

**General Terms and Conditions (Sale and Purchase)**  
**DS Produkte GmbH, Stormarnring 14, D-22145 Stapelfeld**

- I. The following General Terms and Conditions for Sale (A.) or Purchase (B.) apply to all contracts concluded with our contractual partner (Buyer or Seller), including any ancillary agreements, provided that he is an entrepreneur and concludes the contract in the exercise of his commercial or independent professional activity (§ 14 BGB).
- II. They shall also apply to future business relations, even if we do not expressly refer to them again.
- III. In addition, the INCOTERMS shall apply in the version valid at the time of conclusion of the contract.
- IV. Deviating conditions of the contractual partner are non-binding for us, even if we have not expressly objected to them, unless they are expressly acknowledged by us.
- V. The unconditional acceptance or delivery of the goods or services by us in the knowledge of conflicting terms and conditions shall not constitute an acknowledgement of conflicting terms and conditions.
- VI. Individual agreements made in individual cases with the contractual partner (including collateral agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation. Legally relevant declarations and notifications to be made to us after conclusion of the contract (e.g. setting deadlines, notifications of defects, withdrawal or reduction) must be made in writing in order to be effective.
- VII. If written form is provided for in these General Terms and Conditions, this shall also be observed for transmission by telefax or electronic data transmission.
- VIII. The relations between us and the contractual partner are subject to the law of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) as well as other, including future, intergovernmental or international agreements shall not apply, even after their adoption into German law.
- IX. The place of jurisdiction for all disputes in connection with the transaction shall, at our discretion, be Hamburg or the domicile of the contractual partner, for actions of the contractual partner exclusively Hamburg. Legal regulations concerning exclusive competences remain unaffected.
- A. Conditions of sale**
- A.1 Information and advice, documents**
- (1.1) Information and advice regarding our products shall be provided on the basis of our previous experience. The values stated here, in particular with regard to the possible applications of the goods, are only average values and do not represent any indication of the quality of the goods. We do not assume any obligation to adhere precisely to the values and possible applications unless these have been expressly agreed as binding. Should the purchaser nevertheless be entitled to claims for damages, **Clause A. 7** shall apply.
- (1.2) All documents and objects, such as drawings, samples or models, which we make available to the Buyer in connection with our offers, shall remain our property and shall be returned upon request. We reserve all existing copyrights and related industrial property rights. The purchaser shall not be entitled to disclose the documents made available to him to third parties without our prior written consent. A right of retention of the buyer in these documents is excluded.
- A.2 Conclusion and content of the delivery contract**
- (2.1) Our offers are always subject to change, unless we specify a binding validity period for us. We can accept orders within 14 days of receipt.
- (2.2) A delivery contract shall only be concluded if we expressly confirm the Buyer's order in writing or effect delivery without separate confirmation. The content of the delivery contract shall be governed by our order confirmation including any attached attachments, unless the Buyer has objected in writing to the content of the order confirmation immediately, at the latest within one week of receipt. We will inform the buyer of this separately when the order confirmation is sent. If delivery is made without a separate order confirmation, our delivery note shall be deemed to be the order confirmation. Dates and places for services are only binding if they have been confirmed by us. Incorrect and incomplete information in the order as well as transmission errors are at the expense of the buyer.
- (2.3) All information on our goods, in particular the illustrations, quality, colour, quantity, weight, measurement and performance information contained in DS' offers and printed matter, are approximate values only within the scope of the tolerances customary in the industry and do not constitute quality information.
- Insofar as no limits are specified in the order confirmation for admissible deviations and no deviations result from expressly recognised customer specifications, deviations customary in the industry are admissible in any case. The quality, suitability, qualification and function as well as the purpose of use of our goods are exclusively determined by our performance descriptions and technical specifications. Public statements, price quotations or advertising by us or third parties do not constitute a description of the quality of the goods.
- (2.4) The buyer shall not receive any guarantees from us regarding the quality or durability of the goods (§ 443 BGB) unless they are expressly identified as such in the order confirmation; the same shall apply to the assumption of a procurement risk.
- (2.5) When samples or specimens are supplied, their quality is not guaranteed unless this has been expressly agreed. The same shall apply mutatis mutandis to the information provided by analyses.
- (2.6) We reserve the right to make any necessary changes in consultation with the purchaser. If the place of delivery is subsequently changed by the buyer, he shall bear the resulting costs.

