

**GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT**

**§ 1 General / Scope of application**

1. The terms and conditions of delivery and payment shall apply to this and also to all future delivery contracts with FFG Umwelttechnik GmbH & Co. KG (hereinafter called "Vendor"), even if they are not mentioned in later contracts. They shall also apply if the other contracting party (hereinafter called "Buyer") makes reference to its own terms and conditions of business and/or Vendor enters into a contractual relationship despite knowledge of contradictory terms and conditions or ones deviating from the present terms and conditions. Terms and conditions deviating from these terms are challenged. They are only deemed acknowledged if Vendor expressly agrees to them.

2. Agreements amending or supplementing the present terms and conditions shall only be effective if they are confirmed in writing by Vendor.

3. In the event of deliveries abroad, not only the present general terms and conditions, but also the "International Commercial Terms" (Incoterms 1953) published by the International Chamber of Commerce with the extensions of 1967, 1976, 1980, 1990, 2000 and 2010, as amended, shall be applicable.

**§ 2 Quotations**

1. Vendor's quotations shall be subject to change without notice and without obligation.

2. Drawings, illustrations, samples, models, trademarks, presentations, calculations, statements of weights and dimensions as well as documents provided within the framework of sundry production of quotations or preparation of contracts by Vendor shall remain property and may only be forwarded to third parties, used, copied or otherwise reproduced with express written approval of Vendor. They shall exclusively be used for the contractual purposes.

Vendor reserves rights of retention and copyrights to plans and technical documents provided by it before/after conclusion of the contracts which can be used for production of the object of delivery or individual parts thereof. They may not be used, copied, reproduced, provided or make known to third parties without an express written declaration of approval by Vendor.

3. The quotation documents stated in § 2, sub-section 2, shall only be approximately decisive to the extent that they have not expressly been designated as binding in writing. They shall merely be used as information for Buyer and shall not substantiate an assurance.

4. Upon request or if a contractual relationship is not substantiated, the documents in the sense mentioned above shall be returned to Vendor without delay.

5. To the extent that the documents stated in sub-section 2 are forwarded or make known to third parties, used, copied or reproduced in any way, Vendor shall be entitled to demand damages. The same shall apply if the documents are not returned to Vendor without delay upon request or if no contract is concluded. The damage to be reimbursed shall in particular entail the costs of re-procurement and legal persecution.

**§ 3 Conclusion / contents of the contract**

1. The contract shall only be substantiated by written confirmation by Vendor, the latter alone being decisive for the contents. This shall also apply in the event of a quotation by Vendor with a temporal binding being accepted in good time by Buyer and the order confirmation not being presented within the acceptance period.

2. Amendments, supplements and side-agreements to the contract shall require written form. Assurance of a property of an object of purchase shall only be effective if it is given in writing.

3. Buyer's rights from the contract shall be non-assignable.

4. Vendor reserves the right to make amendments with a view to the material, finish and/or construction to the extent that this does not result in any impairments of the usefulness of the object of delivery for the purpose envisaged in the contract.

5. If import and/or export licences or approvals of any other kind are necessary for exportation of the object of purchase, this shall be in the sphere of responsibility of Buyer, which must obtain them in good time. Buyer shall be responsible for compliance with the relevant import and export, customs and environmental law provisions and for attending to the formalities and transportation ex works.

If the necessary approvals in the aforementioned sense are not presented within a period of 3 months, which shall commence from the time of conclusion of the contract, Vendor can set Buyer a suitable period of grace to obtain them. After the expiry of the period of grace, Vendor shall, at its choice, be entitled to withdraw from the contract or to demand damages on account of non-performance.

**§ 4 Prices / payments**

1. Prices stated shall be understood purely net and shall apply ex works, exclusive of packaging and dispatch costs. The costs of packaging, dispatch, freight, insurance, customs and other expenses shall be charged to Buyer.

The prices valid on the day of delivery shall be charged. Value Added Tax at the amount in question at the time shall be added to the prices.

2. Payment of the purchase price and the charges for all subsidiary services shall be due without deduction franco Vendor's payment office one week after invoicing and provision of the object of delivery to the extent that nothing to the contrary has been agreed in writing.

Other means of payment shall only be accepted following separate agreement on account of performance. Credits for cheques provided shall only be deemed payments following honouring.

