

## **General Terms and Conditions of Purchase for the Supply of Goods and Services to Companies of the Pfannenberg Group**

**Last revised: September 2021**

### **1. Application**

- 1.1 These General Terms and Conditions of Purchase ("**Conditions of Purchase**") shall apply to all goods and services that are to be supplied to the Pfannenberg Group ("**Customer**") by the contractor ("**Contractor**"). They shall form part of all contracts entered into with the Contractor, even if they are not expressly referred to in subsequent contracts.
- 1.2 These Conditions of Purchase shall apply exclusively in national and international business transactions with entrepreneurs within the meaning of Section 14 German Civil Code (*Bürgerliches Gesetzbuch – BGB*), legal persons under public law and special funds under public law.
- 1.3 Terms and conditions of the Contractor that conflict with or deviate from these Conditions of Purchase shall not become part of the contract unless their application is expressly approved by the Customer in writing. These Conditions of Purchase shall apply even if the Customer refers without reservations to a letter that points out or refers to terms and conditions of the Contractor or of a third party, or if the Customer accepts goods or services from the Contractor without reservations while being aware of the Contractor's conflicting or deviating terms and conditions.
- 1.4 If Customer and Contractor have entered into master agreements or individual contracts, these shall take precedence. They shall be supplemented by the present Conditions of Purchase unless more specific provisions have been agreed therein.
- 1.5 Individual agreements made with the Contractor in any particular case (including ancillary agreements, additions and changes) shall, in all cases, take precedence over these Conditions of Purchase. The content of such agreements shall, subject to proof of the contrary, be as set out in a written agreement or a written confirmation from the Customer. They shall be supplemented by the present Conditions of Purchase unless more specific provisions have been agreed therein. All legally relevant declarations and notices from the Contractor (e.g. setting of a deadline, reminder, termination or rescission) must be issued in writing. This shall also apply to the cancellation of this written form requirement.

### **2. Purchase orders, formation of contract**

- 2.1 Unless otherwise agreed in writing, the Contractor shall provide all offers and cost estimates free of charge.
- 2.2 The Contractor shall only deliver goods or provide services on the basis of a purchase order from the Customer. Purchase orders from the Customer shall only be binding if they are issued by the Customer in writing or electronically or, in the case of purchase orders issued orally, by telephone or using other means of telecommunication, if they are properly confirmed by the Customer in writing or electronically, stating the order number. Purchase orders that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed written purchase orders. If the Customer does not respond to offers, requests or other declarations from the Contractor,

this shall only be deemed consent if an express written agreement to this effect has been made between Customer and Contractor. To the extent that a purchase order contains obvious mistakes, misspellings or calculation errors, it shall not be binding upon the Customer.

- 2.3 The Contractor shall, without undue delay and in any case no later than five (5) working days after the receipt of the purchase order, issue an order confirmation in which the price and the delivery date and/or the date for the provision of the services are expressly stated. If the order confirmation deviates from the purchase order, the deviations shall not be deemed agreed unless and until they are expressly confirmed by the Customer in writing. If Customer and Contractor have entered into a master agreement regarding future deliveries, purchase orders (requests for delivery) issued by the Customer shall be binding if not objected to by the Contractor within three (3) working days after they have been received.
- 2.4 If it turns out during the performance of a contract that deviating from the originally agreed specifications is necessary or advisable, the Contractor shall so advise the Customer without undue delay. The Customer shall inform the Contractor of whether and, if so, what changes are to be made by the Contractor compared to the original purchase order. If the costs incurred by the Contractor in performing the contract change as a result of such changes, both the Customer and the Contractor shall have the right to demand that the agreed prices be adjusted appropriately.

### **3. Delivery**

- 3.1 The delivery shall correspond to the purchase order issued by the Customer in terms of execution, scope and scheduling. Any dates or time periods stated in the contracts for the delivery of goods and the provision of services shall only be binding if expressly designated as binding. The delivery periods and delivery dates stated by the Customer in the purchase order shall be binding. Delivery periods shall commence on the day the purchase order is issued.
- 3.2 The date on which the goods are delivered to the Customer in accordance with the contract shall be decisive for compliance with the delivery date or delivery period. Unless otherwise agreed, delivery shall be made in accordance with DPU Incoterms® 2020. If no place of delivery has been agreed, DPU Incoterms® 2020 – Pfannenberger GmbH, Werner-Witt-Str. 1, D-21035 Hamburg shall apply.
- 3.3 The Contractor shall notify the Customer without undue delay in writing if it can be foreseen that the delivery dates and delivery periods will be exceeded, stating the reasons for and the expected duration of the delay. In the event of a delay in delivery, the Customer shall have the right to rescind the contract in accordance with the statutory provisions. In the event of default on the part of the Contractor, the Customer may demand a contractual penalty in an amount equal to 0.5% of the net order value for each commenced week of delay, but not more than 5% of the order value in total. This shall not affect any further statutory claims of the Customer for damages. The contractual penalty shall be applied towards the damage caused by default which the Contractor is liable to compensate. Acceptance of a late delivery shall not constitute a waiver of claims for damages. The Customer may reserve the right to claim the contractual penalty until the final payment is made.
- 3.4 The delivery of goods and/or provision of services before the agreed delivery and/or service provision date shall only be permitted with the Customer's prior written consent. The Customer may return any goods that are delivered early at the expense of the Contractor, or store them at the Contractor's expense until the agreed delivery date.

