

# General Terms and Conditions of Sale Norgren GmbH



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## 1. GENERAL

- 1.1 These General Terms and Conditions of Sale (hereinafter referred to hereinafter as “GTCS”) apply to all purchasing, work, and/or service contracts that **Norgren GmbH** (referred to hereinafter as “we”, “us” or “Seller”) in its capacity as a seller, work contractor, or service provider concludes with a purchaser, ordering agency, or service receiver (referred to hereinafter as “Customer” or “Buyer”) when this Customer is a contractor as defined under section 14 of the German Civil Code (BGB).

“Ex Works” means “ex works” as defined in the edition of the rules for interpretation of trade terms known as INCOTERMS current as at the date of the Customer’s order.

“Products” means all products and associated documentation to be supplied by the Seller under these GTCS.

“Seller’s Premises” means the Seller’s registered office address, or such other Seller location as may be confirmed by the Seller in writing.

- 1.2 These GTCS apply exclusively to the contracts concluded with us. We do not accept any of the Customer’s general terms and conditions to the contrary and/or in addition. These do not apply unless we have declared our agreement thereto explicitly and in writing (email is not sufficient).
- 1.3 These GTCS apply to all present and future contracts, also when these future contracts do not refer the Customer explicitly to the application of these GTCS.
- 1.4 In all cases, any individual agreements reached separately (including collateral agreements, supplements, and amendments) take priority over these GTCS. The content of such agreements must take the form of a contract or confirmation set down in writing.
- 1.5 Any written form agreed in these GTCS also extends to telecommunication methods, specifically email, which suffice, unless otherwise stated in these GTCS.

## 2. OFFER AND CONTRACT CONCLUSION

- 2.1 If not specified otherwise, our offers, cost estimates, and other price calculations are to be interpreted as a request to the Customer to submit an offer (invitatio ad offerendum). Accordingly, the contract is concluded when we accept or confirm the Customer’s offer in writing (e.g. through our order acknowledgement) or through performance. The same also applies analogously when we have submitted to the Customer catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), or other product descriptions or material, including their digitised versions.
- 2.2 Purchase orders or jobs awarded by the Customer must take the written form to become effective. This written form includes email. Also, collateral agreements, supplements, and/or amendments to the purchase order must be submitted in writing (including email). The same applies to material statements and charges that the Customer must submit to us after completion



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of contract (e.g. deadlines, defect reports, declaration of withdrawal, price reductions).

- 2.3 If the Customer wishes to accept an offer only after modifications to the content (e.g. based on a purchasing order process or job), this declaration is interpreted as a new request that requires our approval. Before submitting this modified purchase order or awarding this modified job, the Customer must point out in writing that the offer is to be accepted in the modified form. Insofar as we modify a Customer's offer, this shall also be deemed a new offer, which must be expressly or impliedly accepted by the Customer.
- 2.4 Any oral agreements reached with our personnel will only become effective, subject to a condition precedent, when we have submitted our written confirmation.
- 2.5 We shall be entitled to cancel an order at any time by serving notice in Writing on the Customer if it does not receive, on request, satisfactory (in our sole opinion) credit references in relation to the Customer. If we cancel an order pursuant to this Clause 2.5, we shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Customer as a result of or in connection with such cancellation.
- 2.6 We retain ownership rights and copyright to illustrations, drawings, calculations and other documents ("contract documents"). The Customer is not permitted to allow third parties access to contract documents without our prior consent. These are to be used exclusively for production based on orders from us. Clause 11 applies additionally.

### 3. PRICES, TRANSPORT COSTS

- 3.1 Unless agreed otherwise with the Customer in writing, our remuneration is based on our respective applicable price lists. These price lists are those specified in advance to the Customer or those applying on the date of the submitted offer and (for documentation purposes) attached to the job confirmation.
- 3.2 We reserve the right at any time prior to delivery and on written notice to increase the price and/or apply a surcharge if there is any increase in the cost of materials, labour, transport, utilities, foreign currency fluctuation, currency regulation or alteration of duties or if our costs are increased by any other factor beyond our reasonable control.
- 3.3 If not agreed otherwise, all prices are in Euros based on an Ex Works Seller's Premises delivery, plus packaging and the statutory VAT, if levied, and customs (on exports), fees, and other rates and taxes.
- 3.4 If the Customer requests delivery to a place other than the place of performance (Clause 6.2), the Customer bears the packaging and transport costs and, if any, the costs of the transport insurance the Customer wishes.
- 3.5 The Customer shall be liable to the Seller for any demurrage costs incurred in the event of vehicles being unduly delayed at the point of delivery.
- 3.6 We do not take back any transport or other packaging as provided under the German Packaging



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Ordinance (VerpackG). This becomes the Customer's property with the exception of pallets. The packaging we employ fulfils the ecological recycling requirements (non-pollutant). If the Customer receives packaging from us, the Customer confirms on accepting the Products that the Customer is able to recycle this packaging in compliance with the VerpackG and pledges to dispose of this packaging according to the terms thereof. If the Customer does not wish to dispose of the packaging, the Customer must inform us thereof immediately after accepting the Products. In this case, we give the Customer the option of returning the packaging to us pursuant to the obligations set out in the VerpackG. In this case, the Customer bears the costs of the return transport.