The remuneration shall be due for payment to the complete amount upon delivery or acceptance. Without further declaration by Vendor, Buyer shall fall into arrears 10 days after the date of maturity to the extent that it has not paid completely. In the event of the existence of defects, a right of retention shall only accrue to Buyer if the delivery is obviously defective or a right to rejection of acceptance of the delivery obviously accrues to Buyer; in such a case, Buyer shall be entitled to retain payments in a suitable proportion. Remedying of defects can be rejected by Vendor to the extent that Buyer's retention exceeds twice the costs necessary for the remedying of the defects.

3. In the event of arrears in payment, Vendor shall be entitled to demand default interest to the amount of 1% p.m. for each commenced month. In such a case, proof that damages exceeding this have been incurred shall be permitted.

4. In the event of non-compliance with payment terms, protests against cheques or circumstances becoming known after conclusion of the contract and considerably reducing Buyer's creditworthiness according to banking aspects, all receivables shall become due for payment immediately following a reminder with setting of a period of grace and a threat of rejection. Stays and other postponements of payment -also by acceptance of bills -shall end.

In such a case, Vendor shall be entitled only to implement outstanding deliveries and services against down-payments or collaterals and/or to withdraw from the contract following expiry of a suitable period of grace, maintaining its claim to reimbursement of expenditure, or to demand damages on account of non-performance.

If Vendor withdraws from the contract, Buyer shall indemnify any reduction in value of the object of delivery, even if it is not culpable, to the extent that it or a third party has the object of delivery in its possession following delivery. Vendor can demand either indemnification for uses and reductions of value which have actually taken place or, optionally, a lump-sum indemnification of 3% of the purchase price per month to the extent that Buyer does not prove that lower or no damages have been incurred.

5. In the event of part deliveries, Vendor shall be entitled to issue matching part invoices, which shall be settled within 7 days.

6. Import duties, consular fees and other dues and fees charged on the basis of provisions of the country of destination shall only be included in the price in the event of an express written agreement. If inclusion of such duties, fees and charges in the price has been agreed, the agreed price shall be increased accordingly if the rates of the duties, fees or charges have been increased since the agreement.

7. Price changes shall be admissible if more than 4 months expire between conclusion of the contract and the agreed delivery date. If wages, material costs or customary cost prices on the market increase thereafter until completion of the delivery, Vendor shall be entitled to increase the price suitably in accordance with the increases in costs. Buyer shall only be entitled to withdraw from the contract if the price increase not only inconsiderably exceeds the increase in the general costs of living between ordering and delivery. If Buyer is a merchant, a public-law legal entity or a public-law special fund, price changes according to the above regulation shall be admissible if more than 6 weeks expire between conclusion of the contract and the agreed delivery date.

8. Withholding of payments or offset with Buyer's claims which are not yet legally effective or are being disputed by Vendor shall be ruled out.

9. Buyer declares agreement with offset of its claims and liabilities against Vendor. All the prerequisites shall be assessed according to the time of the ordering, not the maturity of the claim. If claims are due for payment at different times, offset shall be done as per the value date. The offset shall extend to the balance in current account relationships.

To this extent, Vendor shall be entitled, independent of the maturity of the claims, to offset counterclaims of Buyer accruing to the latter against Vendor or companies with which Vendor is directly or indirectly affiliated within a group of companies.

10. In remuneration of cost shares for tools, Buyer shall not acquire any rights to the tool itself, which shall remain property of Vendor.

11. If Vendor declares its willingness to take back loose spare parts, accessories or replacement parts which have been delivered, it shall be entitled to demand 10% of the gross value of the part from Buyer upon return

**§ 5 Delivery period / acceptance period**

1. If a delivery period has been agreed, it shall commence upon dispatch of the order confirmation, albeit not before provision of any documents, approvals and releases to be obtained by Buyer and before receipt of an agreed downpayment, in the event of commissions abroad not before receipt of the confirmation of the letter of credit.

2. The delivery period shall be complied with if notification for dispatch has been given or the object of delivery has left the works before its expiry.

3. The delivery period shall be extended in the event of measures within the framework of industrial disputes, in particular strikes and lock-outs, and also if unforeseen obstacles outside the sphere of influence of Vendor occur (e.g. operational disturbances, delays in the delivery of essential materials), to the extent that such obstacles are proven to be of considerable influence for the supply of the object of delivery. This shall also apply if the circumstances occur with sub-suppliers. The delivery period shall be extended in accordance with the duration of such measures and obstacles.

