

## **Translation from the German Language**

### **General Terms and Conditions of Dataplot GmbH, Henstedt-Ulzburg**

#### **§ 1 General - Scope of Application**

(1) Our General Terms and Conditions (hereinafter: GTCs) have exclusive validity; contradictory or deviating conditions of the customer will not be accepted by ourselves unless we have explicitly confirmed their validity in writing. Our GTCs are also valid if we perform the delivery to the customer without reservation although we are aware of the contradictory or deviating conditions of the customer. The exclusion of deviating conditions of the customer is even valid if our GTCs do not include any special provisions for individual items to be regulated.

(2) Our GTCs are also valid for all future business between the parties without a repeat explicit reference having to be made. All agreements existing between ourselves and the customer shall be recorded in writing. No oral side agreements shall be made.

(3) Our GTCs are only valid towards entrepreneurs in the meaning of Section 14 of the German civil code (*BGB*).

#### **§ 2 Offer - Contracting - Quality of Goods - Quotation Documents**

(1) Until the order has been confirmed in writing, our offers are non-committal, non-binding and revocable unless they have been identified as being binding or state a defined period of acceptance. A contract is only deemed to be concluded if we confirm the customer's order in writing or in another text format (by fax or email) with an order confirmation even though this occurs in the regular course of business. We reserve the right to sell to other parties until we send a written order confirmation.

(2) If the order of a customer qualifies as an offer pursuant to Section 145 *BGB*, we can accept it within a period of two weeks in as far as the customer must expect that we accept it at a later date (Section 147 *BGB*). The same shall apply to repeat orders by the customer.

(3) Our details regarding the object of delivery or service (e.g. weights, dimensions, consumption values, load resistance, tolerances and technical data) and their representation by us (e.g. drawings and pictures) are only approximate values unless the usability for the contractual purpose requires perfect conformity. They are not deemed to be warranties regarding quality characteristics, but descriptions or identifications of the delivery or service. Conventional deviations and any deviations to be made in accordance with legal regulations or which are technical improvements and the replacement of components by equivalent parts are permitted unless they affect the usability for the contractual purpose. The customer is to notify us of any special requirements of the product in due time before contracting. Our contractual obligations and liability shall not be extended by such notification. Subject to other explicit agreements we are only obligated to supplying the ordered products as goods which are commercialised in Germany and which can be approved by authorities in Germany.

(4) We only deem a warranty to be accepted by us if we have defined a quality in writing and/or a performance figure of a service as "legally warranted".

(5) The purchase contract concluded in writing and including these GTCs is exclusively valid for our legal relationship with the customer. It fully reflects all agreements between the contractual parties on the object of contract. Oral promises we have made prior to contracting are legally non-committal, and oral side agreements of the contractual parties are

replaced by the written contract unless they include an explicit statement each that they continue to be valid in a binding manner.

(6) Any amendments and supplements to the agreements entered into, including these GTCs require the written confirmation to become effective unless such amendments and supplements have been made by our directors or *Prokura* holders. Our employees are not authorised to make any deviating oral promises unless they are our directors or *Prokura* holders.

(7) We reserve the property or intellectual property rights in all offers and cost estimates and all drawings, pictures, calculations, brochures, catalogues, models, tools and other documents and devices we have submitted to the customer. Without our explicit consent, the customer may not make such objects or their contents available to third parties or disclose them, use them or let third parties use them or copy them. Upon request the customer must return such objects to us in their full scope and destroy any copies made of them if they are no longer used in the regular course of business or if negotiations have not led to the conclusion of a contract. Exception is made for the storage of data transmitted electronically for the purpose of usual data backup.

(8) We have subcontracting rights.

### **§ 3 Prices, Bearing of Costs**

(1) Subject to other provisions in our order confirmation or our binding offer, our prices are deemed to be "ex works" or ex warehouse respectively and in the net EURO amount, excluding packaging, freight, postage and transport insurance if such has been agreed to, and insurance costs, net of turnover tax in the amount legally valid in each country, plus any country-specific duties should the delivery be made to countries other than the Federal Republic of Germany, and net of customs duties and other fees and public charges incurred for the delivery/service.

