

General Terms and Conditions

General Terms and Conditions HORIBA FuelCon GmbH
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I. General Terms and Conditions

I.1. General

These General Terms and Conditions of Delivery and Payment shall apply in dealings with companies, legal entities under public law and special funds under public law (hereinafter referred to as "Buyer").

(1)

The General Terms and Conditions of Delivery and Payment as well as any other separately agreed contractual agreements shall govern all supplies and services provided by HORIBA FuelCon GmbH (hereinafter referred to as "Contractor"). Any terms and conditions which deviate from, or are in conflict with, these General Terms and Conditions shall not apply unless the Contractor has expressly agreed to them. The following General Terms and Conditions shall also apply in cases where the Contractor or his representative is performing the service without reservations although being aware that the terms and conditions of the Buyer are conflicting with or deviating from these General Terms and Conditions.

(2)

Contracts or any other binding agreements shall be deemed to have been formed only if the Contractor has confirmed the order in writing or is carrying out the order. The Contractor reserves the right to insignificantly deviate for technical reasons from the offer even after the offer has already been accepted.

(3)

The Contractor reserves his unrestricted property rights and copyrights in respect of the exploitation of cost estimates, drawings as well as any other documents and similar information of a physical and intangible type (hereinafter referred to as the "Documents"), including Documents in electronic form. The Documents may be made available to third parties only with the Contractor's prior permission and, if the order is not placed with the Contractor, shall be promptly returned to the Contractor on request. Sentences 1 and 2 of this sub-clause shall apply mutatis mutandis to the Buyer's documents; these documents may, however, be made available to third parties, to which the Contractor has legitimately subcontracted supplies.

(4)

The Contractor, in addition, reserves his unrestricted property rights and copyrights in respect of the exploitation of all specifications, algorithms, source codes, documents, working principles and methods as well as any upgrades, including those existing in electronic form.

(5)

These General Terms and Conditions shall also apply to all future services up to the time when new terms and conditions enter into force.

I. 2. Prices, terms of payment

(1)

Unless agreed upon otherwise in writing, the prices shall be FCA (INCOTERMS 2020) including handing over of the goods to the first carrier, inclusive of packing and plus any applicable statutory value-added tax.

(2)

Unless agreed upon otherwise in writing, payment shall be effected without any deductions within 14 calendar days of the invoice date. In case of a delay in payment, the Contractor shall be entitled to demand interest on

arrears at the legally applicable rate. This shall be without prejudice to any other claims for damages to which the Contractor may be entitled.

(3)

If the Contractor becomes aware of a significant deterioration in the financial situation of the Buyer only after conclusion of the contract and the deterioration puts the Contractor's entitlement to compensation at risk, the Contractor shall be entitled to demand payment for any orders still to be completed on a step by step basis, if no security has been furnished for the consideration payable to the Contractor.

(4)

The Buyer shall be entitled to set off with the Contractor's claims only if Buyer's counterclaim is undisputed or Buyer has a final and binding legal title.

I. 3. Delivery, delay in delivery

(1)

The delivery time will be as agreed between the contracting parties. Meeting the delivery times shall be subject to clarification of all commercial and technical questions between the Contractor and the Buyer. In addition to this, the Buyer must have fulfilled all his obligations, in particular in respect of compliance with the agreed terms of payment. If these preconditions are not satisfied on time, the delivery times shall be reasonably extended; this shall not apply if the delay is due to causes attributable to the Contractor.

(2)

The delivery time shall be deemed as having been met if the delivery item has left the Contractor's plant prior to its expiration, or when readiness for shipment has been advised.

(3)

Unless agreed otherwise in the contract, the goods will be delivered FCA (Free Carrier) in accordance with INCOTERMS 2020.

(4)

Part deliveries will be permissible, provided that the Buyer can be reasonably expected to accept such deliveries.

(5)

If the Contractor's failure to meet delivery times is attributable to Force Majeure, e.g. mobilisation, war, riot or similar events such as strike or lock-out, the delivery times shall be extended by a reasonable period. The same shall apply for the case that the Contractor himself is not supplied on time or not properly.

