

General Terms and Conditions (AGB) of Heermann Maschinenbau GmbH

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Part I: General Terms and Conditions HEMA Online Shop for consumers (B2C)

Status: July 2020

The following General Terms and Conditions are an integral part of all our offers and order confirmations on our HEMA Online Shop to **consumers** as Customers (B2C).

§ 1 Scope

- 1. These General Terms and Conditions shall only apply to Customers who are consumers, i.e. Customers who order or purchase goods for private purposes and not for commercial or independent professional activities. These General Terms and Conditions do not apply to business Customers.**
2. These General Terms and Conditions apply to all goods offered by HEMA in the online shop at <https://shop.hema-saegen.de/>. These General Terms and Conditions do not apply to any orders apart of the Online Shop.

§ 2 Notification and Information provided in the Online Shop

1. The presentation of the goods in the Online Shop shall not be deemed as a legally binding offer, but shall be construed a non-binding online catalogue for presentation purpose. By clicking on the button "buy now" Customer places a binding order for the goods selected in the shopping basket. A Confirmation of receipt of Customer´s order will then be sent immediately by e-mail. By sending the e-mail confirmation HEMA does not yet accept your order. Confirmation of the contract is effected by separate e-mail containing a corresponding order confirmation.
2. The data of the concluded contract will not be stored by HEMA in a way accessible to the Customer. However, the data of the concluded contract will be sent to the Customer by e-mail as part of the confirmation of receipt.
3. The Customer may correct any input errors of his order prior to the final submission of its order by checking the order on a separate confirmation page.
4. The language available for the conclusion of the contract is German.
5. HEMA has not submitted to any code of conduct.

6. The essential characteristics and the total price of the goods, further the period of validity of limited offers of HEMA can be found in the detailed descriptions of the individual goods in the Online Shop.

§ 3 Purchase Price, Return Costs in Case of Revocation, Place of Subsequent Performance

1. All prices include value added tax.
2. In the event of revocation, the Customer must bear the direct costs of returning the goods.
3. The place of performance for subsequent performance shall be at the registered office of HEMA. The foregoing does not affect any cost bearing by us in case of supplementary performance.

§ 4 Means of payment, Terms of Payment, Offsetting

1. Unless a product in the Online Shop does not show a notification regarding the means of payment, payment can be made by prepayment, SEPA direct debit, invoice or PayPal.
2. If the Customer chooses to pay by bank wire transfer, the amount due is to be made as prepayment. Prepayment shall be deemed to have been made when credited to HEMA's bank account.
3. If the Customer chooses to pay by PayPal, the payment is deemed to have been executed when received unconditionally in HEMA's PayPal account.
4. HEMA's claims for remuneration can only be offset against undisputed or legally binding claims.

§ 5 Delivery Date Depending on the chosen Means of Payment

1. Unless a product does not show a special notification in the Online Shop or differs from the subsequently provision, delivery will be made as follows:
 - deliveries to Germany: in up to 5 working days
 - deliveries outside of Germany: in up to 7 working daysstarting in case:
 - of prepayment **by bank wire transfer** or **SEPA direct debit** after the payment order has been properly issued to the Customer's transferring bank;

- of payment by **PayPal**: as soon as the Customer's order has been duly placed with PayPal to arrange payment to HEMA's PayPal account;
 - of payment by **invoice**: by conclusion of the contract.
2. Working days are Monday to Friday, except for public holidays at HEMA's registered office and public holidays at the Customer's registered office.

§ 6 Retention of Title

1. HEMA reserves title to all the goods delivered by us until such time as payment from the agreed contract is rendered in full.
2. The Customer must inform HEMA without delay of any execution measures by third parties against the reserved goods and hand over all necessary documents for intervention; this also applies to impairments of any other kind.

§ 7 Liability of HEMA

1. The goods are subject to the statutory warranty, liability for defects.
2. The Customer may claim damages only as follows:
 - 2.1. For damages based on
 - an intentional or grossly negligent breach of duty on our part, or
 - an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agentswhich are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our goods or services.
 - 2.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executives or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.
 - 2.3. Furthermore, we shall be liable for damages due to negligent or intentional breach of duties in connection with defects in our goods or services (subsequent performance or ancillary duties)), and

- 2.4. for damages which fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.
3. In the event of a breach of an essential contractual obligation involving slight negligence , liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.
4. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health as well as damages resulting from the violation of obligations in connection with defects in our delivery or service (subsequent performance or secondary obligations).
5. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue to exist to the statutory extent required within the statutory periods.

