

## **§ 1 Validity**

- 1.1 These General Terms and Conditions (“GTC”) shall be valid for all deliveries and services rendered by Lohnpack GmbH (“Lohnpack”). These GTC are an integral part of all contracts concluded between Lohnpack and his Customers on deliveries or services (“Contractual Services”) offered by Lohnpack.
- 1.2 These GTC and the order form including any annexes (see clause 2.2) shall apply exclusively for all Contractual Services. Any Terms and Conditions of Customers shall be excluded albeit Lohnpack has not specifically objected to their application separately. Albeit Lohnpack refers to a letter which contains General Terms and Conditions of a Customer or refers thereto, it shall not imply an acceptance with the validity of said General Terms and Conditions. This shall particularly apply to Customers’ purchasing conditions.
- 1.3 The following order of precedence shall apply for the individual contractual documents (see clause 1.2):
  - The order form including its annexes;
  - these GTC.

## **§ 2 Conclusion of Contract**

- 2.1 Quotations submitted by Lohnpack shall be subject to change and non-binding unless expressly designated as binding in writing. Unless specified otherwise in the quotation, Lohnpack shall honor their binding offers for a period of 4 weeks.
- 2.2 A contract on Contractual Services shall generally be concluded by an order confirmation or commencement of the provision of services through Lohnpack. Lohnpack may request written confirmations of the Customer’s verbal contract declarations.

### ***§ 3 Services rendered by Lohnpack, Participation of the Customer***

- 3.1 Prior to the conclusion of the contract, the Customer is to check whether the specifications of Lohnpack's Contractual Services comply with his demands and requirements. The Customer is well aware of the essential characteristics of Lohnpack's Contractual Services.
- 3.2 The mutually signed order form including any annexes determines the scope, type and quality of the Contractual Services. Additional specifications or requirements shall only become part of the contract if the contracting parties agree thereon in writing or Lohnpack confirms them in writing. Subsequent changes to the scope of services require written agreement or written confirmation through Lohnpack.
- 3.3 Performance specifications shall not constitute any form of warranty. Any warranty requires a written and express declaration by Lohnpack's management.
- 3.4 The Customer undertakes to support Lohnpack in a reasonable, expert and timely manner and to provide co-operative performances as necessary for the proper performance of the Contractual Services particularly the provision of any and all required or important documents in good time. The Customer shall be responsible that any and all provided specifications as well as supplied information and materials are correct and complete and comply with the relevant statutory provisions (e.g. competition law, copyright and trademark law). Lohnpack shall not assume any responsibility for deficiencies of Contractual Services, service disruptions and infringement of rights rooted in specifications, information or materials provided by the Customer.

### ***§4 Terms of Delivery, Default in Delivery***

- 4.1 The delivery period shall be agreed upon individually in the order form and/or stated by Lohnpack upon acceptance of the order. Should this not be the case a reasonable delivery period applies for each case. The delivery period commences with the conclusion of the contract, however, not before the provision of documents, approvals and other co-operative performances by the Customer to Lohnpack as specified in the order form.
- 4.2 The occurrence of default in delivery shall be determined in accordance with the applicable statutory provisions. A reminder by the Customer shall be considered absolutely necessary in any case.

4.3 In the event that Lohnpack does not adhere to binding delivery periods for reasons beyond Lohnpack's responsibility (non-availability of goods or services) then Lohnpack is to notify the Customer immediately and at the same time specify a new estimated delivery period. In case the goods or services are still not available within the new delivery period Lohnpack shall be entitled to rescind the contract partially or in full; Lohnpack shall immediately reimburse already provided considerations of the Customer. In such cases beyond Lohnpack's responsibility the Customer shall be entitled to rescind the contract provided the delay exceeds a period of three months. Any partial deliveries already conducted shall constitute independent transactions; payment of the partial deliveries may not be refused on account of the quantities open for delivery.

## ***§ 5 Delivery, Transfer of Risk, Acceptance, Default of Acceptance***

5.1 Deliveries are ex warehouse which shall also be the place of performance for deliveries as well as for potential supplementary performances. Upon request and at the expenses of the Customer, the goods shall be delivered to a place of destination stated by the Customer. Unless otherwise agreed upon, Lohnpack shall be entitled to determine the type of shipment at Lohnpack's sole discretion (particularly the transport company, dispatch route, packaging). Decisive for the determination of the weight of the delivery is the weight determined at the time of dispatch from Lohnpack.

