



## General Terms and Conditions of Contracts, Delivery and Services of HUESKER Synthetic GmbH in business transactions with companies - status July 2022 (including Annex „Privacy Policy“)

### A.

#### 1. Scope, general

1.1 These General Terms and Conditions of Contracts, Delivery and Services Part A and Part B apply exclusively to companies within the meaning of Section 14 of the German Civil Code (*BGB*) i.e. natural persons or legal entities, which purchase the goods or service for commercial or professional purposes, and to entities subject to public law and special funds under public law.

The special terms and conditions for contracts for work and services shall apply additionally to contracts for work and services. In the case of contradictions, they shall take precedence over the provisions pursuant to Part. A.

1.2 The terms and conditions set forth below (**General Terms and Conditions**) and the HUESKER Compliance Guideline (HUESKER-CR), available at [www.huesker.de/unternehmen/compliance.html](http://www.huesker.de/unternehmen/compliance.html), which we shall also send at first request free of charge, apply exclusively to our business relations with our customers, also with respect to information and advice. Where our General Terms and Conditions are implemented in business with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed.

Differing terms and conditions of the buyer and/or ordering party - hereinafter referred to as “**customer/s**” - shall only apply if and to the extent that we expressly acknowledge them in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, also where, according to such conditions of purchase, acceptance of an order is deemed to be the unconditional acknowledgement of the conditions of purchase, or we deliver or perform after the customer has indicated the validity of its general terms and conditions of purchase unless we have expressly waived the validity of our own General Terms and Conditions. The exclusion of the customer's general terms and conditions of purchase shall also apply if the General Terms and Conditions do not include a separate regulation for individual stipulations. By accepting our order confirmation or the goods, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase.

1.3 If framework contracts or other contracts have been concluded with our customers, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific stipulations are agreed therein. In addition, the terms and conditions for transactions with companies within the meaning of paragraph 1.1 stated in the Online Shop shall also apply to use of our Online Shop at [www.huesker.shop](http://www.huesker.shop).

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

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

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

2.2. If we provide instructions for use/operating instructions, these shall be drawn up with the care customary in the industry and outside an expressly concluded consultancy agreement not binding. They do not release our customers from the obligation to check the products carefully regarding their suitability for the purpose intended by the customer. The customer shall remain obliged in any case, unless otherwise expressly agreed, to check whether our products and/or services can be used for the purpose intended by the customer. This applies to information on import, customs and certification regulations.

2.3 We only assume an obligation to provide advice regarding our products and their use exclusively based on a separate, written consultancy agreement.

2.4 We shall be deemed to have given a guarantee in the legal sense (assumption of no-fault liability) only if we have designated a property and/or the outcome of performance as “*guaranteed by law*” in writing.

2.5 We shall assume no liability for the usability and/or eligibility for registration and/or marketability of our products or services for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer. This shall not affect the stipulation in paragraph 11.

2.6 The customer shall be obliged to provide us with all information and data required to perform in due time and in full prior to execution of the order and to make copies of data transmitted before transmission to us.

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

3.1 Properties of samples or specimens shall only become an integral part of the contract if this was *expressly* agreed with us. The customer shall *not* have the right to exploit and pass on samples.

Where goods are sold by us based on a sample, deviations therefrom in the goods supplied shall be admissible and shall not give cause for complaints and claims against us if they are customary in the trade and the goods supplied comply with any agreed specifications, unless otherwise agreed.

3.2 We shall retain all title and copyrights to samples, illustrations, drawings, data, calculations and their applications, estimates of cost and other documents about our products and services disclosed or provided to the customer. The customer undertakes not to make the samples, data and/or documents specified in the foregoing sentence available to third parties unless we give our express written consent. The customer shall return them to us on request if an order based on them has not been placed with us within 4 weeks after being provided to the customer. This shall also apply if being able to retain the above-mentioned items and/or data is not otherwise contractually regulated in favour of the customer.

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

3.3 Our estimates of cost shall only be binding when they are expressly designated as binding and the performance included therein begins on a contractual basis immediately after receipt of the estimate of cost by the customer but at the latest within 21 calendar days of receipt of the estimate of cost by the customer.

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

4.1 Purchase orders can be placed by the customer by telephone, in writing, by fax or email or in our **Online Shop** at [www.huesker.shop](http://www.huesker.shop).

**Note: For operational reasons, our online range is conclusively aimed only at customers with registered office in the Federal Republic of Germany. We conclude contracts in our Online Shop at [www.huesker.shop](http://www.huesker.shop) only with such customers.**

Contracts for purchase orders via our Online Shop are concluded in German. To order from our Online Shop, goods must first be selected and then added to the basket (click on “Add to Basket”). To identify and prevent input errors during the ordering process, a summary page is displayed to the customer when ordering online before the purchase order is valid in our Online Shop to enable the customer to check all the details of the purchase order (goods, price, delivery charges etc.) and to correct data entered in the input fields manually or by using the “Back” arrow (<-) in the Online Shop.

4.2 The customer also has to register for purchase orders via our Online Shop as follows: the customer indicates via a selection menu that it is a company with the meaning of para. 1.1. above and then completes the required information - name, address, email and password - in the registration mask for companies. The customer will receive confirmation of registration immediately by email. The customer is in any case obliged, when ordering and/or registering in our Online Shop, to provide true, accurate and complete details



required to process the purchase order, especially full company name or in the case of traders first name and surname, address, payment data and email address.

4.3 Our quotations are subject to change unless expressly designated as binding or expressly contain binding commitments or their binding nature was otherwise expressly agreed. They are requests for purchase orders by customers.

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

4.5 A contract is created - also in day-to-day business - only when we confirm the customer's purchase order by order confirmation in writing or text form. An order confirmation as acceptance shall only apply subject to the proviso that payment arrears of the customer still outstanding are settled and that any credit assessment of the customer undertaken by us does not disclose any negative information unless otherwise expressly agreed with us by the customer.

Where delivery is made or a service provided within the period by which the customer is bound by the offer for conclusion of a contract, our order confirmation can be replaced by our delivery, whereby the date of performance shall be determined by the date of shipment of the delivery unless otherwise expressly agreed.

4.6 We shall also have the right in the event of call orders or acceptance delays caused by the customer to procure the material for the entire order and to manufacture the total quantity ordered immediately resp. to stock up with the total quantity ordered. After the order is placed, any change requests by the customer can, therefore, no longer be considered unless this has been expressly agreed between ourselves and the customer.

4.7 In the case of call orders without agreement of term, production batches and/or acceptance dates, we can at the latest 3 months after order confirmation require a binding stipulation about this from the customer. If the customer fails to comply with this requirement within 2 weeks, we shall have the right, after setting the customer an extension of time of two weeks, to rescind that part of the contract not yet fulfilled and to require damages in lieu of performance.

If a purchase on call has been concluded, we must also receive the individual calls, unless otherwise agreed, at least 6 weeks prior to the requested delivery date, unless a shorter call or delivery period was agreed.

