



Goldschmidt Thermit Railservice GmbH
General Terms and Conditions of Delivery and Service to Companies (Customers)
within the meaning of § 14 BGB [German Civil Code]

Status: 1.11.2009

1. Scope

- 1.1 These General Terms and Conditions shall apply only to our relations with companies (customers) within the meaning of § 14 of the Civil Code of the Federal Republic of Germany (BGB). The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy.
- 1.2 Where our General Terms and Conditions of Delivery and Service are implemented in our business with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise agreed in writing. The customer's terms and conditions shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.
- 1.3 Our terms and conditions shall apply in place of any conditions of purchase of the customer, also where such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of these conditions of purchase. By accepting our order confirmation, the customer expressly acknowledges that it waives any objection derived from the conditions of purchase.

2. Information, advice, properties of the goods

- 2.1 Information and advice regarding our products shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values. Any information about our products, especially illustrations, drawings, contents and performance as well as other information in our quotations and brochures must be regarded as approximate average values.
- 2.2 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of a delivery item in quotations and brochures and our advertising shall only represent a property of our goods when we have expressly declared the condition to be a "property of the goods"; these are otherwise *non-binding* general descriptions of performance.
- 2.3 We shall only be deemed to have given a warranty if we have indicated a property as warranted in writing.
- 2.4. All our products are updated on a regular basis and adapted to state of the art progress. We reserve the right therefore to modify our products at our equitable discretion (§ 315 BGB), also after orders are placed.

We shall assume no liability for the usability of our products for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer.

- 2.5 We shall retain the title and copyright to all illustrations, drawings, indications of weight and dimension, performance and other property specifications, estimates of cost and other documents about our products and services. The customer undertakes not to disclose the above documents to third parties unless we give our express written consent.



3. Specimens

Properties of any specimens of our products shall only become an integral part of the contract if expressly agreed in writing.

4. Conclusion of a contract, scope of delivery, acceptance

- 4.1 Our quotations are subject to change and not binding. They are merely requests to customers for orders. A contract is created - also in day-to-day business - only when we confirm the customer's order in writing (also by telefax or email). Our order confirmation shall prevail over the content of the supply contract. Where delivery is made immediately, our confirmation can be replaced by our invoice.
- 4.2 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. Verbal collateral agreements or amendments/modifications shall be void.
- 4.3. Assumption of a procurement risk does not lie solely in our obligation to deliver an object which is only defined by its type.
- 4.4 In the event of call orders or acceptance delays caused by the customer, we shall be authorised to procure material for the complete order and manufacture the total quantity ordered immediately. After the order is placed, no modification request from the customer can therefore be considered unless this was expressly agreed.
- 4.5 The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our goods.
- 4.6 If acceptance or shipment of the goods is delayed for a reason for which the customer is responsible, the customer fails to provide a shipping order by the end of the delivery period, or the customer fails to fulfil its contractual obligation to call up orders, we shall be authorised, after setting an extension of time of 7 days which has expired, at our option to request immediate payment of the purchase price or to rescind the contract or refuse performance and request damages instead of full payment. The time limit must be given in writing but we shall not be required to refer again to our rights under this clause. In the event of our claiming payment of damages, this shall amount to at least 10% of the net delivery price. This shall not affect any right to prove a different amount of damages or that damages are not incurred.
- 4.7. If shipment is delayed at the customer's request or, for reasons for which the customer is responsible, we shall be authorised to store the goods, beginning on expiry of the time limit set in the written notice that the goods are ready for shipment, and to invoice at least 0.5% of the net invoice amount per month or part thereof for costs incurred thereby. This shall not affect the assertion of any further rights. The customer shall have the right to prove that lower costs were incurred.
- Furthermore, we shall be authorised, after the time limit expires, to dispose of the contractual goods otherwise, and to deliver to the customer again after a reasonable time limit.
- 4.8. If the order for delivery or call for delivery is delayed by the customer, we shall be authorised to postpone delivery by the same period of time as the customer is behind schedule plus a reasonable scheduling period.



