

# General Terms and Conditions of Sale and Delivery of Eugen Geyer GmbH - 12/2019

## I. Scope / Offers

1. All of our business relationships with our contracting parties shall be governed by these General Terms and Conditions of Sale and Delivery. They shall apply only if the contracting party is an entrepreneur (Section 14 BGB [*German Civil Code*]), a legal entity under public law or a special fund under public law.

2. These General Terms and Conditions of Sale and Delivery shall apply in particular to contracts governing the sale and/or delivery of movable property (hereinafter referred to as "deliveries", "goods" or "products"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 650 BGB), as well as to services for commercial or professional use. Unless otherwise agreed, the present Terms and Conditions of Sale and Delivery shall apply as a framework agreement also for similar future contracts in the version applicable at the time the order was placed by the contracting party and/or in the text form last communicated [*"text form" as defined under § 126b BGB*] to the contracting party, without any requirement on our part to refer to them in each individual case.

3. These General Terms and Conditions of Sale and Delivery shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions used by the contracting party shall only become an integral part of the contract if and to the extent that we have expressly agreed to their validity. Our consent shall be required in each and every case, for example even if we effect delivery to the contracting party without reservation although we are aware of the general terms and conditions used by the contracting party.

4. Any individual agreements entered into with the contracting party in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these General Terms and Conditions of Sale and Delivery. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written acknowledgement.

5. Legally relevant declarations and notifications from the contracting party relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract or price reductions) must be given in writing, i.e. in written or text form (e.g. letter, email, fax). Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party shall remain unaffected hereby.

## II. Conclusion of Contract

1. Our offers are without obligation and non-binding.

2. The order of the goods by the contracting party shall be deemed a binding contract offer. Unless otherwise provided for in the order, we shall be entitled to accept such contract offer within 8 days of receiving it.

3. Acceptance can be declared either in writing (e.g. by way of acknowledgement of order) or by delivering the goods to the contracting party.

4. Within the framework of order placement, the contracting party must provide us with all documents necessary for the execution of the order, including but not limited to technical drawings, technical data, test instructions, raw material analyses etc. The contracting party must in particular notify us of the tolerances and standards which must be observed. The contracting party shall be liable for ensuring that all the documents and information are correct. We shall not be liable for any defects resulting from any errors in these documents or information.

5. Each order shall be governed by our written acknowledgement of order. If the contracting party has any objections as to the contents of the acknowledgement of order, the contracting party must oppose such acknowledgement of order without delay. Otherwise the contract shall take effect in accordance with the acknowledgement of order. In the event of any deviations in the content of drawings the specifications in the acknowledgement of order shall be authoritative.

6. We reserve the right to effect the following changes to the contractual products after conclusion of the contract, if and to the extent that this can be expected of the contracting party:

- a) Product and/or process changes in accordance with general product development and improvement;
- b) minor and non-significant deviations in colour, shape, design, surface structure, dimensions, weight and quantities;
- c) visual and other customary deviations.

7. If the content of our performance needs to be modified due to missing or incorrect information provided by the contracting party, we shall be entitled to effect such modifications; any costs or damage incurred thereby must be reimbursed to us by the contracting party.

8. Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximates unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.

## III. Samples and Prototypes / Documents and Data Provided / Cost Estimates

1. The properties of samples, prototypes and/or sample copies shall only become an integral part of the contract if this has been expressly agreed in writing. The contracting party shall not be entitled to use or pass on any samples, prototypes and/or sample copies.

If we sell on the basis of a trade sample, prototype and/or sample copy and unless otherwise agreed, any deviations therefrom in the delivered goods shall be permissible and shall not entitle the contracting party to raise any complaints or assert any claims against us, providing that the deviations are customary in the trade and that the delivered goods are in compliance with any specifications which have been agreed.

2. We reserve all title and copyrights to all and any samples, prototypes and/or sample copies, images, drawings, data, cost estimates and other documents disclosed or provided to the contracting party that relate to our products and services. The contracting party undertakes to ensure that the samples, information and/or documents listed in the preceding sentence are not made available to any third party, unless we give our express written consent to this. If no order based on these samples, information and/or documents is placed with us, such must be returned to us upon request.