5.2 The risk of accidental loss or accidental impairment of the goods shall be transferred to the Customer upon delivery at the latest. In case of an agreed shipment of the goods the risk of accidental loss or accidental impairment of goods as well as the risk of delay shall be transferred already with dispatching the goods to the forwarder or freight carrier or any other person or institution appointed to carry out the shipment. If an acceptance procedure has been agreed upon, this acceptance shall be authoritative for the transfer of risk. In all other respects, the applicable statutory provisions governing contracts for work and services (Werkvertragsrecht) shall apply to an agreed acceptance as well. It is deemed equivalent to the handover or acceptance if the Customer is in default of acceptance. In the event of a return consignment, the risk of accidental loss or accidental impairment of the goods shall be borne by the Customer until delivery to Lohnpack.

5.3 In the event that the Customer is in default of acceptance or fails to render co-operative performances or the delivery is delayed for other reasons for which the Customer is responsible Lohnpack shall be entitled to claim for compensation of damages including additional expenses (e.g. storage costs). In this case Lohnpack shall charge a lump sum

compensation in the amount of EUR 50.00 per calendar day commencing with the delivery period and/or - in absence of a delivery period - with the announcement of shipment readiness of the goods. Proof of a greater damage and the statutory claims (in particular but not limited to reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; the lump sum, however, is to be offset against further monetary claims. The Customer shall be entitled to provide evidence that Lohnpack did not suffer any damage whatsoever or only significantly less damage than the afore-mentioned lump sum.

- 5.4 Lohnpack shall be entitled to have the owed performance rendered by a Third Party.
- 5.5 Lohnpack shall be entitled to partial or early deliveries.

## **§ 6 *Loaned Packaging, Pallets***

- 6.1 In case an agreement was made as to goods being transported on pallets, Lohnpack shall be entitled at Lohnpack's choice to deliver lots either on Euro-Pool-Pallets with the dimensions 800 x 1200 mm or on disposable pallets. Delivery on Euro-Pallets shall only take place against counter-exchange, i.e. for the pallets delivered with the products, the Customer is to provide Lohnpack with the same number of undamaged, empty pallets (in each case only Euro-Pool-Pallets) in exchange. Damaged but repairable Euro-Pool-Pallets received by Lohnpack shall be invoiced with the respective repair costs, non-repairable pallets shall be invoiced with the respective replacement costs, unless the Customer may provide evidence that he is not responsible for the damage. In case of lost pallets the Customer shall undertake to provide replacement or to pay the replacement costs to Lohnpack unless the Customer can provide evidence that he is not responsible for the loss. In case delivery is on disposable pallets, the Customer shall be responsible for re-palletising and discarding of the pallets.
- 6.2 The following provisions shall apply to other loaned packaging materials and/or loading aids provided by Lohnpack: The loaned packaging material provided by Lohnpack (identified as such in the invoice) as well as possible loading aids shall remain the inalienable property of Lohnpack. They must be handled with care and may not be used for any other purpose than storage of the delivered goods. The Customer is to be held liable for damage resulting from non-compliance with these provisions unless the Customer provides evidence that he is not responsible for the damage. The return consignment of the loaned packaging as well as the loading aids to the specified or agreed receiving point for empties shall be conducted immediately free-of charge upon emptying, free of defects, in usable condition and by indicating the department stated in the invoice. Loaned barrels, pallet cages, containers and stack tanks as well as all other loaned packaging material and loading aids are to be returned within eight weeks as of delivery. In the event that loaned packaging and/or loading aids are

not returned in time or by non-compliance with Lohnpack's requests become unusable, Lohnpack reserves the right to invoice those at the market price for brand-new packing of the same type or to claim rental charges. The above-mentioned payments shall be due immediately. The account for empties shall be credited after receipt of the empties unless the Customer provides evidence that he is not responsible for the delayed return or the unusability of the loaned packaging and/or loading aids.

- 6.3 The taking back of packaging material other than loaned packaging material shall be subject to the regulations of the Verpackungsverordnung [translator's remark: German Packaging Material Regulations] in their current version as well as any additional agreements or arrangements made, if applicable.

## **§ 7 Prices, Payment Terms, Invoice Details**

- 7.1 Unless otherwise agreed in individual cases, Lohnpack's prices valid at the time of contract conclusion shall apply on the basis ex warehouse plus statutory sales turnover taxes.
- 7.2 In the event that shipment of the goods has been agreed (see clause 4.1) the Customer is to bear the transport costs ex warehouse and if requested by the Customer as well as the costs of a transport insurance if necessary. Potential customs duties, fees, taxes and any other public levies shall be borne by the Customer.
- 7.3 Payment shall be due and payable within 14 days from invoice date and delivery and/or acceptance of the goods. Even with an ongoing business relation, Lohnpack, however, reserves the right to apply cash in advance payment terms for complete or partial deliveries. Lohnpack shall declare a corresponding reservation in their order confirmation at the latest. Lohnpack furthermore reserves the right to request the provision of reasonable collaterals already prior to delivery in case reasonable doubts as to the solvency or the creditworthiness of the Customer should arise after contract conclusion, agreed payment or delivery terms are not adhered to in essential aspects or material changes in the business circumstances of the Customer should occur. In the event that the Customer refuses to provide such collaterals within a reasonable period set, Lohnpack may rescind all contracts concluded with the Customer either partially or in full. The right to further claims shall remain unaffected.
- 7.4 Discount deductions shall only be applicable provided that there are no other receivables due for payment by the Customer arising from the business relation with Lohnpack.