(6)

If the Contractor becomes definitely unable to perform the entire service prior to the passage of risk, the Buyer will be entitled to terminate the contract without notice. The Buyer shall also be entitled to withdraw from the contract if it becomes impossible to perform part of an order and the Buyer is justifiably interested in rejecting a part delivery. If this is not the case, the Buyer shall pay the contract price due for the part delivery. The same shall apply in case of the Contractor's incapability. As for the rest, clause I. 9.2 shall apply. If the impossibility or incapability occurs while the Buyer is in delay of acceptance, or if these circumstances are solely or for the most part attributable to the Buyer, the Buyer shall remain obligated to pay the consideration due. Any other claims arising from a delay in delivery shall be exclusively subject to clause I. 9.2 of these General Terms and Conditions.

(7)

If shipment or acceptance of the delivery item is delayed for reasons attributable to the Buyer, the costs incurred as a result of the delay will be charged to the Buyer's account starting one month after notification of readiness for shipment or acceptance.

(8)

If the terms of payment provide for opening of a Letter of Credit (hereinafter called "L/C"), the agreed delivery time will commence at the date of opening of the L/C by the Buyer. Any delay in the opening of the L/C will result in a corresponding delay in the date of delivery.

(9)

If the dispatch or delivery is delayed at the Buyer's request by more than one month after notification of readiness for shipment, storage charges of 0.5 % of the price of the items to be delivered, not more than an aggregate amount of 5 % maximum, however, can be charged to the Buyer's account. This shall be without prejudice to the right of the contracting parties to furnish proof of higher or lower storage costs.

(10)

When receiving the shipment, the Buyer shall, in addition, observe any notes and dispositions separately made by the Contractor in respect of the receipt of the goods.

(11)

Please note that due to the worldwide COVID-19 epidemic, extended delivery times may occur on short term so that we cannot agree on fixed deliver dates or periods. Any stated dates and periods are therefore non-binding

I. 4. Passage of risk

(1)

The risk shall pass to the Buyer in accordance with the contractually agreed delivery terms, i.e. INCOTERMS 2020. Any subsequent agreements deviating from the contractually stipulated terms of delivery shall require the written form and confirmation by the Contractor.

(2)

If there is a delay in the shipment or acceptance, or if the shipment or acceptance is completely cancelled due to reasons not attributable to the Contractor, the risk shall pass to the Buyer from the date of notification of readiness for shipment or acceptance.

(3)

The Contractor will insure the supplies against the usual transport risks at the Buyer's request and expense.

I. 5. Reservation of title

(1)

The goods to be delivered (reserved goods) remain the Contractor's property up to the time of fulfilment of all claims against the Buyer to which the Contractor is entitled under the business relationship. If the value of all security rights to which the Contractor is entitled exceeds the value of all secured claims by more than 10 %, the Contractor will release a corresponding part of the security rights at the Buyer's request; the Contractor may choose at his own discretion which of the various security rights existing are released by him.

(2)

As long as the reservation of title exists, the Buyer may not sell, pledge or assign the goods as security. The Buyer shall notify the Contractor immediately of any attachments, seizures or any other dispositions or interventions by third parties.

(3)

If the Buyer is in breach of his obligations, in particular if he is in default of payment, the Contractor shall be entitled, in addition to taking back the goods, to withdraw from the contract, if the Buyer has failed to cure the breach within the reasonable time period specified by the Contractor; this shall be without prejudice to the legal provisions stipulating that no deadline needs to be fixed. The Buyer shall be obligated to surrender the goods. Taking back, asserting the reservation of title or pledging of the reserved goods by the Contractor shall not be deemed as constituting a withdrawal from the contract unless the Contractor has expressly stated that it is to be understood as a withdrawal.

(4)

If a petition in bankruptcy is filed, the Contractor will be entitled to withdraw from the contract and to demand that the goods delivered be returned immediately.

I. 6. Utilisation of software

(1)

If the scope of supply includes software, a non-exclusive right to use the supplied software including its documentation will be granted to the Buyer. It will be provided for use with the delivery item designed for this purpose. It will not be permissible to use the software on more than one system.

(2)

The Buyer may copy, revise or compile the software only to the extent permitted under the law (§§ 69 a ff. German Copyright Act). The Buyer undertakes not to remove identifications of the manufacturer – in particular copyright notices – or to change them without the prior written permission of the Contractor.

(3)

The Contractor or the software supplier retains all other rights in the software and documentation including copies thereof. Granting of sub-licenses will be permissible.

I. 7. Defects of quality

The Contractor will be liable for defects of quality as follows:

(1)

All parts or services exhibiting a defect of quality shall at the Contractor's own discretion be rectified, replaced or newly provided free of charge, provided that the cause of the defect had already existed at the time of passage or risk. The Contractor shall be promptly notified in writing of such defects. Replaced parts become the Contractor's property.

