

## **General Terms and Conditions of Purchase (Conditions of Purchase) of Alberdingk Boley GmbH and Alberdingk Boley Leuna GmbH**

### **I. General, scope of application**

1. The present General Terms and Conditions of Purchase (Conditions of Purchase) apply to all business relationships between Alberdingk Boley GmbH as well as Alberdingk Boley Leuna GmbH (hereinafter referred to as the "Purchaser") and its business partners and suppliers (hereinafter referred to as the "Supplier"). The Conditions of Purchase shall only apply where the Supplier is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a special fund under public law. The current version of the Conditions of Purchase is available to download from the website [www.alberdingk-boley.de](http://www.alberdingk-boley.de).
2. The Conditions of Purchase apply, in particular, to contracts for the purchase and/or delivery of movable items (hereinafter also referred to as the "goods") and to services, regardless of whether the Supplier manufactures the goods itself or purchases them from other suppliers (§§ 433, 651 German Civil Code). The Conditions of Purchase, as amended, are also to be regarded as the framework agreement, including for future contracts, for the purchase and/or delivery of movable items with the same Supplier, without the Purchaser being required to refer to these Conditions again in individual instances, unless otherwise agreed in the individual contract.
3. These Conditions of Purchase shall apply exclusively. Deviating, contrary or supplementary General Terms and Conditions of the Supplier shall only become a component of the contract to the extent that the Purchaser has expressly consented to their applicability in writing. This requirement of consent applies in every case, for example, even where the Purchaser accepts deliveries from, or makes payments to, the Supplier without reservation in the knowledge of the Supplier's General Terms and Conditions.
4. Individual agreements made with the Supplier in individual instances (including collateral agreements, supplements or amendments) always take precedence over these Conditions of Purchase. A written contract or written confirmation by the Purchaser is decisive for the contents of such agreements.
5. Legally relevant declarations and notifications, which the Supplier is obliged to provide to the Purchaser after conclusion of the contract (e.g. setting deadlines, reminders, declarations of rescission), require the written form to be effective.
6. References to the applicability of statutory provisions serve the purpose of clarification only. The statutory provisions shall apply even in the absence of such clarification, insofar as these are not directly modified or expressly excluded by these Conditions of Purchase.

### **II. Contract conclusion**

1. Orders and amendments to orders are only binding when issued or confirmed by the Purchaser in writing. The Supplier is obliged to notify the Purchaser of obvious errors (e.g. typing or calculation errors) and incompleteness of the order, including the order documentation, for the purposes of correction/completion before acceptance; the contract shall otherwise be regarded as not concluded. Oral, collateral agreements are invalid. The Supplier must confirm the order within a maximum period of three (3) days calculated from receipt. The same applies for amendment of an order. After expiry of this period, the Purchaser is entitled to refuse the order or its amendment, without this giving rise to any claims by the Supplier against the Purchaser.
2. The Purchaser is entitled, until complete fulfilment of the order, to request amendments to the order with respect to the properties, delivery or delivery period of the items or services ordered at the expense of the Supplier.
3. Delayed acceptance shall be regarded as a new offer and shall require acceptance on the part of the Purchaser.

### **III. Services, delivery period, default of delivery and Supplier's duty to cooperate**

1. The agreed delivery dates and delivery times are binding; they are fixed deadlines. Receipt of the delivery item by the Purchaser is decisive for compliance with the delivery deadline or delivery period. Deliveries are made free of charge to the Purchaser at the Supplier's risk, unless otherwise agreed. Where the place of destination is not specified and nothing else has been agreed, the delivery shall be made to the Purchaser's business headquarters in Krefeld (Germany). The respective place of destination is also the place of performance.  
The Supplier shall bear the procurement risk for its services, unless otherwise agreed in individual cases (e.g. sale of in-stock items).
2. The Supplier undertakes to inform the Purchaser immediately, in both oral and written form, if it anticipates being unable to meet the agreed delivery deadlines - for whatever reason. Unconditional acceptance of a delayed (partial) delivery or (partial) services does not represent a waiver by the Purchaser of rights with respect to the untimely (partial) delivery or (partial) services.
3. For deliveries which included installation / services, transfer of the defect-free goods after installation / services has / have been properly carried out - and for the delivery of machinery or systems (building components) this includes delivery of the documentation required for initial operation - is decisive for timeliness of the delivery. Insofar as acceptance is contractually agreed between the Contracting Parties or provided for by law, the date/time of acceptance shall be decisive.  
Deliveries / services ahead of schedule or partial deliveries / services require the prior agreement of the Purchaser and may affect the annual supplier evaluation.
4. Documentation required for the order to be carried out must be requested by the Supplier from the Purchaser in good time.  
The Supplier undertakes to cooperate with processing the order, as far as is reasonable. Where the order relates to delivery of a machine or systems (building components), the Supplier undertakes, in particular, to ensure proper initial operation of the equipment at the Purchaser's location, e.g. by provision of appropriately trained personnel.