- 7.5 Upon the expiration of the payment period as per clause 7.3 the Customer shall automatically enter into default. During the default period interest is to be paid on the purchase price at the respective applicable interest rate for default. Lohnpack reserves the right to claim consequential damages caused by default. Our claim for the commercial maturity interest (§ 353 HGB [translator's remark: German Commercial Code]) against merchants remains unaffected.
- 7.6 The Customer shall only be entitled to set-off rights or rights of retention to the extent that they are uncontested or legally asserted. In the event of defects to the delivery the Customer's counterclaims particularly those according to clause 9.6 shall remain unaffected.
- 7.7 Should it become apparent after conclusion of the contract that Lohnpack's claim for payment is threatened by the Customer's inability to honour his commitments (e.g. due to an application for the opening of an insolvency proceeding), Lohnpack shall be entitled, according to the statutory provisions, to refuse performance and - if applicable, after affixing a deadline - to rescind the contract (§ 321 BGB [translator's remark: German Civil Code]).

## **§ 8 Retention of Title**

- 8.1 All goods supplied by Lohnpack shall remain property of Lohnpack until full and complete payment of all current and future receivables subject to the contract and arising from an ongoing business relation (secured claims).
- 8.2 The goods subject to retention of title may neither be pledged to third parties, nor assigned as collateral before full payment has been effected. The Customer is to notify Lohnpack immediately in writing if an application for the initiation of insolvency proceedings is filed or if third parties exercise rights over the goods (e.g. seizure) in Lohnpack's property.
- 8.3 In the event of the Customer's non-compliance with the provisions of this contract, particularly with non-payment of due receivables, Lohnpack shall be entitled to rescind the contract and/or to request surrender of the goods based on the retention of title according to the statutory provisions. The request to surrender the goods shall not automatically be deemed a declaration of rescission; Lohnpack shall rather be entitled to request the surrender of the goods as well as to reserve the right to rescind the contract. In the event that the Customer fails to settle due payments, Lohnpack may only assert those rights if Lohnpack has previously set a reasonable grace period for payment without success or such grace period is legally superfluous according to the statutory provisions.

8.4 The Customer shall be entitled to resell and/or further process the goods subject to retention of title in the course of an ordinary business transaction pending further notice as per lit. c). In this case the following provisions shall apply in addition.

- a) The retention of title extends to any and all products resulting from the processing, mixing or combining of our goods at their full value, with Lohnpack being considered the manufacturer. In the event that with processing, mixing or combining with goods of third parties the property rights of said third parties remain in effect, Lohnpack shall acquire co-ownership in the ratio of the invoiced value of the goods processed, mixed or combined. Incidentally the same shall apply to the manufactured product as well as to the goods delivered under reservation of title.
- b) The Customer hereby now already assigns the claims against third parties, which are established from the resale of the goods or product in total or in the amount of Lohnpack's potential co-owner share as collateral to Lohnpack according to clause a). Lohnpack accepts the assignment. The Customer's duties as stipulated in clause 8.2 shall also apply with regard to the assigned receivables.
- c) The Customer shall retain the right to collect the receivables apart from Lohnpack. Lohnpack undertakes to refrain from collecting the receivables provided that the customer complies with his payment obligations to Lohnpack, the Customer honours his commitments and Lohnpack does not assert his right of retention according to clause 8.3. Should this be the case, however, Lohnpack may demand that the Customer announces the assigned claims and their recipients to Lohnpack, provides all information required for collection, supplies the relevant documents and notifies the recipient (third party) of the assignment. In this case, Lohnpack shall furthermore be entitled to revoke the Customer's authority for resale and further processing of the goods subject to the retention of title.
- d) If the marketable value of the collaterals exceeds Lohnpack's claims by more than 10 % then Lohnpack shall release the collaterals at his discretion upon the Customer's request.

8.5 Printing plates manufactured by Lohnpack or on behalf of Lohnpack as well as tools shall remain the property of Lohnpack regardless of whether the manufacturing costs were completely or partially invoiced and paid by the Customer. Lohnpack shall not be obliged to surrender the afore-mentioned items to the Customer. Printing plates and tools shall be stored for one year upon completion of the last delivery without assumption of liability by Lohnpack. After this time, the printing plates and tools may be discarded for storage-related reasons without further notice to the Customer.