If the obstacles last for longer than one month or if operational stoppages take place in Vendor's company or with downstream suppliers or if not only temporary, out-of-the-ordinary incidents not to be controlled by Vendor occur, Vendor shall be entitled to withdraw from the contract.

Vendor shall also not be answerable for the aforementioned circumstances if they occur during arrears already in existence.

Buyer shall be informed by Vendor about the start and end of such obstacles as soon as possible in important cases.

4. The delivery periods can be exceeded by Vendor by up to 3 weeks. 3 weeks after the exceeding of a delivery date, Buyer can request in writing that Vendor delivers within a suitable period. After a fruitless expiry of this period of grace, Vendor shall fall into arrears. Vendor shall not fall into arrears as long as Buyer does not completely fulfil the contractual obligations for which it is responsible.

5. Complying with the delivery period shall presuppose fulfilment of contractual duties by Buyer.

6. If an acceptance period has been set, Vendor shall not be obliged to delivery following its expiry.

7. If dispatch of the delivery is delayed by more than two weeks after the agreed delivery date by request of Buyer or following notification by Vendor if no precise delivery date has been agreed, Vendor can demand storage charges to the amount of 1% of the price of the object of delivery as a lump sum for each month (if applicable pro rata temporis). Buyer shall be permitted to prove that Vendor has not incurred any damage or only considerably less damage. Vendor shall be permitted to prove that higher damage has been incurred.

#### **§ 6 Scope of delivery**

The scope of delivery shall be determined by Vendor's written order confirmation.

#### **§ 7 Passage of risk / acceptance**

1. Buyer shall be obliged to accept the object of delivery. If no other agreement has been reached (delivery by Vendor), hand-over shall be in Flensburg at Vendor's headquarters.

Even if they manifest inconsiderable defects, objects of delivery shall be accepted by Buyer, notwithstanding its rights. Part deliveries shall be admissible.

2. For delivery abroad, the regulations in the present terms in this regard shall only apply to the extent that the passage of risk does not result from the international regulations on standardised interpretation of agreed Incoterms 2010 as amended.

The following point 5, on the other hand, shall have priority over the interpretation regulations of the Incoterms, in particular if Buyer fails to comply with cooperation or subsidiary duties according to the agreed Incoterms.

In foreign transactions, Vendor shall be entitled, following passage of risk, to insure the contractual commodities against fire, transport and sundry damage at Buyer's expense insofar as Buyer has not concluded said insurances or agreed Incoterms impose the duty to insurance on Vendor.

3. Buyer shall take over the commodities within 14 days of receipt of notification of readiness. If Buyer falls into arrears with the take-over duty, Vendor shall be entitled to declare withdrawal from the contract after the expiry of a suitable period of grace of no less than 14 days and to claim damages on account of non-performance. The period of grace can be waived in the cases regulated by law. Setting of a period of grace shall likewise not be necessary if Vendor seriously or finally rejects acceptance or is obviously also not in the position to pay the purchase price within said period.

If Vendor demands damages, they shall amount to 10% of the gross purchase price to the extent that Vendor does not prove higher damage or Buyer does not prove that no damage or damage not to said amount has been incurred.

4. Risk shall pass to Buyer upon acceptance of the object of delivery, albeit no later than the expiry of the period pursuant to §7 sub-section 3 1st half-sentence. If Buyer declares that it will not accept the object of delivery, the risk of chance destruction or chance deterioration of the object of delivery shall pass to Buyer at the time of the rejection.

Risk shall pass to Buyer upon provision of the object of delivery to the haulage company, freight forwarder or collector or, to the extent that Vendor has taken on transport, with the start of the loading activity, albeit no later than departure from Vendor's factory or the manufacturer's factory, even if part deliveries are made or Vendor has also assumed further performances, e.g. costs of dispatch or export and erection.

5. If the goods are ready for dispatch and if delivery of the goods is delayed as a result of circumstances for which Vendor is not answerable, risk shall pass to Buyer from the day of notification of readiness for dispatch, although Vendor

shall be obliged to effect insurance requested by Buyer at the latter's wish and expense.

