

Ident-Nummer		Terms and Conditions of Sale, Delivery and Trade	HOFMANN <small>IHR MÖGLICHMACHER</small>
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§ 1 Scope of Application

(1) All of our company's deliveries, services and transactions towards/with enterprises or public law entities or special assets concerning deliveries and services shall exclusively be effected in accordance with the Terms and Conditions of Sale, Delivery and Trade below. These conditions form part of any contracts which we conclude with our contracting partners with respect to deliveries, services and other commercial objects.

(2) Any deviations, alterations and amendments require written form, which also applies to any deviations from this requirement of written form.

(3) Any of our contracting partners' terms and conditions of business shall not apply, even if we have not expressly contradicted their validity in individual cases. Even if our contracting partners refer to their terms and conditions of purchase, sale, delivery, production and/or trade in one document or several documents directed to us or if they otherwise make such terms and conditions available to the public or their contracting partners, this shall not constitute any consent to the validity of those terms and conditions on our part. The acceptance of an order or any other conduct implying an intent shall not incorporate such terms and conditions into the provisions of this contract either.

(4) These terms and conditions of sale and delivery shall – as far as a mutual commercial transaction is concerned – also apply to any future legal relations with our contracting partners, even if no explicit reference is made to the former in individual cases.

§ 2 Offer and Offer Documents

(1) All of our offers are subject to change and without engagement unless they have been expressly declared to be binding. If our offer has not been expressly declared to be binding or if it is subject to a certain time limit for acceptance and if our contracting partner accepts such an offer, the contract shall only be deemed to have been concluded upon our written confirmation. Unless explicitly otherwise stated in the offer, the binding period shall be 30 days from submission of the offer.

(2) Any specifications made by us regarding the subject matter of the delivery or service (e.g. weights, measurements, utility values, resilience, tolerance ranges and technical data) as well as our representation of the same (e.g. drawings and illustrations) shall be deemed to be only approximately authoritative unless the usability for the intended purpose requires strict conformity. They do not constitute guaranteed quality features, but descriptions or markings of the relevant delivery or service. Deviations which are customary in this line of business and deviations which occur due to legal provisions or represent technical improvements as well as a replacement of components by parts of the same value shall be admissible insofar as they do not impair the usability for the purpose intended by the contract.

(3) We reserve the right or copyright in any offers and estimates of costs submitted by us as well as in any drawings, illustrations, calculations, prospectuses, catalogues, models, tools and other documents or auxiliary means provided by us. The recipient shall not be permitted any use of such items outside the use stipulated in the contract. Our contracting partner may neither make such objects or their content available to any third parties nor use or reproduce them itself or via third parties without our express consent. At our request, our contracting partner must return all such objects to us and destroy any possibly created copies thereof if it does not need them in the ordinary course of business or if negotiations should not result in the conclusion of a contract.

(4) During the quotation phase the information contained in the offer documents are to be examined by our contracting partner for design options within the bounds of the intended project. In the event of discrepancies we must be notified within 10 days of receipt of such documents; otherwise, our contracting partner shall be responsible for any defects and deviations resulting therefrom.

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§ 3 Conclusion of Contract; Written Form

(1) As a matter of principle, any contracts between our business partners and our company regarding the manufacture of objects and/or machines shall be concluded by means of a written contractual instrument signed by both parties (hereinafter referred to as "contract of manufacture"). If such a contract is missing from the beginning, the parties shall be obliged to conclude a written individual contract which reflects the verbal agreements faithfully even after the start of production. The duty to conclude a written contract of manufacture shall not be replaced by a commercial letter of confirmation.

(2) Verbal agreements shall only become effective upon written confirmation on our part. The written form shall also apply to any collateral agreements or amendment agreements. The conclusion of a contract cannot be brought about by a unilateral written reference to negotiations having taken place made by the contracting partner. Any failure to respond on our part shall in no case be regarded as consent. The content shall exclusively be recognised by means of our written confirmation.

(3) The legal relations between our contracting partners and our company shall be governed as follows: firstly, by the contract of manufacture within the meaning of item 2 subsection 1 and secondly, unless otherwise agreed in the contract of manufacture, by the present Terms and Conditions of Sale, Delivery and Trade to supplement the aforementioned contract. These documents constitute any agreements made between our contracting partners and our company in their entirety. Verbal agreements shall be replaced by the contract of manufacture and these General Terms and Conditions of Business unless it explicitly ensues from such verbal agreements that the latter continue to be effective with binding force regardless.