## 4. PAYMENT TERMS, DEFAULT, SECURITY

- 4.1 If not agreed otherwise in writing, our invoice amounts are due immediately subject to no deductions, at the latest thirty (30) days after the invoice date, and must be paid without deduction of expenses into one of our business accounts. The payment period for deliveries after the issuing of the invoice starts on the day the delivery is received or would have been expected to have been received save for postponement otherwise than due to default on the part of the Seller. Time for payment of the price is of the essence of the GTCS. Evidence of due payment is the time the bank transfer order was submitted. For cheque payments, this is the date of the postmark. No payment shall be deemed to have been received until the Seller has received cleared funds.
- 4.2 The above payment period is extended when the invoice is not received within four working days after the invoice date and the Customer informs us immediately thereof in writing. The period is extended by that time exceeding the invoice's delivery period of four working days.
- 4.3 Purchase orders totaling less than the minimum net Products value listed on the latest price list will be invoiced at this minimum net Products value.
- 4.4 All payments made by the Customer to the Seller under any contract subject to these terms shall be made free of any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any contract subject to these terms or otherwise. We are entitled to offset payments against the oldest due account receivable.
- 4.5 The Customer is deemed to have defaulted when the above payment periods expire. During this default period, the Customer must, without prejudice to any other right or remedy available to the Seller, pay interest on the purchase price at the applicable statutory rates. We reserve the right to claim compensation for additional damage incurred through default. With respect to merchants, our right to default interest (section 353 of the German Commercial Code (HGB)) remains unaffected.
- 4.6 If, after concluding the contract, we identify a risk to our claim for the purchase price as a result of inadequate performance by the Customer (e.g. petition to instigate insolvency proceedings), the statutory provisions grant us the right to refuse performance and, if necessary after a deadline, to withdraw from the contract (section 321 BGB). If a contract sets out provisions governing the manufacture of specialised items (custom-made items), we may declare our withdrawal with



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immediate effect. This does not affect the statutory regulations applying to the dispensability of setting deadlines.

## 5. DELIVERY, DELIVERY TIME, DEFAULT OF ACCEPTANCE

- 5.1 Explicitly agreed in writing delivery dates and/or locations are binding for both Parties. Fixed-date deliveries must be designated as such explicitly and in writing. When an agreed nonbinding delivery date has been exceeded, the Customer may request us in writing to deliver within an appropriate period and, if this proves unsuccessful, to exercise the Customer's rights under sections 281, 323 BGB. Binding date deliveries are only valid if all of the documents required from the Customer, the necessary permits, releases, clarifications and approvals of plans, have been submitted and the agreed payment terms and other obligations have been fulfilled and, in addition, any and all technical issues that were still open when the contract was signed have been mutually agreed upon. If these prerequisites are not met in time, the delivery period will be prolonged accordingly.
- 5.2 If delivery/performance requires the Customer's collaboration and this collaboration is not provided within the period specified in the purchase order, the delivery dates and periods specified in the purchase order or the Seller's order acknowledgement are extended accordingly. The calculations of the delay and the corresponding extension to the delivery period require the date the Customer was to provide collaboration. When the contract agrees that the Customer provides collaboration at a third party location, evidence of successful collaboration is provided by the date we receive the written confirmation (including email). Additional statutory rights (sections 280 et seq., 323 et seq, BGB) based on omission or violation of collaboration duties remain unaffected. These rights are subject to the statutory period of limitation. Furthermore, this does not affect our rights as set down under sections 642, 643 BGB.
- 5.3 If delivery/performance requires the Customer's collaboration and this collaboration is provided before expiration of the period specified in the purchase order or Seller's order acknowledgment, the delivery dates and periods specified in the purchase order or order acknowledgment shall not be shortened.
- 5.4 We are entitled to deliver before the due date and to deliver in instalments if we have informed the Customer thereof in writing (including via email) and in good time beforehand in which case each instalment shall be treated as a separate contract governed by these GTCS. No delay in the delivery of any instalment of Products or any defect therein shall entitle the Customer to terminate any or all remaining contracts. This does not apply if the delivery/performance before the due date is unacceptable to the Customer and the Customer has reported this in writing without undue delay on receipt of the written notification.
- 5.5 If we are unable to observe binding delivery dates for reasons for which we are not responsible (nonavailability of performance), we shall inform the Customer in due course thereof, at the same time providing information on the expected new delivery date (if known). If performance cannot be provided before the new delivery deadline either, we are entitled to withdraw from the contract either in full or in part. The Seller's performance provided up to this date will be reimbursed without delay. This does not affect our statutory rights to rescind or terminate the contract nor the statutory



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provisions governing the settlement of contracts on non-fulfilment of performance obligations (e.g. impossibility or unacceptability of the performance and/or rectification).