Unless agreed to the contrary, the customer shall be obliged to accept the purchased goods in full within one year of the order confirmation being issued. If calls are not made in due time, we shall have the right to remind the customer of the calls and their planning and to set an extension of time for planning of 14 calendar days. If the time limit expires without effect, we shall have the right to rescind the contract or to require damages in lieu of performance. In doing so, we do not have to refer again to the rights under this clause. Para. 4.15 (2) shall apply accordingly

4.8 The customer must notify us in writing in due time prior to conclusion of the contract of any special requirements of our products and/or services which have not been expressly offered to the customer. Such notification shall not, however, extend our contractual obligations and liability.

**4.9 By way of derogation from Section 434 BGB, the delivery item supplied by us shall be free of material defects if it has the properties agreed in the specification according to the contract, in the absence of such the properties listed by us in the technical data sheet for the product concerned at the time of conclusion of the contract. Section 434 (2) No 3 and (3) No 4 (accessories and instructions) and Section 434 (3) No 2 b) (properties from public statements and advertising) as well as Section 434 (3) last paragraph (seller not being bound by public statements) remain unaffected. Further properties of the delivery item, especially (i) customary quality that the buyer can expect of items of this nature, (ii) suitability provided in the contract, (iii) suitability for customary use, (iv) quality of a specimen or sample, shall not be owed by us in the absence of express agreement to the contrary.**

**4.10 Unless otherwise expressly agreed, we shall only be obliged to supply the products ordered by the customer from us as goods which are marketable and eligible for approval in the European Union.**

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

**4.12 Assumption of a procurement risk within the meaning of Section 276 BGB is not based solely on our obligation to deliver an item which is defined solely by its class.**

**4.13 We shall only assume a procurement risk within the meaning of Section 276 BGB by virtue of a separate written agreement stating "we assume the procurement risk...".**

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

In the event of our requesting damages as stipulated above, the damages to be paid shall amount to a lump sum of 20% of the net delivery price in the case of purchase contracts. The right is reserved for the customer to prove substantially lower damages (more than 10 % lower). We have the right to assert higher damages as well. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

4.15 If the shipment or delivery is delayed at the customer's request or for reasons, for which the customer is responsible, we shall have the right to store the goods, beginning upon expiry of the reasonable time limit set in writing or text form in the notice that the goods are ready for shipment, at the customer's risk of loss and deterioration of the goods, and to invoice the costs incurred for this at 0.5% of the net invoice amount of the stored goods for each full week or part thereof. The stored goods shall only be insured at the customer's specific request. This shall not affect the assertion of further rights. The right is reserved for the customer to prove that no costs or considerably lower costs were incurred.

Furthermore, we shall have the right, after the foregoing time limit expires according to sentence 1 para. 4.14, to dispose of the contract goods otherwise, and to make a new delivery to the customer after a reasonable period of time.

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

4.17 Unless otherwise expressly agreed in writing or text form or if we are subject to different mandatory legal provisions, we shall only be required to provide user information for our products and a product label in German or, at our option, in English.

The customer shall be responsible for providing us with any necessary information regarding the ordered goods within a reasonable period of time free of charge to allow the purchase order to be executed according to the contract.

4.18 We reserve the right to change the specifications of the goods in so far as this is necessary to comply with legal requirements provided that such change does not cause any deterioration in terms of quality and usability for the usual purpose, and, if fitness for a specific purpose was agreed, for that purpose.

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

In addition, we shall have the right to supply products with deviations customary in the trade in terms of quality, dimension, weight, colour and equipment. Such goods shall be deemed to comply with the contract. Likewise, technically unavoidable deviations in quality, colour, width, weight, equipment or design in relation to the ordered goods shall not constitute a material defect. The foregoing shall not apply if the goods deviate from agreed sample properties.



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

5.1 Binding delivery dates and periods must be agreed expressly and as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation and, if the order confirmation is replaced by our delivery/service, 3 working days at our registered office after receipt of the customer's purchase order by us and acceptance of the same by us but not before all economic, technical and logistics details about the execution of the order have been clarified between the customer and ourselves and all other requirements to be fulfilled by the customer have been fully met, in particular advance payments or securities agreed and cooperation required are made resp. provided in full by the customer. This shall apply accordingly to delivery and/or service dates. If the customer requests changes after placing the order, a new delivery/service period shall begin, which corresponds to the original delivery period, upon confirmation of the change by us.

5.3 Deliveries may be made prior to expiry of the delivery time. The date of delivery for obligations to be performed at the debtor's place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The date of delivery for obligations to be performed at the creditor's place of business shall be deemed the date of delivery at the agreed place of delivery.

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

5.4 In the absence of other written agreement, the customer's interest in our performance shall only not apply if we fail to deliver material parts or deliver with delay.

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

5.6 We shall not be in default as long as the customer is in default in fulfilling obligations towards us; this shall also include obligations under other contracts.

5.7 The customer shall offer recyclable packaging in a clean condition and free of defects to us to take back, without our being obliged to take it back.

5.8 The unloading of the goods shall be a matter for the customer where it has been agreed that the obligation is to be performed at the creditor's place of business and shall be borne by the customer.

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

If the goods are stored, the customer shall pay a storage lump sum of 1% of the net remuneration per week for the stored goods. The right is reserved for either party to prove that costs were lower or higher; the right is also reserved for the customer to prove that no costs were incurred at all.

5.10 When unloading and retrieving goods, the customer must assist our personnel if this is necessary and technically and logistically reasonable for the customer.

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

6.1 If we do not receive deliveries or services from our sub-contractors to provide a delivery or service, which is due from us

under the contract, despite due and proper stocking prior to conclusion of the contract with the customer in terms of the quantity and quality owed under our delivery or service agreement with the customer i.e. in such a way that, upon fulfilment of the supplier resp. sub-contractor obligation towards ourselves, we can fulfil the contract with the customer according to the nature of the goods, quantity of the goods and delivery time and/or service (congruent stocking) or they are incorrect or not in due time for reasons for which we are not responsible or it is incorrect or not in due time for reasons for which we are not responsible or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer immediately in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction or to rescind the contract in whole or in part for that part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk according to Section 276 BGB or a delivery guarantee. Events of force majeure are epidemics, pandemics, cyber attacks, strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks or obstructions through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by us.

