

## General Terms & Conditions of Delivery of Koenig & Bauer Sheetfed AG & Co. KG

(hereinafter referred to as the Supplier)

These General Terms & Conditions of Delivery are to be used with regard to:

1. a person practicing a commercial or independent professional activity at the conclusion of the contract (entrepreneur);
2. corporate bodies under public law or a special fund under public law.

Should there be any individual contractual agreements between the Supplier and the customer beyond the points regulated in these Terms & Conditions of Delivery then these shall have priority. In such a case the General Terms & Conditions of Delivery of the Supplier shall only apply additionally.

### I. General

1. These terms & conditions as well as any separate contractual agreements are the basis for all deliveries and services. The specifications and characteristics listed therein are not guarantees in the sense of the BGB (German Civil Code) unless they are expressly indicated as such. Any differing terms & conditions of purchase specified by the customer shall not become part of the contract, even if an order is accepted.

In the absence of any special agreement, a contract shall come into effect when the supplier confirms the order in writing or a purchase/work delivery contract is signed by both parties.

2. The Supplier shall provide the customer with the information and instructions necessary for the processing of the contract. However, this does not establish any consultancy contract. An express written agreement is required in order for an additional consultancy contract to come into effect.

3. Dimensions, weights, deliverability, operating behavior, and space and energy requirements are calculated in the drawings, pictures, and descriptions that accompany or are referred to in the offer or the Supplier's confirmation letter and can only deviate minimally from the actual execution and/or in the case of the commencement of production, however, without affecting the typical contractual obligations of the Supplier.

4. Subsection 3 also applies accordingly for the text and images contained in promotions and sales documents that exclusively serve to elucidate and promote the Supplier's works without thereby establishing a performance obligation on the part of the Supplier to be faithful to the promotion or images and/or without thereby establishing the agreement of guarantees.

5. Any spare-parts package that may belong to the scope of delivery shall be assembled standard to the best of the Supplier's knowledge and belief.

6. The offered scope of delivery corresponds to the European safety regulations relevant at the time of the conclusion of the contract (EC Machinery Directive, above all EN101, in its respective version relevant at

the time of the conclusion of the contract). The customer shall notify the Supplier of changes to this safety standard that are due to the installation site of the delivery item by the placement of the order at the latest so that the parties can reach a separate agreement regarding these changes.

7. Insofar as this is reasonably acceptable for the customer, changes and/or additions to the accessories and equipment of the delivery item – but not to the type of machinery together with its basic configuration – shall be carried out by the Supplier.

8. The Supplier shall reserve the proprietary rights and intellectual property rights to samples, cost proposals, drawings, systems, images, designs, descriptions, and similar information in tangible and intangible form (including in electronic form). Section X of these Terms & Conditions of Delivery applies in this respect.

If a contract is not concluded between the Supplier and the customer then the documents transferred to the customer for the preparation of this contract are to be surrendered in their entirety to the Supplier without request and in doing so the customer shall guarantee that the customer has not produced any photocopies, duplicates, videos or re-recordings of these on data carriers and is not in direct or indirect possession of them.

The Supplier pledges to not permit third parties to access information and documents designated by the customer in writing as confidential without the consent of the customer.

9. All offers of the Supplier are subject to change, apply for a period of three months at the longest, and expire on their own unless the Supplier extends them in writing before or after the expiration of the deadline.

10. There are no verbal side agreements and rights from such cannot be asserted.

Changes and/or amendments to the content and scope of the contract requested by the customer therefore require the written confirmation of the Supplier in order to be valid. This also applies to a change of this written form requirement. This written form requirement can only be changed with a written confirmation of the customer and the Supplier.

11. Assignments of claims and other transfers of rights of the customer to third parties require the prior written consent of the Supplier.

12. If individual provisions of these Terms & Conditions should be or become invalid, void, incomplete, voidable, or impracticable then this shall not affect the validity of the other provisions. The parties to the contract pledge to replace any invalid, voidable, impracticable or void provisions with other provisions that best fulfill the economic intent of the original provisions or fill gaps occurring in this sense.

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## II. Price and payment

1. Unless a special agreement has been made the prices shall apply ex works including loading in the works but excluding packing and unloading. The sales tax in its respective statutory amount as well as any taxes, levies, and customs duties (e.g. withholding tax) shall be added to the prices.

Things such as the costs for shipping, transfer, charging, loading, packing, and conversion of transport vehicles requested by the customer as well as for government levies shall not be included. These shall be billed to the customer separately by the Supplier.