(2)

Following a corresponding agreement with the Contractor, the Buyer shall grant the time and opportunity required for performing any rectification and replacement supplies the Contractor deems necessary; if the Buyer fails to grant the time and opportunity, the Contractor will not be liable for any consequences resulting from such failure. The Buyer shall be entitled to rectify the defect himself or have it rectified by a third party and claim

reimbursement of the associated expenditure only in urgent cases where operational safety is at risk or disproportionately large damages have to be avoided.

(3)

The Contractor shall be allowed the opportunity to rectify defects or make replacement supplies within a reasonable period of time.

(4)

If the Contractor – without being able to plead exceptional cases under the law – fails to rectify or replace within the time limit fixed by Buyer, the Buyer shall be entitled in conformity with the legal regulations to withdraw from the contract.

(5)

As concerns the costs resulting from rectification or replacement, the Contractor shall bear the costs of the repair or replacement part, provided that the complaint turns out to be justified. If, for rectifying or replacing the defective item, the item has to be returned to the Contractor, the Buyer will be responsible for obtaining any import and export declarations which may be required and shall bear all costs associated with the return; the Buyer shall, in addition, observe the notes and dispositions the Contractor has separately made in respect of the return of the defective item.

(6)

Buyer shall not be entitled to warranty claims arising from a defect if the item in question deviates only insignificantly from the agreed quality, if the fitness for use is affected only insignificantly, in the case of natural wear and tear or in case of damages which have arisen after the passage of risk due to unsuitable or improper use, improper installation or commissioning by the Buyer or a third party, faulty or negligent treatment, excessive loading, improper maintenance, unsuited operating supplies, defective construction works, unsuitable subsoil or special external influences not envisaged under the contract as well as in the case of non-reproducible software faults.

(7)

The Contractor will not be liable for improper rectification by the Buyer or a third party and any consequences arising from it. The same shall apply to any changes made to delivery items without the Contractor's prior permission.

I. 8. Industrial property rights and copyright, deficiencies in title

(1)

Unless agreed otherwise, the Contractor will be obligated to make delivery free from industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights" only in the country of the place of delivery. If a third party raises justified claims against the Buyer by reason of an infringement of Property Rights by the supplies made by the Contractor and used in conformity with the contract, the Contractor will be liable to the Buyer within the period of time set forth in clause I. 9.3 as follows:

a.

The Contractor will at its sole discretion and at its own expense either obtain a right to use the supplies in question, change them in such a way that the Property Right will no longer be infringed, or replace them. If this is not possible for the Contractor on reasonable conditions, the Buyer shall be entitled to the remedy of withdrawal or reduction of the purchase price.

b.

The obligations of the Contractor set out above shall apply only if the Buyer promptly notifies the Contractor in writing of the claims raised by the third party, if he does not recognise the infringement and if the Contractor retains the right to take all defence measures and enter into composition agreements. If

the Buyer discontinues the use of the supply to minimise losses or for any other important reasons, he shall be obligated to point out to the third party that the discontinuation of use does not mean that he recognises that an infringement of a Property Right has taken place.

(2)

Any claims by the Buyer shall be excluded, if the infringement of the Property Right is attributable to him.

(3)

Any claims by the Buyer shall also be excluded, if the infringement of the Property Right has been caused by the Buyer's specifications, by an application which could not be foreseen by the Contractor or by the fact that the supply has been changed by the Buyer or has been used together with products which have not been supplied by the Contractor.

(4)

In case of infringement of Property Rights, the provisions set forth in I. 8.1 a) shall apply to any claims of the Buyer. As for the rest, the provisions of clause I. 7.3, shall apply accordingly.

(5)

If there are any other deficiencies in title, the provisions of clause I. 7 shall apply accordingly.

(6)

Any further claims, or any claims other than those set out in clause I. 8., raised by the Buyer against the supplier and his vicarious agent by reason of a deficiency in title shall be excluded.

I. 9. Liability, statutory limitation

(1)

If the delivery item cannot be used in conformity with the contract by the Buyer through the Contractor's fault because of neglected or faulty execution of proposals made and advice given prior to or after execution of the contract, or because of the violation of any other contractual accessory obligations – in particular in respect of the operating and maintenance instructions for the delivery item – the provisions of clauses I. 7., I. 8. and I. 9. 2 shall apply accordingly to the exclusion of any other claims the Buyer may have.