- 5.6 If the Customer is not a merchant and does not run a shop or warehouse as defined under section 56 HGB, the Customer shall provide us, within an appropriate time before delivery of the Products, with the names of one or more persons who are authorised to receive the delivery/performance and to sign the delivery note. If none of the persons the Customer has named are present for the delivery and the Customer has not found replacements at short notice, the Customer is in default of acceptance.
- 5.7 If, after a period of 30 days of the Seller giving notice to the Customer that the Products are ready for delivery the Customer does not arrange collection of the Products or the Customer otherwise defaults on acceptance, fails to provide collaboration, or if our delivery is delayed at the Customer's request or for other reasons for which the Customer is responsible, we are entitled to demand compensation for the damage incurred as a result, including any additional expenses (e.g. transport and storage costs). In this case, we shall charge liquidated damages corresponding to 0.5% of the value of the stored Products per calendar week, but no more than 5%, starting on the delivery date or – if no delivery date has been agreed – on the date of the notification that the Products are ready to ship. If sales contract law applies, and the Customer does not accept our delivery before the deadline, we may withdraw from the contract after an unsuccessful extension of this deadline and demand compensation for damages. In this event, we are entitled to invoice liquidated damages corresponding to 5% of the agreed price. This does not affect our rights to claim compensation for greater damages or to exercise our statutory rights to claims (in particular, compensation for additional expenditure, appropriate recompense and/or termination). The Seller shall be entitled to claim interest pursuant to Clause 4.2 from the date on which payment would otherwise have fallen due if no such postponement had occurred. The liquidated damages, however, shall be credited to other pecuniary claims.
- 5.8 In as far as we are responsible for the non-compliance with bindingly promised deadlines and dates which the Seller has committed to as being binding in writing (email is not sufficient), or in as far as we are in default, the Customer shall be entitled to compensation for delayed performance at the amount of 0.5% of the invoice value of the Products deliveries and services in delay for each complete week of the delayed performance, but limited in total to a maximum of 5% of the invoice value of all Product deliveries and services affected by the delay, subject to a 2 week grace period. Any claims beyond this are excluded, unless the delayed performance is based on at least gross negligence by us.

## 6 PASSAGE OF RISK

- 6.1 According to Ex Works Incoterm, the risk of accidental loss or deterioration of the delivery is passed to the Customer "Ex Works", which is also the place of performance, if the passage of risk is based on sales contract law and we have not reached an agreement differing therefrom explicitly and in writing with the Customer.
- 6.2 Upon the Customer's request and at the latter's expense, the Products are shipped to a different place of destination (contract of sale involving delivery of Products). If not agreed otherwise, we are entitled to define the shipping mode (specifically the carrier, shipping route and/or packaging).



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If the Customer requests the Products to be shipped to a place other than the place of performance, the risk of accidental loss or deterioration of the Products and the risk of delay when the Products have already been delivered to the carrier is passed to the carrier or the third party appointed to perform this shipment. If acceptance has been agreed, such acceptance shall be relevant for the passage of risk. If Customer is in delay with receipt of the Products, this shall be deemed tantamount to handover/acceptance.

## **7 RESERVATION OF TITLE, INSURANCE, RESALE & FURTHER PROCESSING**

- 7.1 We reserve the right of title on the Products supplied until all of the accounts receivable from the delivery contract have been paid in full. These Products are referred to hereinafter as “reserved Products”.
- 7.2 If the laws of the country in which the Products are situated on the basis of the delivery do not recognise the reservation of ownership agreed explicitly herein, or recognise this only under the proviso of certain conditions, the Customer is obliged to point this out to us at the latest on conclusion of the contract.
- 7.3 Until title has passed to the Customer from the Seller under these conditions, the Seller may recover the Products and the Seller's officers, employees, representatives or agents shall be entitled to enter upon any premises where such Products are kept, with or without vehicles, for the purpose either of recovering the same or satisfying itself that Clause 7.4 is being complied with.
- 7.4 Until title to the Products has passed to the Customer it shall possess the Products as fiduciary agent and bailee of the Seller and shall store the Products separately from other Products and shall ensure that they are fully insured on an all risks basis and clearly identifiable as belonging to the Seller. Also, the Customer must report without delay any restriction that has arisen, or will arise in the future, affecting the scope of performance and/or termination of the insurance policy. The Customer assigns by way of security all claims for compensation it may have against its insurer based on damages of the aforementioned kind affecting the reserved Products to us. We hereby accept this cession.
- The Customer shall also not assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Products or any interest in the Products nor create or allow to be created over the Products any lien. The Customer must notify us immediately of any seizure or other distraints by third parties.
- 7.5 Notwithstanding the foregoing, if the Customer resells the Products before title has passed to it in accordance with this Clause 7, it shall do so solely on the following conditions:
- 7.5.1 any sale will be effected in the ordinary course of the Customer's business at full market value and the Customer will account to the Seller accordingly and hold out of the sale proceeds sums equivalent to the invoice value of the Products supplied by the Seller on trust for the benefit of the Seller; and



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7.5.2 any such sale will be a sale of the Seller's property on the Customer's own behalf and the Buyer will deal as principal when making such a sale.

7.6 If Products of the Seller are processed further by the Customer, such processed Products shall be handled free of charge on the Seller's behalf. The Seller is therefore manufacturer as defined under section 950 BGB, i.e. retain ownership of the Products at all times and all stages of processing. When the Customer compounds or mixes the reserved Products with articles not belonging to the Seller, the provisions set out under sections 947, 948 BGB apply. In other words, our joint ownership of the new article is equivalent to our ownership of the reserved Products as defined hereunder.

