

General Terms and Conditions of Purchase and Delivery of Horst Bode Import-Export GmbH for Business to Business (status July 2024)

Art. 1 Scope

(1) These General Terms and Conditions of Purchase and Delivery (hereinafter referred to as “General T&Cs of Purchase”) of Horst Bode Import-Export GmbH (hereinafter referred to as “Purchaser” or “we/us”) apply exclusively with respect to businesses within the meaning of Section 14 of the German Civil Code (hereinafter referred to as “BGB”) i.e. natural persons or legal entities, that, in respect of the sale of goods, are acting in the performance of their commercial or independent professional activities (hereinafter referred to as “Supplier” or “you”).

(2) The General T&Cs of Purchase apply exclusively. We do not recognise conflicting or different terms and conditions of the Supplier unless we have expressly approved their validity in writing. The General T&Cs of Purchase shall apply exclusively even if we accept or pay for deliveries of goods by the Supplier in the knowledge of terms and conditions of the Supplier which conflict with or differ from these General T&Cs. Terms and conditions of the Supplier shall not apply even if we do not separately object in individual cases to their validity. Even if we refer to a letter which contains or makes reference to the Supplier’s terms and conditions, this shall not constitute any agreement with the validity of those terms and conditions. This shall apply even if such terms and conditions do not contain any separate provision on individual stipulations of our General T&Cs of Purchase.

(3) An amendment of the General T&Cs of Purchase is reserved exclusively for the Purchaser.

(4) The General T&Cs of Purchase shall also apply to all later contracts with the Supplier.

Art. 2 Quotations, purchase orders, conclusion of contracts

(1) Contracts between the Purchaser and the Supplier shall be concluded solely based on the content of the Purchaser’s purchase orders and these General T&Cs of Purchase. Only purchase orders placed in writing shall be legally binding. Purchase orders placed verbally or by telephone shall only be legally valid when subsequently confirmed in writing by the Purchaser. The written form, also as far as specified elsewhere in these General T&Cs of Purchase., shall also be maintained by transmissions using telefax or email as well as digital/electronic signatures and signatures (e.g. DocuSign)

(2) The contract shall be concluded by written order confirmation, either as separate declaration by the Supplier or by countersigning and returning the purchase order, (hereinafter referred to collectively as “Order Confirmation”), at the latest by delivery and acceptance of the ordered products. If the Supplier does not accept the purchase order within 5 calendar days of receipt, the Purchaser shall have the right to revoke the purchase order unless the purchase order expressly contains a different binding period. Order Confirmations that differ from the content of the purchase order and/or these General T&Cs of Purchase shall be deemed a new quotation which shall be deemed accepted only after express written consent on our part. If no such confirmation exists and delivery is nevertheless carried out, we shall have the right to reject the delivery at the Supplier’s expense. If we accept the delivery, the contract shall be concluded solely according to the content of our purchase order and the General T&Cs of Purchase.

(3) By way of derogation from paragraph (2) above, a contract shall already be concluded with the Purchaser’s purchase order if the purchase order is preceded by the Supplier’s quotation, the purchase order refers to this and corresponds to this in content. Any quotations by the Supplier must be made in writing, must describe the delivery item in full and are binding upon the Supplier. The Supplier shall be bound to its quotation as contract request for at least 14 calendar days after receipt by the Purchaser unless the Supplier must also regularly expect a later acceptance/purchase order by the

Purchaser (Section 147 BGB). The Purchaser shall not in any case be under an obligation to accept/place a purchase order.

Art. 3 Delivery in due time, contractual penalty

(1) The agreed delivery dates and periods are binding. Compliance with the delivery date or delivery period shall be determined by receipt of the goods at the delivery address stated by the Purchaser (see Art. 4 (2) below). Within the scope of delivery by the Supplier, the Supplier shall make the goods available in due time, taking account of the time for loading and shipment to be agreed with the freight forwarder and the delivery times pursuant to Art. 6 (1).

(2) In the event of foreseeable non-compliance with the agreed delivery date, the Supplier must notify the responsible contact partner in the Purchaser's purchasing department in writing immediately but at the latest two working days prior to the agreed delivery date, stating the reasons and expected duration of the delay and obtain Purchaser's decision concerning maintenance of the order. Claims by the Purchaser for non-compliance with the delivery date shall remain unaffected by this; this shall apply both in the case that the Purchaser refrains from the order for reasons of default in delivery and in the case of Purchaser's consent to a delivery despite lateness. Postponements shall be admissible only after the Supplier's consultation with the Purchaser's responsible buyer.