§ 4 Prices; Payment

(1) Prices apply to the scope of performance, delivery and business specified in § 2 ss. 1 of the contract of manufacture. Any increased or additional performances are charged extra.

(2) Prices are to be understood in EUROS, ex works, plus packaging, statutory value-added tax, fees and other public charges as well as any further costs connected with the contract. Customs duties and import charges of the country of destination shall be borne by the contracting partner.

(3) In the event of a fundamental change to the cost factors we shall be entitled to an alteration of the prices/the price. An unanticipated rise in personnel costs, e.g. owing to industrial disputes, a considerable increase in the price of raw materials, also and especially if the latter is due to exchange rate fluctuations or any other difficulties on the procurement market, or any other unpredictable tremendous production obstacles which may, for instance, be caused by a fundamental change to energy costs, natural disasters or unforeseeable impediments to transport routes shall be regarded as such cost factors. If there is an advance in prices, we shall notify our contracting partner thereof within a short period, i.e. not any later than within 14 days after the factors justifying the price increase became known to us. In this case our contracting partner shall have the right to withdraw from the contract within another 14 days after receipt of the notification. The declaration of withdrawal requires written form.

(4) Unless otherwise agreed, payments are to be effected into one of our accounts within 14 days after receipt of the invoice, without any deductions. Every invoice shall be deemed to have been received within 3 days after despatch unless our contracting partner proves the contrary.

(5) The date on which we receive payment shall be authoritative for the payment date. Cheques shall only be regarded as payment after they have been honoured. If our contracting partner does not pay at maturity, the former shall have to pay interest on the outstanding amounts at 8 percentage points above the base interest rate as from the due date pursuant to § 274 s. 1 BGB (Federal German Civil Code) or at least at 8% per year. The assertion of higher interest and further claims for damages in the event of default shall remain unaffected.

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(6) Unless otherwise agreed, 50 per cent of the (purchase) price to be paid to our company shall be due upon placement of the order and another 50 per cent shall be due upon delivery.

(7) We shall have the right to make any further deliveries conditional on receipt of payment in due time.

(8) We shall be entitled to effect or render any outstanding deliveries or services only against payment in advance or on security if after conclusion of the contract any circumstances become known to us which are prone to diminish our contracting partner's creditworthiness considerably and by which payment of the receivables on our part from the relevant contractual relationship (including receivables from other individual contracts to which the same framework contract applies) to be effected by the contracting partner is put in danger. In this case we shall also have the right to both withdraw from the contract and demand immediate payment and/or restitution of the items already delivered. If the items reclaimed have already been used, we shall be entitled to demand an appropriate utilisation charge. If the items reclaimed have been reduced in value due to their use or for any other reasons lying within our customer's sphere, we shall also have the right to demand compensation for the decrease in value.

(9) We shall be entitled to set off our contracting partner's payments first against its older debts and to set off incoming payments first against costs and interest and then against the main performance. In the event that legitimate doubts about the contracting partner's solvency arise after conclusion of the contract, we shall have the right to demand payment in advance or provision of securities. If the contracting partner does not comply with such a request, we shall be entitled to terminate the contract by means of withholding its performance.

(10) Any set-off of counterclaims by our contracting partner or any retention or reduction of payments by our contracting partner owing to such claims shall only be admissible if the counterclaims incontestably exist or have been officially found to be valid.

§ 5 Delivery; Delay

(1) Unless otherwise agreed, our deliveries shall be effected EXW (Incoterms 2010 = ex works), 96215 Lichtenfels, Michael Och Straße 9.

(2) The observance of delivery periods presupposes that any documents, necessary declarations of authorisation and approval, particularly plans, to be furnished by the contracting partner are received in due time and that the contracting partner adheres to the terms of payment agreed and to any other obligations stipulated. If these requirements are not fulfilled early enough, the delivery periods shall be reasonably extended unless we are responsible for the delay. If the non-compliance is attributable to force majeure, e.g. incitement, war, riots or similar occurrences such as a strike or lock-out, the delivery periods shall be reasonably extended.

