

Terms and Conditions of Purchase

§ 1 Scope

- 1) The following terms and conditions of purchase exclusively apply to our purchase orders, unless otherwise agreed upon expressly in writing. Any terms and conditions of the supplier that conflict with or deviate from our terms and conditions will not be accepted, even if we have not expressly contradicted their application.
- 2) Our terms and conditions of purchase also apply to any future business with the supplier, even if these terms and conditions have not been expressly agreed upon again. Our terms and conditions of purchase are considered as accepted no later than with the execution of the first delivery.
- 3) Deviating individual agreements remain unaffected by these terms and conditions of purchase.

§ 2 Orders / Order Confirmations / Samples

- 1) Unless otherwise provided in § 1 Section 3, an order is deemed to have been placed only when the order has been given in writing. Any orders that we place either orally or by telecommunication, are non-binding and shall be confirmed as binding by us through a subsequent transmittance of a written order.
- 2) In case of obvious errors, typing and arithmetical errors in any documents, drawings and plans submitted by us, we are exempted from any obligation. In case the supplier detects such errors, he is obliged to inform us about any such errors to minimize the damage, so that our order can be corrected and resubmitted.
- 3) For organizational reasons, each order must be confirmed in writing by the supplier within a period of 14 days unless otherwise provided in § 1 Section 3; otherwise, we shall be entitled to cancel the order. In addition to the purchase order number and any references noted on it, along with the component, drawing and model numbers, order confirmations must include the agreed-upon prices and discounts and the binding delivery times.
- 4) Any deviations in quantity and quality from the wording and content of our purchase order as well as deviations from the technical standards provided by us are deemed as agreed upon only if they have been confirmed explicitly by us in writing unless otherwise provided in § 1 Section 3. This same requirement applies to subsequent contract alterations.
- 5) For first-time orders of components originating from our design or for changes of orders, sample pieces in the agreed quantity, including the original sample inspection report (EMP), must be made available. Only after our written approval of the samples will the order be deemed as finally placed unless otherwise provided in § 1 Section 3.
- 6) As long as reasonable for the supplier we can demand changes of design and manufacturing of the goods. Effects on the costs (less or extra) and the delivery times shall be mutually agreed upon.

§ 3 Prices

If not expressly stated otherwise, the agreed-upon prices are fixed prices.

§ 4 Shipment / Passing of Risk

- 1) Shipment (including packaging) is carried out at the expense of the supplier, free of costs, to the receiving point specified by us. Import turnover tax and freight certificate stamps, custom duties and other fiscal charges are paid for by the supplier as far as permitted by applicable law.
- 2) Any risk shall pass to us only after acceptance at our receiving point.
- 3) If, in the case of an exception, we have to pay freight charges, the supplier must choose the mode of transport specified by us, and in all other cases, the mode of transport and delivery most favourable for us.

§ 5 Transport documents / customs / export control

- 1) The country of origin of the goods has to be documented by the supplier situated in the EU by providing a valid (long-term) supplier's documentation (according to the newest version) and by the supplier not situated in the EU by providing a preference certificate or a certificate of origin. The (long-term) supplier's documentation shall contain our part number, the exact country of origin and the customs tariff number.
- 2) A change of the country of origin has to be indicated to us immediately.
- 3) If a (long-term) supplier's documentation cannot be provided, a certificate of origin has to be added to the delivery unrequested and free of costs.
- 4) The supplier shall indemnify us from any costs and claims of third parties caused by inapplicable, incomplete or faulty documents of origin or statements of origin.
- 5) Upon the first delivery we must have obtained a valid supplier's documentation (according to the newest version) as well as all product information relevant for the (inter)national trade. In case of delivery of goods underlying an export control, the supplier is obliged to provide us immediately with all necessary documents and information needed for applying for administrative authorizations. This information obligation of the supplier even survives the termination of the business relationship.
- 6) The supplier declares to be an authorized economic operator (ZWB/ AEO Authorized Economic Operator) or to have established for its company at least equal standards of security according to Art. 14k of EC Regulation No. 1875/2006.

