OCS Optical Control Systems GmbH und OCS Service GmbH

General Terms and Conditions of Sale and Supply

I. GENERAL REMARKS – SCOPE

1. All sales contracts and supplies are exclusively based on these Terms of Sale and Supply. These Sale and Supply Terms shall be included into sale and/or supply contracts concluded with us, regardless of whether we produce ourselves or purchase the goods from sub-suppliers (sec. 433, 650 *BGB* [*Bürgerliches Gesetzbuch* – German Civil Code]). The Contract Partner ordering or accepting our supplies and services is deemed acceptance of our Sales and Supply Terms.

2. Our Sale and Supply Terms apply exclusively, also if we do not expressly refer to them. Any deviating, contrary or supplementary general terms and conditions or purchasing terms of the Contract Partner do not apply, even if we do not reject them in each individual case. Such terms become part of the contract only if and to the extent we expressly accept them in writing; in these cases, our Sale and Supply Terms apply as a supplement. The approval requirement applies in each case, particularly if we supply the goods subject to no conditions despite being aware of the Contract Partner's deviating, contrary or supplementing general terms and conditions (of purchase) or if we refer to correspondence including or referring to such terms. Order execution must not be interpreted in the way that deviating terms apply.

3. Our Sale and Supply Terms only apply to entrepreneurs (sec. 14 *BGB*) if the contract relates to the business operations, bodies corporate organised under German public law and German public-law special funds (sec. 310(1) *BGB*).

4. The Sale and Supply Terms apply in the form of a framework contract in the version as amended at the time of the Contract Partner placing the order or that last communicated to them, that is, also to all future purchase and/or supply contracts with the Contract Partner and, in particular, to subsequent orders – including those made by telephone –, without us being required to refer to them again; we will immediately notify the Contract Partner of any Sale and Supply Terms amendments.

5. Individual arrangements with the Contract Partner (including ancillary agreements, supplements and amendments) prevail over these Sale and Supply Terms, whereby they require a written contract and/or our written confirmation.

6. Legal declarations and information which the Contract Partner must make/provide to us (e.g. the setting of time limits, notification of defects, warnings, declarations of withdrawal/price reduction) must be made in written or text form (e.g. by letter, e-mail or fax) to be effective. This does not affect

statutory form requirements and other evidence, particularly in the case of doubts relating to the authorisation of the individual making such declaration.

7. Except for our managing directors and holders of power of attorney [*Prokurist*], agreements between the Contract Partner and our representatives are binding only after we confirmed them in writing, whereby these representatives are authorised to accept cash/cheque payments only against the submission of collection authorisations.

8. Remarks on applicability of legal provisions only serve clarification; legal provisions apply even without such clarifications, unless they are amended or expressly excluded under these Terms.

II. CONTRACT CONCLUSION

1. Unless expressly indicated as being binding, our offers are subject to changes and non-binding. This applies also if we provide the Contract Partner with catalogues, technical documentations (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including electronic ones – in which we reserve ownership and copyrights.

2. Order placement by the Contract Partner must be considered a binding contract offer. Unless the Order provides otherwise, we may accept contract offers within two (2) weeks from receipt. A contract will be concluded once we confirmed the Contract Partner's Order in writing or delivered the goods.

3. If we receive electronic Orders, we are not obliged to confirm receipt of such contract offers. If we still deliver such confirmation of receipt, mere confirmation must not be considered binding acceptance of the contract offer.

4. Remarks, information and service descriptions – particularly those relating to the supplies/services (e.g. weights, sizes, utility values, load-bearing capacities, tolerances, mixtures, recipes, and technical data) and our presentations thereof (e.g. drawings, pictures) – included in our brochures, price lists or documents relating to the Offer represent our own experiences and/or estimated values customary in the industry which are not binding, unless they are expressly referred to as being binding; they do not guarantee certain product features and/or qualities. The Contract Partner is exclusively responsible for checking supplies for fitness for the intended purpose. We do not assume any warranty or liability for the fitness for the purposes intended by the Contract Partner.

5. The legal relationship between us and the Contract Partner exclusively depends on the written contract, including these Terms, representing all the arrangements between the Parties concerning the subject matter. Verbal confirmations from us prior to contract conclusion are not legally binding.

6. Any changes and/or supplements to Orders placed and confirmed, particularly those concerning the ingredients, colours, sizes, weights and other performance data, must be agreed upon in writing to

be legally valid. Unless these changes/supplements were agreed upon in writing, we perform the ordered services without considering any requests for changes/supplements. If we confirm any changes/supplements requested by the Contract Partner in writing, the latter must object to such confirmation – particularly to completeness and adequacy – within 48 hours from receiving this in written or text form (e.g. by letter, email or fax). To the extent the Contract Partner fails to object to confirmation within 48 hours, it shall be binding between the Contractual Parties; compliance with the term depends on the time of sending. We must consider the Contract Partner's requests for changes/supplements to the extent this is possible and reasonable for us considering operational capacities. Extra costs resulting from this will be remunerated in terms of para. III.3 of the Terms.