(3) Any periods and dates for deliveries and services proposed by us shall only be regarded as approximate unless a fixed time limit or fixed deadline has been promised or stipulated. Insofar as despatch has been agreed, the delivery periods and delivery dates shall refer to the point in time at which the goods in question are delivered into the custody of the forwarding agent, carrier or any other third party entrusted with the transport.

(4) Insofar as it has been agreed that a fixed quantity is to be delivered within a stipulated period of time and that our contracting partner shall have the right to determine the delivery date (quota on call), delivery of the relevant goods must be requested from us twelve weeks before the desired delivery date at the latest. After the fixed period of time has lapsed without any supplies having been ordered on call, we shall be entitled to deliver the quantity which has not yet been ordered and charge the latter to the contracting partner.

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(5) We shall not be liable for any impossibility of delivery or any delays in delivery insofar as the impossibility or delay has been caused by force majeure or any other incidents (e.g. interruptions of operations of any description, difficulties concerning the procurement of materials or energy, delays in transit, strikes, lawful lock-outs, shortage of labour or energy or raw materials, difficulties in obtaining necessary permits from authorities, official measures or the absence of delivery or incorrect or delayed delivery by suppliers) for which we are not responsible. Insofar as such occurrences make the relevant delivery or service much more difficult or even impossible for us and if the hindrance is not only of temporary duration, we shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration the periods for deliveries or services shall be extended or postponed by the duration of the relevant hindrance plus an appropriate starting period. Insofar as our contracting partner cannot be reasonably expected to accept the delivery or service as a result of the delay, the former shall have the right to withdraw from the contract by means of an immediate written declaration.

(6) We shall be entitled to effect partial deliveries if

- the partial delivery is usable within the bounds of the purpose intended by the contract
- the supply of the remaining goods ordered is guaranteed
- our contracting partner will not incur a considerable additional expense or additional costs thereby (unless we agree to assume such costs).

(7) If we fall behind with a delivery or service or if the performance of a delivery or service becomes, regardless of whatever reason, impossible for us, our liability shall be restricted to damages in accordance with § 10 of these Conditions.

§ 6 Passing of Risk

The risk of loss of the order performance shall pass to the contracting partner as soon as we have delivered the same into the custody of a forwarding agent or any other person for the purpose of transit or as soon as we have advised the contracting partner that the goods to be delivered have been completed and placed at its disposal in our works; in the case of data transmission, the risk shall pass as soon as the relevant data have been sent.

§ 7 Storage; Acceptance; Notice of Defect(s)

(1) After the risk has passed, storage costs shall be borne by our contracting partner. If finished parts are stored by us, storage costs shall be 0.25 % of the invoice amount of the delivery items to be stored per lapsed week. If tools are stored, storage costs shall be 0.5 % of the invoice amount of the tools to be stored per lapsed week. The assertion and proof of higher or lower storage costs shall remain unaffected. We store prototype tools for a period of 2 years at maximum. Storage of moulds, holding fixtures, gauges and tools must not exceed three years. After expiry of the storage time limit we shall be entitled to destroy the prototype tools or moulds, holding fixtures, gauges and tools. Notice of the destruction shall be given at least four weeks beforehand in writing. The written form shall be deemed to have been observed if the notice has been sent by e-mail or fax.

(2) Insofar as an acceptance is necessary because of the nature of the performance, the former shall be effected without undue delay by the contracting partner and be documented by means of a written acceptance certificate. If the contracting partner fails to accept the performance within 14 days after being notified of its completion, the performance shall be deemed to have been acknowledged and accepted in accordance with the terms of the contract. This shall also apply if the contracting partner has begun using the purchased item (e.g. by putting the tools delivered into operation) and seven working days have passed since delivery or installation in such a case.

This shall not apply if there is a defect which renders the use of the item delivered by us impossible or impairs its use severely and if our contracting partner gave notice of this defect before expiry of the above-mentioned time limits in writing. The notification of the defect shall be deemed to have been given in due time if it does not reach our company any later than 3 days after despatch.

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(3) In all other respects, it shall be mandatory for any complaints, especially notifications of defects to reach our company without delay, but not any later than within 10 days of receipt of the delivery performance (in the case of hidden defects without delay, but not any later than within 10 days of their detection) in written form. Insofar as the contracting partner does not lodge complaints or does not give notifications of defects in due time or in written form as stipulated, the delivery performance shall be considered to be flawless with respect to the complaint which has not been lodged in due time or form or with respect to the defect of which has not been given notice in due time or form. If the contracting partner accepts the delivery performance despite being aware of a defect, the former shall only be entitled to any rights derivable from such defectiveness if it expressly reserves its rights which are based on this defect in writing.