§ 6 Documentation

- 1) The complete correspondence associated with our purchase orders, including delivery notes, invoices, freight papers etc., must include all ordering data (order number, date of order, supplier number). The supplier in case of negligence is liable for any consequences resulting from faulty declarations.
- 2) If the supplier delivers goods in the meaning of Art. 3 of the EC-Regulation No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction on Chemicals (REACH), he is responsible to fulfill his obligation to communicate certain information according to Art. 33 REACH-Regulation.

§ 7 Invoices and Payment

- 1) Payments will be made within 14 days after delivery and receipt of the invoice with 3 % discount, or within 30 days after receipt of the invoice without deduction.
- 2) For payment of any invoice, we acknowledge - subject to the provisions of § 9 - only the quantity and weight determined by our incoming goods inspection.
- 3) Invoices for goods which, contrary to our specifications, are delivered earlier, are paid after deduction of agreed discounts only at the time resulting from the payment terms given in Sub-section 1, taking into account the delivery time given in the purchase order.
- 4) Accounts receivable by the supplier from us may be assigned to third parties or collected by third parties subject to our consent only, which shall not be withheld unreasonably. § 354a HGB (German Commercial Code) remains unaffected. Payments shall be made exclusively to the supplier.

§ 8 Transfer of Title / Reservation of Title

- 1) The title in the supplied goods is principally transferred to us at the time of the delivery. To the extent that the supplier has agreed to a simple reservation of title by individual agreement, the title is transferred to us as soon as we have paid the purchase price for the actual delivered goods. Any form of extension or expansion of the reservation of title requires our previously written consent.
- 2) If we provide the supplier with components, we reserve the title in them. Processing or reshaping by the supplier will be carried out for us. In the event of a processing or blending, we acquire co-ownership in the new goods, in proportion to the value of our goods to other processed goods at the time of the processing.
- 3) Materials that we provide must be stored as such in a separate place and must be used for our orders only. The supplier is also liable for any decrease in value or loss, in case of fault. The supplier stores these goods for us; the purchase price includes expenses for the storage of the objects and materials stored for us.

§ 9 Obligation to Make a Complaint / Outgoing Goods Inspection

- 1) The acceptance is given subject to an inspection for correctness and suitability. We will check the goods for deviations in quality and quantity within a suitable timeframe. The complaint is deemed to be given in due time if it is received by the supplier within a period of 10 working days from the receipt of the goods. Defects which cannot be detected within this period even after careful inspection, have to be advised in writing to the supplier immediately upon their detection. We are exempted from the duty to make a complaint regarding obviously visible incomplete deliveries which are evident from delivery notes, invoices, notifications, etc.
- 2) If an overall inspection that exceeds the usual scope of an incoming goods inspection becomes necessary due to a defective delivery, the supplier will pay the additional charges caused therein.
- 3) The supplier must carry out a quality assurance check in accordance with the latest technological capabilities and, upon request, prove that this has been done. The supplier will enter into a corresponding quality assurance agreement, to the extent that we believe this is required. Such quality assurance agreement shall prevail these terms and conditions of purchase within its scope.

§ 10 Warranty

- 1) The supplier warrants that our order will be executed in an expert proper manner in accordance with the corresponding state of technology. We are entitled to the legal warranty claims in unabbreviated form. We are entitled to claim at our option removal of a defective or compensatory delivery. In this case, the supplier has to pay the expenses required to remove the defective or compensatory delivery. The right to payment of damages remains reserved.
- 2) If the supplier is in default with the removal of the defects, we are entitled to remove the defects ourselves at the expense and risk of the supplier. The same shall apply for cases where defects have to be removed immediately to prevent any further material damage.
- 3) If defective goods are supplied repeatedly by the supplier, we shall be entitled to withdraw from the contract following the assignment of a corresponding time limit, including rejection warning.
- 4) Warranty claims shall be time barred 24 months after the delivery to us. A longer limitation period according to §§ 478, 479 BGB (German Civil Code) remains unaffected.
- 5) To the extent we believe this is required the supplier shall enter into a corresponding warranty agreement. Such warranty agreement shall prevail these terms and conditions of purchase within its scope.