§ 8 Severability, Applicable Law, Interpretation of Legal Terms and Phrases

1. If any provision of these General Terms and Conditions is or becomes invalid in whole or in part, this shall not affect the effectiveness of any other provisions or agreements.
2. German law shall apply to the contractual and other legal relationships with our Customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). This shall not apply if mandatory consumer protection regulations in the country in which the Customer has his habitual residence are more favourable to the Customer (Art. 6 of Regulation (EC) 593/2008).
3. In case German law is applicable the following specific legal terms and phrases within these General Terms and Conditions shall be interpreted as follows:
 - assurance (Zusicherung)
 - cardinal obligations (Kardinalpflichten)
 - damages (Schadensersatz)
 - domicile (Wohnsitz)

- executives (leitende Angestellte)
- intentional or grossly negligent breach of duty (vorsätzliche oder grob fahrlässige Pflichtverletzung)
- Offsetting (Aufrechnung)
- revocation (Widerruf)
- slight negligence (einfache Fahrlässigkeit)
- subsequent performance (Nacherfüllung)
- vicarious agents (Erfüllungsgehilfen)

§ 9 Disputes settlement procedure

1. HEMA is neither willing nor obliged to participate in dispute resolution procedures at a consumer dispute resolution body.
2. European Commission's Online Dispute Resolution Platform (OS):
<http://ec.europa.eu/consumers/odr/>.
3. Our e-mail address is: info@hema-saegen.de.

Part II: General Terms and Conditions HEMA Online Shop for Business Customers (B2B)

Status: July 2020

The following General Terms and Conditions are an integral part of all our offers and order confirmations on our HEMA Online Shop to **business Customers (B2B)**.

§ 1 Scope

- 1. These General Terms and Conditions shall only apply to business Customers, i.e. to Customers who purchase the goods for their commercial or self-employed professional activity. These General Terms and Conditions do not apply to consumers.**
2. These General Terms and Conditions apply to all goods offered by HEMA in the online shop at <https://shop.hema-saegen.de/>. These General Terms and Conditions do not apply to any orders apart of the Online Shop.
3. These General Conditions for the Provision of Goods and Services shall apply exclusively in our relationship with the Customer. They shall also apply to all future business transactions as well as to all business contacts with the Customer, such as the commencement of contract negotiations or the initiation of a contract, even if these General Conditions for the Provision of Goods and Services are not again expressly agreed to or referred to. The validity of the Customer's general order or purchase conditions is expressly contradicted.
4. If, in any individual case, obligations are created in relation to any person or commercial entity not a party to the contract, the limitations of liability in these General Terms and Conditions shall also apply to such persons or commercial entities, insofar as these General Terms and Conditions were also applied to the third party when the contractual obligation was established. This shall be the case in particular, if the third party has gained knowledge or already had knowledge of these General Terms and Conditions when the obligation was established.

§ 2 Notification and Information provided in the Online Shop

1. The presentation of the goods in the Online Shop shall not be deemed as a legally binding offer, but shall be construed a non-binding online catalogue for presentation purpose. By clicking on the button "buy now" Customer places a binding order for the goods selected in the shopping basket. A Confirmation of receipt of Customer's order will then be sent immediately by e-mail. By sending the e-mail confirmation HEMA does not yet accept your order. Confirmation of the contract is effected by separate e-mail containing a corresponding order confirmation.
2. The data of the concluded contract will not be stored by HEMA in a way accessible to the Customer. However, the data of the concluded contract will be sent to the Customer by e-mail as part of the confirmation of receipt.
3. The Customer may correct any input errors of his order prior to the final submission of its order by checking the order on a separate confirmation page.
4. The language available for the conclusion of the contract is German.
5. HEMA has not submitted to any code of conduct.
6. The essential characteristics and the total price of the goods, further the period of validity of limited offers of HEMA can be found in the detailed descriptions of the individual goods in the Online Shop.

