

**General Conditions for all Sale Contracts and Contracts for Work and Materials for Complete Lines, Machinery, Spare Parts, Modernizations and Services of the Supplier: NOMACO GmbH & Co. KG****1. Preamble****1.1. Context**

1.1.1. **Inclusion.** These General Conditions shall apply together with the other provisions of the individual agreement (hereinafter altogether referred to as "Contract"). Between Buyer and one of the above-mentioned suppliers (hereinafter the "Supplier").

1.1.2. **Priority of Individual Agreement.** In case of contradiction between these General Conditions and any conditions of the individual agreement, the conditions of the individual agreement shall prevail.

1.1.3. **Contradictory Conditions.** General terms and conditions appearing on Buyer's order or other documents that are additional to or different from these General Conditions and/or he individual agreement shall only become part of the Contract upon the express written consent of the Seller.

1.1.4. **Silent acknowledgement.** Receipt by Seller of Buyer's order or receipt by Buyer of Seller's order acknowledgement without Seller's objections to the terms and conditions of Buyer, shall not constitute acceptance by Seller of such terms and conditions of Buyer.

**1.2. Binding Force**

1.2.1. **Offers.** Seller's offers are not binding and subject to confirmation. Amendments in the scope of delivery after conclusion of the Contract may entail different pricing of individual components.

1.2.2. **Order Confirmation.** No offer/ order of Buyer shall become effective until confirmed by Seller in writing.

1.2.3. **Oral Statements.** Oral undertakings, representations and warranties are not binding unless confirmed by Seller in writing.

**1.3. Definitions**

1.3.1. **Incoterms.** Any reference made to trade terms (such as EXW, FOB, etc.) is deemed to be made to the relevant term of INCOTERMS 2010 published by the International Chamber of Commerce.

1.3.2. **The Product.** The object(s) to be supplied (and installed, as the case may be) under these General Conditions is (are) hereinafter referred to as "Product".

**2. Product Description and Product Information****2.1. Product details**

It is agreed that any information relating to the Product and its use, such as weights, delivery terms, measurements, capacities, prices, colors and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, pricelists of the Seller or his sub-Sellers, shall not take effect as terms of the Contract unless expressly referred to in the Contract. Seller's guarantees are binding only, if they are expressly stated as such in an offer or in an order confirmation and if Seller's obligations from such guarantees are clearly defined. General appraisals or indications as to the fitness of the Product for special purposes are binding only, if substantiated by specific parameters. Mentioning of the fitness to allow production of a specific end product is not a guaranteed quality of the product or an assurance that the product may be realized independent from the production process. Such assurances or the assurance to grant technical support does not oblige Supplier to render know how for the process of finishing, chemical and other treatment or confectioning of a specific end product.

**2.2. Norms and Standards**

2.2.1. **International Standards.** Unless otherwise agreed IN WRITING, quality and dimensions shall be determined according to the regulations DIN, EN, ISO or other international standards; as valid at contract date.

2.2.2. **European Standards.** If no such standards are specifically agreed, the corresponding European Standards and in their absence the generally accepted commercial practices shall apply.

2.2.3. **Reference.** Reference to standards, material specifications or factory test certificates and measurements are no guaranteed characteristics or guarantees.

**2.3. Indications of Buyer**

2.3.1. **Verification.** Seller shall not be obliged to check for correctness any documents submitted or data provided by the Buyer or his agent.

2.3.2. **Errors.** Seller shall not be liable for any errors, omissions or faults contained in the documents and data mentioned under 2.3.1. above except in case of Seller's gross negligence or willful misconduct or in another case of liability as mentioned under para 11.1. below.

**2.4. Documentation**

2.4.1. **Product Information.** If and to the extent agreed, the Seller shall provide information and documents which are necessary to permit the Buyer to erect, commission, operate and maintain the Product.

2.4.2. **Drawings.** The Seller shall not be obliged to provide manufacturing or workshop drawings for the Product or for the spare parts.