#### IV. Delivery Time / Delay in Delivery

1. The delivery time is agreed on an individual basis or is specified by us upon acceptance of the order. If this is not the case, the delivery time shall be approximately 8 weeks from the conclusion of the contract.
2. The agreed delivery time shall commence with the conclusion of the contract, but not before all technical issues have been clarified and all and any documents, materials or tools to be provided by the contracting party have been provided in full and not before receipt of any down payment which may have been agreed. The delivery times specified shall always be approximates and are non-binding. In the event of any subsequent requests for changes or additions by the contracting party the delivery time will be adequately extended.
3. Delivery times and delivery dates shall be deemed met if the delivery item has left our premises by the time such times and dates expire.
4. If we are not able to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of performance), we will inform the contracting party of this without delay and at the same time will inform the contracting party of the expected new delivery time. If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the contracting party without delay. "Unavailability of performance" within this meaning shall include but not be limited to cases in which we are not supplied by our own suppliers in a timely manner if we have concluded a matching cover transaction, if neither we nor our suppliers are at fault or if, in an individual case, we are not obliged to procure.
5. The onset of our being in delay in delivery shall be determined on the basis of the statutory provisions. In any case, however, a reminder by the contracting party shall be required. If we are in default of delivery, the contracting party may demand, to the exclusion of further claims, a flat-rate compensation for the damage caused to him by the delay. The flat-rate compensation for damage shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay but shall not exceed, however, 5% of the delivery value of the goods that are delivered late. We reserve the right to prove that the contracting party has not suffered any damage at all or that the amount of the damage was significantly below the above flat rate. Any further compensation paid by us for the damage caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 BGB and in the case of compulsory statutory liability.
6. The rights of the contracting party in accordance with clause XI hereof as well as our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance) shall remain unaffected.

#### V. Supply by our own Suppliers / Force Majeure

1. If, for reasons for which we are not responsible, we are not supplied, not correctly supplied or not supplied on time by our sub-suppliers for the provision of our contractually owed deliveries or services despite proper and sufficient coverage of requirements before conclusion of the contract with the contracting party in accordance with the quantity and quality resulting from our supply or performance agreement with the contracting party (*matching cover transaction*) or if events of force majeure occur which continue for a not insignificant length of time (i.e. lasting more than 14 calendar days), we will inform our contracting party thereof in writing or in text form in good time. In such case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract that has not yet been fulfilled, insofar as we have fulfilled our aforesaid obligation to provide information and have not assumed the procurement risk or a delivery guarantee.

If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the contracting party without delay.

Force Majeure comprises strike, lockouts, official interventions, energy and raw material shortages, transport bottlenecks or impediments through no fault of our own, operational impediments through no fault of our own – e.g. due to fire, water or machine damage – and all and any other impediments which, from an objective point of view, have not been culpably brought about by us.

2. If a delivery date or a delivery period has been bindingly agreed and the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with clause V. 1. above, the contracting party shall be entitled – after a reasonable grace period has expired without result – to withdraw from the contract on account of the part that has not yet been fulfilled. In such case, any further claims of the contracting party, in particular claims for damages, shall be excluded.

3. The above provision pursuant to clause V. 2. shall apply accordingly if, for the reasons stated in clause V. 1. above, even without contractual agreement of a fixed delivery date, further adherence to the contract cannot objectively be expected of the contracting party. We shall be exempted from our obligation to effect delivery if such delivery is prevented by an event of Force Majeure. Events of Force Majeure shall include but not be limited to war, earthquake, flood and other disasters, strike, destruction of production facilities by fire or explosion – to the extent that we are not responsible for the impediment that hinders delivery, either at our site or at the site of our sub-supplier. If the impediment continues for a duration of more than four weeks we shall, in such cases, be entitled to withdraw from the contract.

#### VI. Delivery / Passing of Risk / Acceptance / Delay in Acceptance

1. Delivery shall be effected ex warehouse (EXW INCOTERMS 2020), which shall also be the place of performance for delivery and subsequent performance, if applicable. Upon the request and expense of the contracting party, the goods will also be shipped to another point of destination (sale by dispatch). Unless otherwise agreed, we shall have the right to determine the respective type of shipment (in particular select the shipping company, dispatch route, packaging) ourselves.

2. The risk of accidental loss and accidental deterioration of the goods shall pass to the contracting party upon delivery at the latest. However, in the case of sale by dispatch the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass with delivery of the goods to the carrier, forwarding agent or other person or entity charged with the shipping of the goods. If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. In other respects, the statutory provisions of the law on contracts for work and services [*German "Werkvertragsrecht"*] shall apply mutatis mutandis if acceptance has been agreed. Default in acceptance [*German "Annahmeverzug"*] by the contracting party shall be equivalent to delivery [*German "Übergabe"*] or acceptance [*German "Abnahme"*].

