

# **UNGER Kabel-Konfektionstechnik GmbH Terms and Conditions of Sale and Service, Conditions of Purchase (Version 12/2025)**

## **Validity**

All of our deliveries and purchases shall be executed exclusively on the basis of these Terms and Conditions of Sale and Service and Conditions of Purchase. The Terms and Conditions of our business partners shall not apply even if the Terms and Conditions of our business partners do not contain a separate provision with respect to individual points. The Terms and Conditions of Sale and Service and Conditions of Purchase shall only apply to entrepreneurs within the meaning of § 310 subsection 1 of the BGB (German Civil Code). Any deviations from these Terms and Conditions shall only take effect if we confirm them in writing. These Terms and Conditions of Sale and Service and Conditions of Purchase shall also apply to all future business transactions between the contracting parties without any requirement for a renewed reference to these Terms and Conditions of Sale and Service and Conditions of Purchase.

## **A. Terms and Conditions of Sale and Service**

### **§ 1 Conclusion of the Contract**

1. Our offers shall be subject to change without notice unless they are expressly marked as binding or explicitly contain binding commitments or their binding nature has been expressly agreed in some other manner. They are to be considered invitations to submit an order. The Customer shall be bound by his/her/its order as a contract application for 14 calendar days – or 5 working days in the case of an electronic order (in each case at our registered office) – after receipt of the order by us, unless the Customer has to expect later acceptance by us on a regular basis (§ 147 BGB). This shall also apply to repeat orders submitted by the Customer.

2. A contract shall only be concluded – also in the case of current business transactions – when we confirm the Customer's order in writing or in text form (i.e. also by fax or e-mail) by means of an order confirmation. The order confirmation shall only apply subject to the condition that any payment arrears of the Customer are settled and that a credit check of the Customer that is performed by us does not produce a negative assessment. In the case of delivery or performance within the binding period of the Customer stipulated in the offer, our order confirmation can be replaced by our delivery, whereby the time of dispatch of the delivery shall be decisive.

3. The Customer shall inform us in writing in good time before the conclusion of the contract about any special requirements relating to our products. However, such references shall not result in any extension to our contractual obligations and liability. In the absence of any other express agreement, we shall only be obliged to deliver

the ordered products as goods that can be marketed and authorized for sale in the Federal Republic of Germany.

4. The assumption of a procurement risk or a procurement guarantee shall not be solely based on our obligation to supply a specific item that is determined only according to its type.

5. We shall only assume a procurement risk within the meaning of § 276 of the BGB (German Civil Code) on the basis of a separate written agreement that uses the expression "we shall assume the procurement risk...".

6. In the event of a delayed delivery order or call-off on the part of the Customer, we shall be entitled to postpone the delivery by the same period of time as the delay on the part of the Customer plus a scheduling period of 4 working days at the location of our registered office.

7. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. The Customer shall require our express written agreement before forwarding these to third parties.

### **§ 2 Prices**

1. The agreed prices are net prices ex works and do not include any additional costs such as shipping and packaging costs or transport insurance.

2. Insofar as the period between the conclusion of the contract and the time of delivery is more than four months, our sales prices that are valid on the day of delivery shall apply even if other prices were agreed when the contract was concluded. Any price increase shall not exceed the extent to which the material price, procurement, production, delivery, wage and energy costs, tax increases have risen between the time of the conclusion of the contract and the time of delivery.

### **§ 3 Delivery schedule and call-off system**

#### **1. Scope of application**

The following provisions apply to framework agreements and call-off deliveries where demand is controlled by delivery schedules.

**In case of doubt, they take precedence over the provisions of §§ 2 and 4.**

#### **2. Delivery schedules and conclusion of contract**

The supplier receives rolling delivery schedules with demand specifications.

Binding orders (production releases) are based on the quantities marked as binding in the delivery schedule.

An order is also deemed to have been accepted **if the supplier does not object within two (2) working days of receipt**. Notwithstanding § 2 No. 4, the acceptance period for orders under this paragraph is two working days.

### **3. Fixed period 1 – production release**

There is a delivery obligation within fixed period 1 for the quantities specified as binding in the delivery schedule. Fixed period 1 corresponds to the respective notified planned delivery time of the contract product.

### **4. Fixed period 2 – Material release**

Quantities exceeding this may be designated as material releases. Fixed period 2 shall not exceed three times the planned delivery time. Within this period, the supplier may schedule the necessary raw materials. The material release serves the purpose of early scheduling of raw materials. It does not constitute an obligation to accept delivery, but enables the supplier to plan production economically. In the event of a significant deviation of the binding call-offs from the material release, the parties shall agree on an appropriate solution with regard to materials already scheduled.

### **5. Forecast (non-binding demand estimate)**

Information in the delivery schedule outside the fixed periods is a non-binding demand estimate and is used exclusively for capacity planning. It does not constitute a delivery or purchase obligation.

### **6. Priority and supplementation**

In all other respects, the provisions of these terms and conditions shall remain unchanged. In the event of contradictions between delivery schedule details and other orders or call-offs, the respective delivery schedule shall take precedence.