2. The customer shall bear all costs relating to customs clearance (including standing times for trucks, containers, etc.).

3. The Supplier has the right to bill the incurred sales tax/VAT to the customer if it should turn out that the customer is obligated to pay this after the invoice has been issued and/or paid.

4. Unless a special agreement has been made the payment is to be made without any deduction to the Supplier's account as follows:

- 35% down payment by one week after receipt of order confirmation or signing of the purchase contract/contract for work and materials at the latest;
- 65% as soon as the customer is informed that the primary components/aggregates are ready for shipment.

5. The customer is entitled to the right to fully or partly offset with counterclaims from this or other legal relationships only insofar as these are undisputed or determined without further legal recourse or have a synallagmatic connection (claims for damages, remedy, contract completion etc.).

6. The payment to the Supplier is to be carried out free of expense through bank transfer from a business account of the customer at the customer's headquarters or through an irrevocable letter of credit issued by the customer in due time before readiness for shipment from a major international bank confirmed by the Supplier

The place of consideration (payment) of the customer (place of fulfillment) is always the location of the business premises for the Supplier.

7. If the customer finances the payment of the delivery item by taking out a loan or through lease agreements then the customer hereby assigns to the accepting Supplier all pecuniary claims and all other rights to which the financing bank or leasing company is entitled. Like the acceptance of exchanges or checks by the Supplier, the assignment shall only be carried out for processing purposes. The customer shall bear the costs resulting in this case. The Supplier has the right to notify the banking institution/leasing company of the assignment at any time. The customer is obligated to notify the financing institution of the reservation of title and to provide proof to the Supplier that this has been done upon request.

If a leasing company enters into the contract between the Supplier and the customer then the contract between the Supplier and the customer shall be considered to be suspended. If the contract between the leasing company and the customer (as well as, if applicable, the Supplier) is cancelled or terminated, due to

a willful or negligent misconduct of the customer, then the contract between the Supplier and the customer shall be reinstated, insofar as the Supplier has declared its approval to this in writing.

8. If the customer fails to meet an agreed payment deadline (default) then the customer is to pay an additional nine percentage points of interest beyond the respective applicable base interest rate on the owed amount of money starting from the following day, but at least the verifiably typical interest rate to be paid at banks for current debts; the Supplier has the right to provide proof of higher damages caused by delay and to demand compensation for them.

9. If the customer defaults on payment of not only insignificant part of the entire payment (gross breach of contract) then the entire remaining amount still owed by the customer - as well as all pecuniary claims of the Supplier due to ongoing business dealings in the case of a current account - shall be due immediately and interest is to be paid on it as specified above in Section II Subsection 8 starting from the day it was due. The same shall apply in the case that an exchange or check of the customer that is accepted by the Supplier is not honored due to circumstances for which the customer is responsible, in which case extension agreements entered into with the acceptance of exchanges shall be invalid.

10. a. If the customer defaults on payment obligations from one or more legal transactions, does not issue a letter of credit despite the obligation to do so, or does not issue one properly as described in this Section II then the Supplier has the right

- to refuse the surrender of the delivery item to the customer and to store the delivery item at its own expense or to otherwise dispose of it;
- to refuse the fulfilment of another agreed legal transaction or warranty performance obligation resulting from this until the customer has caught up on the services or acts of cooperation in arrears and has compensated any resulting damages; in addition the Supplier shall be entitled to a right of retention with regard to the Supplier's own services in the case of the failure of the customer to meet the agreed payment deadline;
- to disallow or reduce individual functions of the delivery item for as long as the customer does not prove that the functional limitation is disproportionate to the unfulfilled payment obligations.

b. However, the Supplier also has the right to withdraw from the contract at the option of the Supplier in the cases specified above.

In the cases specified above in particular the customer does not have the right to invoke a right of retention as per Section 273 of the BGB (German Civil Code) or Section 369 of the HGB (German Commercial Code) due to the payments owed by the customer.

11. The customer's rights of retention in accordance with Section 273 of the BGB (German Civil Code) and Section 369 of the HGB (German Commercial Code) can be asserted exclusively in cases of gross contract violations by the Supplier, defectiveness of the delivery item that is undisputed or determined without further legal recourse, or claims that are undisputed or determined without further legal recourse.

12. The supplier has the right to offset with and against due, non-due, and future claims against the customer to which the Supplier is entitled or to which

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a company in which the Supplier directly or indirectly holds at least a 80% stake is entitled or to which the customer is entitled vis-à-vis one of the designated companies. The customer shall be informed of the status of the stake held upon request.