3. If the contracting party is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the contracting party is responsible, we shall be entitled to demand compensation for the damage incurred thereby, including additional expenditures (e.g. storage costs). For this purpose, we will charge a flat-rate compensation amounting to EUR 0.50 per sqm for every calendar day, commencing with the delivery period or – in the absence of a delivery period – with the notification that the goods are ready for dispatch.

The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditures, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The contracting party shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.

#### **VII. Semi-finished Products / Goods Provided / Incoming Goods Inspection**

1. If the contracting party has to provide semi-finished products for contract work, these shall be supplied free from defects, free production site and free of charge and shall include a reasonable additional quantity for potential scrap and internal retention samples. If the contracting party fails to do so, the costs and other consequences incurred by this shall be borne by the contracting party.
2. The contracting party must deliver the goods in such a way as to ensure that article name, quantity and weight are clearly visible and unambiguous identification is possible.
3. Upon receipt, we shall only inspect the goods of the contracting party for external damage of packaging, boxes and the goods themselves. We will inform the contracting party within 10 working days of any defects detected.
4. If damage occurs to the material provided by the contracting party during the manufacturing process as a result of a breach of the obligations stipulated in clause VII. 2. or VII. 3. above, we shall not be liable for this. If any damage or loss is incurred by us on account of this the contracting party shall be obliged to provide us compensation thereof.

#### **VIII. Prices / Terms of Payment / Defence of Uncertainty**

1. Unless otherwise agreed in individual cases, our prices applicable at the time of the conclusion of the contract shall apply, ex warehouse, plus statutory sales tax.

At our discretion, the invoice can be sent either by mail or email. The contracting party agrees to receive invoices electronically. Electronic invoices will be sent to the contracting party in PDF format by email to the email address provided. At the express request of the contracting party, the dispatch of invoices can also be changed to delivery by mail at any time.

2. In the case of sale by dispatch (clause VI. 1. hereof) the contracting party shall bear the transport costs ex warehouse as well as the costs of any transport insurance that the contracting party may require. If we do not charge the transport costs actually incurred in the individual case, a flat-rate transport fee shall be deemed agreed (exclusive of transport insurance) at a rate of EUR 2.00 per kg (gross weight). Any customs duties, fees, taxes and other public dues shall be borne by the contracting party.
3. Our invoices shall be due for payment within 30 days net from the date of the invoice and delivery and/or acceptance of the goods. However, even within the scope of an ongoing business relationship we shall be entitled at any time to effect delivery, in whole or in part, only with advance payment. The respective reservation will be made with the acknowledgement of order at the latest.
4. Upon expiration of the aforesaid term of payment the contracting party will be in default of payment. During default the purchase price shall bear interest at the statutory rate of default interest applicable at the time. We reserve the right to assert further damage caused by the delay. With respect to merchants our claim for payment of the commercial default interest (Section 353 HGB [*German Commercial Code*]) shall remain unaffected.
5. The contracting party may only offset counterclaims or enforce a right of retention if his claim has been recognized by declaratory, non-appealable judgment or is undisputed.
6. If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is at risk due to the contracting party's inability to perform (e.g. filing of an application for the initiation of insolvency proceedings), based on statutory provisions we shall be entitled to refuse performance and - after setting a deadline, if applicable - to withdraw from the contract (Section 321 BGB). In the case of contracts on the production of non-fungible goods (custom-made items) we shall have the right to withdraw from the contract immediately; the statutory provisions on the waiver of deadlines shall remain unaffected.