(4) By giving notice of a defect the statute of limitations shall not be suspended. The statute of limitations shall only be suspended by the assertion of claims before a court.

§ 8 Warranty

(1) The warranty period is one year from delivery or, insofar as an acceptance is necessary, one year from acceptance.

(2) The objects supplied shall be examined with care immediately upon delivery to our contracting partner or the third party designated by the latter. They shall be deemed to have been approved unless we receive a written notification of defects regarding obvious defects or any other defects which were discernible in the course of an immediate, careful examination within seven working days after supply of the delivery item or, otherwise, within seven working days after the discovery of the defect or any earlier point in time at which the defect was discernible for the contracting partner during normal use of the delivery item without closer inspection. At our request, the delivery item rejected must be returned to us carriage free. If the complaint is justified, we shall refund the costs of the most inexpensive transport route; this shall not apply if the costs increase because the delivery item is situated in a place other than the place of contractual use.

(3) If the objects supplied show material defects, we shall, in the first instance, be obliged and entitled to effect a subsequent improvement or substitute delivery at our discretion on condition that we decide on such a procedure within an appropriate period of time. In the event of failure, i.e. impossibility, unacceptability, refusal of or undue delay in the subsequent improvement or substitute delivery, our contracting partner may withdraw from the contract or reduce the purchase price adequately.

Any claims on the contracting partner's part due to the expenditures necessary for the purpose of subsequent improvement, particularly transport costs, travel costs, labour costs and materials costs shall be excluded insofar as such expenditures increase because the delivery item has subsequently been taken to a place other than the contracting partner's place of business unless the movement complies with its contractual use.

(4) Any claims for damages pursuant to § 10 shall remain unaffected by this.

(5) If any components made by other manufacturers show defects which we are unable to remedy for licensing reasons or factual reasons, we shall have the choice of asserting our warranty claims towards the manufacturers and suppliers for our contracting partner's account or assigning such claims to our contracting partner. Pursuant to these Conditions, warranty claims with respect to such defects which appear under the other circumstances shall only exist if the judicial enforcement of the above-mentioned claims against the manufacturer and supplier has been unsuccessful or if it is hopeless, for instance owing to insolvency. For the duration of the legal dispute the statute of limitations on the warranty claims in question shall be suspended.

(6) We expressly insist that an assumption of guarantees or of the procurement risk on our part requires a written agreement. Any indications comprised in our catalogues, on our websites or in other items of general information shall at no time constitute a guarantee or an assumption of a procurement risk.

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(7) Warranty shall be excluded if our contracting partner effects any changes to the delivery item or has the latter changed by any third parties without our consent and if the removal of defects becomes impossible or unacceptably difficult thereby. In any case our contracting partner shall bear the additional costs of such a remedial action which accrue due to the change.

(8) A delivery of used items to our contracting partner agreed with the latter in an individual case shall only be effected to the exclusion of any warranty for material defects.

(9) The contracting partner is under an obligation to notify us of any recourse claim arising in the supply chain immediately after obtaining knowledge thereof. Statutory rights of recourse on the contracting partner's part against us shall only exist insofar as the contracting partner has not entered into any agreements with its customer which go beyond the statutory claims based on defects.

(10) Warranty claims shall not exist with respect to a slight deviation from the quality agreed, a minor impairment of the usability as well as non-reproducible software errors.

(11) Any more extensive claims or any claims other than those governed by this § 7 on the contracting partner's part against us, our executive bodies, employees or vicarious agents based on a defect shall be excluded.

§ 9 Property Rights

(1) In accordance with § 7 we guarantee that the delivery item is free from any industrial property rights or third-party property rights; yet this guarantee shall be restricted to the country of the place of delivery.

(2) In the event that the delivery item infringes an industrial property right or copyright held by a third party we shall have the choice of altering or exchanging the delivery item at our expense in such a manner that third-party rights are no longer infringed, whereas the delivery item continues to fulfil the functions stipulated in the contract or providing our contracting partner with the usufructuary right by conclusion of a licensing agreement. Should we fail to do so within an appropriate period of time, our contracting partner shall be entitled to withdraw from the contract or reduce the purchase price adequately. Any possible claims for damages on our contracting partner's part are subject to the restrictions of § 10 of these Conditions. The contracting partner shall not have the right to demand a compensation for futile expenditures.

