

**General Purchasing Conditions of  
J.A. Becker & Söhne GmbH & Co. KG**

**1. Scope of application**

1.1 These General Purchasing Conditions apply only to contractors in the course of their commercial or independent professional activity and in relation to public-registered corporations. They apply to all commercial transactions between J.A. Becker & Söhne GmbH & Co. KG (hereinafter called the “**Purchaser**”) and the Supplier, even if not mentioned in subsequent contracts. They apply to works and services as appropriate. The receipt of the supplied products constitutes acceptance (in the case of works), and the receipt of the service (in the case of services) likewise constitutes acceptance.

1.2 Any of the Supplier’s conditions of sale of contrary effect to, supplementary to or deviating from these Purchasing Conditions are excluded from the content of contract unless their applicability is approved in writing by the Purchaser. These General Purchasing Conditions will also apply even if the Purchaser unreservedly accepts a delivery from the Supplier in the knowledge of the Supplier’s contrary, supplementary or deviating terms.

1.3 Any provisions contrary or supplementary to these Purchasing Conditions, or deviating from them – as negotiated between the Purchaser and the Supplier for purposes of the contract – must be placed on written record. The same will apply to suspending this written-form requirement itself.

1.4 This does not affect any further rights which accrue to the Purchaser by provisions of law or under other agreements further to these Purchasing Conditions.

**2. Negotiation of contract; Amendments to contract; Execution of contract**

2.1 The Supplier’s quotations, drafts, plans, preliminary cost estimates, test pieces and specimens are free of charge to the Purchaser. Upon the Purchaser’s request, they must be taken back by the Supplier promptly and at its own expense. Furthermore, the Purchaser will pay no charges for visits and other preliminary services provided by the Supplier in connection with the submission of offers, and the Purchaser will make no payment in this context unless separately agreed in writing in a specific instance.

2.2 An order takes effect only if it is issued in writing by the Purchaser or – in the case of a verbal order – once it has been correctly confirmed in writing by the Supplier. Any order issued by means of automated media - even without

any signature or indication of any name - is deemed issued in writing. The order will not be binding on the Purchaser if it contains any obvious mistakes, typos or errors of calculation.

2.3 Promptly, i.e. at the latest by 5 working days after the Supplier has received the order, it must submit a written order confirmation in which the price and the delivery time are expressly indicated. Where the order confirmation contains deviations from the order, they are deemed approved only once they have been confirmed in writing by the Purchaser. The same applies in relation to subsequent amendments to contract.

2.4 Both Parties’ legally binding declarations may also be issued in electronic form. In that event, the Party issuing the declaration must add its name and must apply to the electronic document a qualified signature compliant with signature regulations. In the case of a document, both Parties to contract must apply electronic signing – as indicated above – of a document of identical wording. Until proven otherwise, each Party remains bound by the declarations comprised in such a digital document if the document was signed digitally as per the requirements of signature regulations.

2.5 Order confirmations, dispatch notes, freight notes, delivery notes, invoices and other communications from the Supplier must include an indication of the order details, especially the order number, the order date and the Supplier’s reference number.

2.6 The Purchaser’s absence of response to quotations, to requests or to other statements made by the Supplier may be interpreted as approval only if this understanding has been pre-agreed in writing.

2.7 Where requested by the Purchaser in its order, it will receive the following items free of charge from the Supplier, together with the order confirmation:

- Binding dimensional drawings and complete technical data;
- Assembly, operating and servicing instructions;
- Spares lists and drawings;
- Documents both in German and in English;
- Test reports and works confirmations, works certificates and
- Acceptance test certificates.

2.8 Should it come to light in the course of execution of a contract that deviations from the originally agreed specification are necessary or would be helpful, then the Supplier must promptly notify the Purchaser in writing, and must submit proposals for change. The Purchaser will notify the Supplier whether and which changes the Supplier must implement, relative to the original order. The same will apply if adherence to applicable legal or official rules would necessitate deviation from the information, calculations, drawings, plans or models approved by the Purchaser.

2.9 At all times, the Purchaser is entitled to change the order, with specific reference to the composition of the products. In such cases, the Supplier must be allowed a reasonable period within which to apply the necessary changes in production. Should the costs incurred by the Supplier in the process of execution of the contract come to be altered as the result of such changes, then the Parties to contract will negotiate a corresponding adaptation of pricing. If no consensus concerning the adaptation of pricing is reached within 8 weeks following the written request for negotiation, then the Purchaser is entitled to terminate the contract without further notice.