### **A.3 Delivery / transfer of risk**

- (3.1) The delivery periods and dates stated by us are only approximate unless they are expressly designated as fixed in the order confirmation. Two (2) weeks after expiry of these non-binding delivery periods and dates, the Buyer may set us a reasonable deadline for delivery in writing. We shall not be in default until the grace period has expired, unless we are not responsible for the non-performance.
- (3.2) Under no circumstances shall delivery periods begin to run before the buyer has provided the documents or permits to be procured by him, or after receipt of any agreed deposit, letters of credit or bills of exchange and clarification of all questions still open at the time of conclusion of the contract. Delivery dates shall be postponed accordingly.
- (3.3) In the event of delay in delivery or impossibility of performance, we shall only be liable for claims for damages in accordance with **Clause A.7**.
- (3.4) In the event of force majeure, such as war, transport or operational disruptions, industrial disputes, foreign exchange impediments or other delivery impediments beyond our control, as well as in the event of non-delivery, incorrect or delayed delivery by the upstream supplier for which we are not responsible (self-supply reservation), and in the event of other performance impediments for which we are not responsible, we may postpone delivery for the duration of the impediment and a reasonable start-up period. If the hindrance is expected to be permanent or to last longer than four months, we shall be entitled to withdraw from the contract in whole or in part, without prejudice to any statutory rights of withdrawal of the contractual partners. In this case, the purchaser shall not be entitled to any claims for damages against us. He shall not be obliged to provide the consideration and shall retain the advance payment made by him.
- (3.5) We shall be entitled to make partial deliveries if (a) the partial delivery can be used by the Buyer within the scope of the contractual purpose, (b) the delivery of the remaining ordered goods is ensured and (c) the Buyer does not incur any substantial additional expenses or costs as a result thereof (unless we agree to bear these costs).
- (3.6) The place of performance shall always be Stapelfeld.
- (3.7) If delivery on demand has been agreed, the requests must be made within three months of conclusion of the contract, unless otherwise agreed. If the delivery is not requested in due time, **Clause A.3.9** shall apply accordingly.
- (3.8) All sales are ex works Gallin. Shipment and transport shall always be at the risk of the buyer. The risk shall pass to the purchaser, even in the case of partial deliveries, as soon as the consignment has been handed over to the person carrying out the transport - irrespective of whether it is a person belonging to us or a third party - or has left our works for the purpose of dispatch, unless **Clause A.3.9** applies.
- (3.9) If the purchaser refuses to accept the goods or if the dispatch of the delivery is delayed for other reasons which lie with the purchaser, the transfer of risk shall take place at the beginning of the purchaser's default of acceptance. Storage costs after transfer of risk shall be borne by the purchaser. During the buyer's

default of acceptance, we shall only be liable for intent and gross negligence. Any further claims for reimbursement of expenses or claims for damages by us shall remain unaffected by this.

- (3.10) In the case of FOB deliveries, the date of arrival of the delivery item corresponding to the arrival stamp of the pre-carriage document at the port of loading shall be decisive for compliance with the delivery period.
- (3.11) If the buyer is in delay with a service to be rendered by him, we may withdraw from the contract after expiry of a grace period set by us or, at our discretion, demand damages instead of performance. There is no need for a threat of rejection when setting a grace period. If the delivery is part of the service owed by us, the buyer must create the necessary conditions for this. Unloading must be able to take place immediately and without risk. As long as these conditions are not met, we shall not be obliged to perform and the buyer shall be liable for all damages arising therefrom.
- (3.12) The persons signing the delivery note are deemed to be authorized for acceptance and confirmation of receipt. Furthermore, the delivery/variety list shall be deemed acknowledged by signing the delivery note.