(2)

The Contractor will be liable – for any legal reason whatsoever – for damages which have not been arisen on the delivery item itself only

- a.
if he has acted with intent,
- b.
in case of gross negligence of the owner / bodies or managerial employees,
- c.
in case of culpable injury to life, body, health,
- d.
in case of defects which he has fraudulently concealed or whose absence he has guaranteed,
- e.
in case of defects of the delivery item to the extent that he is liable under the Product Liability Act for personal injury or injury to privately used items.

In case of culpable violation of essential contractual obligations, the Contractor shall also be liable in case of gross negligence of non-managerial employees and of minor negligence. In the latter case liability shall be limited to reasonably foreseeable damage that is typical of the contract. Any further claims shall be excluded.

(3)

Any claims by the Buyer – for any legal reasons whatsoever – shall expire by limitation after 12 months. In respect of claims for damages pursuant to clause I. 9. 2 a – e, the legal time limits shall apply.

I. 10. Governing law, jurisdiction

(1)

The principal place of business of the Contractor shall be the sole place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship. The Contractor will also be entitled, however, to bring an action at the Buyer's principal place of business.

(2)

The legal relations of the parties under this contract shall be governed by the German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

I. 11. Severability

Should any provision of these General Terms and Conditions of Delivery and Payment be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision which comes closest to the original intention of the contracting parties.

II. Conditions of purchasing

II. 1. General

In case of purchases or ordering of services from third parties, the legal relations between the contractor (hereinafter referred to as "Supplier") and HORIBA FuelCon GmbH (hereinafter referred to as "Client") shall be exclusively governed by the General Terms and Conditions for Purchasing and Ordering of Services.

(1)

Any terms and conditions of the Supplier which contradict or deviate from our General Terms and Conditions will not be accepted by us and are hereby expressly rejected. If order confirmations or supplies are accepted without reservation, this shall not be deemed as constituting recognition of such terms and conditions.

(2)

By making his first supply based on these General Terms and Conditions for Purchasing and Ordering of Services, the Supplier recognises that they will exclusively apply also to any further orders placed.

II. 2. Offer, order

(1)

Offers made by the Supplier shall be in German and shall indicate net prices in Euros.

(2)

Packaging, loading, freight, postage, insurance/transport insurance and shipping costs shall be shown separately, if it has been agreed that the Client will have to bear these costs.

(3)

Unless agreed otherwise in writing, the prices quoted in the Supplier's offer shall be binding for three months from the offer date.

(4)

Orders of the Client will be placed exclusively by way of the Client's order form and in writing. In urgent cases, orders may be placed by telephone. However, such orders shall be deemed as having been definitely placed only if they are subsequently confirmed by a written order.

(5)

The order shall be deemed as having been properly placed if it makes reference to the Supplier's offer and if a copy of the offer is attached to the order.

(6)

All orders will be expressly placed to the exclusion of any set off by other companies.

(7)

The Supplier may accept the order only within a time limit of two weeks maximum. If the order is not confirmed in writing within the time limit of two weeks from the order date, the Client will no longer be bound by the order.

(8)

The Supplier shall send the order confirmation in a single copy by separate mail to the Client. It must not be enclosed with the goods.

(9)

The Client reserves his property rights and copyrights in figures, calculations, drawings, assessments and any other documents (hereinafter referred to as "Documents"); they may not be made available to any third party without the express written permission of the Client. The Documents shall be exclusively used for the manufacturing purposes set out in the order; following completion of the order, the Supplier shall return the Documents of his own accord to the Client. They must not be disclosed to any third parties. Inasmuch, the provision of paragraph 1 of clause II.10 shall additionally apply.

II. 3. Prices, scope of services, terms of payment

(1)

The price shown in the order shall be binding. Unless otherwise agreed in writing, the price will include delivery "franco domicile" inclusive of packaging, loading, freight, postage, insurance/transport insurance, shipping costs and any taxes applying. The return of the packing material shall be subject to a separate agreement.

(2)

Invoices will be processed by the Client only if, in addition to the company name and order number as set out in the order, the scope of supply is exactly designated in the invoice, in particular, the article, type and quantity. The Supplier shall send the invoice separately by mail. It must not be enclosed with the goods.