#### **IX. Title / Retention of Title / Lien**

1. We retain title to the delivery item until payment of all and any claims arising out of the supply contract has been received in full. Such shall also apply to all future deliveries, even if no express reference is made by us in each case. We shall be entitled to take back the delivery item if our contracting party acts in breach of the contract.
2. Our contracting party undertakes to handle the delivery item with due care for as long as title has not passed to him. In particular, the contracting party undertakes to adequately insure the delivery item at its replacement value at his own expense against theft and fire and water damage. If maintenance or inspection work is required, our contracting party must carry out such work at his own expense in due time. As long as title has not passed, our contracting party must notify us immediately in writing if the delivery item is seized or subjected to other third-party intervention. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action in accordance with Section 771 ZPO [*German Code of Civil Procedure*], our contracting party shall be liable for the loss incurred by us.
3. If precious metals, auxiliary materials or other items owned by us are processed, combined or mixed with the goods owned by the contracting party and provided to us for processing, we shall acquire co-ownership or sole ownership of the new product in accordance with Section 947 BGB in proportion to the value of our performance and the value of the goods of the contracting party at the time of such processing, combining or mixing.
4. If the delivery item is processed, combined or mixed in such a way that the product of the contracting party is to be considered as the principal thing, it is agreed that the contracting party shall assign to us co-ownership thereof on a pro rata basis.
5. Insofar as we acquire ownership of the product as per Section 947 or 950 BGB we shall retain title to such product until all and any existing claims arising out of previous contracts with the contracting party have been paid in full.
6. Subject to admissible revocation for good cause, the contracting party shall be entitled to resell the item to which we retain title ("goods subject to retention of title") within the scope of his ordinary course of business. In the event of resale, as early as with the present the contracting party shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, up to the total amount of our invoice (including value-added-tax).
7. If the delivery item is combined, mixed or blended with movable products of the contracting party in such a way that the product of the contracting party is to be considered as the principal thing, as early as with the present the contracting party hereby assigns to us co-ownership of the whole product in proportion to the

value of the delivery item and the value of the other combined, mixed or blended products. The contracting party shall store such property for us free of charge. If the delivery item is combined, mixed or blended with movable products belonging to a third party in such a way that the product of the third party is to be considered as the principal thing, as early as with the present the contracting party shall assign to us his claim for remuneration against such third party, i.e. the amount equivalent to the sum total of the invoice of the delivery item.

8. We shall be entitled to a right of lien to the items of the contracting party that have come into our possession based on the contract with respect to all and any claims against the contracting party. The lien may also be asserted for claims from previously provided services and deliveries, insofar as they are related to the object of performance. For other claims arising out of the business relationship, the lien shall apply insofar as these claims are undisputed or recognized by declaratory, non-appealable judgement.

#### **X. Duty of Information of the Contracting Party**

1. If the respective information is not provided in the documentation specified under clause II. 4. hereof, the contracting party must provide us with all necessary information required for the proper and correct processing of the goods at the latest upon delivery of the goods to be processed. This shall include but not be limited to detailed information on the handling of the goods.

2. The contracting party undertakes to inform us if usage of the products to be processed is associated with specific risks. Such applies in particular to use of the products in safety-relevant areas, such as the automotive sector, medical and dental engineering, aerospace and armaments.

#### **XI. Notification of Defects / Breach of Duty due to Material Defects / Warranty**

1. Unless otherwise provided for in the following, the provisions laid down by law shall apply to the rights of the contracting party in the case of material defects and defects of title (including incorrect delivery and short delivery as well as improper assembly or faulty assembly instructions). The special provisions laid down by law relating to end delivery of unprocessed goods to a consumer, even if the latter has processed the goods, shall always remain unaffected (supplier recourse as per Section 478 BGB). Claims from supplier recourse shall be excluded if the defective goods were further processed either by the contracting party or another entrepreneur, e.g. by incorporation into another product.

2. The claims for defects asserted by the contracting party require that he has observed his statutory obligations regarding inspection and reporting (Section 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be performed immediately before processing. If a defect is detected upon delivery, during inspection or at any later point in time we must be notified hereof in writing without delay. In any case, apparent defects must be reported in writing within 7 working days from delivery and any defects that were not apparent during inspection must be notified in writing within the same time period after detection. If the contracting party fails to duly inspect the goods and/or fails to notify the defect, our liability shall be excluded for the defect that was not notified or not notified in time or not notified in the proper form or manner in accordance with the legal provisions.

3. If the delivery item is defective, we shall first of all have the right to select whether we will provide supplementary performance either by remedying the defect (repair) or by delivering an item free from defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

4. As long as the contracting party does not provide us with the opportunity to verify the defect, in particular if, upon request, the contracting party does not provide us with the rejected goods or samples, the contracting party cannot assert that the goods are defective.

5. We shall have the right to make the supplementary performance owed by us conditional upon the contracting party paying the purchase price that is due.

6. The contracting party must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected goods for inspection or verification purposes. In the case of replacement delivery, the contracting party must return the defective goods to us in accordance with the provisions laid down by law. If we were not originally under the obligation to incorporate the goods, supplementary performance shall include neither the disassembly of the defective item nor its re-incorporation.