§ 3 Delivery, Scope of Delivery and Performance, Performance Deadlines

1. Delivery and performance periods and dates provided are based on the best possible information, but are generally non-binding. The commencement of a delivery period and compliance with any delivery deadline shall be subject to the Customer's timely and proper performance of its duties of cooperation, the provision of all documents required and the payment of any agreed advance payments.
2. Our written offer or order confirmation shall determine the scope of our duty to provide goods and services. Any collateral agreement or amendment shall require written confirmation by us. If our offer or order confirmation is based on information provided by the Customer (data, figures, illustrations, drawings, system requirements, etc.), our offer shall only be binding if such information was correct. If it becomes apparent after contract formation that the order cannot be performed in accordance with the Customer's specifications, we

shall be entitled to withdraw from the contract if and insofar as the Customer is not prepared to accept any replacement solution proposed by us and to bear any additional costs actually incurred.

3. We shall be entitled to provide partial performance in relation to all goods and services to a reasonable extent. We shall be entitled to use subcontractors to fulfil our contractual obligations.
4. As soon as we become aware of any risk of the Customer being unable to pay, we shall be entitled to limit any provision of goods and services to advance payment or the provision of security in each case. Our rights to withdraw from any individual contract already entered into shall remain unaffected if and insofar as the Customer fails to make an advance payment or provide security within a reasonable period.
5. Information enclosed within our offers and order confirmations, e.g. drawings, weight, dimensional and capacity specifications, shall be deemed only approximately unless expressly marked as binding. We reserve all rights to drawings, drafts or alike work.
6. In the event of force majeure or other extraordinary circumstances for which we are not responsible, we shall not be in default. In such case, we shall be entitled to also withdraw from the contract if we are already in default. In particular, we shall not be in default in the event of delays in delivery insofar as these are caused by incorrect or untimely delivery by our suppliers for which we are not responsible. In case of any hindrance of a temporary nature, the deadlines for the provision of goods and services shall be extended or shall be postponed by the period of such delay as well as a reasonable run-up period.
7. If we are contractually obliged to perform in advance, we may refuse any such performance incumbent upon us if it becomes apparent after entering the contract that our claim to consideration is endangered by the Customer's inability to pay. This shall be the case in particular if the consideration due to us is endangered by the poor the financial circumstances of the Customer or if other obstacles threaten the performance, such as export or import prohibitions, conflict-related events, insolvency of suppliers or the absence of any essential employees due to illness.

§ 4 Prices and Packaging, Transfer of Risk

1. Our prices are net prices and, unless otherwise agreed in writing, are always "ex works" Frickenhausen, Germany (EXW Incoterms 2020). In the case of services, the prices refer to the performance of the service at the agreed place of performance. When invoicing, the value added tax shall be added at its respective statutory rate.
2. If a performance period of more than four months has been agreed between the time of confirmation of the order and the time of performance, we shall be entitled to pass on to the Customer to a corresponding extent any cost increases that have occurred in the meantime for us. The same applies if a performance period of less than four months was agreed, but the performance can only be provided by us later than four months after confirmation of the order for reasons for which the Customer is responsible.
3. In the case of any work performance or services to be rendered by us, the remuneration - even in the case of a previously submitted cost estimate - shall generally be charged on the basis of time, unless a lump-sum remuneration has been agreed. Please refer to our offer or order confirmation for the time recording units and the current hourly rates.
4. Expenses and travel expenses shall be invoiced separately unless otherwise agreed. Reimbursement of travel and accommodation costs by the Customer shall be made on presentation of the receipts in copy and deduction of the input tax amounts contained therein, unless otherwise agreed in writing between the parties prior to travel. Please refer to our offer or order confirmation for the current travel and expense rates.

§ 5 Terms of Payment

1. Unless otherwise contractually agreed, all payments shall be due for payment to us or to one of our accounts within 30 days of receipt of the delivery or the complete provision of performance, strictly net and free of any deductions. If we perform our deliveries or services in definable parts, payment for each part shall be due upon.
2. Unless expressly agreed otherwise, the Customer shall not be entitled to make deductions.