(3)

The payability of a pecuniary claim shall be subject to a verifiable invoice.

(4)

The Supplier will be obligated to transfer to the Client title in the supplied parts of the plant, in the materials, components or object of sale, or to furnish security for the same. The claim shall become due for payment only after these obligations have been fulfilled.

(5)

The Supplier shall provide his supply or service in accordance with the latest state of the art, applicable safety regulations and the technical data and parameters agreed upon.

(6)

The Supplier warrants that all delivery items and components of the service are his property and are unencumbered and free from any rights of third parties. Title will pass upon handing over or installation. By accepting the order, the Supplier undertakes to indemnify and hold harmless the Client in respect of the goods to be supplied or services to be provided against any legal claims of domestic or foreign third parties resulting, inter alia, from patents, designs, copyrights or any other rights. This indemnification shall also apply to any legal charges or compensations resulting out of them as well as to costs incurred as a result of conversion and redesigning works. As for the rest, the provisions of clauses II.7 and II.8 shall apply.

(7)

Unless agreed otherwise in writing, the Client shall effect payment after delivery or provision of the service by the Supplier as follows:

a.

- three days after receipt of invoice at 5% discount, or
- b.
- 14 days after receipt of invoice at 3% discount, or
- c.
- 30 days after receipt of invoice at 2% discount, or
- d.
- 60 days net after receipt of invoice.

Payment shall be exclusively by bank remittance or by acceptance, which shall be free of charge for Supplier.

(8)

The Client reserves the right to set off with claims due to the Supplier.

II. 4. Packing, shipment, documents, quality

(1)

The supplies ordered shall be packed and transported so that any damage to them will be excluded. The Client reserves the right to specify requirements for the packaging, the selection of the means of transport, transport route as well as for the transport insurance.

(2)

The Supplier will be obligated to obtain all documents accompanying goods, consignment notes, supplier declarations, test records and any other Documents required at his own expense and to submit them in due time to the Client. The Supplier shall indicate on all required documents at least the company name and the order number as set out in the order; if he fails to comply with this requirement, the Client cannot be blamed for any processing delays occurring.

(3)

Any costs and losses resulting from non-compliance with shipping, packing or marking instructions stipulated under the law or in the contract between the parties shall be for the Supplier's account, unless he can prove that non-compliance was not attributable to him.

(4)

Only qualities and properties of the delivered goods or services specified by the Client will be accepted. The condition of the supplied goods on arrival in the Client's incoming goods department will be decisive for the evaluation of the quality of a consignment; in respect of services provided, the acceptance protocol shall be decisive. If the quality of a supply or service deviates from the quality agreed between the parties, the Client will be entitled to a reduction in the purchase price in accordance with the legal regulations. In addition to this, clause II. 7 shall apply.

II. 5. Delivery, passage of risk

(1)

The delivery time specified in the order, or the time specified for handing over/completion of the service, or a delivery or handing-over deadline agreed outside the order shall be binding. Only the date of arrival of the supply or service at the delivery address specified by the Client shall be regarded as the delivery date. If the deadlines are not met, the Supplier shall be deemed to be in default of delivery or provision of the service, with no reminder being required.

(2)

Unless agreed otherwise in writing, the delivery shall be made "franco domicile" to the delivery address indicated in the order on working days from 7.30 a.m. to 16.00 p.m. In case an acceptance is required, acceptance of the supply/service ordered will take place on the spot at the delivery address indicated in the order.

(3)

If supplies are delivered or services provided before the delivery date specified by the Client, the goods will be temporarily stored with reservation and without any obligation on the part of the Client until the delivery date specified in the order is reached.

(4)

If a call-off order has been agreed with the Supplier, the Supplier undertakes to make the called-off quantities available at the delivery dates specified.

(5)

The delivery note shall be enclosed with the goods; it shall indicate, in addition to the company name and order number set out in the order, the exact designation of the scope of supply, in particular, articles, type and quantity.

(6)

The Supplier will be obligated to promptly notify the Client in writing, if any circumstances occur or are identified by him, from which it can be concluded that the agreed delivery time or the point of time agreed for handing over cannot be met.

(7)

In case of delay, the Client shall be entitled to claim liquidated damages for delay in an amount of 0.5 % of the order value for each commenced week, not more, however, than 5 % maximum of the order value. If agreed deadlines are not met, the Client, in addition, reserves the right to extend the time allowed for payment by 5 days for each day of delay. This shall be without prejudice to any other claims to which he may be entitled.