5. Where the Supplier fails to meet a delivery deadline for reasons within its scope of responsibility, or where it exceeds an agreed delivery period, the Purchaser is entitled, without prejudice to further legal claims, at its discretion, to withdraw from the contract or to claim damages.

All additional costs incurred as a result of late deliveries or services (e.g. additional freight costs, retrofitting costs, extra costs incurred for covering purchases following loss of interest in the delivery/service etc.) and other damages shall be borne by the Supplier. In the event that deadlines are repeatedly exceeded and deliveries or services are repeatedly defective, the Purchaser is entitled, without prejudice to other claims and, further, in respect of deliveries or services not yet due or not yet performed under successive supply contracts or from other contracts, to withdraw from the contract in whole or in part. Where circumstances occur, which pose a threat to timely delivery or services, the Supplier must inform the Purchaser immediately, initially by telephone and then in writing, indicating the reasons.

6. Statutory provisions apply to default of acceptance by the Purchaser. The Supplier must expressly offer its services, even in the case that a defined or definable calendar period is agreed for action or cooperation by the Purchaser (e.g. provision of material). Where the Purchaser is in default of acceptance, the Supplier can require damages to cover its additional expenditure pursuant to statutory provisions (§ 304 German Civil Code). Where the contract relates to non-fungible items to be manufactured by the Supplier (unique products), the Supplier is only entitled to further rights, where the Purchaser is under an obligation to cooperate and is responsible for the failure to cooperate.

#### **IV. Delivery / Shipping, REACH Regulation**

1. Subject to other arrangements between the Parties, delivery of goods is to be made to the place of delivery in accordance with Incoterms 2010.

For all deliveries, the complete delivery documentation and certificates of analysis must be provided, at the latest with delivery of the goods, along with other necessary documentation providing the order number, date of order, raw materials number and symbol as well as the batch number or lot number, gross and net weight, number of packages and packaging type, place of delivery (unloading point), consignee, delivery quantity and delivery address and test certificates in accordance with the specifications agreed. For tanker deliveries, a weigh ticket must be enclosed.

2. For third country deliveries (imports), the Supplier must indicate on the shipping documents whether the goods are duty paid or duty unpaid, depending on the Incoterms 2010, which have been agreed in the order. For duty paid goods, the Supplier must provide proof of duty payment in the shipping documents.

For goods that are duty unpaid, the following customs documents must be provided promptly by the Supplier to the Purchaser:

- Transit accompanying documents (e.g. T1)
- Shipping documents,
- Customs invoice or commercial invoice,
- Preference documents (e.g. Form A, EUR.1, A.TR),

- Certificate of origin,

and, where applicable, other documents required for customs.

The Supplier must ensure that all the necessary information for the customs notification procedure is fully and accurately provided in good time at the authorized location for submission of advance notification.

3. The Supplier undertakes to inform the Purchaser, in writing and in detail, of any authorization requirements for (re-)exports in accordance with the respective national export and customs provisions (German, European and US-American export and customs provisions) and the export and customs provisions of the country of origin of the goods and services.

4. To prevent transportation damage, it is incumbent upon the Supplier to package the goods carefully. The Supplier bears liability for any damages arising as a result of improper packaging. All packaging (overpack, transportation packaging and sales packaging) will be collected by the Supplier or a third party from the place of destination upon request of the Purchaser. Where the packaging used does not comply with the Purchaser's instructions, the latter is entitled to return it, carriage forward, or, at its discretion, to dispose of it at the Supplier's expense. Invoiced, larger packaging in usable condition can be returned by the Purchaser, carriage forward.

5. The Supplier must package, identify and ship hazardous products and materials in accordance with relevant national and international provisions, in particular, in accordance with the German Dangerous Goods Ordinance.

The Supplier shall further ensure that the products delivered by it comply with the provisions of EC Regulation No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (hereinafter referred to as the "REACH Regulation").

In particular, the Supplier undertakes to obligate all its suppliers to fulfil the duties according to Article 3 No. 32 REACH Regulation with regard to supplying the goods. In all the instances provided for at Article 31(1) to (3) REACH Regulation, the Supplier shall provide the Purchaser with a safety data sheet in accordance with Article 31 REACH Regulation in the language of the recipient country.