7. In deviation from para. II.6, we reserve the right to change production processes and product composition, unless this impacts on the product type and quality. However, these changes may not lead to goods being delivered which, considering their use, deviate from the agreements in a negative way for the Contract Partner. Deviations customary in the industry, based on legal provisions or representing technical enhancements and replacements of components by equivalent parts are admissible, unless this interferes with usability for the purpose under the contract.

8. Excess and short deliveries to a reasonable extent are considered to be agreed.

III. PRICES

1. Unless the Parties agreed upon fixed prices or another due date in writing, prices applicable upon contract conclusion and possible surcharges apply.

2. Unless expressly indicated otherwise in writing, prices are net prices, exclusive of VAT which the Contract Partner must additionally pay to the statutory amount, and they apply – exclusive of packaging costs – on an ex works basis (Incoterms® 2010). If there are no other indications, prices are indicated in euros.

3. Should the Contract Partner change, supplement or cancel and/or change the requirements of service provision for Orders, works, plans or similar, they must pay to us any related costs and exempt us from liability towards third parties. If the Contract Partner, prior to execution, withdraws from the contract for reasons beyond our control, we may request a cancellation fee amounting to a reasonable share of the contract fee to compensate for any damage we incur. However, the Contract Partner may produce evidence showing that we incurred no damage at all because of their withdrawal or that damage is much smaller than the requested cancellation fee.

4. Should price calculation bases change, with no fault of our own, due to production cost increases – particularly material, production and/or labour costs –, increases in and/or the introduction of tax/charges directly related to the subject matter, we have the right to adjust the prices.

5. If we see after contract conclusion that a lack of the Contract Partner's ability to perform poses a threat to our purchase price claim (e.g. due to the institution of insolvency proceedings), applicable legal provisions allow us to refuse performance and – possibly after setting a term – withdraw from the contract (sec. 321 *BGB*). With contracts for the production of non-fungible goods (individual production), we may immediately withdraw from the contract; this does not affect statutory provisions on deadline dispensability. Possible discounts no longer apply if the Contract Partner is in arrears, if insolvency proceedings relating to their assets were instituted or if institution is rejected due to a lack of funds.

6. Pallets and other loading means included in the delivery remain our property, unless otherwise agreed upon, and they must be immediately returned to us on a carriage-paid basis. We do not take back any other transport and packaging materials in terms of the German Packaging Regulations [*Verpackungsordnung*], they become the Contract Partner's property.

IV. REMARKS AS TO APPLICATION – INFORMATION AND CONSULTANCY SERVICES – PUBLIC-LAW AUTHORISATION DUTIES

1. We provide remarks as to application, information and consultancy services for products on offer to the best of our knowledge and past experience; values indicated in this regard represent average values. Suitability tests with supplies and consideration of processing requirements are required despite any remarks as to application, information or consultancy services. Information on suitability and application of our goods does not exempt the Contract Partner from the duty to perform their own checks. Information provided by us is binding only if provided expressly and in writing; verbal information is non-binding. Sec. XI of these Terms applies to possible liability.

2. We are not liable for compliance with legal or official provisions relating to the use of our goods, in particular for obtaining and granting required public-law, particularly official, authorisations. Consideration of legal and official provisions as to the use of our goods, particularly compliance with public-law authorisation duties, is the exclusive responsibility of the Contract Partner and this does not affect our claims. Should we assist the Contract Partner with obtaining required public-law authorisations, the Contract Partner bears any related expenses.

V. DELIVERY PERIODS

1. Delivery periods (deadlines) are binding only if they are indicated in our written order confirmation. These periods start upon written order confirmation receipt, but not before

   - clarification of all the technical/commercial details;

- the Contract Partner performing their co-operation duties, particularly the provision of authorisations, releases, materials to be provided, documents etc.; and

- if applicable, the receipt of contractual advance payments.

2. Delivery periods are met if, by the end of the period, the goods were supplied from our warehouse and/or works or handed over to the forwarder, haulier or other third parties commissioned with the transport or if readiness for supply was indicated for goods which cannot be supplied on time for reasons beyond our control.

3. Delay in deliveries depend on the statutory provisions. In each case, the Contract Partner must deliver a warning and grant a reasonable grace period, and only after such grace period terminated without success may we be considered in default. If our written order confirmation expressly refers to delivery periods/deadlines as being “fixed”, the Contract Partner’s warning needs not include a grace period to validly put us in default.