## **§ 9 Warranty Claims**

- 9.1 Unless otherwise agreed, the statutory provisions shall apply for the rights of the Customer in case of defects of quality and title.
- 9.2 The basis for any claim for defects against Lohnpack shall particularly be the concluded agreement on the quality of the Contractual Services. Any and all performance specifications which are subject of the individual contract or published by Lohnpack (particularly in catalogues or on Lohnpack's internet websites) shall constitute agreements on the quality.
- 9.3 In the event that no specific quality has been agreed the statutory provisions shall apply. Lohnpack shall not be liable, however, for any public statements by the manufacturer or other third parties (e.g. advertising messages).
- 9.4 Any Customer claims for defects shall be subject to the assumption that the goods were inspected immediately upon delivery and that obvious defects were immediately brought to Lohnpack's attention. The Customer is to provide Lohnpack with samples of the products claimed to be defective. In the event that impartial third parties took samples at the time of loading then those samples shall be solely decisive for the question of proper provision of the Contractual Services.
- 9.5 The Customer is to notify Lohnpack immediately in writing as to any defects. If the Customer fails to conduct a proper inspection and/or report of defects, Lohnpack's liability for the defect which was not reported and/or not reported in good time and/or not properly reported shall be excluded.
- 9.6 If the delivered item is defective Lohnpack may initially choose whether Lohnpack provides subsequent performance by remedy of the defect (subsequent improvement) or by delivery of a faultless object (replacement delivery). Lohnpack's right to refuse subsequent performance under the statutory pre-requisites shall remain unaffected.
- 9.7 Lohnpack shall be entitled to predicate the supplementary performance due on whether the Customer pays the purchase price due. The Customer, however, shall be entitled to retain a portion of the purchase price appropriate in relation to the defect.
- 9.8 The Customer shall give Lohnpack the required time and the opportunity for the supplementary performance, the Customer is particularly obliged to hand over the rejected goods for inspection purposes. In case of a replacement delivery the Customer is to return the defective item to Lohnpack according to the statutory provisions.



- 9.9 In case of proven defects and Lohnpack is to be responsible for said defects, then Lohnpack is to bear the expenses necessary for the inspection and subsequent performance, in particular transport, travel, labour and material costs (excluding de-installation and installation costs). Otherwise, Lohnpack may charge the costs incurred by the unjustified complaint (particularly inspection and transport costs) to the Customer, unless the lack of a defect could not be recognized by the Customer.
- 9.10 In urgent cases, e.g. specifically where operational safety is at risk or to avoid extraordinarily high damages, the Customer shall be entitled to remedy the defect himself and to demand compensation from Lohnpack for the expenses objectively required for remedy. Lohnpack shall be notified immediately, if possible prior to such self-remedy of defects. The Customer's right to self-remedy of defects shall not be applicable if Lohnpack would be entitled to refuse the relevant remedial work in accordance with the statutory provisions.
- 9.11 In case the subsequent performance has failed or a reasonable time period set by the Customer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory provisions the Customer may rescind the contract or reduce the purchase price. The right to rescind the contract, however, shall not apply to minor defects.
- 9.12 The Customer's claims, however, to damages and/or compensation for futile expenses even with defects shall only be applicable pursuant to § 10 hereof and shall otherwise be excluded.

### ***§ 10 Damages and Compensation for Expenses***

- 10.1 Irrespective of the legal grounds, Lohnpack shall provide damages and reimburse futile expenses only to the following extent:
- a) The liability for wilful intent and warranties is unlimited.
  - b) In case of gross negligence Lohnpack shall be liable in the amount of typical degrees of damage as foreseeable at the time of contract conclusion.
  - c) In the case of a negligent breach of duty material to the accomplishment of the purpose of the contract and upon the fulfilment of which the Customer relies and may rely and whose breach jeopardises the achievement of the purpose of the contract (cardinal obligation), Lohnpack shall be liable up to the amount of the damage typically foreseeable upon conclusion of the contract but with a maximum amount of the net value of the individual order.

- d) In all other cases of negligent breach of duty Lohnpack's liability is excluded.
- e) In the event of physical injury and damage to life and health resulting from claims subject to the Product Liability Act the statutory provisions shall apply without limitations.

10.2 The right to contest the charge of contributory negligence remains open to Lohnpack.

### ***§ 11 Statute of Limitation***

11.1 The statute of limitation shall be limited

- a) to one year for claims from material defects;
- b) to two years for claims from violation of third party rights;
- c) to two years for claims for compensation which are not based on material defects or violation of third party rights or compensation for futile expenses.

11.2 Clause 9.1 shall not be applicable for claims for damages and compensation of expenses arising from willful intent, gross negligence, fraudulent intent and according to the cases as mentioned in clause 7.1 e).

### ***§ 12 Assignment***

Lohnpack shall be entitled to assign claims from the contractual relation to third parties.