2.10 The Purchaser reserves all rights of ownership, copyright and other protected rights in respect of all documents. Such documents may be used exclusively for production on the basis of the Purchaser's order, and may not be made accessible to any third parties without the Purchaser's prior written consent. At the Purchaser's request, the Supplier will promptly release all documents to the Purchaser once they are no longer needed in the normal course of business. The same will also apply, in particular, to all of the Purchaser's drafts, test pieces, specimens and models.

2.11 Before negotiation of contract, the Supplier must notify the Purchaser in writing if the ordered products are subject to any export control regulations applicable in Germany, or any other restrictions upon marketability. In the case of any incorrect information, with particular reference to the failure to make disclosures, and in the event of any false, incomplete or late notification, the Purchaser is entitled – upon expiry of any reasonable deadline which it may have set, and without reference to the Supplier's culpability – to withdraw from the contract. The same will apply if the products are subject to export controls or other restrictions upon marketability. This will not affect the Purchaser's further claims.

2.12 If the Supplier's financial circumstances should

suffer serious deterioration, or if a well-founded application for the institution of insolvency proceedings or similar proceedings for the Supplier's estate should be declined for lack of assets, then the Purchaser is entitled to withdraw from the contract in whole or in part.

### **3. Supply according to model**

3.1 If the supply of a model is agreed upon, then the contract – in the absence of any provision to the contrary – will be subject to the suspensive prerequisite of approval of the model (refer Sale on Trial, §454, *BGB (=German civil code)*).

3.2 If supply is conducted as per a model, then the characteristics of the model will stand as the Supplier's binding statement of condition. The same will apply to the Supplier's description of performance.

3.3 Any deviation from an approved model will be subject to the Purchaser's prior, written approval, for which the Supplier must apply, in writing, together with submission of the new model. The same will apply in respect of any deviations relative to approval reports.

### **4. First-time production; Initial models**

4.1 In the case of orders for first-time production of any article, the Purchaser will hand to the Supplier, together with the order enquiry: drawings and/or documents indicating all dimensions, quality characteristics and contractually-agreed characteristics (desired characteristic). Such drawings and documents will remain the Purchaser's property. Should the order not go ahead, then the Supplier is obliged promptly to hand back the documents and drawings which it had received.

4.2 The Supplier undertakes to make initial models, using the definitive operating media and under standard production conditions, at its own expense and in good time before commencement of standard production; and to produce a corresponding initial model test report.

4.3 In the following cases, the Supplier must – spontaneously, i.e. without waiting to be requested – submit initial models to the Purchaser:

- In the case of product changes;
- upon changes to the processed material;
- upon any change in Suppliers;
- upon any changes in design;
- in the event of any new/amended forms and/or tools (revisions/new productions)
- upon any changes in the production process;

- upon any changes as to the production venue.

4.4 The initial model test report must provide measurement data for all dimensions, quality criteria and characteristics stipulated by the Purchaser. It will include a juxtaposition of the desired and the actual status together with tolerance information. The model test report must indicate if certain characteristics of the initial model could not be examined in the Supplier's works or if any characteristics desired by the Purchaser could not be implemented.

4.5 Approval for standard production by the Supplier will be conditional upon the outcome of the Purchaser's own initial model test, and will be declared by the Purchaser in writing.

4.6 In the event of failure to adhere to the agreed quality, the Purchaser is entitled to set a reasonable deadline for rectification and – once that deadline has expired without success – to withdraw from the contract and/or to claim compensation.

4.7 It is assured by the Supplier that the delivery state achieved in standard production will exhibit the characteristics of the approved initial model. The Supplier is not entitled to apply any changes on its own initiative which may have an influence on quality.

## **5. Purchaser's right of inspection**

The Purchaser is entitled directly or by way of appointed representatives to inspect the production of the article and/or the carrying-out of the services to be provided, at any time during regular business hours, subject to having notified the Supplier in good time, if there is a framework supply contract in place between the Purchaser and the Supplier, or if the Purchaser has a specific suspicion concerning a deficiency relating to the article. However, no such inspection will exempt the Supplier from its sole responsibility with regard to contractually-compliant performance and/or supply.

## **6. Packing; Dispatch and transportation; Delivery and acquisition of ownership**

6.1 In the absence of any provision to the contrary, delivery is to be performed "carriage free" to the designated destination (DDP INCOTERMS). Unless otherwise agreed in writing, delivery must be provided carriage free.

