgement of settlement.
- h. Payments will only be made to the Contractual Partner.
- i. If advance payments are agreed upon, then we shall be obligated to pay only after the Contractual Partner has provided to us a directly enforceable guarantee by a big German bank for the amount of the advance payment.
- j. Payments shall be made subject to proper fulfilment of the contract and the correctness of the invoice as regards prices and calculations.
- k. If within a period of two years after the final payment we detect errors the settlement or in the settlement documents, then the Contractual Partner shall, after notification, be obligated to reimburse us for the amounts overpaid. The Contractual Partner shall not be entitled to plead loss of enrichment. We shall set off against our reimbursement claim errors in favour of the Contractual Partner that have occurred in the same settlement. The time limit shall not apply to our claims from tort.
- l. If the contract should become invalid or be cancelled or reversed for whatever reason, then any payments made by us shall bear interest of three percentage points on top of the base lending rate, without prejudice to other claims. Foreign Contractual Partners shall repay in euros the euro amount we have paid plus the interest specified above in euros, regardless of any exchange rate changes that may have occurred in the meantime.
- m. In the event of defective delivery or service we shall be entitled to withhold payments to a reasonable extent until proper performance. The Contractual Partner may set off against our claims only undisputed or final claims. Apart from that, set-off against our claims shall not be permitted.

## § 26 Sub-contractors, co-operation, passing-on of orders

- a. The Contractual Partner shall as a rule process the order itself.
- b. The Contractual Partner may pass on an order or part of any order only with our prior written consent even if the Contractual Partner makes delivery in its own name.
- c. Persons carrying out contractual work within our premises shall sign our external company directive. It is submitted by us at the beginning of the work and shall be signed and returned immediately.

## § 27 Work carried out at our plants, occupational safety

- a. Persons carrying out contractual work on our premises shall comply with the provisions of the relevant plant regulations, the legal accident preventions regulations and the regulations of the trade association. The rules applying to entry to and exit from our plants shall be observed.
- b. We cannot be held liable for accidents occurring within our domain, unless such accidents are caused by grossly negligent or wilful breach of the duties of our legal representatives or vicarious agents.
- c. Persons carrying out contractual work within our premises shall sign our external company directive. It is submitted when placing the order.

## § 28 Provision of parts and materials, safekeeping

- a. Goods or parts provided by us (hereinafter: "Client Parts") shall remain our property and must be marked as such immediately upon provision and be stored separately.
- b. The Client Parts must only be used as contractually agreed between us and our Contractual Partners. Any other use is not permitted.
- c. For these Client Parts, the Contractual Partner shall assume the risks of accidental or other loss, deterioration or damage to our property. Scrap or excess consumption due to operations shall also be charged to the Contractual Partner.
- d. If the Client Parts are sent to the Contractual Partner directly by a third party, then the Contractual Partner shall effect incoming inspection as regards quantities and quality control. The Contractual Partner shall notify us and the third party forthwith of any complaints.
- e. Processing and alteration of the Client Parts shall be made on our behalf with the consequence that we gain ownership of the object produced.
- f. If the Client Parts are inseparably mixed with other goods not owned by us, then we shall gain co-ownership of the new product in the relation of the value of the Client Parts (purchase price plus VAT) to the other components at the time of mixing. If mixing takes place in such a way that the Contractual Partner's goods become the main item, then it shall be deemed to have been agreed that the Contractual Partner assigns proportional co-ownership to us. The Contractual Partner shall keep safe for us our sole property or co-property.
- g. The Contractual Partner undertakes to insure the Client Parts at their replacement value at its expense against fire, water damage, theft and other customary risks. The Contractual Partner already now assigns to us any and all claims for compensation under the insurance policy and we hereby accept the assignment.
- h. We shall be informed in writing and by telephone forthwith upon any threatening attachment of, theft of or damage to the Client Parts becoming known to the Contractual Partner.
- i. We shall be entitled at any time to inspect the warehouse and the stocks or have them inspected by our representative.
- j. Withdrawals from and stocks of the Client Parts shall be reported to us in detail continuously, at the latest at the end of any month. The Contractual Partner undertakes to take stock of the Client Parts at the end of each calendar year and inform us about the stocks. We shall be entitled to demand such stocktaking also during a year. Excess stocks shall be returned to us free of charge upon fulfilment of the contract.
- k. If the security rights to which we are entitled in accordance with clause e. and/or clause f. exceed the purchase price of all our reservation goods not yet paid for by more than 10%, then we shall be obligated to release the security rights at the Contractual Partner's request at our choice.