4. Periods/deadlines will be extended, regardless of our rights resulting from the Contract Partner being in arrears, by the period during which the Contract Partner fails to fulfil their duties towards us.

5. If we are unable to meet delivery periods for reasons beyond our control (performance non-availability), we will immediately inform the Contract Partner about this and the presumed, new delivery period. Should performance be impossible even during new delivery periods, we may, at our discretion, choose to totally or partially withdraw from the contract without granting a grace period first, whereby we immediately reimburse consideration which the Contract Partner had already paid. Service non-availability in terms of the above particularly includes delayed supplies by our sub-suppliers, conclusion of congruent covering transactions, no liability for us or our sub-suppliers or no duty for us to procurement in individual cases. In no case under sent. 3 are we obliged to procure materials from other sub-suppliers.

6. Our liability for damage caused by delay exclusively depends on the provisions under sec. XII of the Terms.

7. We may make partial deliveries if this is acceptable for the Contract Partner. This is the case if

   - the Contract Partner can use such partial deliveries for the intended purpose;

   - delivery of the remaining goods is guaranteed;

   - this does not result in additional efforts/expenses for the Contract Partner (unless we agree to bear such costs).

   Partial deliveries may be invoiced separately.

VI. DELIVERY AND TRANSFER OF RISK

1. Unless otherwise agreed upon, we deliver the goods, at our discretion, from our warehouse/works ("place of fulfilment") pursuant to the Incoterms® 2010. If any of the Incoterms is agreed upon as a delivery condition, this applies as amended at the time of contract conclusion.

2. Upon the Contract Partner's request, the goods will be delivered to other destinations (sale by delivery to a place other than the place of performance). Unless otherwise agreed upon, we may, based on dutiful discretion, determine the type of delivery (particularly forwarding agents, delivery routes, packaging). The Contract Partner bears the costs resulting from delivery, including remuneration for forwarding agents and, particularly, customs, charges, tax and other levies. The Contract Partner must indicate in writing the type and extent of any transport damage immediately after receiving the goods. Insurance to protect the goods from transport damage, loss or breakage will be purchased only upon the Contract Partner's express request, at their expense and on their account.

3. The risk of accidental loss/deterioration of the goods is transferred to the Contract Partner no later than upon hand-over to them. In the case of sales by delivery to a place other than the place of performance, delivery and transport will always be made at the Contract Partner's risk, whereby this also applies to delivery and transport from third-party warehouses (transfer orders) and goods/empties return deliveries (reusable transport packaging). With sales by delivery to places other than the place of performance – also with partial deliveries –, the risk of accidental loss/deterioration of the goods and delays is transferred to the Contract Partner upon goods hand-over (the beginning of loading activities is decisive) to the forwarder, haulier or other parties/entities commissioned with the transport. To the extent agreed upon, the transfer of risk depends on acceptance. Apart from that, agreed acceptance is subject to statutory provisions of the law on contracts for works and labour. Should the Contract Partner be in default of acceptance, the goods are deemed handed over and/or accepted. If supply is delayed for reasons within the Contract Partner's control or if they themselves are responsible for goods transport, the risk is transferred to the Contract Partner once readiness for delivery is indicated.

4. Should the Contract Partner be in default of acceptance or fail to cooperate or should deliveries be delayed for other reasons within their control, we may request compensation for related damage, including additional expenses (e.g. storage costs from the time of risk transfer). Monthly costs of storage at our works/warehouse amount to 0.5% of the invoice amount. The right to produce evidence showing that we incurred more extensive damage and our statutory claims (particularly for compensation for additional expenses, reasonable compensation and cancellation) is not affected by

this, whereby the lump sum must be offset against other monetary claims. The Contract Partner has a right to show that we incurred no damage at all or damage which is smaller than the above lump sum. Following termination of reasonable periods without success, we may otherwise dispose of stored goods and make supplies to the Contract Partner subject to a reasonably extended period.

5. Carriage-free deliveries require an express, written agreement. In these cases – including partial deliveries –, the risk is transferred to the Contract Partner once the goods arrived at their premises/warehouse ready for unloading. The goods must be immediately and appropriately unloaded by the Contract Partner providing sufficient numbers of workers and equipment. Waiting times will be charged at customary rates. If access to the destination is prevented for reasons within the Contract Partner's control, the risk is transferred to them once access fails; this applies also to unjustified refusal to accept the goods by the Contract Partner and para. VI.4 applies accordingly.

VII. PAYMENT

1. Payments must be made in euros (€) free from postage and expenses. They may be effected only to the paying office which we indicate. Upon contract conclusion, the Parties must expressly agree upon draft/cheque payments being admissible, whereby drafts/cheques are deemed a payment only after they were honoured and whereby they will be accepted with no duty to timely submission and protesting. Discount and draft expenses must be borne by the Contract Partner and they are due for immediate payment.

