

## General Terms and Conditions of Purchase (GTCP) (as of March 2022)

### IEM FörderTechnik GmbH

#### 1. General

- 1.1** These General Terms and Conditions of Purchase (GTCP) apply to all orders, even if no express reference is made to them in contracts, and to orders that are not documented in a purchase agreement. These GTCP specifically apply to deliveries and to works or services. The result of the delivery or service is hereinafter referred to as the delivery item and the time of performance as the time of delivery.
- 1.2** In the event of any contradictions between different contractual documents, such documents are to apply in the following order:
- individual orders
  - framework order
  - delivery call-offs
  - supply contract or work contract or service contract
  - these General Terms and Conditions of Purchase
  - property law of the Federal Republic of Germany
- 1.3** The invalidity of individual provisions of these General Terms and Conditions of Purchase does not affect the validity of the remaining provisions.
- 1.4** All deliveries, services and offers of our suppliers are made exclusively on the basis of these General Terms and Conditions of Purchase. These GTCP are an integral part of all contracts that we conclude with our suppliers in relation to the deliveries or services they offer. They also apply to all future deliveries, services or offers to the customer or IEM, even if they are not separately agreed again. The terms and conditions of our suppliers or third parties do not apply, even if we do not separately object to the applicability of such terms and conditions in individual cases. Even if we refer to a letter containing, or referring to, terms and conditions of the supplier or a third party, this does not constitute consent to the validity of such terms and conditions. Payments or acceptance of deliveries or services by us do not constitute acceptance of the supplier's terms and conditions; deviating conditions, ancillary agreements, changes or additions only apply insofar as they are expressly accepted by us in writing or electronically.
- 2. Offer, order and order confirmation**
- 2.1** The invitation to submit an offer is non-binding for our part. Offers and quotes submitted to us are binding and free of charge, unless an express agreement to the contrary is in place.
- 2.2** Orders and agreements are only binding if they are placed or confirmed by our purchasing department in writing or electronically. Orders and/or delivery call-offs are deemed to be accepted unless the supplier objects, in writing or electronically, within three working days of receipt of the order/delivery call-off.
- 3. Service description**
- 3.1** The delivery item or the service to be rendered is to comply with the specifications, drawings, plans, static calculations, implementation provisions and other documents specified by us as well as with the provisions applicable in the country of manufacture and in the country of destination (specifically in relation to system projects as well) at the time of delivery. These specifications are guaranteed characteristics of the delivery or service.
- 3.2** The supplier guarantees the careful and proper performance of the contract in accordance with the latest developments in science and technology (including developments in the field of safety and occupational health). Moreover, the supplier guarantees the quality and expediency of the delivery and service with regard to material, construction and design and the format of the documentation (operating instructions, drawings, plans, etc.) associated with the delivery.
- 3.3** The information and documents associated with the order (e.g. sketches, drawings, plans, static calculations, data) and provisions (e.g. samples, models, tools, devices, moulds and other equipment) are binding on the supplier. However, the supplier is to check the aforementioned for any discrepancies, professionally and immediately, and notify us immediately, in writing or electronically, of any defects identified or suspected. The supplier is to issue a written reminder, without delay, if any of the requisite documents or provisions to be supplied by us are missing.
- 3.4** The supplier may not subsequently refer to discrepancies or missing documents or provisions if they have not issued a written reminder in due time or if they have received a remedy within a reasonable period of time.
- 3.5** All information and documents (e.g. sketches, drawings, plans, static calculations, data), as well as provisions (e.g. samples, models, tools, devices, moulds and other operating materials) and primary or raw materials, which are supplied or paid for by us, remain our property (or become our property upon payment) insofar as such items are required for the delivery item. They must not be made available or made accessible to third parties and must not be used as part of a delivery to third parties. Vicarious agents and sub-suppliers are to be instructed accordingly. The supplier is to prepare complete tool documentation and make it available to us in a form to be agreed.