7.7 We are entitled to dispose of reserved Products as we see fit. If not explicitly specified otherwise, return of reserved Products shall not be considered as equivalent to withdrawal from the contract. In all cases in which we may dispose of the reserved Products as we see fit, and in the case when accounts receivable ceded as collateral are collected, we shall invoice the incurred disposal costs to be borne by the Customer as a lump sum amounting to 10% of the obtained disposal proceeds. This does not affect our right to claim compensation for greater damage. The Customer may choose to submit evidence to the contrary that no disposal costs have been incurred or that these costs are far less.

7.8. If the Customer fails to discharge any of its obligations under Clause 7, we are entitled to dissolve (terminate or withdraw from) the contract with the Customer for cause. This does not affect compensation claims for damages and the rights according to sections 280 et seq. BGB.

## 8 LIABILITY

8.1 Claims for damages are excluded regardless of the type of violation, including unlawful acts, insofar as they are not due to intention or gross negligence.

8.2 In the event of a material breach by the Seller, the Seller's liability for slight negligence is limited to foreseeable damage.

Claims in respect of the following cannot be made unless an essential quality feature guaranteed by the Seller in writing has the express purpose of protecting the Customer from such damage:-

(a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings; (d) loss of business; (e) loss of opportunity; (f) loss of goodwill; (g) loss of reputation; (h) loss of data; (i) any wasted expenditure; or (j) any indirect or consequential loss or damage howsoever caused. For the avoidance of doubt, the Sub-clauses in this Clause 8.2 are intended by the parties to be severable.

8.3 The liability limitations and exclusions in Clauses 8.1 and 8.2 are not applicable to claims which are due to deceitful conduct on the part of the Seller, nor in case of a liability for guaranteed quality features, nor to claims according to the product liability law, nor to injuries to life, body or health.



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- 8.4 Without prejudice to Clause 8.3, the Seller's maximum aggregate liability for all claims made by the Customer in relation to any contract shall not exceed the contract price for the Products, and the Customer agrees to insure adequately to cover claims in excess of such amount.
- 8.5 All exclusions and limitations of our liability also apply to the personal liability of our statutory representatives, our employees, and our vicarious agents.
- 8.6 Prices are quoted by the Seller on the basis of the limitations of liability set out in these conditions. The Customer shall be entitled to request the Seller to agree a higher limit of liability and the Seller may (at its discretion) then quote a revised price taking account of any increased insurance premium to be borne by the Seller.
- 8.7 The Customer shall indemnify the Seller against all losses, costs, claims, damages, expenses and liabilities in respect of or arising out of any injury, loss or damage whatsoever suffered by or occasioned to any person arising out of or in connection with the supply by the Seller of the Products or any act or omission of the Buyer in its performance of its obligations under the Contract, except where any such claim or loss is a direct result of any negligent act or default of the Seller.
- 8.8 If the Products are being supplied by the Seller to the Buyer for incorporation or use at or in relation to a nuclear site or facility, the following shall apply:-
- 8.8.1 The Buyer agrees to hold harmless, indemnify and keep indemnified the Seller (for and on behalf of itself and each of its group undertakings, and their respective officers and employees) (each an "**Indemnified Person**") from and against any and all direct or indirect liabilities (which shall include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, obligations, claims (including claims from third parties), demands, damages, penalties, expenses and fees suffered or incurred by the Seller or any other Indemnified Person, arising out of any actual or alleged nuclear damage caused by the Products or which otherwise occurs in consequence of the performance of or failure to perform the Contract, whether by the Seller, or any sub-contractors of the Buyer or Seller, and any actual or alleged nuclear damage arising in consequence of any activities from time to time carried out in relation to the Contract, whether or not resulting from the negligence of the Seller;
- 8.8.2 The Buyer undertakes to provide and to maintain, or procure that the Owner/Operator of the site where the Products are to be installed provides and maintains, throughout the operational life of the site where the Products are to be installed and for ten years thereafter, insurance covering nuclear damage. Such policy will be placed with recognized international Nuclear Pools (Liability and Property) on industry standard terms, will provide for all suppliers and sub-suppliers to be covered as additional insured and will include a waiver of subrogation for the benefit of the Seller. The Buyer will pay any deductible applicable to such insurance (or, as applicable, procure that the Owner/Operator pays such deductible). The Buyer will provide a copy of the insurance certificate to the Seller upon written request;