5. Delivery, delivery period, default in delivery

- 5.1 Binding delivery dates and time limits must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and time limits that are not binding or approximate (approx., about etc.).
- 5.2 Delivery time limits begin with the customer's receipt of our order confirmation but not before all details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met. This shall also apply to delivery dates. If the customer requests modifications after placing the order, a new delivery period shall begin when we confirm the modification.
- 5.3 Deliveries may be made prior to expiry of the delivery period. The date of delivery shall be deemed the date on which the goods are reported ready for shipment, otherwise the day on which the goods are sent. We are authorised to make partial deliveries. Interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver material parts or deliver with delay.
- 5.4 Goods shall be delivered - unless otherwise agreed - at our option in the case of long-term contracts when called and in the case of single contracts within the agreed delivery period. We can deliver the goods on the 1st working day after conclusion of the contract and at any time within the delivery period during normal business hours.
- 5.5 If we default in delivery, the customer must first set us a reasonable extension of time to perform the contract. If this elapses without result, the customer can assert the rights stipulated in §§ 280, 281, 284, 286, 323 BGB on the respective conditions stated therein. Damage claims for breach of duty - for whatever reason - shall only exist as stipulated in 12. If we fail to provide a service on the date or within a period determined in the contract, the customer can only rescind the contract if it has bound its interest in the performance to the timeliness of performance in the contract.
- 5.6 Damage claims for default in delivery shall be limited to a maximum of 3% of the net delivery price of the delayed goods per full week of delay but in all to a maximum of 10% of the specified net delivery price. If default is due to intent or gross negligence or a material breach of duty, statutory liability shall apply, which is limited, however, in the event of a negligent breach of duty only to the foreseeable damage in each case.
- 5.7 If the customer sets us a reasonable period of grace when default in delivery has occurred, the customer shall be authorised, after expiry of this period of grace without result, to rescind the contract. The customer shall only be entitled to damage claims for non-performance in the amount of the foreseeable damage, if the default was due to intent or gross negligence or a material breach of duty. Furthermore, liability for damages is limited to 50% of the damage incurred.
- 5.8 The limitations of liability in 5.6 and 5.7 shall not apply if a commercial transaction was concluded for delivery by a fixed date. This shall also apply if the customer can assert that, due to the default for which we are responsible, the immediate assertion of its claim for damages is taken into account instead of performance.
- 5.9 We shall not be in default as long as the customer is in default in fulfilling its obligations towards us; this shall also include obligations under other contracts.
- 5.10 We shall not be obliged to deliver for as long as the means of transport to be provided by the customer is not available. However, we shall be authorised, where the shipping order or call order can be carried out, to arrange delivery with our own transport or hire transport. In this case too, the goods shall be transported at the customer's risk.



6. Reservation of own delivery, force majeure and other obstructions

- 6.1 If, despite proper stocking, we do not receive a delivery or service from our sub-contractors for reasons for which we are not responsible, or it is incorrect or not in due time, or cases of force majeure occur, we shall notify our customer in writing or text form in due time. In such case, we are authorised to postpone the delivery for the duration of the obstruction, or to rescind in whole or in part that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not accepted a procurement risk. Cases of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions that considered objectively were not caused by our negligence.
- 6.2 If a delivery date or delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded due to events in 6.1., the customer shall be authorised after a reasonable extension of time has elapsed in vain to rescind that part of the contract not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer has no further claims in this case.

7. Shipment and passing of risk, insurance, packaging

- 7.1 Unless otherwise agreed in writing, we shall ship goods ex works uninsured at the customer's risk and expense.
- 7.2 We shall endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result - also where delivery freight paid is agreed - shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment. We reserve the right to choose the route and means of transport.
- 7.3 The risk of accidental loss or accidental deterioration shall pass to the customer when the goods to be delivered are handed over to the customer, forwarder, freight carrier or other firms entrusted with shipping the goods but at the latest when the goods leave our works, warehouse or branch.
- 7.4 If the delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the goods are notified as ready for delivery.

8. Notice of defects, warranty, breach of duty

- 8.1 The customer must give us written notice of recognisable defects immediately upon receipt of the goods but at the latest 12 days after performance. Written notice of defects must include a detailed description of the defect. A notice of defects that fails to comply with requirements of time and form shall exclude any claim by the customer for breach of duty due to poor performance. If the goods are not delivered by us but by a transport operator instructed by us, the transport operator must also be notified of any defects recognisable on delivery and recording of the defects must be arranged by the transport operator as well. The above-mentioned obligations shall also continue to apply. A notice of defects that fails to comply with requirements of time shall also exclude any warranty claim by the customer.
- 8.2 Notice of hidden defects must be given in writing immediately after they are recognised but at the latest within the limitation period specified in 8.9. Written notices of defects must here too include a detailed description of the defect. A notice of defects that fails to comply with requirements of time and form shall exclude any claim by the customer for breach of duty due to poor performance.