2. Unless expressly agreed otherwise, the Contract Partner must pay within 14 days from the invoice date subject to a 2% discount or within 30 days from the invoice date subject to no discounts. If they pay by direct debit within 14 days, we grant a 3% discount. A discount will be granted only if the Contract Partner fulfilled all payment duties, including those from past deliveries. Payments are deemed on time only if we can dispose of the money at the due date on the bank account which we indicated. Should the Contract Partner fail to comply with payment terms, they must pay annual default interest of nine per cent above the base lending rate on the invoice amount (sec. 247 *BGB*); we reserve the right to assert a claim for additional damages in the case of delays. This does not affect our claim for commercial maturity interest against entrepreneurs (sec. 353 *HBG* [*Handelsgesetzbuch* – German Commercial Code].

3. Offsetting against counterclaims by the Contract Partner or the retention of payments based on these claims is admissible only if and to the extent these counterclaims are undisputed or legally determined by a court. For defects, the Contract Partner may withhold payments only to an extent which is reasonable compared to the claim which they assert. When exercising their right to retention, the Contract Partner must provide to us, at our discretion, a security in the form of a bank guarantee or a deposit with a notary of their choice to the amount of the partial payment which they withhold.

4. In the case of delayed payment, we may:

   4.1 accelerate any claims from this or any other transaction against the Contract Partner, including those still to become due for payment;

   4.2 retain our supplies and other services under this or any other transaction until the Contract Partner fulfilled all outstanding claims under this or any other order;

   4.3 request reasonable securities;

   4.4 request any goods we supplied and which are still subject to retention of title to be returned. If the goods can be exploited not at all or no longer due to the lapse of time, the Contract Partner must pay other compensation to us if we so request.

5. If we, after contract conclusion, learn of facts relating to considerable deterioration of the Contract Partner's financial situation which, based on dutiful commercial discretion, pose a threat to the satisfaction of outstanding claims by the Contract Partner under the relevant contract (including individual orders relating to the same framework agreement), that is, including, without limitation, the institution of insolvency proceedings, we have the right to provide outstanding services only against advances, against adequate securities to be provided within a reasonable period or on a gradual basis. Should the Contract Partner fail to timely fulfil our justified request, we may withdraw from the contract or request damages, whereby we may accelerate any outstanding amounts, including deferred payments.

VIII. RETENTION OF TITLE

1. Until complete payment of all present and future claims under the purchase contract and existing business relationships (secured claims), the goods remain our property. The secured claims in terms of sent. 1 particularly include payable remuneration and all incidental claims, whereby the latter especially includes packaging, freight, insurance, bank, warning, lawyer, court and other costs. When accepting drafts or cheques, payment is deemed effected once they were finally honoured.

2. The Contract Partner takes the goods subject to retention of title into custody on our behalf and must separately store and label those goods which are our property. We may check the goods for separate storage and labelling subject to notification at short notice. Where the initiation of insolvency proceedings in relation to the Contract Partner's assets is applied for, we may label the goods subject to retention of title as our property and/or to recover possession of them. The Contract Partner is liable for the loss of goods subject to retention of title; they must purchase insurance at their expense in our favour against all risks, in particular against fire, water damage and theft. Any insurance claims

are hereby assigned to us right from the beginning and we must be immediately informed about any damage.

3. The goods subject to retention of title will be processed on a non-paid basis for us as the manufacturers in terms of sec. 950 *BGB*, without any duties on our part. Processed goods are considered goods subject to retention of title in terms of para. VIII.1. If the Contract Partner processes, combines or mixes the goods subject to retention of title with other goods, we are entitled to co-ownership in the new items in the ratio of the goods invoice value (final amount, including VAT) to the value of the other goods used for this. If our ownership based on connection or mixing lapses, the Contract Partner assigns to us any ownership rights in the new stocks or items to which they are entitled in the ratio of the invoice amount of the goods subject to retention of title and they store them on a non-paid basis. The relevant co-ownership rights are deemed goods subject to retention of title in terms of para. VIII.1.

4. Only in the ordinary course of business and to the extent they are not in arrears may the Contract Partner resell, process, connect to other items or install the goods subject to retention of title ("re-sale"). Any other disposal of the goods subject to retention of title is not permitted. In particular, the goods subject to retention of title may neither be pledged to third parties nor assigned as a security prior to complete payment of secured claims. If third parties apply for the institution of insolvency proceedings, attach the goods or access the goods subject to retention of title or assigned claims in any other way, we must be immediately informed about this. Any intervention costs, e.g. third-party counterclaim proceedings in terms of sec. 771 *ZPO* [*Zivilprozessordnung* – German Code of Civil Procedure], must be borne by the Contract Partner to the extent they cannot be collected from those third parties (opponents) upon first demand and intervention was justified. Should the Contract Partner give their customers time to pay the purchase price, they must retain title to the goods subject to retention of title at the conditions based on which we retained title to the supplied goods subject to retention of title; however, the Contract Partner is not obliged to retain title also to any claims against their customers which are established only in the future. Otherwise, the Contract Partner has no right to re-selling.

