

General Terms and Conditions of Sale, Delivery, Performance, Payment and Assembly of B.Pro GmbH Oberderdingen

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Part A – General Information

1. Scope

- 1.1. These General Terms and Conditions of Sale, Delivery and Payment (hereinafter also referred to as “General Terms and Conditions” or “GTC”) shall apply only with respect to entrepreneurs within the meaning of Section 14 of the German Civil Code [BGB].
- 1.2. All deliveries and services effected by us shall be governed by these General Terms and Conditions exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us. Even if we refer to written communication containing or making reference to deviating terms of the customer or a third party such shall not constitute any agreement to the validity of these terms and conditions.
General terms and conditions, including shrink wrap, clickwrap or other pre-formulated provisions, used by the customer and its suppliers shall not apply.
- 1.3. Unless otherwise agreed, these GTC shall apply as a framework agreement also for similar future contracts in the version applicable at the time the order was placed by the customer and/or in the text form last communicated [*“text form” as defined under § 126b BGB*] to the customer, without any requirement on our part to refer to them in each individual case.
- 1.4. Any individual agreements entered into with the customer in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these General Terms and Conditions. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written acknowledgment. In cases of doubt, commercial terms are to be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version applicable at the time the contract was concluded.
- 1.5. All agreements must be made in writing to be effective. This shall apply both to collateral agreements and assurances and warranties and to subsequent amendments to the contract, including this provision.
- 1.6. Unless otherwise agreed in the following, legally relevant declarations and notifications from the customer relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract or price reductions) must be given in writing exclusively, i.e. in written or text form. Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declarant shall remain unaffected hereby.
- 1.7. Any reference to the application of statutory provisions shall be for the purpose of clarification only. The statutory provisions shall thus also apply without such clarification, unless they are directly modified or expressly excluded by these General Terms and Conditions.

2. Offer, Conclusion of Contract, Changes, Documents and Cost Estimates

- 2.1. Our offers are without obligation and are not binding, unless they have been expressly declared as binding. We shall be entitled to accept orders or commissions within 60 days of their receipt. Cost estimates are not binding.
- 2.2. Written and oral orders shall be deemed to have been accepted upon the issue of a written acknowledgment of order or upon delivery of the ordered goods. The contents of the contract shall be governed by our offer or our written acknowledgment

of order. If no written acknowledgment of order is issued, our invoice shall fulfil this function. If the customer has any objections as to the contents of the acknowledgment of order, the customer must oppose such acknowledgment of order without delay. Otherwise, the contract shall take effect in accordance with the acknowledgment of order.

- 2.3. If our scope of services needs to be modified due to missing or incorrect information provided by the customer, we shall be entitled to effect such modifications; any costs or damage incurred thereby must be reimbursed to us by the customer.
- 2.4. Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximate unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.
- 2.5. We unrestrictedly reserve all title and author's exploitation rights to all and any drawings, cost estimates and other documents. Upon request, these documents must be returned to us without delay. There shall be no right of retention. Without our prior written consent, they shall not be disclosed to any third party.

3. Delivery, Delivery time, Place of Performance, Delay in Delivery

- 3.1. The delivery times shall commence with the date of the acknowledgment of order, however, in any case not before the documents, approvals and releases to be submitted by the customer have been provided and the agreed terms of payment (and/or the provision of collaterals, if applicable) have been met.
- 3.2. Any binding delivery dates and periods must be expressly agreed in writing.

Delivery periods shall be deemed met if the delivery item has left our premises or if readiness for dispatch has been notified by the time such periods and dates expire.

In the event of non-binding or approximate delivery dates or delivery periods (approx., about, etc.) we will use our best efforts to meet such delivery dates and periods. If a calendar week is agreed as the delivery period, we shall have the right to provide our services up to and including Sunday of the respective calendar week.

- 3.3. If delivery periods are exceeded, the customer shall be entitled to withdraw from the contract only if the customer has previously set us a reasonable grace period including a warning that the customer will refuse delivery, and if delivery has not been effected within such grace period. This shall not apply if in accordance with Section 323 (2) of the German Civil Code the specification of a deadline can be dispensed with.
- 3.4. If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the damage incurred thereby, including additional expenditures (e.g. storage costs). For this purpose, we will charge a flat-rate compensation amounting to 0.5% of the invoice amount for each completed calendar week, commencing with

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the delivery period or – in the absence of a delivery period – with the notification that the goods are ready for dispatch.

The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditures, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The customer shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.

If a reasonable time period has passed without result, we shall also be entitled to otherwise dispose of the delivery item or to supply the customer with a reasonably extended time period.