**2.5. Protection of Intellectual Property**

2.5.1. **Acquisition of rights.** Unless otherwise agreed in writing, the Buyer does not acquire any property or other exclusive rights in software, drawings, technical information and data of the Seller, which may have been made available to him. The Seller remains the exclusive owner of any Intellectual or Industrial Property Rights relating to the Product.

2.5.2. **Purpose of Documentation.** Drawings, technical documents or other technical information submitted to Buyer shall not, without the consent of the Seller, be used for any other purpose than the erection, commissioning, operation or maintenance of the Product.

2.5.3. **Disclosure.** In particular Buyer shall not disclose any drawing, technical document or other technical information nor shall he allow viewings of the Product to any third party, especially to Seller's competitors, without the express prior written consent of Seller, unless compelled by law or court order.

**3. Inspection of the Product(s) and Acceptance Tests****3.1. Carrying out of Inspections**

3.1.1. **Inspection.** Unless otherwise agreed, any agreed inspection shall be carried out at the place of manufacture during normal working hours.

3.1.2. **Inspection Report.** If the Buyer is not represented during the inspection, the Buyer shall receive a binding inspection report by Seller.

**3.2. Acceptance Tests**

3.2.1. **Test Runs.** Acceptance tests provided in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours of Supplier or one of his sub suppliers. In case a test run is due to take place at Buyer's site, Buyer may only refuse test runs in case of essential defects.

3.2.2. **Standards.** If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with generally accepted practice in the respective branch of industry in the country of manufacture.

3.2.3. **Announcement.** The Seller shall notify the Buyer of the acceptance test(s) in sufficient time to permit the Buyer to be present or represented at the test(s).

3.2.4. **Acceptance Test Report.** If the Buyer is not present or represented in spite of timely announcement of the test, the Seller shall make up the binding Acceptance Test Report. If during acceptance test essential defects are not reported from Buyer, and if nevertheless acceptance protocol is not signed by the Buyer, the acceptance protocol signed by the Seller shall be binding.

If an acceptance test is not carried out before start-up, it is equivalent to acceptance and equal to approval of acceptance tests, whenever production of marketable goods has been started. If the parties nevertheless agree on an acceptance test after the production of marketable products has been started, this does not influence the start of the warranty period. In case of minor defects Buyer may retain at maximum two times the amount equivalent to the estimated costs required for repair of such defects.

3.2.5. **Repetition of Acceptance Test.** If the acceptance test shows any lack of conformity of the Product not being only a minor discrepancy and therefore not qualifying for acceptance, then Seller shall be entitled to repeat the acceptance test after having remedied any deficiencies or made appropriate adjustments. Para's 3.2.3. and 3.2.4. apply accordingly.

**3.3. Costs**

3.3.1. **Costs for the Seller.** The Seller shall bear his expenses and costs for the acceptance test(s) carried out at the place of manufacture.

3.3.2. **Costs for Buyer.** The Buyer shall bear his and his representatives living expenses in connection with the inspections and acceptance test(s).

3.4. **Assembly.** Assembly of the Product on site of Buyer is conducted by way of a chief-assembly. Therefore the Buyer is required to put auxiliary personnel and equipment at Seller's disposal according to Seller's instructions.

Purchases surmounting such obligation to assist may be charged to Seller only if based on a written order from Seller. For the purpose of assembly Buyer takes care of a free access to the foundations.

**4. Shipment, Transfer of Risk****4.1. Means of Transportation, Routing and transfer of Risk.**

If it has been agreed that Seller shall arrange for transport/ shipment of the Product, Seller shall be free to determine the shipping route and means of transportation as well as the forwarding agent and the carrier. Risk of incidental destruction or deterioration of the Product passes to Buyer at the moment of hand-over to forwarder, if not stipulated i.c.w. Incoterms otherwise.

**4.2. Delay of shipment without Seller's Fault**

4.2.1. **Storage.** In the event the agreed shipment of Product will become impossible or will be delayed for reasons not attributable to Seller, Seller shall be entitled to store the Product at Buyer's risk and cost.

4.2.2. **Due Date of purchase price.** In such case Buyer will pay the agreed Contract price which would have become due upon delivery against warehouse receipt or similar document.