(3) If no delivery date resp. delivery period has been agreed, delivery shall be made or the service provided immediately. In the event of foreseeable incapacity to deliver or partial incapacity to deliver, paragraph (2) above shall apply *mutatis mutandis*. Subsequent deliveries may be made only after consultation with our purchasing department.

(4) In the event of default in delivery, the Supplier shall pay the Purchaser a contractual penalty of 0.3 % of the respective net order price per calendar day of default in delivery but not more than 5 % of the (net) total order price.

The right to assert further damages according to the provisions of these General T&Cs of Purchase (see below as well) and the law, offsetting the contractual penalty, and/or other rights shall remain unaffected by this. In particular, we shall have the right, after a reasonable period has elapsed without effect, to rescind the contract and claim damages in lieu of performance. We shall have the right *inter alia* to purchase replacement goods from a third party at the Supplier's expense and to assert the additional costs arising from the covering purchase. This shall also apply in the case of a short delivery.

A time limit shall not have to be set if the Supplier finally refuses performance, the parties have agreed a fixed date transaction or there are other reasons which render the setting of a time limit unnecessary.

The – also unconditional – acceptance of a delayed delivery of the contract products by the Purchaser shall not constitute any waiver of claims for damages and/or contractual penalty. With regard to the contractual penalty, this applies insofar as the contractual penalty can still be asserted in the event of unconditional acceptance until the final invoice.

(5) If delivery is earlier than agreed, the Purchaser reserves the right to return the goods at the Supplier's expense. If the goods are not returned when delivered early, the goods shall be stored at the Purchaser or at the recipient of the delivery, if different from this, at the Supplier's expense and risk until the delivery date.

(6) Partial deliveries shall be accepted only after express agreement reached with the Purchaser. Where partial shipments are agreed, the remaining quantity must be specified. The Purchaser shall have the right to return partial deliveries not approved to the Supplier at the Supplier's expense and risk. The same shall also apply to subsequent deliveries or replacement deliveries which are not agreed.

Art. 4 Delivery costs and delivery address

(1) The Supplier undertakes to inform all service providers commissioned by the Supplier in connection with supplying the Purchaser, for example for logistics services and IT, about the content of the General T&Cs of Purchase, if relevant to the services of the respective service provider (see specifically Arts. 6, 15) and to ensure their compliance.

(2) Unless otherwise expressly agreed in writing, the goods are to be delivered to the address stated below (hereinafter referred to as "Delivery Address"):

Horst Bode Import-Export GmbH

Havighorster Weg 6

21031 Hamburg

Germany

Art. 5 Place of performance and passing of risk

(1) Place of performance is the Delivery Address (see Art. 4 (2)), in the case of an agreed delivery address different to this, the agreed Delivery Address (hereinafter referred to collectively as "Place of Performance"). Where delivery of goods to an external warehouse has been agreed, the Place of Performance shall be the service provider's delivery address which we notify to the Supplier in writing. Unless otherwise expressly agreed in writing, the Supplier shall be obliged to deliver carriage paid and duty paid.

(2) The Supplier shall in any case bear the risk of accidental loss and accidental deterioration of the delivery item until handover at the Place of Performance (see Art. 5 (1)) (DDP Incoterms 2020), irrespective of whether delivery carriage paid was agreed or not.

Art. 6 Terms and conditions of delivery, logistics for foodstuffs

Unless otherwise expressly agreed in writing, the terms and conditions stipulated in the following paragraphs shall apply to the delivery of goods. The Supplier shall ensure that the service providers used by the Supplier comply fully with these terms and conditions. The Supplier shall be liable for culpable violations by service providers as for its own fault.

(1) Delivery times

Delivery of goods is permitted only between 6 am and 2 pm CET from Monday to Friday. All drivers are obliged to report first to the incoming goods office with the relevant shipping documents.

(2) Unloading

When delivering, it is not permitted to position third-party goods in front of the goods for the Purchaser in the truck, which first have to be unloaded before the goods intended for the Purchaser can be unloaded. In such case, unloading shall not take place. When delivering, trucks/containers can be unloaded only via our ramp. A docking allocation shall be provided in the incoming goods office. Prior docking of the truck/container at the ramp without allocation is prohibited. Care must be taken, especially when delivering by means of containers, that the goods are secured to ensure that they cannot fall out when the container doors are opened.