- 3.5. We shall be entitled to effect partial deliveries insofar as this is not unacceptable for the customer.
- 3.6. If we are in default of delivery, the customer must first grant us a reasonable grace period of at least 14 days – provided that this period is not unreasonable – in order to render performance. If this time period elapses without result, any claims for damages for breach of duty – irrespective of the reason thereof – shall apply only subject to the provisions of item 3.8 below.
- 3.7. If a right of retention can be asserted such shall exclude the occurrence of default.
- 3.8. If the customer incurs any damage on account of our delayed delivery, the customer shall have the right – to the exclusion of any further claims – to claim compensation for the delay. Such compensation shall amount to 0.5% of the net payment for each completed week that the delivery of the goods and/or service as a whole is in default, however not exceeding 5% of the net remuneration of the total delivery and/or total service which, due to the delay, cannot be delivered and/or provided by us in time or in accordance with the contract. Any further compensation paid by us for the damage caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 of the German Civil Code and in the case of compulsory statutory liability.

4. Prices and Packaging

- 4.1. The prices stated in the acknowledgment of order shall be authoritative. Unless otherwise agreed, our prices shall be FCA, place of delivery shall be one of our works in Oberderdingen (Germany), Hilter (Germany) or Frýdek-Místek (Czech Republic), unless otherwise agreed in individual cases. Our prices shall be exclusive of packaging, postage, freight, insurance, customs duties, other expenses and the statutory VAT.
Unless otherwise agreed, the customer shall bear all costs required for the set-up, assembly and installation of the goods as well as for connection to the electricity and water supply.
- 4.2. If additional expenses required for the provision of the service are incurred by us in the execution of the order of which we were not aware at the time of the conclusion of the contract, we shall have the right to charge these costs to the customer. This shall apply in particular if the goods provided by the customer do not correspond to the documents sent by the customer at the time of the conclusion of the contract.
- 4.3. If, after the conclusion of the contract and up until the execution of the order, any cost increases arise which were unforeseeable for us and/or which could not be controlled by us, e.g. on account of an increase in labor or material costs, we shall have

the right to adjust the prices within the scope of the altered circumstances.

- 4.4. A pallet exchange shall be deemed agreed in principle. The right to make such decision and the respective arrangements shall be reserved for the customer and the shipping agent.
- 4.5. If we are not bound by law to do so we will take back returned goods only if the goods are in a resalable condition, are originally packed and if the customer pays a handling fee of 30% of the invoice amount of the goods to be returned. Returns of goods are only possible with our prior written consent. Goods may only be returned with our prior written consent. The customer shall return the goods at its own expense and risk.

5. Shipment and Passing of Risk

- 5.1. Unless otherwise agreed in writing, delivery shall be effected FCA. Place of delivery shall be one of our works in Oberderdingen (Germany), Hilter (Germany) or Frýdek-Místek (Czech Republic). If there is an obligation to collect or send, the risk shall pass to the customer as soon as the goods leave our premises.
- 5.2. If shipment has been agreed and in the absence of another agreement, we reserve the right to select the route and the means of transportation. However, we will endeavor to take into account the customer's requests with regard to the shipping method and the shipping route – which shall however not constitute any entitlement to this effect by the customer. Any additional costs incurred thereby – also if delivery carriage paid (e.g. CPT or CIP) has been agreed – shall be borne by the customer; the same shall apply to any transport and insurance costs.

If we select the shipping method, the route or the shipping agent, we shall only be liable for intent or gross negligence in such selection.

- 5.3. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon delivery at the latest.

However, in the case of sale by dispatch the risk of accidental loss and accidental deterioration of the delivery as well as the risk of delay shall already pass with delivery of the products to the carrier, forwarding agent or other person or entity charged with the shipping of the goods.

If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. In other respects, the statutory provisions of the law on contracts for work and services [*German "Werkvertragsrecht"*] shall apply mutatis mutandis if acceptance has been agreed. Default in acceptance [*German "Annahmeverzug"*] by the customer shall be equivalent to delivery [*German "Übergabe"*] or acceptance [*German "Abnahme"*].

If the customer is in default of acceptance, if the customer fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, the risk of accidental loss or accidental deterioration of the delivery item shall pass to our customer at the time when the customer is in default of acceptance or in debtor's delay.

The aforesaid shall also apply in the event of an agreed partial delivery.

- 5.4. If shipment is delayed because we make use of our right of retention based on a complete or partial default in payment on the part of the customer, or for any other reason for which the customer is responsible, the risk shall pass to the customer on the date that the notification of readiness for dispatch and/or readiness to perform is received by the customer.

6. Terms of Payment, Set-off and Retention

- 6.1. Unless otherwise agreed in writing, payment shall be effected without deduction within 30 days of receipt of an invoice or an equivalent payment schedule.
- 6.2. Invoice amounts shall bear interest at a rate of 9 percentage points above the respective base interest rate from the due date, even without a reminder. The same shall apply to open instalments where payment is made by instalments.
- 6.3. For as long as due invoices are not paid by the customer, we shall be entitled to assert a right of retention with regard to the processing of new orders owed by us. If a right of retention is asserted, such shall exclude the occurrence of default.
- 6.4. In the event of circumstances that indicate a significant deterioration in the economic situation of the customer, we shall be entitled to immediately declare all claims due. In this case, we shall also be entitled to demand advance payment or the provision of corresponding security. If this is not complied with although we have set a deadline, we shall be entitled to withdraw from the contract.
- 6.5. The customer may only offset counterclaims that are undisputed or recognized by declaratory, non-appealable judgement. The customer may only enforce a right of retention if its counterclaim is based on the same contractual relationship.