### **III. Time of delivery, delay in delivery; delay of the customer; goods deliveries into EU countries abroad**

1. The time of delivery is derived from the agreements of the parties to the contract. It begins at the earliest on the day on which the customer has fulfilled the customer's cooperation duties that are contractually agreed or incumbent upon the customer on the basis of side agreements – such as the procurement of authorizations, other documents, and/or declarations of approval – and/or has provided the equipment and/or accessories of the delivery item for the purpose of the installation or assembly to be supplied for contract fulfilment; furthermore, if the customer has made the contractually agreed down payments and if the Supplier has received a written confirmation of financing of a credit institution of the customer that is accepted by the Supplier with the signing of the contract by or written order confirmation of the Supplier, or two weeks after this at the latest.

Compliance with the delivery date by the Supplier also requires that all commercial and technical issues between the parties to the contract have been resolved.

If these criteria specified above are not fulfilled by the customer then the time of delivery shall be extended by an appropriate period of time. This shall not apply if the Supplier is responsible for the delay.

2. Compliance with the delivery date is subject to the correct and on-schedule delivery to the Supplier by its own suppliers. The Supplier shall immediately provide notice of any looming delays.

3. The delivery deadline shall be considered to have been met if the delivery item has left the supplier's works or readiness for shipment has been reported by the expiration of the deadline.

4. The dates agreed upon between the parties shall be postponed appropriately in the case of force majeure impacting the Supplier or one of the Supplier's sub-suppliers. All unforeseeable events that lie outside of the realm of influence of the Supplier or cannot be overcome with reasonable effort, particularly natural events, highly contagious illnesses, war, civil war, terrorist acts, riots, fire, labor disputes, damages in transit, radioactive contamination to the delivery item, to the place of delivery, or to its respective surroundings shall be considered force majeure.

The Supplier shall not be responsible for the circumstances described above even if they arise during an already existing delay.

5. The Supplier is obligated to immediately notify the customer of the occurrence of force majeure. Liability and flat-rate damage compensation in accordance with Section III Subsection 6 is excluded in the case of force majeure.

6. If the Supplier falls culpably in default and damages arise for the customer due to this then the customer has the right to demand a flat-rate amount of compensation for delay. It shall amount to 0.5% for each two full calendar weeks of the delay but is limited

to a maximum total amount of 5% of the value of the respective part of the entire delivery that cannot be used on schedule or in accordance the contract as a result of the delay. The Supplier shall be provided with a waiting period of four full calendar weeks before the Supplier falls into default of delivery. The customer is free to prove a higher amount of damages, if such damage occurs due to willful or grossly negligent misconduct of the Supplier.

The Supplier is free to provide proof that there are no damages or that there is a lower amount of damages.

7. If the customer sets a reasonable deadline for the Supplier for performance after the deadline - taking into consideration the statutory exceptions - and the deadline is not met then the customer has the right to withdraw from the contract in accordance with Section XII. Upon the request of the Supplier the customer pledges to state in writing within an appropriate amount of time whether the customer will exercise its right of withdrawal.

If the customer does not exercise this right at all, not in due form, or not in due time or if the Supplier is ready to deliver before receiving the customer's cancellation then the customer shall lose the right to withdraw from the contract (forfeiture).

Furthermore, the provisions in Section XII of these Terms & Conditions of Delivery shall apply.

8. Further claims due to delay in delivery on the part of the Supplier are determined exclusively in accordance with Section VII Subsection 2 of these Terms & Conditions.

9. If the shipment or the acceptance of the delivery item is delayed for reasons for which the customer is responsible, then the Supplier shall

- charge the customer for the actual costs arising due to the delay beginning one month after notification of readiness for shipment but at least 0.75 percent of the invoice value for each commenced month (unless the customer proves to the Supplier that there are no damages or that there is a lower amount of damages) and potentially store the delivery item or parts of it at the customer's expense and/or set a reasonable deadline for the acceptance of the delivery item or parts of it and, after the period has lapsed without success, to make other use of the delivery item or parts of it, whereby the right of the Supplier to demand fulfilment of the contract from the customer shall not be affected and the delivery deadline of the Supplier shall be postponed accordingly without the Supplier falling into default of delivery.

The customer shall be responsible for delays resulting from the destination country.