3. Insofar as the Customer has its place of business located outside of Germany and no advance payment is envisaged under the contract, we shall be entitled without any separate agreement in relation thereto, to make any performance subject to the provision of a letter of credit from a bank or savings bank registered in the European Union for the amount of the gross performance price and issued in accordance with the current applicable Uniform Guidelines and Practices for Documentary Credits (ERA 500)/Uniform Customs and Practice for Documentary Credits (UCP 500) of the International Chamber of Commerce (ICC). If we do not demand the provision of such a letter of credit and if nothing to the contrary has been contractually agreed, our claim shall become due upon receipt of the delivery or upon the provision in full of our services. If we provide the goods or services over separable time periods, we shall in any case be entitled to demand payment for the corresponding part remuneration for each period and, as applicable, to demand the provision of a letter of credit for each such period.
4. If the Customer is in default of payment, it shall compensate us for any damage caused by default, including in particular interest at a rate of 9 percentage points above the base interest rate. If the Customer is in arrears with the payment of a due amount or partial amount for more than 14 days, if the Customer violates the obligations resulting from a retention of title or if the consideration due to us is endangered due to poor financial circumstances of the Customer, the entire outstanding balance of any and all claims shall become due for payment immediately.
5. Payment by bill of exchange or acceptance shall be permitted only after an express agreement on such and only on account of payment. Any additional costs incurred as a result shall be borne by the Customer.
6. Only those claims which are undisputed or confirmed by way of a final legal judgment may be set off against any amount we may claim under our right to remuneration. The same applies to the exercise of any right of retention. The Customer shall be entitled to exercise any right of retention only insofar as it is based on the same contractual relationship.
7. Any assignment of claims against us by the Customer shall require our prior approval, which we shall only refuse for good cause.

§ 6 Delivery of Software

1. Delivery and scope of delivery

Software, including patches, will be delivered in the form of the object code on a standard data carrier and/or online as a download on our homepage. The delivery will include a user manual. Unless otherwise agreed between the parties, the user manual may at our discretion be delivered either as a booklet or on a data carrier. We are not obliged to provide the source code for the software.

2. Software licenses

2.1. For the use of the delivered software the software license terms of the respective software apply.

2.2. Unless otherwise agreed, customer is granted a non-exclusive, unlimited, non-sublicensable software license for the use of the delivered software. This software license entitles the customer to install the software on a single computer (single workstation licence) oder machine.

2.3. No further license rights are granted, especially no rights to copy the software out of the scope of the contractually intended use. The customer is not entitled to modify the software except to correct errors. The customer may only correct errors if bullmer has previously refused to correct the error or has been unsuccessful in correcting it. The customer is granted the right to make a back-up copy of the software and to duplicate it in connection with ordinary data back-up for the purpose of ensuring that the software operates as intended. It is permissible to decompile the software under the provisions of Article 69e of the German Copyright Act (Urhebergesetz).

2.4. The software license in respect to any bug-fix or update versions of a software is identical to the software license of the original delivered software.

2.5. Markings of the software, in particular copyright notices, trademarks, serial numbers or alike may not be removed, changed or made unrecognisable.

§ 7 Warranty and General Liability

1. The limitation period for claims based on any defect in our goods or services shall be one year from the date of statutory commencement of the limitation period. After the expiry of this year, we may refuse to undertake any subsequent performance without the Customer being entitled to claim a

reduction in price, withdraw from the contract or claim damages as a result. This reduction of the statutory limitation period shall not apply to claims for damages other than those based on refused subsequent performance and shall generally not apply to claims based on a fraudulent concealment of any defect.