7. Claims for Defects

- 7.1. Unless otherwise provided for in the following, the provisions laid down by law shall apply to the rights of the customer in the case of material defects and defects of title (including incorrect delivery and short delivery as well as improper assembly or faulty assembly instructions). In all cases, the statutory special provisions for reimbursement of expenses in the event of end delivery of the newly manufactured goods to a consumer shall remain unaffected (supplier recourse as per Sections 478, 445a, 445b and/or 445c, 327 [5], 327u of the German Civil Code) - unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement. Claims from supplier recourse shall be excluded if the defective goods were further processed either by the customer or another entrepreneur, e.g. by incorporation into another product.
- 7.2. Our liability for defects shall above all be based on the agreement made about the quality of the goods and the use provided for (including accessories and instructions). An agreement on the quality of the goods shall be deemed all product descriptions and manufacturer's information that are the subject-matter of the individual contract or that have been published by us (in particular in catalogs or on our internet homepage) at the time of conclusion of the contract.

To the extent that the quality has not been agreed, it must be determined whether or not a defect exists based on the provisions laid down by law (Section 434 [3] of the German Civil Code). Public statements made by the manufacturer or on behalf of the manufacturer, in particular in advertising or on the label of the goods, shall take precedence over statements of other third parties.

Unless otherwise expressly agreed, any statements and data contained in offers, product descriptions, catalogs, data sheets, drawings or other documents on technical data, dimensions, quantities, colors, potential applications and other properties, in particular on availability etc., only include information on the quality and guaranteed characteristics of the goods but do not constitute any guarantees.

- 7.3. In the case of goods with digital elements or other digital content, we shall only owe the provision and updating, if appli-

cable, of the digital content insofar as this expressly results from a quality agreement as per item 2 above. In this respect, we assume no liability for public statements made by the manufacturer and any other third party.

- 7.4. The claims for defects asserted by the customer require that the customer has observed its statutory obligations regarding inspection and reporting.

In the case of building materials and other goods intended for incorporation or other further processing, an inspection must in any case be carried out immediately before processing. The customer is under the obligation to inspect goods that are delivered to it without delay and to notify us of any apparent defects immediately. Any hidden defects must be communicated by the customer as soon as they are detected. If the customer breaches the obligation to inspect the goods without delay and to notify defects immediately our delivery and service shall be deemed accepted.

If the customer fails to duly inspect the goods and/or fails to notify the defect, our liability shall be excluded for the defect that was not notified and/or not notified in time or not notified in the proper form or manner in accordance with the legal provisions.

The customer is under the obligation to inspect any delivery immediately upon receipt and to notify us in writing and without delay of any apparent defects. Any hidden defects must be notified in writing as soon as they are detected. Otherwise, the delivery shall be deemed accepted. In the case of goods intended for incorporation, attachment or installation, this shall also apply if the defect that results from the breach of one of these obligations becomes apparent only after corresponding processing; in this case, in particular, the customer shall not be entitled to any claims for reimbursement of the corresponding costs ("dismantling and installation costs").

- 7.5. In the event of a defect for which we are responsible, we shall be entitled to effect supplementary performance by, at our discretion, either remedying the defect or by supplying a defect-free item in replacement. In consultation with the customer, however, we shall also be entitled to issue a corresponding credit note in lieu of supplementary performance. Our right to refuse supplementary performance in accordance with the provisions laid down by law shall remain unaffected.
- 7.6. The customer must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected goods for inspection or verification purposes. In the case of replacement delivery, upon our request, the customer must return the defective goods to us in accordance with the provisions laid down by law, however, the customer shall have no right of return. If we were not originally under the obligation to incorporate the goods, supplementary performance shall include neither the disassembly of the defective item nor its re-incorporation.
- 7.7. The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as costs of assembly and disassembly, if applicable, shall be borne or refunded by us in accordance with the statutory provisions, if a defect actually exists. Otherwise, we can demand compensation from the customer for the costs incurred as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.
- 7.8. Also in case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause 9 hereof (Damages) and shall be excluded in all other respects.
- 7.9. Claims for defects by the customer do not apply if the customer or a third party has inappropriately influenced our performance or has used the goods despite being aware of the defect. In

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such cases, liability on our part may only come into consideration if the customer substantiates that the defects were not caused, either in whole or in part, by the aforesaid actions.