### ***§ 13 Place of Performance, Place of Jurisdiction, Applicable Law***

13.1 Place of performance and exclusive place of jurisdiction for both contracting parties shall be Lohnpack's registered office location for all disputes arising from the contractual relation.

13.2 These GTC and the contractual relation between Lohnpack and the Customer shall be governed by the legislation of the Federal Republic of Germany excluding private international law and the UN Convention on the International Sale of Goods (CISG).

## General Purchasing Conditions of Lohnpack GmbH

### **§1 Scope**

- 1.1 These General Purchasing Conditions (“GPC”) shall be valid for all business transactions with our business partners and suppliers (“Seller”). These GPC are an integral part of all contracts concluded with our Sellers regarding their offered deliveries or services.
- 1.2 These GPC shall be valid as applicable at the respective order date and/or in their latest submitted text version also applicable as framework agreement for similar future contracts with the Contractor albeit not separately agreed upon.
- 1.3 These GPC apply exclusively. Terms and Conditions of our Sellers or any Third Parties shall not apply albeit we have not specifically objected to their application separately. Albeit we refer to a letter which contains General Terms and Conditions of the Seller or a Third Party or refer thereto, it shall not imply an acceptance with the validity of said General Terms and Conditions.
- 1.4 These GPC shall apply in particular for contracts on the sale and/or the delivery of movable objects (“goods”) irrespective of whether the Seller produces the goods himself or purchases them from suppliers (§§ 433, 651 BGB [translator’s remark: German Civil Code]).

### **§2 Conclusion of Contract**

- 2.1 Our purchase order shall be binding at the earliest upon placing of a written order or confirmation. The Seller is to notify us about obvious errors (e.g. printing or calculation errors) and incompleteness of the order including order documents for the purpose of corrections and/or completion before accepting the order; the contract shall otherwise be regarded as not concluded.
- 2.2 The Seller shall confirm our order in writing within a period of 3 days or to perform without reservations (acceptance) by delivering the goods. Delayed acceptance shall be deemed to be a new offer and shall require confirmation by us.

### **§ 3 Delivery Time and Delay in Delivery**

- 3.1 The delivery time specified in our purchase order shall be binding. The Seller shall be obliged to inform us immediately in writing if he anticipates not being able to meet the agreed delivery time - irrespective of the reasons.
- 3.2 Should the seller fail to provide his service or not within the agreed delivery time or is in default, our rights - particularly with respect to rescission and damages - shall be governed by the applicable statutory provisions. The provisions set out in section 3.3 of this document shall remain unaffected.
- 3.3 If the Seller is in default, we reserve the right to charge a contractual penalty in the amount of 1 % of the net price per complete calendar week, however, the total penalty amount shall not exceed 5 % of the net price of the delayed goods. We are further entitled to demand the contractual penalty in addition to performance and, as a minimum sum, the damages owed by the Seller; this shall be without prejudice to our right to claim any further damage. If we accept the delayed performance we shall demand the contractual penalty at the time of the final payment at the latest.

### **§ 4 Performance, Delivery, Transfer of Risks, Default of Acceptance**

- 4.1 We shall be entitled to change the time and place of delivery as well as the manner of packaging at any time by written notification within a period of 5 calendar days prior to the agreed delivery date. The same shall apply to changes in product specifications, as far as they can be implemented in the course of the regular production process of the Seller without considerably increased additional expenses, whereby in said cases the notice period relating to the afore-mentioned section shall be at least 5 calendar days. We will refund the Seller for any proven and appropriate additional costs incurred due to the changes. Should the changes cause delays in delivery, which are unavoidable in the Seller's regular production and business dealings, the delivery date will be postponed accordingly. The Seller shall inform us in good time and in writing about the carefully assessed additional costs or delays in delivery, however, within a period of 2 working days at the latest after receipt of our notification according to section one.
- 4.2 The Seller shall not be entitled to have the owed performance rendered by a Third Party without our prior written consent. The Seller is to bear the procurement risk for his performance, unless otherwise expressly agreed upon in individual cases.