6. The Supplier bears the risk of loss or damage to the contractual goods, including to the documentation specified at § 4(1) and § 4(2), until their actual transfer at the place of delivery. Insofar as delivery has been agreed between the Contracting Parties to include installation / assembly / services, risk transfers to the Purchaser only once installation / assembly / services and transfer have been properly carried out.

7. Where acceptance is contractually agreed or legally required, the Contracting Parties shall mutually agree an acceptance date/time upon written request of the Supplier. The result of acceptance will be recorded in an acceptance report.

8. Transfer of risk takes place upon receipt of the goods at the Purchaser's works by virtue of acceptance by the warehouse clerk, who signs off receipt of the goods on the delivery note. For services performed, successful acceptance by the Purchaser shall be indicated in an acceptance report. For CAD ("cash against documents") purchases, transfer of risk takes place upon payment for the goods in accordance with FOSFA 53

and NOFOTA. Acceptance by other means, in particular, by examination, expert's report, certification or work record, is excluded. Payment of the invoiced amount does not signify acceptance.

## **V. Supplier's declaration, customs, export control**

1. For deliveries and services, which are made from an EU country other than Germany, the Supplier must provide the EU Tax Identification Number.
2. For first shipments, the Supplier must provide a long-term supplier declaration for goods with preferential origin status within the meaning of § 11 of these Conditions of Purchase pursuant to (EU) Regulation No. 989/2017, unsolicited and free of charge.

## **VI. Sustainability**

1. The Purchaser operates in accordance with the guiding principles of sustainable development and complies with internationally-recognized, basic standards for occupational safety, health and environmental protection, employment rights, human rights and responsible corporate management (hereinafter referred to as the "ESG Standards").

The Supplier shall ensure compliance with the ESG Standards and undertakes to obligate third parties that it engages to fulfil the contract (e.g. subcontractors) to comply with the ESG Standards.

2. In executing the contract, the Supplier undertakes to comply with the Purchaser's standards on occupational safety, health and environmental protection.

## **VII. Quality**

1. The Supplier must ensure that its deliveries/services comply with the state-of-the-art technology, up-to-date safety technology, safety provisions and the agreed technical data and specifications.
2. The Supplier shall adhere to environmental protection provisions and shall have due regard to energy, safety and waste disposal considerations when manufacturing its products.
3. The Supplier undertakes to ensure effective quality assurance and, upon request of the Purchaser, to operate an integrated management system in accordance with the standards, ISO 9000 ff. / ISO 14000 ff. / ISO 50001 ff., OHSAS 18001, or equivalent. The Supplier grants the Purchaser the right to audit the management system established by the Supplier for functionality.
4. The Supplier undertakes to notify the Purchaser without delay, in advance and in writing, in the event of any envisaged product modifications and / or changes in manufacturing procedures or methods of analysis and any change to the legal classification of the products supplied in accordance with the German Ordinance on Hazardous Substances. Product modifications shall be understood to include, for

example, modifications with respect to the quality of the products, raw materials and raw material sources, change of production site etc.

### **VIII. Control rights**

1. Insofar as the Purchaser or competent authorities request access to the Supplier's production process and documentation relating to the order to inspect specific requirements, the Supplier declares that it is prepared, upon request of the Purchaser, to allow such an inspection or audit of its operations and to provide all reasonable assistance.
2. The Purchaser is at liberty to inspect execution of the contract by the Supplier at its business premises or factory, either itself or using a third party. The Purchaser warrants that it will only carry out such an inspection having given prior notice to the Supplier. The Supplier grants the Purchaser or a third party engaged by the latter the option of visiting the Supplier's production sites used for contract execution. Each Contracting Party shall bear its own expenses incurred hereby.
3. The provisions at § 8(1) and (2) do not affect the Purchaser's contractual or statutory rights.

### **IX. Contractual performance by third parties**

1. The Supplier shall, in principle, fulfil its contractual obligations itself. It may issue subcontracts only with the Purchaser's consent. Exchanging subcontractors also requires the Purchaser's consent.
2. The Supplier undertakes to comply with the Purchaser's applicable safety regulations and shall impose this obligation on subcontractors engaged by it.

### **X. Pricing and payment terms**

1. The price stipulated in the order is binding. All prices shall be understood to include statutory VAT, unless this is shown separately. Invoices shall be issued for completed deliveries and services.

The invoice must meet applicable legal requirements for invoicing, in particular, fiscal requirements, including the VAT law to which the deliveries / services set out in the invoice are subject.

Invoices must be submitted after delivery is completed, separately and in single copy, providing exact information as to the purchase order date, to the invoice address indicated in the order.

