



## General Terms and Conditions of Purchase of HUESKER Synthetic GmbH for transactions with companies - status 01/2016

### 1. General / Scope of application

1.1 Our General Terms and Conditions of Purchase shall apply exclusively. We do not acknowledge any terms and conditions of the Supplier which are contrary to or differ from our General Terms and Conditions of Purchase unless we have expressly approved their validity in writing. Our General Terms and Conditions of Purchase shall also apply exclusively if we accept the Supplier's delivery without reservation, in the knowledge of terms and conditions of the Supplier which are contrary to or differ from our General Terms and Conditions of Purchase.

The HUESKER Compliance Guideline (HUESKER CG), which can be called up at [www.huesker.de/compliance.html](http://www.huesker.de/compliance.html), is also an integral part of our General Terms and Conditions of Purchase. The Supplier shall notify HUESKER immediately if the HUESKER CG is not available to the Supplier at [www.huesker.de/compliance.html](http://www.huesker.de/compliance.html), irrespective of whether this is due to a technical or personal hindrance.

1.2 Upon making the first delivery or providing the first service on the basis of these General Terms and Conditions of Purchase, the Supplier acknowledges the respective current version of the terms and conditions for all further deliveries too. We shall make the current version of our General Terms and Conditions of Purchase available to the Supplier at first request without charge.

1.3 Any framework agreements or individual agreements concluded between the parties shall have priority over these General Terms and Conditions of Purchase. Unless more specific provisions are made therein, such agreements shall be supplemented by these General Terms and Conditions of Purchase. All agreements reached between ourselves and the Supplier for the performance of a contract must be set down in writing in the contract.

1.4 Our General Terms and Conditions of Purchase including the HUESKER Compliance Guideline shall apply exclusively to companies pursuant to Section 14 BGB [German Civil Code] i.e. to such natural persons or legal entities or partnerships having legal capacity which are performing their commercial or independent professional activities when concluding the contract.

### 2. Data, illustrations, formulas, drawings, calculations provided

2.1 We shall retain ownership rights and copyrights to illustrations, formulas, manufacturing instructions or instructions for use, drawings, calculations and other documents and data provided by us. They may not be disclosed to third parties without our express written consent. Furthermore, they may *only* be used for processing our purchase order and must be returned to us, including all copies, after the purchase order is processed without being asked to do so. They must be kept secret with respect to third parties unless there is an official or legal obligation of disclosure. If these illustrations, formulas, drawings, calculations and other documents are contained in data, these must be deleted completely at any time at our first request, and their deletion confirmed in writing immediately.

2.2 If data are provided according to para. 2.1, we shall also have the right to the Supplier making an appropriate declaration to cease and desist with a penalty clause with respect to the further use of the data. We can in such case specify the amount of the penalty according to our reasonably exercised discretion (Section 315 BGB [German Civil Code]).

### 3. Supplier's quotations

3.1 The Supplier's quotations shall be given in writing.

3.2 The Supplier's quotations must describe the delivery item and/or the service to be provided in full, and shall list in full all necessary additional products and/or services required for us to use the delivery item/service safely and efficiently, and shall specify their price separately in the quotation.

3.3 Goods or parts of goods and/or services or parts of services which are not listed in the Supplier's quotation but which are indispensable for the safe and efficient operation or relevant use of the goods and/or service shall be deemed, unless otherwise agreed, an integral part of the delivery item and/or service and as due from the Supplier together with the item and/or service without further remuneration.

3.4 The Supplier shall expressly indicate in its quotation in writing or text form any dangers to life, limb or health or other dangers and environmental hazards connected with the delivered goods or the service to be provided and any need for special handling of the goods.

3.5 The Supplier is aware that we shall examine and that we have to examine the Supplier's quotation in terms of whether the Supplier adheres to the general principles of corporate compliance in its business operations. We shall have the right to reject quotations from the Supplier also because the Supplier is not able or willing on request to prove its adherence to the principles of corporate compliance or does not accept the principles of corporate compliance pursuant to the HUESKER Compliance Guideline.

### 4. Declaration of acceptance / Conclusion of contract / Performance of service / Order processing / Acceptance

4.1 In order to allow our orderly controlling of the contract, only written purchase orders (in the form of a telefax shall suffice), duly printed by us on our purchase order form shall be valid. Alternatively, we can also submit our declaration of purchase in text form (email) with our sender identification.

Amendments to and modifications of the purchase order shall only be valid when given in writing. This shall also apply to the cancellation of the written form requirement itself, whereby this shall not affect the precedence of an individual agreement according to Section 305 b BGB for individual agreements of any form. Our silence regarding the Supplier's quotations, requests or other declarations shall only be deemed to be our consent if this was expressly agreed in writing. The order shall be based exclusively on the content of the purchase order.

4.2 The Supplier shall be obliged to specify our purchase order number and the ordering party exactly on all shipping documents and delivery notes. If the Supplier fails to do so, we shall not be responsible for delays in processing and payment.

4.3 The Supplier must confirm the purchase order in writing or text form within 5 working days of its receipt, whereby our receipt of the confirmation shall be decisive. After expiry of this period, we shall have the right, unless otherwise agreed, to revoke our purchase order. Claims by the Supplier based on a valid revocation of the order for this reason shall be excluded.