- 7.10 The customer may not assert claims for defects in particular in case of inappropriate or improper use - in particular if the customer did not comply with the information in the instructions for use or operating manuals -, incorrect assembly or start-up by our customer or by a third party, subsequent wear-and-tear, faulty or careless handling, improper maintenance, inappropriate equipment, inferior construction work, inappropriate foundation, unsuitable location for installation, in particular installation foundation, lack of stability or unsafe power supply, chemical or electrical influences – unless we are responsible therefor.

8. Liability for Software Defects

- 8.1. Following the respective notification of defects by the customer we will remedy defects in the software supplied (software programs and the corresponding documentation and circuits and other records) within a limitation period of 2 years from delivery. At our discretion, remedy will be effected by rectifying the defect, delivering software free from such defect or demonstrating ways to prevent the effects of the defect. At least three attempts at supplementary performance must be accepted in the event of a defect. An equivalent new software version or the equivalent previous software version without the defect must be accepted by the customer if such can be expected of the customer.

The limitation period shall not commence anew on account of the supplementary performance. If we refuse to carry out the supplementary performance, if the supplementary performance fails or cannot be expected of the customer, the customer shall be entitled to assert additional claims and may in particular demand a reduction of the purchase price or withdraw from the contract.

- 8.2. At the time of transfer of risk, the software shall have the agreed properties and characteristics and shall be suited for the contractually intended use – in the absence of an agreement it shall be suited for its customary use. It shall meet the criteria of practical suitability and shall be of the quality customary for this kind of software, but it is, however, not bug-free. Functional impairment of the software as a result of hardware defects, environmental conditions, operating errors or the like shall not constitute a defect. A negligible reduction in quality shall not be taken into account. Software installation (patches or new versions) shall be the responsibility of the customer.
- 8.3. The customer shall assist us in error analysis and remedy of defect in particular by providing a substantiated description of the problems that arise, providing comprehensive information and by granting us the time and opportunity necessary for remedying the defect. At our discretion, defects may be remedied on site or at our business premises. Services can also be performed remotely. The customer must, at its own expense, arrange for the necessary technical requirements and must provide us electronic access to the software upon prior notification.
- 8.4. We shall be entitled to charge additional costs if the software was modified, used outside its prescribed environment or was handled incorrectly. We shall be entitled to charge compensation for expenses incurred if no defect is detected and if negligence was involved when the customer notified the defect. The burden of proof shall be with the customer. Section 254 of the German Civil Code shall apply mutatis mutandis.
- 8.5. Our liability shall be excluded if the minimum requirements regarding the customer's hardware and software facilities as stated in the agreed specifications are not met, if the software is installed at the customer on different hardware to the hard-

ware quoted in the agreed specifications without our consent, which must be provided in text form [*"text form" as defined under § 126b of the German Civil Code*], if different software to the software disclosed to us when agreement was made on the specifications has been installed on the same hardware or connected hardware of the customer on which the software is installed and the customer does not provide us with evidence that such different software has not caused any disruptions in the use of the delivery item and/or the software, if the customer has modified the software without our previous consent in text form or if the customer has not used the software in accordance with its intended use.

- 8.6. Unless otherwise stipulated herein we shall not be liable for any damage that did not originate in the delivered software itself. In other respects, clause 9 hereof shall apply to claims for damages and claims for compensation of wasted efforts.
- 8.7. The provisions stipulated in clause 7 hereof shall apply mutatis mutandis.

9. Damages

- 9.1. Unless otherwise provided for in these General Terms and Conditions of Sale, Delivery and Payment, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.
- 9.2. We shall be liable for damages, irrespective of the legal grounds on which such claims are based, within the scope of liability based on fault in the event of intent and gross negligence. In the event of slight negligence, we shall be liable, subject to statutory limitations of liability (e.g. due diligence in our own affairs; insignificant breach of duty), only
- for damage resulting from injury to life, limb or health,
 - for damage resulting from the breach of an essential contractual obligation (fundamental obligation going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the customer regularly relies on and may rely on); in this case, however, our liability shall be limited to the compensation of foreseeable damage that typically occurs.
- 9.3. The limitations of liability resulting from the above item 9.2. shall also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for in accordance with statutory provisions. The limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished a guarantee for the quality of the goods and for claims of the customer under the Product Liability Act.
- 9.4. The customer may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. Unrestricted right of termination of the customer (in particular pursuant to Sections 650, 648 of the German Civil Code) shall be excluded. In addition, the statutory requirements and legal consequences shall apply.
- 9.5. The statutory provisions relating to the burden of proof shall remain unaffected by the above regulations.
- 9.6. If we provide technical information or act in an advisory capacity and if this information or advice is not part of the contractually agreed scope of performance owed by us, this shall be done free of charge and to the exclusion of any liability.