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

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

6.4 If we are obliged to make a single or multiple delivery (call-off delivery), the delivery obligation shall not apply if the legal and/or economic and/or logistical and/or purchase conditions on the market for provision of the delivery according to the contract have changed compared to the time when the contract was concluded in such a way that, when considered objectively, we can no longer reasonably be expected to fulfil the delivery obligation. This is the case in particular if (i) the delivery item or parts thereof or necessary raw materials for this, due to a general shortage of raw materials and/or shortage of parts, cannot be procured for us on the procurement market within a sufficient period of time to meet the delivery period owed to the customer, even outside our usual suppliers up to this point in time or (ii) procurement is not possible for legal reasons by this delivery period due to an embargo or other sanctions imposed by the state, insofar as we would initiate a purchase order on the procurement market immediately after call-off by the customer in the case of a call-off delivery obligation or after conclusion of the contract in the case of individual delivery. Exemption from performance shall also apply if the price for a required raw material to meet the delivery period increases by more than 50% in relation to the time of conclusion of the contract, insofar as the customer does not agree to assume the price difference. The delivery obligation on our part ceasing to apply as mentioned above shall also occur if the situation leading to the above-mentioned inappropriateness or the event leading to this was foreseeable in principle but not specifically at the time the contract was concluded. As requirement for our exemption from performance, we shall inform the customer immediately in writing or text form if it is foreseeable to us that the above-mentioned situation shall occur, which shall lead to an exemption from performance as defined above. In such case, the parties shall immediately negotiate an adjustment to the contract, taking into account mutual interests, which takes into consideration the above-mentioned situation. If, at the request of one of the parties to the contract, such an agreement is not reached within 30 calendar days, both parties shall be entitled to rescind the contractual relationship concerned without compensation or, in the case of a continuing obligation, to terminate it without notice. Rescission resp. termination without notice shall be excluded for a party who refuses negotiation of an adjustment or adjustment of the contract contrary to the principles of good faith.

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

7.1 Unless otherwise agreed, delivery is ex works, Incoterms 2020. In the case of a sale involving the carriage of goods, we shall also have the right to send the goods to be delivered from a place other than the place of performance.



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

If shipment is delayed with respect to the agreed date at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In such case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

If shipment to the port of destination agreed between the customer and ourselves is not possible, for reasons for which we are not responsible (e.g. epidemic/pandemic), we shall have the right, after prior notice, at our reasonably exercised discretion (Section 315 BGB), to deliver to another port or by land. Additional costs incurred as a result shall be borne by the customer. The above right to change performance and the obligation to bear the costs shall not apply if we have assumed a guarantee of delivery or, where it has been agreed that the obligation is to be performed at the customer's place of business, a procurement risk equivalent to a guarantee according to Section 276 BGB. Transport insurance shall be concluded in such case only at the instruction and expense of the buyer. Section 315 III BGB (possibility of judicial review and amendment of the equitable decision) remains unaffected.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer, where it has been agreed that the obligation is to be performed at the debtor's place of business, upon the products to be delivered being handed over to the customer, where it has been agreed that the obligation is to be performed at the debtor's place of business with the debtor having to dispatch the goods, upon the goods being handed over to the forwarding agent, carrier or firms otherwise entrusted with shipping the products but at the latest when the products leave our works or our warehouse unless an obligation to be performed at the creditor's place of business has been agreed. The foregoing shall also apply if an agreed partial delivery is carried out. In the case of an obligation to be performed at the creditor's place of business, the risk shall pass to the customer upon delivery at the agreed place.

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

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

## **8. Notice of defects / Breach of duty due to material defects (warranty)**

8.1 The customer must give us notice in writing or text form of recognisable material defects in our delivery items immediately but at the latest 12 calendar days after collection, in the case of delivery ex works or storage location, otherwise after delivery. Notice of hidden material defects must be given to us in writing or text form immediately after they are detected but at the latest within the period of limitation in respect of warranty pursuant to para. 8.7. A notice of defects that fails to comply with requirements of time or form shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects or a procurement risk pursuant to Section 276 BGB or other mandatory statutory basis for liability, especially product liability law. This shall not affect the special legal provisions in the case of final delivery of the goods to a consumer (*recourse against suppliers*, Sections 478, 445a BGB).

8.2 The customer must carry out a plausibility check upon receipt i.e. check the type of goods, number/weight and condition. The delivering transport operator must also be notified of material defects recognisable upon delivery, recognisable defects in type and/or defects in quantity/weight and the recording of the defects in written or text form on the delivery documents/CMR by the transport operator on site must be arranged by the customer. Failure to

arrange for the notice of defects to be recorded vis-à-vis the delivering transport operator in compliance with requirements of time or form shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of a fraudulent, grossly negligent or an intentional act on our part, in the event of injury to life, limb or health or the assumption of a procurement risk pursuant to Section 276 BGB, a guarantee for the absence of defects or liability according to a mandatory statutory basis for liability, in particular the *Produkthaftungsgesetz* [German Product Liability Act] and in the event of right of recourse in the supply chain (Sections 478, 445a BGB).

If defects in number and weight were already recognisable upon delivery by reason of the foregoing obligations to inspect, the customer must make a complaint about these defects to the delivering transport operator upon receipt of our delivery items, and have this complaint certified by the transport operator. Sentence 2 of para. 8.2 shall apply accordingly.

8.3 When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall apply if the products are shipped on from their original destination unless this corresponds to the normal use of the delivered goods.

8.4 *The customer must give notice in writing or text form immediately of other breach of duty by us, setting a reasonable time limit for remedy, before asserting further rights, otherwise this shall cause the customer to forfeit the rights resulting therefrom.* This shall not apply in the case of a fraudulent, intentional or grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee or a procurement risk or in the case of a mandatory statutory basis for liability, in particular the *Produkthaftungsgesetz*, or in the event of the assumption of a guarantee of performance or delivery.

8.5 We shall remedy any defects for which the customer itself is responsible and eliminate any unjustified complaints on behalf of and at the expense of the customer if the customer is a registered trader within the meaning of the *Handelsgesetzbuch* [German Commercial Code].

8.6 If breach of duty does not by way of exception relate to the performance of work by us, the contract may not be rescinded if our breach of duty is not material.

8.7 We shall provide a warranty in respect of claims arising from breach of duty due to defective performance in the form of material defects for a period of 12 months, unless otherwise expressly agreed in writing or text form, calculated from the date the risk passes (see para. 7.3), in the case of the customer's refusal to accept or take delivery as of the date of receipt of the notice that the goods are available to be taken over at the customer. This shall not apply to damage claims resulting from a guarantee, from the assumption of a procurement risk within the meaning of Section 276 BGB, claims for injury to life, limb or health, a fraudulent, intentional or grossly negligent act by us, or in the cases of Sections 478, 479 BGB (recourse in the supply chain), Section 438 (1) No 2 (construction of buildings and delivery of objects for buildings), and Section 634 a (1) No 2 BGB (building defects), or if otherwise a longer statutory period of limitation is mandatory by law. This shall not affect Section 305 b BGB (precedence of an individual agreement in verbal, text or written form). There is no connection between the reversal of the burden of proof and the foregoing stipulation.

8.8 If the customer or a third party rectifies the products supplied by us incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any changes in the delivery item undertaken without our prior consent.

Our warranty and liability for material defects in the delivery item shall be excluded if the customer fails to comply with the technical regulations or instructions for use for the delivery item stipulated by us in accordance with the concluded contract or specified by us in this respect and the defect in the delivery item or damage to the customer is based on this.

This shall also apply if changes not agreed with us are made or occur to the ground or building structure on which the delivery item was attached and where it was processed, which at the same time change the requirements, to which the attached or processed delivery item was subject according to the contract up to that point in time, or the delivered, attached and processed delivery item is handled incorrectly, in particular exposed to substances, the effect



of which the customer failed to specify expressly to us in writing when placing the order and the defect resp. damage to the customer is based on this.