- 3.5 The Customer may, even after the contract has been entered into, demand that changes be made to the delivery item and/or to the content of the services to be provided and also to the delivery date or the date for the provision of the services to the extent that the Contractor can reasonably be expected to accept such changes, due regard being had to the mutual interests of both parties. In the event of such a change, the consequences for either party, in particular in terms of additional or reduced costs and in terms of the delivery dates or the dates for the provision of the services, shall be reasonably taken into account. If the changes lead to a price increase or to an extension of the delivery period, the Contractor shall be obliged to inform the Customer in writing of the amount of the price increase or, as the case may be, of the extension of the delivery period and the reasons for such without undue delay after obtaining knowledge thereof, and within a reasonable period before the performance of the changed delivery or the changed provision of services commences. The change shall be deemed validly agreed if the Customer sends the Contractor a written notice to change, or extend, the purchase order.
- 3.6 Along with the goods, the Contractor shall supply the necessary protective devices, proof of origin and – in the official languages of the EU – storage, assembly and operating instructions as well as safety data sheets at no cost to the Customer. The same shall apply to the documentation needed for the servicing of, and repairs to, the goods supplied.
- 3.7 Partial deliveries and excess or short deliveries shall not be permitted, to the extent not otherwise agreed. The Customer reserves the right to recognise such deliveries in individual cases and charge the Contractor a flat processing fee of EUR 40.00 for the additional expenses incurred as a result of the partial deliveries. The Contractor may prove that the Customer did not suffer any loss or that the loss actually suffered remains significantly below this amount.
- 3.8 Notwithstanding the Incoterms® 2020 clause agreed in clause 3.2 above, the Contractor shall additionally be obliged to handle, and pay for, the import clearance and the prepayment of the freight and other costs of delivering the goods on the Contractor's own responsibility. This shall also include all the formalities prescribed by the relevant country of import and required for import, for example, the import licence, security clearance for import, inspection of the goods prior to loading and any other official permits.
- 3.9 The Contractor shall have no right to transfer its obligations under this contract in whole or in part to third parties (e.g. subcontractors) or engage third parties to perform the services and work entrusted to it without first obtaining the Customer's prior written consent. This shall also apply to services for which the Contractor's business is not prepared. The transfer of orders by subcontractors to further third parties shall also require the Customer's prior written consent. The Customer's affiliated companies (*verbundene Unternehmen*), as defined in Sections 15 et seq. German Stock Corporation Act (*Aktiengesetz – AktG*), are also to be considered third parties (subcontractors).
- 3.10 The Contractor shall ensure that the contractual services meet the Customer's technical specifications. The Contractor shall be obliged to document any tests carried out in this connection and archive all test, measurement and check results for a minimum period of 10 years. Upon prior announcement, the Customer may inspect and make copies of such records during normal business hours.
- 3.11 To the extent not otherwise agreed in writing, the Contractor shall mark the delivery items in such a manner that they can be permanently identified as the Contractor's products.

#### **4. Transfer of risk, shipment, documents, packaging**

- 4.1 The Contractor shall bear the risk of accidental loss or destruction or accidental deterioration of the goods until they are delivered in accordance with the contract as specified in clause 3.2 above and accepted by the Customer (DPU Incoterms® 2020). If the Contractor is obliged to set up or assemble the goods in the Customer's business, the risk shall not pass to the Customer until after the goods have been accepted in full and commissioned so as to be ready for use.
- 4.2 Each delivery shall be announced to the Customer by means of a notice of dispatch when it is carried out, at the latest.
- 4.3 All correspondence between Contractor and Customer and all invoices and shipping documents shall state the Customer's order number. In addition, each delivery shall be accompanied by a delivery note which contains the date (of issue and dispatch), the order and materials numbers, a list of the batches supplied, the description of the goods, the quantities supplied and the weight. Any failure to comply with these documentation requirements shall constitute a material breach of contract by the Contractor. The Contractor shall be liable to compensate the Customer for any damage suffered by the latter as a result of such non-compliance, unless the Contractor is not responsible for the breach of duty. If the delivery note is not included or is incomplete, the Customer shall not be responsible for any resulting delay in processing and payment. The regulations regarding the transport of dangerous goods shall be observed; in particular, any dangerous goods shall be marked as such.
- 4.4 The Contractor shall observe the Customer's requirements for the shipment of the goods. In addition, the goods shall be packed in accordance with the Pfannenberger Packaging Rules in such a manner as to avoid damage in transit. Superfluous packaging materials shall be avoided. Only environmentally friendly, recyclable packaging materials may be used. The Customer may, at the Contractor's expense, return the packaging to the Contractor or, at the Customer's option, recycle it or dispose of it.
- 4.5 The Contractor undertakes to use environmentally friendly products and processes, within the limits defined by the economic and technical possibilities.
- 4.6 If the Contractor violates any of the provisions set out in this clause 4, the Customer may, in accordance with the statutory provisions, rescind its contracts with the Contractor or terminate them and claim damages and demand to be indemnified against any third-party claims and administrative fines imposed as a result of such violation.