4.4 We ask the Supplier to submit the order confirmation as a single copy. The Supplier's quotations shall be submitted free of charge and they shall be without binding force for us.

4.5 As regards supply quantities (number of items, weights and dimensions), values determined by the authorities, or in the absence of such values, the values determined during our incoming goods inspection shall prevail. For all shipments, especially shipment by lorry, the supply quantities must be stated in the shipping documents of the goods.

4.6 If our purchase order or the documents on which this is based or data contain obvious errors, typing and calculation errors, we shall not be bound in this respect. On the contrary, in such cases, the Supplier shall be obliged to notify us in writing or text form of the relevant errors to allow us to correct and replace our purchase order. If documents which are obviously required are not forwarded with the purchase order, this obligation shall apply accordingly.

4.7 The Supplier declares that it is willing at our request to allow authorities and employers' liability insurance associations, which are responsible for product safety, access to the Supplier's production process, and to provide us with every reasonable support in this connection if authorities approach us because they are inspecting one of our products or because of supposed statutory violations by such products, on which the Supplier has cooperated by making a delivery or providing sub-contractor services or has thereby enabled the production.

4.8 If the Supplier accepts our purchase order only with deviations, the Supplier must identify these deviations by highlighting them in its order confirmation; they shall not otherwise prevail.

4.9 The Supplier shall furthermore expressly indicate to us in writing or text form any changes to contract terms or ordering information and/or purchase conditions.

The Supplier shall notify us of any amendments/extensions of the scope of the contract, the necessity of which only becomes evident



when the contract is performed, immediately in writing or text form. The amendments/extensions shall only have legal effect when we have given our written consent. This shall not affect the precedence of an individual agreement according to 305 b BGB in verbal, text or written form.

4.10 Unless otherwise agreed, the Supplier warrants that, when the purchase order is accepted in the case of assembly, repair or construction services, the Supplier has informed itself about the manner of execution and scope of the service by inspecting the plans available at our company.

4.11 In the case of safety-related parts in delivery items, which are specially marked e.g. with an "X" in the exchanged technical documents or specified by separate agreement with the Supplier, the Supplier must in addition state in specific records how, when and by whom the delivery items were tested for characteristics which have to be documented and the results provided by the required quality tests. These test documents must be kept for us free of charge for 10 years and submitted to us if required free of charge. If permitted by law, the Supplier must oblige any upstream suppliers to the same extent.

4.12 Before dispatching the goods, the Supplier must notify us in writing or text form (email) of the supply quantity, weight and date of dispatch as well as the receiving office specified in the purchase order.

Our signature on certificates of dispatch, confirmation of receipt or delivery notes does not constitute acknowledgment of the completeness of the delivery or the absence of defects in the delivered products.

4.13 The Supplier must specify to us and request from us documents to be provided by us in due time and in writing.

4.14 If the Supplier has to provide samples of materials, test reports, quality documents or other documents according to the terms of the contract or as accessory obligation, the completeness of the delivery and/or service shall also require that such documents are provided in full.

4.15 If waste is produced within the scope of the Supplier fulfilling the contract, the Supplier shall, unless otherwise agreed, remove and dispose of such waste itself at its own expense according to the relevant waste legislation. Ownership, risk and responsibility according to waste legislation shall pass to the Supplier at the time the waste arises.

4.16 We shall have the right for good cause to request the removal of personnel employed by the Supplier in the case of contracts for work and services. Good cause shall exist in particular when there is objectively justified doubt about the necessary experience and/or qualification to bring about the result of performance due according to the contract and/or such personnel fail to comply with health and safety/environmental protection regulations. The Supplier undertakes in such case to provide a qualified substitute immediately. Any costs connected with a change in personnel shall be borne by the Supplier. This shall not affect the deadlines agreed.

4.17 Notice of the need to enter our business premises must be given in due time. Instructions given by our personnel must be followed in order to comply with the company safety regulations.

4.18 Unless otherwise agreed, the Supplier undertakes to provide the service itself.

## **5. Prices, payment, invoice / Assignment / Set-off, retention / Packaging, waste disposal**

5.1 Unless otherwise agreed in writing, prices agreed are fixed prices and, unless otherwise agreed in writing, include all costs for packaging, transport to the agreed receiving or shipment centre (delivery DDP - Incoterms 2010), for customs formalities and customs. Unless otherwise agreed, the place of delivery shall be deemed our registered office.

Prices shall include the applicable value-added tax unless the price is expressly designated a net price.

5.2 The Supplier undertakes not to offer us prices and terms which are more unfavourable than those offered to other customers where, in specific cases, they offer the Supplier the same or equivalent economic and logistic conditions.

5.3 Where orders are subject to the Supplier's price reservation, we shall have the right to rescind the contract if we do not agree with the price specified in the confirmation.

5.4 We can only process invoices if they state the purchase order number and ordering party given on the purchase order, according to the specifications on our purchase order, and can be verified. If such information is not stated, we shall not be responsible for any delays in processing and payment.

5.5 Unless otherwise agreed, we shall pay incoming invoices received by us as follows:

- with a 3 % cash discount within 14 days of receipt of the delivery or acceptance of the service and receipt of the invoice;
- net within 30 days of receipt of the delivery or acceptance of the service and receipt of the invoice.
- Deductions of cash discount shall also be admissible if we avail ourselves of a right of set-off.