10. If the customer is responsible for goods deliveries into EU countries abroad then the customer pledges to immediately provide the Supplier with the completely and properly filled out verifications (e.g. confirmation of arrival, white carrier's receipt, or CMR waybills) that are required in accordance with the relevant German legislation. If the customer does not fulfill this obligation on time then the Supplier reserves the right to subsequently bill the customer with German sales tax in the amount of the respective tax rate to be applied to the invoice amount. The same applies correspondingly for tax-

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free intra-Community deliveries for which German law does not apply, insofar as the local legislation requires corresponding verifications, as well as for deliveries into the third country for which the customer is responsible for the export declaration.

## IV. Passing of risk; acceptance; insurance

1. The risk is passed to the customer once the Supplier has specified the delivery item for shipping purposes and has notified to the customer that the delivery item is ready for shipment, even if partial deliveries are being made or the Supplier has accepted responsibility for other services, e.g. the shipping costs or delivery and assembly.

The risk of accidental destruction of the delivery item as such shall be passed to the customer as soon as the Supplier specifies the delivery item for shipping purposes and notifies the customer that the delivery item is ready for shipment.

2. Partial deliveries are permitted as long as these are not unreasonable for the customer.

3. At the start of the assembly work the customer shall provide a dust-free and heated building and sufficient unloading space, a sufficiently large transport opening, electrical connections, water and air connections, and exhaust systems as well as a large closeable space for the installers for the storage of valuables and tools, lockers and sanitary facilities as well as a telephone, fax machine, and high-speed Internet which the Supplier's employees can use for free for the purpose of performing services during the installation and commissioning phase. The same applies correspondingly for repair/warranty work.

4. The acceptance must be carried out immediately on the acceptance date or, alternatively, after the supplier provides notification of readiness for acceptance.

5. At the request of the Supplier the customer is obligated to cooperate on an acceptance date, to cooperate in the creation of an acceptance log about the findings thereby obtained, and to sign the protocol. All complaints are to be recorded in this, otherwise the Supplier's services shall be considered approved and accepted without defect.

6. The customer does not have the right to refuse acceptance of the Supplier's services due to minimal defects that do not at all or do not significantly impair the usability or value in use. If the parties do not agree on the cause, nature, type and/or significance and/or effects of the defect then each party has the right to initiate independent proceedings for the taking of evidence or legal proceedings. If the independent proceedings for the taking of evidence are not initiated within four weeks starting from the designated acceptance date then the Supplier's services shall be considered unconditionally approved and accepted by the customer. The same also applies if the customer has commenced use of the Supplier's service or parts of it despite not coming to an agreement.

7. If products capable of being sold are produced for a period of more than 4 weeks then the delivery item shall be considered to be accepted with the

conclusion of the 4th week.

8. The noting of open issues in the acceptance protocol regarding insignificant defects or objections shall not prevent the acceptance.

9. If the customer does not accept the delivery item or parts of it, although there are no or only insignificant defects, or if the handover of the delivery item or parts of it is deferred and the warranty period for defects of the delivery item has not already begun then it shall begin starting from the originally agreed time of acceptance in any case.

Beyond this, the Supplier has in this circumstances the right at the option of the Supplier

- to postpone the acceptance date and to demand from the customer the costs resulting from this postponement;

- to demand immediate payment of the full remaining payment installments;

- after setting a deadline of four calendar weeks to withdraw from the contract in writing and to demand an amount of twenty percent of the price to be charged for the total performance, whereby the Supplier reserves the right to provide proof that there is a damage compensation claim that goes beyond this and to assert this claim.

If the customer proves that the damages were less than this or that no damages were incurred at all then the Supplier's claim is to be reduced accordingly.

The customer shall bear the costs of recovery. The customer is also to assist in the recovery to the best of its abilities. The customer hereby irrevocably grants consent to the corresponding necessary opening of the areas in which the delivery item is located as well as the entry permit for the Supplier.

10. Furthermore, the Supplier has the right under the conditions specified in Point 9 to set functional limitations to the machinery or not to put certain functions into operation as in Section II Subsection 10.a (at the end).

11. a. If the Supplier ships the delivery item and the customer does not prove that a corresponding goods in transit and erection all risks insurance policy has been taken out in the customer's name and at the customer's expense at the time of the passing of risk then the Supplier has the right and the customer hereby irrevocably grants the Supplier the authorization to take out the specified insurance policies in the customer's name and at the customer's expense.

b. The customer is obligated, starting from when the machinery is brought into the printing location, to take out a fire insurance policy, a natural hazard insurance policy, a property insurance policy, a theft insurance policy and an insurance policy against other damages as well as against the deterioration and accidental destruction of the delivery item as well as a machinery breakdown insurance policy after the completion of the assembly of the delivery item benefitting the Supplier for the total value of the delivery item or of the purchase price that is still outstanding at least until the full payment, insofar as the Supplier is still the owner of the delivery item at that time. The Supplier is to be specified as additionally insured and is to be issued the confirmation of insurance coverage.