6.2 Where delivery ex-works has been negotiated in an individual instance, the Supplier must ensure the most favourable means of carriage and the correct declaration (concerning the value of goods). In that event, too, the Supplier will be liable for any damage in transit.

6.3 The Supplier must adhere to the Purchaser's stipulations for the dispatch of the products, especially the respectively applicable transport, packing and delivery provisions. Delivery must be conducted using packing which is appropriate for the type of products. In particular, products must be packed such as to avoid damage in transit. Only the specifically necessary amount of packing materials must be used. In particular, the Supplier must mark the pack with the extent of delivery, the article and material numbers, the delivered quantity, the date of manufacture and the order details, especially: order number, order date and Supplier's reference number.

6.4 All deliveries must be accompanied – in a single copy – by a delivery note indicating the extent of the delivery, the article and material numbers, the delivered quantity, the date of manufacture and the order details, especially: order number, order date and Supplier's reference number. These details must also be indicated on all dispatch documents and invoices. Should the Supplier fail to provide this information, then it will be responsible for any delays in procedure that may arise as the result.

6.5 For purposes of the delivery of the products, the Supplier must furthermore adhere to *GefStoffV (=hazardous products regulations)*, and must in particular pack the affected products, mark them as appropriate and make specific reference (on the delivery note) to the presence of hazardous substances.

6.6 The dispatch of the products must be promptly notified to the Purchaser.

6.7 The Supplier is obliged to negotiate the appropriate amount and type of transport insurance and must promptly provide the Purchaser with written certification of the same, upon request. If it has been agreed to charge for the costs of transport, then the Purchaser will designate the shipper and the mode of transportation. If the costs of packing are to be borne by the Purchaser, then this can be charged at cost; the full extent of reusable packs must be credited if they are handed back, carriage free, to the Supplier.

6.8 Deliveries must be made – unless otherwise agreed in writing with the Purchaser – exclusively on working days and within the normal business hours of 7 AM to 3 PM from Monday to Friday and from 7 AM to 1:30 PM on a Friday. The Supplier will hold the Purchaser exempt from any complaints made by third parties who have unsuccessfully attempted to make deliveries outside of these stipulated times unless the Supplier was not responsible for the attempted delivery outside of normal business hours.

6.9 Upon the handover of products, they revert directly and free of charge to the Purchaser's ownership. The Supplier assures that it is entitled to sell the products on and to transfer their ownership.

## **7. Delivery time**

7.1 The delivery periods and deadlines indicated on the order, or negotiated in any other way, are binding. Delivery deadlines start to run upon receipt of the order. The products must be received at the delivery address indicated by the Purchaser within the delivery deadline or on the agreed delivery date.

7.2 If it is apparent to the Supplier that it cannot fulfil the delivery time, then it must promptly notify the Purchaser in writing, indicating the reasons and the prospective duration of the delay.

7.3 In the case of delay incurred by the Supplier, the Purchaser is entitled to charge a contractual penalty of 0.5% of the net order value for each week or part-week of delay, up to a maximum of 5% of the net value of order, unless the delay in delivery was not the Supplier's fault. The Purchaser must claim the contractual penalty no later than by the stage of final payment. Cases of force majeure are excluded. This does not affect any further claims accruing to the Purchaser, subject to offset of the contractual penalty against any compensation claims. The Purchaser's claim for delivery is excluded only if the Supplier is to pay – at the Purchaser's request – compensation in lieu of delivery. Acceptance of delayed deliveries does not constitute any waiver of compensation claims or the contractual penalty.

7.4 Only by the Purchaser's prior written consent may any delivery take place before the agreed delivery date. The Purchaser is entitled to place in storage – at the Supplier's expense – any products that have been delivered early without written approval, unless the delivery was only slightly premature or unless the premature delivery was not the Supplier's fault.

## **8. Part-deliveries, over-deliveries or under-deliveries**

8.1 Part-deliveries and/or part-services require the Purchaser's prior written consent. If the Purchaser accepts part-deliveries and/or part-services even without having granted prior consent, this does not establish premature payability of payment obligations, nor does it constitute consent to accept additional transport costs.

8.2 The Purchaser reserves the right to accept over-deliveries or under-deliveries in individual cases. In the event of an over-delivery on the part of the Supplier without

prior written consent, the Purchaser is entitled to decline acceptance of the delivery, to place it in store at the Supplier's expense or to send it back. The Purchaser will not take on any corresponding storage liability. Nor is any such over-delivery included in the scope of insurance cover under the Purchaser's industrial fire insurance.