5.6 Payments shall not constitute acceptance or waiver of any notice of defects and shall not represent any acknowledgement of performance in accordance with the contract.

5.7 If early delivery is taken, the due date, unless otherwise agreed, shall correspond to the delivery date originally agreed.

5.8 In the event of incomplete or incorrect delivery, we shall have the right to withhold payment in whole or in proportion to the value until proper performance.

5.9 The invoices shall be issued in duplicate and sent separately to the invoice address stated on the purchase order after fulfilment of the contract according to the respective purchase order. All accounting records must be attached in full. Invoices for partial services must be marked "invoice for partial service", final invoices marked "invoice for residual service".

5.10 If advance payments are agreed, they shall only be due, where amounts are more than EUR 5,000.--, when the Supplier has provided us with an absolute guarantee, issued by a German financial institution or German savings bank which participates in the Deposit Protection Fund, to secure the advance payment.

5.11 The Supplier shall only have a right of retention and set-off against our claims for those claims which have been acknowledged by us or recognised by declaratory judgment.

5.12 The Supplier may only assign claims against us with our consent unless these are pecuniary claims.

5.13 The Supplier shall pack the products to be delivered only in environment-friendly packaging material or environment-friendly containers so as to ensure that transport damages are prevented. Packaging of the respective shipment shall be included in the price unless otherwise agreed by us with the Supplier. Where delivery or assembly is performed by the Supplier, the Supplier shall dispose of any waste generated free of charge.

5.14 If, by way of exception, we and the Supplier have reached other agreements, the Supplier shall charge for packaging at cost price. In such case, the Supplier must select the packaging specified by us. If this packaging selected by us is not suitable to package the delivery item safely and appropriately, the Supplier shall notify us of this immediately in writing.

5.15 If the packaging used to ship the goods is invoiced separately on the basis of an agreement, we shall be free to make the packaging available again in a serviceable condition, carriage paid, in exchange for a credit of at least 2/3 of the calculated value, unless otherwise agreed by us with the Supplier. The Supplier shall be free to prove that the value of the returned packaging is considerably lower. In this case, the refund shall be adjusted accordingly.

5.16 In the case of para. 15 above, we shall have the right to forward the packaging to the Supplier at its expense.

## **6. Sub-contracts / Transfer of rights and obligations**

6.1 The Supplier is on principle entitled to award sub-contracts unless the Supplier has agreed to perform itself. However, we shall have the right to object to the placement of sub-contracts by the



Supplier for good cause if the sub-contract placed materially affects our interests. In such case, the Supplier must perform the order itself. Good cause is deemed to exist in particular if the sub-contractor does not, when considered objectively, warrant that the contract shall be fulfilled as agreed or has violated our company safety regulations in the past in the case of services to be performed on our company premises. The Supplier shall be liable for the conduct of sub-contractors as if such conduct was its own.

6.2 The Supplier shall not have the right to transfer rights and obligations - subject to the provision in para. 1 - without our consent. Section 354a HGB [German Commercial Code] (assignment of pecuniary claims).

## **7. Delivery / Delivery period**

7.1 The delivery dates and periods agreed must be complied with. The date of receipt of the goods at our premises or at the agreed place of delivery shall be decisive for compliance with such dates and periods.

7.2 We shall have the right, unless otherwise agreed, to request the Supplier to delay the delivery and/or service by up to 4 weeks free of charge. The Supplier shall not be entitled to assert any claims for delay in delivery against us in this context. During the above-mentioned period, the goods to be delivered shall be stored at the Supplier's risk. Furthermore, we shall have the right to request a further delay in delivery of up to 6 months, during which time the goods shall also be stored at the Supplier's risk. In this case, we shall be obliged to reimburse the Supplier for proven, reasonable and customary costs of storage and insurance of the goods and to pay at the latest 4 weeks after the payment date arising from the original delivery date.

7.3 The Supplier shall be obliged to notify us immediately in writing if circumstances arise or become known to the Supplier indicating that agreed dates for the delivery or service cannot be met. This shall also apply if the Supplier is not responsible for delays in delivery. We shall be entitled to compensation from the Supplier for resulting damage if this obligation is violated.

7.4 Where the delivery or service is provided earlier than agreed, we reserve the right to return the delivery at the Supplier's expense or to refuse performance of the service. If goods delivered prematurely are not returned, the goods shall be stored at the Supplier's expense and risk until the delivery date.

7.5 We shall only accept partial deliveries or partial services when expressly agreed in writing. If partial deliveries are agreed, the residual quantity to be delivered must be clearly specified.

## **8. Passing of risk / Documents**

8.1 Delivery shall be made in principle free domicile and at the risk of the Supplier until the date on which delivery is completed, and, in the case of services provided under contracts for work, until the date of acceptance at the contractually agreed receiving office or place of use.

8.2 The Supplier shall be obliged within the context of the business relationship to handle each individual purchase order separately in all business correspondence. The Supplier shall be required to specify at least the full purchase order number, purchase order date and ordering party's reference as well as our transaction number in all correspondence e.g. emails, letters, dispatch notes, delivery and packing notes, invoices, consignment notes, dispatch addresses etc.