§ 11 Manufacturer's Liability

- 1) If claims are filed against us for violation of government safety regulations or due to domestic and foreign manufacturer's liability provisions or laws as a result of a defective condition of our products which is ascribable to the goods of the supplier, we are entitled to claim damages or indemnity at our option, to the extent that the damage is contingent on the products supplied by the supplier and he would also be liable directly. This damage shall also include the expenses of any prevention of damages (e.g. in form of necessary recall measures) as far as the supplier is legally responsible.
- 2) If we are made responsible by a third party in foreign countries for personal damages or damages of goods caused by a defect of the goods of the supplier, we have the right to raise a counter-claim, to start third party proceedings or to raise claims for indemnification and a total or partial recourse at the jurisdiction of the main claim against the supplier.
- 3) The supplier is obliged to sustain sufficient product liability insurance at its own costs. Such insurance shall not constitute any limitation of liability of supplier.

§ 12 Trade Secret Information

The supplier undertakes to treat our order, the business relationship and all non-apparent commercial and technical details associated with these, which the supplier becomes acquainted with during our business relationship as trade secrets. He shall oblige correspondingly his sub-suppliers. Only after our written consent the supplier may advertise with the business relationship or to disclose it to third parties, especially by mentioning us as reference customer.

§ 13 Models / Devices / Moulding Tools etc.

- 1) The supplier obliges to transfer to us against adequate payment the ownership in the tools, models, devices, moulding and injection moulding dies, etc. (including follow-up tools), that are used exclusively for the production for us.
- 2) The equipment so given under Section 1 required for the execution of our orders is to be stored at the supplier's place without storage fees. This operating material is to be protected against fire, theft and vandalism and to be insured accordingly. If the contractual supply relationship to the supplier is terminated for any reason whatsoever, he is obliged to return immediately the operating material mentioned under Section 1.
- 3) Any use of the operating material owned by us for third parties is not permitted unless by our written consent. Agreed tooling capacities have to be fulfilled. If agreed output quantities of faultless parts are not complied with due to fault of the supplier, we will be paid back our tooling investment in relation to the supplied quantity. The repair of the models, moulding tools, devices, etc. is paid for principally by the supplier; the costs are included in the payment according to Section 1 respectively in the fixed prices given under § 3 for the goods manufactured by the equipment and delivered to us.

§ 14 Design Protection

To the extent that the ordered components are manufactured by the supplier based on our design, all rights resulting in connection with the design remain with us. With the acceptance of the order, the supplier undertakes to refrain from supplying or offering the ordered components to third parties now or at any other time. Inquiries are to be forwarded exclusively to us.

§ 15 Protective Rights

The supplier is liable for any infringement of patents or other protective rights on the part of third parties that may occur through his supplies and the use therein. He exempts us and our customers from any claims whatsoever arising from the breach of such protective rights. This shall not apply if the supplier has manufactured the supplied goods according to drawings, models or any other descriptions or instructions that are thereby comparable and that are provided by us and if this causes the breach of the protective rights and he is not aware or cannot be aware in connection with the products manufactured by him that protective rights are thereby being violated.

§ 16 Delivery Dates / Default of Delivery

- 1) The agreed-upon delivery dates are binding. For compliance with a delivery date, the receipt of the goods at the receiving point and/or point of use is relevant. If the supplier realizes that an agreed-upon date cannot be complied with for whatever reasons, he must inform us about this immediately in writing, indicating the reasons and the expected duration of the delay.
- 2) Defaults on performance are given in accordance with § 286 Sub-paragraph 1, Sub-paragraph 2 BGB (German Civil Code). Regarding the time determined according to the calendar within the meaning of § 286 Sub-paragraph 2 BGB (German Civil Code), the delivery date agreed upon on the orders shall apply.
- 3) In the event of a default of delivery, we are entitled to claim a lump-sum damage caused by the default in the amount of 1 % of the delivery value per completed week, however, in total not to exceed 5 %. Any further legal claims are reserved. The supplier is entitled to prove that no damage or that a substantially lower damage was caused due to the default. In such a case, the lump-sum damage payment will be reduced accordingly.
- 4) We are not obliged to accept delivery prior to expiry of the delivery date. In case of a delivery prior to the agreed-upon date, we reserve the right to return the goods at the expense of the supplier. If the shipment is not returned in case of early delivery, the goods will be stored at our place at the supplier's expense and risk until the delivery date.
- 5) We will accept partial deliveries only if explicitly agreed upon in advance. For agreed-upon partial deliveries, the remaining residual quantity must be documented in writing.