8.9 Further claims by the customer for or in connection with defects or consequential harm caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 11.

8.10 Our warranty within the scope of contracts concluded with us (i.e. claims for breach of duty due to defective performance in the case of material defects in connection with the contract concluded with us) and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proved to be due to defective manufacturing substances, defective construction and/or production and/or processing or, if owed, defective instructions on use. Warranty and liability arising therefrom due to breach of duty for defective performance in particular shall be excluded with respect to the consequences of incorrect use, inappropriate storage and transport conditions, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences which do not correspond to average standard influences specified in our product description and/or operating instructions or a product specification otherwise agreed or the respective product-specific data sheet by us or the manufacturer. This shall not apply in the case of a fraudulent, grossly negligent or intentional act by us, or injury to life, limb or health, the assumption of a guarantee, a procurement risk pursuant to Section 276 BGB and liability due to other mandatory basis for liability prescribed by law.

8.11 Claims by the customer for expenses required for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded if the expenses increase because the delivery item has been transferred subsequently to a place other than the customer's delivery branch unless in doing so this complies with its intended use.

8.12 Claims based on defects shall not exist in the case of only a minor deviation from the agreed or customary quality or usability.

8.13 Recognition of breach of duty in the form of material defects shall only be valid when given in writing.

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

9.1 All prices are ex works resp. warehouse and in principle quoted net in euros, excluding packaging, freight, postage and, if a transport insurance was agreed, insurance costs, plus value added tax (if incurred by law) which shall be borne by the customer at the legally valid rate, plus any country-specific charges in the case of delivery to countries other than the Federal Republic of Germany, and plus customs duties and plus other fees and public charges for the delivery/service. Unless otherwise agreed with the customer, the valid prices follow from our general price list respectively applicable when the contract is concluded between ourselves and the customer, which we shall provide to the customer immediately on first request free of charge.

9.2 Payment methods other than bank transfer for purchase orders outside the HUESKER Online Shop shall require separate agreement between ourselves and the ordering party. This shall apply in particular to the issue of cheques and bills of exchange.

Payments can be made in the HUESKER Online Shop by Credit Card (VISA & Mastercard), PayPal, prepayment or against invoice or by direct debit. Payment procedure, except for purchase against invoice and PayPal, is handled via CrefoPay. CrefoPay is provided by Creditreform and CrefoPayment GmbH und Co.KG. The terms and conditions set forth below of this para. 9.2 apply in this respect:

### **Payment by credit card (via CrefoPayment)**

We only accept Mastercard and VISA credit cards. For this, the customer is automatically forwarded to an encrypted page of our payment partner CrefoPayment to make the payment there. The debit of the credit card account takes place in each case only after delivery of the goods to the customer.

### **PayPal (via PayPal)**

The customer can pay online via PayPal. This requires registration with PayPal. The customer's bank and credit card data are deposited exclusively with PayPal. When selecting the PayPal payment method, the customer is directed to the PayPal website at the end of the order process to make payment. After completion of the payment process with PayPal, the customer is redirected to our Online Shop and can complete the purchase order there. After receipt of payment

confirmation from PayPal, we ship the ordered goods within the agreed delivery time.

### **Prepayment (via CrefoPayment)**

After placing the purchase order, the customer receives the transfer data. As soon as payment of the full invoice amount has been credited to our account, we shall ship the goods immediately within the specified delivery time. Note: transfers can take from one to three banking days. Clear and fast assignment of the payment requires that the transfer was made only to the account stated on the order conformation, indicating the reference.

### **Payment by direct debit (via CrefoPayment)**

To pay by direct debit, the customer is automatically redirected to an SSL encrypted page of our payment partner CrefoPayment, where the customer enters its bank data. Upon confirmation of the purchase order, the customer gives a direct debit mandate which authorises collection of the purchase amount. We irrevocably collect the amount from the customer's account and arrange for shipment of the goods. Purchase by direct debit is possible only with a credit rating sufficient for the purchase of goods.

### **Purchase against invoice**

When purchasing against invoice, the customer has the option of checking the goods at its premises and then making payment. The invoice is enclosed with the goods in printed form. Purchase against invoice is possible only with a credit rating sufficient for the purchase of goods.

### **Credit rating assessment for purchase against invoice and direct debit**

To pay by the payment methods "payment against invoice" and "payment by direct debit", the purchase order is released only after credit rating assessment. Credit rating is assessed through Creditreform Boniversum GmbH, Hellersbergstrasse 11, 41460 Neuss, which assigns probability values concerning the customer's future payment behaviour. The probability values are determined from empirical data relating to the address enquired about and data collected concerning the person enquired about. If the forecast concerning the customer's payment behaviour is negative, the customer shall be requested to decide on a different payment method.

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

9.4 Unless otherwise agreed, we are entitled to send our invoices to the customer exclusively electronically and to issue partial invoices according to the progress of order processing and / or require payments on account corresponding to the progress of processing.

9.5 Unless otherwise agreed, the purchase price shall be due for payment, after receipt of the invoice but not before delivery of the goods or provision of the service owed, less 2% cash discount within 10 calendar days or strictly net within 30 days thereafter. The granting of cash discount shall require the settlement of all invoices due at an earlier date.

9.6 If the customer pays in a currency other than euros, payment shall only be satisfied when the foreign currency payment corresponds to the agreed euro amount on the date of receipt of payment.

9.7 Services that are not an integral part of the agreed scope of delivery shall be carried out, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.8 We shall have the right unilaterally to increase the remuneration accordingly in the case of an increase in material production costs and/or material costs and/or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental charges and/or currency regulations and/or changes in customs duties and/or freight rates and/or public charges if these have a direct or indirect impact on the manufacturing costs of the goods or procurement costs or costs of our contractually agreed services and if more than 2 months elapse between conclusion of the contract and delivery. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the above-mentioned factors with respect to the overall cost burden for the delivery (*cost balancing*). If the above-mentioned cost factors are reduced without the reduction in costs being set off against the increase in other of the above-



mentioned cost factors, the reduction in costs shall be passed on to the customer through a price reduction.

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

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

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

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

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

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

9.14 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment. This shall apply accordingly if the counter-claim for set-off is in the synallagma (i.e. in the relationship of reciprocity between two performances in the contract concluded with us) with our claim and relates to the breach of a main obligation by us.

9.15 The customer can only exercise a right of retention if its counter-claim is based on the same contractual relationship.

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

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

9.17 Timeliness of cheque payments shall be determined by the value date. Payments by the customer must be made for our benefit, all postage and charges paid.

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

9.19 We have the right to assign all claims arising from the contractual relationship with the customer without restriction to third parties.

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

10.1 We retain title to all goods we deliver (hereinafter referred to as a whole as "**goods subject to retention of title**") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance for our benefit when any

or all claims are incorporated by us in a current account and the balance has been established.

10.2 The customer must insure goods subject to retention of title at their replacement value, in particular against fire and theft. Claims against the insurance arising from an event of damage relating to goods subject to retention of title are herewith already assigned to us in the value of the goods subject to retention of title.