(3) Load carriers, packaging

All deliveries shall be made in principle on exchangeable European pallets (1200 × 800mm, first-rate quality) with a maximum weight of 900kg per pallet. No goods may protrude beyond the dimensions of the pallets. The maximum height of the delivered pallet goods is 1.74 m (incl. pallet). For each pallet, a separation (base of paperboard) must be placed between pallet and goods to protect the goods. The goods are to be delivered with regard to the load carrier in such a way that, under normal conditions of use of the packaging and load carriers, the delivered goods can be stored without affecting the goods and process of conveying.

European pallets (of A and B quality) shall be exchanged directly after delivery unless they are damaged.

Notwithstanding the above provisions, the goods shall be packed by the Supplier and transported at all times to ensure that transport damage is prevented. Packaging materials shall be used only to the extent required to achieve that purpose, without incurring additional work costs or additional expenses for the Purchaser. In principle, environment-friendly, non-toxic, easily recyclable packaging materials shall be used, reuse systems are to be preferred. The Supplier's obligation to take back packaging is determined by statutory provisions.

(4) Compulsory information on shipping documents and goods

The following information must be stated on shipping documents:

- our company's correct address
- our purchase order number
- article description, article number, batch, minimum durability date
- quantity delivered in pieces and number of packaging units and weight
- for organic goods: organic reference and control body, indication of the control body as CODE (e.g. DE-ÖKO-003)
- information on harvesting and origin of the goods is desirable

A label which conforms with requirements must in principle be affixed to pallets and containers. The following minimum information must be clearly and legibly included on the label:

- article description, batch/lot, minimum durability date, EAN (not mandatory), origin, organic reference (bio, *kbA* [controlled biological cultivation], eco, organic, ...), organic certifier (control body code), name and address of Supplier or Bode, container size

In the case of labels specified by us, the EAN code on the label of the goods must be scannable.

Conventional goods may not be marked with an organic reference and/or control code!

(5) Refusal of acceptance

The Purchaser shall have the right to refuse acceptance, in particular in the cases described below, if the adverse effects / deviations are not only negligible:

- deliveries outside goods receipt times
- missing minimum durability date (MDD) resp. missing batch/lot numbers on the shipping documents or goods
- missing organic reference / missing organic control body on the shipping documents and/or goods
- missing / illegible shipping documents
- differences between deliveries and quantity indicated on the delivery note
- missing temperature protocol for delivery of goods requiring refrigeration and deep-freezing

- unsorted goods or defectively packed goods
- damaged or soiled goods
- goods without labels / lack of marking on goods
- defect or soiled load carriers
- goods with pest infestation

Further claims due to delivery of defective goods and/or other breach of duty by the Supplier shall remain unaffected by this.

(6) Health and safety and hygiene

Photo and video documentation are in principle prohibited in the warehouse. Each driver is obliged to respect the confidentiality of operational and business matters which come to the driver's knowledge during his visit and beyond. Each driver is obliged to secure his truck / the container accordingly against rolling off at the ramp. Drivers are to use only the designated toilets. Drivers are not permitted to move around alone in the warehouse and production premises. Smoking is permitted only at the designated places. Our employees are pleased to indicate the way. Glass bottles are not permitted on the premises. Glass bottles brought along must be kept in the vehicle and not disposed of on the premises.

When a driver's vehicle is not being loaded resp. unloaded, the driver must stay outside the loading area during the loading of goods of another vehicle in order to avoid any obstruction during loading by our employees. Drivers must follow the instructions of our company's employees at all times.

(7) Logistics for foodstuffs

If the delivery item is foodstuffs, the following provisions shall apply in addition to the above provisions or, in the case of an inconsistency, shall take precedence over them.

Foodstuffs may be delivered only in suitable vehicles or containers intended for the transport of foodstuffs which in particular meet stringent standards of hygiene. If necessary according to product requirements and/or the relevant laws, vehicles or containers must be equipped with fully functional refrigeration equipment which guarantees the core temperatures (in the case of refrigerated products, unless otherwise agreed, up to a max. +8°C, in the case of frozen foodstuffs, unless otherwise agreed, max. -18°C) agreed in these General T&Cs of Purchase or otherwise contractually agreed, alternatively corresponding to the requirements of the respective product, and clean and disinfect them prior to each delivery. Vehicles/Containers intended for transporting the delivery item must, in the case of a temperature specification arising from the requirements of the product and/or statutory provisions or official regulations, have a temperature recorder. Temperature protocols are to be submitted to the Purchaser on request immediately, at the latest within 24 hours of delivery.