- 2.** Any claim of the Customer for subsequent performance due to defects of the goods or services provided by us shall be subject to the following provisions:
 - 2.1.** If a delivered item is defective, we may initially choose whether we provide subsequent performance by remedying the defect (rectification) or by supplying a defect-free item (replacement delivery). The right to refuse the chosen type of subsequent performance under the conditions set down by statutory law shall not be affected hereby.
 - 2.2.** If it is not possible to remedy the defect or to supply an error-free subsequent delivery, or only at disproportionate expense, we shall be entitled to provide a solution by showing the Customer ways of avoiding the error (error bypass). Error bypasses shall be understood as bridging of errors and disturbances. If providing an error bypass is not unreasonable for the Customer, this shall be deemed as a sufficient subsequent performance.
 - 2.3.** We may undertake any such subsequent performance dependent on the Customer having paid the purchase price due for payment. The Customer may, however, withhold payment of a reasonable part of the purchase price in proportion to the defect.
 - 2.4.** The Customer shall provide us with reasonable opportunity and time for any subsequent performance and in particular shall provide us with the defective goods for testing purposes. In case of any replacement delivery, the Customer shall return the defective objects to us in accordance with the provisions of law.
 - 2.5.** We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular any transport, travel, labour and material costs, provided that the alleged defect actually exists.
 - 2.5.1.** If the Customer has installed the defective item in another item or attached it to another item in accordance with its type and intended use, we shall, within the framework of subsequent performance, reimburse the Customer for necessary expenses for the removal of the defective item and the installation or attachment of the repaired or delivered defect-free item. § 442 para. 1 of the

Civil Code (*BGB*) shall apply subject to the provision that regarding the Customer's knowledge the Customer's installation or attachment of the defective item instead of the conclusion of the contract shall be relevant.

2.5.2. The Customer shall bear any costs of subsequent performance arising from the fact that the purchased item has been taken to a place other than the Customer's place of domicile or commercial establishment after delivery.

2.5.3. In the event that any claim for rectification of a defect by the Customer proves to be unjustified, we shall be entitled to claim reimbursement from the Customer of any resulting costs.

3. The Customer may claim damages only as follows:

3.1. For damages based on

- an intentional or grossly negligent breach of duty on our part, or
- an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents

which are not essential contractual obligations (cardinal obligations) and are not main or ancillary obligations in connection with defects of our goods or services.

3.2. For damages which are based on the intentional or negligent breach of essential contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executives or vicarious agents. Essential contractual obligations (cardinal obligations) within the meaning of the above subsections 3.1 and 3.2 are obligations the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies.

3.3. Furthermore, we shall be liable for damages due to negligent or intentional breach of duties in connection with defects in our goods or services (subsequent performance or ancillary duties)), and

3.4. for damages which fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.

4. In the event of a breach of an essential contractual obligation involving slight negligence , liability shall be limited in amount to the damage typically to be expected and foreseeable for us at the time of conclusion of the contract if due care is taken.

5. Any claim for damages on the part of the Customer in case of a breach of an essential contractual obligation involving slight negligence shall expire one year from the limitation period starting to run under the statute of limitations. Excluded from this shall be any damage or injury in relation to life, personal injury or injury to health.
6. Any rights to claim for damages against us arising from mandatory liability at law, for example under the Product Liability Act, as well as in relation to injury to life, body or health shall remain unaffected by the above provisions and shall continue to exist to the statutory extent required within the statutory periods.
7. Any rights of a customer under § 445a, § 445b and § 478 of the Civil Code (*BGB*) where the Customer or its subsequent customers are in a supply chain shall remain unaffected in accordance with the following provisions:
 - 7.1. The Customer shall have the burden of proof to establish that the expenses for subsequent performance were necessary and that it could not have refused subsequent performance to its buyer in accordance with § 439 para. 4 Civil Code (*BGB*) or could not have performed subsequent performance in a more cost effective manner.
 - 7.2. Any claim under § 445a para. 1 Civil Code (*BGB*) shall expire under § 445b para. 1 Civil Code (*BGB*) two years from delivery by us to the Customer. This period shall also apply if a longer period would have applied in accordance with § 438 Civil Code (*BGB*).
 - 7.3. The limitation period for the Customer's claims against us based on a defect in a newly-manufactured item, as defined in §§ 437 and 445a para. 1 Civil Code (*BGB*), shall commence at the earliest two months after the date on which the Customer has satisfied the claims of its buyer, provided that the claims had not yet expired in the relationship between the Customer and its buyer. This suspension of expiry shall end at the latest five years after the date on which we have delivered the goods to the Customer.
8. If the Customer is a merchant within the meaning of the German Commercial Code , the following applies in addition:

The Customer's warranty claims, in particular the claims for subsequent performance, recourse, withdrawal from the contract reduction of the purchase price and damages, require that the Customer has complied with its statutory obligations to inspect and provide notice of any defect (§§ 377, 381