8.3 The above-mentioned documents such as invoices, delivery and packing notes must be attached to each consignment in duplicate. Invoices must be sent to us under separate cover. In the case of deliveries of goods, these documents must at least include:

*Quantity and unit of quantity, gross, net and, if applicable, calculated weight, purchase order number, article description, residual quantity in the case of partial deliveries and our article number.*

8.4 In the case of freight consignments, an advice note must be sent to us separately on the date of shipment. If the Supplier fails to do so, we shall not be responsible for any delays in processing and delays in payment as a result.

8.5 We shall have the right to request the Supplier to submit certificates of inspection with respect to the delivery items in German or English free of charge.

8.6 In the case of contracts for work and such sales contracts where acceptance of the delivery item is agreed or prescribed by law, the risk shall pass only when we accept the service and/or delivery.

## **9. Default**

9.1 In the event of default in delivery, we shall have full recourse to statutory claims. In particular, we shall have the right to request damages in lieu of performance after a reasonable period has elapsed without success and/or to rescind the contract. If we request damages, the Supplier shall have the right to prove that it was not responsible for the breach of duty where the Supplier has not agreed a guarantee with us in the legal sense or has assumed a procurement risk pursuant to Section 276 BGB.

9.2 In the event of default in delivery and/or the performance of a service, we shall have the right to request a contractual penalty of 0.5 % of the net remuneration for the delayed delivery resp. service for each full week of default but not more than a total of 5 % of the net remuneration for the delayed delivery resp. service. We reserve the right to further statutory claims, in particular damage claims, but subject to the contractual penalty being set off in full.

9.3 In the event of delay in delivery and/or the performance of a service that is imminent or has already occurred, the Supplier shall allow us on request to inspect all relevant documents in connection with the order relationship and specify all relevant sub-suppliers and suppliers to us. The Supplier shall, however, only be obliged in this respect to disclose company or business secrets within the meaning of Section 17 of the German Gesetz gegen den unlauteren Wettbewerb (UWG) [Unfair Competition Act] if a non-disclosure agreement is concluded which obliges us to respect confidentiality.

9.4 If we consider it necessary in the event of the Supplier's delay in delivery or in performing a service, the Supplier shall grant us the rights to contact all the sub-suppliers and suppliers in question directly in order to avert any resulting delay in delivery and/or in performing a service resp. to reduce the delay as far as possible.

9.5 If the circumstances in para. 2 and 3 above exist, full responsibility for the order shall remain with the Supplier.

9.6 Taking delivery of a late delivery shall not constitute any waiver of damage claims and the contractual penalty.

## **10. Change management**

10.1 The need for changes to the order content cannot always be avoided, also due to change requests from final customers. We shall have the right, therefore, to request changes to the delivery item and/or service, also after the contract is concluded, according to the regulations set forth below, if, when considered objectively, the deviations, taking into account the Supplier's business and its production and/or service knowledge and order book, can be reasonably expected of the Supplier technically and logistically. The Supplier shall review the change request without delay and notify us immediately in writing of its effect on the contract framework. This notification duty shall include a declaration as to whether the desired changes are at all feasible technically and/or logistically and expedient and a declaration concerning the effects of the change requests on the contract framework agreed to date, such as the concept, periods, deadlines, acceptance modalities and remuneration, in the form of a quotation. We shall then give the Supplier a decision immediately on the implementation of the changes.

10.2 In the case of a positive decision and agreement on the changes to the contract terms, the change to the purchase order shall become an integral part of the contract.

10.3 Where changes are technically insignificant and economically insignificant for the Supplier, the Supplier cannot request a change to the contract terms.

## **11. Acceptance**

11.1 All services provided by the Supplier, for which acceptance is possible, are subject to formal acceptance by us as condition for due payment. If the inspection of the Supplier's services requires the start-up of an entire plant, acceptance shall take place only after the successful conclusion of the agreed function tests. Otherwise the test period shall be 4 weeks after receipt of the Supplier's written notification of completion unless otherwise agreed. The Supplier shall waive any objection to a delayed notice of defects in this respect.



11.2 If the Supplier has to provide a service that requires our acceptance, the Supplier shall be obliged to notify us in writing or text form of its request for acceptance at least 14 days prior to the acceptance date to be agreed.

11.3 If defects are established at the acceptance test, partial acceptance of services which are free of defects shall be possible after agreement with us. This partial acceptance shall, however, not be deemed final acceptance within the meaning of Section 640 BGB.

11.4 Acceptance shall require a written acceptance report signed by the parties. Fictitious acceptance shall be expressly excluded if we do not use the work result as intended commercially on a permanent basis for purposes other than for test purposes i.e. for more than 14 calendar days.

## **12. Inspection for defects / Warranty / Liability for defects / Limitation of claims due to material defects and defects of title**

12.1 The Supplier warrants that all deliveries/services conform to the current state of the art at the time the contract was concluded and to the agreed specifications and also comply with the relevant legal provisions and regulations and the guidelines of authorities, employers' liability insurance associations and trade associations of the Federal Republic of Germany and the European Union, in particular also, where applicable, the Machinery Directive of the European Union, and the country of use notified prior to conclusion of the contract. The Supplier also warrants that the products delivered and packaging materials are environment-friendly.