4.2.3. **Risk of Deterioration.** Any deterioration or loss of the Product during storage acc. to 4.2.1. and/or after take-over by the carrier does/do not entitle Buyer to refuse delivery and taking over of the Product or to request a reduction of the purchase price.

**4.3. Transfer of risk.**

Transfer of risk is determined by para 4.1. above and then exclusively by the relevant Incoterm, even if the parties agreed on a separate acceptance to be conducted after delivery.

**5. Delivery, Delivery Term, Delay****5.1. Cover purchases**

Seller's obligation to supply the Product shall be subject to Seller being supplied properly and in due time by his Suppliers unless in a case of gross negligence or willful misconduct of the Seller.

**5.2. Delay of Delivery without Seller's Fault**

5.2.1. **Dates.** Quoted delivery times are not binding and approximate.

5.2.2. **Delivery time limits/ Delivery dates.** The commencement of agreed delivery time limits / the application of delivery dates is subject to clarification of all necessary details of the Contract and fulfillment by the Buyer of all his contractual obligations to cooperate in due time including, but not limited to the provision of all official documents, the issuance of letters of credit and/or the effecting of down-payments. If the delay of Buyer to fulfill his contractual obligations lasts longer than 14 days, Seller may dispose of his capacities otherwise and will agree with Buyer on new adequate delivery dates.

5.2.3. **Readiness for Dispatch.** The delivery dates shall be deemed observed upon advice of readiness for dispatch in case the Product cannot be dispatched (delivered) in due time through no fault of the Seller.

**5.3. Delay of delivery Due to Force Majeure etc.**

If delivery is delayed by an event of Force Majeure or by an act or omission on the part of the Buyer or by any other event beyond the reasonable control and

responsibility of Seller, the time for delivery and the validity of the respective payment securities shall be adequately extended by a corresponding period having regard to all relevant circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

#### **5.4. Delay of delivery attributable to Seller**

**5.4.1. Liquidated damages.** If the Seller has not delivered the Product at the due date for reasons solely attributable to him, the Buyer is entitled, under exclusion of any other remedies available under contract or statutory law, to claim liquidated damages for sustained proven losses exclusively and limited by the following Clauses 5.4.2. and 5.4.3.

**5.4.2. Lump Sum.** Liquidated damages amount to 0,25 % (or such other percentage as may be agreed) of the purchase price or - in case the value of the delayed portion is less - 0,25 % of the value of the delayed portion of the Product for each complete week of delay.

**5.4.3. Limitation.** Total amount of indemnification for delay of delivery including liquidated damages for delay shall not exceed 2,5 % of the purchase price or - in case the value is less - of the value of the delayed portion of the Product. Such limitation and the 0,25 % lump sum shall not be valid in case the delay results from Seller's gross negligence or willful misconduct.

**5.4.4. Forfeiture.** The Buyer shall forfeit his right to liquidated damages, if he has not reserved this right upon receipt of the Product at latest.

**5.4.5. Due Date.** Liquidated damages of delayed delivery will be due when claimed by Buyer in writing, but not before total delivery is executed or the contract has been terminated according to 5.5.

#### **5.5. Termination at Delay of Delivery**

**5.5.1. Final Period.** If the Seller has not delivered the Product for reasons solely attributable to him, by the date on which the Buyer has become entitled to the maximum amount of liquidated damages under Clause 5.4.3 the Buyer may in writing demand delivery within a final reasonable period. This final period shall not be less than 30 extra days, if the contract concerns the delivery of goods and equipment.

**5.5.2. Request of Recession.** If the Seller does not deliver within such final period the Product and this is due to reasons solely attributable to him, then the Buyer may by notice in writing to the Seller, fully or partly rescind the Contract in respect of such part of the Product which has not been delivered.

**5.5.3. Compensation of Loss.** If the Buyer terminates the Contract in accordance with the preceding Clause 5.5.2., he shall be entitled to compensation of the proven direct loss exceeding the amount of liquidated damages, which he has suffered as a result of Seller's delay.