(8)

Acceptance of delayed supplies or services shall not constitute a waiver of claims for damages.

(9)

Delivered quantities deviating from the quantities specified in the order will be accepted only after an express written agreement to this effect.

(10)

Consignments which have already been packed so that they are suited for export will be inspected by the Client only for external damage. The Supplier will be responsible for the correct content, quantity, quality, packaging etc. As for the rest, clause II.7 shall apply.

(11)

If the Supplier provides an agreed service via one or several part delivery/deliveries, the service shall be deemed to have been provided only after the complete delivery / provision of service has taken place. Any additional costs resulting from the part deliveries such as transport, packing and insurance costs shall be borne by the Supplier. Any claims the Client may have in connection with the agreed supply or service, in particular warranty claims, will remain unaffected by part deliveries.

(12)

Risk shall pass to the Client when the ordered service is delivered to the delivery address designated by the Client. A delivery shall be deemed to have taken place only after the Client's personnel have taken over the items supplied. In case of a cost-plus contract (delivery and erection), any risk existing in respect of the total order scope shall remain with the Supplier up to the time of acceptance of the complete plant by the final customer / owner. Risk shall in this case pass directly from the Supplier to the final customer.

II. 6. Reservation of ownership, tools, software

(1)

The Client will not accept a reservation of ownership by the Supplier in whichever form.

(2)

If the Supplier receives from the Client tools, inspection and test equipment or the like (hereinafter referred to as "Tools") for the purposes of order execution, he shall be obligated to treat them with the required confidentiality and care in accordance with the Client's instructions and to return them to the Client on fulfilment of the order at the latest. The Supplier will not have a right of retention of the Tools in any form whatsoever. The Supplier may make the Tools available to third parties only for having them used in conformity with the contract. The Supplier will be obligated to insure the Tools at his own expense on a replacement value basis against fire and water damage as well as against theft. The Supplier shall at the same time assign already now any claims for compensation under this insurance to the Client; the Client hereby accepts the assignment. If the Supplier is found to be in breach of this obligation, the Client reserves the right to claim damages.

(3)

If the supply includes software, the Supplier shall grant to the Client in accordance with §§ 15 ff., 69 c German Copyright Act a nonexclusive right to use the software including the supplied documentation without any limitations in respect of the content, space and time, entitling the Supplier to duplicate and disseminate it, to reproduce it publicly or to make it available for the purpose of controlling machines, machine parts and tools, for monitoring processes and parameters (also by third parties). The right of use granted shall be designed, in particular, for using the software in machines and machine parts which have been produced by the Client and supplied by the Client to third parties. The Client or his contracting party shall be entitled according to §§ 69 c No. 2, 69 d paragraph 1 German Copyright Act to edit the software in question or to have it edited for the purposes mentioned in sentence 1 and to duplicate, disseminate, reproduce publicly or make this edited version available to the public (also for use by third parties). Any other rights in the software and the documentation shall be retained by the Supplier or the software developer, as the case may be.

II. 7. Warranty, product liability, indemnification, third-party liability insurance protection

(1)

The Supplier shall ensure the careful and correct execution of the order. Acceptance of the supply by the Client will be subject to a quantity, quality and conformance check as well as to a check of the warranted qualities. If any defects are detected, the Client will promptly send a complaint after their detection; inasmuch the Supplier waives a plea of delayed notice of defect.

(2)

The Client shall be entitled without any restrictions to the legal warranty claims. It shall be solely up to the Client to choose the way in which defects are to be remedied. The Client expressly reserves his right to claim damages instead of having remediation performed.

(3)

The Supplier shall promptly remedy defects. If he still fails to fulfil this obligation after a reminder has been sent and a reasonable final deadline has been fixed, the Client shall be entitled to remedy the defect himself or to have it remedied by a third party at the Supplier's expense.

(4)

The period of limitation for redhibitory defects shall be 24 months from the time of passage of risk; the period of limitation for deficiencies in title shall be 10 years. The limitation period for claims made because of a certain defect will be suspended by a written notice of defects of the Client up to the time of rectification of the defect. Suspension of the limitation period will end in accordance with the legal provision set forth in § 203 German Civil Code. Rectification of a defect will cause the period of limitation to start from the beginning. In case of deficiencies in title, the Supplier shall indemnify and hold harmless the Client from and against any claims of third parties.