(2) We are entitled to unilaterally increase the price in the event of material production and/or product procurement cost increases, increases of salary and incidental wage costs, social security contributions, energy costs, cost due to environmental impositions, foreign exchange rate changes, customs changes, different freight rates or public duties if they directly or indirectly affect the production or procurement costs for the goods or the cost of our contractually agreed services and if a minimum of 4 months have lapsed between the contract date and the delivery. An increase in the aforementioned meaning is excluded if the cost increase from any or all of the factors mentioned is compensated with a cost decrease in any other of the factors mentioned in relation to the total cost we incur for the delivery. If such cost factors are reduced without having to be compensated by an increase of the other cost factors, the cost reduction shall be passed on to the customer by reducing the price. If due to our right of adjusting the price as referred to above the new price is higher by 20 % or more than the original price, the customer is entitled to repudiate any contracts which are not yet fully performed. Such a right may only be claimed immediately upon receipt of the notice of the price increase.

(3) If in the event of cross-border deliveries being made to a European Union Member State, the VAT identification code and any other required details and documents are not made available by the customer without delay for the purpose of verifying if this is an intra-community delivery exempted from VAT or if it is found after delivery that the conditions for a VAT-exempted intra-community delivery do not exist, we are entitled to increase the invoiced amount by the VAT at the legally valid rate.

(4) The deduction of an early payment discount is only permitted if we explicitly confirm

this in writing or if such an option is printed on the order confirmation, a binding offer and/or the invoice.

(5) Orders for which no prices have been agreed to are subject to the prices valid on the date of delivery which are stated in our price list, subject to errors in the price list. Otherwise, if no price is defined in the price list, the local conventional and reasonable remuneration is to be paid.

#### **§ 4 Terms of Payment**

(1) Subject to other provisions in the order confirmation or a binding quotation, the purchase price is due for payment in the net amount (without deduction) upon receipt of the notice of readiness for shipment where it has been agreed that the customer is responsible for transport (e.g. ex works has been agreed to), and upon transfer to the freight carrier if we are responsible for the shipment, and upon delivery of the goods where we are responsible for the final delivery; the customer is in default of payment if this obligation is not complied with. The payment is deemed to have been fulfilled when it has reached us. Payment by cheque is not permitted unless agreed to differently from case to case. From the date of default of payment, default interest of 9 percentage points above the currently valid European Central Bank basic interest rate; we reserve the right to assert a claim for higher interest rates and other damages due to the default. Payment by instalments is only accepted if this has been separately agreed to in writing. When a credit card is used for payment in the online shop, the customer's credit card will be debited immediately after the purchasing process is completed.

(2) If a customer is in default of payment, we are entitled to hold back any delivery or service still to be completed on the basis of the same contract or of similar contracts concluded in the scope of the business relationship with the customer until all due payments are fully made.

(3) The customer is only entitled to offset if its counterclaims were judicially established, undisputed or recognized by us. The customer is only entitled to claim any reservation of title if its counterclaims are based on the same contractual relationship. The same shall apply to claims of reservation of title under Section 288 of the German commercial code (*HGB*).

(4) If a term for payment has been agreed to, we are also entitled to perform any outstanding deliveries or services against pre-payment or deposit of a security only, if after conclusion of the contract we are aware of circumstances which may considerably reduce the creditworthiness of the customer and place us at a risk concerning the payment of outstanding receivables by that customer under the same contractual relationship (including from other individual orders under the same master agreement).

(5) Any payment received is first used for the settlement of costs, then the payment of interest and finally the principal claim depending on their seniority.

#### **§ 5 Place of Performance, Passing of Risk/Transfer of Title, Shipment, Packaging, Terms of Delivery**

(1) Subject to other provisions in the order confirmation, our binding offer or any other written agreement, the delivery is deemed to be "ex works" (Incoterms 2010). The place of performance is the place where the installation is to be made if we are responsible for the installation.

(2) If no collection date for which we have to confirm in order for it to become binding is stated in the order or if acceptance does not occur on the agreed collection date, we shall

have the choice of either shipping the contractual goods with a freight carrier we have commissioned or placing the contractual goods in storage at the customer's expense. We shall additionally invoice the packaging, shipment and insurance charges (if such an insurance has been agreed to) incurred by us to the customer when the shipment is made. In the event of storage, the customer shall pay a storage lump-sum of 0.5 % of the net remuneration per week for the goods held in storage. Both parties reserve the right to prove that lower or higher expenses have incurred, the customer also having the the right to prove that no expense has been incurred at all.