12. In the case that the Supplier should reserve the title to the delivery item, the customer hereby irrevocably

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cably authorizes the Supplier to take out an insurance policy for the delivery item at the Supplier's own expense against theft, breakdown, fire, water, and other damages as well as against deterioration and accidental destruction if the customer fails to provide proof of performance of the obligation owed by the customer to the Supplier despite the Supplier setting a deadline. The customer hereby cedes to the receiving Supplier all rights and claims arising from such an insurance policy, including the rights to cancellation, to the changing of contents, and, in the case of damage, to the payment of the insurance value. The Supplier has the right to disclose this ceding to the insurance provider at any time.

## V. Reservation of title

1. The Supplier shall reserve the title to the delivery item until the receipt of all payments from the delivery contract - including for any additional ancillary services that may be owed.

2. During the period of the reservation of title the customer has the right to possess and make use of the delivery item as long as the customer fulfills the customer's obligations resulting from the reservation of title in accordance with the following provisions of this section and does not fall culpably into default of payment or arrears with payment.

3. The customer is to provide the Supplier with unrestricted access to the delivery item upon first request and upon submission of reasonable grounds (in particular for the purposes of control of the maintenance status, compliance with the operating and instruction manual, use of the released equipment etc.) until all of the payments under Subsection 1 have been received by the Supplier.

If the customer should unfairly refuse this then the warranty applying to the delivery item shall be cancelled.

4. The customer is not permitted to sell, pledge, or transfer the delivery item to third parties nor to pledge it as a security. The customer is to immediately notify the Supplier in the case of distraints as well as the confiscation or other dispositions of third parties and to protect the Supplier to the best of the customer's abilities.

5. If the Supplier provides written permission for the transfer, lending, or further sale to third parties of the delivery item under the reservation of title with or without payment in return then the customer shall always act as a disclosed or undisclosed agent of the Supplier. The customer is therefore obligated to disclose the property rights of the Supplier to third parties and to refer to the existing reservation of title. The customer hereby cedes to the accepting Supplier the rights and claims arising for the customer in the specified cases, including the rights to joint possession, to joint ownership, to exploitation and to surrender as well as property and/or monetary claims resulting from the transfer, regardless of the customer's continuing obligations from the contractual relationship agreed upon with the Supplier. The same applies in the case that the customer transfers the delivery item under reservation of title to a third party through third-party financing against the will of the Supplier and without disclosing the rights and claims of the Supplier and the Supplier's property thereby perishes.

6. In the case of actions contrary to contract on the

part of the customer, particularly not insignificant default of payment, in observance of Section V Subsection 7 the Supplier has the right to take back the delivery item and the customer is obligated to surrender it.

In such a case the Supplier has the right to take direct possession of the delivery item under reservation of title, to remove it and to sell it on the open market, and to use the proceeds to offset the Supplier's pecuniary claims against the customer, including interest and costs incurred or to be incurred for necessary repairs, appraisals, transport, packing, disposal, court and attorney fees, etc. in any order at the option of the Supplier. The customer is obligated to provide cooperative support in the taking of possession or recovery/removal of the delivery item by the Supplier to the best of the customer's abilities.

7. The customer shall be liable for the costs incurred to to be incurred by the Supplier for the elimination of third-party rights.

8. Subsection 7 applies in particular even if these costs cannot be demanded or exacted from the third party.

9. The Supplier can only demand the return of the delivery item on the grounds of the reservation of title if the Supplier has withdrawn from the contract.

10. An application to open insolvency proceedings gives the Supplier the right to withdraw from the contract and to demand the immediate return of the delivery item.

11. In particular, even in the case of delivery outside of the area of application of the statutory provisions of the Federal Republic of Germany the customer is obligated to take all measures (e.g. registration of the reservation of title) and to make all declarations to authorities and other institutions and establishments that are required to ensure the reservation of title or comparable rights; regardless of this obligation on the part of the customer, the customer hereby irrevocably authorizes the Supplier to personally submit all of the described declarations to ensure the rights of the Supplier on behalf of and at the expense of the customer.

