Moetefindt
Anhänger und Aufbauten nach Maß

General Terms and Conditions of Business concerning trading with new vehicles, vehicle construction and repair services of Moetefindt Fahrzeugbau GmbH & Co. KG

Status: October 2015
for business relationships with entrepreneurs

1. Scope of application

1.1. Our General Terms and Conditions of Business shall apply exclusively. In so far as the latter do not regulate the matter in question, the law shall apply. We do not recognise any conflicting terms and conditions of the customer which deviate from our General Terms and Conditions of Business or from the law to our disadvantage unless we have expressly agreed to their validity in writing Our General Terms and Conditions of Business shall still apply, even if we have provided our contractual services or deliveries in awareness of any conflicting general terms and conditions of business of the customer or any which deviate from the law to our detriment without reservation.

1.2. Our General Terms and Conditions of Business shall also apply to any future business with the customer.

1.3. Our General Terms and Conditions of Business only apply to entrepreneurs, legal persons under public law or special funds governed by public law within the meaning of Sec. 310(1) German Civil Code (BGB).

2. Offers and cost estimates, contractual documentation, retrospective amendments to the contractual content, reservation of timely and correct receipt of supplies and raw materials, sales prohibition

2.1. Our offers and cost estimates are - unless they have explicitly been marked as binding - subject to change without notice and non-binding.

2.2. We reserve all rights in any offer and contractual documentation, in particular illustrations, brochures, catalogues, etc., as well as samples, models and prototypes, in so far as they are not granted to the customer in accordance with the meaning and purpose of the agreement and/or based on an explicit agreement with the customer. If the order is not placed with us, offer documentation, as well as samples, models and prototypes, are to be returned to us immediately at our request. The customer shall have no right of retention in this respect.

2.3. We reserve the right, after concluding the agreement, to make the following changes to the contractual products, as long as it is reasonable for the customer.

- Product modifications in the course of our ongoing product development and improvement efforts;
- Minor and insignificant deviations in colour, shape, design, measurements, weight or quantity;
- usual commercial deviations.

2.4. The customer shall be obliged to let us know if no deviation whatsoever from the details and requirements given by it is acceptable.

2.5. Should it transpire, after concluding the agreement, that additional work, not explicitly instructed, is necessary in order to produce the contractually intended state or the road safety of the contractual product within the scope of the agreed delivery time or time for providing the services, and, should the customer not be reachable in good time, also following multiple attempts on our part, we reserve the right, notwithstanding the validity of Clause 2.10. below, to carry out such work, in so far as it is reasonable for the customer, without the customer's express prior consent.

2.6. The customer shall be obliged to let us know if any additional work required within the meaning of Clause 2.5 may in each case only be carried out with its prior agreement.

2.7. The scope and content of the contractual products owed, in particular quality features, can be seen from our contractual documentation. Any other descriptions of our contractual products, public statements, representations and advertising do not contain any contractually owed quality specifications.

2.8. Liability for damages under Sec. 122 German Civil Code (BGB) requires us to be at fault.

2.9. The agreement is being concluded subject to the reservation that we receive correct and timely deliveries from our own suppliers. The latter shall only apply in the event of non-delivery not being our fault, in particular when concluding congruent hedging transactions with our own suppliers. The customer will be informed immediately should the goods or services not be available. The consideration paid will be reimbursed without delay. We will exhibit the covering contract to the customer immediately and assign any rights arising therefrom in the scope necessary to it.

2.10. We shall endeavour to accommodate any change request by the customer after the contract has been concluded, within the scope of what is possible. An obligation to fulfil the change request shall, however, only materialise based on an explicit joint agreement in this respect.

3. Vehicles/items handed over to us by the customer

3.1. We shall be entitled to conduct test drives and delivery drives with vehicles handed over to us by the customer, in so far as such journeys are necessary for providing our deliveries or services as contractually agreed.

3.2. Should the customer hand over a vehicle or any other item to us within the scope of an order, it shall be obliged to remove any items not belonging to the item handed over prior to handing the vehicle or item over to us.