### **A.4 Prices/ Payment**

- (4.1) Our prices include standard packaging and do not include the respective statutory value added tax. All shipping costs shall be borne by the purchaser unless otherwise agreed. The freight tariffs, customs rates and other fees applicable on the day of delivery shall apply.
- (4.2) The buyer can only offset our claims or assert a right of retention if the counterclaims or the right of retention of the buyer are undisputed, recognised or legally established. In the event of defects in the delivery, the purchaser's counter rights shall remain unaffected. The purchaser is not entitled to assign claims from this contract to third parties without our written consent.
- (4.3) Unless otherwise agreed, invoices shall be payable immediately and without deduction. The payment obligation shall not be fulfilled until the amount is freely available to us.
- (4.4) Irrespective of the term of bills of exchange accepted on account of performance, our claims shall become due immediately if contractual agreements have been seriously violated by the purchaser and the purchaser is responsible for this. In the event of delay of payment, bill protest and suspension of payment by the purchaser, we may demand immediate payment of the entire amount due - including any claims arising from bills of exchange in circulation - irrespective of the agreed due date. This shall also apply if we become aware of circumstances which give rise to justified and considerable doubts as to the solvency or creditworthiness of the purchaser, even if these circumstances already existed when the goods were ordered but were not known to us or had to be known to us. In all cases mentioned, we are also entitled to make outstanding deliveries only against advance payment or security and, if the advance payment or security is not made within two (2) weeks, to withdraw from the contract without

setting a new deadline. Further claims remain unaffected.

- (4.5) The stated prices are based on the material costs valid at the time of order confirmation. If the delivery or service is to take place more than four months after conclusion of the contract, we shall be entitled to adjust the prices accordingly in the event of changes to this cost basis between order confirmation and the agreed delivery date, provided this does not lead to a higher profit margin. We will prove the changes of the cost basis to the buyer upon request. If this leads to a price increase of at least 5%, the buyer may withdraw from the contract. Withdrawal must be declared in writing immediately after notification of the price increase, otherwise the withdrawal has no effect. Furthermore, it shall have no effect if we declare immediately after receipt of the withdrawal that we insist on the execution of the contract at the originally agreed prices.

In the case of a continuing obligation, a price adjustment in accordance with this **Section A. 4.5** can also be made if the delivery or service is to take place within four months of conclusion of the contract.

- (4.6) In the case of deliveries and services within the EU, the buyer must inform us of the respective sales tax ID number under which he conducts the purchase tax within the EU before carrying out the turnover. In the case of deliveries and services from the Federal Republic of Germany outside the EU which have not been carried out and arranged for by us, the purchaser must provide us with the export certificate required for tax purposes. If the proof is not provided, the buyer must additionally bear the value added tax incurred for the deliveries or services in Germany.

#### **A.5 Reservation of title**

- (5.1) All delivered goods remain our property (reserved goods) until the buyer has settled all existing claims and claims arising after conclusion of the contract.
- (5.2) The buyer shall take care of the reserved goods on our behalf and treat them with care. Upon request, we shall be given the opportunity at any time to take stock of the goods at the place of storage and to mark them adequately. The purchaser must inform us immediately of any attachments or other impairments of our rights by third parties, stating all details which enable us to take all legal action against them. The buyer shall bear all necessary costs which must be incurred for the removal of the access or for the replacement of the reserved goods, unless they can be collected from third parties.
- (5.3) The buyer may only sell the reserved goods in the ordinary course of business at his normal terms and conditions to the extent drawn by us if it is ensured that his claims from the resale are transferred to us in accordance with **Clause A. 5.4**.
- (5.4) The purchaser hereby assigns to us all claims arising from the resale of the reserved goods, also within the scope of contracts for work and services or contracts for the delivery of movable goods to be manufactured or produced, including all ancillary rights; we accept this assignment. To the same extent, they serve as security for the reserved goods.
- (5.5) If the purchaser sells the reserved goods together with other goods not supplied by us, the assignment

of the claim from the resale shall only apply to the amount of the invoice value of the reserved goods at the time of delivery. If the assigned claim is included in a current account, the purchaser hereby assigns to us a part of the balance corresponding to the amount of this claim, including the final balance from the current account.