**5.5.4. Limitation.** The total compensation, including the liquidated damages for delay payable in accordance with Clause 5.4.3. shall not exceed 5 % of that part of the purchase price, which is attributable to the part of the Product in respect of which the Buyer has rescinded of the Contract. This limitation of liability shall not be valid in case of Seller's gross negligence or willful misconduct.

**5.5.5. Assembly and Start Up.** The above-mentioned rules for delivery apply also for assembly works due under the Contract. If not stipulated differently in the Contract, Seller's duties include assembly at Buyers site as well as mechanical and electrical start up.

#### **5.6. Delay of Acceptance**

**5.6.1. Notice.** Unless the Buyer's failure to accept delivery is due to any such circumstance as mentioned in Clause 10.1., the Seller may by notice in writing require the Buyer to accept delivery within a final reasonable period.

**5.6.2. Request of Termination by Seller.** If, for any reason for which the Seller is not responsible, the Buyer fails to accept delivery within such period, the Seller may by notice in writing rescind of the Contract in whole or in part.

**5.6.3. Compensation of Loss.** The Seller shall then be entitled to compensation for the loss he has suffered by reason of the Buyer's default.

**5.6.4.** Compensation of Seller in case of delay of acceptance amounts to 10% of the purchase price of the Product. Buyer may render proof that Supplier's loss is below 10%, Seller may render proof that his loss is above 10% of purchase price.

### **6. Price and Payment Conditions**

#### **6.1. Quotes**

**6.1.1. Subject to Change.** The quoted prices are subject to change prior to acceptance of Buyer's order by Seller.

**6.1.2. VAT.** Unless otherwise agreed, the prices do not include VAT.

**6.1.3. EXW.** Unless otherwise agreed, the prices shall be understood EXW (manufacturer).

**6.1.4. All ancillary costs,** such as reasonable packaging, **taxes, fees, customs duties and charges** incurred in connection with the delivery or service shall be borne by the buyer.

#### **6.2. Payment Conditions**

**6.2.1. Instalments.** The purchase price shall be paid against advance payment at the conclusion of the contract and against irrevocable L/C with confirmation from a first-class bank for the remaining purchase price.

**6.2.2. Effectuation of Payment.** All payments, without any deduction, shall be made on the due date to Seller's free and unrestricted disposal in the contractually agreed currency. Upon Seller's request Buyer shall extend the validity of an L/C for an appropriate time.

**6.2.3. Costs of Transfer.** Any bank fees and/or charges for the monetary transactions and/or for issuing the agreed L/C or payment securities shall be borne by the Buyer.

#### **6.3. Delay of Payment**

**6.3.1. Interest.** If the Seller has not received by the relevant due date the payment(s), the Seller shall be entitled to charge Buyer interest at a rate of 5.0 % p.a. from the day on which payment was due. From the day of Buyer's delay onwards Seller may charge interest at a rate of 8.0 % p.a. above the actual Base Rate of the European Central Bank. This does not exclude compensation for any exceeding losses, caused by payment delay.

**6.3.2.** If Buyer is in delay with one installment of the purchase price, Seller may request immediate payment of the remaining installments.

**6.3.3. Right of Retention.** In case of late payment, the Seller may, after having notified the Buyer in writing, suspend his performance of the Contract until he receives payment of all due amounts in full.

#### **6.4. Payment Security**

**6.4.1. Payment at risk.** If it becomes apparent after conclusion of the Contract that Seller's entitlement for payment is - for example in view of imminent insolvency - at risk, the Seller shall be entitled to an appropriate payment security - e.g. by way of payment guarantee from an international recognized bank - from Buyer as condition precedent to the delivery of the Product. In case such payment security upon request and adequate delay cannot be presented, then Seller may rescind the Contract and claim damages accordingly.

**6.4.2. Right of Dispute.** The Buyer shall not be entitled to set off any counter-claim(s) from any payments due by him, unless such counter-claim(s) is/are undisputed, legally binding or evidenced.