§ 17 Force Majeure

- 1) Events of force majeure will suspend the contractual duties of the parties for the time of the interruption and to the scope of its effects. The parties to the contract are obliged within a reasonable timeframe, to provide the necessary information immediately and to adapt their duties to the changed circumstances in good faith.
- 2) In the case of performance obstacles as per clause 1), we are entitled to withdraw from the contract in respect of the affected scope of performance, to the extent that the delays exceed a period of 6 weeks and any delivery/performance is no longer utilizable by us, after taking economic aspects into regard.

§ 18 General Provisions

- 1) Place of performance and court of jurisdiction for any action whatsoever arising from this contract, is our registered office, when the supplier is a fully qualified merchant, a corporate body of public law or special public assets within the meaning of § 38 Sub-section 1 ZPO (German Code of Civil Procedure). However, we are entitled to bring action against the supplier also at his place of business.
- 2) For these terms and conditions of purchase and the complete legal relationship between the supplier and ourselves, the law of the Federal Republic of Germany applies, even if the supplier's principal place of business is abroad.
- 3) Should a provision in these terms and conditions of purchase or a provision within the scope of any other agreements be or become invalid, this shall not affect the validity of any other provisions or agreements.

Hengst SE, Nienkamp 55 – 85, 48147 Münster, Germany

General Terms and Conditions of Sale and Delivery

§ 1 Scope

- 1) The Seller's deliveries, services and offers shall be rendered solely on the basis of the following Terms and Conditions unless other terms are expressly agreed upon in writing. Any terms of the Purchaser opposing to or deviating from the Seller's General Terms and Conditions will not be accepted.
- 2) These Terms and Conditions also apply to all future business dealings with the Purchaser even if they have not been expressly agreed upon again. At the latest with receiving the goods or services these Terms and Conditions are deemed to be accepted.
- 3) These Terms and Conditions do not affect deviating individual agreements.

§ 2 Offer and Conclusion of Contract

- 1) All agreements entered into between the Seller and the Purchaser for the execution of this contract shall only be binding if set out in writing. This shall apply in particular with regard to drawings, illustrations, measures, weights and other performance data.
- 2) Only the Purchaser's purchase order is a contractually binding offer. Any previous „offer“ made by the Seller only constitutes a non-binding service description and an invitation to submit an offer. At his option, the Seller is entitled to accept the Purchaser's offer within 12 working days in case of ordering Hengst catalogue-/ warehouse products or within three months in case of joint development projects by sending an order confirmation or by sending the goods to the Purchaser within this period. If neither a written order confirmation nor the sending of the ordered goods is effected within 12 working days in case of ordering Hengst catalogue-/ warehouse products or within three months in case of joint development projects, the offer is deemed as declined. In any case, all rights to claim damages for the rejection of an order are excluded.
- 3) The Seller's salespersons are not allowed to enter into oral subsidiary agreements or to grant oral warranties which go beyond the contents of the written contract.
- 4) After the written order confirmation, the Seller is entitled to claim rescission if he himself has not been supplied, has not been supplied properly or has not been supplied on time and if he himself cannot be held responsible for this failure.
- 5) After the written order confirmation the Seller is entitled to claim rescission, if after the conclusion of the contract the Purchaser's business is merged either completely or by the majority with a competitor of the Seller or with a competitor of an affiliated company of the Seller and if the Seller's interests are materially and adversely affected by that merger.

§ 3 Prices

- 1) Unless otherwise agreed upon in writing, the Seller's prices apply ex works (Incoterms under the relevant version).
- 2) Deliveries within the scope of long-term supply contracts are effected at the respective list prices valid at the time when the goods are called off.
- 3) Tools or tooling accessories are invoiced separately unless the latter still exist from previously effected deliveries or if they are provided. Tools remain the property of the Seller until they have been fully paid for by the Purchaser. By paying for a proportion of tooling costs the Purchaser explicitly does neither gain ownership nor a claim for the acquisition of ownership with regard to the tools. The tools rather remain the property of the Seller and in his possession. Unless the payment of the initial tool does not explicitly cover the acquisition of follow-up tools, the latter have to be paid for separately.