10.3 The customer shall have the right to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by a third-party buyer when resold, the customer shall be obliged to resell the goods subject to retention of title to third parties only subject to expressly agreed retention of title and to indicate its non-existent title to them. The right to resell the goods subject to retention of title shall cease to apply immediately if the customer suspends its payment or defaults in payment to us.

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

10.5 The customer shall continue to have the right to collect claims assigned to us until revoked by us, this revocation being admissible at any time. We undertake, however, to revoke the collection authorisation only in the event of a legitimate interest. Such legitimate interest exists, for example, if the customer fails to fulfil its payment obligations in proper form or defaults in payment. At our request, the customer shall be obliged to give us the information and documents in full which are required to collect assigned claims and, unless we do so ourselves, notify its buyers immediately of the assignment to us.

10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall already now assign to us any recognised closing balance resulting for its benefit in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

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

10.8 In the event of conduct in breach of the contract through the customer's fault, especially in the case of default in payment, we shall have the right, after rescinding the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to surrender the goods subject to retention of title immediately and shall bear the transport costs required for taking back the goods. The fact of our taking back the goods subject to retention of title shall constitute a rescission of the contract. Once the contract is rescinded, we shall have the right to realise the goods subject to retention of title. Proceeds from the realisation, less reasonable costs for realisation, shall be set off against those claims which the customer owes us from the business relationship. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. The customer must notify us immediately in writing of any third-party attachment of goods subject to retention of title or claims assigned to us.

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



10.10 We treat and process goods subject to retention of title as manufacturers but without obligation on our part. If the goods subject to retention of title are processed or combined inseparably with other items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the net invoice amount for our goods to the net invoice amounts for the other processed or combined items. If our goods are combined with other movable items into a uniform item that is to be regarded as the principal item, the customer shall already now assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to pursue our ownership or co-ownership rights.

10.11 If, in the case of deliveries abroad, specific additional measures and/or declaration in respect of the agreement of the retention of title are required from the customer in the importing country to ensure the effectiveness of our above-mentioned retention of title or our other rights indicated above, the customer shall take such measures and/or make such declarations at its expense immediately resp. make such declarations in the prescribed form. We shall cooperate on this to the required extent. If the law of the importing country does not allow retention of title but allows us to reserve other rights to the delivery item, we can exercise all such rights at our reasonably exercised discretion (Section 315 BGB). If we cannot secure the claims against the customer in such an equivalent amount, the customer shall be obliged at its expense to provide us immediately with other appropriate securities for the goods supplied or other securities according to our reasonably exercised discretion (Section 315 BGB). This shall not affect the customer's right to judicial review and correction (Section 315 III BGB).

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

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

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

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

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

11.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in bullet points 1, 3, 4 and 5 of para. 11.2 above exist, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage.

11.4 Exclusion resp. limitation of liability according to para. 11.1 to 11.3 above and para. 11.5 below shall apply to the same extent for the benefit of our bodies, our executive and non-executive employees and other vicarious agents as well as our sub-contractors.

11.5 Claims by the customer for damages arising from this contractual relationship can only be asserted within a preclusion period of one year as of commencement of the statutory period of limitation. This shall not apply if we are responsible for intent or gross negligence, in the case of ordinary negligence if we have violated a material contractual obligation and in the case of claims due to injury to life, limb or health and in the case of a claim based on a tortious act or an express, assumed guarantee or the assumption of a procurement risk according to Section 276 BGB or where a longer period of limitation is mandatory by law.

11.6 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

## **12. Property rights / Licences**

**12.1 Unless otherwise agreed, we shall only be obliged to deliver in the contractually agreed first country of delivery exempt from third-party industrial property rights and copyrights.**

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

We shall at our option first either try to obtain a right of use at our expense for the deliveries in question or change the delivery item while complying with the properties agreed under the contract so that the property right is not infringed, or exchange the delivery item. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights which are defined, however, on the basis of these General Terms and Conditions of Contracts and Delivery.

The customer shall, in the event of infringement of property rights by our delivery items, be entitled only to rights against ourselves if the customer gives us notification in writing or text form immediately about the claims asserted by third parties, does not acknowledge any infringement, and all defensive measures and settlement negotiations are reserved for us.

- If the customer stops using the products for reasons of damage minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of the infringement of a property right.
- If an appeal is filed by third parties against the customer for infringement of property rights resulting from the use of products supplied by us, the customer undertakes to notify us of this immediately and give us the opportunity to participate in any legal action. The customer shall support us in every way in conducting such a legal action. The customer must not take any action which could prejudice our legal position.

12.3 The customer shall have no claims against us if it is responsible for infringement of a property right. The customer shall also have no claims against us if the infringement of the property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products are changed by the customer or used with products not supplied by us, which do not comply with the intended use, if the infringement of the property right is based on this.

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

All copyrights, patent rights or other industrial property rights shall remain with us unless otherwise and expressly agreed in writing. Section 305b BGB (precedence of an individual agreement) shall not be affected in the case of individual agreements in verbal, written or text form.

If patentable inventions are made at our company within the scope of implementing the contract, we shall grant the customer a non-exclusive and non-transferable right to use them under preferential economic conditions. This shall not affect the customer's entitlement to receive all rights arising from the invention if the achievement of the invention is a main contractual obligation on our part.

## **13. Return / Export control / Product approval / Import regulations**

13.1 In the absence of any contractual agreements to the contrary with the customer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of



Germany, to the agreed country of first delivery (*first country of delivery*).

13.2 We advise the customer that European and German foreign trade law applies to the transfer/export of products (goods, software, technology) and to the provision of services with cross-border reference to the fulfilment of the contractual obligation and individual deliveries and technical services can be subject to restrictions and prohibitions under export control law. This applies in particular to so-called armaments and dual-use items. Furthermore, European and other global national embargo regulations exist against certain countries and persons, companies and organisations which prohibit the supply, provision, transfer, export or sale of goods and the performance of services or can be subject to authorisation. For cross-border delivery resp. provision, administrative authorisations or other certificates may, therefore, have to be obtained by us. Further rights and obligations in this context are respectively governed by the following provisions. For certain transactions in connection with US goods or other US code, US re-export law can also apply due to extraterritorial effect and lead to prohibitions or authorisation requirements which we must comply with and implement in order not to be sanctioned on our part by US authorities.

13.3 The customer is itself obliged to verify the existence of and compliance with export and import control regulations for the delivery item and the export and import of the same and to comply strictly with the relevant export regulations and embargos for such goods, in particular of the European Union (EU), Germany resp. other EU Member States and, if applicable, the USA or Asian or Arab countries and all third countries concerned, if the customer exports the products supplied by us or has them exported by us.

13.4 The cross-border return of goods, samples, tools, software, material and also technology, also in the form of drawings, instructions, data etc. to the customer can also in individual cases be subject to provisions under foreign trade law and be dependent on administrative authorisation procedures. Before transfer of the products supplied by us to the customer and their integral parts and/or accessories into a first country of delivery other than that agreed with us, the customer warrants that the customer shall obtain the necessary national product approvals or product registrations in due time and that the requirements embodied in the national law of the country concerned for providing user information in the national language as well as all import provisions and export control regulations have been fulfilled.