Commercial Code (*HGB*)). If a defect is found during the inspection or later, we must be notified without undue delay in text or written form. Without undue delay shall mean that the notification shall be provided within fourteen days of the detection of a defect whereby in order to satisfy this deadline the sending of the notice within this period shall suffice. Irrespective of this obligation to inspect and provide notice of any defect, the Customer must report obvious defects (including incorrect and short delivery) within fourteen days of delivery in text or written form by e-mail, whereby in such case the timely dispatch of the report shall also be sufficient to meet the deadline. If the Customer fails to properly inspect the goods and/or to notify us of any defects, our liability for the defect not notified shall be excluded. This shall not apply if we have fraudulently concealed the defect.

§ 8 Exemption from Liability for Non-fungible Goods

If we manufacture non-fungible goods on behalf of the Customer, in particular custom-made items or prototypes, these items may only be used for internal research purposes and shall not, without our express consent, be used commercially. If the Customer uses such items commercially without our express consent and a violation of domestic or foreign or official safety regulations or product liability requirements results thereby, the Customer shall indemnify us against any subsequent claims by third parties. However, in cases of fault-based liability, this shall apply only if the Customer is at fault. Insofar as the cause of the damage is within the reasonable control of the Customer, it shall bear the burden of proof in this regard.

§ 9 Retention of Title

1. We reserve title to all the goods delivered by us until such time as payment is rendered in full in relation to all our current and future claims arising from the agreed contract and other ongoing business transactions (secured claims).
2. Goods subject to a retention of title shall not be pledged to any third party or assigned as security until all secured claims have been paid in full. The Customer must inform us without undue delay in text or written form if and to the extent that any third party accesses goods belonging to us.

- 3.** In the event of the Customer acting in breach of contract, in particular in case of any non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand the return of the goods on the basis of our retention of title. Any demand for the return of goods shall not in itself constitute a declaration of withdrawal from the contract; we are entitled to demand a return of goods and to continue to reserve our right to withdraw from the contract. If the Customer fails to pay the purchase price due, we may exercise these rights only if we have set a further reasonable deadline by which payment must be made or, if such an additional deadline is not required by law.
- 4.** The Customer shall be entitled to resell and/or process the goods in the ordinary course of business subject to our retention of title. In such case the following provisions shall also apply:

 - 4.1.** Any retention of title shall cover the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed the manufacturer. If in any processing, mixing or connection with other goods, a third party retains its retention of title, we shall then acquire a co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In addition, in relation to such resulting products the same shall apply as in relation to goods supplied under retention of title.
 - 4.2.** The Customer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product, in whole or to the amount of our possible co-ownership share in accordance with the above provision. We hereby accept this assignment. The obligations of the Customer as set out in A. § 6 no. 2. above shall also apply with regard to the assigned claims.
 - 4.3.** As well as ourselves, the Customer shall remain authorised to collect the claim. We undertake not to collect a claim provided that the Customer meets its payment obligations towards us, is not in default in relation to any payment, no application has been made for the commencement of insolvency proceedings and there is no other defect in terms of the Customer's ability to pay. In the event of any of the above, we may require the Customer to disclose to us any assigned claim and the details of the respective debtor, as well as all other details necessary for the collection and that the Customer provides all related

documentation and notifies the debtor (third party) of the respective assignment.

- 4.4. If the realisable value of any security exceeds our claim by more than 10%, we shall, at the request of the Customer, release security at our discretion.
5. The Customer must treat the reserved goods with care. At our request, the Customer must adequately insure the reserved goods at replacement value against fire, water damage and theft at its own expense. Insofar as any maintenance or inspection work becomes necessary, the Customer shall carry out such at its own expense and in good time.
6. If the effectiveness of this retention of title depends upon its due registration, e.g. in one or more public registers in the Customer's country, we shall be entitled and authorised by the Customer to bring about this registration at the Customer's expense. The Customer shall be obliged to provide at no charge all the support necessary for such registration.