§ 4 Payment

- 1) Unless otherwise agreed upon, the Seller's invoices are payable strictly net and immediately after the receipt of the goods. A cash discount is generally only granted in writing and refers to the commodity price exclusive of additional charges. Presentations of cheques are accepted as payment only after their encashment. Any amortisation, rebate or other deductions exclude a cash discount. Despite any other contrary provisions from the Purchaser, the Seller is entitled to set off payments against older debts of the Purchaser; he will inform the Purchaser about the manner in which the set-off was exercised. If expenses and interests have accrued already, the Seller is entitled to set off the payment first against the expenses, then against the interests and finally against the principal claim.
- 2) If the Seller is informed about circumstances calling into question the Purchaser's credit worthiness, particularly if a cheque is not cashed, if the Purchaser defaults with regard to paying for earlier deliveries or if the payment is suspended, the Seller is entitled to call the complete remainder of the debt due, even if he has accepted cheques. In this case the Seller is also entitled to demand advance payments or security deposits. If the Purchaser does not comply with such a demand within the set time-limit, the Seller is entitled to rescind the contract or to claim damages for non-performance; delivery commitments can be rejected until the advance payment or the security deposit is effected.
- 3) The Purchaser is only entitled to a set-off or retention if the notices of defect or the counterclaims have been established as legally binding or if they are beyond dispute. The Purchaser is only entitled to retention because of counterclaims arising from the same contractual relationship.
- 4) The Purchaser is in default if he fails to pay despite a reminder by the Seller after the due date for the payment of the purchase price or if he fails to meet a date for payment determined as a calendar date in the contract. The legal provision according to which the debtor also defaults on performance after 30 days after the due date and the receipt of an invoice or similar request for payment (§ 286 Clause 3 of the German Civil Code) remains unaffected.

§ 5 Changes in Performance

- 1) Samples are partly manufactured by hand. Therefore, the Seller reserves the right to make minor changes with regard to the delivery, provided that these changes are acceptable for the Purchaser. The same applies with regard to changes in design or shape resulting from technological improvements and/or statutory requirements, provided that the delivery item is not considerably changed.
- 2) Subsequently requested technical changes with regard to the order can generally only be taken into account if execution of the order has not started and if the Seller has accepted these changes in writing. Accepted changes lead to a reasonable adjustment of the agreed delivery period. The additional charges caused by these changes have to be borne by the Purchaser.
- 3) In any other respect, the Seller does not accept the possibility of unilateral changes in performance by the Purchaser after the conclusion of the contract even if such a right is provided for in the latter's General Terms and Conditions.

§ 6 Annulment Charges

If the Purchaser rescinds from an already concluded contract without good cause, the Seller is entitled to claim 10 per cent of the gross sales price for the damage caused by the rescission, especially lost profits, notwithstanding his possibility to claim higher actual damages. The Purchaser retains the right to prove a non-existent or a lower damage.

§ 7 Period of Delivery and Performance

- 1) Agreements with regard to periods of delivery and performance must be in writing.
- 2) The Seller's compliance with his delivery and performance obligations requires the Purchaser's timely and duly fulfilment of his duties.
- 3) Partial deliveries are admitted within the delivery/ performance periods stated by the Seller insofar as they are reasonable for the Purchaser.
- 4) If the Purchaser is in default of acceptance, the Seller is entitled to claim compensation for the resulting damage. With the occurrence of a default of acceptance the risk of an accidental impairment and an accidental loss passes to the Purchaser.
- 5) Even if periods and dates have been bindingly agreed upon, the Seller is not liable for delays in delivery and performance due to force majeure, labour disputes, riots, government embargoes, import or export restrictions, delays or refusals of import or export licenses applied for as well as the cancellation or revocation thereof, administrative directives, and other unpredictable, inevitable and severe events, even if they only affect the Seller's suppliers or their sub-suppliers. The same applies if these events occur at a time where the Seller is in default. They entitle the Seller to postpone the delivery/ performance by the duration of the impediment plus an adequate start-up time. The Seller is only allowed to plead the aforementioned circumstances if he has immediately informed the Purchaser of the impediments. Further statutory rights of the Purchaser and the Seller are not excluded hereby.