- (5.6) Until revoked, the purchaser is entitled to collect claims from the resale in accordance with Sections **A.5.3 to A.5.5**.

- (5.7) If the buyer does not fulfil his obligations under this contract or other contracts with us, if he is in particular in default of payment or if we become aware of circumstances which reduce his creditworthiness, we may:

(a) prohibit the resale of the reserved goods;

(b) withdraw from this contract in accordance with the general rescission rules; then the buyer's right to possession of the reserved goods lapses and we can demand the return of the reserved goods;

(c) demand the disclosure of the names of the debtors of the claims assigned to us so that we can disclose the assignment and collect the claims; all proceeds due to us from assignments shall be forwarded to us immediately upon receipt if and as soon as claims on our part against the purchaser are due;

(d) to revoke the direct debit authorisation granted.

- (5.8) If the realisable value of the securities to which we are entitled exceeds the claims by more than 10% in total, we shall be obliged to release securities of our choice at the Buyer's request.

#### **A.6 Obligation to examine and give notice of defects / liability for defects / statute of limitations**

- (6.1) Even if samples or specimens have been sent beforehand, the Buyer shall carefully inspect the delivered goods immediately upon arrival at the place of destination. In particular, the quality and quantity of the goods shall be inspected.
- (6.2) If boxes, cartons or other containers are delivered, meaningful random samples shall be taken. The delivery shall be deemed approved if we do not receive a written notice of defect within ten (10) days after receipt of the goods at the place of destination, or if the defect was not recognizable during the inspection, within ten (10) days after its discovery with an exact description of the defect. Notifications of defects shall always be addressed to us directly.
- (6.3) Transport damage must be reported to the freight forwarder immediately.
- (6.4) In the event of justified and timely notification of defects, we shall, at our discretion, provide subsequent performance by subsequent improvement or replacement delivery.
- (6.5) If the supplementary performance or replacement delivery fails, the purchaser may demand a reduction of the purchase price or rescission of the contract. In the case of only minor defects, the purchaser shall not be entitled to withdraw from the contract.
- (6.6) If a defect occurs not only in isolated cases but in a large number of the products supplied by us, the

following shall apply: Before the purchaser acknowledges or fulfils a claim for defects asserted by his customer (including reimbursement of expenses pursuant to §§ 445a I, 439 II and III BGB), he shall notify us and request a written statement, briefly explaining the facts of the case. If the Buyer violates this obligation, any claim for reimbursement of expenses by the Buyer shall be reduced accordingly if this has caused disproportionate costs (e.g. handling costs for returns).

**(6.7)** Prior to our claim, the purchaser is obliged to first pursue all possible claims against our suppliers. For this purpose, we undertake to assign to the Buyer any claims for defects and replacement to which we are entitled against our suppliers. The purchaser is not obliged to pursue the claims in court. If the claim against our supplier remains unsuccessful, the buyer is entitled to claim against us in accordance with these conditions, provided that he transfers the claims assigned to him back to us.

**(6.8)** Warranty claims of the purchaser shall become statute-barred within one year of delivery of the goods. This shall not apply if we can be accused of fraudulent intent or for our mandatory liability for damages in accordance with **Clause A.7**. Agreements between the purchaser and his customers which go beyond the statutory warranty claims shall not be at our expense.

**(6.9)** The above provisions conclusively contain the warranty for our goods. In particular, we shall be liable for all other claims for damages to which the purchaser may be entitled due to or in connection with defects in the delivered goods, irrespective of the legal basis, exclusively in accordance with **Clause A.7**.