12.2 Unless stipulated otherwise, we shall be obliged to inspect the goods for any qualitative and quantitative deviations within a reasonable period. Our notice of defects shall be deemed to be provided in due time if, in the case of visible defects, it is received by the Supplier within a period of 5 working days as of full receipt of the goods or, in the case of hidden defects, as of discovery of such defects. The Supplier shall waive in respect of ourselves any defence of a delayed notice of defects.

12.3 If we reached a specific quality assurance agreement with the Supplier, the duty to inspect the goods shall be limited to transport damage, and an identification and quantity inspection.

This shall also apply if the Supplier is certified pursuant to ISO 9000 et seq., has advertised with this certification, and did not notify us in writing within a period of 12 days of conclusion of the contract that this meaning is not to be linked to the certification.

12.4 We shall be entitled to full statutory claims for defects; this shall also apply where the delivered goods are processed.

We shall have the right at our option to request the Supplier to remedy defects or deliver a new article.

12.5 If the delivered products or the service provided do not correspond to the properties due, the Supplier shall be liable for all damages resulting therefrom including consequential damages.

12.6 If the Supplier defaults in remedying a defect, we shall have the right to request a contractual penalty for default in remedying the defect of 0.5 % of the net remuneration agreed for the defective delivery and/or service for each period of default of 7 calendar days or part thereof but at most 5 % of the agreed net remuneration for the defective delivery without further proof of damage. The Supplier shall, however, have the opportunity to prove to us that we incurred no damage or materially more minor damage. This shall not affect our further statutory and contractual claims. The above contractual penalty shall be set off in full against any further damage claim.

12.7 If the Supplier fails to begin remedying the defect immediately after receiving our request to remedy such defect, we shall, in order to avert acute danger to life, limb or health, or to avoid greater damages exceeding 100 % of the net remuneration for the defective delivery and/or service, have the right to remedy such defect ourselves or have such defect remedied by a third party at the Supplier's expense. The Supplier shall bear the costs of this. This shall not affect any other claims to substitute performance by us, especially under the rules governing actions performed without due authority.

12.8 In the event of defects of title, the Supplier shall furthermore indemnify us against third-party claims in this respect including the customary costs of legal defence and our administrative costs. If the Supplier has produced its delivery or service according to documents provided by us, such as models or drawings or at our

express instruction, and could not have known that this would infringe third-party property rights, the foregoing indemnity obligation shall not apply.

12.9 If we take back products finished and/or sold by us as a result of the defectiveness of the contractual item delivered by the Supplier or claims have otherwise been asserted against us as a result, we shall have the right to recourse against the Supplier, whereby we shall no longer be required to set a period otherwise required to exercise our rights in respect of defects.

12.10 Claims for defects against the Supplier for material defects shall become statute-barred in the case of work 36 months after acceptance, in the case of product deliveries 36 months after the risk passes.

12.11 The limitation period for defects of title is 5 years, calculated as of acceptance; in the absence of acceptance as intended as of delivery of the result of performance due according to the contract.

12.12 The limitation period shall be interrupted by our written notice of defects.

12.13 If the Supplier undertakes with our consent to verify whether a defect exists or to remedy a defect, the limitation period shall be interrupted until the Supplier has notified us of the result of the verification in writing or text form or states to us that the defect is remedied or refuses to continue to remedy the defect.

## **13. Force majeure**

Regardless of our other rights, force majeure, industrial disputes, operational disruptions for which we are not responsible, unrest and other unavoidable events shall entitle us to rescind the contract in whole or in part provided such events are not of insignificant duration (i.e. persist for longer than 4 weeks) and result in a substantial reduction of our requirements and we notify the Supplier of the obstacle immediately.

## **14. Product liability / Indemnity / Third-party liability insurance coverage**

14.1 Unless otherwise agreed, if the Supplier is responsible for product damage, it shall be obliged to indemnify us against all third-party claims for damages and the refund of expenses provided such damage was caused in its area of control and organisation. Apart from payment of compensation for damage to third parties, the Supplier's duty to compensate shall also include customary costs of legal defence, costs of recall, inspection, assembly and disassembly, and our administrative and other expenses for the settlement of the damage.

14.2 Within the scope of its liability for damage in terms of para. 1, the Supplier shall also be obliged to reimburse any reasonable expenses pursuant to Sections 683, 670 BGB and Sections 830, 840, Section 426 BGB resulting from or in connection with a recall campaign performed by us. We shall inform the Supplier in advance of the content and scope of the recall measures to be performed, if this is possible and can be reasonably expected, and shall give the Supplier the opportunity to comment. This shall not affect any other statutory or contractual claims.

14.3 The Supplier undertakes, as of the date when the first contract is concluded with us for a period of up to 36 months after the last delivery and/or service provided to us, to maintain a product liability insurance with a lump-sum amount insured of € 5,000,000.00 per event of personal injury/damage to property and EUR 2,500,000.00 for pecuniary loss. This shall not affect any further damage claims to which we are entitled. The Supplier must provide us with proof of the above-mentioned insurance and premium payment for this on first request. If proof of the insurance and premium payment is not provided to us at our request within 7 calendar days, we shall have the right to rescind contracts not yet fulfilled in whole or in part (with respect to the part not yet fulfilled).