§ 10 Duty of Customer to Provide Support

1. The Customer shall support us and our employees to a reasonable, customary extent.
2. The Customer must provide us with all materials, information and data we require to provide our performance. Data and data carriers must be technically defect-free. Insofar as special statutory or operational safety regulations apply at the Customer's premises, the Customer must inform us of such before the time of our performance.
3. The Customer is not entitled to instruct our employees regarding any service rendered by us. The Customer however is entitled to instruct our employees regarding necessary safety requirements and company regulations of the Customer. Instructions on individual questions regarding work or services provided by us shall not be given to our employees, but to the contact person named by us. We then will decide on the necessary measures within the scope of our performance obligations.

§ 11 Intellectual Property Rights

If we manufacture according to drawings, models or samples provided by the Customer, the Customer guarantees that such use does not infringe any

intellectual property rights of third parties. Before placing an respective order with us, the Customer shall be obliged to review whether the goods ordered infringe any intellectual property rights of third parties. The Customer shall indemnify us in this respect against any third-party claims. If the Customer is prohibited from manufacturing or delivering the ordered proucts by a third party with reference to an intellectual property right infringement, we are entitled, without examining the legal situation, to stop work and demand compensation for the costs incurred.

§ 12 Confidentiality

1. The Customer undertakes, to keep secret all information which becomes accessible to him in connection which is designated as confidential or which is recognisable as being a business or trade secret due to other circumstances. The Customer further undertakes not to record or pass on any such confidential information to any to third party or exploit such information in any way, unless expressly approved in writing beforehand or required to achieve the purpose of the contract. This confidentiality obligation shall remain in force for a further five years after the complete performance or ending of the related order.
2. The above shall not apply to any information which,
 - was already known to one party before the start of the contract negotiations or which are communicated by third parties as non-confidential, provided that these do not violate confidentiality obligations on their part;
 - is or becomes publicly known through no fault or action of the party concerned;
 - both of the parties have developed independently of each other; or
 - which must be disclosed due to legal obligations or official or court orders.

In the last situation the disclosing party shall notify the other party without undue delay before any disclosure. Further obligations in relation to confidentiality existing at law shall remain unaffected hereby.

3. The Customer undertakes to establish appropriate secrecy measures within the meaning of § 2 No. 1 lit. b) GeschGehG to protect the business secrets

obtained from us.

§ 13 Miscellaneous: Place of Performance, Place of Jurisdiction, Applicable Law, Severability, Interpretation of legal terms and phrases

1. The place of performance and exclusive place of jurisdiction for all disputes arising between the parties from the contractual relationship shall be Frickenhausen, insofar as the Customer is a merchant, a legal entity under public law or a special fund under public law or the Customer does not have a general place of jurisdiction in the Federal Republic of Germany or relocates its place of jurisdiction abroad. Notwithstanding the above, we shall be entitled to commence legal proceedings in relation to the assertion of any claim against the Customer at its general place of jurisdiction.

A merchant shall be deemed any entrepreneur listed in the commercial register or who runs a commercial business and requires a commercially equipped business operation. The Customer shall be deemed to an general place of jurisdiction abroad if his place of business is abroad.

If any provision of these General Terms and Conditions or any provision within the framework of other agreements is or becomes invalid, this shall not affect the effectiveness of any other provisions or agreements.

2. German law shall apply to the contractual and other legal relationships with our Customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
3. Based on the applicable German law the following specific legal terms and phrases within these General Terms and Conditions shall be interpreted as follows:

- assurance (Zusicherung)
- cardinal obligations (Kardinalpflichten)
- commercial register (Handelsregister)
- damages (Schadensersatz)
- demand for the return of goods (Herausgabeverlangen)
- domicile (Wohnsitz)
- executives (leitende Angestellte)
- for good cause (aus wichtigem Grund)
- fraudulent concealment (arglistiges Verschweigen)

- input tax amounts (Vorsteuerbeträge)
- intentional or grossly negligent breach of duty (vorsätzliche oder grob fahrlässige Pflichtverletzung)
- non-fungible goods (unvertretbare Sachen)
- rectification (Nachbesserung)
- reduction in price (Preisminderung)
- replacement delivery (Nachlieferung)
- slight negligence (einfache Fahrlässigkeit)
- subsequent performance (Nacherfüllung)
- text (Textform)
- vicarious agents (Erfüllungsgehilfen)
- withdraw (Zurücktreten)
- withdraw from the contract (Rücktritt)
- work (Werk)
- work performance (Werkleistungen)
- written form (Schriftform)