## § 29 Models, tools, moulds, devices, drawings and documents

- a. We reserve ownership of any and all tools, models, drawings, devices, samples, work documents, software, measuring equipment, test instructions and similar documents or means of production (hereinafter: "Tools") that we provide to the Contractual Partner.
- b. If tools, devices or measuring equipment are produced by the Contractual Partner in whole or in part for our account, then such production shall be effected on our behalf with the consequence that we gain the sole ownership of the product. Handing-over shall be replaced by the fact that the Contractual Partner shall be authorised to own and keep safe the products for the duration of the relevant order free of charge as hired products. This shall also apply if we pay just a proportion of the production costs or amortisation of the production costs via delivery rates has been agreed. We shall have the sole and exclusive right to use the Tools.
- c. The Contractual Partner undertakes to use Tools manufactured at our expense or provided to it by us exclusively for the production of the goods ordered by us.
- d. Alterations to the Tools must only be made with our prior written consent. This shall also apply to any destruction and/or disposal.
- e. The Contractual Partner undertakes to ensure at its expense the Tools at their replacement value against fire, water damage, theft and other customary risks. At the same time, the Contractual Partner already now assigns to us any and all claims for compensation under the insurance policy and we hereby accept the assignment.
- f. The Contractual Partner undertakes to carry out in time at its expense any necessary maintenance, inspection and repair work on the Tools. The Contractual Partner shall forthwith inform us of any disturbance. If it fails to do so, claims for damages shall not be affected.
- g. The Contractual Partner undertakes to keep strictly secret any and all images, drawings, calculations and other documents and information received or produced on our instructions. They must be disclosed to third parties only with our prior written consent. The obligation of secrecy shall apply even after completion of this contract. It shall expire if and in so far as the production know-how contained in the images, drawings, calculations and other documents has become generally known.
- h. If the Contractual Partner violates any of the provisions of this clause 29, then it shall pay a contractual penalty of 10% of the order value but not less than €5,000. Claims for damages shall not be affected.
- i. All Tools belonging to us shall be returned to us in a usable condition forthwith upon termination of the contract at the Contractual Partner's expense and risk. The Contractual Partner shall not have a right of retention with regard to the tools.

## § 30 Assignment of claims and reservation of title

- a. The Contractual Partner shall not be entitled to assign claims against us or have them collected by third parties without our prior consent. We shall give consent regarding assignment in good faith. In the event that the Contractual Partner has granted his supplier extended reservation of ownership in the course of ordinary business, our consent is deemed to have been given.
- b. If the Contractual Partner has effectively reserved ownership of the goods delivered, then ownership of the goods delivered shall pass to us at the time we have paid for them.
- c. The extensions of the extended reservation of proprietary rights and of the so-called current account reservation and extended group reservation of ownership shall not apply.
- d. Reservation of title in favour of the Contractual Partner and third parties is ruled out.