#### **A.7 Liability for damages**

**(7.1)** Claims for damages on the part of the purchaser, irrespective of the legal basis - e.g. delay, defective delivery, breach of duties arising from a debt relationship or duties in contract negotiations, tort, product liability - are excluded unless liability is mandatory; this is e.g. the case of injury to life, body or health as well as in the case of intent, gross negligence or breach of essential contractual obligations, the fulfilment of which is a prerequisite for the proper execution of the contract and the observance of which the customer may regularly rely on, by us, our legal representatives or vicarious agents, in addition in the case of liability under the Product Liability Act or insofar as we have expressly given a guarantee (§ 443 BGB) in writing for the availability of an item or have assumed a procurement risk. This does not imply a change in the burden of proof to the disadvantage of the purchaser.

**(7.2)** Our liability in case of gross negligence as well as in case of negligent violation of essential contractual obligations is limited to the foreseeable damage typical for the contract (in case of simple negligence our liability is otherwise excluded according to **Clause A. 7.1**).

**(7.3)** In the event of gross negligence on the part of simple vicarious agents, our liability shall be excluded unless we are responsible for any organisational fault.

**(7.4)** In particular, we shall not be liable for damages resulting from improper operation of the subject matter of the contract by the purchaser or his customer.

**(7.5)** Insofar as our liability is limited in accordance with the above provisions, this shall also apply to the personal liability of our employees, workers, co-workers, representatives and vicarious agents.

**(7.6)** The purchaser is obliged to notify us immediately in writing of any damage or loss for which we are liable.

**(7.7)** With regard to the prior assertion of claims for damages against our suppliers due to defects, **Clause A.6.7** shall apply.

**(7.8)** **Clause A.6.8** shall apply mutatis mutandis to the limitation of claims for damages on the part of the purchaser due to defects.

## **B. Conditions of purchase**

### **B.1. Orders**

**(1.1)** Purchase contracts are only concluded upon receipt of the valid order confirmation of the seller or upon acceptance of the delivery by us. If the order confirmation is not sent within 14 days of the date of the order letter, it shall be deemed a new offer requiring our written acceptance. Our order shall be decisive for the content of the purchase contract, including all associated attachments, documents, drawings and plans, unless the parties have agreed otherwise.

**(1.2)** If the content of the order confirmation deviates from the content of the order, the Seller must expressly and separately point out a deviating acceptance of the conclusion of the contract. In this case, a contract is only concluded with our written consent. We reserve the right to make any necessary changes after conclusion of the contract, also with regard to the place of delivery, in consultation with the seller.

**(1.3)** If the purchase price is not fixed in our order, the seller must inform us of the price at the latest with the order confirmation. The contract is only concluded with our written confirmation at the stated price.

### **B.2 Prices**

The purchase prices are understood as fixed prices net-to, plus the statutory value-added tax, free domicile (DDP) of the receiving point named by us. Unless otherwise agreed, they shall include customary packaging, carriage and storage charges as well as any customs duties. The shipping costs shall in any case be borne by the Seller, even if we require a special mode of shipment. The Seller shall also be liable for increased costs and damage to the goods caused by improper packaging after delivery.

### **B.3 Delivery / contractual penalty in case of delay in delivery**

**(3.1)** The place of performance shall be the place of receipt specified by us; transport or shipment shall be at the risk of the Seller.