5. The Contract Partner's claims from reselling the goods subject to retention of title are hereby assigned to us right from the beginning; they serve securitisation to the same extent as to the goods subject to retention of title. Only if it is guaranteed that the related claims are assigned to us has the Contract Partner a right and authorisation to re-selling.

6. Should the goods subject to retention of title be sold at an overall price together with other goods we did not supply, the claims from re-reselling will be assigned to the amount of the invoice value of the goods subject to retention of title which we supplied.

7. If assigned claims are included into current accounts, the Contract Partner assigns to us, right from the beginning, a share of the balance amounting to the value of the claim, including the current account final balance.

8. In the case where the Contract Partner has claims against insurance companies or third parties due to damage, value decreases, loss/destruction of collaterals or other reasons, they hereby assign these claims to us right from the beginning.

9. Until the time of our revocation, the Contract Partner may collect claims assigned to us. We are entitled to revocation if the Contract Partner fails to ordinarily fulfil their payment duties under the business relationship or if circumstances come to our attention which considerably reduce the Contract Partner's credit standing. Should the requirements for exercising this right to revocation be met, the Contract Partner must, upon our request, immediately indicate the assigned claim and the relevant debtor, provide information required for collection, hand over to us documents related to this and inform the debtor about this assignment; we ourselves are also entitled to inform the debtor about this assignment.

10. Should the nominal value (goods invoice or claims nominal amount) of collaterals provided to us exceed the secured claims by more than 20%, we must, upon the request of the Contract Partner or that of third parties affected by excessive securitisation, release securities at our exclusive discretion.

11. If the Contract Partner violates the contract, particularly if they fail to pay the outstanding purchase price, we are entitled to withdraw in terms of the law and/or to request the goods to be returned based on retention of title. The request for return does not include a declaration of withdrawal; instead, we may only request the return of the goods and reserve the right to withdrawal. The request for return must be considered withdrawal from the contract only if we expressly declare this in writing. Should the Contract Partner fail to pay the outstanding purchase price, we may exercise the related rights only if we previously, without success, granted them a reasonable grace period for payment or if the granting of such period is not required under the law. Attachment of the goods subject to retention of title must always be deemed withdrawal from the contract. The Contract Partner's right to possess the goods subject to retention of title lapses if they fail to fulfil their duties under this or any other contract. We may request the return of and exploit the goods; any exploitation proceeds must be offset against the Contract Partner's liabilities – less reasonable exploitation costs.

12. In countries providing for no rights equivalent and/or similar to the retention of title, the Contract Partner provides to us – if possible right from the beginning or, if not, upon first demand – a comparable security and they assist with performing other measures required for providing such securities.

IX. PROTECTION RIGHTS

1. Our Protection Rights

1.1 We reserve ownership and copyrights in (electronic) images, samples, cost estimates, other documents and material/immaterial information. Without our express approval, the Contract Partner may disclose to third parties, use/distribute themselves or have third parties use/distribute neither the documents themselves nor their contents. Upon our request, they must completely and immediately return the items to us and destroy any copies thereof if they no longer require them for the ordinary course of business or if negotiations lead to no contract.

1.2 Should the supplied items include software programs, any rights in them, particularly ownership and other industrial property rights, remain with us. However, we grant the Contract Partner a simple, purpose-related and non-exclusive right to use the software program, including the documentation. The software program is provided for the use on the relevant supply item; using it on more than one system is prohibited. The Contract Partner may reproduce, process, translate or convert the object code into the source code of software programs only to the legally permitted extent (sec. 69a *et seq*. *UrhG* [*Urheberrechtsgesetz* – German Copyright Act]. Actions referred to under sec. 69c *UrhG*, particularly reproduction, processing or distribution, require our written approval and granting sub-licences is not admissible.

1.3 If the Contract Partner places no order, we may request reasonable remuneration for product samples we manufactured.

2. Third-Party Protection Rights

2.1 If production of the goods based on samples or other requirements/instructions of the Contract Partner violates third-party industrial property or copyrights, the Contract Partner holds us harmless against any and all claims related to these violations.

2.2 To the extent production of the goods is not based on the Contract Partner's samples or other requirements/instructions, we are liable in terms of sec. XII for the supplied items being free from third-party industrial property and copyrights. The Contract Partners inform each other immediately in writing if third parties assert any of these claims due to the violation of these rights.