6. If risk passes to Buyer on account of a delay in delivery for which Vendor is not answerable, Buyer shall pay the warehouse costs originating with third parties or, in the event of storage with Vendor, 0.5% of the invoice amount per month, albeit no less than 50 EUR for administration and handling of the storage, from the day of a subsequent reminder, to the extent that it does not prove that storage costs have not been incurred or not to this amount.

7. The costs of performance of the acceptance as such shall be borne by Buyer. All other costs, in particular travel and other expenses of any civil servant necessary for performance of the acceptance, shall be borne by Buyer. If Buyer waives acceptance in the delivery factory, the goods shall be deemed accepted as soon as they leave the factory.

#### **§ 8 Retention of title**

1. Vendor reserves title to the goods delivered until complete performance of all claims accruing to Vendor against Buyer for whatever legal reason, cheque payments only being regarded as fulfilment upon honouring.

In current accounts, the entire conditional commodities shall be deemed collateral for the balance claim.

If the validity of this retention of title depends on specific prerequisites or formal provisions according to Buyer's national laws, in particular registration with the competent authority, Buyer shall inform Vendor thereof without delay and fulfil the prerequisites and formal provisions for validity at its expense. Following performance, Buyer shall prove validity to Vendor.

2. If the value of the collaterals existing for Vendor exceeds claims against Buyer by more than 25%, Vendor shall be obliged to release collaterals at its own choice upon request by Buyer.

Buyer may only resell the conditional commodities in the ordinary course of business.

Buyer shall be obliged to secure Vendor's conditional rights in the event of resale of the conditional commodities on credit.

Buyer here and now assigns to Vendor all claims accruing to Buyer from the resale, regardless of whether the conditional commodities have been resold without or following processing. Vendor here and now accepts said assignment. Buyer shall be authorised to collect said claims even after the assignment. Vendor's entitlement to collect the claim itself shall remain unaffected; however, Vendor engages not to collect the claims as long as Buyer properly complies with its payment duties and does not fall into arrears of payment or economic distress. But if this is the case, Vendor can demand that Buyer notifies the assigned claims and their debtors, gives all the information necessary for collection, hands over the pertinent documents and notifies the debtors (third parties) of the assignment. Buyer shall keep collected amounts separately and pay them to Vendor without delay. Buyer shall notify Vendor without delay of interventions by third parties against conditional commodities or the assigned claims. All and any costs of interventions shall be borne by Buyer.

3. Processing or re-shaping of the goods by Buyer shall always be done on Vendor's behalf without obligations arising for the latter therefrom. If the objects of delivery are processed with other objects not belonging to Vendor, Vendor shall acquire co-ownership of the new object in the ratio of the value of the objects of delivery to the other processed objects at the time of processing.

If objects of delivery are inseparably blended with other objects not belonging to Vendor, Vendor shall acquire co-ownership of the new object in the ratio of the value of the objects of delivery to the other blended objects. Buyer shall keep the co-ownership on Vendor's behalf free of charge.

If the delivered goods are blended or combined with other objects, Buyer shall assign its rights to hand-over, ownership or co-ownership to the blended stock or to the new object to Vendor at the time of conclusion of the contract and shall keep it or the new object on Vendor's behalf with the due care of a prudent businessman. Vendor here and now accepts the assignment.

If Buyer acquires sole ownership of the new object according to statutory provisions, Buyer and Vendor agree that Buyer shall assign co-ownership of the new object to Vendor in the ratio of the value of the combined object of delivery to the invoice value of the other object and shall keep it on Vendor's behalf free of charge. If the conditional commodities are resold together with other commodities, the advance assignment agreed above shall apply to the amount of the invoice value of the conditional commodities sold together with the other commodities.

4. Buyer may not pledge the objects of delivery nor assign them by way of security. In the event of attachment or confiscation or other interventions by third parties, Buyer shall notify Vendor without delay by recorded delivery and provide it with all information and documents necessary to attend to its rights. The costs of measures to remedy the intervention, in particular for judicial proceedings, shall be borne by Buyer if they cannot be collected from the opposing party.

Enforcement officials and third parties shall be notified of Vendor's conditional ownership. In the event of a breach, the claims accruing to Buyer against third parties shall be deemed assigned to Vendor, which here and now accepts the assignment.