**(3.2)** Agreed dates and periods shall be binding; if delivery periods are stated, they shall commence from the

- date on which the order is placed. Decisive for compliance is the receipt of the goods at the named place of receipt. If the delivery has not been agreed "free domicile" (DDP) of the named receiving point, the seller must inspect the goods in good time, taking into account the usual times for loading and dispatch. Delivery dates set for call-off deliveries are binding according to the same principles if the seller does not object to them immediately.
- (3.3) If over-deliveries are not agreed, we shall be entitled either to accept the over-delivered goods with the corresponding value date of the invoices or to store them at the expense of the Seller until they are collected by the Seller or to return them at the Seller's expense. If and to the extent that the dimensions and weights of the goods exceed the specifications made in the offer, the Seller shall be liable for all additional costs, e.g. freight or customs duties.
- (3.4) The seller is not entitled to deliver to us before the agreed delivery time. If he nevertheless delivers before the agreed time, we shall be entitled to store the delivery at the Seller's expense until the agreed delivery time or to return it at the Seller's expense.
- (3.5) If the Seller does not fulfil his obligations within the agreed time, he shall be liable in accordance with the statutory provisions, unless otherwise provided below. We accept partial deliveries only after express agreement.
- (3.6) In the event of delay on the part of the Seller, we shall be entitled to demand a contractual penalty of 0.5 % of the net price (delivery value) for the first week commenced of the delay, of 1 % for each additional week commenced, but no more than a total of 5 % of the delivery value, offset against any further claims for damages. If the delay exists only with regard to part of the goods, the contractual penalty shall be proportionate to the delivery value for the untimely partial delivery.
- (3.7) Expected delays in delivery or a possible failure to deliver in whole or in part shall be notified immediately by the Seller, stating the reasons and the alleged duration of the delay, without prejudice to any rights we may have due to the delay.
- (3.8) If we accept a delayed delivery, we shall be entitled to assert the contractual penalty specified in **Clause B.3.6** until final payment, even if we have not expressly reserved the right to do so upon acceptance of the goods.
- (3.9) If dates or deadlines cannot be met due to the occurrence of force majeure, such as war, transport or operational disruptions, industrial disputes, foreign exchange hindrances or other delivery obstacles beyond our control, we shall be entitled to demand performance at a later point in time without the Seller incurring any claims for damages. If the impediment is not only a temporary impediment to performance or lasts longer than one (1) month as a result of force majeure, we shall be entitled to rescind the contract without the Seller incurring any claims for damages; notwithstanding any statutory rights of the parties to rescind the contract. If the seller asserts force majeure for delays in delivery, he must provide suitable evidence for this.
- (3.10) The Seller shall send a dispatch notification by e-mail for each individual consignment on the day of dispatch. The deliveries themselves must be accompanied by a delivery note in duplicate, stating our order number. If applicable, the Seller shall also observe the delivery guidelines provided to him by us.
- (3.11) Without our express written consent, the Seller may not transfer any rights arising from this contract to third parties.
- (3.12) The transfer of ownership of the goods to us must take place unconditionally and regardless of the payment of the purchase price. An extended and extended retention of title by the seller - in particular the retention of title to the delivered goods until full payment of all claims arising from the entire business relationship - is excluded. In particular, no processing within the meaning of § 950 BGB shall take place for the seller.
- (3.13) Acceptance of the goods does not constitute recognition of a retention of title declared by the seller.
- (3.14) If several sellers have undertaken together to deliver the goods, they shall be jointly and severally liable for the proper delivery of the goods. Our performance shall be made to each of them with effect for and against all of them. All sellers hereby grant each other power of attorney to accept all our declarations of intent relating to the purchase.
- (3.15) The Seller undertakes to inspect the goods before dispatch and to inspect their contractual nature. The inspection results must be documented in writing and stored. We have the right to unrestricted inspection of these documents.
- B.4 Payment**
- (4.1) Invoices shall be payable at our discretion either within 20 days less 3% discount or on the last day of the month following the month in which the invoice was issued. The payment period shall not commence until the goods have been received in accordance with the contract, including proper delivery notes and invoices. Invoices shall be submitted to us in duplicate stating their order number and must otherwise be presented in accordance with the contractual and respective statutory provisions. We are not responsible for any consequences resulting from non-compliance with this obligation (e.g. delays in payment).
- (4.2) The time of payment has no influence on our claims for defects and on the right of complaint. In the event of faulty delivery, we shall be entitled to withhold payment proportionally until proper fulfilment (see also **Section B.11.**).
- (4.3) The Seller shall have a right of set-off or retention only on the basis of legally established, undisputed or acknowledged counterclaims.
- B.5 Quality assurance**
- (5.1) The delivered goods must comply with the statutory provisions applicable in Germany and the European Union as well as in the country of destination specified by us, the regulations and guidelines of authorities, professional associations and trade associations, the latest state of the art as well as the

characteristics and quality requirements specified in the order.