- 3.6** Any changes to the subject matter of the contract, the materials used, and the production and testing methods may only be made with our prior written consent.
- 3.7** We are also permitted to demand changes to the subject matter of the contract subsequent to conclusion of the contract, insofar as such changes are reasonable to the supplier. With regard to such a change to the contract, due consideration is to be given to the effects on both parties, particularly in relation to any potential additional or reduced costs and extension of delivery deadlines.
- 3.8** Our commitment note and our assembly and disassembly conditions apply to work on and for systems set up by us. To document the management of occupational health and safety, the release certificate is to be completed prior to commencing any work. A notice of exemption from construction withholding tax is to be submitted.
- 4. Documentation**
- 4.1** The documentation for the delivery item is to be delivered together with the delivery item at the very latest, insofar as no earlier delivery date has been agreed.
- 4.2** The documentation is part of the order and is included in the purchase price.
- 4.3** In the event of missing, delayed or incomplete documentation, we are entitled, unless otherwise agreed, to withhold at least 5% of the order value until delivery of the complete documentation. However, a minimum of EUR 2,000 will be withheld under such circumstances.
- 4.4** An accident leaflet and safety data sheets fully completed in accordance with DIN EN ISO/ASTM 52900 as well as documents required under the Reach Ordinance are to be delivered in good time and in their latest version.
- 5. Quality and quality control, production and product approval procedures**
- 5.1** The supplier is to comply with our quality assurance standards for their deliveries and services and apply a suitable quality standard such as QS 9000, ISO/TS 16949 or VDA 6.1 throughout their manufacturing process and acknowledge the underlying standard in writing. Unless otherwise agreed, the best quality vis-à-vis material and design is deemed to be agreed.
- 5.2** The supplier is aware of the purpose of the contractual service. They are liable for material defects which adversely affect the suitability of the service for the intended purpose and function.
- 5.3** If requested to do so, the supplier is to submit an initial sample from series tools with all requisite documents for appraisal in compliance with the given deadline.
- 5.4** The supplier is to take suitable measures to ensure the quality of the materials and preliminary products needed to manufacture the delivery item.
- 5.5** The supplier is to keep records of when, how and by whom the delivery items were tested in the course of the manufacturing process and record the results of the required quality tests. The test documents are to be kept for ten years and submitted to us if necessary. The supplier is to instruct sub-suppliers and vicarious agents to the same extent.
- 5.6** Insofar as the nature and scope of the test as well as the test equipment and methods have not been agreed between us and the supplier, we are thus prepared to discuss the test with the supplier to determine the required standard of test technology in each case. Such a discussion is to take place at the supplier's request and within the scope of our knowledge, experience and capabilities.
- 6. Regulations, standards and sub suppliers**
- 6.1** By accepting the order, the supplier undertakes to comply with all relevant statutory and other regulations applicable at the time of delivery in the country of manufacture and in the country of destination (particularly in relation to systems). This applies, inter alia, to EU regulations, EU directives, safety and environmental protection regulations, the German Equipment Safety Act, accident prevention and other occupational safety regulations as well as regulations regarding the handling of hazardous substances.
- 6.2** If the supplier intends to subcontract the delivery item or partial services thereof, our written approval is to be obtained beforehand.
- 6.3** Insofar as the supplier has the delivery item or parts thereof manufactured by third parties, the aforementioned conditions are to apply analogously. The supplier is responsible for compliance with the aforementioned provisions by their suppliers and vicarious agents.
- 6.4** The supplier undertakes to reimburse the costs, damages and other disadvantages arising from non-compliance with the aforementioned regulations.
- 7. Property rights**
- 7.1** The supplier is liable for ensuring that their delivery and service are free of third-party rights and that their delivery and service and the contractual exploitation thereof do not infringe any patents or other third-party property rights domestically or abroad. In this regard, the supplier is to indemnify us against any claims raised by third parties.
- 7.2** Claims arising from liability for defects of title prescribe within a period of 36 months from the point at which we become aware or, due to gross negligence, fail to become aware of the underlying breach of duty.