13.5 Compliance with the delivery obligation can require the approval resp. granting of export licences or transfer authorisations or other foreign trade certificates by the competent authorities. If we are prevented from delivering in due time due to the duration of the necessary and proper execution of a customs or foreign trade application, authorisation or verification procedure through no fault of our own, the delivery time shall be appropriately extended by the duration of the delay caused by such administrative procedure. We cannot in general specify a fixed period for the above procedures on the part of the authorities. We shall notify the customer in individual cases immediately about such procedures as well as circumstances and measures. Claims for damages by the customer for delays through no fault of our own for this reason shall be excluded vis-à-vis ourselves unless we have assumed a guarantee liability contractually towards the customer.

13.6 The customer is obliged to provide us truthfully with full information in due time in writing or text form concerning the end use and an end user of the goods to be supplied or service to be provided differing from the end user named to us compared with the initial statements, if applicable, immediately after conclusion of the contract. Any delivery period or service period shall not start to run prior to this. This includes in particular issuing any necessary end-use certificates (so-called EUCs) and transmitting the originals to us in order to verify the end-use and intended purpose of the goods resp. services and provide proof to the competent authorities for customs and export control purposes. If potential violations of export bans or embargo regulations result from the above-mentioned documents, we shall have the right to rescind the contract without compensation.

13.7 The customer must comply with any re-export requirements arising from authorisations granted to us by the competent authorities or courts. The customer shall accordingly bind its customers contractually and provide us with proof of this upon

request. We shall inform the customer of the scale and scope of such requirements imposed on us at the latest with the delivery.

13.8 If we or already our suppliers are not granted any necessary export licences resp. transfer authorisations or other necessary approvals by the competent authorities through no fault of our own or not in due time or other obstacles prevent the fulfilment of the contract resp. the delivery in whole or in part through no fault of our own due to customs, foreign trade and embargo regulations to be complied with by us as exporter resp. transferor or by our suppliers according to law applicable to them, we shall have the right to rescind the contract resp. the individual supply resp. service obligation unless we have expressly assumed a no-fault guarantee liability for their provision.

This shall also apply if corresponding export control and embargo obstacles only arise through no fault of our own between conclusion of the contract and the delivery resp. performance of the service and in the assertion of warranty rights - e.g. through a change in the legal situation - and make the performance of the delivery resp. service temporarily or permanently impossible. This may be the case because export licences resp. transfer authorisations or other foreign trade authorisations or approvals granted to us or our suppliers are revoked by the competent authorities through no fault of our own or other legal obstacles due to customs, foreign trade and embargo regulations to be complied with prevent fulfilment of the contract resp. the delivery or service through no fault of our own. Claims for damages by the buyer for this reason shall be excluded unless we have expressly assumed a no-fault guarantee liability for the provision of the above-mentioned authorisations resp. documents.

13.9 The customer shall in particular check and ensure and provide proof to us upon request that

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

13.10 The customer undertakes in turn to prove this obligation to its customers for the goods supplied by us and to prove this to us on request.

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

13.12 Where goods supplied by us are passed on to third parties, the customer undertakes to oblige such third parties in the same way as the customer in para. 13.1 - 13.11, and to notify them of the need to comply with these legal provisions.

13.13 The customer shall also ensure at its own expense, where delivery outside the Federal Republic of Germany is agreed, that the goods to be supplied by us comply with all national import regulations of the first country of delivery fully and in a timely manner without cost to us.

13.14 The customer shall indemnify us against all damages and proven, customary and reasonable expenses resulting from the culpable breach of the foregoing obligations according to para. 13.1-13.13. Costs for own employees are excluded. Section 254 BGB (contributory negligence) remain unaffected.





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

14.1 Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at the creditor's place of business is assumed or as otherwise agreed.

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

14.3 The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the customer and ourselves, in particular to the exclusion of the UN Sales Convention (CSIG). It is expressly stated that this choice of law is also deemed to be such choice within the meaning of Art. 14 (1) (b) Regulation (EC) No 864 / 2007 and shall, therefore, also apply to non-contractual obligations within the meaning of this Regulation. If the application of foreign law is mandatory in individual cases, our General Terms and Conditions shall be interpreted as meaning that the economic intent pursued by them is preserved to the maximum possible extent.

#### **15. Compliance violations / Incoterms / Written form**

15.1 *We shall have the right at any time, after setting a reasonable time limit for remedying the compliance violations stated below without effect, to rescind the contract if the customer verifiably commits culpably caused statutory violations which constitute a material violation of the principles of proper management within the meaning of Section 43 GmbHG [German GmbH Law] or the German Corporate Governance Code (DCGK) and our operational interests are more than negligibly affected economically or legally. In the case of contracts for the performance of a continuing obligation, we shall have the right, instead of rescission, to termination without notice. Section 314 BGB remains unaffected.*

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

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

#### **16. Privacy**

16.1 HUESKER Synthetic GmbH will use all personal data provided only to the extent permitted by law and for the purpose of carrying out the contract / order processing. For this purpose, HUESKER Synthetic GmbH is bound by the provisions of the EU General Data Protection Regulation (GDPR) and the *Bundesdatenschutzgesetz* (BDSG) [Federal Data Protection Act] and has taken the necessary technical and organizational measures to ensure the security of the data.

16.2 A detailed description of the use of personal data in the customer relationship can be found in the Annex "Privacy Policy".

## **B.**

### **Special Terms and Conditions for Contracts for Work and Services**

#### **1. Obligations to cooperate**

1.1 In addition to the contractual agreements, the customer shall, unless otherwise expressly agreed, assume in particular the following obligations to cooperate:

- The customer shall ensure continuous processing of the order. The customer shall determine the binding production dimensions resp. a binding measurement and shall release drawings immediately after receipt.

1.2 The customer shall ensure that the following conditions are met on site when performance is rendered:

- Existence of the professional subsurfaces necessary for the application of our products and as far as necessary power connections. These must be constructed by a recognised

electrician and comply with the current VDE regulations. There must also be provision for switching off the mains connection according to VDE 0100 Section 29-7 and protecting it from being switched on accidentally and without authorisation. A separate, professional fuse protection must be provided for each installation.

- Approved climbing aids and scaffolding must be provided on site for installation or construction heights over 2 m.
- Completion of the required masonry, chiselling, plastering and connection work.
- Barrier-free access to the installation site and cleaning of the work area before start of the installation work as well as allocation of sufficient storage space in the work area.
- Existence of a cutting check near the installation.
- Existence of final planning by the customer, unless contractually assumed by us.
- Closure of the work area for the duration of the installation.
- Protection of the delivery items and work materials of ourselves and our vicarious agents on the customer's premises or company grounds against theft and damage until acceptance.
- Access to locations relevant for execution of the contract as well as the necessary authorisations for this purpose.
- Existence of appropriate ground conditions in the door area.