(3) If it has been agreed that the goods are to be shipped, the risk passes to the customer when the object of delivery is handed over to the forwarding agent, carrier or other person contracted to ship, but no later than when it leaves our branch, our works, our warehouse, the warehouse of our storage and logistics service provider or manufacturer's works unless the agreement includes our responsibility for the final shipment. In the event of a direct delivery being made by our supplier to the customer, the title shall be transferred to customer once the purchased object has left the warehouse of our supplier. These for transfer of title regulations also apply to partial deliveries and if we have other services to render (e.g. shipment or installation) independent of the fact that the shipment is done by us or by other persons contracted by us or by customer or parties the customer has contracted. If the shipment is delayed because the customer has given such instructions, the title shall be transferred to customer with our notification of the readiness for shipment, and we are entitled to keep the goods in storage at the expense and risk of customer. In the event of storage, the customer shall pay a storage lump sum of 0.5 % of the net remuneration per week for the goods held in storage.

(4) Subject to other agreements with the customer, we have the choice of the mode of shipment, the route and type and extent of the required preservation and the selection of the forwarding agent or carrier, and also the packaging, which we shall select compliantly and reasonably. Upon the customer's request we shall take out insurance for the shipment of the goods against theft, breakage, damage in transit, fire and water damage and other risks which can be insured at the customer's expense. If the shipment is delayed at the customer's request or by facts for which the customer is responsible, we shall keep the goods in storage at the expense and risk of the customer. The customer shall pay a storage lump-sum of 0.5 % of the net remuneration per week for the goods held in storage. Both parties reserve the right to prove that lower or higher expenses have been incurred, the customer also having the right to prove that no expenses have been incurred at all.

(5) We are entitled to make partial deliveries if:

- the customer is capable of using the partial delivery for the scope of the contractually determined purpose;
- the delivery of the other ordered goods is ensured; and
- the customer will not incur any considerable additional expenditure or costs (unless we have agreed to settle such costs).

(6) If we promise to deliver carriage paid or free domicile, we only pay the shipping costs, but do not assume the risk until the place of destination. The other provisions in these GTCs or the individual agreement have validity regarding the passing of the risk.

(7) All objects delivered to the customer must be accepted by the customer even though they may present minor defects and irrespective of any warranty rights.

(8) If a final acceptance procedure must be carried out, the purchased object is deemed accepted:

- once the delivery is completed and if we are responsible for installation once

- the installation is completed;
- If we have notified the customer referring to the fiction of acceptance under this provision, and instructed the customer to express acceptance;
- if twelve business days have lapsed since delivery or installation or the customer has started to use the purchased object (e.g. has commissioned the delivered equipment) and in this event six business days have lapsed since delivery or installation, and
- if the customer has omitted to express acceptance within this period for another reason than due to a non-conformity it has informed us of and which leads to the impossibility of using the purchased object or considerably affects such use.

## § 6 Period of Delivery

(1) Binding delivery dates must be explicitly agreed to in writing. We shall take every effort to keep to non-committal or approximate lead times or dates (terms like "ca.", "about" etc.) for deliveries. If shipment was agreed to, the lead times or delivery dates refer to the time of transfer to the forwarding agent, carrier or other third party contracted to ship.

(2) Any agreed lead time starts - unless agreed otherwise in writing - when the order confirmation has arrived at the customer's place; otherwise, if no order confirmation is transmitted, when our offer is accepted. A condition for the commencement of the lead time is, however, the clarification of all commercial and technical issues between us and the customer and the fulfilment of the customer's obligations, such as obtaining the documents, approvals, releases the customer has to submit, and the adherence to the payment terms, including the payment of a down payment, in due time and in the proper form. We reserve the right of benefit of discussion of the contract not being fulfilled.

(3) Irrespective of our rights from a default by the customer, we may request an extension of lead times and service performance times or a prolongation of lead times and service performance times by the period in which the customer has not met its obligations towards us. If the customer has requested changes after contract conclusion, a new reasonable lead time and/or service performance time starts to run once we have confirmed such a change.