## **15. Rights of use / Inventions**

15.1 If drawings, individual EDP programs, photographic material, film footage and layouts for print media or other such documents are created from the deliveries or services to be performed by the Supplier on our behalf, we and all our affiliated companies within the meaning of Section 15 AktG [German Stock Corporation Act] shall receive an exclusive, transferable right of use, unlimited in time, location and content, for all types of use, such right being discharged in full by the agreed price.



15.2 If the deliveries or services are protected by the Supplier's copyrights, the Supplier shall grant us the irrevocable, transferable right, unlimited in time, location and content, to use the delivery or service for all types of use without charge, in particular to reproduce, disseminate, display, modify and process the delivery or service.

15.3 If copyrighted rights of use, industrial property rights and legal positions similar to property rights and other written, machine-readable and other work results arise for the deliveries or services to be performed by the Supplier on our behalf, we shall be entitled to them exclusively and without restriction as part of performance, and they shall be discharged in full by the agreed price. The Supplier shall be obliged to notify us immediately of the existence of any such invention and agree on further action with us.

15.4 The Supplier shall be further obliged to use inventions of its employees and, if applicable, sub-suppliers at its expense and indemnify us so that the Supplier can transfer the rights to these inventions to us.

15.5 If we register an invention as a property right, we shall assume the costs incurred for registration and maintenance of the property right.

15.6 If we decide not to register inventions or are no longer interested in an existing property right, the Supplier may pursue the registration or maintenance of the property right at its own expense. We shall, however, in such case retain a non-exclusive and transferable right of use free of charge.

15.7 If, in the context of our using the deliveries or services, use of the Supplier's property rights, which existed for the Supplier before the delivery or service was provided, is necessary, we shall receive a non-exclusive and transferable right to use these property rights from the Supplier, such right being discharged in full by the agreed price.

#### **16. Spare parts and readiness for delivery**

16.1 The Supplier warrants, in the case of products consisting of parts, that it shall ensure the supply of spare parts for a period corresponding to the usual period of technical use but for at least 8 years after acceptance of the last delivery of the delivery item unless a different availability of spare parts was agreed with us in writing. During this period, the Supplier undertakes to supply these parts on market conditions.

16.2 If the Supplier intends to discontinue the supply of spare parts after expiry of the above-mentioned period, the Supplier shall give us the opportunity with a lead-time of at least 30 calendar days to place a final order. This shall also apply if the supply of spare parts is discontinued prior to expiry of the period, whereby our reordering shall not cause us to forfeit our damage claims.

#### **17. Provision / Co-ownership / Retention of title**

17.1 Tools, materials, substances, parts, containers and packaging we provide may only be used for their intended purpose.

17.2 We shall retain title to any tools we provide, and the Supplier may use them exclusively for the performance provided to us that is the subject matter of the contract.

17.3 If we provide parts to the Supplier, we shall retain title to them (goods subject to retention of title). The Supplier shall undertake processing or transformation on our behalf. If our goods subject to retention of title are processed with other items that do not belong to us, we shall acquire co-ownership of the new article in the ratio of the gross value of our item (purchase price plus value-added tax) to the other processed items at the time of processing.

17.4 If the article we provide is inseparably mixed with other items that do not belong to us, we shall acquire co-ownership of the new article in the ratio of the gross value of the article subject to retention of title (purchase price plus value-added tax) to the other mixed items at the time of mixing. If the items are mixed in such a way that the Supplier's article is deemed to be the principal article, it shall be deemed agreed that the Supplier shall transfer co-ownership to us on a pro rata basis. The Supplier shall safeguard sole ownership or co-ownership on our behalf.

17.5 The Supplier shall be obliged to insure the articles that belong to us at their replacement value at its own expense against damage caused by fire, water and theft. At the same time, the Supplier herewith assigns to us all claims for compensation under this insurance. We herewith accept the assignment.

17.6 The Supplier shall also be obliged to carry out any required maintenance and inspection work and all repair and servicing work on our tools in due time at its own expense and to prove to us that this has been carried out. The Supplier must notify us immediately in writing of any failure of the machines and/or tools provided. If the Supplier negligently fails to do so, we shall be entitled to damages in case of a claim.

17.7 The Supplier shall also be obliged to keep any illustrations, drawings, calculations and other documents and information received, on whatever form of media, strictly secret unless there is a legal or official obligation of disclosure. They may only be disclosed to third parties with our express written consent if they are subject to an obligation of confidentiality. The obligation of confidentiality shall also apply after fulfilment of the contract. It shall lapse if and when the manufacturing know-how included in the illustrations, drawing, calculations and other documents provided is in the public domain without violation of the obligation of confidentiality.

17.8 If the sum of the security interests to which we are entitled according to para. 1 to 6 exceeds the purchase price of all our goods subject to retention of title which are not yet paid for by more than 10 %, we shall be obliged at the Supplier's request to release the security interests at our option.

17.9 We object to an extended retention of title.

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

18.1 The Supplier is responsible for ensuring that third-party rights within the Federal Republic of Germany and the European Union and the country of use notified to the Supplier by us together with the purchase order are not violated in connection with the Supplier's delivery and/or service. Liability shall be excluded if the Supplier proves that it neither knew nor could have known about the existence of such rights or their occurrence in the future when the delivery item was delivered.