The Supplier guarantees that the persons commissioned with the delivery are trained in handling foodstuffs, comply with all statutory and official requirements for handling foodstuffs and, if required by law or by virtue of official requirements, have the necessary certificates (see e.g. Section 43 *Infektionsschutzgesetz* [German Infection Protection Act]), which is to be proved by presentation (if applicable as a copy) at the Purchaser's request.

The Supplier guarantees that the packaging materials used are suitable and non-hazardous with respect to the foodstuffs and the packaging of the respective foodstuffs otherwise satisfies all relevant requirements, including the information and labelling requirements applicable to this.

Art. 7 Due and proper performance of the contract, quality of the goods

(1) Delivery of the goods according to the contract shall be determined in particular by the Purchaser's agreed product specifications. As a rule, the product specifications are transmitted to the Supplier prior

to or at the beginning of the supply relationship. The product specification applicable to the respective contract product shall apply to all future deliveries unless the parties have agreed a product specification different to this for the specific contract.

(2) The Supplier shall submit a packaging specification for all foodstuffs and packaging supplied to us, irrespective of whether these are used for production or trial purposes, immediately and without being requested to do so. In the event of changes, packaging specifications shall be updated by the Supplier immediately and provided to us. Unless the Purchaser objects, the Supplier's packaging specifications shall be deemed minimum requirements for the packaging of the respective contract products. This also applies to future transactions. The Purchaser shall be free to require packaging requirements which go beyond specifications in the purchase order or own specifications referred to in the purchase order.

(3) The agreed quality of the goods also includes properties which the Purchaser may expect, given public statements by the Supplier, especially in advertising or in the identification of certain properties, unless these are inconsistent with the agreed product specifications. This shall not apply if the Supplier did not know and also did not have to know about the statement, it was corrected in an equivalent manner at the time of conclusion of the contract or it could not affect the decision to purchase for other reasons.

(4) The Supplier guarantees that all goods and services supplied by it comply with the relevant statutory provisions and official regulations and guidelines, the provisions of the institutions for statutory accident insurance and prevention [*Berufsgenossenschaften*] and professional organisations resp. are executed according to them. If, in an individual case, deviations from such regulations are necessary from the Supplier's perspective, the Supplier must in due time obtain the written consent of the Purchaser thereto in advance. The Supplier's warranty obligation shall not be limited by any such consent of the Purchaser.

(5) In the case of foodstuffs, other substances used in the manufacture of foodstuffs, packaging materials for foodstuffs and other materials which come into contact with foodstuffs in the production or filling, the Supplier guarantees that they comply in particular in terms of composition, quality, packaging and declaration with all relevant provisions of German and EU law, especially food law.

Unless otherwise expressly agreed in writing, the product must be unadulterated, without other (e.g. chemical) additives or treatments. It follows moreover that the product must not have been irradiated or genetically modified.

(6) The Supplier is also obliged to hold available, until delivery at the Place of Performance, all required documents, loading documents, customs documents etc. (hereinafter referred to as "Documents"), either itself or through third parties responsible for the transport, and/or transmit them in due time to the competent offices (e.g. customs). The Supplier shall be liable to the Purchaser for all damages resp. costs incurred by the Purchaser as a result of Documents not being available or not being available in due time (e.g. port dues as a result of late or incorrect transmission of Documents for customs clearance / acceptance in port).

(7) The Supplier warrants that all goods can be traced at all times, irrespective of the agreed terms and conditions of delivery and the agreed shipping address.

Art. 8 Incoming goods inspection, warranty

(1) Notwithstanding the provisions relating to the passing of risk and Place of Performance agreed in individual cases, the Supplier shall carry out quality assurance, appropriate in nature and scope that always conforms with the state of the art and official as well as statutory requirements, which

guarantees in particular an adequate inspection of all outgoing goods in respect of the contractually agreed specifications, including the requirements according to these General T&Cs of Purchase as well as all relevant legal requirements, especially of food law, and shall prove this to the Purchaser in an appropriate form at first request. At the Purchaser's first request, a separate quality assurance agreement shall be concluded with the Purchaser for this purpose (hereinafter referred to as "QAA"). If a QAA is not concluded, this shall not release the Supplier from the obligations described above.