- 7.3** Insofar as the supplier has property rights relating to the application of the delivery item they have delivered, the supplier is to grant us a worldwide, unlimited right of joint use, free of charge, to their property rights to the extent necessary to achieve the purpose of the contract.
- 8. Order number, supplier number, item number**  
Order confirmations, dispatch documents and invoices as well as other correspondence, including electronic transactions, are to bear our complete order number and job number, the supplier number, our material and drawing number and the quantity of material for each purchased part or service. The individual containers of the delivery are to bear our designation of the delivery item. If this information is absent, we reserve the right to invoice costs arising from such an absence or to reject deliveries and invoices. The return transport is at the supplier's expense and risk.
- 9. Packaging, dispatch, transport, delivery, acceptance point, transfer of risk**
- 9.1** To protect against loss or damage and to prevent damage to persons, equipment or other goods, the delivery items are to be packaged and loaded safely at the supplier's expense. The supplier is liable for all the consequences of an error or defect in the packaging. Packaging regulations issued by us do not exempt the supplier in this regard.
- 9.2** Hazardous substances are to be packaged, labelled and transported in accordance with the applicable laws of the respective countries (including transit countries). The dangerous goods classification or, if applicable, the "no dangerous goods" notation is to be indicated on the delivery note.
- 9.3** Where necessary, the CE marking is to be affixed in such a way that it is clearly visible. The declaration of conformity and the hazard analysis are to be included with the delivery.
- 9.4** Each delivery is to be accompanied by a delivery note or packing slip which must meet the aforementioned requirements. If these items are not included, we reserve the right to reject the delivery. In the event that we do not accept delivery items and such items are returned, the return transport occurs at the supplier's expense and risk. The supplier is charged for the equivalent value of the return. This does not cause a default of acceptance on our part.
- 9.5** Delivery is made in accordance with the mode of dispatch stated in the order. The supplier is to bear responsibility for transport insurance until the transfer of risk.
- 9.6** The transfer of risk occurs at the agreed place of performance following acceptance of the delivery item. Insofar as INCOTERMS have been agreed for deliveries, and such terms deviate from those set out here, risk is to be borne in accordance with the provisions of this clause.
- 9.7** Dispatch is to be to the acceptance point or construction site stipulated by us.
- 9.8** The supplier is to inform themselves, beforehand, of the locations and how to get to such locations if the goods are to be delivered to the construction site. We do not accept any liability for damage and costs incurred in relation to delivery to the construction site due to ground conditions or other circumstances. Downtimes may only be claimed separately by the supplier to the extent that such downtimes are caused by us or our vicarious agents intentionally or as a result of gross negligence.
- 9.9** The supplier undertakes to dispose of their waste, packaging etc. on their own authority and at no charge to us. If the supplier does not comply with this agreement, we may carry out the disposal at the supplier's expense without setting any further deadline.
- 10. Prices and payment terms**
- 10.1** Prices are fixed prices, carriage-paid to our acceptance point, including packaging and other ancillary costs unless otherwise agreed.
- 10.2** Unilateral price changes are excluded. An increase in material and raw material prices, wages and salaries, manufacturing and transport costs as well as other price elements subsequent to conclusion of the contract do not constitute an entitlement to change the price.
- 10.3** Notices of defects entitle us to suspend payments or withhold appropriate amounts until the defects have been completely remedied.
- 10.4** Invoices are to be submitted as a single copy, separately from the delivery item after delivery, and separately for each order. The value added tax is to be accounted for in accordance with the applicable regulations.
- 10.5** Unless otherwise agreed, we are to pay the purchase price on the 20th of the following month less a 3% discount or net within 60 days of delivery of the goods and receipt of the invoice. The receipt of our transfer order by our bank is sufficient for the timeliness of the payments due from us.
- 10.6** If the delivery item is received subsequent to the invoice or if the invoice is incomplete, the date of receipt of the delivery item or the date of receipt of the proper invoice is decisive for calculating the discount period.
- 10.7** Payment is to be made subject to invoice verification and complete delivery of the delivery item in its entirety. Our payment does not constitute confirmation of performance of the supplier's contractual obligations nor acceptance of the performance object.
- 10.8** Insofar as we make advance payments to the supplier prior to complete delivery or performance, we are thus entitled to make such payments dependent on the provision of bank guarantees.
- 10.9** The supplier undertakes to reimburse us in the event of overpayments, whereby the supplier cannot invoke the statute of limitations or plead financial loss.
- 10.10** We are entitled to offset the supplier's claims against other existing claims in accordance with the value date.