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- 8.8.3 In this Clause 8 the term “liability” means any form of liability or obligation whatsoever including but not limited to liability for nuclear damage (as defined in Clause 8.8.4 below) and liability for misrepresentation, under contract, common law, equity or any statutory provision whether or not based on negligence or breach of any express or implied duty to act with care or skill;
- 8.8.4 In this Clause 8, the term “nuclear damage” means injury or death to persons and damage to any property or facility and/or damage or harm to the environment, natural resources, flora and fauna (and including the property and/or facility of the Buyer and the Owner/Operator and the site where the Products are to be installed) arising out of or resulting from radioactive, toxic, explosive or other hazardous properties (or any combination of such properties) of any nuclear matter in connection with which the Products are directly or indirectly used, including but not limited to ionizing radiation or contamination by radioactivity from any nuclear fuels, radioactive products or any nuclear waste from the combustion of nuclear fuels coming from, originating in, or sent to, any site at which the Products are to be installed and/or used, whether or not such injury, death or damage results from the negligence of the Seller.
- 8.9 The Customer has no claims to recourse against us arising from the forwarding of deliveries to a third party when the Customer has reached, with this third party, agreements extending beyond the mandatory warranty claims under the law (in particular contract penalty agreements), unless we have agreed explicitly and in writing to our liability beyond the mandatory warranty claims under the law.
- 8.10 The Customer may only withdraw or terminate when we are responsible for breaching an obligation not consisting in a deficiency. The Customer has no free right to terminate (in particular as set down in sections 649, 651 BGB).
- 8.11 For the rest and insofar as is permitted by law, we exclude all terms and conditions that may otherwise be implied by statute or otherwise regarding liability. Notwithstanding this, nothing in this Clause 8 is intended to restrict our statutory rights.
- 9. WARRANTY**
- 9.1 With respect to material defects and defects of title (including wrong and inadequate delivery, improper assembly, or deficient assembly instructions) the following provisions of Clause 9 apply.
- 9.2 Material defects:
- 9.2.1 Our liability for material defects is based primarily on the agreement reached on the condition of the Products. Agreements on the condition of the Products are written agreements designated as such and, in all other cases, exclusively our product descriptions or specifications that were provided to the Customer prior to its order or incorporated in the contract in the same manner as these GTCS.



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# General Terms and Conditions of Sale Norgren GmbH



**Norgren GmbH**  
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- 9.2.2 The details specified in the above condition agreements and product descriptions do not constitute a guarantee for quality attributes (quality guarantees), but descriptions or identifications of the delivery or performance.
- 9.2.3 Details on the subject matter (e.g. weights, measurements, values in use, load bearing capacities, tolerances, and technical data) are decisive only to an approximate extent except when the usability requires precise compliance for a contracted purpose.
- 9.2.4 Deviations that are common for the sector, deviations arising from legal provisions or serving as technical improvements as well as the replacement of components with equivalent parts, except when these prove detrimental to the usability of the Products for a contracted purpose are permitted.

Without prejudice to the above, we accept no liability for the Products' suitability for any of the Customer's particular purposes. In this respect, therefore, the details specified in the product descriptions do not exempt the Customer from conducting its own tests on its own responsibility.

If a condition has been agreed, there is no liability for public statements (section 434 para. 1 (3) BGB). If a condition has not been agreed, the statutory provisions must be consulted to determine the presence or absence of a defect. In this respect, we accept no liability for public statements (e.g. advertising slogans) by the manufacturer (e.g. of a subproduct or basic material), subcontractor, or other third party.

The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations specified or given to us by the Customer or its agents, servants, consultants, or advisers are accurate correct and suitable. Examination or consideration by us of such drawings information advice or recommendations shall not result in any liability on the part of the Seller.

## 9.3 Defects of title:

- 9.3.1 If the usage of the delivered Products leads to a breach of industrial property rights or copyrights in the home country of the Seller, we will procure for the Customer at our own expense the right to further use or modify the delivered Products to such a reasonable extent that they no longer breach property rights.
- 9.3.2 If this is not possible at our reasonable expense or within an appropriate period of time after notification of such breach, the Customer is entitled to withdraw from the contract.

Under the above conditions, we too have the right to withdraw from the contract.

Furthermore, we exempt the Customer from undisputed or other claims of legal action submitted by the affected owners of the property rights.

Subject to the provisions set out under Clause 10 of these GTCS, our above named obligations are definitive in the event of any breach to property or copyrights.



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Andrew Bruce  
Dr. Klaus Heldmann  
Christian Keil

**Vorsitzender des  
Aufsichtsrats:**  
Thomas Hey

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These obligations apply only when:-

- the Customer informs us immediately of claims on the grounds of breach of industrial property rights or copyrights;
- the Customer assists us to an appropriate extent in countering the submitted claims or helps us to implement modification measures;
- we are provided with all countermeasures including extrajudicial arrangements;
- the defect of title has not been caused by an instruction or in accordance with designs plans or specifications from the Customer; and
- the legal violation was not caused by the Customer's altering the delivered Products on its own accord or using them for a purpose not set down in the contract.

9.4 The Customer must first fulfil its duties to examine and report defects under sections 377 et seq. HGB before the Customer can exercise its warranty rights. Obvious defects must be reported immediately in writing, at the latest within three days after the acceptance of the delivery/performance; concealed defects must be reported immediately in writing after their discovery. If the Customer reports defects belatedly and/or not according to form, this leads to the loss of its warranty rights.

9.5 The warranty rights of the Customer are subject to:-

- 9.5.1 receiving written notification of the defect within the period of this warranty;
- 9.5.2 the product being made available to us for inspection without any further use of, or alteration to, or interference with the Product;
- 9.5.3 the defect is not a loss, shortage, or damage that the Customer is obliged to notify to us;
- 9.5.4 the defect is not a result of any design specification or instruction given by the Customer;
- 9.5.5 that the Customer has fully complied with any of our instructions concerning the use and storage of the Product; and
- 9.5.6 the Customer demonstrating to the satisfaction of the Seller that such loss, shortages or damage occurred prior to delivery by the Seller.