## VI. Claims for defects

The Supplier shall be liable for material defects and defects of title of new delivery items to the exclusion of further claims - subject to Section VII - as follows:

### Material defects

1. All parts that turn out to be defective as a result of a circumstance before the passing of risk are to be repaired or replaced with spare parts free of defects by the Supplier at the option of the supplier. Such defects are to be immediately reported to the Supplier when they are found. Replaced parts shall become the property of the Supplier.

Warranty work shall be performed strictly by the Supplier at no charge on German bank working days at regular rate working hours. If the production of the customer should require special services to be initiated then the surcharged incurred for these are to be remunerated by the customer.

2. a. For the repairs and spare part deliveries rea-

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sonably considered to be necessary by the Supplier the customer shall enable unhindered, unrestricted, and, if requested by the Supplier, contiguous access to the delivery item even outside of the usual business hours and shall provide a person entrusted with the operation of the delivery item to the Supplier for information and assistance at no charge. This applies for the period that the Supplier reasonably requires for the repair services and/or replacement of parts; otherwise the Supplier is relieved from liability for the costs and consequences resulting from this.

b. Only in urgent cases of a risk to operational safety or for the prevention of disproportionately extensive damages, whereby the Supplier is to be immediately informed, or in cases in which the Supplier defaults on the Supplier's warranty obligations shall the customer have the right to personally correct the defect or to have it corrected by a third party and to demand compensation from the Supplier for the required and reasonable expenses.

c. If the customer or a third party improperly performs repairs then there shall be no liability on the part of the Supplier for the resulting consequences. The same applies for changes to the delivery item that were carried out without the consent of the Supplier.

3. a. If the complaint should turn out to be justified, the Supplier shall bear the direct costs for the repair or spare part delivery including shipping, insofar they are necessary for the subsequent fulfilment.

b. However, the Supplier shall not bear the costs of the disassembly and assembly if they are not within the scope of the Supplier's contractual obligation and the Supplier's liability only amounts to slight negligence.

c. The Supplier shall not bear any costs resulting in connection with shipment into countries outside of the European Union such as costs for the customs clearance of spare parts from and back to Germany / into the European Union.

4. a. The customer has a right to withdraw from the contract if the Supplier - taking into consideration the statutory exceptions - fails to meet a reasonable deadline set for the Supplier for the repair or spare part delivery due to a material defect at least twice. The provisions of Section XII of these Terms & Conditions of Delivery remain unaffected.

b. If there is only an insignificant defect then the customer merely has a right to reduce the contract price. The right to reduce the contract price otherwise remains excluded.

5. Further claims are determined exclusively in accordance with Section VII Subsection 2 of these Terms & Conditions.

6. No liability or warranty shall be assumed in the following cases in particular:

- Unsuitable or improper use, defective assembly or commissioning by the customer or a third party, natural wear and tear, defective or negligent handling, improper servicing, unsuitable operating supplies, defective construction work, unsuitable building ground, chemical, electrochemical, or electrical influences, insofar as the Supplier is not responsible for these;

- For components to the delivery item demanded, provided, or procured by the customer, which were not within the scope of the Supplier's contractual obligations, on which quality or condition the Supplier has no influence and which the Supplier did not in-

voice. This liability exemption is not applicable to installation failures in cases where the Supplier performed the installation and invoiced the assembly and is intentionally or negligently liable for such failure;

- The Supplier shall not assume any guarantee or warranty with regard to the function or freedom from defects of machine parts, aggregates, and accessories purchased and/or provided by the customer. The customer pledges to mount or install only merchantable machine parts, aggregates, and accessories on the machinery. The customer furthermore pledges to inform the Supplier of the type and scope of such additions before their installation and to install or mount them only after obtaining express written technical release by the Supplier and excluding all other liability of the Supplier. In this respect the customer shall be acting at the customer's own risk. In the case of the breach of this duty the customer must indemnify the Supplier against any liability (particularly from the title of damage compensation, warranty, and product liability) arising from the installation of the parts mentioned above and to indemnify and hold the Supplier harmless upon first request; the customer shall be liable to the Supplier for all damages resulting from this.

7. The customer is to immediately notify the Supplier in writing of defects and is to give the Supplier the opportunity to conduct an 'on-site' review as to whether the notification of defects is justified. If the customer breaches this obligation then the Supplier shall have the right to refuse warranty work due to the notified defect.

8. Any warranty is excluded for used contractual items, accessories, and equipment.

## Defects of title

9. If the use of the delivery item leads to the violation of industrial property rights or intellectual property rights then as a matter of principle the Supplier shall procure the right to further use for the customer or shall modify the delivery item for the customer in a way so that there is no longer a violation of property rights.