## **9. Prices; Payment**

9.1 The price indicated on the order is binding. In the absence of any written provision to contrary effect, the price is applicable on the basis of "*free to point of use*" and specifically includes the cost of packing, dispatch (including dispatch equipment), transport and insurance as far as the delivery address indicated by the Purchaser, together with Customs duties and other public charges, and with full & adequate documentation, where required. Unless the price is expressly designated as being the net price, it includes statutory VAT. Unless the dispatch & transport charges are (in an individual instance) included in the price whereby the Purchaser agrees in writing to cover the dispatch & transport charges, the respectively covered charges will only extend to the most favourably priced mode of dispatch & transport, even if a faster mode of transportation would be required in order to adhere to the agreed delivery periods & deadlines.

9.2 If the case relates to VAT-free delivery, then the Supplier must provide the required certificates – to the extent that certificates are attributable to the Supplier's scope of responsibility. In respect of deliveries within the European Union, the Supplier must, without waiting to be prompted, give written indication of its VAT ID N° and of its commercial capacity; and must collaborate in the securing of registration and in the issuance of documents for the export certificates.

9.3 The Purchaser will receive a single copy of the Supplier's invoice. This must not be enclosed with the delivery; rather, it must be sent separately. Invoices lacking an order number, an order date or a supplier reference number will be deemed not received for lack of processability.

9.4 Any over-services or under-services must be itemised separately on the invoice. Additional and/or over-services will be paid for by the Purchaser only if this has been the subject of a written understanding prior to the performance of the service.

9.5 Payment is made by the 15<sup>th</sup> day of the month following delivery in the wake of receipt of the products and receipt of the invoice, subject to deduction of a 3% discount, or net at the end of the month following delivery.

9.6 Payments are made only to the Supplier and subject to reservation of examining the invoice. The Purchaser is entitled at its own discretion to settle payment either by cheque or by bank transfer. In the event of a defective delivery, the Purchaser is entitled to withhold payment pending correct fulfilment, without loss of rebates, discounts or similar pricing concessions. To that extent, the payment deadline period starts to run once all deficiencies have been rectified in full. In the case of premature delivery of the products, the payment deadline starts to run no sooner than by the expiry of the delivery deadline or by the agreed delivery date. If the Supplier is required to submit material certificates, test reports, quality documents or any other documents, then the receipt of the products initiates the elapse of the payment deadline only if the Purchaser has also been supplied with the required documents.

9.7 Any advance payments will be due for settlement only once the Purchaser has received a surety – free of charge to the Purchaser – appointed with a credit house or credit insurer approved in the European Union, to the value of the amount of advance payment (security for advance payment) which must be handed back after payability of the final payment and/or reimbursement of any overpayment.

## 10. Transfer of risk

10.1 The Supplier bears the risk of accidental failure and fortuitous deterioration of the products until they are handed over to the Purchaser.

10.2 If the Supplier is under obligation to assemble or to install the products at the Purchaser's works, then the risk of fortuitous failure and of fortuitous deterioration of the products reverts to the Purchaser only upon the assembly or installation of the products. The same will apply even if the Purchaser has agreed to cover certain services such as transport costs.

## 11. Warranty; Claims for defects; Guarantees

11.1 The Supplier guarantees that the supplied products comply with the agreed specification, the approved models, the Purchaser's stipulations and/or such stipulations as it has approved, calculations, drawings, plans or models, together with the applicable provisions of law and the regulations & directives issued by authorities, professional associations and specialist associations together with the applicable DIN standards, the provisions of law concerning technical industrial media, the applicable accident-prevention regulations, any other industrial safety regulations, the applicable VDE provisions and generally recognised technical health & safety rules. In the case of supplies of technical work equipment, plant & machinery, they must comply with *GPSG (=Equipment & product*

*safety regulations)* and with *MRL (=EC Machinery Directives)* in their current version applicable at the time.

11.2 Furthermore, machinery and technical work equipment must be supplied with operating instructions as required by the Machinery Directive. If the product requires a manufacturer's declaration or a "CE" Declaration of Compliance as laid down by the EC Machinery Directive, then the Supplier must produce these and promptly pass them on – at its own expense – to the Purchaser. The same applies in respect of the Hazard analysis and the Technical documentation. If any such documents are missing or suffer from errors, then this will be held to constitute a defect in the supplied products. It is further assured by the Supplier that the product complies with EC marking regulations to the extent that marking is required by law. The Supplier, without waiting to be prompted, will supply the Purchaser with a corresponding declaration of compliance.