### **7. Retention of Title**

#### **7.1. Conditions of Transfer**

The Product shall remain the property of the Seller (Product under retention of title) until full satisfaction of all actual and future claims against the Buyer arising from the respective Contracts and the relationship with Buyer regardless of their legal basis, which at the time of conclusion of the Contract (have) come into being. In case the above retention of title is not effective according to the law of the country, to which the Product is supplied, a security corresponding to the retention of title shall be deemed agreed upon.

#### **7.2. Alternative Forms of Security**

**7.2.1. Resale.** Buyer is entitled to sell, to process or to connect and subsequently resell the Product under retention of title by way of prolonged retention of title, if this happens during his ordinary course of business. Pledge or transfer of title for securing other liabilities is not allowed. Buyer has to give immediate written notice of any amendments, confiscation, or other forms of third-party disposal to the Seller. The Buyer may only transfer title of the Product if all and any claims of the Seller are fulfilled.

**7.2.2. Processing and Amendments.** Any processing and amendments done by the Buyer will be done exclusively in the name and on behalf of the Seller. If any amalgamation of the Product with other products not being in the ownership of the seller take place, the Seller acquires joint ownership of the new product in the proportion in which the purchase price is related to the value of the new product. The new product is deemed to be the Product under retention of title according to these conditions.

**7.2.3. Assignment.** Buyer hereby assigns all future claims and ancillary rights he acquires in connection with the resale of the Product as well as claims against his insurers as security to the Seller. In case of an international resale the Buyer furthermore hereby assigns - when concluding the Contract - all actual and future claims against national and international lending institutions, especially from factoring, Confirmed and other Letters of Credit as well as bonds and guarantees to Seller who hereby accepts such assignment. If the resale takes place together with products not being in the ownership of the Seller - whether processed or not - any claim of the Buyer is deemed to be assigned in the proportional value of the purchase price of the Product under retention of title. Such assignment is not meant to be a grace period of the amounts due to the Seller.

**7.2.4. Realisation of the Receivables.** Buyer shall remain entitled to realize the assigned receivables also after such assignment. The Seller will nevertheless be entitled to claim for the receivables in his own name. He will not do so, as long as Buyer is not in delay of payment, no insolvency of the Buyer has been applied for, no such application has been dismissed due to lack of funds and no suspension of payments exists. If any of such cases arise, Buyer has to give prompt written notice to the Seller and has to give all necessary information and documents on the assigned claims and debtors to Seller. He will inform the debtors in writing about the assignment.

#### **7.3. Storage**

During the period of the retention of title the Buyer shall properly maintain the Product, keep it separate from other products and mark it as being in Seller's ownership. He has to insure the Product at his own costs for the benefit of the Seller against theft, breakage, fire, water and other possible risks.

#### **7.4. Transfer of title upon request of Buyer**

The Seller will transfer ownership of the Product under retention of title and assigned receivables to Buyer, in so far as the respective values surpass 120% of the Seller's claims against Buyer.

### **8. Liability for Non-Conformity of the Product**

#### **8.1. Examination, Notification**

**8.1.1. Examination.** The Buyer shall examine the Product without undue delay after its arrival at destination for the absence of any non-conformity.

**8.1.2. Notice.** Buyer shall notify the Seller in writing of any non-conformity of the Product.

**8.1.3. Content of the Notice.** The notice shall specify the nature of such non-conformity.

**8.1.4. Term.** Notice has to be given within 10 days from the date when the Buyer discovers or ought to have discovered the non-conformity.

**8.1.5. Preclusion.** In any event the Buyer shall have no contractual remedy for non-fulfillment or non-conformity, if he fails to notify the Seller thereof (by specifying the nature of such non-fulfillment or non-conformity) within 12 months from the date of delivery of the last effectively delivered partial delivery of the Product. This does not apply, if Seller has intentionally not mentioned the non-conformity, if liability results from breach of guarantee or if the non-conformity is caused by an intentional or gross negligent breach of duty of if the non-conformity in connection with an at least negligent behavior of Seller has caused damage to health or bodily injury to Buyer or his employees

**8.1.7. Minor Deficiencies.** Products will be deemed to conform with the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the Parties.