18.2 If a claim is made against us by a third party for violation of such rights, the Supplier shall be obliged to indemnify us at first written request against these claims. We shall not be entitled to enter into any agreements, in particular to conclude a settlement with the third party, without the Supplier's consent.

18.3 The Supplier's duty to indemnify shall apply to all expenses we necessarily incur from or in connection with any claim made by a third party.

18.4 The limitation period for liability arising from the violation of property rights shall commence as soon as the claim arises and the circumstances on which the claim is based have come to our knowledge or should have come to our knowledge without gross negligence. The limitation period is 5 years.

#### **19. Documents and confidentiality**

19.1 All business, technical or product-related information, especially calculation data, manufacturing specifications, internal production information and data of whatever kind made accessible by us to the Supplier, including other development or manufacturing features to be taken from any objects, documents or data provided and other know-how or experience provided by us to the Supplier must not be disclosed by the Supplier to third parties unless and until they are proven to be in the public domain or a legal or official obligation of disclosure exists, and may only be made available to those persons in the Supplier's own company who must necessarily be involved in their use for the purpose of the delivery or service to us and who are likewise obliged, in as far as this is permitted with respect to employees under labour law, in writing to treat them as confidential. We shall retain the exclusive title to such items.

If the Supplier uses sub-contractors or upstream suppliers for the purpose of fulfilling the contract and is permitted to do so according to the contractual relationship concluded with us, the Supplier shall bind them as material contractual obligation in writing to corresponding confidentiality for our benefit and to the effect that we shall have our own right from this to require the Supplier to cease and desist and, in the event of breach of duty, to damages, and the Supplier shall provide us with proof of this without being requested to do so.

19.2 Such information may not be reproduced or used commercially, other than for deliveries to us, without our prior written consent. The above confidentiality agreement shall also survive the termination of the supply relationship until it is legally disclosed but at most for 4



years after the delivery and/or service. The above obligation of confidentiality shall not exist if the Supplier can prove that it has legally developed the information provided itself or already knew about it (in which case the Supplier shall notify us immediately in writing after transmission of the information) before it was disclosed, or it had entered the public domain as a result of our written declaration, or there is an official or statutory obligation of disclosure.

19.3 At our request, all information and data originating from us (including, if applicable, any copies or records made) and any objects loaned must be returned to us immediately and in full or destroyed, and their destruction confirmed in writing. If information provided to the Supplier is contained in data, such data must be deleted in full any time at our first request, and deletion must be confirmed immediately in writing.

19.4 In the case of data transmitted by us to the Supplier, we shall also have the right to have the Supplier make a declaration to cease and desist with a penalty clause to us which shall include a contractual penalty for each case of negligent contravention of the obligation to cease and desist from further use of the data transmitted by us or copies thereof, which we have requested the Supplier to return and/or delete, in the amount determined according to our reasonably exercised discretion (Section 315 BGB). This may be reviewed by a court of law and reduced, however, at most to a total of EUR 250,000.00 for all cases of violation. We reserve the right to further damage claims, while setting off the contractual penalty in full, and claims to compel the Supplier to cease and desist.

19.5 We reserve all rights to such information and data (including copyrights and the right to apply for industrial property rights such as patents, utility models, trademark protection, etc.). In the event such information and data were made accessible to us by third parties, this retention of rights shall also apply for the benefit of such third parties.

19.6 Licences or warranties shall not be connected to the information and/or data transmitted to the Supplier.

19.7 Any products manufactured in accordance with documents drafted by us e.g. drawings, samples or models and similar items or in accordance with our confidential specifications or with our formulas that are not in the public domain or with our tools or any reproduced tools may neither be used by the Supplier itself nor offered or delivered to third parties.

## **20. Safety provisions / Other requirements of deliveries and services**

20.1 For its deliveries, the Supplier must comply with safety regulations which are valid in the Federal Republic of Germany and the European Union and the country of use notified to the Supplier prior to conclusion of the contract and with the technical data or limits corresponding to the current state of the art when the risk passes or any other additional technical data or limits agreed.

20.2 The Supplier undertakes to use exclusively materials that comply with the respectively applicable statutory safety requirements and provisions, in particular for poisonous and hazardous materials. This shall also apply to environmental protection regulations and regulations with regard to electricity and electromagnetic fields. The above obligation shall include all regulations valid in the Federal Republic of Germany, the Europe Union and the country of use notified prior to conclusion of the contract, and also the regulations of the customer countries notified to the Supplier before or together with the purchase order, if such regulations differ from the above regulations.

20.3 If the Supplier's products do not comply with the requirements of paragraphs 1 to 2 above, we shall have the right to rescind the contract. This shall not affect any further damage claims.

20.4 We must be notified in writing or text form of any intended changes to the delivery item and service. Such changes shall require our prior written consent.

## **21. Quality and documentation**

21.1 Unless otherwise agreed, the Supplier shall bear the costs for declarations of conformity. Declarations of conformity must be submitted to us immediately in German and English with each delivery.

21.2 Notwithstanding the foregoing, the Supplier must continuously verify the quality of the delivery item. The Supplier must notify us of any possible improvements immediately. The Supplier must notify

us immediately in writing of any evident errors in specifications and foreseeable complications.