3.3. The customer shall bear sole responsibility for the items handed over to us by it in order to fulfil the contract complying with the requirements of the order and being specified in full.

3.4. Should it not be possible to fulfil the agreement, or not flawlessly, due to the quality of any items handed over to us or due to a lack of or defective specification of the items handed over to us specified by the customer on its own responsibility, without there having been any circumstance involved that is our fault, our claims for remuneration shall be in line with Sec. 645 German Civil Code (BGB). Any further liability on the part of the customer due to fault shall not be affected thereby.

3.5. The customer shall bear the costs and risk of delivery of the items handed over to us at our works.

4. Prices, terms of payment, payments to account, offsetting, reservation of subsequent fulfilment

4.1. We reserve the right to increase our prices appropriately if any increases in costs not caused by us, in particular due to collective wage agreements or changes in the price of materials, occur after the agreement has been concluded. We will provide the customer with evidence of such changes upon request.

4.2. Our prices are, subject to any special agreement, understood to be ex works/warehouse, exclusive of postage, shipping, freight charges, packaging and insurance. VAT will be charged in addition, at the respective rate laid down by law.

4.3. Subject to any separate agreements, payments are to be made by the customer immediately and without any deduction. Any deduction for a cash discount shall require to be specially agreed in writing. In regard to the consequences of payment arrears, the statutory regulations shall apply.

4.4. We shall be entitled to request appropriate payments to account plus the statutory amount of VAT falling due thereon.

4.5. The customer shall only be entitled to offset its counterclaims against our claims if its counterclaims have been established with legal validity or are undisputed or have been recognised by us. The customer shall only be authorised to exercise a right of retention if its counterclaim is based on the same contractual relationship.

4.6. In the event of the existence of defects, the customer shall not be entitled to assert a right of retention unless the delivery is obviously defective and/or the customer is obviously entitled to refuse to accept our services. In such a case, the customer shall be entitled to withhold payment if the amount withheld is in reasonable proportion to the defects and the anticipated costs of subsequent fulfilment (in particular the remedying of defects). The customer shall not be entitled to assert any claims or rights due to defects if it has not made any payments due and the amount due is in reasonable proportion to the value of the deliveries and/or services that contain defects.

5. Delivery or service date, hindrances to delivery or providing services that are not our fault, default in making delivery or providing services, impossibility, partial deliveries, delay in acceptance, infringement of obligations to co-operate 5.1. Subject to any other provision being agreed, delivery shall be made "ex works".

5.2. The dates for deliveries and/or services specified are only fixed dates if they have expressly been agreed as such in writing.

5.3. Non-bindingly agreed delivery and/or service dates may be extended by us for up to 10 weeks.

5.4. Adherence to obligations relating to deliveries and/or services, in particular delivery dates, shall require the following:

- the timely and proper fulfilment of any obligations on the part of the customer to co-operate, in particular receiving the documents and information to be provided from the customer;
- the clarification of any technical details with the customer;
- the receipt of any payments to account agreed and/or the issuing of agreed letters of credit;
- the existence of any official approvals and licences required.

The defence of the agreement not having been fulfilled is reserved.

5.5. In regard to adherence to the delivery deadline, the date on which the delivery is made "ex works" or the customer has been notified of readiness for shipping shall be pertinent.

5.6. Delays in deliveries or services that are not our fault:

5.6.1. Delays in deliveries or services based on the following hindrances to delivery or the provision of services shall not be deemed our fault – unless exceptionally a procurement risk or warranty has precisely been assumed in regard to adhering to the deadline or date. The same shall also apply if such hindrances occur at the premises of our suppliers or their sub-contractors:

Circumstances constituting Acts of God, as well as hindrances to delivery or providing services;

- which occur after concluding the agreement, or of which, through no fault of our own, we only become aware after concluding the agreement;
- in regard to which evidence has been provided by us that they could also not be anticipated or prevented by us by applying the necessary care, and that, to that extent, we are also not at fault as regards acceptance or precautionary or preventive measures.