1.3 If the installation has been commissioned from us by the customer, the customer shall also be responsible for completion of the following preliminary work on site:

- Sufficient number of built-in, flush-mounted boxes for any control elements and programme switches.
- Proper laying of the electrical cables including the mains connection according to our construction cable plans.
- Completion and complete mechanical drive assembly of all components and peripherals belonging to the installation.
- Existence of the specified voltage.
- Delivery of the required information to enable the initial risk assessment according to the respectively current regulations/standards at the time of performance.

1.4 If the CUSTOMER culpably violates its obligation to cooperate, the customer shall be obliged to compensate us for damages. In the event of lack of cooperation by the customer, execution deadlines on our part shall be extended by the period between the original due date of the obligation to cooperate until its fulfilment plus a reasonable restart period.

#### **2. Payments on account**

The customer must make payments on account corresponding with the progress of the work, verifiable by measurement.

#### **3. Claims based on defects**

The standard obligation to give notice of defects under para. 8.1 of Part A shall not apply to contracts for work and services.

#### **4. Acceptance**

4.1 Acceptance of the services covered by the contract shall take place immediately after completion of the work. The customer shall ensure that a person authorised for acceptance is present. If acceptance does not take place at that time for reasons for which the customer is responsible, we shall set the customer a reasonable deadline for determining a date and performing acceptance in writing or text form, indicating the consequences of allowing this to elapse without effect.

4.2 If acceptance does not take place within the period set in the absence of any reaction or cooperation on the part of the customer, the services covered by the contract shall be deemed accepted upon expiry of the period.

4.3 We shall have the right to require partial acceptance from the customer for self-contained partial services.

Gescher, July 2022



## Annex "Privacy Policy"

### Privacy Policy for Customers/Contracting Partners pursuant to the European General Data Protection Regulation (GDPR)

#### I. Name and address of the controller

We, HUESKER Synthetic GmbH ("we", "HUESKER"), take the protection of your personal data very seriously. We treat your personal data confidentially and in accordance with statutory data protection provisions and this Privacy Policy. The controller within the meaning of applicable data protection laws and other data protection provisions is:

HUESKER Synthetic GmbH  
Fabrikstrasse 13-15  
48712 Gescher  
email: [info@huesker.de](mailto:info@huesker.de)

#### II. Name and address of the data protection officer

The controller's data protection officer is:  
OHA - Gesellschaft für Arbeitsschutz und  
Arbeitssicherheit mbH  
Paul-Klinger-Strasse 1  
45127 Essen  
email: [ds-beauftragter@oha-essen.de](mailto:ds-beauftragter@oha-essen.de)

#### III. Personal data processing

##### 1. Nature of use of personal data

We process personal data received by us from you in your capacity of customer/contracting partner resp. representative/authorised representative/contact partner of the company which is our customer/contact partner within the scope of our business relationship. Personal data will be generated by ourselves and yourself during the stage of initial business contact and during the business relationship. For companies, such data mainly relate to the responsible contact partner at your company and, if applicable, the company management (managing directors, board of management). Personal data generated are as a rule:

name, salutation, title, address, telephone number, telefax number, email address, account data, your company / company name (with VAT ID), department, position, date of birth, object of the contract, credit assessments, enquiries and correspondence relating to the conclusion, management, implementation and billing of the contract.

##### 2. Purpose and legal bases for the processing of personal data

Your personal data will be processed pursuant to applicable data protection provisions, especially the GDPR and the *Bundesdatenschutzgesetz (BDSG)* [German Federal Data Protection Act]. Specifically, this is for the following purposes and according to the following legal bases:

###### a) Based on your consent pursuant to Art. 6 (1) sentence 1 a) GDPR

If you have given us your consent to processing for specific purposes, we will process your data on the basis of your consent. The scope and purpose of data processing is described in the corresponding declaration of consent provided to you separately.

###### b) To comply with contractual obligations pursuant to Art. 6 (1) sentence 1 b) GDPR

Personal data are processed for reasons of handling contracts, namely for implementing your contract. Please refer to the respective contract concluded with you and the General Terms and Conditions incorporated therein for further information relating to the purposes and scope of the contractual services for which the data are processed.

###### c) To comply with statutory requirements pursuant to Art. 6 (1) sentence c) GDPR

We are subject as a company to diverse statutory requirements regarding compliance with control and notification obligations under tax law. To ensure compliance with such requirements, personal

data within the scope of initial business contact and handling are processed in accordance with statutory requirements.

###### d) Within the framework of the balancing of interests pursuant to Art. 6 (1) sentence 1 f) GDPR

We process your data beyond the actual fulfilment of the contract to safeguard legitimate interests of ourselves or third parties:

- Advertising by email for similar products or by post, unless you have objected to this, to enable us to indicate our current offers to you (our legitimate interest).
- Depending on the selected method of payment, we will transmit your data (name, address and, if applicable, data of birth) to Creditreform Boniversum GmbH for the purpose of credit assessment, obtaining information to assess the risk of non-payment on the basis of mathematical-statistical methods using address data. Should estimation of the customer's payment behaviour be negative, the customer will be asked to select a different payment method.

#### 3. Data erasure and storage period

Personal data of the data subject shall be erased or blocked as soon as the purpose of storage ceases to apply. Storage beyond this can occur if this was provided for by the European or national legislator in regulations, laws or other provisions under Union law, to which the controller is subject. Data shall be blocked or erased even if a storage period provided for by the above-mentioned standards expires unless there is a necessity for further storage of the data to enter into a contract or perform a contract.

After fulfilment of the contractual and statutory obligations, personal data will always be erased. Exceptions to this are:

- Compliance with retention periods under commercial and tax law. Periods for this are between two and ten years.
- Preservation of evidence within the scope of the respectively applicable rules on limitation periods. Pursuant to Sections 195 et seq. of the *Bürgerliches Gesetzbuch* [German Civil Code], these limitation periods can be up to thirty years. The regular limitation period here is three years to the end of the year.

#### 4. Disclosure to third parties

Personal data of data subjects are in principle not disclosed to third parties. Only bodies requiring access to your personal data to comply with contractual and statutory obligations will have access to them. This includes transport and logistics companies, technicians, dealers and commercial agents if this is required to implement or to establish the contract. For billing purposes, we will pass on the required payment data to our company's bank. If service providers and vicarious agents are also involved in the data processing, this will only be possible if the legal obligations prescribed for this in the GDPR and the requirements are mandatorily complied with by us for the handling of personal data.

#### 5. Transmission to a "third country"

Your personal data will be transmitted to countries outside the EU resp. EEA in principle only if you have given us your consent for this or this is a necessary condition for the implementation of a contract.

#### 6. Obligation to provide data

Data requested by us in the respective contract (name, company/company name, contact and account data) must be provided. If such data are not provided, we must refuse you resp. your company as contracting partner because they are absolutely necessary for us to process the contract.

#### IV. Rights of the data subject

If your personal data are processed, you are a data subject within the meaning of the GDPR and you have the following rights vis-à-vis the controller:

##### 1. Right of access

You can request the controller to confirm whether personal data concerning yourself are being processed by us.