#### **5. German Electrical and Electronic Equipment Act, German Electrical and Electronic Equipment Substances Ordinance, REACH**

- 5.1 The Contractor warrants compliance with the provisions of the German Act on Placing on the Market, Taking Back and Disposing in an Environmentally Sound Manner of Electrical and Electronic Equipment or, briefly, German Electrical and Electronic Equipment Act (*Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten – ElektroG*) and that it will perform the Customer's obligations arising from said Act and, to the extent that such obligations cannot be transferred, help the Customer perform them. In particular, the Contractor undertakes, to the extent necessary, to affix the manufacturer's marking pursuant to Section 9 (1) German Electrical and Electronic Equipment Act (*ElektroG*) to the contractual item in accordance with the Customer's specifications at no cost to the Customer and, to the extent required by the German Electrical and Electronic Equipment Act (*ElektroG*), mark the respective contractual item with the appropriate symbol

pursuant to Section 9 (2) German Electrical and Electronic Equipment Act (*ElektroG*) in conjunction with Annex 3 to the German Electrical and Electronic Equipment Act (*ElektroG*) in accordance with the Customer's specifications.

- 5.2 The Contractor warrants compliance with the requirements under Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (Restriction of Hazardous Substances – RoHS) and with the requirements under the national implementing acts, in particular the German Ordinance on the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment or, briefly, German Electrical and Electronic Equipment Substances Ordinance (*Elektro- und Elektronikgeräte-Stoff-Verordnung – ElektroStoffV*). Furthermore, the Contractor warrants that all electrical and electronic equipment supplied has the special markings and information pursuant to Section 5 German Electrical and Electronic Equipment Substances Ordinance (*ElektroStoffV*) on it. In addition, the Contractor shall affix a CE marking pursuant to Section 7 German Product Safety Act (*Produktsicherheitsgesetz – ProdSG*) to the equipment and products, to the extent necessary and permitted. This CE marking shall be affixed in a visible, legible and indelible form to the item of electrical or electronic equipment or the data plate.
- 5.3 If the Contractor supplies electrical and electronic equipment, including cables and spare parts, the Contractor shall provide the Customer with a written declaration of RoHS conformity before the first delivery takes place. The packaging of such products shall have a RoHS conformity marking on it. On the delivery note, RoHS conformity shall be confirmed with the statement "RoHS-konform/RoHS compliant". Furthermore, the Contractor shall notify the Customer without undue delay, and without waiting for a request, in writing if the information provided in the declaration of conformity is no longer correct. Compliance with the maximum permitted values shall be proven by means of an internal analysis or through a technically qualified laboratory commissioned for this purpose. At the request of the Customer, this proof shall be handed over. It shall be sent to the following e-mail address: **QM@Pfannenberg.com**.
- 5.4 The Contractor warrants that the goods supplied by it comply with the provisions of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("**REACH Regulation**"). At the request of the Customer, the Contractor shall, at the latest upon delivery, provide a current and complete safety data sheet in the German language that meets the requirements of the REACH Regulation in accordance with Article 31(1) to (3) REACH Regulation. With each update/revision of the statutory provisions, the Contractor shall again provide the Customer with the appropriate safety data sheet. The safety data sheet shall additionally be sent in paper form or in an electronic format to the following address: **QM@Pfannenberg.com**. The mere availability of the safety data sheet on an Internet webpage is not considered sufficient proof that it was actually transmitted. According to the German Chemicals Sanctions Ordinance (*Chemikalien-Sanktionsverordnung*), failure to properly supply or update the safety data sheet is an administrative offence that may be punished by a monetary fine of up to EUR 50,000.00.
- 5.5 The Contractor warrants that the product does not contain any substances of very high concern within the meaning of the REACH Regulation in a concentration above 0.1% weight by weight (w/w). If the Contractor nevertheless supplies the Customer with products that contain substances of very high concern of which one or more are present in a concentration above 0.1% weight by weight (w/w) and which meet the criteria of Article 57 REACH Regulation and have been included in Annex XIV to the REACH Regulation (candidate list for authorisation) and/or have been identified pursuant to Article 59(1) REACH Regulation (candidate list), the Contractor shall provide information about the name of the substance, the pertinent CAS number, the concentration of the substance in the product and the safe use of the product within 45 days in accordance



with Article 33 REACH Regulation. The information shall be sent to the following e-mail address: **QM@Pfannenberger.com**.

- 5.6 If the Contractor violates any of the provisions set out in clauses 5.1 to 5.4 above, the Customer may, in accordance with the statutory provisions, rescind its contracts with the Contractor or terminate them and claim damages and demand to be indemnified against any third-party claims and any administrative fines imposed as a result of such violation.