- 10.11** The supplier is not entitled to assign their claims against us without our prior written consent. We will not unreasonably withhold our consent in this regard.
- 10.12** We acknowledge the supplier's retention of title to the delivery items until full payment of the purchase price. An extended or prolonged retention of title is excluded.
- 10.13** A written reminder is always required for us to be put in default.
- 11. Delivery date and default**
- 11.1** Delivery and performance are to take place on the delivery dates stipulated in the order letter or on the dates determined by us in accordance with §§ 315 BGB (German Civil Code) or delivery and performance are to take place on an on-call basis. Delivery dates are binding. Force majeure is excepted in this regard.
- 11.2** The delivery date is met if the delivery item has arrived at the agreed acceptance point on or before the delivery date. If dispatch of the delivery item is postponed at our request, the delivery date is deemed to have been met if notification of readiness for dispatch is received on or before the delivery date. With regard to contracts for work and services or contracts for work and materials, the delivery date is met if the delivery item is ready for operation and accepted at the place of acceptance on or before the delivery date.
- 11.3** We are permitted to adapt the delivery date to operational requirements. The delivery date may be set anew as a result. In this case and other such cases of prevention of removal, the supplier is to assume responsibility for the proper interim storage and insurance of the delivery items. The supplier is not to charge any separate costs for postponements of deadlines up to a period of 3 months. Appropriate costs are to be agreed for any further deadline postponement after this 3-month period.
- 11.4** Deliveries and services which are reported as being ready for dispatch or ready for assembly prior to the delivery date do not have to be called off or accepted. Partial services or partial deliveries are excluded.
- 11.5** Insofar as delivery or performance is not effected by the given deadline, we are thus entitled to assert all resulting legal claims.
- 11.6** The supplier is to notify us, immediately and in writing or electronically, of any imminent delays in delivery that are apparent to the supplier. The supplier is to state the reasons and duration of the delay, and suggest remedial measures.
- 11.7** In order to avoid imminent delays in delivery, we are entitled to contact the vicarious agents and sub-suppliers of the supplier to the extent that such contact is expedient.
- 11.8** Insofar as the agreed delivery dates are not met, we can thus claim a contractual penalty of 0.1% for each working day of the delay. Such a contractual penalty is not to exceed a total of 5% of the order value as a flat-rate contractual penalty, unless the supplier is not responsible for the reasons giving rise to the delay. The supplier is to bear the risk of default on the part of the supplier's suppliers.
- 11.9** The reservation of the contractual penalty may also be declared in such a way that the forfeited contractual penalty may be deducted from the remuneration owed at the point at which the next payment is due.
- 11.10** Legal claims due to the default in delivery remain unaffected. The contractual penalty forfeited is to be offset against any further claims for damages for default or non-performance.
- 11.11** Additional costs for the expedited transport required to meet delivery deadlines are to be borne by the supplier if such expedition is necessary to avoid higher damages caused by any default.
- 12. Obligation to accept**  
Circumstances of force majeure, in our field of activity or in the field of activity of our suppliers, exempt us from our obligations to accept for the duration of such circumstances and to the extent of the effects thereof. Claims on the part of the supplier for consideration and compensation are excluded in such cases.
- 13. Provisions, transferred documents**
- 13.1** The supplier is liable for the loss, misuse or damage of provisions (e.g. samples, models, tools, devices, moulds and other equipment), documents (e.g. sketches, drawings, plans, static calculations, data) and primary materials or raw materials. Insofar as parts or materials provided are not processed in accordance with the contract, the supplier is, without prejudice to other claims, to reimburse us not only for the costs of the provisions and the procurement thereof, but also the value of the refined delivery item or the costs of restoration.
- 13.2** We reserve the extended retention of title to provisions (e.g. samples, models, tools, devices, moulds and other operating resources), parts, primary materials or raw materials as well as services. This also includes means of production and services which the supplier procures themselves for the manufacture of the delivery item or service, but which are paid for by us. Products and services remain our property during every stage of processing.
- 13.3** With regard to processing with other items owned by third parties, we are thus entitled to co-ownership of the newly manufactured item in the ratio of the value of our provision to the value of all items used in the manufacture and of the expenses incurred by the supplier.
- 13.4** Production equipment owned by us is intended exclusively for our use and is to be stored and maintained by the supplier in a functional condition at all times and insured against fire, water damage and theft at replacement value at the supplier's own expense.
- 13.5** All provisions, parts, primary materials or raw materials are to be marked as our property.
- 13.6** All unprocessed supplies are to be returned immediately after completion of the delivery item without being requested to do so and at the supplier's expense.