10. Retention of Title

10.1. We retain title to all goods delivered until each and every claim against the customer has been paid in full, even if the goods concerned have already been paid. Claims shall also include claims on checks and bills of exchange as well as receivables from current account. If, in connection with payment by way of bill of exchange, a liability to recourse is created against us, retention of title shall only become extinct if it is ruled out that a creditor might have recourse against us.

10.2. If the customer is in default of payment or if it becomes apparent that our claims for payment are at risk due to the customer's inability to honor its commitments, we shall be entitled to claim the surrender of the goods based on the retention of title. Such claim for surrender shall not require withdrawal from the contract.

The customer must inform us immediately of any impairment of the goods subject to retention of title and any enforcement measures taken by any third party against the goods subject to retention of title by providing us with the documents required for asserting our rights. The customer will inform the third party in advance of such existing rights to the goods. The customer shall bear the costs of legal enforcement if the executing third party is not able to reimburse such costs.

10.3. Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the delivery item within the framework of the ordinary course of business. In the event of resale, as early as with the present the customer shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, up to the sum total of the invoice (including VAT), irrespective of whether the goods delivered were sold without or after processing.

Subject to our admissible revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. For good cause we shall have the right to notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the debt. If the right to collect the debt is revoked, we can require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all information required for collection, to hand over all relevant documents and to notify the debtors of the assignment.

10.4. Processing and transformation of the delivery item by the customer shall always be undertaken on behalf of us. We shall be deemed to be the manufacturers within the meaning of Section 950 of the German Civil Code, without any further obligation. If the delivery item is processed together with other items which do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the delivery item and the value of the other processed goods at the time of processing. In all other respects, the provisions applicable to the item delivered subject to retention of title shall apply to the new product created by such processing.

10.5. If the delivery item is mixed or blended with other items which do not belong to us, we shall acquire co-ownership of the new product in proportion to the sum total of the invoice of the delivery item and the value of the other mixed or blended products at the time of mixing or blending. If mixing or blending is done in such a way that the product of the customer is to be considered as the principal thing, it shall be deemed agreed that the customer assigns to us co-ownership on a pro-rata basis. The customer shall store the sole property or joint property for us.

11. Supply by our own Suppliers and Force Majeure

11.1. If, for reasons for which we are not responsible, we are not supplied, not correctly supplied or not supplied on time by our sub-suppliers for the provision of our contractually owed deliveries or services despite proper and sufficient coverage of requirements before conclusion of the contract with the customer in accordance with the quantity and quality resulting from our supply or performance agreement with the customer (*matching cover transaction*) or if events of Force Majeure occur which continue for a not insignificant length of time, we will inform our customer thereof in writing or in text form in good time. In such case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract that has not yet been fulfilled, insofar as we have fulfilled our aforesaid obligation to provide information and have not assumed the procurement risk or a delivery guarantee.

If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the customer without delay.

Force Majeure shall be equivalent to war, civil war, combat operations (irrespective of whether or not a war has been declared), revolution, insurgency, riots, terrorism, explosion, fire, earthquake, high water, flood, storm, typhoon and other natural disasters, epidemics, pandemics, diseases or quarantine, cyber-attacks, disruptions to the operation of the world wide web (internet), industrial disputes, strikes, lockouts, embargoes, calls for boycotts, import and export bans and other trade barriers, official interventions, changes in the legal situation, energy and raw material shortages, transport bottlenecks or impediments for which we are not responsible, e.g. on account of fire, water or machine damage, power failure - and all and any other impediments which, from an objective point of view, have not been culpably caused by us.

Force Majeure shall also apply if, as a result of war, there are raw material shortages and production bottlenecks that are not the direct consequence of the acts of war but are an indirect consequence, which may lead to a reduction in production for which we are not responsible.

11.2. If a delivery date or a delivery period has been bindingly agreed and the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with item 11.1. above, the customer shall be entitled – after a reasonable grace period has expired without result – to withdraw from the contract on account of the part that has not yet been fulfilled. In such case, any further claims of the customer, in particular claims for damages, shall be excluded.

11.3. The above provision pursuant to item 11.2. shall apply accordingly if, for the reasons stated in item 11.1. above, even without contractual agreement of a fixed delivery date further adherence to the contract cannot objectively be expected of the customer.

12. Intellectual Property Rights.

If we infringe the intellectual property rights of any third party, we can fulfil the commitments we have entered into, at our discretion, either by:

- a) obtaining the necessary licenses in respect of the allegedly infringed intellectual property rights, or;
- b) providing the customer with a modified delivery item or parts thereof, which, if exchanged for the infringing delivery item or the respective part thereof, will eliminate the allegation of infringement with regard to the deliveries and services.

13. Software

13.1. If software and the related documentation are part of the deliveries and services, the customer shall be granted the non-exclusive, non-transferrable, not sub-licensable and irrevocable right to use these together with the deliveries and services for which the software has been delivered. Use of the software on more than one system shall not be permitted.

Unless a specific license agreement has been concluded with us in writing, any other use of the software and the related documentation, e.g. together with the customer's own hardware or the hardware of any third party, shall be expressly excluded.