11.3 In the case of the supply of hazardous substances, the Purchaser must be provided, well in advance of the delivery, with product information, especially safety datasheets. The Supplier is forbidden to use any carcinogenic substances.

11.4 The Purchaser must notify the Supplier of any visible defects promptly after the delivery of the products, and must report any concealed defects promptly after they are discovered. A report is deemed "prompt" if it is issued (in the case of visible defects) within 2 weeks after delivery and (in the case of concealed defects) within 2 weeks after they are discovered. In the event of the report being delayed and lost, the corresponding obligation is fulfilled by the fact of the report having been sent promptly. In the case of deliveries which are made up of a large number of identical products, the Purchaser must examine a reasonable quantity of the delivered products, to determine whether they are defective. To the extent that the products are rendered unmarketable as the result of the examination, the quantity of products to be examined will decrease to a corresponding, reasonable extent. If individual random samples taken from a consignment are defective, then the Purchaser may – at its own discretion – require the Supplier to separate out the defective items, or may substantiate claims for deficiency of the entire consignment to the extent permitted by law. The Supplier must bear the costs of this examination in any instance where – due to product defects – the required investigation of the products exceeds the normal scale of goods inwards inspection.

11.5 If the Purchaser and the Supplier have an ongoing supply relationship, then the Supplier is under obligation to maintain an appropriate quality management system and to produce and inspect the products to be supplied in accordance with said quality management system. If the Supplier, for purposes of manufacture or of quality assurance relating to the products to be supplied, purchases production or test media, software, services, hardware or other bought-in services from upstream suppliers, then it must place them under contractual commitment to its quality management

system, or otherwise conduct its own quality assurance for bought-in supplies. In particular, the Supplier must conduct its own material inspections. The Supplier will produce records of the execution of quality assurance measures, and will file such records – and store any specimens of the products to be supplied – according to a system accessible to overview. It will allow the Purchaser the necessary extent of examination, it will explain the records and it will submit copies of the records together with any models. Promptly after having received the products – provided that this is practicable in the ordinary course of business – the Purchaser will check whether the consignment complies with the ordered quantity and with the ordered type, and check for the presence of any outwardly visible transport damage. Should any defect come to light, either at the stage of such inspections or at any subsequent point, then the Purchaser must notify the Supplier within 2 weeks after the inspection or after detection. No further goods inwards inspection will take place.

11.6 If the supplied products – due to defects – are not marketable as defined by the applicable provisions of law or if they have to be correctly disposed of by the Purchaser, then the Purchaser is entitled to carry out disposal at the Supplier's expense unless the defect was not attributable to the Supplier.

11.7 In the case of defects in the products, the Purchaser is (at its own discretion) entitled – irrespective of statutory claims for defects – either to require satisfaction in the form of prompt rectification of the defects or otherwise the supply of defect-free products by the Supplier. The Supplier must bear the costs entailed in providing satisfaction. This will also apply if the products have – as appropriate to their intended use - been placed, after their delivery, in a location other than the Purchaser's stipulated delivery address. Should the Supplier fail to fulfil its obligation to provide satisfaction within a reasonable deadline stipulated by the Purchaser, then the Purchaser may itself carry out the necessary steps at the Supplier's expense & risk, or have them carried out by a third party, unless the omission of the required service at the expiry of the corresponding deadline was not attributable to the Supplier. In particular, the setting of a deadline is not necessary if the Supplier has declined both modes of providing satisfaction or if the attempt at providing satisfaction has failed or is unreasonable for the Purchaser. In particular, the provision of satisfaction is deemed unreasonable on the part of the Purchaser if the Purchaser has already continued to supply the products to third parties. Moreover, the Purchaser is not obliged to set any deadline if the Supplier seriously and definitively refuses to provide service or if there are particular circumstances in place which – taking account of both sides' interests –

justify the immediate substantiation of the claim for defects. *Particular circumstances* are especially considered to arise in urgent cases where the provision of satisfaction on the Supplier's part would not foreseeably provide a solution to the urgent disadvantage suffered by the Purchaser. If the setting of a deadline period is not indispensable, then the Purchaser is entitled to take the necessary steps at the Supplier's expense & risk even without allowing a reasonable period of grace following unsuccessful expiry, provided that the Purchaser notifies the Supplier accordingly. This does not affect the Purchaser's further claims.