### **§ 4 Delivery and Delivery Costs**

1. We shall be entitled to execute partial deliveries and partial services to an extent which the Customer can be reasonably expected to accept. Since it is not always possible to guarantee exact compliance with the delivery quantity due to the varying quality and size of the parts, we shall be entitled to execute excess or short deliveries of up to 5 % of the ordered quantity.

2. Agreed delivery dates shall be deemed to have been adhered to if the ordered goods have been submitted to a carrier or the individual or company designated to handle the consignment within the delivery period or on the agreed delivery date or have been reported as ready for dispatch.

3. The goods shall be dispatched at the Customer's expense and risk, even if they are not dispatched from the place of performance. In the absence of a specific contractual provision, the method of dispatch shall be selected to the best of our judgment, although we shall not assume responsibility for the cheapest means of transport. Any insurance requested by the Customer shall be at the Customer's expense.

4. Delivery times shall be indicated to the best of our knowledge, but shall not be binding, even if they are indicated during the processing of the order following a re-

minder to effect delivery. Claims for damages which are based on delayed delivery shall be excluded; this shall not apply if the delay in delivery is due to intent or gross negligence.

5. Insofar as we are prevented from fulfilling our performance deadlines due to force majeure events for which we are not responsible, the agreed performance deadline shall be extended by an appropriate period of time.

6. Goods which are reported as being ready for dispatch and whose contractual delivery date has been reached must be called off and accepted immediately. Otherwise – or in the event of impossibility of dispatch – we shall be entitled to store the goods at our own discretion at the expense and risk of the Customer.

7. Insofar as dispatch or delivery is delayed at the request of the Customer, the Customer shall be charged storage fees to the level of 1 % of the invoice amount for each month or part thereof, beginning one month after notification of readiness for dispatch.

8. Insofar as acceptance of the products or their dispatch is delayed for a reason for which the Customer is responsible, we shall be entitled – after the setting and expiration of a 14-day period of grace – at our discretion to demand the immediate payment of the remuneration or to withdraw from the contract or refuse performance and demand damages instead of full performance. The deadline must be set in writing or in text form. There shall be no obligation on our part to refer to the rights associated with this clause again when setting the deadline.

In the event of the above-mentioned claim for damages, the damages to be paid shall amount to 20 % of the net delivery price in the case of purchase contracts or 20 % of the agreed net remuneration in the case of service contracts. Both parties reserve the right to show that the level of the damage was different or that no damage occurred. The above provisions shall not be associated with a reversal of the burden of proof.

9. The all-inclusive amounts referred to under the above provision shall not apply if the Customer shows that no damage at all occurred or that its level was less than the all-inclusive amount. We may also claim higher costs and damages if we are able to provide evidence thereof.

10. The delivery claim shall be suspended for as long as the Customer has not settled the invoices which are due for payment by the delivery date.

## **§ 5 Terms of Payment and Default in Payment**

1. All invoices shall become due for payment in full upon delivery. The Customer shall be in default 14 days after delivery without any further declarations on our part if payment has not been effected. In such a case, the Customer shall only be entitled to withhold payment if the amount withheld is in reasonable proportion to the defects and the anticipated costs of supplementary performance (in particular of the rectification of defects).

The Customer shall not be entitled to assert any claims and/or rights due to defects if the Customer has not made any payments which are due and if the amount due (including any payments that have been effected) is in reasonable proportion to the value of the – defective – delivery or work.

2. In the event of default in payment we shall be entitled – without any requirement to provide proof – to demand default interest at the rate of 9 % above the base lending rate of the European Central Bank which applies at the time in accordance with the Discount Transition Act, which shall become due immediately. A higher or lower default interest rate shall be charged if appropriate evidence is provided.

3. Insofar as the Customer is in default of payment or if – after the conclusion of the contract – we become aware of circumstances which are likely to call the Customer's creditworthiness into question, we shall be entitled to declare that further outstanding claims are due for immediate payment. We shall then reserve the right to deliver only after the settlement of all open claims or after the receipt of corresponding securities (e.g. a bank guarantee) or by means of cash on delivery plus any cash on delivery costs or after advance payment.

4. In the event of default in payment, we shall be entitled to demand that payments can only be made with discharging effect to a third party to be nominated by us.

5. The Customer may offset counterclaims and assert a right of retention based on counterclaims only if these are not disputed, have been legally established or have been recognized by us.

## **§ 6 Reservation of Title, Garnishments**

1. We reserve the title to all goods supplied by us (hereafter referred to collectively as "goods subject to reservation of title") until all our claims arising from the business relationship with the Customer, including any future claims that may arise in conjunction with contracts concluded at a later date, have been settled. This shall also apply to a balance in our favor if individual or all of our claims are included in a current invoice (current account) and the balance has been drawn up.

2. The Customer shall insure the goods subject to reservation of title to a sufficient extent – in particular against fire and theft. Claims against the insurance company arising from a case of damage that affects the goods subject to reservation of title are hereby ceded to us in the amount of the value of the goods subject to reservation of title.