## **6. Prices, terms of payment, set-off, right of retention**

- 6.1 The prices stated in the purchase order shall be binding. Unless otherwise agreed in writing, the prices shall be DPU Incoterms® 2020 and shall include packaging and prepayment of the import costs pursuant to clause 3.8 above. All prices stated shall be net prices; statutory value-added tax shall be stated separately at the time the invoice is issued at the then applicable rate.
- 6.2 A proper invoice must meet the statutory requirements and the requirements set out in the purchase order. The Contractor's invoices shall state the order information (order number, order date, quantity and price), the number of each single item (batches) and the delivery note number. Otherwise, the invoices cannot be processed and, therefore, will be deemed not received. Copies of invoices shall be marked as duplicates. Unless otherwise agreed, all invoices shall be issued in EUR. Online invoices shall only be permitted with the Customer's prior written consent.
- 6.3 Payment shall be made using means of payment of the Customer's choice and after delivery and acceptance of the goods and receipt of the invoice, within 21 days with a 3% discount or within 60 days net, unless other terms have been agreed in writing. In the event of a defective delivery, the Customer may withhold payment until the delivery has been properly performed without forfeiting any rebates, discounts or similar price reductions. To the extent that the Contractor is obliged to provide materials tests, inspection reports, quality documents, documents pursuant to clause 5 above or other records, the receipt of these records shall be a further prerequisite for the acceptance of the goods. The time allowed for payment shall not commence until all defects have been fully remedied. If goods are delivered early, the time allowed for payment shall not commence until the agreed delivery date.
- 6.4 The Customer shall not be in default of payment without first having received a reminder.
- 6.5 To the extent that the Customer is required to make a payment prior to delivery (down-payment), the Contractor shall, at the Customer's request, provide corresponding bank guarantees from a German credit institution before the Customer makes this payment.
- 6.6 Payment shall be made subject to review of the invoice. Payments do not imply that the delivery is recognised as being in accordance with the contract. All payments shall be made subject to subsequent claims.
- 6.7 Ownership of the goods shall be transferred to the Customer free of any encumbrances when the goods are paid for, at the latest. All payments shall be made to the Contractor only. Extended or prolonged retention-of-title clauses shall not be permitted.
- 6.8 Counterclaims shall only entitle the Contractor to a set-off if they have been established in a judgment that cannot be appealed against or are recognised or undisputed. The Contractor may only assert a right of retention if its counterclaim is undisputed or has been established in a judgment that cannot be appealed against and if it is based on the same contractual relationship.

## **7. Termination, rescission**

- 7.1 If the Contractor owes obligations other than the delivery of the goods, the Customer may terminate the contract at any time in accordance with Section 648 sentence 1 German Civil Code (*BGB*) – where applicable, applied *mutatis mutandis* – and/or in accordance with any other applicable statutory provisions. Furthermore, the Customer may terminate the contract in accordance with the rules set out in this clause 7.
- 7.2 The Customer may terminate or rescind the contract for good cause. Good cause shall be deemed to exist, in particular, in the following cases:
  - 7.2.1 The Contractor fails to perform its contractual obligations despite a written request and the setting of a reasonable deadline to no avail.
  - 7.2.2 The Contractor commits extensive or serious violations of public-law provisions or requirements that are subject to a criminal penalty or an administrative fine in connection with the performance of deliveries and services.
  - 7.2.3 The Contractor finally refuses the performance of one or more contractual obligations.
- 7.3 Notice of termination must be given in writing; in the event of termination for good cause, the notice must additionally state the relevant reason for termination. Upon termination of the contract by either contracting party, the Contractor shall deliver to the Customer without undue delay all the work records needed to continue the services and all items provided to it by the Customer.
- 7.4 If the contract is terminated for good cause and the Contractor is responsible for the reason for termination, the Customer shall only compensate the Contractor for services that have already been provided in accordance with the contract by the time the notice of termination is received, based on the agreed prices in relation to the partial service. The Customer's claims for damages, if any, shall remain unaffected.
- 7.5 The statutory rights of termination and rescission (in particular, Section 643 German Civil Code (*BGB*)) shall remain unaffected.
- 7.6 The rescission of the contract shall take place in accordance with the statutory provisions. The consequences of the rescission shall be determined exclusively by statutory law.
- 7.7 The Customer may additionally terminate the contract if the Contractor discontinues its services/deliveries without justification or if an admissible application is made to initiate insolvency proceedings or similar statutory proceedings against the Contractor's assets or any such proceedings are initiated or their initiation is refused for lack of assets. The Customer shall compensate the Contractor on a *pro rata* basis for the services provided. The Customer may claim damages from the Contractor for non-performance of the remaining obligations.
- 7.8 If the Customer terminates the contract in accordance with clause 7.1 above or for good cause without the Contractor being responsible for the reason for termination, the Contractor may claim the agreed remuneration; the Contractor must accept, however, that its claim will be reduced by any expenses saved by the Contractor as a result of the contract being cancelled or any earnings which the Contractor generates, or maliciously omits to generate, by using its labour elsewhere.
- 7.9 The Customer may cancel an order for deliveries (Section 433 German Civil Code (*BGB*)) at any time, in whole or in part, as long as the respective delivery has not yet been handed over if, due to special circumstances, the Customer no longer has an

interest in the performance of the Contractor's obligations after a balancing of interests. In the event that the Customer rescinds the contract on the basis of this clause 7.9, the provisions set out in clauses 7.4, 7.7 and 7.8 above shall apply *mutatis mutandis* to the Contractor's claim for remuneration. The Customer shall acquire ownership of the partial deliveries or services paid for.

## **8. Assignment, attachment, retention of title**

- 8.1 The Contractor shall have no right to assign its claims against the Customer to third parties or have them collected by third parties without first obtaining the Customer's prior consent, such consent not to be unreasonably withheld. If, contrary to and despite the first sentence above, the Contractor assigns its claims to third parties without the Customer's consent, or has its claims collected by third parties, the Customer may make payment with debt-discharging effect both to the Contractor and to the third party, as the Customer chooses. If the Contractor receives its own supplies subject to a prolonged retention-of-title clause, the consent referred to in the first sentence above shall be deemed given.
- 8.2 The Contractor shall notify the Customer without undue delay of any attachments, seizures or other dispositions by third parties in relation to the deliveries owed by the Contractor.