7. The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labour and material costs as well as costs of assembly and disassembly, if applicable, shall be borne or refunded by us in accordance with the statutory provisions, if a defect actually exists. If these costs are increased by taking the delivery item to a place other than the place of delivery such costs shall be borne by the contracting party. If a defect does not actually exist, we may demand compensation from the contracting party for the costs incurred by us as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the contracting party.

8. If supplementary performance has failed or if a reasonable time period to be set by the contracting party has expired without result or can be waived in accordance with the statutory provisions, the contracting party shall be entitled to withdraw from the contract or to reduce the purchase price. However, in the event of a minor defect the right of withdrawal shall not apply.

9. In case of defects, any claims of the contracting party for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause XII hereof and shall be excluded in all other respects.

#### **XII. Liability / Damages caused by Fault**

1. Unless otherwise provided for in these General Terms and Conditions of Sale and Delivery, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.

2. We shall be liable for damages, irrespective of the legal grounds on which such claims are based, within the scope of liability based on fault in the event of intent and gross negligence. In the event of slight negligence, we shall be liable, subject to statutory limitations of liability (e.g. due diligence in our own affairs; insignificant breach of duty), only

- (a) for damage resulting from injury to life, limb or health,
- b) for damage resulting from the breach of an essential contractual obligation (fundamental obligation going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the contracting party regularly relies on and may rely on); in this case, however, our liability shall be limited to the compensation of foreseeable damage that typically occurs.

3. The limitations of liability resulting from the above clause XII. 2. shall also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for in accordance with statutory provisions. The limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished a guarantee for the quality of the goods and for claims of the contracting party under the Product Liability Act.

4. If we provide technical information or act in an advisory capacity and if this information or advice is not part of the contractually agreed scope of performance owed by us, this shall be done free of charge and to the exclusion of any liability.

5. The contracting party may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. Unrestricted right of termination of the contracting party (in particular pursuant to Sections 650, 648 BGB) shall be excluded. In addition, the statutory requirements and legal consequences shall apply.

### **XIII. Statute of Limitation**

1. In derogation from Section 438 [1], number 3, BGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.

2. However, if the goods are a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness (building material), claims will become statute-barred in 5 years from delivery in accordance with the statutory provision (Section 438 [1], no. 2, BGB). Any additional special provisions on limitation periods laid down by law shall remain unaffected (in particular Section 438 [1], no. 1, Section 71 [3], Sections 444, 445b BGB).

3. The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the contracting party based on a defect of the goods – unless the standard statutory limitation periods (Sections 195, 199 BGB) would, in an individual case, result in shorter limitation periods. However, claims for damages of the contracting party in accordance with clause XII. 2., sentence 1 and 2(a) above as well as claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods exclusively.

### **XIV. Copyrights**

1. If we have to effect deliveries in accordance with drawings, models, samples or by using parts that have been provided by the contracting party, the contracting party shall be responsible for ensuring that no intellectual property rights of any third party are infringed thereby in the country of destination of the deliveries and services. We will inform the contracting party of all rights known to us. The contracting party must hold us harmless from claims asserted by any third party and must compensate us for any damage incurred. If a third party prohibits us from producing or supplying goods on the basis of an intellectual property right belonging to such party, we shall be entitled - without examining the legal situation - to suspend the deliveries and services up until the legal situation has been clarified by the contracting party and the third party. If the continuance of the order can no longer be expected of us due to the delay, we shall be entitled to withdraw from the contract.

2. If we infringe the intellectual property rights of any third party, we can fulfil the commitments we have entered into, at our discretion, either by

- (a) obtaining the necessary licences in respect of the allegedly infringed intellectual property rights, or
- b) providing the contracting party with a modified delivery item or parts thereof, which, if exchanged for the infringing delivery item or the respective part thereof, will eliminate the allegation of infringement with regard to the deliveries and services.

3. Any drawings and samples provided to us that are not part of the order will be returned upon request; otherwise we shall be entitled to destroy them 3 months after the offer has been made. This obligation shall apply to the contracting party *mutatis mutandis*. The person authorized to destroy the drawings and samples must inform the contracting party of his intention to destroy the items in good time in advance.

4. We shall be entitled to the copyrights and, if applicable, industrial property rights, in particular all rights of use and exploitation of the models, shapes and devices, designs, drawings and of the delivery item designed by us or by a third party on our behalf.

### **XV. Tools**

1. If the contracting party is charged tool costs *pro rata*, the respective tools shall nevertheless remain our sole property. These tools will be held ready by us for 5 years after their last use.