(2) The parties agree that the incoming goods inspection by the Purchaser pursuant to Section 377 *HGB* [German Commercial Code], as far as relevant for the respective contract, is limited to externally visible damage (especially transport damage) and deviations in quantity.

(3) Any defects determined by the Purchaser in the course of the incoming goods inspection are to be notified to the Supplier within 14 calendar days of handover at the Place of Performance (see Art. 5 (1) of these General T&Cs of Purchase). Defects which are not visible according to Art. 8 (2) of these General T&Cs of Purchase shall be notified to the Supplier immediately after they become known to the Purchaser.

(4) If, on the basis of agreements made between the parties, an inspection and, as appropriate, release of pre-production samples of the Supplier is carried out by the Purchaser, this shall not affect claims by the Purchaser for delivery which is not according to the contract.

(5) The Purchaser shall in principle have the right to choose the type of supplementary performance unless the Supplier has a mandatory statutory right to refuse the type of supplementary performance chosen by the Purchaser, in particular if the Purchaser chooses a form of supplementary performance which is unreasonable for the Supplier.

(6) In the event of a defect in the delivered product, the Purchaser can, after expiry of a reasonable period intended for supplementary performance without effect, remedy the defect itself and require reimbursement of the necessary expenses unless the Supplier justifiably refuses supplementary performance. Notwithstanding the statutory provision, the Purchaser can, in urgent cases, especially to avert significant imminent damages, remedy the defect itself at the Supplier's expense, also without determining a period for supplementary performance, if it is no longer possible given the particular urgency to notify the Supplier of the defect and the imminent damage and to set the Supplier a period, albeit it only brief, for own remedy.

(7) Unless otherwise agreed, the period of limitation for claims for defects is 36 months as of the passing of risk (see Art. 5 (2)). The liability of the Supplier based on information relating to any durability of products going beyond this or other further guarantees shall remain unaffected by this.

Art. 9 Liability, indemnification, recall and obligation to obtain insurance

(1) The Supplier shall be fully liable according to statutory provisions, in particular also in the case of ordinary negligence and for indirect damages.

(2) If a claim is made against the Purchaser by third parties, in particular commercial or private buyers, for violation of official or statutory safety regulations, due to product liability regulations for a defectiveness of products or for other reasons, which are attributable to a defective contract product or other violation of contractual obligations, the Supplier shall indemnify the Purchaser against all claims, The Purchaser shall also have the right to require compensation from the Supplier for any damage beyond this if this has been caused by the contract product.

This damage shall also cover the costs of a product recall, also a precautionary product recall, as far as necessary from the Purchaser's perspective at the relevant time, costs of necessary legal defence in

accordance with statutory provisions, inspection costs, installation and removal costs as well as administrative and other expense of the Purchaser for processing the damage. The Purchaser shall have the right in particular to reimbursement of all costs of a recall and to indemnification against claims of third parties, especially the Purchaser's buyers, asserted against the Purchaser in this connection, if an analysis carried out resp. arranged by the Purchaser or a third party, especially a buyer, indicates residues, pesticides or other defects in the products which are not in conformity with the respectively relevant statutory regulations, in particular the relevant EU regulations and German legislation. This shall also apply if there are results of other analyses deviating from this.

(3) In the event of defectiveness of products delivered or to be delivered, imminent product recalls and other damaging events in connection with the products, whether they have already occurred or are imminent, the Supplier must inform the Purchaser immediately, giving a detailed statement of all particulars relating to the damaging event, especially of third-party suppliers, related purchase order details, batch details and immediate measures to be taken. The Supplier shall also support the Purchaser at its own expense in all other measures required in this context, unless unreasonable, and shall cooperate in this respect at the Purchaser's request.

(4) The Supplier shall take out insurance with a sum insured of at least € 5 million per case of damage - lump sum - against all liability risks, especially arising from product liability, including the risk of recall, maintain this insurance for the entire duration of the supply relationship between Purchaser and Supplier, including the warranty and any guarantee periods applicable to the products supplied in each case and submit the insurance policy to the Purchaser upon request for inspection.

Art. 10 Processing of returns

(1) Returns incurred are to be collected within a period of 7 working days. This period shall start to run upon the first contact between the purchasing or quality management departments and the Supplier. It is absolutely necessary for the processing of returns to report the collection in writing at least one working day in advance because provision of the goods cannot otherwise be guaranteed.