## **9. Provision of items by the Customer**

- 9.1 All samples, models, drawings, plans, sketches and other technical documents provided to the Contractor for the fulfilment of purchase orders shall remain the Customer's property. Models, tools and devices which the Contractor produces or procures at the expense of the Customer shall become the Customer's property upon payment by the Customer. The Contractor shall treat this property of the Customer with care, mark it as the Customer's property and, to the extent feasible, store it separately from other products of the Contractor and insure it at the Contractor's own expense against loss and other damage. Any products and parts which are produced using these models and tools or using these devices may only be manufactured and supplied on behalf of and/or to the Customer. At the request of the Customer, the Contractor shall deliver the models, tools and devices to the Customer free from third-party rights.
- 9.2 The Customer's property pursuant to clause 9.1 above shall be returned to the Customer without undue delay at any time following a request or, without a specific request, after the order has been fulfilled.
- 9.3 Any processing or transformation by the Contractor of items provided shall be made on behalf of the Customer. If any such items are processed together with other items that do not belong to the Customer, the Customer shall acquire co-ownership of the new item in proportion to the ratio of the value of the Customer's item to the value of the other processed items at the time of processing.

## **10. Warranty, lapse of time, liability**

- 10.1 Warranty and liability shall be governed by the statutory provisions to the extent not otherwise stated in these provisions or in another written agreement between Contractor and Customer.
- 10.2 The Contractor ensures that all deliveries are free from defects, correspond with the purchase order and the specifications, are suitable for the intended use, are state-of-the-



art and comply with the applicable national and international legal provisions, including the requirements and guidelines of public authorities, employers' liability insurance associations and trade associations. The Contractor shall, in particular, comply with the provisions of the EU chemicals regulation REACH Regulation, as well as with its obligations under clause 5 above. If the Contractor has any concerns about the design or type of performance requested by the Customer, it shall so advise the Customer without undue delay in writing.

- 10.3 Except in cases of fraudulent intent, claims for defects shall be time-barred after three years unless the item has been used for a building in accordance with its customary use and has caused this building to be defective. The limitation period shall commence upon acceptance of the contractual item by the Customer (transfer of risk).
- 10.4 To the extent feasible within the ordinary course of business, the Customer shall check without undue delay after the delivery and acceptance of the goods whether quantity and type correspond to the purchase order and whether any externally visible damage sustained in transit exists.
- 10.5 If a defect is discovered during these checks or later, the Customer shall notify the Contractor of this fact without undue delay, within 5 (five) working days after the check for obvious defects and within 14 (fourteen) days after the discovery for hidden defects, to the extent that this is feasible within the ordinary course of business.
- 10.6 In the event of bulk deliveries, the Customer shall only be obliged to carry out random checks. If these checks show that significant portions of the random samples do not meet the contractual or statutory requirements, the Customer shall not be obliged to carry out further checks and shall have the right to reject the entire delivery. If the goods are chemicals, only a random check in the Customer's laboratories shall be conducted. The rejection of the delivery does not constitute notice to rescind the contract.
- 10.7 If the goods contain defects, the Customer may, without prejudice to its statutory claims for defects, demand that the Contractor remedy the defects or, at the Customer's option, that it deliver goods which are free from defects by way of subsequent performance. The Contractor shall bear all the necessary expenses for subsequent performance.
- 10.8 The Contractor shall bear all expenses incurred in connection with the identification and correction of defects, in particular, the cost of examinations, disassembly or removal and installation costs, transport, travel, labour and materials costs and travelling expenses. This shall also apply to the extent that the expenses increase as a result of the fact that the contractual item has been taken to a place other than the place of destination. The Contractor shall bear these necessary expenses even if it turns out that there was actually no defect. The above shall not affect the Customer's liability for damages in the event of unjustified requests to remedy defects; however, the Customer shall only be liable in this respect if the Customer recognised or was grossly negligent in failing to recognise that there was no defect.
- 10.9 If the Contractor culpably fails to perform its warranty obligation within a reasonable period of time set by the Customer, the Customer may take the necessary measures itself or have them taken by third parties at the expense and risk of the Contractor, without prejudice to the Contractor's warranty obligation. In case of urgency, the Customer may, upon consultation with the Contractor, carry out the repairs directly itself or have them carried out by a third party at the Contractor's expense.
- 10.10 Measures to remedy minor defects, to prevent disproportionately large damage or to prevent risks to operational safety on the part of the Customer or third parties may be taken by the Customer or by a third party commissioned by the Customer at the

Contractor's expense without prior consultation. The Customer shall promptly notify the Contractor of the reasons for and the type and scope of such measures. This shall not affect the Contractor's warranty obligation.

- 10.11 For deliveries or parts of deliveries that cannot be used by the Customer or the end customer while the defect exists and/or during the correction of the defect, the warranty period shall be extended by the duration of the interruption of use. If the Contractor fulfils its subsequent performance obligation by making a replacement delivery, the limitation period shall commence anew for the goods delivered as a replacement upon acceptance of these goods.
- 10.12 If the Contractor supplies goods for which spare parts are needed, the Contractor shall be obliged to supply the Customer upon expiry of the limitation period for another 10 years with the required spare parts, accessories and tools. If the Contractor intends to discontinue the supply of spare parts for such goods upon expiry of the aforesaid 10-year period, the Contractor shall be obliged to inform the Customer promptly in writing of its intention and give the Customer the opportunity to place one last purchase order.
- 10.13 The Contractor shall respond to notices of defects and complaints about goods without undue delay and provide an initial statement within 48 hours. At the Customer's request, the Contractor shall provide the Customer with the findings of the fault analysis (if any) carried out by the Contractor. If the Contractor does not comply with such a request within a reasonable period of time, the Customer shall have the right to carry out, or have carried out, its own fault analysis at the Contractor's expense.
- 10.14 The Contractor shall, without undue delay and without waiting for a request, notify the Customer of any changes in the composition of the materials processed for the manufacture of the contractual goods or in the performance of its deliveries. All changes shall require the written consent of the Customer. The Contractor shall be obliged to notify the Customer without undue delay of any risks of infringement or cases of infringement that become known in connection with the supply of the contractual goods and services and counteract any claims in this respect together with the Customer by mutual agreement.