- 4.3 The Seller shall not be entitled to partial delivery or premature delivery without our prior written consent.
- 4.4 Delivery shall be made free of charge within Germany to the location stated in the order. The delivery terms DDP shall apply (Incoterms 2010). If the place of destination is not stated and nothing else has been agreed upon, the delivery is to be rendered to our headquarters in Eberhardstraße 60, 71679 Asperg, Germany. The agreed place of destination shall also be the place of performance for deliveries as well as for possible supplementary performances.
- 4.5 Deliveries are to be accompanied by a delivery note indicating the date (issuing date and date of shipment), content of the delivery (item number, quantity, batch and best before date) as well as our order identification (date and number). If the delivery note is missing or incomplete, we refuse any responsibility for delays in processing and payment resulting from this omission.
- 4.6 The risk of accidental loss or accidental impairment of the goods shall be transferred to us upon delivery to the place of destination. If an acceptance procedure has been agreed upon, this acceptance is authoritative for the transfer of risk. In all other respects, the applicable statutory provisions governing contracts for work and services (Werkvertragsrecht) shall apply to acceptance as well. It is deemed equivalent to the handover or acceptance if we are in default of acceptance.
- 4.7 In the event of default of acceptance by us the applicable statutory provisions shall apply. The Seller must, however, expressly offer his performance albeit a specific or definable calendar date has been agreed for an action or assistance (e.g. provision of material) by us. In the event that we are in default of acceptance the Seller may claim reimbursement of additional expenditures in accordance with the statutory provisions (§ 304 BGB). If the Contract concerns non-fungible goods that are to be produced by the Seller (individual construction), the Seller shall only be entitled to further rights if we are obliged to provide assistance and are responsible for the failure to provide said assistance.
- 4.8 We are entitled to terminate the contract at any time by written declaration and indication of the reason if we are unable to further use the products in our business operations due to circumstances arising after contract conclusion. In this case we shall compensate the Seller for the provided partial performance.
- 4.9 In case of overdeliveries and underdeliveries, unless otherwise specified in the order, the following quantities shall be considered as overdelivery and underdelivery:
- For an agreed scope of supply of up to 49 999 pieces +/- 10%
  - For an agreed scope of supply from 50 000 of up to 99 999 pieces +/- 5%
  - For an agreed scope of supply of 100 000 pieces +/- 3%

## **§ 5 Export Control, Customs**

- 5.1 The Seller shall be obliged to inform us in his business documents as to any possibly applicable (re-) export license requirements for the goods according to German, European or US export control law and customs regulations as well as the export control law and customs regulations of the country of origin of the goods.
- 5.2 The Seller is to indicate the origin of the goods and the customs tariff number (HS-Code) in his business documents. As an alternative, the Seller is to send a certificate of origin or a long-term supplier declaration for the provided goods and is to inform us immediately about possible changes.

## **§ 6 Prices, Payment Terms, Invoice Details**

- 6.1 The price indicated in the purchase order shall be binding. All prices include the statutory VAT unless separately stated.
- 6.2 Unless otherwise agreed in specific instances shall the price include all performances and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, freight costs including possible transport and liability insurance).
- 6.3 In case the agreed upon price does not include packaging and reimbursement for packaging, which is not only provided on loan basis and has not expressly been determined then said packaging shall be invoiced according to proven cost prices. At our request, the Seller is to take back the packing at his expenses.
- 6.4 The agreed price shall be due for payment within a period of 30 calendar days from complete delivery and performance (including a possibly agreed acceptance procedure) as well as receipt of a proper invoice. If we settle payment within a period of 14 calendar days we shall be granted a 3 % discount on the net amount of the invoice. In case of payment via bank transfer, payment is considered to have been conducted in time if our transfer order has been received by our bank prior to expiry of the payment period; we shall not be responsible for delays caused by banks involved in the transfer procedure.
- 6.5 All order confirmations, delivery documents and invoices are to state our order number, item number, delivery quantity and delivery address. In case one or more of these details are missing and processing is delayed by us in the course of our normal business operations the payment periods as mentioned in section 6.4 are extended by the period of the delay.

- 6.6 We do not owe any default interest. In the event of default in payment the applicable statutory provisions shall apply.
- 6.7 We are entitled to the rights of offsetting and retention as well as the defense of non-performance of the contract to the extent permitted by applicable statutory provisions. We shall particularly be entitled to retain due payments as long as we still hold claims arising from incomplete or faulty performance against the Seller.
- 6.8 The Seller is only entitled to offsetting or retention in case of res judicata or undisputed counterclaims.

## **§ 7 Confidentiality and Retention of Title**

- 7.1 We reserve all property rights and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents. Documents of this kind shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. In this case, any copies made thereof are to be destroyed; this only excludes any data stored in the courses of the statutory storage duties as well as the storage of data as a back up as part of usual data storage practice. The documents shall not be disclosed to Third Parties even after termination of the contract. The obligation to maintain confidentiality expires only if and insofar as the knowledge in the provided documents has become common knowledge.
- 7.2 The afore-mentioned provision shall apply accordingly for substances and materials (e.g. software, finished and half-finished products) as well as tools, templates, patterns and other objects which the Seller is provided with for production by us. Such objects are - as long as they are not processed - to be stored separately and insured to the usual extent against destruction and loss. The Seller is to notify us immediately about any damage caused to these objects which are not minor damages. Upon request, the Seller shall be obliged to return the objects in good order and condition if they are no longer needed for performing the contract concluded with us.
- 7.3 Any processing, mixing or combining (further processing) of provided objects by the Seller shall exclusively be done for us. The same shall apply for further processing of delivered goods by us so that we are considered the manufacturer and we thus shall acquire propriety rights of the product to the statutory extent

7.4 The assignment of the goods to us shall take place unconditionally and regardless of the payment of the price. In case we agree, however, to the Seller's conditional offer in individual cases by payment of the purchase price, the Seller's retention of title expires at the latest with payment of the purchase price for the delivered goods. We shall remain entitled to re-sale the goods in normal course of business even ahead of paying the purchase price by means of assignment in advance of the claims arising thereof (alternative application of the simple and to re-sale extended retention of title). At any rate, all forms of retention of title, particularly the amplified, transferred and to further processing extended retention of title shall be excluded.