(4) We shall not be liable for an impossibility of delivery or for a default of delivery due to a *force majeure* or any other events not foreseeable at the time of contracting (e.g. operational disturbances of any kind, difficulties in procuring material and energy, shipment delays, strike, legal lockout, lack of workforce, energy or raw materials, difficulties in the obtaining of required approvals from authorities, acts of government or missing, incorrect or belated deliveries from suppliers for which we are not responsible. We are entitled to repudiate the contract if such events make the delivery or service performance for us considerably more difficult or impossible and the adverse event is not only temporary. If the adverse event is temporary, the lead times or service performance times are extended or prolonged by the duration of the disturbance plus a reasonable period of restart. The customer may repudiate the contract by sending us an immediate written declaration if the acceptance of the delivery or performance is unreasonable for the customer due to such delay.

(5) If the customer is in default of accepting the delivery or if it culpably violates any of his other obligations to co-operate, we are entitled to request reimbursement of the damage we have incurred from such an event, including all potentially incurred extra charges. We reserve the right to assert any further claims or rights.

(6) As far as the conditions under the previous paragraph are met, the risk of accidental

loss or accidental deterioration of the object of purchase is transferred to the customer at the moment of the customer being in default of acceptance or payment.

## **§ 7 Assembly**

(1) If we have agreed to do assembly work, the customer shall provide for an unhindered delivery of all goods to be delivered by us to the site and unrestricted access to the object on which the assembly is to be done.

(2) If we have agreed to provide assembly instructions and the customer is provided with non-conform assembly instructions, we are obliged to deliver conform assembly instructions only if proper assembly is impossible due to such non-conformity. All other warranty obligations towards the customer due to any non-conforming assembly instructions are excluded unless mandatory law provides for anything to the contrary.

(3) If necessary and as long as the title has not yet been transferred, the customer shall keep the goods already delivered at no expenses for us within the scope of commercial compliance duties.

## **§ 8 Liability for Defects/Warranty**

(1) The customer must notify us in writing of any quality defects which are visible immediately must, but no later than eight business days after having collected the delivery ex works or warehouse, otherwise after delivery, in the event of hidden quality defects immediately after their detection, in the latter case no later than within the warranty limitation period pursuant to paragraph (7) below. The date on which we receive the written notification of defect is relevant. If any damage or another defect can be seen from the outside upon delivery, this shall be recorded in a receipt signed both by the customer and the person transporting the goods (forwarding agent or carrier). All claims asserted by the customer for a violation of duties concerning quality defects are excluded if the notification is not submitted in due time. This shall not apply in the event of intentional, grossly negligent or fraudulent acts by us, in the event of threats to life, limb and health or the assumption of a warranty for freedom from defects or of a risk of procurement pursuant to Section 276 *BGB* or any other situation requiring our liability by mandatory law. The statutory special provisions for a final delivery of the goods to a consumer shall not be affected (supplier recourse pursuant to Sections 478, 479 *BGB*). If the goods must be incorporated into or attached to another item, the notification of a defect must be sent prior to incorporation into or attachment to the other item respectively. A delivered item subject to a notification of defect must be returned to us carriage paid charges upon request. If the claim for defect is justified, we shall reimburse the charges of the cheapest mode of shipment; this does not apply if such charges are increased due to the delivered object being at a place other than that of its intended use.

(2) If the delivered goods present quality defects, we have the duty and choice after a reasonable period of either repairing it or sending a replacement delivery initially. If such a remedy or replacement delivery fails, i.e. is impossible, unreasonable, refused or the remedy is unreasonably delayed, the customer may repudiate the contract or reduce the purchase price by a reasonable amount.