- 13.2. The customer shall only be entitled to duplicate, rework, translate or convert the software from object code to source code within the scope permitted by law (Sections 69 a et. seq. of the German Copyright Act). Provision of source programs shall require special written agreement. If the originals bear a copyright notice such notice must also be added to the copies by the customer.
- 13.3. Unless otherwise agreed, the right of use shall in each case be deemed granted with the acknowledgment of order and delivery of the software, the related documentation and any subsequent additions.

14. Statute of Limitation

- 14.1. In derogation from Section 438 [1], number 3, of the German Civil Code, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance or the first time the customer puts the goods into use, whichever occurs first.
- 14.2. The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the customer based on a defect of the goods – unless the standard statutory limitation periods (Sections 195, 199 of the German Civil Code) would, in an individual case, result in shorter limitation periods. However, claims for damages of the customer in accordance with item 9.2 above as well as claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods exclusively.

15. Export Control, Import Regulations

15.1. In the absence of any derogating contractual agreements concluded with the customer, the deliveries and services are intended to be placed on the market within the European Union for the first time, or, in case of deliveries and services outside the European Union to the agreed country of first delivery (country of first delivery).

15.2. The deliveries and services may be subject to the export control regulations of the Federal Republic of Germany, the European Union, the United States of America or other countries.

15.3. In the event of subsequent export of the deliveries and services to third parties in Germany and abroad, the customer must comply with the respective applicable regulations of national and international export control law.

16. Transfer of Rights and Obligations

We shall be entitled to transfer our rights and obligations to third parties without prior consultation with the customer.

However, the assignment of the rights and/or the transfer of the customer's obligations arising out of the contractual relationship to a third party shall require our written consent.

17. Place of Performance, Place of Jurisdiction

17.1. Unless otherwise agreed, place of performance for all and any obligations arising out of the contractual relationship shall be the seat of our company or the place of performance designated by us.

17.2. For merchants with seat in the European Union, Liechtenstein, Iceland, Norway or Switzerland when the proceedings are initiated exclusive place of jurisdiction – also internationally - for all and any disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent for the seat of our company. In deviation herefrom we may, at our discretion, also bring an action at the seat of the customer. Any statutory provisions taking priority, in particular with regard to exclusive jurisdiction, shall remain unaffected thereby.

17.3. If item 17.2. above is not applicable, any disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.

18. Applicable Law

The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

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Part B

The following terms and conditions effective at the point in time the contract is concluded shall always apply in combination with the General Terms and Conditions (Part A) as an integral part thereof and shall apply exclusively to assembly services.

1. Scope and Scope of Services

Assembly services within the meaning of these terms and conditions of assembly shall comprise the set-up, installation and commissioning of a system in connection with a purchase contract. The customer shall be entitled to individual assembly services only if we have undertaken to provide such services in accordance with item 2.4 (Part A). In no event shall the agreement of an individual assembly service (e.g. set-up) result in the obligation to provide all additional assembly services.

2. Prices

- 2.1 Assembly will be invoiced at the cost rates applicable at the time, which can be requested from us.
- 2.2 Surcharges will be charged for work outside usual working hours.
- 2.3 Travel and waiting times shall count as working time.

3. Customer's Duties to Cooperate

- 3.1 To the extent necessary, the customer must support our employees in meeting the contractually owed services at its own expense.
- 3.2 The customer must name at least one responsible person (hereinafter referred to as "Authorized Representative") for the entire assembly process, who will be permanently present at the assembly site during the execution of the assembly services and who shall be authorized to make declarations of intent with direct effect for and against the customer in his/her own name.
- 3.3 The customer must ensure that our employees are adequately protected at the assembly site and are informed about existing special safety regulations, insofar as these are of importance to our employees. If necessary, special protective clothing must be provided to our employees free of charge. If any of our employees violate such safety regulations, the customer shall notify us immediately.
- 3.4 In addition, the customer must ensure at its own expense that:
 - 3.4.1 our employees have access to the assembly site at the agreed time; any waiting times of our employees will be invoiced at the agreed hourly rates;
 - 3.4.2 technical assistants are available in a timely manner in the number and for the time necessary for the provision of the services; the supporting staff must follow the instructions of our employees; we do not assume any liability for the supporting staff;
 - 3.4.3 the equipment or systems required for the performance of the assembly services is/are available at the assembly site at the agreed time and that the assembly site and the equipment/systems are protected against harmful influences of any kind;
 - 3.4.4 all earthwork, construction, bedding and scaffolding work has been carried out and necessary building materials have been procured;