On the above-mentioned prerequisites – occurrence only after concluding the agreement or, through no fault of our own, our only becoming aware of the occurrence of such circumstances after concluding the agreement, as well as the proven unforeseeability and inevitability of such circumstances – shall in particular include the following:

Justified industrial action (strikes and lock-outs); disruptions to business; scarcity of raw materials; shortage of consumables and supplies; a shortage of staff.

5.6.2. Any claims for compensation for damage on the part of the customer shall be excluded in the case of delays in deliveries and services within the meaning of Art. 5.6.1.¬

5.6.3. In the event of a final hindrance to providing deliveries and services within the meaning of Art. 5.6.1. each¬ contracting party shall be entitled to terminate the agreement immediately by withdrawing from it in line with the statutory regulations.

5.6.4. In the case of a temporary hindrance in providing deliveries and/or services within the meaning of Art. 5.6.1., we shall be entitled to postpone deliveries and services by the duration of the hindrance plus a reasonable lead time. Should we advise the customer of an unacceptable impediment to delivery or providing services, we shall be entitled to withdraw from the contract. The customer shall only be entitled to withdraw from the contract on the prerequisites outlined below in Art. 5.8.

5.7. Delays in deliveries or services that are our fault:

Should it not be possible to identify a more stringent degree of liability (in particular independently of fault) or milder degree of liability, either specifically or from the remaining content of the contractual relationship, we shall be liable for damage caused by delay due to wilful intent or negligent breach of duty as follows:

5.7.1. In accordance with the statutory regulations in the case of wilful intent.

5.7.2. In accordance with the statutory regulations subject to limitation of our liability to pay compensation for damage to the foreseeable damage typically occurring;

- in the event of negligence on the part of our legal representatives, senior executives and any other vicarious agents;
- in the case of slight negligence on the part of our legal representatives, senior executives and any other vicarious agents if essential contractual obligations are infringed by them (cf. the definition to be found in Art. 9.11.2.), the underlying agreement is a firm deal, or the customer is able, based on the delay in delivery or providing services on our part, to assert that its interest in fulfilling the contract has lapsed.

5.7.3. Otherwise we shall be liable in the event of a delay in delivery or providing services, to make a flat-rate compensation payment for the delay in the amount of 0.5% of the value of the delivery or service, however up to a maximum of 5% of the value of the delivery or service, for each complete week of delay.

5.7.4. Any further claims for compensation for damage by the customer due to intentional or negligent delays in making delivery or providing services shall be excluded.

5.8. The customer's right of withdrawal in the case of delays in making deliveries or providing services:

Should we be able to provide evidence that the delay is not our fault, the customer shall only have a right of withdrawal

- If the latter has bound the continuance of its interest in performance to the timeliness of the service in the agreement (firm deal) or
- it proves that its interest in having the service provided has lapsed due to the delay in making delivery or providing services or maintaining the contractual relationship is unacceptable to it.

Otherwise, Sec. 323(4)-(6) German Civil Code (BGB) shall apply. The statutory regulations shall be pertinent for the legal consequences of withdrawal (cf. Secs. 346 et seqq. German Civil Code (BGB)). Any payments not owed by the customer may be reclaimed by it.
The statutory rights of termination under a contract for work and services shall not be affected thereby.

5.9. In the event of it being impossible for us to deliver or provide services, we shall be liable in accordance with the statutory regulations, with our liability being limited to the following amounts: Should no wilful intent or gross negligence on our part or one the part of our legal representatives or vicarious agents exist, our liability to pay compensation for damage and to compensate futile expenditure shall be limited to a total of 20% of the net invoice amount of our deliveries or services; in the case of grossly negligent conduct, to the foreseeable damage typically occurring. Said limitation of liability shall not apply if we have, exceptionally, taken on a procurement risk. The customer's statutory right of withdrawal from the contract if it is impossible for us to deliver or provide services shall not be affected thereby.

5.10. We shall be entitled to make partial deliveries or provide some of the services in the scope acceptable to the customer.