Following an appropriate request by the Purchaser, the Supplier must issue the invoice in electronic form, which facilitates electronic settlement of the invoice by the Purchaser.

2. The following information must be contained in the invoice:

- Supplier's name and address,

- Delivery address, if different,
- Purchaser's name and address,
- Terms of delivery and payment,
- Date of invoice,
- Invoice number,
- Supplier's IBAN and BIC
- VAT identification number,
- Order number,
- Supplier's tax number,
- Description of goods,
- Customs tariff number
- Quantities,
- Net price and currency,
- VAT and currency,
- Gross price and currency.

whereby invoices should copy the information in the order with respect to the sequence of items and item numbers.

Insofar as possible, the invoice should provide the Purchaser's cost centre.

3. Unless otherwise agreed in specific instances, the price includes all services and ancillary services provided by the Supplier (e.g. assembly, installation) and all ancillary costs (e.g. appropriate packaging, transport costs, including any transport and liability insurance).

4. The agreed price is due, at the earliest, 30 calendar days from completion of delivery and services (including, where applicable, agreed acceptance) and receipt of a proper invoice.

Unless otherwise agreed, the Purchaser shall receive a 3% discount upon paying the purchase price within 14 days of delivery of the goods and invoicing.

For bank transfers, payment shall be deemed to have been made in good time where the Purchaser's transfer instruction is received by the Purchaser's bank prior to expiry of the payment period; the Purchaser is not responsible for delays in the payment process of the banks involved.

5. Payment does not signify acceptance of conditions and prices and affects neither the Purchaser's rights in respect of improperly performed deliveries / services nor the Purchaser's examination rights nor the right to object to an invoice for other reasons.

6. Default interest amounts to 9 percentage points above the basic interest rate annually. Maturity interest is not payable by the Purchaser. Statutory provisions shall apply in respect of the occurrence of default by the Purchaser, and, where applicable, by way of deviation from these, a written reminder is required from the Supplier in every case.

7. The Purchaser is entitled to deduct source tax from remuneration payable to the Supplier in the amount owed by the latter under German law and which the Supplier is liable to pay. Insofar as the Supplier provides an exemption certification from the

German Federal Central Tax Office prior to payment of the remuneration, deduction of source tax shall be reduced or waived in a corresponding amount.

## **XI. Origin of goods**

1. The Supplier undertakes to indicate the non-preferential origin of goods in the commercial documents. Further, the Supplier shall provide the certificate of origin relating to the origin of the goods, upon request of the Purchaser.
2. The goods must comply with the terms of bilateral or multilateral preference agreements or the unilateral terms with regard to country of origin of the Generalized System of Preferences (GSP), insofar as the deliveries fall within the scope of the movement of goods.

## **XII. Non-disclosure, rights of use**

1. The Purchaser retains property and intellectual property rights to all illustrations, plans, drawings, models, samples, calculations, executive instructions, product descriptions, data, materials, enquiries, invitations to tender and other documentation. Such documentation is to be used exclusively for the contractual services and must be returned to the Purchaser after completion of the contract. Documentation must not be disclosed to third parties, even after termination of the contract. The non-disclosure obligation ceases to apply only if and to the extent that the knowledge contained in the documentation provided is generally known. A right of retention of the Purchaser's documentation by the Supplier is excluded.
2. The preceding provision applies accordingly for substances and materials (e.g. software, finished and half-finished products) and for tools, templates, samples and other items that the Purchaser provides the Supplier for manufacturing purposes. Such items - where unprocessed - shall be stored separately at the Supplier's expense and adequately insured against destruction and loss.
3. The Supplier undertakes to treat as strictly confidential information provided to it in the context of the contract and all confidential information obtained during execution of the contract for the term of the contract and afterwards.

The Supplier undertakes not to provide confidential information to a third-party without the prior, written consent of the Purchaser outside execution of the contract and not to make commercial use of such information and to refrain from any other activity in connection with the confidential information communicated and obtained.

The Supplier shall treat the confidential information as strictly confidential and shall neither disclose the said information to third parties who are not authorized persons nor otherwise make the said information available and shall make appropriate arrangements to protect the confidential information, at a minimum, taking such measures as the Supplier takes to protect particularly sensitive information in relation to its own company.

4. "Confidential information" for the purposes of this Article shall mean all information of a financial, technical, economic, legal or tax nature, which relates to the business activities, employees or board of management, or other information (including data,



records and know-how) which pertains to the Purchaser and its affiliates (including the company) and which is, directly or indirectly, disclosed or otherwise made available to the Supplier, its institutions, employees, consultants or other third party engaged by it, by the Purchaser or its affiliates (including the company) or otherwise made known to the Supplier.