9.6 If the delivered Products are defective, we may first choose whether to provide a subsequent remedy by repairing the defect in the Products (rework) or to deliver defect free Products (replacement delivery). This does not affect our right to refuse rework observing statutory prerequisites.



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- 9.7 We are entitled to make the subsequent performance we owe dependent on the Customer's payment of the due purchase price.
- 9.8 The Customer must grant us the opportunity and time needed to provide the subsequent performance we owe, in particular for handing over the defective Products for test purposes.
- 9.9 If a defect is in fact established, we shall bear the expenses needed for testing and reworking, in particular the transport, road, labour, and material costs. If, on the other hand, the Customer's demand to remedy a defect is unjustified, we may demand from the Customer reimbursement of the costs incurred thereby.
- 9.10 If we do repair the Products or supply a satisfactory substitute of the Products or effect repayment under this Clause 9, the Customer shall be bound to accept such repair or substitution of the Products, or repayment and we shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Products or from the delay before the defective Products are repaired or the substitute Products are delivered or the repayment is effected.
- 9.11 In urgent cases, e.g. when there is a risk to operational reliability or for averting excessive damage, the Customer has the right to remedy the defect itself and to demand from us reimbursement of the reasonably incurred and properly mitigated expenses incurred thereby. We must be informed immediately beforehand of such measures and where possible mutually agree the associated costs in writing in advance. There is no right to remedy defects oneself when we would have been justified in refusing the appropriate rework under the statutory provisions.
- 9.12 If rework repeatedly fails, an appropriate deadline fixed by the Customer expires repeatedly to no avail, or the statutory provisions render this rework superfluous, the Customer may withdraw from the sales contract or request a reduction of the purchase price. A trivial defect, however, does not justify any right to withdraw. Loss shortages or damage in a delivery or any instalment delivery shall not be a ground for termination of the contract or the remainder of the contract (as the case may be).
- 9.13 The Customer may claim damage compensation or reimbursement of excess expenditure only as provided under Clause 9, and in all other cases such claims are excluded.
- 9.14 If our rework includes the delivery of a defect free product, the Customer must hand over the defective product at our request. In all cases, our agreement must be granted before the Products are returned.
- 9.15 By way of derogation from the conditions under section 438 para. 1(3) BGB, the Customer's warranty claims fall under the statute of limitations twelve months after delivery. If acceptance has been expressly agreed in writing by us, the Customer's warranty claims fall under the statute of limitations twelve months after acceptance. If the subject matter of the contract is a building or an object whose customary purpose renders it suitable for use for a building e.g. construction materials have been found defective, or if it relates to works to result in the provision of planning and monitoring services for a building, the statute of limitations under the law is five years from the date of delivery or acceptance (cf. sections 438 para. 1(2), 634a para. 1(2) BGB). This does



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not affect the Customer's rights under sections 478, 479 BGB (recourse claims against previous suppliers).

- 9.16 The statute of limitations is suspended for the duration of the required rework. It does not recommence.
- 9.17 The above limitations also apply to the Customer's contractual and extracontractual compensation claims for damage caused by a defect in the Products, unless application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.
- 9.18 The Customer may not submit any warranty claims when the defect in our delivery or performance has been incurred to a not inconsiderable extent by the Customer's making changes to our delivery/ performance and/or the Customer's failure to follow operating instructions. The same applies to an unsuitable or improper use or use or storage other than that specified by us; defective assembly or startup by the Customer or third party; unauthorised repair attempts; natural wear and tear; erroneous or negligent handling; unsuitable resources or replacement materials; chemical, electrochemical, or electrical effects outside of our influence; and failure to observe our operating instructions and catalogue sheets, specifically with respect to the conditions of use for our pneumatic components.
- 9.19 For the rest and insofar as is permitted by law, we exclude all terms and conditions that may otherwise be implied by statute or otherwise regarding this warranty section. Notwithstanding this, nothing in this Clause 9 is intended to restrict our statutory rights.

## 10. USE OF SOFTWARE

- 10.1 If delivery includes software, the Customer is granted a nonexclusive right to use the delivered software including its documentation solely in connection with the delivered Products for which it was provided. The software may not be used on more than one system.
- 10.2 The Customer may duplicate, revise, translate, or decompile the software only to the extent permitted under the law (sections 69 a et seq. of the German Copyright Act (UrhG)). The Customer pledges neither to remove any of the manufacturer's specifications, specifically the copyright notices, nor to change them without our prior explicit consent.
- 10.3 All other rights to the software and its documentation including all copies remain with us or the software supplier. No sublicences may be granted.
- 10.4 An intentional breach of these conditions entails an immediate contract penalty in an amount that we determine to be just and that, when disputed, must be assessed by the District Court (Landgericht) of Stuttgart. This contract penalty must be offset against any compensation claim for damage. The software and its documentation must be returned to us immediately.
- 10.5 The above provisions do not apply to exclusively custom software developed on the basis of the specifications provided by the Customer. This software, developed within the limits of a contracted complete control system, we have compiled into a custom solution from multipurpose



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software modules (standard software modules) and modified to reflect the contracted performance requirements (custom application). On full payment of the purchase price for the custom application, we shall transfer to the Customer the exclusive right of use, without geographical or temporal constraints. At the same time, the Customer does not have any rights of whatever kind to any of the standard software modules providing the basis for the custom modifications. Irrespective of these provisions, we retain the right to generate and offer custom software solutions based on this development and on the requirements of other customers. In all cases, we retain the simple right of use to the custom solution for internal purposes.