- 13.7** We are entitled to demand the surrender of individual or all provisions, parts provided, primary materials or raw materials at any time. Insofar as we order the surrender, the supplier undertakes to carry out such an order immediately and upon first request.
- 13.8** Information and documents (e.g. sketches, drawings, plans, static calculations, data) and provisions (e.g. samples, models, tools, devices, moulds and other equipment) must not be made accessible to third parties. In exceptional cases, written or electronic permission is to be obtained from the customer for a transfer.
- 14. Non-Disclosure**
- 14.1** Our contracts and orders and all associated commercial and technical details are to be kept secret by the supplier. This secrecy obligation specifically applies to all documents (e.g. sketches, drawings, plans, static calculations, data), tools (e.g. samples, models, tools, devices, moulds and other equipment) that are made available to the supplier or are prepared by the supplier according to our specifications. Prices and conditions are also to be kept secret.
- 14.2** The supplier may only provide information about the business relationship with us if we have given our written consent in this regard.
- 15. Liability and warranty**
- 15.1** The supplier's liability, including liability for material defects, is to be governed by statutory provisions, unless otherwise agreed or otherwise regulated in these conditions.
- 15.2** The principles of § 254 BGB (German Civil Code) apply accordingly in relation to any compensation for damages between us and the supplier.
- 15.3** The supplier is liable to us for damages incurred without the need for further evidence to this effect other than an objective breach of duty, the causal connection to the damage incurred, and the extent of the damage.
- 15.4** The supplier undertakes to reimburse us for all costs arising in connection with a material defect, including those costs for which we receive a justifiable invoice from our customers. These costs include, inter alia, costs incurred in the course of troubleshooting, removal of the defective part and installation of the spare part, as well as appraisal, transport and sorting costs. Furthermore, the supplier is to compensate us or our customers for damages resulting from any business interruption, loss of profit and other such losses.
- 15.5** In the event of any failure on the part of the supplier to remedy the defect or to provide a replacement delivery or replacement service, we are thus entitled to remedy the defect ourselves or commission third parties to do so at the supplier's expense. This is in addition to the statutory claims following expiry of a reasonable period set by us in order to avert acute risks or avoid major damage.
- 15.6** Unless a longer period has been agreed or is stipulated by law, in cases in which we use the delivery item for the manufacture of equipment, the limitation period for claims for damages ends 24 months following acceptance of the equipment by our end customer or 36 months following delivery of the equipment, but no later than 42 months following acceptance of the delivery or service by us. In all other cases, such claims become statute-barred 36 months following acceptance of the delivery or service by us.
- 15.7** With regard to parts of the delivery or service that have been replaced or repaired on the basis of claims for defects, the limitation period recommences at the time at which the supplier has completely fulfilled our claims for subsequent performance.
- 15.8** Our claims, which we make against the supplier due to defects as per §§ 478, 479 BGB, remain unaffected and apply insofar as the delivery items cause the defectiveness of the intermediate or end product we manufacture. We may also assert such claims if the end customer is a contractor.
- 15.9** Upon acknowledging receipt of the delivery items and acceptance of the drawings, plans, calculations, data and documents submitted, we do not waive any claims arising from liability for material defects and other such rights.
- 15.10** The official approval of documents or our approval of drawings, calculations and other technical documents do not limit the supplier's sole responsibility for ensuring the absence of defects in the contractual items. The same applies with regard to our instructions, suggestions and recommendations, unless the supplier objects to such instructions, suggestions and recommendations in writing and in due time.
- 15.11** Insofar as a claim is made against us for breach of official safety regulations or for other legal reasons under domestic or foreign law, we are thus entitled to demand reimbursement from the supplier for the damage incurred in accordance with the statutory provisions applicable to us (liability principles), insofar as the supplier's deliveries or services or their conduct were defective and caused the damage. With regard to cases in which recourse is to be expected, we are prepared to notify the supplier of the claims raised against us and the measures we have taken.
- 15.12** The supplier is responsible for any fault on the part of vicarious agents and sub-suppliers in the same way as they are for any fault on their own part. The supplier cannot exempt itself from liability by providing evidence of proper selection and supervision of vicarious agents and sub-suppliers.
- 15.13** Insofar as the supplier is liable, the supplier indemnifies us from all corresponding claims of third parties.
- 15.14** In the event that claims are made against us on the basis of product liability, the supplier undertakes to indemnify us against such claims if and insofar as the damage was caused by a defect in the subject matter of the contract and insofar as the supplier would himself be liable in the external relationship. In such cases, the supplier is to bear all costs and expenses, including the costs of any legal proceedings domestically or abroad.
- 16. Transferability and termination of the contract**
- 16.1** The transfer of rights or obligations arising from the contractual relationship requires our prior written consent. This also applies to the assignment of claims arising against us.
- 16.2** Irrespective of other rights of termination or withdrawal, we are entitled to terminate the contract or to withdraw from the contract, in whole or in part, if the creditworthiness of the supplier or the supplier's ability to deliver deteriorates to such an extent that performance of the contract seems to be endangered, or if the supplier suspends payments or if insolvency proceedings are initiated against the supplier or the opening of such proceedings is rejected due to lack of assets.
- 17. Place of performance, jurisdiction, applicable law**
- 17.1** Place of performance for the deliveries and services is our company headquarters in Kastl (Kemnath) or, otherwise, the acceptance point or construction site stipulated by us. Kastl (Kemnath) is otherwise the place of performance for all other obligations of both parties. The place of performance for our payment obligations is any place in which we have an account with a financial institution.
- 17.2** Place of jurisdiction is Weiden (Germany). We may also bring an action before the competent courts for the supplier's registered office or those courts before which third parties make claims against us for circumstances that are causally connected with the deliveries, services and other such obligations.
- 17.3** German is the contractual language.
- 17.4** The law of the Federal Republic of Germany applies exclusively. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded. With regard to the interpretation of delivery clauses, the INCOTERMS in the version valid at the time of conclusion of the contract apply.