(3) Our warranty (claims due to a violation of duties because of bad performance in the event of quality defects) and the liability we have under it is excluded if the defects and damage in their context cannot be proven to be caused by faulty material, faulty design or deficient production materials or - if we have to deliver them - non-conformity of instructions for use or assembly instructions. In particular, any warranty and the resulting claims due to a violation of duties because of bad performance is excluded for any consequences of an unsuitable, improper use or abuse (with printed media, the processing/printing in particular),

any use deviating from our technical data sheet and our instructions for use, faulty assembly and/or commissioning by the customer or by third parties, unsuitable or improper storage conditions, natural wear and tear, faulty or negligent care, improper maintenance, inappropriate media, chemical, electromagnetic, mechanical or electrolytic influences which are not those explicitly mentioned in our product description or any other product specifications which had been agreed upon, or the product-specific data sheet we have issued, or are the standard influences on average foreseen by the manufacturer. This shall not apply in the event of fraudulent, grossly negligent or intentional acts by us or in the event of injuries to life, limb and health or the assumption of a warranty for freedom from defects or of a risk of procurement pursuant to Section 276 *BGB* or any other situation requiring our liability by mandatory law.

(4) No warranty is granted if the customer modifies or has other parties modify the delivered object without our consent, thusly making it impossible for us to remedy any defect or making it unreasonably more difficult. The customer shall bear all the surcharges of remedy resulting from such a modification.

(5) No warranty for quality defects is granted in special cases of the delivery of second-hand objects to deliver as agreed to with the customer.

(6) In the event of recourse in the supply chain (Section 445a *BGB*), the customer may only request the reimbursement of expenses incurred by it in the relation to its buyer pursuant to Section 439 para. 2 and para. 3 *BGB* to the extent that the defect claimed by its buyer already existed when the title was transferred to the customer and we were granted the chance of performing the remedy ourselves - choosing either a replacement or remedy - within a reasonable period of time before the customer's buyer carried out any remedies. The second sentence shall not apply if our chance of performing the remedy ourselves is contrary to the justified interest of the customer or if the latter is obliged under the duties of a contract for work to incorporate the goods into another item or attach them to another item. We do not grant any warranty under Sections 478, 479 *BGB* (recourse in the supply chain - supplier's recourse) if the customer has processed or transformed or modified the contractual products supplied by us in another manner unless this meets the contractual purpose of the determined use of the products.

(7) The period of limitation for defect claims is one year, starting on the date of transfer of title. This shall not apply for claims for compensation from a warranty, the transfer of a procurement risk in the meaning of Section 276 *BGB*, claims from injuries to life, limb and health, fraudulent, intentional or grossly negligent acts by us, or if a longer period of limitation is defined in the events of Section 438 para. 1 No. 2 (construction of buildings and supply of items for buildings) and Section 634a para. 1 No. 2 *BGB* (building defects) or mandatory law defines such a longer period of limitation. Section 305b *BGB* (priority of individual agreements in the oral or text form or in writing) remains unaffected. The provision above is not connected to a reversal of the burden of proof.

(8) The period of limitation in the event of supply recourse under Sections 478, 479 *BGB* remains unaffected. It runs for five years, starting on the date when the defect item is delivered.

(9) The period of limitation for claims of the customer during negotiations is only interrupted if the negotiations are recorded in writing.

(10) Any recognition of the violation of duties in the form of quality defects always requires the written form.

## **§ 9 Exclusion and Limitation of Liability**

(1) Subject to the exceptions below, we shall not be liable - whatever the legal grounds - for a violation of duties from a debt relationship, in particular not for claims the customer may assert for compensation or reimbursement of expenses.

(2) The exclusion of liability under paragraph (1) above shall not apply if the law provides for mandatory liability, and:

- If we have violated our duties intentionally or by gross negligence, or if our legal representatives or agents have violated their duties intentionally or by gross negligence;
- if we violate material contractual duties; "material contractual duties" are duties which protect the customer's legal positions from a contract, for which a contract with its content and purpose is concluded in the first place; "material" is also deemed to be all contractual duties the fulfilment of which enable the proper execution of a contract in the first place and on whose adherence the customer may and must normally refer;
- in the event of injuries to life, limb and health, including those afflicted by legal representatives or agents;
- in the event of default if a fixed delivery date and/or service performance date was agreed to;
- if we have provided a warranty for the quality of our goods or the existence of a certain performance success or a procurement risk in the meaning of Section 276 *BGB*;
- for any liability under the Product Liability Act or any other situation requiring our liability by mandatory law.

(3) In the event that we or our agents are only held liable for minor negligence and no circumstance of the paragraph (2) above exists - items 3, 4, 5 and 6 - we grant liability only for the typical contractual and foreseeable loss even though we have violated material contractual duties.