3. The Customer shall be entitled to resell the delivered products in the normal course of business. The Customer shall not be permitted to make any other dispositions such as – in particular – the pledging or granting of property by way of security. Insofar as the goods subject to reservation of title are not paid for immediately by the third-party purchaser when resold, the Customer shall be obliged to resell them only under reservation of title. The

right to resell the goods subject to reservation of title shall lapse automatically if the Customer discontinues his/her/its payments to us or is in default of payment to us.

4. The Customer hereby assigns to us all claims, including securities and ancillary rights, which the Customer may accrue from or in connection with the resale of goods subject to reservation of title with respect to the end customer or third parties. The Customer may not conclude any agreement with his/her/its own customers which exclude or prejudice our rights in any way or which annul the advance assignment of the claim.

In the event that the goods subject to reservation of title are sold together with other items, the claim against the third-party customer shall be deemed to have been assigned in the amount of the delivery price agreed between us and the Customer, unless the amounts attributable to the individual goods can be determined from the invoice.

5. The Customer shall remain entitled to include the claim assigned to us until our revocation, which is permitted at any time. However, we undertake to revoke the direct debit authorization only in cases where there is a justified interest in doing so. Such a justified interest shall apply, for example, if the Customer does not satisfy his/her/its payment obligations in a proper manner or is in default of payment or in the event of default, the suspension of payments, the opening of insolvency proceedings, the protest of a bill of exchange or if there are substantiated indications of over-indebtedness or the imminent insolvency of the Customer.

At our request, the Customer shall be obliged to provide us in full with the information and documents that are necessary for the collection of any assigned claims and, unless we do so ourselves, inform his/her/its own customers immediately of the assignment to us.

6. Insofar as the Customer includes claims from the resale of goods subject to reservation of title in a current account relationship that exists with his/her/its own customers, the Customer hereby assigns to us an acknowledged final balance in the Customer's own favor in the amount of the sum that corresponds to the total amount of the claim that has been included in the current account relationship from the resale of our goods subject to reservation of title.

7. Insofar as the Customer has already assigned claims from the resale of the products delivered or to be delivered by us to third parties, in particular on the basis of genuine or fake factoring, or has concluded other agreements on the basis of which our current or future security interests pursuant to subsection 10 may be impaired, the Customer shall notify us of this without delay. In the case of fake factoring, we shall be entitled to withdraw from the contract and demand the surrender of products that have already been delivered. The above shall also apply in the case of genuine factoring if the Customer cannot freely dispose of the purchase price of the

claim according to the contract associated with the factor.

8. In the event of a breach of contract for which the Customer is responsible, in particular in the event of default in payment, we shall be entitled to take back all of the goods subject to reservation of title after withdrawing from the contract.

In this case, the Customer shall be obliged to surrender the goods immediately and shall bear the transport costs incurred for the goods to be taken back. Insofar as we take back the goods subject to reservation of title, this shall constitute withdrawal from the contract. In the event of withdrawal from the contract, we shall be entitled to dispose of the goods subject to reservation of title. The proceeds from the sale, less any reasonable costs of the sale, shall be offset against the claims which the Customer owes us from the business relationship. In order to determine the stock levels of the goods delivered by us, we may enter the business premises of the Customer at any time during normal business hours. The Customer shall inform us immediately in writing of any access by third parties to goods subject to reservation of title or claims which have been assigned to us.

9. Insofar as the value of the securities that exist for us according to the above provisions exceeds the secured claims overall by more than 10 % in total, we shall be obliged to release securities of our choice at the request of the Customer.

10. Any treatment and processing of the goods subject to reservation of title shall be carried out on our behalf as the manufacturer, but without subjecting us to any obligations. Insofar as the value of the goods subject to reservation of title that have been delivered by us is less than the value of the goods which do not belong to us and insofar as our goods subject to reservation of title are processed or inseparably combined with other items which do not belong to us, we shall acquire co-ownership of the new item in the proportion of the net invoice amount of our goods to the net invoice amounts of the other processed or combined items.

Insofar as our goods are combined with other movable objects to form a uniform item which is to be regarded as the main item, the Customer hereby transfers co-ownership to us in the same proportion. The Customer shall store the ownership or co-ownership free of charge on our behalf. The resulting co-ownership rights shall be considered to be goods subject to reservation of title.

At our request, the Customer shall be obliged at any time to provide us with the information required for us to pursue our ownership or co-ownership rights. Insofar as we do not acquire any ownership of the new goods in accordance with the above process, we and the Customer are in agreement that the Customer shall grant us co-ownership of the new goods in the proportion of the value of the delivered item that belongs to us to that of the other processed goods at the time of processing. The above sentence shall apply accordingly in the case of a mixing of the goods

or a combination of the delivered item with goods which do not belong to us.

Insofar as we acquire ownership or co-ownership in accordance with the provisions of this section (reservation of title), the Customer shall hold them in safekeeping for us with the diligence of a prudent businessman.