5.11. Should the customer culpably default in accepting the goods or services at the place of fulfilment, or collecting or calling off the contract products – also in the case of any partial deliveries – should the delivery otherwise be delayed for reasons which are the customer's fault, or should the customer culpably infringe any other obligations to co-operate, we shall – notwithstanding any further statutory claims – be entitled to request compensation for the damage caused to us to that extent, including any additional expenditure

6. Passing of risk, insurance

6.1. Should sales conventions apply to our deliveries, the risk of accidental destruction or any accidental impairment of the goods shall pass to the customer once the delivery has been handed over to the person or institution appointed to collect or effect the delivery, however at the latest upon leaving our factory.

6.2. In the event of a delay in acceptance, call-off or collection on the part of the customer or a delay in our providing deliveries or services for reasons which are the customer's fault, the risk of accidental destruction or accidental impairment shall pass to the customer as at the date on which the latter falls behind schedule and/or the deliveries could have been made or the services provided as contractually agreed, had the customer conducted itself in line with its obligations.

6.3. At the customer's request, the consignment will be insured, as from the passing of risk, against theft, breakage, fire, water and damage in transit, as well as any other insurable risks, at its own expense.

7. Retention of title

7.1. We reserve our ownership in the contractual products ("delivery subject to reservation") until such time as we have received all payments arising from the business relationship with the customer. The reservation of ownership shall also extend to the acknowledged balance, should we deliver to the customer on the basis of an open account relationship (current account reservation).

7.2. The customer shall be entitled to sell on or continue to use the item(s) subject to reservation of ownership within the course of regular business. However, it already

now assigns to us any receivables accruing to it by its customers or third parties from the resale or continued use in the sum of the final amount of the invoice (including VAT). Should the customer contribute the receivables from selling on the item subject to reservation of ownership to an open account relationship existing with its customers, the claim on the open account shall be assigned in the amount of the recognised balance. The same shall apply to the "causal" balance in the event of the customer filing for insolvency. The customer shall still be authorised to collect the receivables assigned following the assignment of them. Our authority to collect the receivables ourselves shall – subject to the insolvency regulations – not be affected thereby. We do, however, undertake not to collect the receivables as long as the customer does not infringe its contractual obligations or fall into arrears with payment, and as long as no application for the institution of insolvency proceedings is filed and there is no cessation of payment.

Transfer of ownership by way of security or pledging are not covered by the power of disposal.

7.3. Should our obligation in accordance with Art. 7.2. above not to collect the receivables ourselves lapse, we shall – subject to the insolvency regulations – be entitled to revoke the authority to sell on or continue to use the items and recall the delivery subject to reservation and/or demand the assignment of the customer's claims to hand over the items to a third party. Our taking the goods supplied subject to a reservation of title back constitutes withdrawal from the contract.

After previously threatening to take the items subject to reservation back and setting an appropriate grace period, we may, for the aforementioned reasons – subject to the insolvency regulations – appropriately utilise the items that have been taken back. The proceeds of sale will be offset against the customer's liabilities – less the appropriate costs of liquidation.

On the prerequisites that entitle us to revoke the customer's authority to sell on the items, we may also revoke the direct debit mandate and require the customer to disclose the receivables assigned and their debtors, provide all details necessary for their collection, hand over the associated documentation and notify the debtors (third parties) of the assignment.

7.4. Should the delivery subject to reservation be damaged or lost, or should the customer change ownership or domicile, the customer shall be required to inform us in writing without delay. The same shall apply accordingly in the event of levy of execution or any other interventions by third parties, so that we can file an action pursuant to Sec. 771 German Code on Civil Procedure (ZPO). Should the third party not be in a position to reimburse us the judicial and extra-judicial expenses of an action filed pursuant to Sec. 771 German Code on Civil Procedure (ZPO), the customer shall be liable for the losses incurred by us. Should the release of the delivery subject to reservation of ownership be achieved without any proceedings, the costs incurred in the process may be charged to the customer, along with the costs of the return of the pledged items subject to reservation of ownership.