(3) Our obligations specified in the foregoing shall only exist if the contracting partner notifies us immediately and in writing of the claims asserted by the relevant third party, if the former does not recognise such claims and if any defensive measures and settlement negotiations are reserved to us. If the contracting partner discontinues its use of the delivery in order to reduce the damage or for any other valid reasons, the former shall be obliged to draw the third party's attention to the fact that the discontinuation of use does not entail any acknowledgement of an infringement of property rights.

(4) If products of other manufacturers delivered by us cause any infringements of rights, we shall have the choice of asserting our claims towards the manufacturers and upstream suppliers for our contracting partner's account or assigning such claims to the contracting partner. In accordance with § 7 of these Conditions, any claims against us shall only exist in such cases if the judicial enforcement of the above-mentioned claims against the manufacturers and upstream suppliers has been unsuccessful or if it is hopeless, for instance owing to insolvency.

(5) Any claims on the contracting partner's part shall be excluded insofar as it is responsible for the infringement of property rights. Any claims on the contracting partner's part shall also be excluded insofar as the infringement of property rights is caused by specifications made by the contracting partner, by an application which we are unable to foresee or by the fact that the delivery is changed by the contracting partner or if it is used together with products not supplied by us.

§ 10 Liability for Damages Based on Fault

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(1) Our liability for damages, regardless of whatever cause in law, especially from impossibility, default, defective or wrong delivery, breach of contract, infringement of obligations regarding contract negotiations and tort shall, insofar as the cause in question involves fault, be limited in accordance with the following clauses.

(2) We shall not be liable in the event of ordinary negligence on the part of our executive bodies, legal representatives, employees or any other vicarious agents unless such ordinary negligence constitutes an infringement of substantial obligations of the contract.

(3) Insofar as we are liable for damages on the merits, such liability shall be limited to instances of damage which we foresaw as a possible consequence of a breach of contract when the contract was concluded or which we should have foreseen while exercising due diligence. Compensation for indirect damage or consequential damage resulting from defects of the delivery item can only be demanded from us insofar as such cases of damage were typically to be expected during the intended use of the delivery item.

(4) In the event of liability for ordinary negligence, our obligation to compensate for instances of material damage and any further pecuniary loss resulting therefrom shall, unless otherwise agreed, be limited to the amount covered by the product liability insurance of the relevant enterprise of the group which constitutes a party to the contract concluded, even if an infringement of substantial obligations of the contract has been committed.

(5) The aforementioned exclusions and restrictions of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

(6) Insofar as we furnish technical information or act in an advisory capacity and such information or advice is not included in the scope of performance owed by us as stipulated in the contract, this shall be done free of charge and to the exclusion of any liability whatsoever.

(7) The foregoing restrictions shall not apply in the case of mandatory liability, e.g. liability for intentional or grossly negligent conduct, for guaranteed quality features, for injury to life or limb or health, liability pursuant to the Product Liability Act and for an infringement of substantial contractual obligations. Any claim for damages due to an infringement of substantial contractual obligations shall, however, be limited to such instances of damage which are foreseeable and typical of this type of contract unless intent or gross negligence is involved or it is a matter of liability for injury to life, limb or health. The foregoing regulation shall not entail a change in the burden of proof to the contracting partner's disadvantage.

(8) Any claims for damages for the loss of stored data shall be excluded if the loss could have been prevented from occurring by a proper data backup.

§ 11 Reservation of Ownership

(1) The reservation of ownership as hereinafter stipulated shall serve the purpose of securing any of our already existing current and future claims from the supply relationship between the contracting partners including any balance claims from a current account relationship restricted to this supply relationship.

(2) The goods delivered by us shall remain our property until full payment of any secured claims from the business connection with the contracting partner has been effected (hereinafter referred to as "reserved property"). In the event of a default of payment our contracting partner shall be obliged to restitute the reserved property at its expense if so requested by us. The demand for restitution of the reserved property is not accompanied by a withdrawal from the contract unless the withdrawal is explicitly declared in written form.