(2) When collecting a return, the return note must be presented. In addition, exchangeable empty pallets corresponding to the quantity of pallets to be collected must be brought along (pallet exchange procedure). If this is not the case, the Purchaser shall invoice the Supplier € 25.00 (twenty-five) net for each load carrier.

Art. 11 Information requirements

(1) If the delivery item is foodstuffs, the Supplier shall notify the Purchaser fully concerning all information to be provided according to the relevant statutory and official European and German requirements, also such requirements applicable to the sale to end consumers (e.g. relating to ingredients, constituents, allergens etc.).

(2) Information shall be provided in any form specified by law or by an authority, otherwise in appropriate form.

Art. 12 Prices, invoices and payment terms

(1) The agreed prices are fixed prices and exclude additional charges of any kind. Any price increases shall require the Purchaser's written consent. Costs for packaging and transport to the Place of Performance (see Art. 5 (1) of the General T&Cs of Purchase) and for customs formalities and customs duties are included in the prices unless otherwise agreed in writing. The nature of pricing shall not affect the agreement on the Place of Performance.

(2) Unless otherwise expressly agreed, the invoice recipient is:

Horst Bode Import-Export GmbH
Havighorster Weg 6
21031 Hamburg
Germany

Invoices must comply with current statutory requirements at all times, in particular include the following information:

1. the full name and full address of the business operator providing the delivery or service and the recipient of the delivery or service;
2. the VAT identification number issued to the business operator providing the delivery or service by the Federal Central Tax Office;
3. the date of issue;
4. a consecutive number with one or several series of numbers which is assigned once by the issuer of the invoice to identify the invoice (invoice number);
5. the quantity and nature (normal trade description) of the items delivered;
6. the date of the delivery (delivery date);
7. the remuneration for the delivery, itemised according to tax rates and individual tax exemptions;
8. any reduction in the remuneration agreed in advance unless already taken into account in the remuneration (reference to reduction in the remuneration);
9. the tax rate to be applied and the tax applicable to the remuneration or, in the case of a tax exemption, reference to the fact that a tax exemption applies to the delivery;
10. in the case of an intra-Community delivery, the VAT identification number of the company providing the delivery or service and that of the recipient of the service or delivery must be specified.

The invoice must include the following additional information:

- delivery note number
- our order number
- order date

(3) The term of payment for the invoice (see sentence 1 of paragraph (4) below) shall begin as soon as the delivery or service has been received by us in full and the properly issued original invoice has been received. Complaints shall be made by us where invoices are not submitted properly and they shall be deemed not received with respect to the start of the term of payment. If the Supplier has to provide test reports, quality documents (such as product analyses) or other documents, completeness of the delivery or service shall also require the receipt of such documents as well.

(4) Unless otherwise agreed, payments shall be made at the Purchaser's option within 14 days less cash discount of 2 % or 30 days net. The Purchaser can retain payment until defects are remedied. Payment shall not imply either recognition of the correctness of the delivery or service or a waiver of the rights to which the Purchaser is entitled. Upon execution of the transfer order by the bank of Horst Bode Import-Export GmbH at the latest on the due date, payment shall be deemed as made in due time. The Supplier shall bear bank charges of the receiving bank.

(5) The Purchaser shall have the right to offset payment obligations vis-à-vis the Supplier against its own claims, whether arising from the current contract or earlier transactions. The Supplier shall not have the right to offset counterclaims of the Purchaser against its own claims unless the claim was expressly recognised in writing by the Purchaser or recognised by a court.

(6) The Purchaser expressly objects to any prolonged and extended retention of title (*verlängerter und erweiterter Eigentumsvorbehalt*).

Art. 13 Confidentiality

(1) All business, technical, company-related, customer-related or product-related information, especially calculation data, manufacturing instructions, drawings, internal production information and data of whatever kind made accessible to the Supplier by the Purchaser, including other development or manufacturing characteristics which are to be taken from any items, documents or data provided ("Information Subject to Confidentiality"), must be kept confidential with respect to third parties. They may only be made available to those persons in the Supplier's own company who must necessarily be involved in their use for the purpose of the delivery or service to the company and who are likewise bound in writing to confidentiality, in the case of employees if permitted by labour law. They shall remain exclusively the property of the Purchaser. Sub-contractors and other vicarious agents of the Supplier shall be accordingly bound by the obligation of confidentiality.