## **§8 Warranty Claims**

8.1 The statutory regulations shall apply to our rights in case of defects of quality and title (including incorrect and short delivery as well as incorrect assembly and inadequate assembly and operating instructions) and in case of other breaches of duty by the Seller unless agreed otherwise in the following.

8.2 According to the applicable statutory provisions, the Seller shall in particular be liable that the goods have the agreed quality at the time of transfer of risk. In any case, those product descriptions, which are the subject matter of the respective contract or are incorporated in the contract in the same way as these GPC, - in particular due to identification or reference in our order - shall be valid as an agreement on the properties and condition. This shall apply regardless of whether the product description originates from us, from the Seller or from the manufacturer.

8.3 Notwithstanding § 442 section 1 sentence 2 BGB, we shall also be entitled to claims for defects without any restriction if the defect was unknown to us upon conclusion of the agreement even as a result of gross negligence.

8.4 The applicable statutory provisions shall apply for the commercial duty to inspect and notify defects (§§ 377, 381 HGB [translator's remark: German Commercial Code]) as follows: Our duty of inspection shall be limited to defects which become apparent upon visual check during our incoming goods inspection including the delivery documents as well as during our quality control using sampling (e.g. transport damage, wrong or short deliveries). If an acceptance procedure has been agreed upon, no duty of inspection shall apply. Apart from that, it depends on the extent to which inspection is expedient according to proper business procedures, taking into account the circumstances of the individual case



- 8.5 Deviations in quality and quantity shall be considered as rebuked in good time if we notify the Seller within 10 working days upon receipt of the goods. Notification as to hidden defects shall also be deemed to have been made in a timely fashion if they were reported to the Seller within a period of 10 working days after discovery.
- 8.6 Acceptance or approval of provided specimens or samples does not constitute a waiver of warranty rights.
- 8.7 Upon the receipt of written notification as to defects by the Seller, the term of limitation shall be inhibited until the Seller either rejects our claims or declares the defect to be remedied or otherwise rejects pursuit of negotiations about our claims. In case of replacement delivery and remedy of defects the warranty period shall begin anew for the replaced and remedied parts unless we had to conclude from the behavior of the Seller that he did not feel committed to conduct such measures but carried out the replacement delivery and remedy of defects as a gesture of goodwill or due to similar reasons.
- 8.8 The Seller's expenses incurred for purposes of inspection and supplementary performance (including possible reassembly and installation costs) shall be borne by the Seller albeit it turns out that there was in fact no defect. The liability for damages in case of unjustified demands concerning notices of defects shall remain unaffected; insofar we shall, however, only be liable if we have recognized or by gross negligence have not recognized that there was no defect.
- 8.9 In the event that the Seller fails to honor his obligation for supplementary performance - at our choice by remedy of the defect (rectification) or by delivery of an item free of defects (replacement delivery) - within a reasonable time limit as set by us, we shall be able to remedy the defect ourselves and demand from the Seller compensation for the expenses necessary for this or an appropriate advance payment. If supplementary performance by the Seller has failed or is unreasonable for us (e.g. because of particular urgency, endangerment of the operating reliability or the imminent occurrence of disproportionate damages), no time limit need be set; we shall notify the Seller immediately and if possible in advance.

## **§ 9 Supplier Regress**

- 9.1 In addition to the warranty claims, we shall have unrestricted entitlement to our statutory stipulated rights of regress within a supply chain (supplier regress according to §§ 478, 479 BGB). We shall in particular be entitled to demand precisely such kind of supplementary performance (repair or replacement delivery) from the Seller as the one we owe our customer in the individual case. This shall not infringe upon our statutory right of choice (§ 439, section 1 BGB).
- 9.2 Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses according to §§ 478 section 2, 439 section 2 BGB) we shall notify the Seller and request written comments by giving a brief account of the facts. If the comments are not provided within a reasonable period of time and also no mutual resolution is brought about, the claim for defects actually granted by the Seller shall be deemed to be owed to the customer; in this case the Seller shall be responsible for providing counter evidence.
- 9.3 Our claims arising from supplier regress shall also apply if the goods have been further processed by us or our customer, e.g. by installation into another product.