§ 8 Contract Penalty

Even without an explicit rejection, the Seller does generally not accept contract penalties.

§ 9 Acceptance

- 1) Within the scope of continuing or successive delivery contracts in which the Seller's performance depends on the Purchaser calling off the goods, the calling off of the goods by the Purchaser is regarded as a major obligation within a reciprocal relationship.
- 2) With regard to quantities not called off in due time, the delivery obligation of the Seller ceases provided that the Purchaser also fails to call off the goods within a written grace period of 14 days and that the Purchaser has been informed of this legal consequence together with the setting of the grace period.

§ 10 Allocation of Risk

The risk passes to the Purchaser according to the agreed ex works rule (Incoterms under the relevant version).

§ 11 Reservation of Title

- 1) Until full payment of the purchase price and until the payment of all past and future deliveries of goods within the business relationship (including related costs, claims for damages, future claims, honouring of cheques or bills, the release from personal securities, guarantees or similar securities) the delivered goods remain the property of the Seller. The reservation of title also continues to exist if individual claims of the Seller are accommodated in a current account (current account reservation) and the balance is struck and accepted. The Seller is entitled to the reservation of title not only with regard to the accepted and abstract balance but also for the causal balance.
- 2) On request and at his option, the Seller will release these securities to the extent that their value (taking into account the expenses for the administration and the disposition of the security), related to the realisable value exceeds 110 per cent of the secured claim or 150 per cent of the relevant estimated value.
- 3) The Purchaser is entitled to process and sell the goods subject to the retention of title within the due course of business. These entitlements cease especially with the Purchaser's default and/or suspension of payment or in the case that the opening of insolvency proceedings on his assets are applied for. It is expressly stated that the entitlement to sell and process the goods does not exist in cases in which the Purchaser has agreed upon a non-assignment with his customer. Pledging and chattel mortgages with regard to the goods subject to the retention of title are not allowed.
- 4) For reasons of security the Purchaser assigns to the Seller already now and to the full extent all claims following from a resale of the goods subject to the retention of title or from any other cause in law with regard to the goods subject to the retention of title (insurance, tort) (including all claims for balance arising from a current account). The Seller revocably authorizes the Purchaser to collect the claims assigned to him on the Seller's account and in the Purchaser's own name. This collection authority can only be revoked if the Purchaser fails to meet his payment obligations properly.
- 5) The processing or transformation of the delivered goods by the Purchaser is always carried out on behalf of the Seller. If the delivery item is processed with other goods, not belonging to the Seller, the Seller acquires co-ownership in the new item at the ratio of the value of the delivery item to the other processed items at the time of the processing. With regard to the item created by the processing the same applies as with regard to the goods delivered under a reservation of title.
- 6) If the delivery item is intrinsically intermixed with goods not belonging to the Seller, the Seller acquires co-ownership in the new item at the ratio of the value of the delivery item to the other intermixed goods at the time of the intermixture. If the intermixture is effected in a manner that the Purchaser's item has to be considered as the main item, it is deemed as agreed that the Purchaser transfers to the Seller proportional co-ownership. The Purchaser holds the sole ownership or the co-ownership in the goods delivered under a reservation of title on behalf of the Seller.
- 7) In the case of access to the goods delivered under a reservation of title by third parties, especially seizures, the Purchaser will point to the Seller's ownership and will immediately inform the latter, so that the Seller is able to enforce his property rights. To the extent that the third party is not in a position to refund the court- and out-of-court- expenses to the Seller, the Purchaser is liable for paying these expenses.
- 8) In the case of the Purchaser acting contrary to the contract – especially in the case of default of payment – the Seller is entitled to retract the goods delivered under a reservation of title or, if necessary, to demand the assignment of the Purchaser's claim for restitution against the third party. The Seller's retraction as well as his seizure of the goods delivered under a reservation of title implies a rescission from the contract.