(4) Our liability is restricted for each case of damage to a maximum liability amount not exceeding 1,000,000 € for personal injury and property damage and 250,000.00 € for pecuniary losses. This shall not apply if we are liable for fraud, intention or gross negligence, for any claims for injuries to life, limb and health, and in the event of a claim resulting from criminal offences or an explicitly assumed warranty or the transfer of a procurement risk in the meaning of Section 276 *BGB*, or if mandatory law provides for higher liability sums deviating from this. All further liabilities are excluded.

(5) The liability exclusions or restrictions respectively pursuant to paragraphs (1) to (4) and (6) above shall apply to the same extent in favour of our company organs, our managers and non-executive employees in addition to other vicarious agents and our subcontractors.

(6) The customer's claims for damages from this contractual relationship may only be asserted within an exclusion time limit of one year from the statutory start of the period of limitation. This shall not apply if we are liable for fraud, intention or gross negligence, for any claims for injuries to life, limb and health, and in the event of a claim resulting from criminal offences or an explicitly assumed warranty or the transfer of a procurement risk in the meaning of Section 276 *BGB*, or if mandatory law provides for a longer period of limitation.

## **§ 10 Securing the Reservation of Title**

(1) We reserve the title and property in all goods we have delivered (hereinafter the "goods under reservation of title") until all claims from the business relationship with the customer are fulfilled, including any future claims from contracts concluded at a later date. This also applies for a balance in our favour if individual receivables or all receivables owed



to us have been registered in a current account and the balance has been drawn.

(2) The goods under a reservation of title must be sufficiently insured by the customer, in particular against fire and theft. All claims asserted against the insurance from any loss concerning the goods under reservation of title are already now transferred to us in the amount of the value of the goods under reservation of title. The customer has the duty of treating the goods under reservation of title with good care. The customer shall carry out any maintenance and inspection work if such are deemed necessary in due time and at its own expenses.

(3) The customer is entitled to resell the products delivered in the ordinary course of business. The customer is not entitled to dispose of them in any other way, including by pledging them or creating collateral with them. If the goods under reservation of title are not immediately paid for by the third-party buyer in the event of resale, the customer is obliged to resell them subject to a reservation of title clause. The right of reselling any goods under reservation of title is null and void if the customer has ceased its payments or is in default of payment towards us.

(4) As of now, the customer assigns us all receivables including collateral and ancillary rights from end buyers or third parties to which the customer is entitled from the resale of the goods under reservation of title or in such a context. The customer may not sign any agreements with its buyers which exclude our rights or reduce them in any form or render the advance assignment of the receivable null and void. Should any goods under reservation of title be sold together with other items, the receivable against the third-party buyer in the amount of the supply price agreed between us and the customer is deemed assigned to us if no individual amounts for the goods can be determined from our invoice.

(5) The customer is entitled to collect the receivables assigned to us until we revoke such collection which is possible for us at any time. We agree to revoke the debit authorisation only if we have a justified interest to do so, however. Such a justified interest exists for instance if the customer does not fulfil its payment obligations properly or is in default of payment. Upon our request the customer is to disclose all information and submit all records required for the collection of assigned receivables and inform its buyers immediately that they have been assigned to us.

(6) If the customer records any receivables from the resale of goods under reservation of title in an current account relationship existing with its buyers, it as of now assigns any resulting recognized final balance in its favour to us in the amount which is identical with the total receivable from the resale of our goods under reservation of title accounted for in the current account relationship.

(7) If the customer has already assigned receivables from the resale of goods we have delivered or will deliver in the future to third parties, in particular on the basis of real or non-recourse factoring agreements, or entered into other agreements which may deteriorate our collateral rights under this paragraph, we are to be immediately informed of this fact. In the event of non-genuine factoring, we are entitled to repudiate the contract and request the surrender of the products already delivered. The same applies to non-recourse factoring, if the customer is unable to freely dispose of the purchase price of the receivable under the agreement with the factoring beneficiary.