11. In the case of garnishments or other interventions by third parties, the Customer shall inform us thereof immediately in writing in order that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of any legal action in accordance with § 771 of the ZPO, the Customer shall be liable for the loss incurred by us.

### **§ 7 Warranty, Delayed Performance and Default, Non-Performance**

1. Claims for defects submitted by the Customer shall not apply in the case of only insignificant deviations from the agreed properties or only insignificantly impaired usability.

2. The information contained in brochures or other documents, as well as in other offers, such as illustrations, descriptions, dimensions, weight, performance and usage data, as well as information regarding the usability of the goods, are product descriptions and do not contain any assurance of their properties. Minor and/or reasonable deviations from these product descriptions which are customary in the trade shall be considered to have been approved and shall not entitle the Customer to not fulfill his contractual obligations.

3. The right to choose between the rectification of defects and a new delivery (supplementary performance) shall be at our discretion in all cases. The Customer's request for supplementary performance must be submitted in writing. We shall be granted a period of 20 working days for supplementary performance. Insofar as the delivery/service is to be corrected, such correction shall only be deemed to have failed after the second unsuccessful attempt. Insofar as the supplementary performance fails, the Customer shall have the right to reduce the purchase price or – if the subject matter of the liability for defects is not construction work – to withdraw from the contract at his/her/its own discretion. The statutory cases governing the dispensability of setting a deadline shall remain unaffected. The application of §§ 478, 479 of the German Civil Code (BGB) (entrepreneur's right of recourse) shall remain unaffected.

4. The expenses required for the purposes of supplementary performance shall be borne by the Customer insofar as such expenses increase because the supplies/services are transferred to a location other than the Customer's branch office, unless such transfer is in line with their intended use. The application of § 478 of the German Civil Code (BGB) shall remain unaffected.

Without prejudice to any further claims on our part, the Customer shall – in the event

of an unsubstantiated notification of defects – reimburse us for the expenses incurred for the examination of and – if requested – rectification of the defect.

5. We shall be liable in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent, as well as in cases of injury to life, limb or health caused by slight negligence in accordance with the statutory provisions. In cases of gross negligence, our liability shall be limited to the foreseeable damage that is typical for this type of contract, unless another of the exceptional cases listed in sentence 1 or sentence 3 of this subsection also applies. In all other respects we shall only be liable in accordance with the German Product Liability Act or due to a culpable violation of essential contractual obligations. However, the claim for damages for the violation of essential contractual obligations shall be limited to the foreseeable damage that is typical for this type of contract, unless another of the exceptional cases listed in sentence 1 or sentence 3 of this subsection also applies.

6. The provision in the preceding subsection shall apply to all claims for damages (in particular for damages in addition to performance or damages in lieu of performance), irrespective of the legal grounds, but in particular due to defects, the infringement of duties arising from the contractual obligation or from tort. They shall also apply to the claim for compensation for futile expenditure. However, the liability for default shall be determined in accordance with § 8 of these conditions and the liability for impossibility in accordance with § 9 of these conditions.

7. The above provisions shall not be associated with a change to the burden of proof to the disadvantage of the Customer.

8. We shall be liable in the event of delay in performance in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent, as well as in cases of injury to life, limb or health caused by slight negligence in accordance with the statutory provisions. However, in cases of gross negligence, our liability shall be limited to the foreseeable damage that is typical for this type of contract. With the exception of the cases referred to in sentence 1 and sentence 2, the liability on our part for damages due to default in addition to performance shall be limited to a total of 5 %, and for damages in lieu of performance (including reimbursement for futile expenditure) to a total of 10 % of the value of the delivery/service. Any further claims of the Customer shall be excluded – even after the expiry of any deadline set for us to perform. The restriction shall not apply in the case of a culpable violation of essential contractual obligations. However, the claim for damages for the culpable violation of essential contractual obligations shall be limited to the foreseeable damage that is typical for this type of contract, unless another case referred to in sentence 1 applies at the same time. The above provisions shall not be associated with a change to the burden of proof to the disadvantage of the Customer.

9. We shall be liable for impossibility of delivery/performance in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent, as well as in cases of injury to life, limb or health caused by slight negligence in accordance with the statutory provisions. However, in cases of gross negligence, our liability shall be limited to the foreseeable damage that is typical for this type of contract, unless another of the exceptional cases listed in sentence 1 also applies at the same time. With the exception of the cases referred to in sentence 1 and sentence 2, the liability on our part for impossibility of performance shall be limited to damages and compensation for futile expenditure to a total of 10 % of the value of the delivery/service. Any further claims of the Customer due to impossibility of delivery shall be excluded – also after the expiry of any deadline that has been set for us to perform. The above provisions shall not be associated with a change to the burden of proof to the disadvantage of the Customer.

10. The Customer may only withdraw from the contract within the framework of the statutory provisions if we are responsible for the breach of duty. In the event of a breach of duty, the Customer shall declare within a reasonable period of time after being requested to do so by us whether he/she/it intends to withdraw from the contract due to the breach of duty or insist on delivery.