Where that is the case, you can request the controller to provide access to the following information:

- the purposes for which personal data are processed;
- the categories of personal data processed;
- the recipients resp. categories of recipient to whom the personal data concerning yourself was or will be disclosed;



- (d) the envisaged period for which the personal data concerning yourself will be stored, or, if no specific information on this is possible, the criteria used to determine that storage period;
- (e) the existence of a right to request from the controller rectification or erasure of personal data concerning yourself, restriction of the processing or to object to such processing;
- (f) the existence of a right to lodge a complaint with a supervisory authority;
- (g) where the personal data are not collected from the data subject, any available information as to their source;
- (h) the existence of automated decision-making, including profiling pursuant to Art. 22 (1) and (4) GDPR and, at least in those cases, meaningful information about the logic involved as well as the significance and the envisaged consequences of such processing for the data subject.

You have the right to request information as to whether the personal data concerning yourself are transferred to a third country or to an international organisation. In this context, you can request to be informed of the appropriate safeguards pursuant to Art. 46 GDPR relating to the transfer

## 2. Right to rectification

You have the right to obtain from the controller rectification and/or completion if the processed personal data concerning yourself are inaccurate or incomplete. The controller shall make rectification without delay.

## 3. Right to restriction of the processing

You can request restriction of the processing of personal data concerning yourself under the following conditions:

- (a) if you contest the accuracy of the personal data concerning yourself for a period which enables the controller to verify the accuracy of the personal data;
- (b) the processing is unlawful and you oppose the erasure of the personal data and request the restriction of their use instead;
- (c) the controller no longer needs the personal data for the purposes of processing but they are required by you for the establishment, exercise or defence of legal claims; or
- (d) you have objected to processing pursuant to Art. 21 (1) GDPR and it is uncertain whether the legitimate grounds of the controller override yours.

Where processing of personal data concerning yourself has been restricted, such data shall, with the exception of their storage, only be processed with your consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

If processing is restricted according to the above-mentioned conditions, you shall be informed by the controller before the restriction of processing is lifted.

## 4. Right to erasure

### a) Obligation of erasure

You can request the controller to erase personal data concerning yourself without undue delay and the controller shall have the obligation to erase such data without undue delay where one of the following grounds applies:

- (1) The personal data concerning yourself are no longer necessary in relation to the purposes for which they were collected or otherwise processed.
- (2) You withdraw your consent, on which the processing is based according to point (a) of Art. 6 (1), or point (a) of Art. 9 (2) GDPR, and where there is no other legal ground for the processing.
- (3) You object to the processing pursuant to Art. 21 (1) GDPR and there are no overriding legitimate grounds for the processing, or you object to the processing pursuant to Art. 21 (2) GDPR.
- (4) The personal data concerning yourself have been unlawfully processed.
- (5) The personal data concerning yourself have to be erased for compliance with a legal obligation according to Union or Member State law to which the controller is subject.
- (6) The personal data concerning yourself have been collected in relation to the offer of information society services referred to in Art. 8 (1) GDPR.

### b) Information to third parties

Where the controller has made the personal data concerning yourself public and is obliged pursuant to Art. 17 (1) GDPR to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable

steps, including technical measures, to inform controllers which are processing the personal data that you as data subject have requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

### c) Exceptions

The right to erasure shall not apply to the extent that processing is necessary

- (1) for exercising the right of freedom of expression and information;
- (2) for compliance with a legal obligation which requires processing according to Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority which was vested in the controller;
- (3) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Art. 9 (2) as well as Art. 9 (3) GDPR;
- (4) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Art. 89 (1) GDPR in so far as the right referred to in section a) is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (5) for the establishment, exercise or defence of legal claims.

## 5. Right to be informed

If you have asserted your right to rectification, erasure or restriction of processing vis-à-vis the controller, the controller shall be obliged to notify all recipients, to whom the personal data concerning yourself was disclosed, of this rectification or erasure of the data or restriction of the processing unless this proves impossible or involves a disproportionate effort.

You have the right vis-à-vis the controller to be informed about these recipients.

## 6. Right to data portability

You have the right to receive the personal data concerning yourself, which you have provided to the controller, in a structured, commonly used and machine-readable format. Furthermore, you have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where

- (a) the processing is based on consent pursuant to point (a) of Art. 6 (1) GDPR or point (a) of Art. 9 (2) GDPR or on a contract pursuant to point (b) of Art. 6 (1) GDPR; and
- (b) the processing is carried out by automated means.

In exercising this right, you have furthermore the right to have the personal data concerning yourself transmitted directly from one controller to another, where technically feasible. This may not adversely affect the freedoms and rights of other persons.

The right to data portability shall not apply to the processing of personal data which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority which was vested in the controller.

## 7. Right to object

You have the right to object, on grounds relating to your particular situation, at any time to the processing of personal data concerning yourself which is based on point (e) or (f) of Art. 6 (1) GDPR. This also applies to profiling based on those provisions.

The controller shall no longer process the personal data concerning yourself unless the controller can demonstrate compelling legitimate grounds for the processing which override your interests, rights and freedoms or processing serves the establishment, exercise or defence of legal claims.

Where personal data concerning yourself are processed for direct marketing purposes, you shall have the right to object at any time to processing of personal data concerning yourself for the purposes of such marketing. This also includes profiling to the extent that it is related to such direct marketing.

Where you object to processing for direct marketing purposes, the personal data concerning yourself shall no longer be processed for such purposes.

In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, you may exercise your right to object by automated means using technical specifications.

## 8. Right to revocation of the declaration of consent under data protection law

You have the right to revoke your declaration of consent under data protection law at any time. Revoking your consent shall not affect the lawfulness of the processing carried out on the basis of your consent until revocation.



## 9. Automated individual decision-making, including profiling

You have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning yourself or similarly significantly affects you. This does not apply if the decision

- (1) is necessary for entering into or the performance of a contract between yourself and the controller;
- (2) is authorised by Union or Member State law, to which the controller is subject, and which lays down suitable measures to safeguard your rights and freedoms and your legitimate interests; or
- (3) is based on your explicit consent.

Such decisions may not, however, be based on special categories of personal data according to Art. 9 (1) GDPR unless point (a) or (g) of Art. 9 (2) GDPR applies and suitable measures to safeguard the rights and freedoms and your legitimate interests are in place.

Regarding the cases referred to in (1) and (3), the controller shall implement suitable measures to safeguard the rights and freedoms and your legitimate interests, at least the right to obtain human intervention on the part of the controller, to express an own point of view and to contest the decision.

## 10. Right to lodge a complaint with a supervisory authority

Without prejudice to any other administrative or judicial remedy, you have the right to lodge a complaint with a supervisory authority, in particular in the Member State of your habitual residence, your place of work or the place of the alleged infringement if you consider that the processing of personal data concerning yourself infringes the GDPR.

The supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Art. 78 GDPR.

## V. Updating of this Privacy Policy

We reserve the right to update this Privacy Policy, where necessary, to take account of technical developments or in relation to new services or products offered. The current version can be viewed at all times on our website.