The data medium on which the said information is carried is irrelevant; in particular, oral information is also included. It is also irrelevant whether documents or other data media were created by the Purchaser, the Seller or by another party, insofar as they carry information which pertains to the Purchaser or its affiliates.

5. The confidentiality obligations do not apply where

a) the Purchaser provides its prior, written agreement to the Supplier disclosing the confidential information to a third party in an actual, individual instance,

b) the Supplier obtained the confidential information from a third party, insofar as the third party obtained the information lawfully and is not in violation of any confidentiality obligation binding it by passing on the information.

c) the Supplier is required to disclose the confidential information by order of a competent court or authority or other such institution or under its statutory / legal obligations or on the basis of stock exchange rules and regulations, whereby the Supplier must take all reasonable steps to prevent or limit, to the fullest extent possible, such disclosure of the confidential information.

6. The obligation to maintain the confidentiality of financially sensitive information within the meaning of the German Energy Industry Act and the obligation of non-discriminatory disclosure of information which may be commercially advantageous within the meaning of the German Energy Industry Act, remain unaffected by the preceding provisions.

7. Technical documentation, papers, drawings, diagrams, outline plans, graphics, photographs, layout templates and other documentation - irrespective of the data medium on which they are recorded and regardless of format - and all samples, tools, materials and other equipment, created by the Supplier within the scope of contract implementation become the property of the Purchaser when they are provided. The Purchaser shall obtain, for all the above-mentioned work - insofar as permitted by law - all copyrights, moral rights, and trademark-related rights of use and all rights in connection with the same to the Supplier's delivery items or object of services including all conceivable legal interests in the design (designs, drafts, concepts), including for types of use that are unknown at the time the order is placed.

The Purchaser is not obliged to pay any separate remuneration for transfer of the above-mentioned rights; such transfer is fully included in the price indicated for the orders.

8. The Supplier may only advertise and reference the business relationship with the prior, written consent of the Purchaser.

### **XIII. Retention of title, rights of set-off and rights of retention**

1. Rights of set-off, rights of retention and the right to plead non-performance of the contract are available to the Purchaser to the extent permitted by law. The Purchaser is,

in particular, entitled to retain payments due, so long as it is entitled to make claims against the Supplier arising from incomplete or defective services.

2. The Supplier has a right of set-off or a right of retention only as a result of counterclaims that have been legally established or are undisputed.

3. Any processing, combination or mixing (further processing) of the items supplied by the Supplier shall be undertaken on behalf of the Purchaser. The same applies for further processing of the goods delivered by the Purchaser, so that the Purchaser shall be deemed to be the manufacturer and shall acquire ownership, at the latest, when the further processing takes place in accordance with statutory provisions.

4. Assignment of the goods to the Purchaser shall take place unconditionally and regardless of payment of the price. Where, however, in an individual instance, the Purchaser accepts an offer of assignment by the Supplier that is conditional on payment of the purchase price, the Supplier's retention of title ceases, at the latest, upon payment of the purchase price for the goods delivered. The Purchaser remains entitled to sell on the goods in the normal course of business, including prior to payment of the purchase price, under advance assignment of the resulting claims (alternatively, there shall be a simple retention of title, extended to the resale). In any case, all other forms of retention of title are excluded, in particular, extended and assigned retention of title and retention of title prolonged by further processing.

#### **XIV. Liability for defects**

1. Unless otherwise stipulated, statutory provisions apply in respect of the Purchaser's rights in the event of material defects and defects in title in respect of the goods (including wrong delivery and shortfall in delivery and improper installation, defective installation / operating instructions or manual) and in the event of other breaches of duty by the Supplier.

2. According to statutory provisions, the Supplier is, in particular, liable for the goods having the contractually-agreed properties upon transfer of risk to the Purchaser.

3. The Supplier guarantees that, at the time of transfer of risk, all deliveries and services provided by it will have the contractually-guaranteed characteristics and features including the product or performance specifications agreed and will comply with established technological practice, appropriate legal provisions and the instructions and guidelines of the competent authorities, trade and professional associations and impending modifications are not known to it. Insofar as machines, equipment or systems are the object of delivery and services by the Supplier, these must conform to the requirements of special safety regulations for machines, equipment or systems in force at the time of performance of the contract and possess a CE marking.

4. In any case, product descriptions or specifications which - in particular by means of designation or reference by the Purchaser in the order - form the subject of the respective contract or are incorporated into the contract in the same way as these Conditions of Purchase, shall serve as the agreement in relation to the condition. It makes no difference whether the product description and / or specification originated from the Purchaser, the Supplier or the manufacturer.