11. The limitation period for claims and rights due to defects in the deliveries/services shall be one year, irrespective of the legal grounds. However, this shall not apply in the cases covered by § 438, subsection 1, no. 1 of the BGB (defects of title for immovable property), § 438, subsection 1, no. 2 of the BGB (buildings, items for buildings), § 479, subsection 1 of the BGB (right of recourse of the entrepreneur) or § 634a, subsection 1, no. 2 of the BGB (buildings or work whose success consists in the provision of planning or monitoring services for them). The cases excluded in sentence 2 above shall be subject to a limitation period of 3 years.

12. Insofar as we deliver used products in individual cases in accordance with the contractual agreement, a warranty shall be excluded unless otherwise agreed in individual cases.

13. The limitation periods according to subsection 11 shall also apply to all claims for damages against us which are associated with the defect – irrespective of the legal basis of the claim. Insofar as claims for damages of any kind exist against us which are not associated with a defect, the limitation period stipulated in subsection 11 sentence 1 shall apply to them.

14. However, the limitation periods referred to in subsections 11, 12 and 13 shall apply subject to the following proviso:

- a) The limitation periods shall generally not apply in the event of intent or the fraudulent concealment of a defect or insofar as we have assumed a guarantee for the properties of the delivered item.
- b) The limitation periods shall not apply to claims for damages in the case of a grossly

negligent breach of duty which does not consist in the delivery of a defective item or the provision of defective work performance; it shall not apply the case of a culpable violation of essential contractual obligations; it shall not apply in cases of culpably caused injury to life, body or health or in the case of claims under the German Product Liability Act. The limitation periods for claims for damages shall also apply to the reimbursement of futile expenditure.

15. For all claims the limitation period shall begin with the delivery, or upon acceptance in the case of the performance of work.

16. Unless otherwise expressly stipulated, the statutory provisions on the commencement of the limitation period, the suspension of expiry, the suspension and restart of time limits shall remain unaffected.

17. The above provisions shall not be associated with a change to the burden of proof to the disadvantage of the Customer.

18. Defects are to be reported to us in writing in compliance with the inspection and notification obligations referred to in § 377 of the German Commercial Code (HGB).

### **§ 8 Intellectual Property Rights**

For all documents, objects and similar items submitted to us for the purposes of delivery or performance, the Customer shall be responsible for ensuring that the intellectual property rights of third parties are not infringed thereby. We shall inform the Customer of any third-party rights of which we are aware. The Customer shall indemnify us against any claims which are asserted against us by third parties due to an infringement of intellectual property rights if such property rights are infringed contrary to the obligation under § 7 sentence 1. Insofar as our performance, production or delivery is prohibited by a third party invoking an intellectual property right that belongs to the third party, we shall be entitled, without examining the legal situation, to discontinue the work and demand compensation for our expenses. Documents, objects and similar items submitted to us which did not result in the order being placed shall be returned on request in return for the reimbursement of the costs. Otherwise we shall be entitled to destroy them three months after the offer has been submitted.

### **§ 9 Documents and Non-Disclosure**

All business or technical information that is made accessible by us (including features which can be inferred from any objects, documents or software that is/are submitted, as well as other knowledge or experience) shall be kept secret from third parties for as long as and to the extent that it can be shown that it is not publicly known, and may only be made available on the Customer's own business premises to those individuals who need to be involved for its use for the purposes of the order from us and who have also been subjected to an obligation to maintain secrecy; such information shall remain our exclusive property. Without our prior written consent, such information – with the exception of orders from us – may not be reproduced or

used for commercial purposes. At our request, all information that originates from us (including any copies or records that have been drawn up, if applicable) and any items provided on a loan basis are to be returned to us immediately and in full or shall be destroyed. We reserve all rights to such information (including copyrights and the right to apply for industrial property rights, such as patents, utility models, semiconductor protection, etc.). Insofar as these have been made available to us by third parties, this reservation of rights shall also apply in favor of these third parties.

## **B. Conditions of Purchase**

### **§ 1 General**

Our Terms and Conditions of Purchase shall apply exclusively; any General Terms and Conditions of Business of the supplier that conflict with or deviate from, contradict or supplement our Terms and Conditions of Purchase shall only apply to the extent that we have expressly agreed to them in writing. The acceptance of goods or services from the supplier (hereafter: subject matter of the contract) or their payment shall not constitute such agreement, even if we have accepted the supplier's deliveries without reservation in the knowledge of the supplier's General Terms and Conditions.

### **§ 2 Conclusion and Amendments to the Contract**

1. Unless otherwise agreed, all orders, contracts and delivery call-offs, as well as their amendments and supplements, shall require the text form. Our order shall be deemed binding at the earliest upon its submission or confirmation in text form. The supplier shall notify us of obvious errors (e.g. typing and calculation errors) and incomplete aspects of the order, including the order documents, for the purposes of correction or completion prior to acceptance; otherwise the contract shall be deemed not to have been concluded.