7.5. The processing or alteration of the items delivered subject to reservation of ownership shall always be undertaken by the customer on our behalf. Should the delivery subject to reservation of ownership be processed together with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the delivery subject to reservation of ownership (final invoice amount, including VAT) to the values of the other items processed at the time of processing or alteration.

Furthermore, the same shall apply to the item which has arisen through processing or alteration as to the goods subject to reservation of ownership. The customer shall be granted an expectant right corresponding to its expectant right in the delivery subject to reservation of ownership in the item that has arisen through processing or alteration.

7.6. Should the delivery subject to reservation of ownership be inseparably mixed or connected with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the delivery subject to reservation of ownership to the values of the other items mixed or connected items as at the date of the items being mixed or connected. Should the mixing or connection be carried out in such a way that the customer's item is to be deemed the main item, it shall be deemed to have been agreed that the customer assigns us proportionate co-ownership. The customer shall keep the sole property or jointly owned property safe for us.

7.7. When selling on our delivery subject to reservation of ownership after processing or alteration, the customer already at this point assigns its claims to remuneration in the amount of the final invoice of our claims (including VAT) to us by way of security.

Should we, in accordance with Art. 7.5. or 7.6 above, only have acquired co-ownership due to the delivery subject to reservation of ownership having been processed and/or altered or mixed or connected with other items, not belonging to us, the customer's claim to remuneration shall only be assigned to us in advance in the proportion of the final amount, inclusive of VAT, invoiced by us for the delivery subject to reservation of ownership to the final amounts invoiced for the other items, not belonging to us.

Otherwise Arts. 7.2 to 7.4 above shall apply accordingly to the claims assigned in advance.

7.8. Should the reservation of ownership or the assignment under foreign law not be valid in the region in which our delivery subject to reservation of ownership is located, a security that is in line with the reservation of ownership and the assignment in this legal territory shall be deemed to have been agreed.

Should the customer's co-operation be necessary for the emergence of such rights, it shall be obliged, in response to our request, to take any steps necessary to establish and maintain such rights.

7.9. The customer shall be obliged to treat the delivery subject to reservation of ownership with care and store it carefully. The customer shall, in particular, be obliged to adequately insure the delivery subject to reservation of ownership in our favour against theft, robbery, burglary, fire and water damage at the reinstatement value at its own expense. The customer already now assigns to us any insurance claims arising herefrom in regard to the delivery subject to reservation of ownership. We accept the assignment.

We furthermore reserve the right to assert our claims to fulfilment and/or claims for compensation for damage.

7.10. We undertake to release the collateral to which we are entitled, at the customer's request, in so far as the realisable value of our collateral exceeds the accounts receivable to be secured by over 10%. We shall be free to choose the collateral to be released.

8. Acceptance period, acceptance, testing

8.1. The customer shall be obliged to accept the delivery following receipt of the notification of readiness for collection or completion.

8.2. Should the law on contracts for work and services apply to our deliveries or services, the customer shall, at our option, be obliged to accept the item in writing at our works after having been notified of the completion of the contractual products or, in the event of any contractually envisaged testing, once such testing has taken place.

8.3. Acceptance may not be refused due to insignificant defects.

If the customer fails to accept our deliveries or services within a reasonable period of time determined by us, although it is obliged to do so, the acceptance shall be deemed to have taken place.

8.4. Upon acceptance, our liability for any obvious defects shall lapse if the customer has not reserved the right to assert claims in regard to a particular defect within the scope of the acceptance.

8.5. Unless anything to the contrary has explicitly been agreed, contractually stipulating testing of contractual products shall take place in the usual scope (test drives of a maximum of 20 km). Should the customer require further testing, the latter need to explicitly agreed in addition.

8.6. Should the customer have caused any damage in the course of a test being carried out - e.g. during a test drive - through its own culpable misconduct or that of its assistants or vicarious agents, it shall have unlimited liability towards us in accordance with the statutory regulations.

8.7. Should a test be agreed, the customer undertakes to test the functions of the contractual products for the agreed period of time. Besides the functioning, such tests should also include safety-related testing, so that the regulations applicable to the respective industry, such as the machinery directive, etc., are fulfilled.