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(3) Our reserved property must be stored carefully by our contracting partner. In particular, the latter shall insure the reserved property against burglary, theft, damage caused by fire or water as well as any other risks existing with our contracting partner or ensure that such an insurance policy which has already been taken out also covers the reserved property. Our contracting partner even now assigns to us any claims on its insurance company from an occurrence of the insurance contingency regarding our reserved property.

(4) If any third parties lay claim to our reserved property, especially by seizure, our contracting partner shall immediately point out our ownership to them and notify us thereof in order to enable us to assert our property rights. Insofar as the third party in question is not prepared to reimburse us for the legal costs or extra-judicial costs accruing in this connection, our contracting partner shall be liable to us in this respect.

(5) The contracting partner shall be entitled to resell the delivery performances subject to the reservation of ownership in the ordinary course of business. If the contracting partner resells these goods in its turn without receiving the full purchase price in advance or stage by stage against delivery of the purchased item, the former shall have to agree a reservation of ownership with its customer in accordance with these Conditions. The contracting partner even now assigns its claims from such a resale as well as the rights from the reservation of ownership agreed – in the case of co-ownership of the reserved goods proportionally to the co-owner's share – to us. We authorise our contracting partner to collect the claims assigned to us in its own name, with this authorisation being subject to revocation. We shall only be entitled to revoke this authorisation for collection in the event of realisation.

At our request, the contracting partner shall be obliged to notify the purchasers of the assignment and furnish us with any information or documents necessary for the assertion of our rights towards the purchasers. The contracting partner shall only be authorised to collect the claims from the resale despite the assignment as long as the former duly fulfils its obligations towards us.

(6) If the reserved property is processed, combined or mixed by our contracting partner, it is agreed that the process, combination or mixture (hereinafter referred to as "process") shall be effected on our behalf and for our account as manufacturer and that we shall immediately acquire ownership or – if the process involves materials from several owners or if the value of the processed object exceeds the value of the reserved goods – co-ownership (severalty) of the newly created object in proportion of the value of the reserved goods to the value of the newly created object. The value at the time of process shall be authoritative. In the event that no such acquisition of ownership should occur on our part, the contracting partner even now assigns to us its future ownership or – in the aforementioned proportion – its co-ownership of the newly created object by way of security. If the reserved goods are combined with other objects to form a unified object or if they are inseparably mixed and if one of the other objects must be regarded as the main constituent, our contracting partner shall, insofar as the latter owns the main constituent, assign co-ownership of the unified object to its purchaser/customer only on a pro rata basis in the proportion described in sentence 1. If the contracting partner combines or mixes the reserved property with an object owned by a third party in return for payment, the former shall even now assign its claim for remuneration against such a third party to us.

(7) We shall release the reserved goods as well as the objects or claims taking their place at our contracting partner's request and discretion insofar as their value exceeds the value of the secured claims by more than 50%.

(8) If the contracting partner's conduct is not in conformity with the contract, particularly in the event of a delay or default in payment as well as of a petition for the commencement of insolvency proceedings against the contracting partner's assets or in the case of dismissal of such proceedings for lack of assets, the contracting partner shall be obliged to reconstitute the reserved performances at our request, with any rights of retention being excluded.

The delivery performance shall then be subject to our unrestrained power of exploitation. If the contracting partner has been provided with software, any rights of use and utilisation granted to the former within the bounds of the contract shall expire in such a case.

§ 12 Auxiliary Means for the Execution of Orders

(1) If we make any (auxiliary) models, moulds, tools etc (hereinafter referred to as "tools") within the framework of the performance commissioned, they shall not form part of the order performance, but remain our property unless otherwise agreed in writing.

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(2) After acceptance of the performance commissioned by the contracting partner we shall keep the same for a period of three (3) years without prejudice. After expiry of this time limit we shall have the right to scrap the tools unless we have expressly agreed a further storage of the tools or a transfer of ownership of the tools against payment of an adequate remuneration with the contracting partner in writing.

(3) The safekeeping period for the customer's property with respect to the contracting partner's moulds and tools shall not end any later than 3 years after execution of the order. After expiry of this period we shall be entitled to scrap the tools unless we have expressly agreed a further storage of the tools or a return of the tools against payment of an adequate remuneration with the contracting partner in writing.