(2) The above provision shall not apply to Information Subject to Confidentiality which is or has become generally accessible or has been or is communicated to the Supplier by a third party authorised to do so without obligation as regards its confidential treatment or which was already verifiably known to the Supplier prior to the date of receipt or the Supplier is obliged to make a disclosure by law or official order. If the Supplier invokes one of the above exceptions to the obligation of confidentiality, the burden of proof that this exception exists shall rest with the Supplier.

(3) The obligation of confidentiality shall also continue to exist after the contract has been processed.

(4) Mentioning or advertising the Purchaser's company name and/or the business relationship with the Purchaser in the Supplier's publications shall be permitted only after previously obtaining the Purchaser's written consent. This shall apply *inter alia* to studies, reference and customer lists as well as advertising materials in printed or electronic form which the Supplier publishes at any time.

Art. 14 Property rights and rights of use

(1) The Supplier guarantees and warrants that all deliveries are free from third-party property rights and in particular that the delivery and use of the delivery items do not infringe patents, licences or other third-party property rights.

(2) The Supplier shall indemnify the Purchaser and the Purchaser's customers against third-party claims arising from any infringement of property rights and shall also bear all costs incurred by the Purchaser or the Purchaser's customers in this connection, including the costs of necessary legal defence in accordance with statutory provisions.

(3) If judicial proceedings arise in this respect, the Purchaser shall have the right to join the Supplier as a party to the legal action. If the Supplier loses the legal action through no fault of the Purchaser, the Supplier shall reimburse the Purchaser for the costs of the legal action as well.

(4) The Purchaser is entitled, at the Supplier's expense, to obtain approval from the rightholder to use the delivery items and services in question.

(5) If the Supplier has own property rights to goods delivered to the Purchaser, including images and certificates, the Purchaser shall be granted a freely transferable right of use thereto, unlimited in time and free of charge.

Art. 15 Legal minimum wage (*MiLoG*) [German Minimum Wage Law]), *Arbeitnehmerentendegesetz (AEntG)* [German Law on the Posting of Workers], prohibition of illegal employment, compliance

(1) The Supplier shall ensure that the employees used by it or its subcontractors or personnel service providers according to these General T&Cs of Purchase to execute supply contracts with the Purchaser are paid the legal minimum wage according to the *MiLoG* or, if the services to be provided fall within the scope of the *AEntG*, the minimum wage respectively prescribed for the industry. The Supplier shall likewise ensure that mandatory obligations to pay contributions to social security institutions, institutions for statutory accident insurance and prevention and other bodies, such as the joint bodies of the parties to the collective agreements stated in Section 8 *AEntG*, are complied with. The Supplier shall verify compliance with the preconditions described above when selecting subcontractors or personnel service providers.

(2) If a claim has been justifiably asserted against the Purchaser by an employee of the Supplier or by an employee of a subcontractor used by the Supplier, at whatever level, or of a personnel service provider, like a guarantor, for payment of the legal minimum wage or minimum wage for the industry or by one of the bodies of the parties to the collective agreements stated in Section 8 *AEntG* for payment of contributions, the Supplier shall indemnify the Purchaser against such claims.

(3) The Supplier shall furthermore be liable to the Purchaser for any damage arising for the Purchaser from the culpable failure to comply with the obligations pursuant to Art. 15 of these General T&Cs of Purchase.

(4) Illegal employment of any nature is prohibited.

(5) The Purchaser has declared the notion of compliance to be a key company value. The Purchaser expects the Supplier, therefore, to comply with respectively applicable national statutory provisions within the scope of its business activities on behalf of and with the Purchaser. This applies in particular to statutory requirements in relation to health and safety and employee protection, compliance with human rights, prohibition of child labour, criminality of corruption and the granting of advantages of any kind and in relation to environmental protection, antitrust requirements etc. Furthermore, the Purchaser expects the Supplier to communicate these principles and requirements to its subcontractors and third-party suppliers and to encourage them to comply with these laws as well. Any further compliance requirements arising from separate agreements between the parties and/or a code of conduct of the Purchaser confirmed by the Supplier shall remain unaffected by this.