2. Any verbal agreements of any kind which do not satisfy the text form obligations shall require our confirmation in text form to be effective.

3. Cost estimates shall be binding and shall not be reimbursed, unless expressly agreed otherwise.

4. Insofar as the supplier does not accept the order within two weeks of its receipt, we shall be entitled to revoke it.

5. Insofar as we incur costs as a result of the defective delivery of the subject matter of the contract, in particular transport, travel, labor, material costs or costs for an incoming goods inspection that exceeds the usual scope, these costs shall be borne by the supplier.

### **§ 3 Delivery**

1. Deviations from our contracts and orders shall only be permitted with our prior consent in text form.

2. All agreed dates and deadlines are binding. The time of receipt of the goods by us shall be the decisive factor when determining whether the delivery date or delivery period has been complied with. Insofar as

the supplier fails to perform or to perform within the agreed delivery period or is in default, our rights – in particular our rights relating to withdrawal and compensation – shall be determined in accordance with the statutory provisions. The provisions in the following subsection shall remain unaffected.

Insofar as the supplier is in default, we may – in addition to further statutory claims – demand lump-sum compensation for the damage suffered by us due to default in the amount of 1 % of the net price per completed calendar week, but not more than 5% overall of the net price of the goods which are delivered late. We reserve the right to show that a greater level of damages has occurred. The supplier reserves the right to prove that no damages at all – or only a considerably lower level of damages – has occurred.

The supplier shall bear the procurement risk for its services unless otherwise agreed in the individual case.

3. Insofar as the supplier has assumed responsibility for the erection or assembly – and unless otherwise agreed – the supplier shall bear all of the necessary incidental costs such as travel expenses, the provision of the tools and allowances, subject to deviating provisions.

4. Insofar as agreed deadlines are not adhered to, the statutory provisions shall apply.

Insofar as the supplier foresees difficulties with regard to manufacturing, the supply of primary materials, compliance with the delivery date or similar circumstances which might prevent the supplier from delivering on time or in the agreed quality, the supplier shall inform our ordering department of this without delay.

5. Any acceptance without reservation of the delayed delivery or service shall not constitute a waiver of the claims for compensation to which we are entitled due to the delayed delivery or service; this shall apply until full payment of the remuneration owed by us for the delivery or service concerned.

6. Partial deliveries are not permitted as a matter of principle unless we have expressly agreed to them.

7. Subject to proof to the contrary, the values determined by us during the incoming goods inspection shall be decisive with respect to quantities, weights and dimensions.

8. We shall have the right to use software that is part of the scope of delivery of the product, including its documentation, to the extent permitted by law (§ 69a ff. of the German Copyright Act (UrhG)).

9. We shall also have the right to use such software, including documentation, with the agreed performance characteristics and to the extent required for the contractual use of the product. We may also make a backup copy without any express agreement.

#### **§ 4 Force Majeure**

Force majeure, labor disputes, disruptions to business operations for which we are not at fault, unrest, official measures and

other unavoidable occurrences shall release us from the obligation to accept delivery in due time for as long as they continue. During such events and within two weeks of their coming to an end, we shall be entitled – without prejudice to our other rights – to withdraw from the contract in whole or in part, provided that these events are not of an insignificant duration and our requirements are considerably reduced due to the fact that procurement elsewhere is necessary.

#### **§ 5 Dispatch Note and Invoice**

The information contained in our orders and delivery call-offs shall apply. A single copy of the invoice shall be sent to the address printed on the invoice, stating the invoice number and other unique identifiers; this may not be enclosed with the consignments.

#### **§ 6 Pricing, Transfer of Risk**

Unless a specific agreement has been concluded, the prices shall be stated free works, duty paid, including packaging.

The supplier shall bear the risk of accidental loss, destruction or deterioration until the time of acceptance of the goods by us or our representative at the location to which the goods are to be delivered according to the order.

#### **§ 7 Terms of Payment**

Unless otherwise agreed, the invoice shall be paid either within 20 days with a 3 % discount or within 35 working days without any discount from the due date of the demand for payment and the receipt of both the invoice and the goods or the provision of the service. Payment shall be effected subject to verification of the invoice. We shall not be liable for any interest payable after the due date. The supplier shall have a right of set-off or retention only in the case of counterclaims which have been legally established or which are undisputed.

#### **§ 8 Claims for Defects and Recourse**

1. Acceptance shall be subject to an inspection for freedom from defects – and in particular also with respect to correctness and completeness – insofar as and as soon as this is feasible in the ordinary course of business. Notification of any defects shall be submitted by us immediately after they are discovered.

In this respect, the supplier hereby waives the objection of the delayed notification of defects.

2. The statutory provisions on defects as to quality and defects of title shall apply unless otherwise stipulated below.

3. The right to choose the type of supplementary performance shall be ours in all cases. Insofar as defects need to be rectified, such rectification of defects shall be deemed to have failed after the first unsuccessful attempt at rectification.

4. We shall perform a check immediately after the receipt of products to determine whether they correspond to the ordered quantity and type and whether there is any externally visible transport damage or any externally visible defects. We shall not be

subject to any further inspection obligations.