### **8.2. Remedies**

Where the Product is nonconforming (and provided the Buyer has given notice of the lack of conformity in compliance with Clause 8.1), the Seller shall at his option have the choice between repair and replacement:

**8.2.1. Repair** of the (portion of) Product shall take place within a period of time reasonable under the circumstances and at Buyer's premises, to which Buyer has to grant access for Seller's personnel and to give all reasonable end necessary support and assistance.

**8.2.2. Replacement** takes place of the nonconforming Product with a conforming Product on a CIF- / CIP-delivery basis within a period of time reasonable under the circumstances. The Seller shall be entitled to remove and take back the replaced (portion of) Product.

### **8.3. Repetition of Remedial Action**

In case the repair or the replacement do not immediately lead to conformity of the Product, Seller is entitled to repeated repairs or replacements at his choice, unless further repairs or replacements are unreasonable and unacceptable for the Buyer.

### **8.4. Absence of Non-Conformity**

If the Buyer has given notice of the non-conformity and no lack of conformity is found for which the Seller can be held responsible, the Seller shall be entitled to damages and/or compensation for the expenses incurred as a result of such notice.

### **8.5. Notice**

If within a final reasonable period of time, the Seller does not fulfill his duties under Clause 8.3., the Buyer may rescind of the Contract or claim damages in accordance with clause 11.

### **8.6. Repair by Third Party**

If the Seller has chosen to repair the Product but fails to fulfill his remedy obligations within such final period of time, the Buyer may himself undertake or employ a third party to undertake the necessary remedial works at the expense of the Seller.

### **8.7. Costs**

Where successful remedial work has been undertaken by the Buyer or a third party, Seller shall reimburse the reasonable and properly substantiated costs incurred by the Buyer, however, limited to 50 % of the price of the nonconforming portion of the Product. This limitation of liability does not apply if one of the cases of para 11.1. below apply.

### **8.8. Reduction/ Recession**

Only where the nonconformity has not been successfully remedied in accordance with the preceding sections, Seller may choose between reduction of purchase price, recession or damages.

**8.8.1. Reduction of Purchase Price.** Seller may decide to grant a reduction of the purchase price in proportion to the reduced value of the Product.

**8.8.2. Recession** and/ or damages. Otherwise Seller may rescind the Contract after giving written notice to the Buyer and/ or claim damages. In this respect the provisions of the individual agreement and the conditions of these general conditions apply, complementary the legal provisions apply.

### **8.9. Non-Conformities not under Seller's responsibility**

**8.9.1. Material provided by Buyer.** The Seller is not liable for non-conformity of the Product arising out of materials provided by or a design made or specified by the Buyer, except if breach of an informational duty by Seller is due to gross negligence or willful misconduct.

**8.9.2. Proper use.** The Seller is liable only for lack of conformity of the Product which appears under the conditions of operation provided for in the Contract and under proper use of the Product. Buyer is especially obliged to observe the following duties:

He shall observe all prescriptions of the maintenance- and instructions manuals, to accept any training offer made by the Seller, to keep a maintenance diary, in which all maintenance works shall be entered with date, item and result of such maintenance works and to inform Seller immediately of any eventually identified defects.

**8.9.3. Risks of use.** Buyer is responsible for protection of the Product and the staff against any risk of using the Product from first start up onwards. Special installations of protection against such risks, if not within the scope of delivery, have to be supplied by the Buyer. This is especially valid for installations for fire protection, spark detection, fire signalling systems and more general alarm systems

**8.9.4. Excessive Use.** The Seller's liability does not cover deficiencies which are caused by faulty operation, storage, maintenance, incorrect erection / installation or faulty repair by the Buyer or third parties or by alterations carried out without the Seller's consent in writing.

**8.9.5. Wear and Tear.** Finally, the Seller's liability does not cover normal wear and tear or damage from corrosive materials, incorrect solvents, fluids or lubricants, unsuitable raw material and incorrect or faulty power – or water supply, if such supplies have been provided by Buyer.