If the supplied items violate third-party industrial property or copyrights, we will modify or replace them, at our discretion and expense, in the way that third-party rights are no longer violated and that they can still be used for the contractual purposes, or we obtain a usage right for the Contract Partner by concluding a licensing contract. If we fail to do so within a reasonable period, the Contract Partner may withdraw from the contract or reasonably

reduce the purchase price. Any compensation claims of the Contract Partner are subject to the restrictions under sec. XII of these Terms.

Should items of other manufacturers supplied by us cause legal violations, we will, at our discretion, either assert our claims against the manufacturer and sub-suppliers at the expense of or assign them to the Contract Partner. In these cases, claims against us in terms of sec. XII exist only if legal enforcement of the above claims against the manufacturer and the sub-suppliers was not successful or if no success is foreseeable, for example due to insolvency.

X. MOULDS – MODELS – EQUIPMENT

If production of the contract items to be delivered by us requires the creation of moulds, models and equipment ("Production Means"), the following applies:

1. Unless otherwise agreed, the Production Means must be separately remunerated in addition to the price for the contract items;

2. Remuneration payable for the Production Means is due for payment at the time of order confirmation, whereby we have the right to suspend Production Means manufacturing until we receive related remuneration;

3. Unless otherwise agreed, we remain the Production Means owners, whereby we undertake, regardless of para. X.4, to use Production Means only for the Contract Partner's orders provided that they fulfil their payment and acceptance duties;

4. We may freely dispose of the Production Means to the extent the Contract Partner releases them, whereby this applies for a two-year period from the last partial delivery for which the Production Means were used if we notified the Contract Partner about the Production Means being disposed of or destroyed and if the Contract Partner does not object in writing within one month. In each case, we may dispose of the Production Means after a three-year period from the last partial delivery for which the Production Means were used.

XI. WARRANTY

1. The Contract Partner's rights related to material and legal defects (including wrong, excess or short deliveries, inappropriate assembly or defective assembly instructions) are subject to legal provisions, limited by the following. In each case, the legal special provisions applicable to final delivery to consumers (recourse of the entrepreneur in terms of sec. 445a, 445b and 478 *BGB*).

2. We are not liable for inappropriate or inadequate use of supplied goods.

3. The Contract Partner must, immediately upon their arrival, check the supplied goods for completeness and compliance in terms of the statutory inspection and defect notification duties (sec. 377 and 381 *HGB*) – even if samples were provided in advance. Supplies are deemed accepted if no defect notification was delivered within four (4) working days from receiving the goods at the destination or, if the defect was not visible during ordinary inspection, within four (4) working days from detection in writing, by fax or by email. The above provisions also apply to wrong, excess or short deliveries, inappropriate assembly or defective assembly instructions. Should the Contract Partner fail to notify us of wrong, excess or short deliveries within four (4) working days from receiving the goods at the destination, they are deemed accepted.

4. Our field staff is not authorised to accept any defect notifications.

5. In their own interest, the Contract Partner has the forwarder confirm any damage to the packaging and any consequential damage.

6. Liability for defects is particularly based on the goods quality agreement, whereby “goods quality agreement” means product descriptions provided to the Contract Partner prior to placing an order or included in the contract parallel to these Terms and Conditions of Sale and Supply.

7. To the extent no goods quality agreement exists, existence of defects depends on legal provisions (sec. 434(1) sent. 2 and 3 *BGB*). However, we assume no liability for public statements of other manufacturers – particularly from suppliers – or other third parties (e.g. advertising statements).

8. In the event of justified and timely defect notification, the Contract Party initially has a claim only for subsequent performance which we provide, at our discretion, by delivering goods free from defects (replacement delivery) or removing the defect (subsequent improvement). Our right to refuse subsequent performance under statutory requirements is not affected by this. If subsequent performance failed, is unacceptable for the Contract Partner (sec. 440 *BGB*) or not required since

   a) we finally reject subsequent performance;

   b) fail to subsequently perform by a contractual time or within a given period and the Contract Partner contractually subjected their interest in performance to timeliness of service provision; or

   c) special circumstances exist which justify cancellation for cause considering the Parties’ mutual interests (sec. 323(2) *BGB*),

   the Contract Partner has the immediate right to reduce the purchase price or, at their discretion, to withdraw from the contract and to request damages instead of performance or compensation for wasted expenditure. In the case of insignificant defects, the Contract Partner has no right to

withdrawal. The Contract Partner's claims for damages and/or compensation for wasted expenditure only exist in terms of sec. XII and XIII; they are excluded for all other cases.

9. We are entitled to subject subsequent performance to the Contract Partner paying the outstanding purchase price. However, the Contract Partner may retain a purchase price share which is reasonable compared to the asserted claims.