(5.2) The seller is obliged to inform us in writing of any restrictions on use and declaration obligations for the delivered goods in Germany and, if applicable, in the country of destination indicated.

(5.3) In the case of the delivery of fruits, raw materials, derivatives and other substances as well as packaging which are subject to food law requirements, the seller guarantees in particular that these are customary in the trade and not harmful to health at the time of delivery and comply with food law requirements.

#### **B.6 Defective Delivery / Warranty / Statute of Limitations**

(6.1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller, unless otherwise specified below.

(6.2) In all cases, the obligation to investigate and notify defects begins when the delivery has been received at the destination specified in the order and proper documents are available. In the case of obvious defects, we shall be entitled to lodge complaints within 10 working days of receipt of the goods; in the case of hidden defects, we shall be entitled to lodge complaints within 10 working days of discovery of the defect.

(6.3) At our request, the Seller shall be obliged to sort out the defective goods in the event of delivery of defective goods and, at our discretion, to remedy the defect or make a subsequent delivery within a reasonable period set by us. In this case, the Seller shall be obliged to bear all expenses necessary for this purpose. If subsequent performance fails, is unreasonable for us or the same goods are delivered again incorrectly, we shall be entitled to reduce the purchase price or withdraw from the contract, even if the scope of delivery has not yet been fulfilled.

(6.4) Subsequent performance shall also include the removal of the defective goods and their reinstallation if the goods have been installed in another item or attached to another item in accordance with their type and intended use; our statutory claim for reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses required for the purpose of testing and subsequent performance even if it turns out that no defect actually existed. Our liability for damages in the event of an unjustified demand for the removal of defects shall remain unaffected; in this respect, however, we shall only be liable if we have recognised or grossly negligently failed to recognise that no defect existed.

(6.5) In urgent cases or in the event of imminent danger, we shall be entitled to remedy the defect ourselves and to demand compensation from the Seller for the expenses objectively required for this purpose. The Seller shall be notified immediately, if possible in advance, of any such self-actment. The right of self-remedy does not exist if the seller would be entitled to refuse a corresponding supplementary

performance in accordance with the statutory provisions.

(6.6) The warranty claims for material defects expire three (3) years after delivery of the ordered goods. The warranty period for replaced and repaired parts shall commence again in the event of a replacement delivery and rectification of defects, unless we had to assume, according to the conduct of the supplier, that he did not consider himself obliged to take the measure, but only carried out the replacement delivery or rectification of defects as a gesture of goodwill or similar reasons.

(6.7) The three-year limitation period in accordance with Clause A.6.6 shall also apply mutatis mutandis to claims arising from defects in title, whereby the statutory limitation period for material claims for surrender by third parties (§ 438 I no. 1 BGB) shall remain unaffected; claims arising from defects in title shall in no case become statute-barred, moreover, as long as the third party can still assert the right against us, in particular in the absence of a limitation period.

(6.8) Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law on sales in individual cases leads to a longer limitation period.

(6.9) The seller is liable for incorrect or incomplete information in his offers or brochures.

#### **B.7. supplier recourse**

(7.1) Our legally determined recourse claims within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) are entitled to us without restriction in addition to the defect claims. In particular, we shall be entitled to demand from the Seller exactly the type of subsequent performance (rectification of defects or replacement delivery) which we owe to our customer in individual cases. Our statutory right of choice (§ 439 I BGB) is not restricted by this.

(7.2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 445a I, 439 II and III BGB), we shall notify the seller and request a written statement, briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the seller shall be responsible for providing proof to the contrary.

(7.3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

#### **B.8 Liability for damages / indemnification / insurance**

(8.1) Unless otherwise stipulated in these Terms and Conditions, the Seller shall be liable to us without limitation for damages in accordance with the statutory provisions.