§ 13 Software

(1) Insofar as data processing programs (hereinafter referred to as "software") are included in our scope of delivery, we shall grant to our contracting partner a non-transferable and non-exclusive right to use such software, with this right being limited in time pursuant to the regulations of the scope of delivery.

(2) The use comprises the complete and partial inputting of data (copying) of the software and the data stock as well as the creation of further copies of such material in machine-readable form insofar as this is necessary for the use stipulated in the contract. Our contracting partner may combine the software provided with other data processing programs. However, the former shall not be permitted to effect any changes or rearrangements to the software.

(3) Any sublicensing shall be inadmissible. The protective notices, copyright notices and any other legal reservations must not be changed in any manner.

§ 14 Inventions

(1) If any inventions arise within the framework of contractual collaboration which may lead to industrial property rights, the party whose employees or authorised agents made the invention shall exclusively be entitled to lodge applications for property rights. The parties shall inform each other of relevant invention reports and planned applications for property rights. Should the party which possesses the rights in the invention not envisage an application for property rights itself, the parties shall come to an understanding about a possible transfer of the rights in the invention.

(2) If inventions are made within the framework of contractual collaboration which involve employees or authorised agents of several parties (hereinafter referred to as "joint invention"), it shall be agreed separately in each individual case which of them should lodge possible applications for property rights and where such applications should be lodged. Such an application can also be lodged jointly; in this case, the costs shall be borne by the parties involved proportionally to each party's contribution to the invention. In the event of joint inventions or common property rights and/or copyrights, each party shall be entitled to renounce its contribution in favour of the other party at all times. The renouncing party shall take any precautions and measures on time in order to enable the other party to safeguard its interests.

(3) Should any party intend to abandon a property right within the meaning of subsection (1) or (2) (alternative 1) or transfer the same to a third party (alternative 2), the former shall have to notify the other parties thereof without delay. The respective other party shall have the right to an assumption free of charge (with respect to alternative 1) or the right of first refusal (with respect to alternative 2).

§ 15 Transfer of Rights and Obligations

Subject to any statutory provisions concerning the admissibility of prohibitions of assignment the transfer of rights and obligations requires our written consent to be legally effective.

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§ 16 Applicable Law; Interpretation of Clauses

(1) In addition to these Conditions, the law of the Federal Republic of Germany shall exclusively apply, with the provisions of the Convention on Contracts for the International Sale of Goods (UN Sales Law) and the conflict of law rules under private international law being excluded.

(2) Clauses customary in commerce shall be construed in accordance with the latest version of the Incoterms.

§ 17 Other

(1) Unless otherwise agreed in writing, the place of performance is 96215 Lichtenfels/Germany.

(2) The exclusive venue for any disputes concerning legal relations between the contracting partner and our company within the territory of the Federal Republic of Germany shall be, at our option, Coburg or our contracting partner's head office. Mandatory statutory provisions about exclusive legal venues shall remain unaffected by this regulation.

Any disputes with contracting partners concerning legal relations outside the territory of the Federal Republic of Germany shall be arbitrated in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) by means of a final decision to be pronounced by one or several arbitrators appointed in compliance with the aforementioned rules and without any possibility of resort to the general courts of law. The parties may agree that different rules of arbitration be applied. The place of the arbitration proceedings is Frankfurt am Main. The language used for the arbitration proceedings is – at the principal's discretion – German or English. The arbitration proceedings are subject to the German Law of Civil Procedure insofar as the arbitration rules do not contain anything to the contrary.

(3) Our contracting partners are hereby advised that we store data from the contractual relationship in accordance with § 28 Bundesdatenschutzgesetz (BDSG / Federal Data Protection Act) for the purpose of data processing and that we reserve the right to convey such data to third parties (e.g. insurance companies) insofar as this is necessary for the fulfilment of the contract.

(4) Insofar as the contract or these Conditions contain any regulatory gaps, those legally effective regulations which the contracting partners would have agreed on the basis of the economic objectives of this contract and the purpose of these Conditions if they had been aware of the relevant regulatory gap shall be deemed to have been agreed to fill such gaps.

(5) Any legal inoperativeness of a part of the agreements made between the parties shall not affect the operativeness of the General Terms and Conditions of Delivery or of the other agreements made between the parties. Any inoperative provisions shall be replaced by such provisions which come closest to the originally intended purpose in a legally admissible fashion.