- 3.4.5 the load-bearing capacity of existing building elements (foundations, ceilings, beams, walls, etc.) on which the installation is to be erected is guaranteed;
- 3.4.6 the necessary heating, lighting, operating power, water, compressed air and electricity, including the necessary connections, are provided;
- 3.4.7 all necessary equipment and heavy tools (e.g. lifting equipment, compressors) as well as necessary requisites and materials (e.g. construction wood, wedges, supports, lubricants) are provided;
- 3.4.8 the required dry and lockable rooms are provided for the storage of our employees' tools;
- 3.4.9 suitable, theft-proof common rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) as well as first aid are provided for our employees;
- 3.4.10 any other action is taken that is necessary for the performance of a contractually agreed commissioning;
- 3.4.11 permits required for the installation and commissioning of the system have been obtained in good time;
- 3.4.12 any additional technical services listed separately in our offers and order confirmations are provided.
- 3.5 The customer must ensure that assembly can be started immediately when our employees arrive and can be performed without any delays up until acceptance by the customer.
- 3.6 The customer shall be under the obligation to confirm the working hours of our employees on a daily basis. The confirmation can be made by the responsible person authorized by the customer in accordance with item 3.2 above. If confirmation is not provided, we shall nevertheless be entitled to invoice the customer for the working hours of our employees.
- 3.7 If the customer does not fulfil the obligations incumbent on it, or does not fulfil them on time, and if this results in delays and/or additional time or expense, we shall be entitled to demand compensation for the additional expenses incurred as a result.
- 3.8 If services cannot be carried out without endangering the life and health of our employees due to non-compliance with occupational safety regulations, either adequate corrective measures must be taken or the work shall be suspended until occupational health and safety is guaranteed. In this case, the time delays shall extend any deadlines accordingly.

4. Acceptance

- 4.1 Our services shall be deemed accepted 14 working days after we have notified readiness for acceptance, unless the customer notifies us in writing of significant defects within this period.
- 4.2 At the time of acceptance, a report which shall be signed by us and the customer must be drawn up confirming conformity with the agreed service description ("acceptance report"). If it is not possible for the customer or its vicarious agents to be present at the agreed place of acceptance on the acceptance date, the declaration of acceptance must be submitted by the Authorized Representative.

Acceptance cannot be refused in the event of an insignificant defect. If the work contains defects that do not entitle the customer to refuse acceptance, acceptance must be given subject to the condition that the defects will be remedied.

Refusal of acceptance or reservations against acceptance must be made without delay in writing, indicating and describing the claimed defect.

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- 4.3 Upon acceptance, our liability for apparent defects shall expire, unless the customer has reserved the right to assert a specific defect.
- 4.4 If, in addition to providing the assembly service, we have also undertaken to deliver the system that is to be assembled, the acceptance of the delivery item and the acceptance of the assembly service must be declared separately.
- 4.5 Our assembly services shall be deemed accepted ("Deemed Acceptance") if
- the assembly services have been completed,
 - we have informed either the customer or the Authorized Representative hereof making reference to the Deemed Acceptance according to this clause and have requested them to perform acceptance,
 - 14 working days have passed since the last work was performed on the assembly or use of the assembled system has commenced not merely for test purposes (e.g. if the assembled system has been put into business operation) and if, in such case, six working days have passed since the last work was performed on assembly, and
 - if the customer or the Authorized Representative has failed to perform acceptance within this time period.
- 4.6 If the customer puts the delivery item or the item to which our service relates into use, this shall be deemed as acceptance.

5. Claims for Defects

- 5.1. The customer may only assert claims for defects on the proviso that the customer has duly met its inspection and notification obligations in accordance with Section 377 of the German Commercial Code [*HGB*]. In the case of building materials and other delivery items intended for incorporation or other further processing, an inspection must in any case be made immediately before processing.

In the case of drop shipping, notification of defects must always be made along the lines of the purchase contract relationships. Drop shipping consists of a sequence of two or more sales by dispatch, e.g. we sell the goods to the customer that, in turn, resells these goods to a third party and instructs us to deliver directly to such third party; four or more persons can be involved in drop shipping.

- 5.2. At our discretion, we will deliver an item free from defect or will remedy defects – this is, however, on the proviso that it can be proven that the delivery item was already defective at the time the risk passed in accordance with item 6.3 (Part A).
- 5.3. If the item delivered is defective, we may first of all choose to effect supplementary performance by either remedying the defect (repair) or by delivering an item free from defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.
- Unless we have expressly confirmed the existence of a defect in writing, any repair or replacement delivery or any re-manufacturing will on principle at most be effected by us as a gesture of goodwill and ex gratia, i.e. without admitting legal responsibility.
- 5.4. After consultation with us, the customer must grant us the necessary time and opportunity for any supplementary performance owed by us and must, in particular, provide us with the rejected delivery item for inspection and verification or otherwise provide us access to the rejected delivery item.

In the event of replacement delivery, the customer must return the defective delivery item to us in accordance with the statutory provisions. We shall be entitled to a claim of transfer of ownership of the replaced parts.