(8.2) If the seller is responsible for a product damage, he shall indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organisation and he himself is liable in the external relationship. This also applies to strict liability, e.g. under the Product Liability Act. For this indemnity, the seller must provide appropriate insurance.

(8.3) Within the scope of his obligation to indemnify, the Seller shall reimburse expenses pursuant to §§ 683, 670 BGB which arise from or in connection with any claims made against third parties, including recall actions carried out by us. As far as possible and reasonable, we shall inform the Seller of the content and scope of any countermeasures and give him the opportunity to comment. Further legal claims remain unaffected.

(8.4) We shall have the right to conclude settlements with third parties; the seller's obligation to pay compensation shall remain unaffected as long as such settlements were required by commercial law.

#### **B.9. Defects of title**

(9.1) The seller is liable for defects in title, in particular because of the liability of the delivered goods with any trademark rights or other industrial property rights of third parties. He shall indemnify us and our customers against all claims arising from defects of title in the use of the delivered goods in accordance with the contract.

(9.2) In particular, the Seller shall reimburse us for all costs resulting from the claim. These costs include, for example, without being limited to, the lawyer's fees incurred for the necessary defence, which may, if necessary, also exceed the statutory fees pursuant to the German Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz - RVG).

(9.3) The contracting parties undertake to inform each other immediately of any infringement risks and infringement cases.

#### **B.10. Use of confidential information**

(10.1) All information associated with our order and resulting from the course of business may only be used for purposes other than our order with our prior written consent. They shall be treated with absolute confidentiality even after the execution of the order.

(10.2) If the Seller discloses our information to his subcontractors with our prior written consent, he shall bind them accordingly.

(10.3) Commercial and technical details which have become publicly known are excluded from the obligation to maintain secrecy.

#### **B.11. Right of retention**

(11.1) We shall be entitled to set-off and retention rights as well as the plea of non-performance of the contract to the statutory extent. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective services against the seller.

(11.2) If payments prior to delivery of the goods have been specifically agreed, the Seller shall be obliged, upon request, to provide first-class security to the amount

of these payments. We may retain payment until this obligation has been fulfilled.

(11.3) We shall be entitled to rescind the contract if, after conclusion of the contract, we become aware of circumstances which result in the credit unworthiness of the seller.

#### **B.12. Minimum wage**

(12.1) When performing the services, the Seller warrants to comply with all obligations incumbent upon him under the Minimum Wage Act, in particular to pay to employees employed in Germany at least one wage in the amount of the minimum wage pursuant to § 1 MiLoG no later than the respective due date.

(12.2) Furthermore, the Seller warrants that it will only employ subcontractors (including rental companies) who, for their part, comply with the obligations incumbent upon them under the Minimum Wage Act and, in particular, will pay their employees employed in Germany at home at least one wage in the amount of the minimum wage pursuant to Section 1 MiLoG no later than the respective due date. This and all subsequent subcontractor regulations shall apply mutatis mutandis to any subcontractor chain.

(12.3) The Seller undertakes to inform us immediately if an employee appointed for us - be it an employee of his own, be it an employee of a subcontractor - asserts claims under the Minimum Wage Act or if administrative offence proceedings are initiated against the Seller or a subcontractor pursuant to § 21 MiLoG.

(12.4) In the event that we are held liable pursuant to § 13 MiLoG or a fine proceeding is initiated pursuant to § 21 (2) MiLoG, the Seller shall indemnify us against all related costs (including reasonable legal defence costs and any fines imposed).

(12.5) Insofar as the Employee Secondment Act is relevant, paragraphs 1 to 4 shall apply mutatis mutandis.

(12.6) We shall be entitled to terminate the contractual relationship with the Seller without notice within two weeks of gaining knowledge if the Seller or a subcontractor violates the provisions of the Minimum Wage Act; we shall not be liable to the Seller for damages as a result thereof.

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