21.3 If minimum and/or maximum values of parameters are specified in a purchase order, the specified maximum values may not, unless otherwise agreed in writing, be exceeded in any area of the delivered item or product; values must not fall short of the specified minimum values in any case and throughout the entire process.

This must be assured and documented by suitable test and measurement procedures. We shall have the right to request the publication of the results of such procedures in writing at any time and without additional costs.

21.4 The scope of delivery shall include product-specific and/or technical documentation, certificates of conformity and other documents, certificates and operating instructions at our option in German or English, and the marking of the parts and product and/or its packaging required by law shall be included in the scope of delivery without separate charges.

21.5 The Supplier shall ensure that the delivery items can be traced exactly through batches.

## **22. Software**

22.1 If the delivery item contains software, we shall, without any special remuneration, have the right to use the software throughout our group, and, in the case of software individually programmed for ourselves, to reproduce it at our discretion, and provide it together with the delivery item to third parties throughout the world with or without charge.

22.2. Remuneration for software shall be due only after formal acceptance procedure has been completed with our written declaration of acceptance.

22.3 When supplying software, supplementary performance with new versions of the program shall only be permitted with our prior written consent. If our consent is given, the Supplier shall be obliged to instruct our employees in the new version of the program at its expense.

## **23. Auditing**

23.1 We shall have the right but shall not be obliged, also with respect to any own certification, to audit the Supplier ourselves or have an expert and/or advisor of our choice perform the audit. This shall include an inspection of the Supplier's operations and quality assurance system and a subsequent assessment. Findings acquired here shall form the basis of our awarding further orders and our internal rating of the company.

23.2 We shall have the right to make announced inspections of the Supplier's regular business operations and to monitor its quality assurance measures during usual business hours. If quality problems have arisen with the Supplier's deliveries in the past, we shall also have the right to make unannounced inspections in order to monitor the quality assurance system. We shall not have the above right if the last complaint about the Supplier's quality assurance system was more than 1 year ago or no defects were found at 2 consecutive unannounced inspections.

23.3 We shall have the right, if we prove an appropriate justified interest, to inspect the Supplier's relevant documents. Such justified interest shall exist in particular where such an inspection might yield information which can enable us to assess the necessity and scope of a recall.

23.4 The Supplier shall not be obliged to disclose company secrets within the framework of our exercising rights pursuant to paragraphs 1 - 3 above.

## **24. Industrial safety / Prevention of accidents**

We draw attention to the fact that all external persons who enter our company or our company premises shall also be subject to our internal rules. Where such rules are violated, we reserve the right to remove the person from the premises. When the Supplier is working on our company premises on our behalf, the Supplier must take all action, make all arrangements and take all measures which comply with the provisions of the relevant regulations for the prevention of accidents and the other generally accepted rules on safety and occupational health. The labour guidelines of our employers' liability insurance association must be complied with.



**25. General provisions / Severability clause / Jurisdiction / Choice of law / Data storage**

Gescher, January 2016

25.1 The business connection with ourselves may be disclosed to third parties for advertising purposes or as reference only with our written consent.

25.2 If, for liquidity reasons, a contracting party suspends payment, a petition is filed to open insolvency proceedings against its assets or judicial or extra-judicial composition proceedings, the respective other party shall have the right to rescind that part of the contract not yet fulfilled if we cannot be expected to adhere to the contract.

Each contracting partner shall furthermore have the right to rescind a contract or that part of a contract not fulfilled if unlawful acts are proved to occur in the business operations of the other contracting partner which are a material violation of the principles of corporate compliance and which are strongly impairing the company interests of the other contracting partner. This shall not apply if the contracting partner in question, after prior written request by the contracting partner entitled in principle to rescind the contract, proves within four weeks that the violation of compliance occurred in its business operations through no fault of its own.

In the case of continuing obligations or contracts for work or services, the contract partner shall have the right, in lieu of rescission, to terminate the contract without notice. This shall not affect Section 314 BGB.

25.3 If any provision of the contract is or shall become invalid/void or unenforceable in whole or in part for reasons relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, statutory provisions shall apply.

If any current or future provision of the contract is or shall become invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, this shall not affect the validity of the remaining provisions of the contract unless the performance of the contract, also in consideration of the following provisions, would present an unreasonable hardship for either party. This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling.

Contrary to the principle of the judicial decisions of the Federal High Court of Justice, according to which a severability clause in principle only reverses the burden of proof, the validity of the remaining provisions of the contract shall be maintained in all circumstances and therefore Section 139 BGB waived as a whole.

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

25.4 These terms and conditions are governed exclusively by the law of the Federal Republic of Germany.

25.5 The language of contract, correspondence, proceedings and official language in court is German.

25.6 The United Nations Convention on Contracts for the International Sale of Goods (CISG) - UN Sales Convention - is excluded.

25.7 Place of performance is the agreed place of delivery /service.

25.8 Place of jurisdiction is the location of our company's registered office. We shall, however, also have the right at our option to bring an action against the Supplier at its registered office or the place of performance.

25.9 We store data arising from the contractual relationship in accordance with Section 26 of the German Bundesdatenschutzgesetz [German Federal Data Protection Act] for the purpose of data processing.