If the supplementary performance fails, the customer may remedy the defect itself in accordance with Section 637 of the German Civil Code ("Self-help") or reduce the payment appropriately.

However, the right of the customer to remedy the defect itself shall not apply if we were entitled to by law to refuse a corresponding supplementary performance.

- 5.5. The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as dismantling and installation costs, if applicable, shall be borne or refunded by us in accordance with the statutory provisions if a defect actually exists. If such costs increase because the delivery item was taken to a place other than the place of delivery, such costs shall be borne by the customer. Otherwise, we can demand compensation from the customer for the costs incurred as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.
- 5.6. Within the framework of the statutory provisions, the customer has the right to withdraw from the contract if – taking into account the statutory exceptions – a reasonable grace period granted to us by the customer for repair or replacement delivery has expired without result. In the event of an insignificant defect, the customer shall only be entitled to a reduction in price. In all other respects, the right to a reduction of the price shall be excluded.
- 5.7. Without prejudice to Section 275 [2] and [3] of the German Civil Code, we shall be entitled to refuse supplementary performance if it entails disproportionately high effort or is only possible at disproportionate cost. When the reasonableness is assessed, the value of the item in a defect-free condition, the significance of the defect and the question of whether we can avail ourselves of the other type of supplementary performance without significant disadvantages for the customer must be taken into account.
- 5.8. Claims for defects by the customer shall be invalid if the customer or a third party has handled our delivery item improperly or has used the delivery item even though the customer or the third party was aware of the defect. In such cases, liability on our part shall only be considered if the customer proves that the defects were not caused, neither in whole nor in part, by the aforementioned handling.
- 5.9. Claims for defects due to causes that cannot be attributed to a fault on our part shall be invalid, for example:

We do not provide any warranty for defects that are due to measures or designs that the customer has expressly requested or that occur in materials or products that the customer has provided or made available to us or use of which the customer has expressly requested contrary to our instructions.

In addition, the customer may not, in particular, assert any claims for defects in the following cases - unless we are answerable for them or such measures have been carried out with our express written consent: in the event of natural wear and tear, excessive stress, unsuitable and improper use - in particular in breach of the information in the operating instructions or manual - faulty assembly or commissioning by our customer or any third party, subsequent wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials / replacement materials, defective construction work, unsuitable sub-soil, unsuitable installation site, in particu-

lar installation surface, lack of stability or unsuitable securing of the power supply, chemical or electrical influences, harmful environmental conditions unknown to us.

Furthermore, claims for defects shall not arise if the software provided is combined by the customer with third-party software and such third-party software is not compatible with the software, nor if defects are based on non-contractual or improper use of the software by the customer. Neither shall claims for defects arise if the customer does not use the required system configuration, in particular infrastructure, hardware, operating system and database.

- 5.10. Claims for defects by the customer shall be excluded if the systems, conveyor belts and other machines of the customer or a third party are not in technically sound and operational condition or are not compatible with the items delivered, if the customer's technical systems, such as supply lines, wiring and the like, are not in a technically sound and operational condition or are not compatible with the items delivered, insofar as the circumstance is the cause of the defect.
- 5.11. The delivery items may only be used by qualified personnel.
- 5.12. Warranty obligations shall not apply
- if the delivery items have been improperly handled, stored, assembled, used, exposed to unsuitable chemical, electro-chemical or electrical influences that have not been contractually specified or have been exposed to undue stress, or
 - if the delivery items are combined with defective construction projects or unsuitable building ground, or
 - if the delivery items have been altered in a manner not approved by us, or
 - in the event of changes, additions or modifications to the delivery items not agreed with us or if third-party accessories or spare parts are used - unless the customer provides proof that there is no causal link between the asserted defect and such measure, or
 - if the customer has not complied with the rules and regulations concerning the treatment, maintenance and care of the delivery items (e.g. operating instructions), unless it can be ruled out that one of these instances has caused the occurrence of the defect.
- 5.13. We do not assume any guarantees or warranties. Furthermore, we shall not be liable for such qualities of the delivery items that are based on drawings, samples or other information and specifications of the customer – in particular on a design prescribed by the customer or the use of a material stipulated by the customer. This shall apply in the aforesaid cases in particular if the delivery items prove to be unsuitable for the customer.
- 5.14. The customer shall only be entitled to withdraw from the contract if our services are demonstrably of no interest to the customer despite the price reduction.
- 5.15. The customer shall bear the burden of proof that it has not taken measures to remedy the defect itself.
- 5.16. Notwithstanding the aforesaid provisions, the customer undertakes to document both the defect and any resulting damage in accordance with generally accepted technical standards.
- 5.17. In case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause 9 (Part A) and shall be excluded in all other respects.

6. Compensation by the Customer

If, through no fault of our own, the devices or tools provided by us are damaged at the assembly site or if they are lost through no fault of our own, the customer shall be under the obligation to compensate such damage. Damage caused by normal wear and tear shall not be taken into account.