5. In the event of defective or faulty deliveries, the supplier shall be obliged to take immediate measures to limit the damage and exclude errors (replacement deliveries, sorting or reworking). Any inspection costs or sorting costs incurred by us shall be borne by the supplier. In principle, the supplier must submit a written statement within 10 working days on the causes of defects and corrective measures in the form of an 8D report in accordance with VDA.

6. Insofar as the supplier does not begin to rectify the defects immediately after our request, we shall be entitled in urgent cases – especially in order to avert acute risks or avoid major damage – to rectify the defects ourselves or have them rectified by a third party at the supplier's expense.

7. Even in the event of only an insignificant deviation from the agreed properties or only an insignificant impairment of the usability of the contractual items, we shall be entitled to withdraw from the contract and claim damages instead of (full) performance.

8. In the case of defects of title, the supplier shall also indemnify us with respect to any existing claims of third parties, unless the supplier is not responsible for the defect of title.

9. Insofar as the supplier fulfills its obligation of supplementary performance by means of a replacement delivery, the limitation period for the goods delivered as a replacement shall start again after their delivery, unless the supplier has, in connection with the supplementary performance, expressly and appropriately reserved the right to effect the replacement delivery only as a gesture of goodwill in order to avoid disputes or in the interests of the continuation of the supply relationship.

#### **§ 9 Product Liability**

1. In the event that claims are submitted against us on the basis of product liability, the supplier shall be obliged to indemnify us from such claims if and to the extent that the damage was caused by a defect of the contractual objects delivered by the supplier. In cases of fault-based liability, however, this shall only apply insofar as the supplier is at fault. Insofar as the cause of the damage lies within the supplier's area of responsibility, the supplier shall bear the burden of proof in this respect.

2. In the cases covered by § 9.1, the supplier shall assume all costs and expenses, including the costs of any legal action.

3. In all other respects the legal provisions shall apply.

4. Within the scope of its indemnity obligation, the supplier shall reimburse expenses pursuant to §§ 683, 670 BGB (German Civil Code) which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the supplier about the content and extent of recall measures – insofar as this is possible and reasonable – and provide the supplier with the opportunity to comment. Further legal claims shall remain unaffected.

5. The supplier must maintain appropriate product liability insurance. At our request, the supplier shall be obliged to provide us with evidence of this and to disclose the policy.

### **§ 10 Limitation Period**

1. The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions unless otherwise specified below.

2. Contrary to § 438 subsection 1 no. 3 BGB (German Civil Code), the general limitation period for claims for defects is 3 years from the time of the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall begin upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for the surrender of property (§ 438 subsection 1 no. 1 BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred for as long as the third party can still assert the right – in particular in the absence of a period of limitation – against us.

3. The limitation periods under sales law, including the above extension, shall apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods under sales law results in a longer limitation period in an individual case.

### **§ 11 Execution of Work**

Individuals who carry out work on the factory premises in fulfillment of the contract must comply with the provisions of the respective site regulations. Liability for accidents that occur to these individuals on the factory premises shall be excluded, unless they have been caused by a willful or grossly negligent breach of duty by our legal representatives or vicarious agents.

### **§ 12 Items provided by us**

Materials, parts, containers and special packagings provided by us (provided materials) shall remain our property. These may only be used for their intended purpose. The processing of provided materials and the assembly of parts shall be carried out on our behalf.

It has been agreed that we shall be co-owners of the products manufactured using our materials and parts in the ratio of the value of the materials provided to the value of the overall product, which shall be held in safekeeping for us by the supplier. Any processing, mixing or combination (further processing) of items provided by the supplier shall be carried out for us. The above shall also apply if the delivered goods are further processed by us such that we are considered to be the manufacturer and acquire ownership of the product at the time of further processing at the latest in accordance with the statutory provisions.

### **§ 13 Documents and Non-Disclosure**

1. All business or technical information that is made accessible by us (including features which can be inferred from any objects, documents or software that is/are submitted, as well as other knowledge or experience) shall be kept secret from third parties for as long as and to the extent that it can be shown that it is not publicly known, and may only be made available on the supplier's own business premises to those individuals who need to be involved for its use for the purposes of the delivery to us and who have also been subjected to an obligation to maintain secrecy; such information shall remain our exclusive property. Without our prior written consent, such information – except for deliveries to us – may not be reproduced or used for commercial purposes. At our request, all information that originates from us (including any copies or records that have been drawn up, if applicable) and any items provided on a loan basis are to be returned to us immediately and in full or shall be destroyed. We reserve all rights to such information (including copyrights and the right to apply for industrial property rights, such as patents, utility models, semiconductor protection, etc.). Insofar as these have been made available to us by third parties, this reservation of rights shall also apply in favor of these third parties.

2. Products which are manufactured according to documents drawn up by us, such as drawings, models and the like, or according to our confidential information or with our tools or replicated tools, may not be used by the supplier itself, nor offered or supplied to third parties. This also applies *mutatis mutandis* to our print orders.