11.8 If identical products are repeatedly supplied suffering from defects, then the Purchaser – once having set a reasonable deadline period – is entitled (in the event of a further deficient delivery) to withdraw from the contract in respect of the unfulfilled extent of delivery and/or to require compensation.

11.9 The receiving of the products, together with their processing, payment and further orders for products not yet known to be defective – and not yet complained of – cannot be held to constitute the Purchaser's approval of the corresponding supply, nor any waiver of claims for defects in the event of defects.

11.10 The period of expiry for the Purchaser's claims for defects is 36 months as from the delivery of the products. This does not apply if the Supplier has deliberately failed to disclose the defect. If use has been made of the defective products - in accordance with their normal mode of use - for a building project, and if the defects have caused the building project to be deficient, or if the case concerns a defect in a building project, then the statutory period of expiry is 5 years. For defects reported by the Purchaser within the period of expiry, claims for defects will expire, at earliest, 6 months after the defect claim was filed.

11.11 Suppliers of products with a requirement for spares are obliged to provide the Purchaser, after the elapse of the expiry period, for a further period of 10 years, with supply of the required spares & ancillaries together with tools, and at the previous prices, together with an allowance for inflation.

11.12 This does not affect the statutory provisions applicable if a consumer goods purchase takes place at the end of the supply chain.

11.13 The Supplier's further guarantees are unaffected.

## **12. Recourse against Supplier**

12.1 The Purchaser holds the full extent of legally defined rights of recourse within a given supply chain in addition to its claims for defects. In particular, the Purchaser is entitled to require the Supplier to provide the precise mode of

12.2 satisfaction which the Purchaser itself is obliged to provide for its own respective customer in a given case. This does not restrict the Purchaser's statutory right of option.

12.3 Before the Purchaser acknowledges or fulfils any claim for defects filed by a given customer, the Purchaser will report the matter to the Supplier and – having given a brief description of the situation – will request a written response. If no well-founded response is received within a reasonable period, and if no consensus solution has been arrived at, either, then the claim for defects actually established by the Purchaser will be deemed owed to the Purchaser's respective customer. The Supplier bears the burden of proof to the contrary.

12.4 The Purchaser's claims arising from recourse against the Supplier will be valid even if the defective products have been the subject of multiple processing on the part of the Purchaser or of any other contractor, e.g. by installation into a different product.

### **13. Product liability**

13.1 The Supplier is under obligation to hold the Purchaser exempt from third parties' claims arising from product liability in this country and abroad, unless it was not responsible for the product error under the principles of product liability. This does not affect the Purchaser's further claims.

13.2 In the context of this exemption obligation, in particular, the Supplier must also reimburse the Purchaser for any expenditures arising from or in connection with any warning, exchange or recall campaign conducted by the Purchaser. The Purchaser will, where possible and reasonable, notify the Supplier as to the content and extent of the measures to be taken, and will give the Supplier the opportunity to respond. In the context of campaigns to be carried out, the Supplier must provide the Purchaser with the best support of which it is capable, and will take all steps stipulated by the Purchaser to an extent reasonable for the Supplier.

13.3 The Supplier is under obligation to negotiate – and to keep in place – extended product liability and recall insurance with worldwide coverage and a reasonable sum insured (for the products) of at least €3 million per personal claim for each individual person and at least €5 million per instance of material claims. Cover must also extend to claims in foreign countries. The Supplier must, without prompting, notify the Purchaser of any USA/Canada cover exclusions. The Supplier hereby assigns to the Purchaser its claims arising from extended product liability and recall insurance, together with all subsidiary rights. The Purchaser hereby accepts such assignment. Should assignment not be permissible under the insurance

contract, then the Supplier hereby instructs the insurer to make any payments exclusively to the Purchaser. This does not affect the Purchaser's further claims. Upon request, the Supplier must provide proof of the negotiation and continued validity of extended product liability and recall insurance cover. The Supplier will refrain from any action or omission which could jeopardise the insurance cover.

13.4 Should the Supplier fail to correctly fulfil its obligation as arising from paragraph 13.3, the Purchaser is entitled – but not obliged – to negotiate extended product liability & recall insurance at the Supplier's expense.

### **14. Third parties' rights**

14.1 The Supplier assures that the supply and utilisation of the products will not infringe any national or foreign patents, utility models, licences or other third-party protected rights & copyrights. This will not apply if the products have been developed by the Purchaser.