## 11. INDUSTRIAL PROPERTY RIGHTS

11.1 If not otherwise agreed upon, we shall be obliged to render the delivery free of any industrial property rights and copyrights of third parties (hereinafter called: "property rights") solely in the country of delivery by Seller. To the extent a third party makes justified claims against the Customer because of infringement of property rights by deliveries rendered by us and used according to contract, we shall be liable to the Customer within the time-limit stipulated in Clause 9 as follows:

11.1.1 we shall at our own expense and discretion obtain a right of use for the deliveries concerned, modify them such that the property right is not infringed or exchange them. Should we not be able to do so under reasonable conditions, the Customer shall be entitled to the statutory right of rescission or reduction.

11.1.2 Our obligation to pay damages shall be subject to Clause 9.

11.1.3 The above-mentioned obligations of us shall only be given provided if the Customer immediately informs us in writing about claims asserted by third parties and fully co-operates with us, refuses to acknowledge an infringement, and all and any defence and settlement proceedings remain reserved to us. Should the Customer discontinue the use of the delivery Products for the purpose of reducing the damage or for other reasons, the Customer shall be obliged to inform the third party about the fact that the discontinuance of use does not represent an acknowledgement of the property rights infringement.

11.2 Claims of the Customer shall be excluded to the extent the Customer is responsible for the property rights infringement. Claims of the Customer shall furthermore be excluded to the extent the property rights infringement was caused by special standards stipulated by the Customer, by use not foreseeable by us or by the fact that the delivery Products were modified by the Customer or used in conjunction with Products not delivered by us.

## 12. OFFSETS

Offsets in form of the Customer's counterclaims or exercised rights of retention are permitted only when the Customer's claims are due and undisputed or have been established with res judicata effect.



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## 13. CONFIDENTIAL INFORMATION

- 13.1 All samples, test examples, brochures, illustrations, drawings, cost estimates, and other documents and computer software that is provided or produced by us or a third party, to the Customer for contract initiation and that the Customer has not paid for separately must be returned to us on demand (including all copies). We reserve our proprietary rights, copyrights, and other industrial property rights on these Products and documents. They may not be utilised in any other manner, specifically they may not be duplicated and/or communicated to third parties without our written consent. Any Products and documents remaining in the Customer's possession require an agreement on indirect possession (section 868 BGB). No rights of retention may be exercised on these products and documents.
- 13.2 The Customer pledges to handle with strict confidence all information, expertise, and other trade secrets while performing the contract and not to communicate any information, documents, documentation, drawings, diagrams, or other materials to third parties without our explicit consent. This does not apply when the Customer is obliged by law to disclose this information.

## 14. WITHDRAWALS AND TERMINATION

Without prejudice to any other rights or remedies of the Seller it shall be entitled in any of the following circumstances to terminate (in whole or in part) the contract and/or to suspend deliveries and/or to receive upon demand of payment all monies due and payable by the Customer:-

- 14.1.1 the Customer defaults for longer than fourteen (14) days on the payment of two agreed instalments and does not settle fully the outstanding sum within fourteen (14) days of a written reminder;
- 14.1.2 the Customer has made an affirmation in lieu of an oath under section 807 of the German Code of Civil Procedure (ZPO);
- 14.1.3 there is compulsory execution on the Customer's assets, and this action has not been revoked within eight (8) weeks;
- 14.1.4 the Customer has filed a petition to instigate insolvency proceedings on the Customer's assets, the competent insolvency court has appointed a preliminary liquidator in response to a third party petition to instigate insolvency proceedings on the Customer's assets, or the instigation of insolvency proceedings has been rejected due to insufficient assets;
- 14.1.5 the Seller reasonably believes that any of the events mentioned above or any equivalent or similar event under any relevant laws to which the Customer or any connected person is subject has or may occur; and/or
- 14.1.6 the Customer or any connected person commits or allows to be committed any material breach of the contract (including these GTPD).



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## 15. SUPPLEMENTARY PROVISIONS FOR ASSEMBLY, REPAIR AND MAINTENANCE SERVICES

- 15.1 The risk of loss to the delivery/performance or parts thereof is passed to the Customer when they have been delivered to the Customer according to the agreed INCOTERMS, unless the parties have agreed otherwise explicitly and in writing.
- 15.2 Even without a separate agreement, the Customer is obliged implicitly to collaborate in our assembly, repair, and maintenance services and to provide us with heating, lighting, electricity, water, and other supply installations, including the requisite connections, free of charge. The Customer is moreover obliged to inform us in detail of the safety regulations that must be observed and to obtain all official permissions needed for the assembly, repair, and maintenance services.
- 15.3 If the Customer fails to discharge or breaches one of its (explicit or implied) collaboration duties, we shall exercise our statutory rights to the full extent (sections 280 et seq., 323 et seq. BGB). These fall under the statute of limitations according to the statutory provisions. This does not affect our rights under sections 642, 643 BGB.
- 15.4 On conclusion of contract, the Customer must appoint to us a contact person and a delegate, both of whom are authorised to answer questions and make decisions in connection with the contracted deliveries/performance.
- 15.5 The contact person and/or representative appointed on conclusion of the contract retains incontrovertibly his authorisation to answer with binding effect all of our questions in connection with the contracted deliveries/performance until the Customer provides us with the name of a new contact person and/or delegate. This does not affect the Customer's right to revoke immediately for cause the authorisation of a contract person and/or delegate.