## § 31 Secrecy and data protection

- a. The Contractual Partner shall keep secret from and sufficiently protect against access by third parties any and all business and company secrets and any and all commercial and technical documents and information of us (including characteristics that can be derived from any objects handed over, documents or software and other know-how or experience) while and in so far as they are not proven to be known by the general public.
- b. Such information must be made available only to such persons in the Contractual Partner's company that need to use it for the purpose of delivery to us and that likewise are permanently obligated to secrecy beyond their employment relationship.
- c. Such information shall remain our exclusive property.
- d. Such information must not be reproduced or commercially exploited without our prior written consent, except for deliveries to us.
- e. At our request, any and all information stemming from us (including any copies or records made) and any and all objects provided on loan shall be returned to us forthwith and completely or destroyed with proof of destruction. We reserve all rights to such information (including copyrights and the right to apply for industrial property rights such as patents, utility patents etc.). If and in so far as such information has been made available to us by third parties, the reservation shall also apply for the benefit of such third parties.
- f. Products manufactured based on documents developed by us such as drawings, models and the like or based on our confidential information or with our Tools or copied Tools must not be used by the Contractual Partner nor offered or supplied to any third party. This shall apply by analogy also to our printing order.



- g. This obligation shall apply to all processes and activities at the Contractual Partner's and its customers and also apply after the submission of a quotation or completion of an order. The Contractual Partner shall put its vicarious agents and assistants under this obligation for an unlimited time. The obligation shall expire after the information or the production know-how have become generally known.
- h. The Contractual Partner shall treat personal data in compliance with the provisions of the Federal Data Protection Act in force.
- i. Sub-contractors or other persons employed by the Contractual Partner to discharge of its obligations shall be obligated accordingly.
- j. We shall be entitled to electronically store data concerning the Contractual Partner and to process and use these data for our operational purposes subject to the statutory provisions.

## § 32 Restraint on publicity

- a. The Contractual Partner shall treat as confidential the negotiations about this contract, the conclusion of the contract and any and all commercial or technical details associated therewith.
- b. Disclosure to third parties is permitted only with our express consent in writing. This shall apply also to advertising messages that in any form hint to the business relationship with us.
- c. Any statutory obligations to inform shall be exempted from this secrecy obligation.

## § 33 Right of withdrawal

- a. We shall be entitled to withdraw from the contract if the Contractual Partner files for bankruptcy, if insolvency proceedings are instituted or rejected for insufficiency of assets or if extrajudicial composition proceedings are filed for or if the Contractual Partner suspends its payments, even if temporarily.
- b. We shall also be entitled to withdraw from the contract if industrial action, disruption of operations, accidents, unrest, war, intervention by the authorities, similar events or force majeure make it impossible to use the goods ordered, make it difficult to use them with regard to commercial aspects or result in a considerable reduction of our demand. Prior to withdrawing from the contract, we shall be entitled to demand postponement of the delivery date by a period of up to 12 months.

## § 34 Place of performance, place of jurisdiction, choice-of-law clause

- a. Unless otherwise agreed in writing, our registered office at 01917 Kamenz shall be the exclusive place of performance for both parties hereto. If a different place of receipt or use is specified in our order, then that place shall be the place of performance.
- b. The place of performance for payments shall be our registered office at 01917 Kamenz.
- c. The courts competent for our registered office at 01917 Kamenz are agreed to be the place of jurisdiction. This shall also apply to proceedings based on deeds, bills of exchange and cheques. This agreement shall also apply if our Contractual Partner does not have a place of general jurisdiction in the Federal Republic of Germany. We shall be entitled to sue our Contractual Partner before any other admissible court of jurisdiction.
- d. This contract shall exclusively be governed by German law. Application of the Hague Conventions of 15 June 1955 relating to a Uniform Law on the International Sale of Goods and the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is expressly excluded.
- e. The contract language is German.

## § 35 Severability clause

- a. Should any of the provisions of this COP and the other agreements made be or become invalid, then this shall not affect the validity of the other provisions of the COP. The parties hereto shall replace such an invalid provision by a valid provision coming as close as possible to the commercial effect of the invalid provision. The same shall apply to any gaps in the COP.
- b. Should any of the provisions of this COP or of the contract be invalid with regard to mandatory foreign law, then the Contractual Partner shall on request agree with us such supplements to the contract and make such statements towards third parties or the authorities that are necessary to guarantee the validity of the provisions affected and, where this is not possible, to preserve the commercial effect even under the foreign law.