(8) If the customer breaches the contract culpably, in particular a default of payment, we are entitled to repudiate the contract and to request that all goods under reservation of title be returned. In this case, the customer is implicitly obliged to surrender them and bears the shipment costs incurred for their return. We have repudiated the contract if we accept the return of goods under reservation of title. If we have repudiated the contract we are entitled

to use the goods under reservation of title. The proceeds of use will be initially set off, deducting reasonable costs incurred from such use, against the receivables which the customer still owes us from the contract of delivery, and then with other receivables from the business relationship. We are entitled to enter the business premises of the customer at any time at regular business hours, in order to determine the stock of goods delivered by us. The customer shall notify us in writing of any access by third parties to the goods under reservation of title or to the receivable assigned to us without delay.

(9) If the value of the collateral existing for us under the clauses above exceeds the total value of the secured receivables by more than 10 %, we agree to release collateral of our choice upon the customer's request.

(10) Any handling and processing of the goods under reservation of title shall be done on our behalf as the manufacturer, without binding us however. If the goods under reservation of title are processed or blended inseparably with other materials not our property, we acquire the co-ownership in the new item in the proportion of the net invoiced value of our goods to the net invoiced value of the other processed or blended materials. If our goods are combined with other moveable property to a uniform item which must be considered the principal item, the customer transfers us the co-ownership in it in the same proportion as of now. The customer keeps the property or co-ownership on our behalf free of charge. All co-ownership rights resulting from this are considered goods under reservation of title. The customer agrees to disclose any information which may be required to defend our ownership or co-ownership rights us at any time upon request.

(11) The customer is to inform us in writing immediately in the event of pledging or any other intervention of third parties so that we can file a suit pursuant to Section 771 of the German code of civil procedure (ZPO). The customer is liable to pay the loss resulting for us unless the third party can reimburse us with the costs of a litigation incurring out of court and in court pursuant to Section 771 ZPO.

## **§ 11 Property Rights**

(1) We confirm under the provisions of this paragraph that the delivered object is free from third party industrial property rights or copyrights. Either of the contractual parties shall immediately inform the other party if it becomes aware that anybody asserts claims against it due to a violation of such rights. Either of the contractual parties shall moreover support the other party in defending itself against the asserted claims to a reasonable extent.

(2) In the event that the delivered item infringes third party industrial property rights or copyrights, we will choose either to modify the delivered item or replace it at our expense so that no rights of third parties will be infringed any longer, but the delivered item continues to perform the contractually agreed function, or to procure the right of use to the customer by entering into a license agreement. If we fail to do so within a reasonable period of time, the customer is entitled to repudiate the contract or reduce the purchase price by a reasonable amount. The customer is obliged to support us reasonably in the modification or replacement procedure. Any claims for damages by the customer are subject to the restrictions of § 9 of these GTCs.

(3) In the event of an infringement by the products of other manufacturers we have delivered, we shall either choose to assert our claims against the manufacturers and previous suppliers for the account of the customer, or assign them to the customer. Any claims against us only exist in such events under this paragraph if the legal action to assert the claims described above against the manufacturers and previous suppliers was unsuccessful or are deemed to be futile, e.g. because insolvency proceedings are pending.

**§ 12 Final Provisions / Incoterms / Governing Law / Jurisdictional Venue / Place of Performance**

- (1) The Incoterms 2010 (International Commercial und Terms) are valid for any commercial clauses agreed upon.
- (2) If the customer is an entrepreneur, a legal entity under public law or a public-law special fund or if it has no general jurisdictional venue in the Federal Republic of Germany, the courts of either Hamburg or at the registered office of the customer according to our choice have exclusive jurisdiction for all disputes from the business relationship between us and the customer. Hamburg is the exclusive jurisdictional venue for the filing of any legal action against us however. Any provisions under mandatory law concerning exclusive jurisdictional venues remain unaffected by this clause.
- (3) The relationships between us and the customer are exclusively governed by the laws of the Federal Republic of Germany. The UN Convention on International Sales of Goods (CISG) is excluded.
- (4) Subject to other provisions in our order confirmation or our binding offer, the place of performance is our legal domicile.
- (5) Should the contract or these GTCs have any legal gaps, the contractual parties agree that a legally effective provision is deemed to have been agreed upon in view of the economic meaning of the contract and the purpose of these GTCs if they had been aware of such a legal gap.