### **8.10. Limitation**

Unless otherwise agreed in writing, no action for non-conformity, non-fulfillment or damages can be taken by the Buyer, whether before judicial or arbitral tribunals, after one (1) year from the date of shipment of the Product or its storage as per Clause 4.2.1. whichever occurs earlier. Claims regarding non-conformity of spare parts delivered under warranty are subject to the warranty period of the Product. Spare parts not subject to warranty are delivered with a one-time warranty period of three months. Except wear and tear parts repeatedly replaced spare parts and spare parts delivered free of charge but without obligation to do so, are not subject to warranty. This does not apply if the deficiency is due to gross negligence or willful misconduct, liability results from breach of guarantee

or if the deficiency in connection with an at least negligent behavior of Seller caused bodily injury to Buyer or his employees.

If an acceptance is agreed upon, the warranty period starts with signing of the acceptance protocol, if no other term is decisive in accordance with para. 3.2. above. However, also in this case the warranty period shall expire ultimately 15 months after complete delivery.

## **9. Co-Operation between the Parties**

### **9.1. Third Party's Claims against Buyer**

The Buyer shall promptly inform the Seller of any claim made against the Buyer by his customers or third parties concerning the Product delivered or Intellectual Property Rights or other rights related thereto.

### **9.2. Third Party's Claims against Seller**

The Seller will promptly inform the Buyer of any claim which may involve the product liability of the Buyer.

## **10. Force Majeure**

### **10.1. Consequences**

**10.1.1. Damages, Restrictions.** In an event of force majeure, the Parties are exempted from the fulfillment of their respective obligations for the duration of the event of force majeure. An event of force majeure includes without limitation: natural disasters, strikes, lock-out, sabotage, embargo, import restriction, port congestion, lack of usual means of public transportation or traffic roads, industrial dispute, war, civil war or warlike operations, threats of terrorism or strikes of terrorists, civil commotion, usurpation of civil or military government, restrictions in the use of power. Identically treated as events of force majeure are delays in deliveries by subcontractors / sub-Sellers caused by any such circumstances referred in this clause or any other circumstances which are beyond the reasonable control of the party affected ("Force Majeure").

Equal to such event of Force Majeure at the place of performance of duties is such event in a different place, if an extension of such risk to the place of performance in a foreseeable time cannot be excluded.

**10.1.2. Excuses.** An event of Force Majeure, however, shall not excuse the failure of payment of moneys due by either Party to the other.

### **10.2. Notifications**

The Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing without delay on the occurrence and on the cessation of such circumstance.

### **10.3. Other Consequence**

**10.3.1. Hindrance of Seller, Prolongation.** If Force Majeure prevents the Seller from fulfilling his obligations in time, the delivery period shall be extended adequately, and Buyer shall extend the validity of payment securities correspondingly.

**10.3.2. Hindrance of Buyer, Securing of the Product.** If Force Majeure prevents the Buyer from fulfilling his obligations and duties, he shall compensate the Seller for expenses incurred in securing and protecting the Product.

**10.3.3. Long lasting Hindrance.** If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than thirty (30) days on account of an event of Force Majeure, the Parties will attempt to develop a mutually satisfactory solution in particular with regard to the time of delivery and the payment of the Contract price.

**10.3.4. Rescission.** Failure to agree upon such solution within another thirty (30) days of being requested by the other Party therefore, shall entitle either Party to rescind of the Contract by giving written notice to the other.

**10.3.5. Consequences of Rescission.** Upon such termination, the Buyer shall pay to the Seller the Contract price properly attributable to the parts of the Product or work executed by the Seller at the date of rescission and the costs incurred by the Seller for the removal of Seller's equipment from Buyer's premises (if applicable).

## **11. Damages, Limitation of Liability**

### **11.1. Limitation of Liability**

Claims for damages or compensation of expenses (hereinafter together referred to as "claims for damages") regardless of their legal basis against the Seller are excluded unless based on the provisions of the Product Liability Code, a breach of contractual or statutory obligations by the willful misconduct or gross negligence of the Seller, liability for health or bodily injury of the Buyer or his employees due to a breach of obligation solely attributable to the Seller, or a guarantee for the existence of a certain characteristic of the Product or the breach of fundamental contractual obligations by the seller.