5. Buyer shall be responsible for insuring the object of delivery against theft, breakage, fire, water and other damage at its own expense and proving this to Vendor before delivery. Vendor shall be entitled to insure the object of delivery at Buyer's expense if there is not sufficient proof.

6. For the duration of the retention of title, Buyer shall have the duty to keep objects of delivery in a proper condition and to have repairs becoming necessary done in a specialised workshop acknowledged by Vendor without delay.

7. In the event of breach of contract by Buyer, in particular in arrears in payment or if judicial insolvency proceedings are opened against Buyer's assets or are rejected

due to insufficiency of funds, the residual amount in question shall be due for payment immediately.

In non-compliance with the payment terms, in protests against cheques, an application for opening of insolvency proceedings, stoppage of payments, dissolution of business and initiation of negotiations on the conclusion of a moratorium, Buyer's rights to process and sell the conditional commodities and to collect the claims shall expire.

In such a case, Vendor shall be entitled to take the commodities into its custody. Buyer shall be obliged to return them to Vendor, ruling out all and any rights of retention. If Vendor makes use hereof, this shall only represent withdrawal from the contract in the event of an express declaration. Warehouse, transport and other costs as a result of the return shall be charged to Buyer. In such a case, Buyer shall further be obliged to notify the aforementioned assignment of ownership rights and claims to third-party debtors upon request by Vendor and to give Vendor the information necessary in order to claim its rights against the third-party debtors and to hand over the documents required. Vendor shall be entitled to credit the goods taken back on account of the retention of title at the price valid on the day of the return which it can achieve in exploitation or sale to be reasonably expected of it in lieu of the invoice value, the expenditure for the sale being charged to Buyer.

8. Claiming of the right of retention and seizure of objects of delivery by Vendor shall only be deemed withdrawal from the contract to the extent that the pro-visions of the Consumer Credit Act apply or it has been expressly declared by Vendor.

### **§ 9 Warranty and liability**

1. Buyer's claims on account of defects in delivery shall only be acknowledged if the commercial duties to examination and notification have been fulfilled; all the examination costs connected with incoming goods shall be borne by Buyer. Recognisable defects, in particular a defective quantity/number, shall be notified to Vendor in writing within 8 days of passage of risk. Other defects can only be claimed within 12 months of passage of risk. Employees commissioned with the examination of defect claims shall not be entitled to acknowledge defects with an effect against Vendor. Claims to subsequent performance or replacement delivery on account of defects in quality of used objects shall be ruled out.

2. At the time of passage of risk, the objects of delivery correspond to the general rules of engineering. If no specific property has been agreed in writing, inconsiderable deviations of samples, types or similar not impairing the usability for the agreed or customary purpose shall not be deemed defects.

3. Following passage of risk, Buyer shall bear the onus of proof that the defect existed upon passage of risk and that the defect has not been caused by a breach of its duties with a view to handling of the object of delivery according to the assembly, operating and maintenance instructions. Defects caused by use of improper operating equipment and materials or high-handed alterations to the object of delivery shall not grant any claims pursuant to the following sub-section

4. The same shall apply to defects on parts subject to wear which are subject to natural wear and tear, to the extent that no guarantee for a specific service life has been assumed.

5. If a notification of defects proves to be justified, Vendor shall be entitled, at its choice, to subsequent performance (remedying of defects, replacement delivery) or reduction of the consideration. The costs of subsequent performance (transport, travel and material costs) shall be borne by Vendor to the extent that the object of delivery is located at the place of performance. Otherwise, Buyer shall bear said costs. Deliveries abroad shall be free of customs FOB Hamburg port or German border (INCOTERMS 2000). Buyer shall grant Vendor the necessary time and opportunity to carry out the actions of subsequent performance. The right to self-performance shall presuppose Vendor's arrears with a threat of self-performance, unless self-performance serves to avoid disproportionately great damage. Vendor shall be informed hereof without delay.

6. If subsequent performance fails, Buyer shall be entitled to withdraw from the contract or to reduce the consideration by the amount by which the defect reduces the value of the object of delivery in relation to the sales price. Subsequent performance shall be deemed to have failed if Vendor so declares or it has been attempted in vain more than twice.

7. Vendor shall not be liable for defects on components purchased from outside suppliers and not considerably changed by Vendor. To this extent, Vendor assigns its claims against the supplier to Buyer upon conclusion of the contract. Vendor shall only be liable for subsequent damage caused by defective components from outside suppliers to the extent that it had concrete indications of the defectiveness and an examination has negligently been omitted.