5. The Supplier warrants that all substances contained in the goods comply with the relevant requirements of the "REACH Regulation", effectively pre-registered for the uses specified by the Purchaser (or exempt from the duty to register) and, where applicable, authorized.

For goods within the meaning of Article 7 "REACH Regulation", the preceding clause applies to substances released by these products. It is incumbent upon the Supplier to inform the Purchaser immediately, where a component of a product is a substance contained in a concentration of more than 0.1 weight by weight (W/W), meeting the criteria of Articles 57 and 59 "REACH Regulation" ("substances of very high concern"). This also applies to packaging products.

6. Where defects exist, the Purchaser is entitled to request supplementary performance in accordance with statutory provisions. The Purchaser may choose the type of supplementary performance. Within the scope of supplementary performance, the Supplier undertakes to provide the goods, at the Purchaser's discretion, to the place of delivery or to the location where the defect in the goods was discovered. Expenditure / expenses incurred for supplementary performance shall be borne by the Supplier. Insofar as the Supplier is under an obligation of supplementary performance, it must have due regard to the Purchaser's operational requirements.

Where supplementary performance is unsuccessful within a reasonable period or fails or where the grace period is dispensed with, the Purchaser can assert further, statutory rights in respect of defects.

7. By way of deviation from § 442(1)(2) German Civil Code, the Purchaser is entitled to claims for defects without restriction even where the defect remained unknown to it upon conclusion of the contract as a result of gross negligence.

8. In respect of the commercial duty to inspect and submit complaints, the statutory provisions (§§ 377, 381 German Commercial Code) apply, subject to the following conditions:

The Purchaser's duty to inspect is limited to defects that are manifestly obvious at the Purchaser's incoming goods inspection upon external examination, including of the shipping documentation, and at quality control by way of random sample test procedure (e.g. transport damage, wrong delivery and shortfall in delivery).

Furthermore, the extent to which an examination is feasible in the normal course of business, having regard to the specific instance, is to be taken into account.

The Purchaser's duty to notify defects discovered later remains unaffected. The Purchaser shall notify the Supplier of obvious defects within fourteen (14) days of receipt of the goods at the place of delivery. Defects, which only become apparent later, must be notified by the Purchaser within fourteen (14) days of their discovery. The date of dispatch of notification to the Supplier is decisive for compliance with the deadline. In this respect, the Supplier shall waive any plea for late notification of defects.

9. Costs incurred by the Supplier for the purposes of testing and rectification (including any dismantling and assembly costs) shall be borne by the Supplier, even where it transpires that no defect exists.

The Purchaser's liability for damages in the event of unjustified requests for rectification of defects remains unaffected; but, in this respect, the Purchaser is only liable if it recognized, or was grossly negligent in failing to recognize, that no defect existed.

10. Where the Supplier fails to meet its obligation of supplementary performance within an appropriate period set by the Purchaser, the Purchaser is entitled to rectify the defects itself and to request either compensation for the expenses hereby incurred or an appropriate advance payment from the Supplier. Where supplementary performance by the Supplier fails or is unreasonable for the Purchaser (e.g. as a result of particular urgency, risk to operational safety or to avert disproportionate damage) or where the Supplier genuinely and conclusively refuses rectification, no deadline needs to be set; in such circumstances, the Purchaser shall notify the Supplier without delay, where possible, in advance.

11. The Purchaser is also entitled, in accordance with statutory provisions, to a reduction of the purchase price or to rescind the contract in the event of a material defect or defect of title. In addition, the Purchaser is entitled to claim compensation for damages and reimbursement of expenses in line with statutory provisions.

12. The Supplier indemnifies the Purchaser for any claims by third parties in the event of defects of title.

## **XV. Recourse against the Supplier**

1. The statutory recourse rights of the Purchaser within a supply chain (supplier recourse claims under the terms of §§ 478, 479 German Civil Code) are also available to the Purchaser in addition to claims for defects. The Purchaser is, in particular, entitled to request the type of supplementary performance (rectification or replacement delivery) that the Purchaser is obliged to provide to its customer in the individual case. The Purchaser's statutory right to choose (§ 439(1) German Civil Code) is not restricted thereby.

2. Before the Purchaser acknowledges or fulfils a claim for defects made by its customer (including reimbursement of expenses under the terms of §§ 478(3), 439(2) German Civil Code), it will inform the Supplier and, giving a brief account of the facts, request written observations. Where the written observations are not made within a reasonable period and where no amicable solution is reached, the claim for defects effectively allowed by the Purchaser is regarded as owed to its customer; the Supplier is responsible for providing counter-evidence.