- 8.3 When handling, processing, combining or mixing with other goods begins, the goods delivered shall be deemed approved by the customer according to the contract. This shall also apply if the goods are re-shipped from their original destination.
- 8.4 Defective goods must be left in their delivery container so that we can check the validity of the complaint properly unless we expressly waive this by written declaration - this can also be sent by telefax - and the customer ensures that the defective goods are kept separate.
- 8.5 The customer must give notice in writing of any other breach of duty, setting a reasonable time limit for remedy, before the customer asserts any other rights.
- 8.6 If a defect exists, this shall be remedied at our option - except in the case of recourse due to delivery acc. to §§ 478, 479 BGB - by rectification or replacement free of charge, whereby we are on principle entitled to two attempts. We shall remedy any defects where the customer itself is responsible, and incorrect complaints on behalf of and at the expense of the customer.
- 8.7 In the case of a notice of defects, the customer's payments may only be withheld to an extent which is proportionate to the material defects which have occurred. If the notice of material defect is incorrect, we shall be entitled to request compensation from the customer for the expenses we incurred as a result.
- 8.8 If the breach of duty is not by way of exception due to our work performance, the contract cannot be rescinded if our breach of duty is immaterial. Except in the case of liability for defects, the contract also cannot be rescinded if we are not responsible for the breach of duty.
- 8.9 We shall provide a warranty for verifiable material, production or construction defects - unless otherwise expressly agreed, unless there is a case of malice or intent or a damage claim for injury to life, limb and health is in question or a case of § 478 BGB (right of recourse) exists - for a period of 24 months, calculated from the date the period of statutory limitation begins.
- 8.10 The foregoing limitation period shall also apply to competing claims in tort and for any claims from consequential damage caused by the defect.
- 8.11 Further claims by the customer for or in connection with defects or consequential damage caused by the defect, for whatever reason, shall exist only subject to the provisions of 12 unless these are damage claims resulting from a warranted property or warranty which is intended to cover the customer against the risk of consequential damage caused by the defect. In this case too, however, we shall be liable only for typical and foreseeable damage.
- 8.12 Our warranty and liability resulting therefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to faulty material, faulty construction or defective design or faulty assembly instructions. Warranty and liability shall be excluded in particular for the consequences of incorrect use (especially where use is not state-of-the art and in disregard of the directions for use), where damage is caused by third parties (e.g. the transport operator), where the customer makes modifications or carries out repair work incorrectly or there is wear and tear of the goods, excessive use or inappropriate equipment and the consequences of chemical or electrolytic influences that do not correspond with expected average standard influences. Claims based on defects do not exist in the case of a minor deviation from the agreed or customary condition or usefulness.

This shall not affect our liability under 12.



8.13 Claims by the customer for expenses required to remedy defects, especially transport, route, work and material costs, shall be excluded if expenses increase because the delivery item is subsequently taken to a place other than the place of delivery, or to the customer's branch. This shall not apply in the case of recourse due to delivery according to §§ 478, 479 BGB.

Any right of recourse the customer may have against us when the goods are resold shall only exist if the customer has not reached any agreements with its buyer which exceed statutory claims based on defects.

8.14 Material defects and other breach of duty shall only be accepted when given in writing.

9. Prices, payment terms, objection of uncertainty

9.1 All prices are on principle quoted in euros and exclude packaging, freight, are ex delivery works or warehouse, and exclude value added tax at the legally valid rate to be borne by the customer.

9.2. Services that are not part of the scope of our quotation shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.3 We are authorised to increase prices unilaterally and reasonably (§ 315 BGB) where material procurement costs or production costs, taxes, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than two months elapses between conclusion of the contract and delivery. An increase for the above purpose shall be excluded if the cost increase for the factors mentioned is cancelled out by a cost reduction for other factors mentioned with respect to the total cost charged for the delivery.

9.4 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

9.5 Our invoices are payable within 14 days of the invoice date. We are however also entitled to request payment against delivery of the goods. Cash discount is calculated on the net amount and shall only be admissible if the customer has met all other liabilities older than 30 days arising from the business relationship with us.

9.6. We are entitled, despite the customer's other terms and conditions, first to offset payments against the customer's earlier debts. We shall inform the customer on how they are offset. If costs and interest have already been incurred, we shall be authorised to offset payment first against costs, then interest and finally against the principal payment.

9.7 The customer shall default in payment, even without a reminder, within 31 days of delivery where we have an obligation to deliver or within 31 days after we have issued a notice that the goods are ready for delivery in the case of delivery ex works. If a binding payment date was agreed, the customer shall be in default if it fails to meet the payment date.

9.8 Once in default, maturity interest of 8% above the respective base rate shall be calculated. This interest shall be lowered if the customer proves that charges are lower; we are permitted to prove that damage is higher.