10. The Contract Partner must grant us the time and opportunity required for subsequent performance, particularly hand over the contested goods for checks and enable us to visit and check the contested goods at the relevant site. If we are not provided with the relevant time and opportunity, we are not liable for any consequences. In the event of replacement deliveries, the Contract Partner must return to us the defective goods in terms of the law. Subsequent performance includes neither the disassembly of defective goods nor their re-installation if we were not obliged to installation right from the beginning.

11. We bear all expenses required for subsequent performance, particularly transport, road, labour and material costs (exclusive of disassembly/installation costs). This does not apply if expenses increase due to the goods, following delivery, being taken to places other than the Contract Partner's business premises, unless transport is in compliance with the intended purpose of the goods; sent. 1 and 2 only apply if there is a defect. If a claim of the Contract Partner for defect rectification turns out to be unjustified, they must reimburse to us the relevant costs if we so request, unless the lack of defectiveness was not recognisable for the Contract Partner.

12. Mere subsequent performance by us does mean that we accepted the defects purported by the Contract Partner, regardless of the extent of subsequent performance. Only our legal representatives, holders of power of attorney and authorised signatories may accept claims, but only in the number required for representation.

13. There are no claims, particularly no claims for damages, in cases where the Contract Partner is responsible for any disruptions. This includes, without limitation, the below cases:

    - inadequate or inappropriate use; false assembly and/or commissioning by the Contract Partner or third parties;

    - normal wear; wrong/careless handling; non-compliance with handling, maintenance and care instructions (such as operating manuals); use of inadequate operating means;

    - defective construction works; inadequate construction ground; (electro-)chemical or electric influences, unless we caused them.

14. Should the Contract Partner accept defective goods despite being aware of it, they are entitled to claims and rights only if they expressly reserve them in relation to detected defects at the time of acceptance and/or inspection.

15. The assignment of the Contract Partner's claims against third parties due to defects is excluded.

16. In emergencies, e.g. in the case of threats to operational safety, or to prevent disproportionate damage, the Contract Partner may rectify the defect themselves and request compensation from us for objectively required expenses, whereby they must immediately, if possible even prior to this, inform us about them rectifying defects themselves. The right to self-rectification does not apply if we were entitled to reject subsequent performance based on valid legal provisions. If the Contract Partner makes inappropriate subsequent improvements, we are not liable for any consequences; this also applies to changes to the supplied items made without our previous approval.

17. With supply items whose shelf life is limited due to the materials used for them and whose packaging shows a best before date, we are liable only for such supply items disposing of the described quality features during the shelf life indicated thereon.

18. Limitation of the Contract Partner's warranty claims depends on sec. XIII.

XII. LIABILITY FOR DAMAGES

1. We are liable for damage from injuries to life, body or health subject to the legal provisions. The below provisions do not apply to such damage.

2. Apart from that, our liability for violations of duties and our extra-contractual liability for intention and gross negligence are limited. Liability for gross negligence of our employees, co-workers and vicarious agents in this regard is excluded.

3. Liability limitation and/or exclusion in terms of para. XII.2 does not apply if and to the extent our violation of contractual duties poses a threat to the achievement of the contract purpose (violation of "important contract duties") so that limitation of liability would lead to the Contract Partner's legal positions crucial for the contract being undermined. This is the case if liability limitation would result in those rights being taken away or limited which the contract must grant considering the contents and the purpose or whose fulfilment is required for ordinary contract execution and upon whose compliance the Contract Partner may reasonably rely/relies.

4. Our liability for slight and gross negligence (for clarification: except for the cases under para. XII.1) is limited to damage typical of this contract and which we had to assume to arise at the time of contract conclusion based on information available to us at that time. This particularly applies to our liability

for a lack of economic success, loss of profits, indirect damage, consequential damage and damage from third-party claims.

5. Unless provided otherwise, additional liability is excluded, regardless of the legal reason.

6. The above limitations and exclusions of liability apply, to the same extent, in favour or our bodies, legal representatives, (executive) employees and vicarious agents, but they also apply to compensation for wasted expenditure (sec. 284 *BGB*). Limitations and exclusions of liability do not apply to the extent we maliciously concealed a defect or accepted a warranty for the quality of the goods.

7. The Contract Partner may withdraw from or cancel the contract due to violations of duties not consisting in a defect if we are responsible for such violation. A free right to cancellation for the Contract Partner (in particular in terms of sec. 650 and 648 *BGB*) is excluded; apart from that, the legal requirements and consequences apply.

8. Limitation of the Contract Partner's claims for damages depends on sec. XIII.

9. The above regulation does not lead to the burden of proof being reversed at the Contract Partner's expense.

10. Claims for damages pursuant to the German Product Liability Act [*Produkthaftungsgesetz*] likewise remain unaffected.