8. Vendor shall only be liable for indemnification of the reason of Buyer's damages if it is answerable for a disturbance in performance. Vendor shall only be liable for

- a) at least negligent infringement of cardinal contractual duties
- b) deliberate or grossly negligent infringement of non-cardinal contractual and subsidiary duties
- c) at least negligent injury of life, limb or health of third parties
- d) deceitful failure to disclose a defects
- e) infringement of guarantees declared in writing.

8. Statutory liability for damage on the basis of the Product Liability Act shall not be

limited by these regulations.

9. Liability from guarantees assumed shall presuppose a written declaration of guarantee and stipulation of guarantee cases and guarantee rights. Statements made in preliminary discussions, brochures or other advertising materials shall not represent a guarantee.

10. To the extent that no gross culpability of the management or managerial employees exists, the obligation to damages shall be limited to the foreseeable damage typical for the contract. Damage exceeding 10% of the delivery value shall be deemed unforeseeable. Buyer shall be free to prove higher damage.

11. A claim to damages in lieu of performance shall only accrue if Buyer has set a suitable period for performance or subsequent performance by recorded delivery and it has expired fruitlessly. The same shall apply accordingly to the right to withdrawal from the contract.

12. Vendor shall be liable for Buyer's claims to restitution pursuant to § 478 German Civil Code up to the amount of the invoice value for the defective object. Buyer's duties to notification of defects shall remain unaffected.

13. All contractual claims to indemnification of damages shall be barred by limitation 12 months from passage of risk. If individual parts have been exchanged, the claims against Vendor on account of defects in these individual parts shall be barred together with the claims with a view to the object of delivery.

### **§ 10 Buyer's rights to withdrawal**

1. Buyer can withdraw from the contract if total performance becomes impossible for Vendor before passage of risk. The same shall apply in the event of impossibility of performance by Vendor. If impossibility occurs due to Buyer's culpability, it shall remain obliged to pay consideration.

2. If arrears in performance within the meaning of § 5 exists and if Buyer grants Vendor in arrears a suitable period of grace with the express declaration that it will reject acceptance of the services following expiry of said period and if the period of grace is not complied with by Vendor, Buyer shall be entitled to withdraw from the contract.

3. Further, Buyer shall have a right to withdrawal if Vendor allows a suitable period of grace set for it for the remedying or after-working of a considerable defect for which it is answerable to expire fruitlessly due to its culpability, after-working becomes impossible or finally fails.

4. Within the framework of statutory provisions, Buyer can only withdraw from the contract if Vendor is answerable for the breach of duty; in the event of defects, however, the statutory prerequisites shall remain decisive. In the event of breaches of duty, Buyer shall declare within a reasonable period of time following request by Vendor whether it is withdrawing from the contract or insisting on delivery as a result of the breach of duty.

5. All further-reaching claims of Buyer, in particular for termination, reduction of purchase price and claims to damage from impossibility of performance, from arrears, from positive breach of contract, culpa in contrahendo and tort, shall be ruled out, also with a view to damage not occurring on the object of delivery itself, as well as claims to indemnification of direct or indirect damage. An exception hereto shall be formed by damage from injury to life, limb and health if Vendor is answerable for the breach of the duty and for other damage to be ascribed to a deliberate or grossly negligent breach of a duty by Vendor. A breach of duty by Vendor's legal representatives or vicarious agents shall be equated to its own breach. The exclusion of liability shall also not be considered to the extent that there is mandatory liability according to the Product Liability Act or other statutory provisions in the event of personal damage or damage to objects used privately.

### **§ 11 Vendor's rights to withdrawal**

1. If, after conclusion of the contract, Vendor receives information giving justified cause to doubt Buyer's creditworthiness, Vendor can, at its choice, demand advance payments or collaterals or, to the extent that payment other than by cash has been agreed, demand cash payment, for which Vendor can set a period of time for Buyer. If performance by Buyer does not take place within said period, Vendor shall, at its choice, be entitled to withdraw from the contract or to reject performance and to demand damages on account of non-performance.

Justified doubts about Buyer's creditworthiness shall in particular, albeit not exclusively, exist if a considerable deterioration of Buyer's economic situation, stoppage of payments, application for insolvency, dissolution of business, change of the ownership and holding situation exists or if Buyer pledges stocks, receivables or purchased goods or creates a collateral for other creditors or has not paid due invoices despite reminders.