3. The Purchaser's claims arising from recourse against the Supplier shall also apply where the goods have been subjected to further processing before they were sold on to a consumer, either by the Purchaser itself or by one of its clients, e.g. by combination, mixing, incorporation in another product etc.

## **XVI. Manufacturer liability**

1. Where the Supplier is responsible for a product defect, it must indemnify the Purchaser for claims made by third parties insofar as the cause of the defect is within

the scope of the Supplier's control and organization and the Supplier is liable to third parties.

2. Under the auspices of its indemnity obligation, the Supplier must reimburse expenses in accordance with §§ 683, 670 German Civil Code, which result from or in connection with third-party claims including recall campaigns implemented by the Purchaser. To the extent possible and reasonable, the Purchaser shall inform the Supplier of the content and scope of recall measures and provide the latter with an opportunity to make observations. Further legal claims remain unaffected.

3. The Supplier must obtain product liability insurance with lump-sum coverage of at least 10 (ten) million euros for personal injury / damage to property.

## **XVII. Termination, rescission**

1. Each Contracting Party is entitled to terminate the contract for good cause. This shall include all grounds that make it unreasonable for the other Contracting Party to adhere to the contract. Good cause shall arise, in particular, where

a) the other Contracting Party culpably breaches significant contractual obligations and fails to remedy this within a reasonable period in spite of a warning. A prior warning is not required, where this would serve no purpose or is unreasonable for the Contracting Party entitled to termination;

b) the financial situation of the other Contracting Party deteriorates seriously, jeopardizing contract performance or the other Contracting Party fails to meet its statutory obligations in respect of tax payments and social security contributions; or

c) the purchase or use of the goods or services is prohibited, in whole or in part, on the basis of legal provisions or the regulations of competent authorities, or

d) an application to open insolvency proceedings in relation to the assets of the other Contracting Party is made, or

e) a claim is made against the Purchaser in the context of the services to be provided under this contract under its liability as guarantor pursuant to § 13 German Minimum Wage Law in conjunction with § 14 German Posted Workers Act.

2. Documentation, papers, drawings or plans, which the Purchaser makes available to the Supplier for execution of the contract, must be handed back to the Purchaser immediately upon notice of termination.

3. Termination requires the written form.

## **XVIII. Supplier's responsibility to clear site upon termination of contract**

1. Insofar as the Supplier constructs or stores facilities and equipment on the Purchaser's premises within the scope of fulfilling the contract, these must be dismantled or removed immediately in the event of termination of the contract, at the Supplier's expense.

2. The Supplier shall ensure professional disposal of waste produced by it within the scope of contract fulfilment, at its own expense. The Purchaser is entitled to carry out the above-mentioned works itself or to engage a third party to do so, at the Supplier's expenses, where the Supplier fails to meet its obligation to carry out the work in spite of a reasonable grace period.

## **XIX. Property Rights and Data Protection**

1.

The Supplier guarantees that no third-party rights (e.g. patent rights, copyrights or other third-party protected rights) are violated in connection with its delivery or services. Where a third party makes a claim on such grounds against the Purchaser, the Supplier undertakes to indemnify the Purchaser against the claim upon first, written request. The Supplier's indemnity obligation pertains to all expenses which the Purchaser is obliged to incur in connection with the claim asserted by a third party.

2.

The Supplier assures compliance with the statutory provisions on data protection in connection to the delivery or service provided, in particular the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). The Supplier also undertakes to obtain written assurance from the subcontractors or agents engaged with regard to compliance with legal provisions regarding data protection. The Supplier must ensure that subcontractors engaged by it or agents acting on its behalf for the subcontractors engaged by it or agents impose a corresponding undertaking with regard to compliance with legal provisions regarding data protection.

3.

If claims are made against the Purchaser by a third party due to a breach of the legal provisions regarding data protection for which the Supplier is responsible, the Supplier shall indemnify the Purchaser against such claims upon the first written request. The Supplier's indemnity obligation pertains to all expenses, in particular fines, which the Purchaser has incurred from or in connection with the claim asserted by a third party and which are obligatory.

## **XX. Contractual penalties**

In the event of the agreement of a contractual penalty, the Purchaser is entitled to assert this until the final payment is due, without the requirement of any reservation pursuant to § 341(3) German Civil Code.

## **XXI. Insurance**

1. The Supplier must maintain adequate liability insurance for the duration of the contract, at its own expense, with coverage customary for the market and appropriate for the level of risk, at minimum, in the amount of 10 (ten) million euros flat rate for personal injury / property damage, for damages for which the Supplier itself, its staff, assistants or vicarious agents are responsible.