8.8. We may also require partial acceptances to be carried out, as long as there are no technical grounds in conflict with that and it is reasonable for the customer for us to do so.

9. Specification of deliveries and services, liability for defects

9.1. **The qualities listed in our contractual documentation comprehensively and conclusively establish the properties of our deliveries and services. In case of doubt, these are only the subject of agreements regarding the quality and not warranties or assurances. Should there be any doubt about the matter, our statements in connection with this agreement do not contain any warranties or assurances within the meaning of increased liability or the acceptance of a special obligation to settle claims. In case of doubt, only statements explicitly made by us in writing in regard to providing warranties and assurances shall be pertinent.**

9.2. No warranty is provided for any losses arising on the following grounds:

- Unsuitable or improper use, natural wear and tear; or

- defective or negligent handling, failure to observe instructions in regard to handling the item; or
- improper alterations carried out by the customer or a third party or any others carried out without our prior authorisation. The latter shall not apply where the third party is a servicing workshop authorised by us to undertake the alterations

unless the customer provides evidence that the defects have not been caused through the above impact, either in whole or in part, and that the remedying of the defects has not been made difficult for us, in an unreasonable way, through such impact.

9.3. No claims for defects on the part of the customer shall exist in the case of the item only deviating slightly from the agreed quality, or the usability of our deliveries and/or services only being insignificantly impaired.

9.4. The customer's rights in regard to defects assume that the latter has fulfilled its obligations of examination and reporting the defect owed in accordance with Sec. 377 German Commercial Code in proper form.

9.5. The reason for the notice of defects is explicitly to be given in writing. The form "Request for work under guarantee/goodwill" is available at our offices and on our website for this purpose.

9.6. We shall be entitled, in the event of receiving a notice of defects, to request to inspect the contractual products at the place of fulfilment of any obligation to provide subsequent fulfilment to a reasonable extent without delay. Should the contractual product not be operational, and a notice of defects be issued for that reason, or should an inspection by us not be acceptable for the customer – for example due to it involving a long journey – the customer is to initially give us an opportunity to name the next specialist workshop in the area ready to provide service which could investigate the reason for the complaint.

9.7. Should steps to remedy the reason for the complaint already have been taken by the customer, or at its instance by a third party, as at the date of the notice of defect or the inspection, we shall additionally be entitled inspect any spare parts installed within the scope of examining our liability for defects and request a written report on the steps taken. Our right to provide subsequent fulfilment shall not be affected by this Art. 9.7.

9.8. Should a defect exist, we shall, at our option, be entitled to provide subsequent fulfilment in the form of either remedying the defect or delivering a new item, free of defects. Should one of the two or both types of said subsequent fulfilment be impossible or disproportionate, we shall be entitled to refuse to provide it.

We may also refuse subsequent fulfilment for as long as the customer fails to comply with its payment obligations towards us in a scope corresponding to the defect-free portion of the service provided.

We shall be obliged to bear any expenses necessary for the purpose of subsequent fulfilment, in particular the costs of transport, toll charges, labour and the costs of materials, in so far as these are not increased by the delivery having been brought to a different location from the place of fulfilment, unless transporting the item there is in line with the intended use.

We shall also be entitled to have the defect remedied by a third party. Replaced parts shall become our property.

9.9. In the event of subsequent fulfilment proving impossible or failing, culpable or unreasonable delay or serious and final refusal by us to provide subsequent fulfilment or subsequent fulfilment being unreasonable for the customer, the customer shall, at its option, be entitled to either reduce the purchase price (reduction in the price) or withdraw from the contract (withdrawal).

9.10. Should the contractual provisions on the prerequisites and consequences of subsequent fulfilment, reduction of the price and withdrawal not contain any regulations, or contain deviating regulations, the statutory regulations on such rights shall apply. The latter shall in particular apply to the customer's right to remedy any defects itself.