9.9. Furthermore, if the customer is in default, we shall be entitled to retain deliveries or services based on all contracts with the customer until the customer meets all obligations in full. The customer can avoid this right of retention by providing a directly enforceable guarantee from a major German bank unlimited in time or from a public-sector financial institution linked to a deposit insurance fund for the amount of all our due claims.



- 9.10 The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this. Furthermore, default in the fulfilment of one claim shall cause all our other claims from the business relationship to become due immediately.
- 9.11. If payment terms are not met or circumstances known or recognisable that in our proper commercial judgement give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or should have been known to us, we shall be authorised, notwithstanding further statutory rights in such cases, to cease further work on current orders or delivery and to request advance payments or the provision of objectively appropriate securities for deliveries still outstanding and - after expiry of a reasonable extension of time to provide such securities without result - to rescind the contract - irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.
- 9.12. If payments are allowed to be deferred and then paid at a later date than agreed, interest of 8% above the base rate applied when the deferment agreement was concluded shall be owed for the period of deferment without requiring a notice of default.
- 9.13. The customer shall only have a right of retention or right of set off regarding those counter-claims that are not disputed or have been recognised by declaratory judgment unless the counter-claim relates to a breach of material contractual obligations by us. A "material" contractual obligation within the meaning of these General Terms and Conditions of Delivery and Service is always given when we intentionally fail to perform such duties – the due performance of which the ordering party relies on and may rely on – because they determine the contract. The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.
- 9.14 Our price lists and other general prices are without obligation.

10. Institution of insolvency proceedings, suspension of payments

- 10.1 An application to institute insolvency or composition proceedings by the customer or the customer's suspension of payments due to rights of retention or other rights shall entitle us to rescind the contract at any time or make delivery of the goods dependent on the prior fulfilment of the payment obligation. If the goods were already delivered, the purchase price shall be due immediately in such cases. We shall also be entitled to reclaim the goods in the above-mentioned cases and to retain them until the purchase price is paid in full.
- 10.2 The stipulations in 10.1 shall also apply if we have accepted cheques by way of payment and the drawee or issuer has applied for the institution of insolvency or composition proceedings or has suspended its payments.
- 10.3 If the customer ceases to make payments, or files an insolvency petition, the customer shall no longer be authorised to sell, process, combine or mix goods subject to retention of title (see 12.1). In such case, the customer must immediately store and label the goods subject to retention of title separately, and amounts, to which we are entitled from assigned claims for goods delivered and which the customer receives, must be held in trust for us.

11. Retention of title

- 11.1 We retain title to all equipment and goods we deliver (hereinafter referred to as a whole as "goods subject to retention of title") until all claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current invoice (current account) and the balance has been established.



- 11.2 The customer must insure the goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to the goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.
- 11.3 The customer is authorised to resell the delivered goods in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only. Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us. This shall also apply if the customer is bound by a group of companies and/or if one of the circumstances stated in the above sentence occurs at the parent or ultimate holding company.
- 11.4 The customer herewith assigns to us all claims including securities and ancillary rights that accrue to it against the end user or third parties with or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its buyers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the delivery price agreed between us and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.
- 11.5 The customer shall be entitled to collect a claim assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer is obliged to forward information and documents required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment.
- 11.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall herewith assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.
- 11.7 The customer must notify us immediately if the customer has already assigned claims from the resale of goods delivered or to be delivered by us to third parties, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to 11. In the case of unreal factoring, we shall be authorised to rescind the contract and request the goods already delivered to be handed over; this shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.
- 11.8 In the event of conduct in breach of the contract, especially in the case of default in payment, we shall be authorised - without first having to rescind the contract - to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title immediately unless it is responsible for an immaterial breach of duty only. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is expressly prescribed by obligatory statutory provisions. The customer must notify us immediately in writing of any third-party access to goods subject to retention of title or any claim assigned to us.
- 11.9 If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged at the customer's request to release securities at our option.
- 11.10 We handle and process the goods subject to retention of title as manufacturers within the meaning of § 950 BGB without any obligation. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected



items. If our goods are connected with other movable items into a uniform article that is deemed the principal article, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to follow up our ownership or co-ownership rights.

12. Exclusion and limitation of liability

12.1 We shall not be liable - save as provided in the terms set forth below - for claims by the customer for damages, for whatever legal reason. We shall not be liable in particular for breach of duty from obligation and tort.

This above-mentioned exclusion of liability shall not apply in the case of obligatory liability. In particular we shall be liable

- for our own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- for material breach of contractual obligations and in the event of impossibility for which we are responsible and material breach of duty;
- if, in the event of breach of other obligations within the meaning of § 241 (2) BGB, it is no longer reasonable to expect the customer to accept performance;
- in the event of injury to life, limb and health, also by legal representatives or vicarious agents;
- where we have assumed a warranty for the workmanship of our goods or the existence of successful performance, or a procurement risk;
- for claims under the Produkthaftungsgesetz [German Product Liability Act].