## 16. COMPLIANCE

- 16.1 The Customer pledges to satisfy all anticorruption laws in connection with its business with us. The Customer shall inform us immediately if it learns that one of its executive bodies, officers, directors, employees, or representatives is under suspicion of corruption.
- 16.2 The Customer is aware that we uphold a Code of Responsible Business (known as the "IMI Way"). The IMI Way is available at [www.imiplc.com](http://www.imiplc.com). The Customer pledges to ensure that its executive bodies, employees, and representatives perform their business activities in compliance with the IMI Way.
- 16.3 The Customer shall be solely responsible for obtaining any and all necessary import or export licences or permits necessary for the delivery to the Customer, and the Customer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, exportation and/or delivery of the Products.
- 16.4 The Customer agrees to comply fully, at its own expense, with all applicable import and export laws, restrictions, national security controls and regulations of Germany and any other applicable local law or regulation.



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## 16.5 The Customer agrees and undertakes that:

16.5.1 it shall comply with the terms of any export licence, licence exception, or general licence granted or approved by any competent governmental authority, and that it shall not re-export or transmit any Products directly or indirectly to any person, entity or into any territory not covered by such export licence, licence exception, or general licence; and

16.5.2 (regardless of any prior export licence, licence exception or general licence), the Products will not be supplied directly or indirectly to any person or entity or into any territory which is embargoed, prohibited, debarred or otherwise the subject of sanctions from the United Kingdom, the European Union, the United States of America or the territory where the Buyer is located.

16.6 The Customer is obliged, each and every time we request it to, to provide verification that the Customer is discharging its duties under this section "Compliance". This includes, but is not limited to, our right to inspect all sites used to perform work for us. This does not affect any other of our rights. If the Customer fails to discharge its duties under this section "Compliance", we have the right to terminate the contract and any other agreements between the Customer and the Seller for cause without penalty to the Seller, but with obligations for the Customer to remedy any damages suffered by the Seller as a result of such termination or breach of contract.

## 17. FORCE MAJEURE

17.1 The Seller shall not be liable for any failure to perform any of its obligations under the contract for any reason whatsoever outside its reasonable control including without limitation, acts of God, strikes, riots, lock-outs or other industrial action including trade disputes (whether such dispute involves its employees or not), government acts or orders, epidemics, pandemics (including, without limitation COVID-19) or outbreak of communicable disease, quarantines, national or regional emergencies, shortage of materials or by any other act, matter or thing beyond its reasonable control.

17.2 In the event that the Seller does not perform its obligations by reason of any of the causes referred to in Clause 17.1 within six months after the time for performance either party may by written notice terminate the contract without liability save that the Customer shall pay for any Products delivered or completed and any work in progress at the time of termination.

17.3 The Customer may only exercise its rights under sections 281, 284, 285 BGB when a suitable extension has expired to no avail, unless timely delivery has been agreed as of essence through a signed statement issued by the Seller.

## 18. TOOLS

Any tools (such as jigs, dies, etc.) which the Seller may construct or acquire specifically in connection with the Products shall, notwithstanding any charges the Seller may make for them, be and remain the Seller's sole and unencumbered property and in the Seller's possession and control without restriction.



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## 19. HEALTH & SAFETY

The Customer agrees to comply with any information and instructions supplied by the Seller relating to the Products including but not limited to any conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person. The Customer shall take such steps as specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Products will be safe and without risk to health at all times.

## 20. CUSTOMER'S DRAWINGS

The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations specified or given to the Seller by the Customer or its agents servants consultants or advisers are accurate correct and suitable. Examination or consideration by the Seller of such drawings information advice or recommendations shall not result in any liability on the part of the Seller.

## 21. APPLICABLE LAWS AND VENUE

- 21.1 These GTCS are subject to the laws of the Federal Republic of Germany.
- 21.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- 21.3 No waiver of or delay or failure by the Seller to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 21.4 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.
- 21.5 Nothing in these conditions shall create a partnership, agency or relationship of employment between the parties
- 21.6 In the absence of any provisions to the contrary herein, the Incoterms published by the International Chamber of Commerce apply in the wording in force at the time of contract conclusion.
- 21.7 The courts of law responsible for the Seller's registered office in Germany is the exclusive venue for all disputes arising from legal relationships based hereon. We are also, however, entitled to submit our claims vis-à-vis the Customer before the courts of law responsible for the Customer's registered office.



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## 22 DATA PROTECTION

The Customer is aware that the GDPR accords us the right to store data collected from the contractual relationship for data agreement purposes and to communicate this data to third parties if necessary for the fulfilment of the contract. If data must be communicated to sales partners, these sales partners are obliged to observe our data protection standards. For further information please see our privacy policy on our website.

**As per: August 2022**



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