2. The Supplier must, following an appropriate request by the Purchaser, provide evidence of the insurance cover.
3. The contractual and statutory liability of the Supplier remains unaffected by the scope and amount of its insurance cover.

## **XXII. Force majeure**

1. Force majeure, industrial disputes, riots, official interventions and other unforeseeable, unavoidable and serious events release the Contracting Parties, for the duration of the disruption and in the scope of its effects, from their performance obligations.
2. The Contracting Parties are obliged, as far as is reasonable, to provide the requisite information without delay and to adapt their obligations to the changed circumstances in good faith.

## **XXIII. Transfer of contract, change of company name**

1. The Supplier may only transfer the rights and obligations under the contract with the Purchaser to a third party with the prior, written consent of the Purchaser.
2. The Supplier must notify the Purchaser of any transfer of the contract implemented by operation of the law and of any change to its company name, without delay and in writing.
3. The Purchaser may transfer the rights and obligations under the contract with the Supplier at any time and without the prior agreement of the Supplier.

## **XXIV. German Minimum Wage Law**

1. Where the Supplier and/or a subcontractor engaged by it and/or an employment agency engaged by it or its subcontractors falls within the scope of applicability of the German Minimum Wage Law and where the Supplier is to provide work or services within the meaning of § 13 German Minimum Wage Law in conjunction with § 14 German Posted Workers Act, the following shall apply:

The Supplier warrants that it complies with the provisions of the German Minimum Wage Law, as amended. It is further obliged to obtain written undertakings from the subcontractors or employment agencies engaged with regard to compliance with the German Minimum Wage Law. The Supplier must ensure that subcontractors engaged by it or employment agencies acting on its behalf for the subcontractors engaged by it or personnel leasing agencies impose a corresponding undertaking with regard to compliance with German Minimum Wage Law.

2. In the event that a claim is made against the Purchaser pursuant to § 13 German Minimum Wage Law in conjunction with § 14 German Posted Workers Act by an employee of the Supplier or of an engaged subcontractor, of any grade, or of an employment agency as guarantor of payment of the minimum wage, the Supplier shall,

by virtue of the present agreement, indemnify the Purchaser against these claims. The indemnity claim becomes payable upon a claim being made against the Purchaser on the basis of the above-mentioned claims.

3. Irrespective of the Purchaser's rights to terminate the contract regulated by § 17, the Supplier is liable to the Purchaser for any damages incurred by the Purchaser due to non-compliance with the above-mentioned Supplier's guarantee.

4. The Supplier undertakes to provide to the Purchaser, at any time following a request, schedules of hours worked (including retrospectively), the payroll accounting in relation to the same and evidence of proper payment of employer social security contributions to social insurance funds.

## **XXV. Limitation period**

1. The reciprocal claims of the Contracting Parties shall become time-barred according to statutory provisions, unless otherwise stipulated.

2. By way of deviation from § 438(1) No. 3 German Civil Code, the general limitation period for claims based on defects shall be 3 years from transfer of risk. Where acceptance is agreed, the limitation period begins with acceptance. The 3-year limitation period shall also apply accordingly for claims based on defects of title, whereby the statutory limitation period for the return of third-party property (§ 438(1) No. 1 German Civil Code) remains unaffected; claims based on defects of title shall not become time-barred in any case, so long as the right - in particular, in the absence of limitation - can still be asserted against the Purchaser.

3. The limitation periods of sales law including the above-mentioned extension shall apply - to the statutory extent - for all contractual claims for defects. Insofar as the Purchaser is also entitled to non-contractual claims for damages, regular statutory limitation periods apply here (§§ 195, 199 German Civil Code), where the application of the limitation periods of sales law does not lead to a longer limitation period in the individual instance.

4. A waiver of claims for defects by the Purchaser is only effective if this is explicitly stated in writing.

## **XXVI. Applicable law and place of jurisdiction**

1. The law of the Federal Republic of Germany applies to these Conditions of Purchase and all legal relationships between the Purchaser and the Supplier, excluding international uniform law, in particular, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 ("CISG") and German conflict-of-law rules.

2. The prerequisites for and the effects of retention of title shall be governed by the law in force at the location of the items, if, under that law, a choice of law in favour of German law is prohibited or invalid.



3. Where the Supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law the exclusive - and international - place of jurisdiction for all disputes arising from the contractual relationship is the Purchaser's business headquarters in Krefeld (Germany). The Purchaser is, however, entitled to initiate a legal action at the place of performance of the obligation to deliver. This shall not apply insofar as an exclusive place of jurisdiction is provided.

#### **XXVII. Severability clause**

Where an individual provision of the present Conditions is or becomes ineffective, the validity of these Conditions and the contract shall be unaffected thereby.