## **11. Product liability**

- 11.1 The acceptance of goods supplied and/or the acknowledgement of their receipt shall not relieve the Contractor of its warranty obligations, even if the Customer was aware of a defect. The same shall apply *mutatis mutandis* to the acceptance of works.
- 11.2 To the extent that the Customer is held liable by third parties due to a defect or a product defect of the item delivered by the Contractor which gives rise to an obligation to provide compensation, the Contractor shall indemnify the Customer against all resulting claims and actively support the Customer in the defence against such claims. To this end, the Contractor shall store all records and documents relating to the delivery for a minimum period of 15 (fifteen) years from the receipt of the delivery by the Customer and deliver them to the Customer at the first request of the latter. Furthermore, the Customer shall have the right to claim compensation from the Contractor for the damage suffered by the Customer, including reasonable legal costs. Such damage shall also include the cost of a precautionary product recall, to the extent that the Customer considers the product recall to be appropriate for the protection of its customers or external third parties after a due assessment of all circumstances. The Contractor shall reimburse the Customer for the cost of such a product recall even after the expiry of the warranty period if the Contractor carries out the product recall on the basis of an official order or in order to avert danger to life and limb of the users of the product or external third parties.

- 11.3 The Contractor shall, at its own expense, obtain insurance against all risks arising from product liability in an adequate amount, but at least in the amount of EUR 5 million, for personal injury, property damage and financial losses (including insurance against the cost of product recalls) for each individual case of damage and provide the Customer with proof of such insurance upon request. The insurance cover shall be maintained for a period of at least 5 (five) years from the last delivery to the Customer.

## **12. Rights of use, third-party rights**

- 12.1 To the extent that the delivery or service includes software, the Contractor shall, unless expressly otherwise agreed in writing, grant the Customer at least a non-exclusive, transferable right, unlimited in time, content and geographic scope, to use the software and the pertinent documentation, as well as any updates, upgrades or other further developments. The Customer shall have the right to grant sub-licences to the extent that the Contractor's copyright is safeguarded in the process. The Contractor shall be obliged to check the software for viruses, Trojan horses and similar malware or bugs using current, customary anti-virus programmes before carrying out the delivery or providing the relevant services.
- 12.2 To the extent that any licence fees are payable for using the delivery item in accordance with the contract, also in combination or interaction with other items, these fees shall be borne by the Contractor.
- 12.3 The Contractor guarantees that the items delivered by it are free from third-party rights and that their delivery or their use in accordance with the contract, also in combination or interaction with other items, does not infringe any patents or other industrial property rights of third parties in the Federal Republic of Germany and the European Union.
- 12.4 If the goods or services supplied by the Contractor infringe any patents or other industrial property rights of third parties, the Contractor shall be obliged to ensure that the infringement no longer exists by procuring the relevant rights or – insofar as it is acceptable for the Customer – by modifying the delivery item or delivering an altered delivery item.
- 12.5 Notwithstanding clause 12.4 above, the Contractor shall be obliged to indemnify the Customer against any claims for infringement of patents or other industrial property rights, as well as against the expenses incurred in connection with these claims, and bear all costs incurred by the Customer as a result thereof. This obligation shall not exist to the extent that the Customer makes any agreements with the third party in relation to this third party's claims, in particular a compromise, without the Contractor's consent or that the Contractor is not responsible for the industrial property right infringement. The Contractor shall provide the Customer with all the information and records needed for the defence without undue delay and free of charge, to the extent that the Contractor can reasonably be expected to do so. Furthermore, at the Customer's request, the Contractor shall use its best endeavours to support the Customer in the defence against the asserted claims. The Contractor shall be obliged to notify the Customer without undue delay of any risks of infringement of rights or alleged infringements of rights that become known and counteract any claims in this respect together with the Customer by mutual agreement.

## **13. Export control and customs**

- 13.1 The Contractor undertakes to observe and comply with all relevant export control and customs regulations when carrying out the legal transaction. This shall also and in

particular apply in the event that the Contractor purchases the goods to be supplied to the Customer from its own suppliers, or that it uses any parts or raw materials purchased from such suppliers for the manufacture of the goods.

13.2 Before the legal transaction is entered into with legal effect, the Contractor shall be obliged to inform the Customer of any import or export restrictions in relation to the goods that are to be supplied by the Contractor, in particular of any obligations to obtain a licence or a permit or of import or export bans, under German, European or US export control and customs regulations, as well as of the export control and customs regulations of the country of origin of the Contractor's goods. To this end, the Contractor shall provide at least the following information:

- the item number pursuant to Annex AL to the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*);
- the item number pursuant to the Annexes to the EU Dual Use Regulation;
- comparable item numbers pursuant to applicable export control regulations, in particular under existing embargo regulations;
- for US goods, the ECCN (Export Control Classification Number);
- the trade origin of its goods and their components, including technology and software;
- whether the goods were or will be transported through the USA, manufactured or stored in the USA, or manufactured using US technology;
- the statistical goods code (HS code) of its goods; and
- a contact person in its company who can be contacted to clarify any queries from the Customer.