# General Terms and Conditions of Sale (as of March 2022)

## IEM FörderTechnik GmbH

**To apply vis-à-vis:**

1. a person who, when concluding the contract, is acting in the exercise of their commercial or independent professional activity (contractor)
2. legal persons under public law or a special fund under public law.

**1. General**

**1.1** All deliveries, services and offers of the Supplier are made exclusively on the basis of these General Terms and Conditions of Delivery. These terms and conditions are an integral part of all contracts which the Supplier concludes with their contractual partners (hereinafter also referred to as the "Purchaser") in relation to the deliveries or services offered by the Supplier. They also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately agreed again.

**1.2** Deviating terms and conditions of the Purchaser or third parties do not apply, even if the Supplier does not separately object to the applicability of such terms and conditions in individual cases. Even if the Supplier refers to a letter containing, or referring to, terms and conditions of the Purchaser or a third party, this does not constitute consent to the validity of such terms and conditions.

In the absence of an agreement to the contrary, a contract is concluded solely upon the written order confirmation of the Supplier.

**1.3** The Supplier retains the right to samples, cost estimates, drawings and such like, information of a corporeal and incorporeal nature – also in electronic form – property rights and copyrights; the aforementioned must not be made accessible to third parties. The Supplier undertakes to make information and documents designated by the Purchaser as confidential available to third parties only with the Purchaser's consent.

**2. Price and payment**

**2.1** The prices apply to the services and scope of delivery listed in the order confirmations or contracts. Additional or special services will be charged separately. Prices are stated in euros ex works including loading at the factory plus packaging, unloading, statutory value added tax, customs duty for export deliveries as well as fees and other public charges.

**2.2** In the absence of an agreement to the contrary/an individual agreement, payment is to be made, without any deduction, on account to the Supplier, namely:

- 1/3 down payment following receipt of the order confirmation,
- 1/3 as soon as the Purchaser has been informed that the main parts are ready for dispatch,

the remaining amount within one month of the transfer of risk.

**2.3** Offsetting against counterclaims of the Purchaser or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been recognised by a declaratory judgement.

**3. Delivery and delivery time**

**3.1** Deliveries are made ex works.

**3.2** Deadlines and dates for deliveries and services stated by the Supplier are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed. Insofar as dispatch has been agreed, delivery deadlines and delivery dates refer to the time of handover to the forwarder, carrier or any other third party commissioned with the transport.

**3.3** The Supplier may - notwithstanding their rights arising from default on the part of the Purchaser - seek an extension of delivery dates and delivery deadlines and a postponement of delivery dates and delivery deadlines from the Purchaser. Such an extension or postponement is to reflect the period during which the Purchaser fails to fulfil their contractual obligations vis-à-vis the Supplier.

**3.4** The Supplier is not liable for the impossibility of delivery or for delays in delivery insofar as such an impossibility or delay are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, lack of labour, energy or raw materials, difficulties in obtaining the requisite official permits, official measures or the non-delivery, incorrect or delayed delivery by suppliers) for which the Supplier is not responsible. Insofar as such events render the delivery or service considerably more difficult or impossible for the Supplier and the impediment is not only of a temporary nature, the Purchaser is thus entitled to withdraw from the contract. With regard to impediments of a temporary nature, the delivery and performance deadlines are to be extended or the delivery and performance dates are to be postponed for the period of the impediment plus a reasonable start-up period. Insofar as acceptance of the delivery or service cannot reasonably be expected of the Purchaser as a result of the delay, the Purchaser may then withdraw from the contract subject to providing the Supplier with immediate written notification thereof.

**3.5** The Supplier is only entitled to make partial deliveries if:

- the partial delivery can be used by the Purchaser within the scope of the intended contractual purpose
- the delivery of the remaining ordered goods is ensured and
- the Purchaser does not incur any significant additional expenses or costs (unless the Supplier agrees to bear such costs)

**3.6** Insofar as the Supplier is in default with a delivery or service or insofar as a delivery or service becomes impossible for the Supplier, irrespective of the reason, the liability of the Supplier is limited to damages in accordance with sections 7.2 – 7.4 of these General Terms and Conditions of Sale.