If this is not possible at economically reasonable conditions or within a reasonable period then the customer shall have the right to withdraw from the contract. The Supplier shall also have the right to withdraw from the contract under the conditions specified above. The provisions of Section XII of these Terms & Conditions of Delivery shall apply.

In addition, upon written request the Supplier shall indemnify the customer against damage compensation claims that are undisputed or determined without further recourse for direct damages to the proprietor concerned.

The obligations of the Supplier specified in Section VI Subsection 9 are conclusive subject to Point VII.2 for the case of the violation of industrial property rights or intellectual property rights.

The only exist if

- the customer immediately informs the Supplier of asserted violations of industrial property rights or intellectual property rights,

- the customer supports the Supplier to a reasonable extent in the defense against asserted claims or enables the Supplier to perform modification measures in accordance with Section VI Subsection 9.

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- the Supplier reserves the right to take all defensive measures including extrajudicial settlements,
- the defect of is not due to an instruction from the customer and
- the violation of rights was not caused by the customer changing the delivery item without authority or using it in a way that is not in accordance with the contract.

## VII. Liability of the Supplier, liability exclusion

1. If the delivery item cannot be used by the customer in accordance with the contract as a result of binding suggestions or advice that the Supplier culpably failed to provide or that were falsely provided before or after the conclusion of the contract or due to the culpable violation of other secondary contractual obligations — particularly instructions for the use and servicing of the delivery item — then the provisions of Section VI and Section VII Subsection 2 shall apply to the exclusion of further claims of the customer. To no extent shall the following liability be excluded by any of these provisions: liability for damage from injury to life, body or health due to negligent breach of duty by the Supplier or intentional or negligent breach of duty by a legal representative or a person used to perform an obligation of the Supplier; liability for other damage arising from a grossly negligent breach of duty by the Supplier or from an intentional or grossly negligent breach of duty by a legal representative of the Supplier or a person used to perform an obligation of the Supplier;
2. The Supplier shall be liable for damages that did not occur to the delivery item itself - regardless of what legal grounds there may be - only
  - a. in the case of intent,
  - b. in the case of gross negligence,
  - c. in the case of culpable injury to life, limb, or health,
  - d. in the case of defects that the Supplier fraudulently failed to disclose,
  - e. within the framework of a promise of a guarantee,
  - f. in the case of defects of the delivery item, insofar as the Supplier is liable for personal injury or property damage for privately used items according to the Product Liability Act.

If there is a proven culpable violation of material contractual obligations (i.e. obligations characterizing the contract and upon which the customer can reasonably rely) then the Supplier shall also be liable in the case of the gross negligence and in the case of slight negligence, but in the latter case to an extent limited to the damages typically reasonably foreseeable for this type of contract.

Further claims are excluded.

A liability exclusion or liability limitations to the benefit of the Supplier also apply to the employees, representatives, and auxiliary agents of the supplier.

## VIII. Limitation period

1. All claims of the customer - regardless of what legal grounds there may be - shall expire in 12 months unless these Terms & Conditions of Delivery provide other arrangements. The limitation period regarding claims for defects begins on the day of

readiness of the delivery item for production (ability to produce the first specimen capable of being sold). If the dispatch and/or assembly and/or readiness for production of the delivery item is delayed at no fault of the Supplier then the claims shall expire after eighteen months starting from the day of the passing of risk at the latest.

2. The warranty period for improvement services or spare parts deliveries performed by the Supplier within the framework of the warranty ends with the expiration of the warranty period that applies to the delivery item.

3. In the case of service work or pure spare part deliveries the warranty period shall amount to six months from the conclusion of the service work or from the delivery date of the spare part.

4. The statutory periods shall apply for damage compensation claims in accordance with Section VII Subsections 2 a-d and f.

5. The same provisions also apply for defects of a structure or for delivery items that were used for a structure according to their usual manner of use and caused the defects of the structure.

## IX. Software

1. Insofar as software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software including its documentation in return for payment in accordance with the contract. It shall be delivered for use on the delivery item for which it is intended.
2. Use of the software on more than one system is not permitted unless the Supplier provides prior written consent to this. The customer may duplicate, edit, translate, or convert object code into source code only within the legally permitted scope (Sections 69 a ff. of the German Copyright Acts).
3. The customer pledges not to remove nor change manufacturer's data - particularly copyright marks - without the express prior consent of the Supplier.
4. All other rights to the software and documentation including copies remain with the Supplier or the software provider. The issuing of sub-licenses is not permitted.
5. The customer shall issue the Supplier the unrestricted permission to create an electronic connection to the delivery item (e.g. by means of a modem or VPN) as well as to retrieve, process, and make use of data.