(5)

If the Client has ordered the goods for the purpose of reselling or for manufacturing his own goods, the warranty period will commence at the time at which the warranty period for the manufactured final product starts, not later, however, than 12 months after the goods have been delivered to the Client.

(6)

If the Client incurs costs as a result of a defective supply, in particular carrying charges, transport, labour and material costs or receiving inspection costs exceeding the usual level, the Supplier shall bear these costs. The Client shall be entitled, in addition, to demand compensation for the expenditure incurred by the Client in his relationship with his customer, because the customer is entitled to a claim against the Client for reimbursement of the expenditure, in particular carrying charges, transport, labour and material costs, incurred for the purpose of remediation,.

(7)

If the Supplier is responsible for damage to a product at the Client's customer, he shall be obligated to indemnify the Client upon the Client's first request against any claims for damages made by third parties to the extent that the cause of such damage lies within his domain and sphere of organisation. To the extent that the cause of the damage lies within the sphere of responsibility of the Supplier, the burden of proof shall be on the Supplier. The Supplier shall also bear all costs and expenditures in these cases, including the costs of any legal action or recall action.

(8)

The Supplier undertakes to maintain a product liability insurance with a lump sum insurance cover of at a minimum € 2.5 million per personal injury/property damage; this shall be without prejudice to any additional claims for damages to which the Client may be entitled.

II. 8. Proprietary rights

(1)

The Supplier shall be liable for any claims which arise from an infringement of granted or applied for proprietary rights while the supplies and services are used in conformity with the contract. The Supplier shall indemnify and hold harmless the Client from and against any claims resulting from the use of such rights. Together with the supply of a proprietary item, the Supplier shall grant to the Client a nonexclusive, unlimited right of use for any types of utilisation.

(2)

The obligation of the Supplier to indemnify the Client shall apply to all expenses necessarily arising for the Client from or in connection with claims raised by a third party.

(3)

The period of limitation shall be ten years from the date of conclusion of the contract.

II. 9. Accident prevention regulations

(1)

The Client is subject to the accident prevention regulations of Berufsgenossenschaft der Feinmechanik und Elektrotechnik (Occupational Health Insurance Association for Precision Engineering and Electrical Engineering) (name change since Jan. 08). The Supplier shall inform the Client about any accident prevention regulations which must be additionally observed. The Client shall be responsible for briefing his own or subcontracted personnel, if any, in respect of the observation of all applicable accident prevention regulations.

(2)

The Supplier and the Client will mutually provide themselves with the details of the persons who are in charge of ensuring compliance with the safety regulations in their respective companies.

II. 10. Confidentiality, data protection, withdrawal from contract, penalty

(1)

The Supplier undertakes to keep in strict confidence any and all information of which he obtains knowledge in the course of the supply relationship with the Client, in particular, technical data, documents, plans, designs, drawings, data carriers, quantities purchased, prices, products and product developments, current and future research and development projects of the Client's customers as well as company related data (hereinafter referred to as "Information") unless such Information is already in the public domain, has been lawfully obtained from a third party or has been independently developed by a third party; all Information shall, in addition, be exclusively used for the purposes of the supply. Sub-suppliers shall be bound accordingly to the duty of confidentiality by the Supplier, if applicable.

(2)

To the extent necessary for business purposes, the Client stores in a data processing system data relating to his suppliers in accordance with the legal provisions of the Federal Data Protection Act.

(3)

We shall be entitled to withdraw from the contract in accordance with the statutory provisions, in particular if

a.

the Supplier is in delay in performing his service, or

b.

if the Supplier objectively lacks creditworthiness. This shall be deemed to be the case, in particular, if a petition in bankruptcy has been filed, bankruptcy proceedings have been instituted or a petition has been dismissed on cause that the assets will be exhausted by costs, or if the Supplier has sworn an affidavit of means so that our entitlement to payment will be at risk.

(4)

The Client reserves his unrestricted right to agree with the Supplier on a penalty for bringing about performance of a service or for a failure to act.

II. 11. Governing law, jurisdiction

(1)

The principal place of business of the Client shall be the sole place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship. The Client will also be entitled, however, to bring an action at the Supplier's principal place of business.

(2)

The legal relations of the parties under this contract shall be governed by the German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

II. 12. Severability

Should any provision of these General Terms and Conditions of Purchasing and Ordering of Services be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision which comes closest to the original intention of the contracting parties.