**4. Transfer of risk, acceptance**

**4.1** Risk passes to the Purchaser at the point at which the delivery item has left the factory, even if partial deliveries are made or the Supplier has assumed responsibility for other services, such as shipping costs or delivery and installation. Insofar as acceptance is required, such acceptance is decisive for the transfer of risk. It is to be carried out without undue delay on the acceptance date. Alternatively, it can be carried out after the Supplier's notification of readiness for acceptance. The Purchaser is not permitted to refuse acceptance in the event of a minor defect.

**4.2** Insofar as dispatch or acceptance is delayed or does not take place due to circumstances for which the Supplier is not responsible, risk passes to the Purchaser on the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurance policies requested by the Purchaser at the Purchaser's expense.

**5. Retention of title**

**5.1** The Supplier retains title to the delivery item until receipt of all payments – including any additional services owed – from the delivery contract.

**5.2** The Supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Purchaser's expense, unless the Purchaser has demonstrably taken out such insurance himself.

**5.3** The Purchaser is not permitted to sell, pledge or assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, the Purchaser is to inform the Supplier immediately.

**5.4** If the Purchaser acts in breach of contract, particularly in the event of default in payment, the Supplier is thus entitled to take back the delivery item following a reminder and the Purchaser undertakes to surrender the aforementioned delivery item.

**5.5** Due to the retention of title, the Supplier is only permitted to demand the return of the delivery item if the Supplier has withdrawn from the contract.

**5.6** The application to open insolvency proceedings entitles the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.

**6. Claims for defects**

With regard to material defects and defects of title in relation to the delivery, the Supplier is only liable in the event of immediate notification of the defect (within three days of the defect becoming known) to the exclusion of further claims - subject to Section VII - as follows:

**Material defects**

**6.1** The warranty period is 1 year from delivery or, insofar as acceptance is required, 1 year from acceptance. In the event of unjustified refusal or delay of acceptance by the Purchaser, the prescription period commences upon expiry of the set deadline for acceptance of the acceptable delivery.

**6.2** The delivered goods are to be carefully inspected immediately after delivery to the Purchaser or immediately after delivery to the third party designated by the Purchaser. With regard to obvious defects or other defects which would have been detectable during an immediate, careful inspection, the delivered goods are deemed to have been approved by the Purchaser if the Supplier does not receive a written notification of defects within 7 working days of delivery. With regard to other defects, the delivery items are deemed to have been approved by the Purchaser if the notice of defects is not received by the Supplier within 7 working days of the time at which the defect became apparent. However, if the defect was already apparent to the Purchaser at an earlier time during normal use, this earlier time is decisive for the beginning of the notice period. At the request of the Purchaser, a defective delivery item is to be returned, carriage paid, to the Supplier. In the event of a justified notification of defects, the Supplier reimburses the costs associated with the most favourable dispatch route; this does not apply insofar as the costs increase because the delivery item is located at a location other than the location of the intended use.