14.2 Should the Purchaser or its customers be claimed against on the grounds of the products having been supplied and used by a third party by way of infringement of such rights, then the Supplier is obliged to hold the Purchaser exempt of any such claims. This exemption obligation refers to all expenditures which the Purchaser may incur in connection with the corresponding claim. In particular, the Purchaser is entitled at the Supplier's expense to secure approval – from the third party – for the use of the products. The exemption obligation does not apply if the infringement of third-party protected rights was not attributable to the Supplier.

14.3 At the Purchaser's request, the Supplier will designate all protected rights and protected-rights registrations known to the Supplier or coming to its notice, which it uses in connection with the articles which are to be supplied or which have been supplied.

### **15. Furnishing of items; Tools**

15.1 Ancillaries which the Supplier has manufactured in accordance with the Purchaser's documents and information – such as models, component models, tools or moulds – may be used by the Supplier only within the framework of the respective contract with the Purchaser, and not for its own purposes; it may neither offer them nor make them accessible to any third parties.

15.2 To the extent that the Purchaser, under contract, agrees to cover tooling or modelling costs, it is hereby agreed that such tools and models become the Purchaser's property upon their production, and at latest by the time of their first use, and that as such they are to be stored by the Supplier free of charge and on the Purchaser's behalf.

15.3 To the extent that the Purchaser furnishes the Supplier with any parts, it reserves ownership over them. Any processing or reconfiguration carried out by the Supplier is conducted on the Purchaser's behalf. If the Purchaser's reserved-ownership goods should be processed in conjunction with other items not belonging to the Purchaser, then the Purchaser will acquire co-ownership of the new item in proportion to the value of the Purchaser's item (purchase price plus VAT) in relation to other items processed, at the time of such processing.

15.4 If the item that was furnished by the Purchaser is inseparably combined with other items not belonging to the Purchaser, then the Purchaser acquires co-ownership over the new item in proportion to the value of the Purchaser's item (purchase price plus VAT) in relation to other combined items, at the time of such combination. If the combination takes place such that the Supplier's item must be regarded as the main item, then it is hereby agreed that the Supplier should transfer a portion of co-ownership to the Purchaser; the Supplier will preserve shared ownership or co-ownership on the Purchaser's behalf.

15.5 The Purchaser reserves ownership over tools; furthermore, the Supplier is obliged to utilise the tools exclusively for the manufacture of products ordered by the Purchaser. The Supplier is obliged at its own expense to insure tools belonging to the Purchaser at their new value and at the Purchaser's own expense, for losses due to fire, flooding and storm damage, breaking & entry and theft. At the same time, the Supplier hereby assigns to the Purchaser all compensation claims arising from such insurance; the Purchaser hereby accepts such assignment. The Supplier is under obligation to carry out – promptly and at its own expense – any necessary servicing & inspection tasks on the Purchaser's tools, together with all maintenance & repair tasks. It must report any problem situations to the Purchaser immediately; if it culpably fails to do so, then the Purchaser's compensation claims will remain unaffected.

## **16. Force majeure**

16.1 Should the Purchaser, due to force majeure, be impeded from fulfilling its contractual obligations – especially acceptance of the products – then the Purchaser will be exempt, for the duration of the problem situation and for a reasonable initial period, from fulfilling its payment obligations, without any obligation to pay compensation to the Supplier. The same will apply if it would be an unreasonable burden upon the Purchaser – or if it is temporarily impeded from fulfilling its obligations – due to unforeseeable circumstances which were not attributable to the Purchaser, with particular reference to industrial disputes, official measures, energy shortages, pandemics or substantial industrial disruptions. The Purchaser may decline to accept the products if any such circumstances

impede it from selling the products due to a slump in demand. The same will also apply if such circumstances arise at a time when the Purchaser is in arrears with acceptances.

16.2 The Purchaser will be entitled to withdraw if any such impediments should persist for longer than four months and if there is no longer any incentive for the Purchaser to continue to be bound to fulfil the contract due to the corresponding impediment. At the Supplier's request, the Purchaser will declare – following the expiry of the deadline – whether it wishes to make use of its right of withdrawal or whether it will accept the products within a reasonable period of time.