At the Customer's request, the Contractor shall be obliged to provide all further foreign trade data in relation to its goods and their components to the Customer in writing and to additionally inform the Customer of all changes in the above data in writing without undue delay (even after the delivery of the goods concerned).

13.3 If the Contractor violates any of the provisions referred to in clauses 13.1 and 13.2 above and the Customer is, therefore, unable to resell the goods ordered or already supplied (and, if applicable, further processed), the Customer may rescind the contract and claim compensation for all resulting damage.

13.4 If the Contractor violates any of the provisions referred to in clauses 13.1 and 13.2 above and the Customer is, therefore, held liable by a third party, the Customer may also give notice to rescind the contract. The Contractor shall additionally be obliged to indemnify the Customer against all claims asserted against the Customer by third parties as a result of the Contractor's violation and compensate the Customer for any damage resulting from such claims.

13.5 The provisions of clause 13.4 above shall apply *mutatis mutandis* in the event that the Contractor violates any of the provisions referred to in clauses 13.1 and 13.2 above and the Customer or individual persons who work for the Customer are, therefore, held responsible for a criminal or administrative offence.

- 13.6 If it becomes impossible for the Customer to resell the goods ordered or already supplied (and, if applicable, further processed) as a result of a restriction on foreign trade (e.g. an embargo or the tightening of an embargo) that comes into effect after the contract has been entered into, the Customer may give notice to rescind the contract.

#### **14. Social responsibility and protection of the environment**

The Contractor undertakes to comply with the respective regulations on how to deal with employees, on the protection of the environment and on safety at work and to work towards reducing the long-term effects of its activities on human beings and the environment. To this end, the Contractor shall implement a suitable management system (e.g. according to ISO 14001) and further develop such system, as far as possible. Furthermore, the Contractor shall observe the principles of the Global Compact initiative of the United Nations. These principles essentially concern the protection of international human rights, the right to collective bargaining, the elimination of forced and compulsory labour and the abolition of child labour, the elimination of discrimination in employment and occupation, environmental responsibility and the prevention of corruption. Further information about the UN Global Compact initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

#### **15. Compliance**

- 15.1 The Contractor hereby confirms that it complies with all relevant laws of the respective applicable legal systems, in particular those from the areas of criminal, antitrust, social security and administrative offences law and those regarding minimum wages and the avoidance of child labour, in connection with the supply of the goods and/or services to the Customer.
- 15.2 The Contractor confirms that it complies in particular with the relevant anti-corruption laws and regulations and that it does not make any financial or other gifts to employees of the Customer or their family members for the purpose of obtaining orders from the Customer. The Contractor will not engage in any such practices in the future, either.
- 15.3 The Contractor confirms that it fulfils the statutory requirements under the German Minimum Wage Act (*Mindestlohngesetz – MiLoG*), to the extent applicable, and that it pays its employees to whom the German Minimum Wage Act (*MiLoG*) applies the minimum wage applicable from time to time. The Contractor additionally confirms pursuant to Section 19 German Minimum Wage Act (*MiLoG*) that it has not been excluded from public procurement procedures.
- 15.4 The Contractor shall be obliged to require its subcontractors and suppliers to comply with the provisions set out in clauses 15.1 to 15.3 above.
- 15.5 If the Contractor violates any of the provisions set out in clauses 15.1 to 15.4 above, the Customer may, in accordance with the statutory provisions, rescind or terminate its contracts with the Contractor, discontinue all contract negotiations and claim damages and demand to be indemnified against any claims which third parties may assert against the Customer.

#### **16. Force majeure**

- 16.1 If force majeure within the meaning of clause 16.2 below prevents the Customer from performing its contractual obligations, in particular from accepting the goods, the Customer shall be released from its obligation to perform for the duration of the



impediment and a reasonable start-up period without being liable to the Contractor for damages. The same shall apply if it is unreasonably difficult or temporarily impossible for the Customer to perform its obligations as a result of unforeseeable circumstances for which the Customer is not responsible, in particular as a result of official measures (regardless of whether they are lawful), official orders, measures or restrictions due to an epidemic (in particular, the COVID-19 epidemic), energy shortage, lack of means of transport, power outage, failure of telecommunication connections or significant operational disruptions.

- 16.2 Force majeure means all unusual, unforeseeable events that are independent of the parties' will and influence, in particular, natural disasters, terrorist attacks, political unrest, epidemics, official measures, blockades, sabotage, embargoes, strike, lockout and other forms of industrial action.
- 16.3 The Customer shall promptly inform the Contractor of the events that have occurred.
- 16.4 The Customer shall have the right to rescind the contract if an impediment within the meaning of clause 16.1 above lasts longer than two months and if, as a result of such impediment, the fulfilment of the contract is no longer of interest to the Customer. At the request of the Contractor, the Customer shall declare after the expiry of the aforesaid time period whether it makes use of its right to rescind the contract or whether it will accept the goods within a reasonable period of time.