- 6.3** In the event of material defects in relation to the delivered goods, the Supplier is initially obliged and entitled to either remedy the defect or make a replacement delivery at their discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of rectification or replacement delivery, the Purchaser may withdraw from the contract or reduce the purchase price accordingly.
- 6.4** Insofar as a defect is due to the fault of the Supplier, the Purchaser may claim damages subject to the conditions set forth in Section 7.
- 6.5** With regard to defects in components of other manufacturers which the Supplier cannot remedy for licensing or factual reasons, the Supplier is, at their discretion, to assert their warranty claims against the manufacturer or suppliers on behalf of the Purchaser or assign such claims to the Purchaser. Warranty claims against the Supplier in relation to such defects only exist subject to the other conditions and in accordance with these terms and conditions of delivery if judicial enforcement of the aforementioned claims against the manufacturer and suppliers was unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the prescription period for the relevant warranty claims of the Purchaser against the Supplier is suspended.
- 6.6** The warranty lapses if the Purchaser modifies the delivery item or has it modified by third parties without the Supplier's consent and remedying of the defect becomes impossible or unreasonably difficult as a result. In any case, the Purchaser is to bear the additional costs of remedying the defect resulting from the change. Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, inadequate construction work, unsuitable foundations, chemical, electrochemical or electrical influences, insofar as the Supplier is not responsible for the aforementioned, render liability on the part of the Supplier void.
- Defects of title**
- 6.7** Insofar as use of the delivery item leads to a breach of industrial property rights or copyrights in Germany, the Supplier is, in principle, to procure the right to continued use of the delivery item for the Purchaser at the Supplier's own expense or modify the delivery item, in a manner reasonable to the Purchaser, in such a way that the breach of the property right no longer exists.  
If this is not possible on account of economically reasonable conditions or within a reasonable period of time, the Purchaser is thus entitled to withdraw from the contract. Subject to the aforementioned conditions, the Supplier is also entitled to withdraw from the contract.  
Furthermore, the Supplier is to indemnify the Purchaser against undisputed or legally established claims on the part of the relevant property right holders.
- 6.8** The obligations of the Supplier set forth in section 6.7 are final, subject to section 7, in the event of a breach of a property right or copyright.  
They only exist if
- the Purchaser informs the Supplier immediately of any asserted breaches of property rights or copyright,
  - the Purchaser assists the Supplier, to an appropriate extent, in defending the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section 7.7,
  - all defensive measures, including out-of-court settlements, are reserved to the Supplier,
  - the defect of title is not based on an instruction of the Purchaser and
  - the breach was not caused by the fact that the Purchaser changed the delivery item on their own authority or used it in a manner not in accordance with the contract.
- 7. Liability for damages due to fault.**
- 7.1** The Supplier's liability for damages, irrespective of the legal reason, particularly in relation to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unauthorised actions, is limited in accordance with section 7 insofar as such liability is a matter of fault.
- 7.2** The Supplier is not liable in the event of simple negligence on the part of their management, legal representatives, employees or other vicarious agents, insofar as such negligence does not constitute a breach of material contractual obligations. Material contractual obligations include the obligation for timely delivery and installation of the delivery item, the obligation for the delivery item to be free of defects which impair its operability or usability to a more than insignificant extent, as well as advisory and protective obligations and a duty of care which are intended to enable the Purchaser to use the delivery item in accordance with the contract or to protect the life and limb of the Purchaser's personnel or to protect the Purchaser's property from considerable damage.
- 7.3** Insofar as the Supplier is liable for damages on the grounds pursuant to Section 7.2, such liability is limited to damages which the Supplier has foreseen at the conclusion of the contract as a possible consequence of a breach of contract or which the Supplier should have foreseen in the application of due care and attention.  
Indirect damages and consequential damages resulting from defects of the delivery item are also only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.
- 7.4** In the event of liability for simple negligence, the Supplier's obligation to compensate for property damage and any further financial losses resulting therefrom is limited to the insured sum of EUR 5 million in the event of intervention by liability insurance and to the order value - per case of damage - in the event of non-intervention by insurance, even if the breach is a breach of a material contractual obligations.
- 7.5** The aforementioned exclusions and limitations of liability apply to the same extent in favour of the management, legal representatives, employees or other vicarious agents of the Supplier.
- 7.6** The limitations of section 7 do not apply to the Supplier's liability for wilful conduct, for guaranteed quality characteristics, for injury to life, body or health in accordance with the German Product Liability Act.
- 7.7** The statutory prescription periods apply to claims for damages under Clause VII.
- 8. Transfer of order-relevant documents**  
If necessary for processing purposes, subcontractors can be given access to drawings and order-relevant documents of the Purchaser subject to a confidentiality requirement. A separate agreement on the part of the Purchaser is not required in this regard.
- 9. Software use**
- 9.1** Insofar as software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the software supplied including the documentation for such software. The software is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
- 9.2** The Purchaser may only copy, revise, translate or convert the software from object code to source code to the legally permissible extent (§§ 69 a et seq German Copyright Act (UrhG)). The Purchaser undertakes not to remove the manufacturer's specifications - particularly copyright notices - or to change such specifications without the express prior consent of the Supplier.
- 9.3** All other rights to the software and the documentation including copies remain with the Supplier or the software supplier. Sublicensing is not permitted.
- 10. Applicable law, place of jurisdiction**
- 10.1** If the Purchaser is a merchant, a legal entity under public law or a special fund under public law or if the Purchaser has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the business relationship between the Purchaser and the Supplier is Weiden in der Opf. or the registered office of the Supplier. Such a decision is at the discretion of the Supplier. In such cases, however, the sole place of jurisdiction for legal actions against the Supplier is Weiden in der Opf./Germany. Mandatory statutory provisions pertaining to sole places of jurisdiction remain unaffected by this provision.
- 10.2** Relations between the Supplier and the Purchaser are governed solely by the law of the Federal Republic of Germany to the exclusion of German private international law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- 10.3** Insofar as the contract or these General Terms and Conditions of Sale contain loopholes, legally effective provisions, which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale had they been aware of such loopholes, are deemed to be agreed to fill such loopholes.