XIII. LIMITATION

1. The Contract Partner's warranty claims – except for those based on injuries to life, limb or health, intention or gross negligence – become generally time-barred, in deviation from sec. 438(1) no. 3 *BGB* one year after goods delivery to the Contract Partner. If acceptance was agreed upon limitation begins upon acceptance. Statutory provisions on limitation with building-related services, malicious intent of the seller, third-party in-rem claims for return and claims relating to recourse of the supplier for final deliveries to consumers are not affected by this.

2. The limitation periods under para. XIII.1 also apply to the Contract Partner's (extra-)contractual claims for damages based on goods defects, unless application of regular statutory limitation (sec. 195 and 199 *BGB*) would lead to shorter limitation periods in individual cases. Otherwise, the Contract Partners claims for damages become time-barred pursuant to sec. XII – regardless of the legal reason, but except for injuries to life, limb or health and cases of gross negligence – within two (2) years from the statutory beginning of limitation periods, but no later than from risk transfer and/or goods acceptance.

3. Limitation periods under the *Produkthaftungsgesetz* remain unaffected in any case.

XIV. FORCE MAJEURE

1. Unforeseeable, extraordinary events beyond our control, such as lockouts, labour disputes, operational disruptions, interference by laws, authority measures, transport disruptions, war, revolutions, upheaval, plane abduction, terrorist attacks, natural disasters or other cases of force majeure, regardless of whether these events occur with us or with our sub-suppliers, exempt us from the duties under the relevant contract; we are exempt in the case of temporary prevention only for the period of prevention plus a reasonable start-up period. Should these events subsequently make contract performance impossible or unacceptable for either Party, both Parties may withdraw from the contract. Unacceptability for either Party in terms of the above sentence applies if the delay due to temporary prevention lasts for more than three (3) months. If the performance period extends or if we are exempt from performance for reasons of force majeure, the Contract Partner may derive no claims for damages from this.

2. If we consider ourselves prevented from ordinarily providing contractual services – regardless of the reason – the Contract Partner must be immediately informed about this in writing. Once it is possible to foresee the time when the service can be provided again, we must communicate this to the Contract Partner in writing – if need be, also by electronic means.

XV. NON-DISCLOSURE

1. The Contract Partner is obliged – beyond the contract term – to treat confidentially and not to totally or partially disclose to third parties any information on the business relationship which they receive; without our approval, the Contract Partner will use this information not even for their own transactions. This non-disclosure duty does not apply to information which is clearly known to the public, which the Contract Partner had already known prior to being disclosure to them or which third parties disclosed to them without violating a non-disclosure duty applicable to these third parties.

2. In particular, the Contract Partner must not disclose to third parties any documents which they receive from us, not even after the contract term. This non-disclosure duty lapses only if and to the extent that information included in the documents provided is known to the public. Should the Contract Partner become aware of internal inventions worthy of protection, we are entitled to all rights from inventions, particularly the right to apply for protection rights. The Contract Partner will at no time disclose their knowledge of such inventions or object to inventions as being prejudicial to novelty at the time of application or at any other time.

3. Only if we expressly agreed to this in writing may the Contract Partner refer to this business relationship in their advertising and information material.

XVI. FINAL PROVISIONS

1. These General Terms and Conditions of Sale and Supply and all legal relationships between us and the Contract Partner are exclusively subject to German law.

   International uniform law – particularly the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) or other conventions on the right of selling goods –, including other, that is, future, inter-government or international conventions, also after their transposition into German law, and German international private law, do not apply.

   As a supplement, the VDMA Supply, Assembly and Repair Terms apply as amended; in cases of doubt and contradictions, however, these Terms prevail.

2. The place of fulfilment for our supply duties depends on sec. VI of the Terms; for all the other duties of the Contract Parties, the place of fulfilment is our registered office in 58454 Witten, Germany.

3. If the Contract Partner is an entrepreneur in terms of the German Commercial Code, a body corporate organised under German public law or a German public-law special fund, the exclusive, that is, also international, venue for the disputes resulting from and in relation to the relevant contract – including cheque and draft disputes – is our registered office in 58454 Witten, Germany (sec. 38(1) *ZPO*). Provided that the Contract Partner meets the requirements under sec. 38(2) *ZPO* and has no venue in Germany, our registered office in 58454 Witten, Germany, is considered the venue. However, we also have the right to file an action against the Contract Partner before other courts in the cases under sent. 1 and 2.

4. If individual provisions of the Terms are or become ineffective in whole or in part, this does not affect validity of the remaining provisions. In these cases, invalid provisions and/or invalid parts thereof must be replaced by legal provisions which in economic terms and to the legal extent come closest to the purposes of the invalid provisions. This accordingly applies to non-executable provisions and contractual gaps included in these Terms.

5. Apart from the above, we refer to our Privacy Policy enclosed or available at LINK.