## **17. Quality assurance and quality control**

- 17.1 The Contractor shall have in place a quality management system that is suitable in terms of type and scope, is state-of-the-art and has at least been certified according to ISO-9001 and/or, to the extent applicable, ISO/TS 16949 as well as according to FSSC 22000 and shall provide the Customer with proof thereof upon request. The Contractor shall regularly keep records of the quality checks carried out by it and make these records available to the Customer at short notice upon request. If deemed necessary by the Customer, the Contractor shall enter into a corresponding quality assurance agreement with the Customer.
- 17.2 If a special quality control is to be carried out for the goods as part of the acceptance procedure, the personnel costs of the acceptance procedure shall be borne by the Customer and the cost of the materials and equipment used for the acceptance procedure shall be borne by the Contractor, unless otherwise agreed in writing.
- 17.3 If it becomes necessary to carry out a further quality control as a result of defects found, the personnel costs of this further control shall also be borne by the Contractor. The same shall apply if the goods are not presented to the quality officer on the date set for the quality control referred to in clause 17.2 above.
- 17.4 Upon prior agreement with the Contractor, the Customer may – at its own expense, to the extent not otherwise agreed – carry out quality audits at the Contractor's places of business.

## **18. Confidentiality**

- 18.1 Each party shall be obliged to use all information, data, records and other means received from the other party directly or indirectly or as part of the performance of the contract, whether orally, in writing, electronically or in any other manner, or otherwise obtained in this context ("**Confidential Information**") exclusively for the performance of its obligations, to treat such Confidential Information as strictly confidential, to implement

appropriate security measures to protect the Confidential Information and, in particular, not to make such Confidential Information available to unauthorised third parties. The Confidential Information shall also and in particular include computer applications, documented work processes and other know-how.

18.2 However, the aforesaid obligation shall not apply to information that:

- a) is already in the public domain (i.e. easily accessible to any third party) at the time it is provided by the parties, or has come into the public domain after it was provided without breach of any duties of confidentiality, in particular those under this clause 18, and without violation of any obligations under these Conditions of Purchase or the contract; or
- b) was already known to the parties at the time it was provided, as can be proven; or
- c) is required to be disclosed by the parties based on an official order or a statutory duty, provided that the party required to make the disclosure has provided the other party with advance notice of the disclosure and has given it the opportunity to otherwise ensure the fulfilment of the order or duty.

18.3 Upon termination of the contract, the parties shall return all Confidential Information generated in connection with the supply of goods and/or services or received from the respective other party or from third parties or otherwise obtained, including any copies made thereof, in an orderly manner. If the Confidential Information is in an electronic format, it must be irretrievably deleted upon delivery of a copy. In the event of destruction or deletion, the destruction of the Confidential Information must be confirmed in writing at the request of the respective other party.

18.4 All employees and suppliers involved in the performance of the contract shall be required by the parties in writing to maintain confidentiality in accordance with this entire clause 18 even after their employment has ended, to the extent permitted under employment law. In addition, the parties shall disclose the Confidential Information only to employees and suppliers who need to know the Confidential Information for the performance of the contract. The Contractor expressly declares that it will take responsibility for any culpable violation committed by its representatives (in particular, its employees and suppliers).

The Contractor undertakes, in particular, to use the Customer's records and materials exclusively for the Customer's purposes and exclusively to the extent permitted by the Customer and not to reproduce them or make them available to third parties without the Customer's prior written consent.

18.5 The Contractor may only refer to its business relationship with the Customer after obtaining the Customer's prior written consent. The Contractor is not authorised to use any trade names, logos or trademarks of the Customer.

18.6 The Contractor shall be prohibited from presenting at trade fairs and/or making available to third parties any delivery items manufactured or processed specifically for the Customer.

18.7 All obligations under this entire clause 18 shall survive the termination of the contract.

18.8 The Contractor warrants that the supply of goods and/or services by the Contractor does not infringe any industrial property rights or copyrights of third parties. In the event of a corresponding culpable infringement of rights, the Contractor shall indemnify the Customer at its first request against any third-party claims and compensate the Customer for all damage and expenses suffered or incurred as a result of the Customer being held liable.

## **19. Governing law, place of jurisdiction, place of fulfilment**

- 19.1 These Conditions of Purchase and the entire legal relations between Contractor and Customer shall be governed by the substantive law of the Federal Republic of Germany, to the exclusion of the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.
- 19.2 If the Contractor is a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch – HGB*), a legal person under public law or a special public fund, the Customer's place of business in Hamburg, Germany, shall be the exclusive place of jurisdiction, also the exclusive international place of jurisdiction, for all disputes arising directly or indirectly out of or in connection with this contractual relationship. The same shall apply *mutatis mutandis* if the Contractor is an entrepreneur within the meaning of Section 14 German Civil Code (*BGB*). However, the Customer may also sue the Contractor at the Contractor's place of jurisdiction or at any other permitted place of jurisdiction.
- 19.3 The place of fulfilment for all obligations that are to be performed by the Contractor and the Customer shall be the Customer's place of business in Hamburg, Germany.

## **20. Severability**

Should any provision, or any part of any provision, of these Conditions of Purchase or of other agreements made between Contractor and Customer violate any provisions of law or be or become invalid or impracticable on other grounds, this shall not affect the validity of the remaining provisions or agreements. In this case, the parties shall be obliged to replace the invalid or impracticable provision with such provision as comes closest to what the contracting parties wanted in economic terms when entering into the contract. The same shall apply *mutatis mutandis* if there is a gap in the contract.