2. In the event of unforeseen incidents within the meaning of § 5 sub-section 3, the right to total or partial withdrawal from the contract shall accrue to Vendor insofar as performance becomes impossible as a result of the circumstances mentioned. Buyer shall have no claims to damages on account of such a withdrawal.

3. In the event of withdrawal by Vendor according to contractual or statutory directives, the goods shall be returned by way of unwinding of the contract at Vendor's headquarters. The costs of the return, in particular all and any costs of return transport, shall be borne by Buyer.

### **§ 12 Liquidated damages**

Insofar as Vendor is entitled to claim damages on account of non-performance, the damage shall be a lump-sum of 15% of the gross business volume

of the transaction in question. Buyer shall be permitted to prove that no or considerably lower damage has been incurred. Vendor shall be permitted to prove that higher damage has been incurred.

#### **§ 13 Liability for breaches of patents**

In the event of deliveries abroad, Vendor shall only be liable for breaches of patents granted in the Federal Republic of Germany and only by supporting Buyer in extra-judicial and judicial disputes with the owner of the patent(s) with a view to objects of purchase manufactured in its factories. With a view to parts of the object of purchase not manufactured by Vendor in its factories, the liability shall be limited to assignment of the claims accruing to Vendor against its suppliers.

#### **§ 14 Replacement parts**

The following regulation shall apply to the delivery of loose replacement, accessory and spare parts:  
Vendor shall supply replacement parts at the agreed replacement price in return for old parts. Slight deviations in the finish of the replacement parts shall be admissible to the extent that they do not impair the usefulness of the object of delivery for the agreed or customary purpose of use. The old parts shall be supplied completely free of freight and costs and may not manifest any defects, in particular no welded or unwelded breakages, with the result that they can be recycled.  
If the replacement part is supplied before Buyer has provided the old part, Vendor shall charge the price valid for new spare parts in lieu of the replacement price. After the old part has arrived, the difference between the new price and the replacement price shall be credited to Buyer if the part is exchangeable.  
The old parts shall pass into Vendor's ownership upon delivery. With the delivery, Buyer indicates that the old part is in its ownership or that it is authorised to assign ownership and that no third-party rights to the old part exist.

#### **§ 15 Euro clause**

1  
Prices shall be deemed agreed in Euro and shall be invoiced in Euro to the extent that they have been agreed in a currency converted to Euro and to the extent that the Euro has been introduced as legal currency for it, albeit no earlier than 01.01.2001.  
Conversion of the currency in question into Euro shall be done on the basis of the official conversion rate.  
2  
Conversion of the currency to Euro shall not represent a reason for termination, withdrawal or challenging and shall not substantiate a claim to a change of contract or subsequent negotiation of the contractual agreements.

#### **§ 16 Place of performance, place of jurisdiction, applicable law**

1  
The place of all contractual actions shall be Vendor's factory in Flensburg as place of performance.  
2  
Proceedings shall be initiated at the factually competent court in Flensburg for all present and future claims from the business relationships, including cheque receivables, if Buyer is a fully-fledged merchant, a public-law legal entity or a public-law special fund. Vendor shall also be entitled to initiate proceedings at a court competent for a branch establishment of Vendor performing delivery, at Buyer's headquarters or at the headquarters of a representative in litigation appointed by Vendor.  
3  
The law of the Federal Republic of Germany shall apply exclusively, ruling out the laws on the international purchase of commodities as well as the United Nations Convention on the International Sale of Goods of 11.04.1980, even if Buyer has its headquarters abroad.

#### **§ 17 Miscellaneous**

1  
Assignments of rights and duties of Buyer from the contract concluded with Vendor shall require written approval by Vendor in order to have effect.  
2  
If a global assignment has been agreed in favour of Vendor, Buyer shall disclose it to a third-party debtor without delay and prove this to Vendor within two weeks of assignment.  
3  
If a provision is or becomes null and void, the validity of the remaining provisions shall be unaffected. The contracting parties are obliged to make a supplementation coming as close as possible to the sense and purpose of the in effective provision in an admissible way.

**FFG Umwelttechnik GmbH & Co. KG**

**Valid from 1st January 2017**