## **§ 10 Product Liability**

- 10.1 If the Seller is responsible for a product defect, the Seller is to indemnify us for claims by Third Parties as the cause lay within his sphere of control and organization and the Seller himself is liable in relation to Third Parties.
- 10.2 Under his obligation to indemnify, the Seller is to reimburse any expenses pursuant to §§ 683, 670 BGB that arise related to any recourse taken by Third Parties including for recall campaigns carried out by us. We shall, to the extent possible and reasonable, notify the Seller of the content and extent of recall measures and give the Seller an opportunity to comment. Further statutory claims shall remain unaffected.
- 10.3 The Seller is responsible for every claim made by Third Parties on the grounds of personal injury or damage to property, which can be traced back to a defective product which he delivered and is obliged to indemnify us from the resulting liability. If we are obliged to initiate a product recall affecting any Third Parties due to defects in one of the products delivered by the Seller, the Seller shall bear all costs associated with the recall.

10.4 The Seller is to take out and maintain a product liability insurance policy at his expenses with a minimum coverage amount of 7.5 million EUR per personal injury/damage to property. Upon request, the Seller is to forward to us a copy of said liability police at any time.

### ***§ 11 Statute of Limitation***

11.1 Unless otherwise stipulated, the contract parties' mutual claims shall be time-barred in accordance with the applicable statutory provisions.

11.2 Notwithstanding § 438 section 1, no. 3 BGB, the general limitation period for claims for defects is three years from transfer of risk. If an acceptance procedure has been agreed upon, the limitation period commences with the acceptance. The 3-year limitation period shall apply mutatis mutandis also for claims arising out of defects in title, whereby the statutory limitation period for claims in rem for the restitution of property (§ 438 section 1 No. 1 BGB) remain unaffected; claims on the grounds of legal defects shall not become statute-barred as long as the Third Party can assert the right against us - in particular in the absence of limitation.

11.3 The limitation periods applicable under the law governing the sale of goods, including the above extension, shall apply - according to applicable statutory provisions - to all contractual claims for defects. If a defect also entitles us to assert non-contractual compensation claims, the standard statutory period of limitation (§§ 195 and 199 BGB) shall apply unless the statutory periods of limitation under the law governed by the sale of goods result in a longer period in individual cases.

### ***§12 Property Rights***

12.1 In accordance with section 12.2 the Seller vouches for the fact that the product supplied does not infringe on Third Party industrial property rights or copyrights within the countries of the European Union or other countries in which the Seller manufactures or has assigned manufacturing.

12.2 The Seller is obliged to indemnify us for all Third Party claims from infringements to industrial property rights and copyrights according to section 12.1 and shall reimburse us for all costs incurred associated with the assertion of such claims. The afore-mentioned entitlement shall not be granted if the Seller proves that neither can he be held responsible nor could he have been aware of at the time of delivery by application of due business diligence.

12.3 Our further statutory claims from defects in title of the delivered goods shall remain unaffected.

### ***§13 Spare Parts***

13.1 The Seller shall be obliged to stock spare parts for the products delivered to us for a period of at least 10 years after delivery.

13.2 In case the Seller intends stop the production of the spare parts for the products delivered to us, the Seller is to immediately notify us about the decision. Subject to section 13.1, said decision must have been made at least 6 months ahead of the production stop.

### ***§14 Compliance with all Applicable Statutory Provisions***

14.1 In the course of performing this contract, the Seller shall be obliged to adhere to all applicable statutory provisions. The Seller shall in particular adhere to the act providing for minimum wages as of 11th August 2014 (Minimum Wage Law, MiLoG) in the respectively applicable version and shall pay his employees a salary which is at least the amount of the respective statutory minimum wage.

14.2 The Seller is put on notice that not necessarily all compensation components are to be taken into consideration for calculating the correct level of minimum wages. The compensation components which are to be taken into consideration for calculating the minimum wages shall thus be incumbent upon the Seller.

14.3 The Seller is to indemnify us for all claims in the context of §13 MiLoG. This shall also apply for possibly required costs which arise on our side from assertion of claims by employees or Third Parties (e.g. social insurance agencies). The afore-mentioned costs also include legal fees according to RVG [translator's remark: German Lawyers Compensation Act] from possibly required expenses for judicial and extrajudicial defense in case of claims.

### ***§ 15 Assignment***

The Seller shall not be entitled to assign claims from the contractual relation to Third Parties. This does not apply to monetary claims.

***§ 16 Place of Performance, Place of Jurisdiction, Applicable Law***

16.1 Place of performance and exclusive place of jurisdiction for both contracting parties shall be our registered office location for all disputes arising from the contractual relation.

16.2 These GPC and the contractual relation between us and the Seller shall be governed by the law of the Federal Republic of Germany excluding private international law and the UN Convention on the International Sale of Goods (CISG).