### **11.2. Breach of essential Contractual Duties**

In case of a breach of essential contractual duties by the Seller damages of the Buyer are restricted to the typical, foreseeable loss, except if such damage is caused by intentional or gross negligent behavior of the Seller, or if there is liability for health, bodily injury of the Buyer or his employees or if liability is due to a guarantee for the existence of a certain characteristic of the Product. Essential duties are those duties which allow performance of the contract. Foreseeable is a damage, which typically may occur when such duty is neglected.

### **11.3. Restrictions**

Seller's liability for the above is limited for property damages to a maximum of EUR 5 mio. per accident, in total, however, not exceeding EUR 5 mio and for bodily injury/ death of persons to EUR 2.5 mio. per accident.

### **11.4. Responsibility**

These provisions shall only be applied to personal injury and property damages which occur, if the Product has been installed / erected under the responsibility of Seller or which result from other circumstances solely attributable to the Seller.

### **11.5. Not Binding Advice**

If Seller furnishes Buyer with advice or other assistance which concerns any Product supplied hereunder or any system or equipment in which any such Product may be installed, the furnishing of such advice or assistance is given on



a good will basis and shall not subject Seller to any liability, whether in Contract, warranty, tort (including negligence or patent infringement) unless in a case of willful misconduct or gross negligence of the Seller or if there is another case of liability under para 11.1.above. If reference is made to certain referential end products to be produced on the Product, this may in no case construed as being a warranty on certain production technologies or putting certain know how at Buyers disposal.

**11.6. Agents, Employee's**

A breach of duty by Seller's agent or employee is equal to the breach of duty by Seller himself.

**11.7. Insurance**

Buyer is requested to protect himself against the risks not taken over by Seller and to take care for the relevant insurance cover.

**12. Miscellaneous****12.1. Severability**

12.1.1. **Invalidity.** The invalidity of any provisions of these General Conditions or any individual provisions of the Contract does not affect the validity of the remaining provisions.

12.1.2. **Intended Purpose.** Any invalid provision shall be replaced by the parties by a valid one which is likely to achieve the intended commercial purpose.

**12.2. Amendments**

Any amendments and supplements of these General Conditions and the other terms of the Contract shall not become effective unless made in writing.

**12.3. Place of Performance**

For the purpose of this Contract and unless otherwise agreed, the place of performance of the Parties shall be or shall be deemed to be the place of Seller's place of business.

**12.4. Notices, Amendments**

12.4.1. **Written Form.** Any notice to be given pursuant to the Contract and any amendments of the Contract shall be in writing signed by the Party giving such notice or making such amendment.

12.4.2. **Transmission.** Notices shall be delivered by hand, by courier or sent by prepaid first-class post to the other Party's business address designated in the contract documents and shall be deemed to be duly received

- if delivered by hand, courier or telegram, on the date when properly received at the address of the recipient; or

- if sent by registered mail, on the date on the return receipt; or

- if sent by facsimile, upon receipt by the sender of

an acknowledgement or transmission report generated by the sender's facsimile machine, provided a copy of such facsimile is also sent by one of the aforementioned notice methods.

**13. Jurisdiction and Governing Law****13.1. Jurisdiction**

All disputes arising from the Contract shall in first instance be dealt with in friendly negotiations. If those negotiations are not successful, the ordinary public courts shall deal with the matter. Place of jurisdiction shall be the statutory seat of the Seller. This shall also apply to disputes as to the creation and validity of a contractual relationship. Seller however shall have the right to proceed against Buyer in appropriate courts at the customer's place of business.

**13.2. Applicable Law**

This Contract and the legal relations of the Parties shall be governed by and construed in accordance with the substantive law of the Federal Republic of Germany. The law of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

**13.3. Ambiguities**

In case of contradictory or ambiguities between the German and English version of these General Conditions the German version shall prevail.

Updated: January 2019