“Material contractual obligations“ are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

12.2 In other cases, we shall be liable for all damage claims asserted against us or refunds under this contractual relationship for culpable breach of duty, for whatever legal reason, but not in the case of minor negligence.

12.3 In the event of liability under 12.2. above and liability without negligence, especially given initial impossibility and defects of title, we shall be liable only for typical and foreseeable damage.

12.4 Liability from the assumption of a procurement risk shall only apply to us if we have expressly assumed the procurement risk by virtue of a written agreement.

12.5 Liability for indirect damages and consequential damage caused by a defect shall be excluded unless we have infringed a material contractual obligation or we, our managers or vicarious agents are reproached for intentional or grossly negligent breach of duty. “Material contractual obligations“ are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.



12.6 Our liability, save for intent, malice and injury to life, limb and health and any other differing indemnity limits prescribed by law, is limited in amount altogether to the scope of cover provided by our employers' liability insurance.

At the customer's request, we shall provide the customer at any time with a copy of our relevant insurance policy free of charge.

We undertake, in the event of the insurer being released from the obligation to perform (e.g. by our breach of warranty, yearly limit etc.) to be answerable to the customer with our own services except however in the case of a negligent act, malice and injury to life, limb and health, and differing indemnity limits prescribed by law only up to a maximum amount of € 100,000.00 (in words: one hundred thousand euros) for each claim.

Any further liability shall be excluded.

12.7 Exclusion resp. limitation of liability according to the foregoing 12.2. to 12.6. shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.

12.8 Claims by the customer for damage from the contractual relationship may only be asserted within a preclusion period of 24 months as of commencement of the statutory limitation period. This shall not apply if we are culpable of malice or gross negligence.

12.9. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

13. Property rights

13.1 Unless otherwise agreed, we shall be obliged only to deliver goods in the Federal Republic of Germany that are exempt from third-party industrial property rights and copyrights. If a third party raises justified claims on account of infringement of property rights by products delivered by us to a customer, we shall be liable to the customer within the time limit specified in 8.9 as follows:

- a. We shall first at our option try to obtain a right of use at our expense for the deliveries in question or modify the products so that the property right is not infringed, or exchange the products. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights which shall, however, comply with these General Terms and Conditions of Delivery and Service.
- b. The customer shall only be entitled to rights if it gives us written notification immediately about the claims asserted by a third party, does not admit any infringement and all defensive measures and settlement negotiations to avert the claims are left to us. If the customer stops using the products for reasons of loss minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of a property right infringement. If an appeal is filed by third parties against the customer resulting from the use of products we supply for infringement of property rights, the customer undertakes to notify us immediately and give us the opportunity to participate in any legal dispute. The customer must support us in every way in conducting such a legal dispute. The customer must not take any action which could impair our legal position.

13.2 The customer shall have no claims if it is responsible for infringement of a property right. The customer shall also have no claims if the infringement of the property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products were modified by the customer or used with products we did not supply.

14. Place of performance, legal venue, applicable law



14.1 Place of performance for all contractual obligations is Essen.

14.2 Sole legal venue for any disputes is - as far as legally admissible - Essen.

14.3 The Law of the Federal Republic of Germany shall exclusively apply to all legal relations between the customer and ourselves. The UN Sales Convention (CISG) is expressly excluded. The above stipulations shall also apply if the customer is a foreigner or its registered office is located abroad.

15. Final provisions, amendments to the terms and conditions

15.1 If our order confirmation includes a clause stipulated in the INCOTERMS (e.g. freight paid ex works etc.), the INCOTERMS as last amended shall apply to the respective clause unless otherwise stated in our order confirmation.

15.2 The customer shall be notified in writing of any amendments to these terms and conditions. They shall be deemed approved by the customer unless the customer objects to them in writing in due time. We must make special reference to this legal consequence in our amendment notification. The customer must send its objection to us within four weeks of receipt of the amendment notification.

16. Severability clause

If individual provisions of these terms and conditions are invalid for reasons other than §§ 305 - 310 BGB, this shall not affect the remaining provisions which shall retain their full validity. Instead of the invalid provisions, a stipulation shall automatically apply which most closely corresponds to the legally admissible economic intent.

Note:

According to the provisions of the Bundesdatenschutzgesetz [Federal Data Protection Act], we draw attention to the fact that our accounting is maintained on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.