9.11. The customer's claims to compensation for damage and expenditure connected with any defects shall, without recourse to the legal nature of the claim, in particular also be in line with Arts. 9.11.1. to 9.11.4. inclusive below – in particular also in regard to any claims due to defects and breaches of duty, as well as claims under tort law.

9.11.1. We shall be liable to an unlimited extent for losses in accordance with the statutory regulations in the following cases:

- In the case of wilful intent;
- in the case of injury to life, the body or the health;
- in the event of there being any defects, as well as any other circumstances that have been fraudulently concealed; or
- in the case of defects, the absence of which has been guaranteed or if a warranty has been given in regard to quality.

9.11.2. We shall, moreover, be liable for any losses in accordance with the statutory regulations, although our liability for compensation for damage shall (except in the cases falling under Art. 9.11.1. above) be limited to the foreseeable damage typically occurring.

- in the event of negligence on the part of our legal representatives, senior executives and any other vicarious agents;
- in the case of slight negligence on the part of our legal representatives, senior executives and any other vicarious agents, provided that that such essential contractual obligations (obligations, the fulfilment of which makes it possible to execute the agreement in proper form in the first place and adherence to which the customer may usually rely on) are infringed by the latter;

9.11.3. Any liability under the Product Liability Act shall not be affected thereby.

9.11.4. Unless anything to the contrary has been provided for under Art. 9.11 above, any further claims shall be excluded.

9.12. The statutory regulations on the burden of proof shall not be affected by the above terms and conditions of business of this Article 9.

10. Liability for secondary obligations

Should the contractual product delivered not be able to be used by the customer as contractually intended due to our fault or fault on the part of our legal representatives or vicarious agents as a result of proposals and advice, as well as other secondary contractual obligations (in particular instructions for use and maintenance of the contractual products) not having been provided or fulfilled, or provided or fulfilled properly, prior to concluding the agreement, the provisions outlined in Art. 9.11 above shall

11. Total liability; withdrawal by the customer

11.1. The provisions below shall apply to any claims on the part of the customer other than liability for quality defects. The statutory or contractual rights and claims that we are entitled to assert should neither be excluded nor limited.

11.2. Otherwise, the provisions contained in Art. 9.11 above in regard to liability for damages – subject to the liability for default (see Art. 5.7.) and due to impossibility (see Art. 5.9.) regulated separately – shall apply accordingly. Any further liability for damages shall be excluded – without taking into consideration the legal nature of the claim asserted. The latter shall in particular apply to any claims for compensation for damage in addition to provision of the contractual services and compensation for damage in lieu of the services due to breaches of duty, as well as any claims for compensation for damage to property under tort law pursuant to Sec. 823 German Civil Code (BGB).

11.3. The limitation in accordance with Art. 11.2 shall also apply in so far as the customer demands the reimbursement of expenses.

11.4. Any fault on the part of our legal representatives or vicarious agents shall be attributable to us.

11.5. The statutory regulations on the burden of proof shall not be affected thereby.

11.6. Should our liability be excluded or limited, the latter shall also apply in regard to the personal liability to pay compensation on the part of our employees, representatives and vicarious agents.

11.7. The customer may, within the scope of the statutory regulations, only withdraw from the contract if the breach of duty is our fault. In the cases falling under Art. 9.9. (failed subsequent fulfilment, etc.) and in the case of impossibility, the statutory regulations shall always apply. In regard to the customer's right of withdrawal should there be a delay in our deliveries or services, the provisions outlined above in Arts. 5.6.3., 5.6.4. and 5.8. shall be pertinent. The customer shall, in the case of any breaches of duty, be required, at our request, to clarify, within a reasonable period of time, whether it is withdrawing from the contract due to the breach of duty or insists on the delivery.

12. Rights in know-how, inventions and protectable work results

Any confidential, highly significant and advanced expertise (know-how) existing at our premises or learned through us during the course of executing the agreements concluded with us, as well as any inventions, protectable designs and/or design models and any intellectual property rights existing in this respect shall – subject to a separate agreement and/or the use that the customer is entitled to make of the contractual products, in accordance with the meaning and purpose of the contractual relationship – belong solely to us.