### **C. General Provisions for Terms and Conditions of Sale and Service, Conditions of Purchase**

#### **§ 1 Place of Performance, Incoterms, Assumption of Risk**

The place of performance shall be the location to which the goods are to be delivered in accordance with the order or at which the service is to be rendered. Insofar as the place of performance is not specified and nothing else has been agreed, delivery of supplier to us shall be effected to our registered office. Any supplementary performance shall also be carried out at the place of performance. Unless otherwise agreed in writing, our delivery shall be effected on the basis of ex works Incoterms 2010. The goods shall be dispatched at the Customer's expense and risk. Upon the transfer of the goods to the railroad company, a forwarding agent or the recipient him/her/itself, the risk shall be transferred to the Customer. In the case of a debt to be collected by the creditor or a debt to be discharged at the domicile of the debtor, the goods shall be transported at the risk and expense of the Customer. Insofar as the shipment is delayed due to the fact that we make use of our right of retention as a result of the total or partial default in payment by the Customer, or for

any other reason for which the Customer is responsible, the risk shall pass to the Customer at the latest on the date of receipt by the Customer of the notification of readiness for shipment and/or performance.

#### **§ 2 Place of Jurisdiction**

The exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of the user, i.e. Chemnitz Regional Court. We shall also be entitled to sue the Customer or supplier at our discretion at the court responsible for its registered office or branch or at the court responsible for the place of performance.

#### **§ 3 Applicable Law, Authoritative Language**

The legal relationships between the Parties shall be governed by German law to the exclusion of the UN Sales Convention. It is expressly pointed out that this choice of law is also to be understood as such within the meaning of article 14, subsection 1(b) of (EC) No. 864/2007 and should therefore also apply to non-contractual claims within the meaning of this Regulation. Insofar as foreign law is to be applied without fail in individual cases, our General Terms and Conditions shall be interpreted in such a way that the economic purpose that is being pursued by them is maintained to the greatest possible extent.

The English version of those „Terms and Conditions of Sale and Service and Conditions of Purchase“ has solely been made for convenience of our contractual partners. Accordingly, only the version of the “Terms and Conditions of Sale and Service and Conditions of Purchase” in the German language is authoritative.

#### **§ 4 Transmission of Data**

In the course of the contract conclusion process, but also with existing customers and suppliers, we transmit personal data collected during the application, the execution and termination of the business relationship as well as data on non-contractual behavior or fraudulent behavior to CRIF BÜrgel GmbH, 80807 Munich.

The legal basis for these transmissions is Article 6 subsection 1 lit. b and Article 6 subsection 1 lit. f of the DSGVO. Transmissions on the basis of Article 6 subsection 1 lit. f DSGVO may only be made if this is necessary to protect the legitimate interests of our company or third parties and does not outweigh the interests or fundamental rights and freedoms of the person concerned, which require the protection of personal data. The exchange of data with CRIFBÜRGEL also serves the purpose of fulfilling legal obligations to carry out credit checks of customers (§ 505a and 506 of the German Civil Code).

CRIFBÜRGEL processes the received data and also uses them for the purpose of profiling (scoring) in order to provide information to its contractual partners in the European Economic Area and in Switzerland as well as possibly other third countries (if there is an appropriateness decision of the European Commission for them), among

other things to assess the creditworthiness of natural persons.

More detailed information on the activities of CRIFBÜRGELE can be found in the CRIFBÜRGELE information sheet or online at [www.crifbuergel.de/de/datenschutz](http://www.crifbuergel.de/de/datenschutz).

#### **§ 5 Severability Clause**

Insofar as a provision of this contract is or becomes invalid/void or unenforceable in whole or in part for reasons of the law governing General Terms and Conditions according to §§ 305 to 310 of the German Civil Code (BGB), the statutory provisions shall apply.

Insofar as a current or future provision of the contract is or becomes invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law governing General Terms and Conditions according to §§ 305 to 310 of the German Civil Code (BGB), this shall not affect the validity of the other provisions of this contract, unless the execution of the contract – also taking into account the following provisions – would represent an unreasonable hardship for one Party. The above shall also apply if it is ascertained after the conclusion of the contract that it contains an omission that requires supplementation.

Contrary to any principle according to which a severability clause is only intended as a fundamental principle to reverse the burden of proof, the validity of the remaining contractual provisions should be maintained under all circumstances, so that § 139 of the BGB is waived in its entirety.

The Parties shall replace the provision which is invalid/void/unenforceable for reasons other than the provisions relating to the law governing the General Terms and Conditions of Business in accordance with §§ 305 to 310 of the German Civil Code (BGB) or any omission that requires supplementation by a valid provision which corresponds in its legal and economic content to the invalid/void/unenforceable provision and the overall purpose of the contract. § 139 of the German Civil Code (partial invalidity) is expressly excluded. Insofar as the invalidity of a provision is based on a measure of performance or time (deadline or date) specified therein, the provision shall be agreed to be legally permissible to the extent that comes closest to the original measure.