## **17. Purchaser's liability**

17.1 The Purchaser is subject to unrestricted liability for losses arising from the infringement of any guarantee or from instances of fatality, physical injury or damage to health. The same is applicable to wilful intent and gross negligence, or to the extent that the Purchaser took on a purchasing risk. The Purchaser can be held liable for moderate negligence only in the event of the infringement of substantial obligations which are inherent in the nature of the contract and which are particularly important with regard to achieving the purpose of contract. In the event of infringement of such obligations, and in the event of delay and incapacitation, the Purchaser's liability is limited to claims whose occurrence would typically have to be expected in the context of the contract. This does not affect mandatory statutory liability for product defects.

17.2 To the extent that the Purchaser's liability is excluded or is restricted, the same will apply to the direct liability of the Purchaser's spokesmen, workers, employees, representatives and agents.

## **18. Confidentiality**

18.1 The Parties are under obligation to observe confidentiality concerning any information coming to their notice which has been designated as confidential or which – in the context of other circumstances – clearly relates to commercial or business secrets, for a period of five years as from delivery, and not to place it on record, pass it on or exploit it except where appropriate in the context of the business connection.

18.2 The confidentiality obligation will lapse to the extent that the information was provably already known to the recipient before the business connection was established, or was generally known before the business connection was established, or was generally accessible – or was generally known or accessible – without any culpability on the part of the recipient. The burden of proof rests with the recipient.



18.3 The Parties will ensure, by way of suitable contractual agreements with the workers and agents acting for them – and particularly with the freelance providers and contractors and service providers working for them – that such parties, too, will refrain (for a period of five years as from delivery) from engaging in any exploitation, forwarding or unauthorised logging of such commercial and industrial secrets.

## **19. Data protection**

19.1 The Parties reciprocally undertake to adhere to the statutory provisions governing data protection, with particular reference to GDPR, the European General Data Protection Regulations, in their execution of the contract, and to place their employees under obligation to adhere to these provisions.

19.2 The Parties process the personal data which they receive (names and contact details of respective contact persons) exclusively for purposes of fulfilling the contract (Art. 6, paragraph 1, clause b) GDPR) and will protect such data by means of technical security precautions fulfilling the latest technical standard (Art. 32, GDPR). The Parties undertake to erase personal data as soon as its processing is no longer required. This does not affect any statutory storage obligations.

19.3 If the Purchaser processes any personal data on a contract basis within the context of execution of the contract on behalf of the Purchaser, then the Parties will make this the subject of an agreement concerning contract processing as defined in Art. 28, GDPR.

## **20. References/Advertising**

The Supplier is not entitled other than by the Purchaser's written consent to use any information concerning an intended or ongoing contractual collaboration for reference or marketing purposes. Furthermore, the taking of photographs on the Purchaser's sites and facilities - together with the use and/or publication of the same in any manner - is forbidden other than by the Purchaser's written consent.

## **21. Concluding provisions**

21.1 Only by the Purchaser's prior written consent is the Supplier entitled to transfer any rights and obligations to third parties or to have any order or substantial portions of an order carried out by third parties.

21.2 The Supplier is entitled on the basis of counterclaims to apply offset only if such counterclaims have been confirmed with legal effect or are undisputed. The Supplier may claim a right of retention only if its

counterclaim is based on one and the same contractual relationship.

21.3 The Supplier's suppliers count as its agents. Upon request, their identities must be promptly notified to the Purchaser.

21.4 The Supplier's legal relationship to the Purchaser is governed by German law to the exclusion of the United Nations Treaty concerning CISG: Contracts for the International Sale of Goods.

21.5 The Purchaser's place of business is the exclusive jurisdiction for all disputes arising from the business relationship between the Supplier and the Purchaser. The Purchaser is also entitled to bring action at the Supplier's place of business and in any other permissible jurisdiction. Arbitration clauses are rejected.

21.6 The delivery address indicated by the Purchaser is the place of fulfilment for the Supplier's supply and satisfaction obligations. Furthermore, the place of fulfilment for all of the obligations of the Supplier and of the Purchaser will be the Purchaser's place of business unless otherwise agreed in writing.

21.7 The language of contract is German.

21.8 Should any provision of these General Purchasing Conditions be or become wholly or partially invalid or impracticable, or should these General Purchasing Conditions be found to suffer from a loophole, then this will not affect the validity of the other provisions. Rather, in place of the provision that was found to be invalid or impracticable, there will be adopted such a valid or practicable provision as fulfils as closely as possible the purpose of the provision which had been found to be invalid or impracticable. In the event of a loophole, there will be deemed agreed the provision corresponding to that which would have been negotiated given the purpose of these General Purchasing Conditions had the Parties detected the issue in the first place.