Art. 16 Subcontractors/Vicarious agents

(1) The use of third parties for performance of the contract, especially in the production, by the Supplier (hereinafter referred to collectively as "Subcontractors") shall require prior written consent by us, which we cannot, however, refuse without objective reason. An objective reason exists in particular if the Subcontractor

- (a) does not guarantee proper performance of the contractual services pursuant to all provisions agreed between ourselves and the Supplier for this and all relevant legal requirements;
- (b) is not sufficiently qualified;
- (c) does not have the experience, certificates, authorisations etc. required to perform the services owed; or

- (d) has already in earlier business relations contravened safety regulations, quality specifications, statutory provisions or other requirements of ourselves or one of our customers, violated other contractual obligations, in particular has not performed in accordance with contractual requirements or has otherwise shown a lack of reliability;

or there are other justified indications that the Subcontractor does not have the required qualifications and/or reliability or does not appear suitable for other reasons to perform properly the tasks which are intended to be assigned to the Subcontractor.

(2) Before commissioning the respective Subcontractor, the Supplier must notify the Subcontractor's full company name and registered office to us in due time and in writing. Furthermore, before using the respective Subcontractor, the Supplier must notify us in writing concerning the nature and scope of the services to be performed by the Subcontractor. We shall be entitled at any time to require proof concerning the intended Subcontractor's specialised knowledge, performance capability and reliability and compliance with statutory provisions.

(3) The Supplier shall ensure that the Supplier's Subcontractors fulfil all obligations under these Terms and Conditions of Purchase, the purchase order as well as all other provisions applicable between ourselves and the Supplier, if relevant to the services to be performed by the Subcontractor, and comply with all statutory obligations and duties (e.g. the *MiLoG*) existing for the Subcontractor's services and the employees used in this context. If a claim is asserted against us by the authorities due to failure by the Subcontractor to comply with statutory provisions (e.g. the *MiLoG*), the Supplier shall indemnify us against all damages.

(4) The Supplier shall be liable to us for Subcontractors used by the Supplier to the same extent as for own fault (Section 278 *BGB*).

Art. 17 Audit

(1) The Purchaser resp. third parties commissioned by the Purchaser shall have the right to carry out an audit at the production sites and branches of the Supplier and any sub-contractors commissioned by the Supplier according to these General T&Cs of Purchase (which the Supplier is responsible for ensuring in the contract with the sub-contractor) in order to make sure that production resp. manufacturing processes, documentation requirements and the quality assurance system of the Supplier satisfy the quality requirements of the Purchaser. The date and procedure for a quality audit shall be determined by mutual agreement, whereby the Supplier must offer the Purchaser an audit date within at the latest one week of the Purchaser's request.

(2) Insofar as the parties have made further provisions with regard to the Purchaser's right to audit in separate agreements, these shall remain unaffected or shall take precedence in the event of a contradiction.

Art. 18 Applicable law, place of jurisdiction

(1) All legal relationships under and in connection herewith between ourselves and the Supplier shall be governed exclusively by the law of the Federal Republic of Germany. Application of the UN Sales Convention (CISG) is excluded by mutual agreement.

(2) Unless otherwise agreed, the place of jurisdiction for all disputes is, according to our choice, an arbitration tribunal or the court of law in Hamburg, Germany. If proceedings are instituted against us, we undertake, at the Supplier's request, to exercise our right of choice prior to litigation within an appropriate period set for us, which must be at least three business days. If we do not make a

declaration within the period set for us, the right of choice shall pass to the Supplier. The Supplier shall make a choice immediately and notify us in writing.

In the event that arbitration proceedings are chosen, a final decision on the corresponding legal dispute shall be made without recourse to ordinary courts of law according to the Arbitration Rules of the *Deutsche Institution für Schiedsgerichtsbarkeit e.V.* (DIS) [German Institution of Arbitration]. The arbitration tribunal shall comprise three arbitrators, whereby one arbitrator shall be designated by each party and the two arbitrators designated by the parties shall then jointly appoint a representative as third arbitrator. An arbitration award made can, on application of a party, be declared enforceable by the competent national court. There is no appeal against the award of the arbitration tribunal. The award shall also include a decision on the costs of the proceedings including the remuneration of the arbitrators. Place and place of jurisdiction of the arbitration tribunal is Hamburg, Federal Republic of Germany. The arbitration proceedings shall be conducted in English.

Art. 19 Deviations, collateral agreements

Amendments to and modifications of the contract and these General T&Cs of Purchase, including this written form clause and collateral agreements of any kind shall only be valid when confirmed in writing by the Purchaser. The precedence of the individual agreement pursuant to Section 305b *BGB* remains unaffected. The written form shall also be complied with by telefax or e-mail if the agreements contained therein are confirmed by the recipient.