13. Contractual penalty

13.1. Our offer documents and contractual documentation, samples, models and prototypes may not be used by the customer for its own purposes or those of a third party, in so far as, in accordance with Art. 2.2. above, it is not entitled to use them in this respect, nor may they be made use of otherwise. In particular, our contractual products may not be either imitated or copied in any other way with the aid of them or with the aid of contractual products produced by us, nor may such imitated goods be distributed or utilised in any other way.

13.2. In the event of any infringement of the obligation specified in Art. 13.1. above the customer undertakes to pay us a contractual penalty in the amount of € 50,000.00, unless it can provide evidence of not being culpable. We reserve the right to assert any further damage.

14. Infringements of rights of third parties

We do not accept any liability for no intellectual property rights of third parties being infringed through the use, installation or resale of the delivery items and/or contractual products. We do, however, warrant that we are not aware of the existence of such intellectual property rights of third parties in the contractual products.

15. Text form

Should it be prescribed, by way of these **general terms and conditions of business** , that declarations need to be made in writing, the text form pursuant to Sec. 126 b) German Civil Code (BGB) shall be pertinent, i.e. the declaration may be transmitted by post or fax, however even a declaration typed on a computer and sent to us by e-mail shall be sufficient.

16. Statute of limitations

16.1. The period of limitation for any claims and rights due to defects in the deliveries and/or services – irrespective of on what legal grounds – shall, subject to Art. 16.3. below, amount to one year.

16.2. The period of limitation given in Art. 16.1. shall also apply to any claims for compensation for damage asserted against us.

16.3. The period of limitation in accordance with Art. 16.1. shall generally not apply in the event of wilful intent. It shall also not apply in the case of fraudulently concealing a defect or in the case of a warranty having been given in regard to the quality of the contractual products. The period of limitation in accordance with Art. 16.1. shall not apply to claims for compensation for damage in cases covered by Arts. 9.11.1., 9.11.2. and 9.11.3. To that extent, the statutory periods of limitation shall apply.

16.4. Unless anything to the contrary has explicitly been agreed, the statutory regulations on the commencement of the period of limitation, the suspension of expiry, stoppage and recommencement of deadlines shall not be affected thereby.

16.5. The claims to a reduction in the price and the exercising of a right of withdrawal shall be excluded in so far as the claim to subsequent fulfilment is statute-barred. The customer may, however, in such a case, refuse to pay the remuneration to the extent that it would be entitled to do so based on the withdrawal or the reduction in the price.

17. Lien

In order to secure our claims, we shall be entitled to assert a contractual lien over the customer's items which have come into our possession in connection with the order. The lien may also be asserted due to claims arising from work carried out at an earlier date, deliveries of replacement parts and other services connected with the item manufactured or handed over by us.

18. Assignment of claims by the customer

Claims against us in regard to the deliveries and services to be provided by us may only be assigned with our prior written consent.

19. Place of fulfilment, place of jurisdiction, applicable law, intra-Community acquisition, severability clause

19.1. Subject to any special agreement, the place of fulfilment shall exclusively be our place of business.

19.2. Should the customer be a merchant within the meaning of the German Commercial Code (HGB), a legal person under public law or a special fund governed by public law, the place of jurisdiction for any obligations arising from and in connection with the contractual relationship shall, at our option, be either our place of business or the customer's place of business. The above agreement conferring jurisdiction shall also apply vis-à-vis customers having their place of business abroad.

19.3. Concerning any rights and obligations arising from or in connection with the contractual relationship, exclusively the law of the Federal Republic of Germany shall apply, without recourse to conflict of laws provisions, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980.

19.4. Should a provision in these **general terms and conditions of business** or a provision within the scope of any other agreements between us and the customer be or become invalid, the validity of any other provisions or agreements shall not be affected thereby.

19.5. Customers from EU Member States shall be obliged to pay us any compensation for damage that may be due to us in the case of intra-Community acquisitions

- based on fiscal offences on the part of the customer itself or
- based on false information given by the customer, or information on its circumstances pertinent to taxation that it has failed to disclose.