§ 12 Warranty

- 1) The Seller warrants that the delivery items are free from defects within the meaning of § 434 of the German Civil Code (BGB); the warranty period is 12 months and starts to run with the handing over of the delivery items.
- 2) The Purchaser is obliged to notify the Seller of any defects in writing and without delay, the latest within 7 days after the receipt of the goods. Defects which cannot be detected within this period even after a diligent inspection, have to be announced to the Seller in writing immediately after their detection.
- 3) If the Purchaser asserts a defect, the whole/ parts of the defective item has/ have to be returned to the Seller on his demand or after consultation with him for the purpose of a defect analysis; the Purchaser also has to provide the Seller with suitable evidence named by the latter, e.g. samples of the motor oil of the event of damage. If the defect is ascertained, the Seller will refund the costs caused by the return.
- 4) If the Seller's operating or maintenance as well as assembling instructions are not observed, changes are made to the products, product parts are exchanged or consumables are used, which do not comply with the original specifications, any warranty is void if the Purchaser fails to refute a correspondingly substantiated assertion that it was one of these circumstances having caused the defect.
- 5) If the delivery item is defective according to section 1, the Seller is at his option entitled to remedy the defect or to substitute delivery. In the case of remedying the defect, the Seller is obliged to bear all expenses necessary for the remediation of the defect, especially transportation and travel expenses as well as labor and material costs, provided that these are not increased by the fact that the delivery items were transported to a place differing from the place of destination.
- 6) If the remediation of the defect fails two times or if the Seller is either not prepared or not able to remedy the defect or to substitute delivery or if the remediation or substitution is delayed beyond a reasonable period of time for reasons for which the Seller is liable, the Purchaser is at his option entitled to demand a reduction of the purchase price or the rescission of the contract.
- 7) The preceding sections comprehensively contain the warranty for the products and exclude any other warranty claims of whatever kind. This does not apply to claims for damages arising from a quality guarantee or other agreements intended to protect the Purchaser against the risk of damages arising from a defect.

§ 13 Copyrights, Industrial Property Rights

- 1) The Seller will indemnify the Purchaser and his customers with regard to all undisputed or legally binding claims arising from infringements of copyrights and industrial property rights, unless the infringement has been caused by the Purchaser, especially by a design of the delivery item coming from the Purchaser or by the connection or the use with other products. The Seller's obligation to indemnify is limited to the foreseeable damage, unless the Seller has acted intentionally or grossly negligent. An additional prerequisite for the indemnification is that the Seller at his option is left the conduct of legal disputes.
- 2) The Seller optionally has the right to relieve himself from the obligations accepted by section 1 either
 - a) by obtaining the necessary licences with regard to the allegedly infringed copyrights and industrial property rights or
 - b) by providing the Purchaser with a reasonably changed delivery item or parts of it, which remedy the infringement reproach with regard to the changed delivery item in the event of its exchange against the infringing delivery item or parts of it.

§ 14 Limitation of Liability

- 1) The Seller is only liable for paying damages to the Purchaser if he can be held responsible for the impairment of performance. The Seller is only liable for the infringement of a material contractual obligation which is due to at least simple negligence and which endangers the achievement of the purpose of the contract, the intentional or grossly negligent infringement of non-material contractual obligations, the culpable injury to life, body, health, defects, if the Seller has maliciously concealed those or if he has guaranteed their absence to the Purchaser or defects of the delivery item, insofar as there exists a liability according to the Product Liability Act for personal or physical damages with regard to the privately used items.
- 2) As far as the management or executive staff have not acted grossly negligent, the obligation to pay damages is limited to the foreseeable damage typical for this type of contract.
- 3) As far as the Seller's liability is excluded or limited, the same applies with regard to the personal liability of his employees, staff, representatives and vicarious agents.
- 4) All contractual claims for damages become time-barred within 12 months after the passing of the risk.

§ 15 General Provisions

- 1) Place of performance and place of jurisdiction for all actions arising from or being associated with this contract is the Seller's place of business, provided that the Purchaser is a merchant, corporate body under public law or special property governed by public law within the meaning of § 38 Abs. 1 of the German Code of Civil Procedure (ZPO). The Seller is however also entitled to bring an action against the Purchaser at the latter's place of business.
- 2) These General Terms and Conditions and the whole contractual relationship between the Purchaser and the Seller are governed by German law, even if the Purchaser's place of business is abroad.
- 3) Should a provision within these General Terms or a provision within the scope of any other agreement be or become invalid, this will not affect the validity of all other provisions or agreements.