## X. Confidentiality

All information communicated by the Supplier to the customer in connection with the Supplier's written order confirmation or with a purchase/work delivery contract signed by both parties as well as information relating to original spare parts of the supplier is to be treated confidentially by the customer. The customer is to use the information merely for the intended purpose in the written order confirmation or in the

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purchase/work delivery contract. The operating manual, received drawings, etc. are solely intended for use by the customer and may not be transferred to third parties (not even vicarious agents and/or associated companies) without the prior written consent of the Supplier.

Consent to the transfer can only be granted in writing. A consent granted by the Supplier in this respect is a one-time consent and does not give the right to conduct multiple transfers.

The obligation to maintain confidentiality does not apply to information for which the customer can prove that

- a. the information was already public knowledge or became public knowledge without the customer violating the obligation to maintain confidentiality, or
- b. the information was already known to the customer when it was received without the obligation to maintain confidentiality, or
- c. the customer legally obtained the information from third parties without the obligation to maintain confidentiality, or
- d. the customer developed this information without the use of the information communicated in accordance with this contract.

The obligations regulated in Section X remain in place even beyond the end of the contract, regardless of the way in which the contract is ended.

## XI. Withdrawal

1. If the customer withdraws from the contract in due form and time then the Supplier shall compensate the customer's negative interest upon presentation of proof in the amount of up to a maximum of one percent of the agreed price for the delivery item to the exclusion of all further claims of the customer; this limitation shall not apply in the case of intent or gross negligence on the part of the Supplier or its vicarious agents for the delay in delivery. The customer is free to provide proof of a higher amount of damage. Section VII Subsection 2 applies accordingly.

2. Furthermore, the customer can withdraw from the contract if

- it is made ultimately impossible for the Supplier to perform the entire scope of delivery to be performed before the passing of risk;
- it is made impossible for the Supplier to perform part of the delivery and the customer provides proof of a justified interest in rejecting a partial performance of the Supplier. If the customer does not succeed in proving this then the customer has the right to reduce the consideration owed by the customer at a rate of the percentage of the value of the impossible partial performance to the value of the total performance.

3. If the customer withdraws then the customer shall be obligated to surrender the delivery item to the Supplier regardless of the other developments in accordance with this subsection. The Supplier has the right to collect the delivery item from the customer's premises in accordance with Section V Sub-

section 5. Section VIII shall apply accordingly for claims of the customer. If the customer delays in the surrender of the delivery item then the customer shall also be liable for accidental damage to the delivery item during the delay or its inability to be issued to another party up to the point when the Supplier has once again taken it fully into the Supplier's direct possession.

4. If the customer withdraws for reasons for which the Supplier is not responsible then the Supplier can demand compensation (in the sense of positive interest) for:

- the expenses already incurred as well as those yet to be incurred as a result of the contract (such as commissions, costs for conversion, transport, packing, assembly and disassembly, insurance premiums, taxes, general overhead expenses, financing and collection costs, loss of interest) without proof at a flat rate of 5% of the value of the delivery item, whereby the customer is free to provide proof of a smaller amount of damage. Moreover, the Supplier can prove and claim damage compensation which goes beyond this. Offsetting by the Supplier, particularly using payments received from the customer, is permitted; and
- the deterioration of, destruction of, or inability to issue the delivery item to another party for a different reason that has occurred or is occurring.

5. a. Furthermore, the Supplier can demand compensation for the use or consumption of the delivery item if the value of the delivery item has been decreased since its assembly and when the Supplier has once again taken it fully into the Supplier's direct possession. The decrease in value is calculated out of the difference between the total price in accordance with the order confirmation or in the purchase/work delivery contract and its present value determined through the sales proceeds (taking into account the incurred exploitation costs) or, if a sale is not possible, through the estimation of a sworn expert.

b. Subsection 4 shall apply correspondingly in the case of the withdrawal of the Supplier for reasons for which the customer is responsible, provided that 20% of the contract value is agreed as the flat rate for damage compensation, whereby the right is reserved to provide proof that the damages are greater or less than this.

## XII. Applicable law; court of jurisdiction

1. The laws of the Federal Republic of Germany shall apply exclusively for all legal relations between the Supplier and the customer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and references to other international laws.

2. The court of jurisdiction is exclusively the court responsible for the headquarters of the Supplier. Nevertheless, the Supplier also has the right to legally assert its claims in the court responsible for the headquarters of the customer.