2. Our liability for tools provided by the contracting party shall be limited to applying the same level of care as exercised on our own behalf. Any costs for the maintenance and upkeep of tools provided by the contracting party shall be borne by the contracting party.

### **XVI. Transfer of Rights and Obligations**

Rights or obligations of the contracting party arising out of the contractual relationship may only be assigned and/or transferred to a third party with our written consent.

### **XVII. Export Control / Product Approval / Import Regulations**

1. In the absence of any derogating contractual agreements concluded with the contracting party the deliveries and services are intended to be placed on the market within the Federal Republic of Germany for the first time, or, in case of deliveries and services outside the Federal Republic of Germany to the agreed country of first delivery (country of first delivery).

2. The export of specific goods by the contracting party from there may be subject to official authorization – e.g. on account of their nature or intended use or final destination. If the contracting party exports the products delivered by us or has them exported by any third party, the contracting party undertakes to verify this himself and to strictly comply with the relevant export regulations and embargoes, in particular those of the European Union (EU), of Germany and/or other EU member states as well as those of the United States of America or Asian or Arab countries, if applicable, and of all third countries affected.

In addition to this, the contracting party is under the obligation to ensure that the required national product approvals or product registrations are obtained and that the stipulations under national law of the respective country for provision of user information in the local language as well as all import regulations are met before he effects delivery to a country other than the country of first delivery agreed with us.

3. The contracting party will in particular check and ensure – and, upon request, provide us with proof - that

- the products provided are not intended for military, nuclear or armaments use;

- no deliveries of goods of US origin, of US software or US technology are made to companies and persons included in the US Denied Persons List (DPL); that without official authorization no deliveries of goods of US origin are made to companies and persons included in the US Warning List, US Entity List or US Specially Designated Nationals and Blocked Persons List;
- no deliveries are made to companies and persons included in the List of Specially Designated Terrorists, of Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export control;
- no deliveries of the products supplied by us are made to military recipients;
- no deliveries are made to recipients that have breached other provisions under export control regulations, in particular regulations of the EU or of the ASEAN countries;
- all early warnings from the competent German authorities or the national authorities of the respective country of origin of the consignment are observed.

4. Access to and use of products delivered by us shall only be permitted if the aforesaid checks and assurances have been made by the contracting party; otherwise, the contracting party must refrain from the intended export and we shall be under no obligation to perform.

5. If the products delivered by us are passed on to any third party, the contracting party undertakes to bind such third party in the same way as stipulated in clause XII 1. to 4. above and to inform the third party that compliance with such legal provisions is imperative.

6. If delivery outside the Federal Republic of Germany has been agreed, the contracting party shall ensure at his own expense that all national import regulations of the country of first delivery have been complied with regarding the products that are to be delivered by us.

7. The contracting party shall indemnify and hold us harmless from and against all damage and expenditure resulting from the culpable breach of the aforesaid obligations stipulated in clause XII. 1. to 6.

#### **XVIII. Place of Performance / Place of Jurisdiction**

1. Place of performance for payment by the contracting party as well as for our deliveries and services shall be Königsbach-Stein.

2. If the contracting party is a registered trader with seat in the European Union, Switzerland, Norway or Iceland when the proceedings are initiated place of jurisdiction for all and any disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent for the seat of our company. In deviation herefrom we may, at our discretion, also bring an action at the seat of the contracting party.

If this clause XVIII. 2. is not applicable, any disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe. The language of the arbitration proceedings shall be German.

#### **XIX. Applicable Law / Severability Clause**

1. The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

2. Should any of the provisions of this contract be or become ineffective/void or not enforceable based on the law on General Terms and Conditions as per Sections 305 to 310 BGB, either in whole or in part, the statutory provisions shall apply.

Should a present or future provision of the contract be or become ineffective/void or not enforceable for other reasons than the provisions relating to the law on General Terms and Conditions as per Sections 305 to 310 BGB, either in whole or in part, such shall not affect the validity of the remaining provisions of this contract, unless the execution of the contract – also taking into consideration the following provisions – would constitute an unreasonable hardship for one of the parties. The same shall apply if a gap which requires to be filled is found after conclusion of the contract.

Contrary to a possible principle based upon which a severability clause shall on principle only reverse the burden of proof, the effectiveness and validity of the remaining contractual provisions shall by all means be maintained, i.e. Section 139 BGB shall in its entirety not apply.