



## General Terms and Conditions of Sale and Delivery of Weingärtner Maschinenbau GmbH (FN 367537 x)

Last revised: September 2022

### 1. Definitions

1.1 "Customer" means our contract partner, it being expressly specified that we enter into contracts exclusively with businesses and/or accept only businesses as contract partners. Businesses are entrepreneurs or legal entities or legally constituted partnerships for which this contract forms part of their business operations. A business is an organization pursuing an independent economic activity which is designed for continued operation, whether for profit or not for profit.

1.2 "Contractual Item" and/or "Contractual Product" means the goods and/or services of all kinds ordered by the Customer from us.

1.3 "Individual Agreement" means the legally effective contract concluded on the basis of our quotation and the order confirmation and/or our performance.

### 2. Scope of application

2.1 These General Terms and Conditions of Sale and Delivery shall apply to all transactions, deliveries, services and quotations. The Customer expressly acknowledges that we object to any deviating provisions in an order or any other business document of the Customer. No deviating terms of the Customer will be accepted by us unless expressly agreed to in writing by us, even if we do not expressly object to them in each individual case. These General Terms and Conditions of Sale and Delivery shall also apply as framework agreement for all transactions with the Customer in the future.

2.2 In the event of any conflict between the various documents forming the contractual basis, the documents shall be applicable in the sequence below (i.e., the document mentioned first shall have precedence over the documents mentioned thereafter):

- the Individual Agreement;
- written supplements to or deviations from these General Terms and Conditions of Sale and Delivery or an Individual Agreement
- these General Terms and Conditions of Sale and Delivery;
- Austrian standards (Ö-Norm) or other quality standards expressly agreed between the Customer and us in writing;
- other statutory regulations.

2.3 If we accept in an individual case that an affiliate of a Customer is authorized to place an order, the Customer shall fully indemnify and hold us harmless with respect to the fulfillment of all contractual obligations by such a third party. Moreover, these General Terms and Conditions of Sale and Delivery shall likewise apply to such a third party.

### 3. Contract formation

3.1 Our quotations and price lists are non-binding and subject to change and merely constitute a request to place an order. Customer orders are binding quotations to enter into a contract with us. A Customer order becomes binding upon the Customer as soon as we receive it, with receipt by our employees being sufficient.

3.2 A contract is not formed until we have confirmed the order in writing or delivered a performance (e.g., delivery/shipment of the Contractual Item). We are not obliged to accept an order. All changes to the contract, including later or additional agreements, will not be effective unless confirmed by us in writing. Our employees are not authorized to make any legally binding representation on our behalf unless special powers of attorney were granted to them and presented to the Customer by us. We may accept every order as long as it is not cancelled by the Customer.

3.3 A sale of goods on an approval or return basis and samples sent in the framework of an order shall be deemed approved by the Customer unless the items are returned within 14 days (with the date of receipt being decisive).

3.4 Any technical information on our goods and services contained in documents provided by us or otherwise available to you (including, but not limited to, calculated processing times) provides only an approximate description unless being expressly guaranteed as binding. We reserve the right to make design- or production-related changes and deviations. Typographical mistakes or calculation errors in quotations, order confirmations or invoices may be corrected by us at any time.

3.5 The Customer shall check each order confirmation without delay. If there is a discrepancy between the order confirmation and the order, the Customer shall notify us accordingly in writing within 5 working days of receipt. Otherwise, the Customer shall be deemed to have approved the order confirmation.

### 4. Price

4.1 Prices given by us are subject to change and, unless otherwise expressly provided, in Euros (EUR) exclusive of VAT. Price estimates are provided without liability for their accuracy unless otherwise agreed in writing. Prices stated in a currency other than the Euro are calculated at the exchange rate valid on the quotation date including  $\pm 2\%$  hedging. If this hedging margin of 2% is exceeded or not exhausted in the period in which our quotation is valid, the price will automatically be altered accordingly. It is the responsibility of the Customer to provide hedging when submitting an order.

4.2 If changes in the cost of labor due to collective agreement arrangements or statutory regulations or internal works agreements or changes in other costs relevant for the calculation or unavoidable for proper performance, e.g., materials, energy, transportation, subcontracted works, financing etc., occur, we will be entitled to increase the price accordingly. The Customer is not entitled to cancel the contract or claim frustration of purpose for that reason. In the absence of another written agreement, all prices are without ancillary expenses.

4.3 Prices stated in our quotation are only valid if the entire quantity stated in our quotation is ordered. It is assumed that delivery can be made in a single operation. Any extra costs resulting from an unforeseeable interruption of delivery will be invoiced separately.

4.4 Works ordered but not included in our quotation will be performed subject to our conditions and the rates charged by us.

4.5 Each delivery of Contractual Products is considered a separate and independent transaction. We shall be entitled to refuse delivery of Contractual Products at any time. Without prejudice to our rights and other remedies, we shall be entitled to withhold, suspend or discontinue Contractual Products, services or any support as long as we have not received payment.

### 5. Delivery and passage of risk

5.1 Agreed delivery periods generally commence on the date our order confirmation is sent, though not until we have confirmed receipt of all technical or other information, documents or down payments, or of any other performance by the Customer required for us to fulfill our obligations.

5.2 The delivery period will be reasonably extended if the Customer requests changes in our performance which require additional deliveries and/or additional services. The Customer will be liable for the additional costs arising therefrom.

5.3 The delivery date shall be deemed to have been met if the Contractual Item leaves our warehouse prior to the delivery deadline or if by that date we advise the Customer that the goods are ready for shipment. The costs of any transport vehicle or railcar downtime shall be borne by the Customer unless such costs have been caused by our gross negligence or willful misconduct.

5.4 Promised delivery dates will be met where possible, but they are not binding. In the case of delay of delivery, the Customer is not entitled to cancel the contract, rescind it on account of mistake or assert claims for warranty or damages. We are entitled to make and invoice partial deliveries or deliver goods in advance.

5.5 We reserve the right to select the type of shipment and the route of shipment excluding any liability. In particular, there is no obligation to select the least expensive type of shipment.

5.6 The goods are packed in conformity with normal commercial practice. This also applies to partial deliveries or deliveries in advance. The costs of packing, shipping, customs and other services (e.g., loading and unloading, transfer to the foundation) are invoiced separately. Express and air freight surcharges are charged separately in each case. Transport insurance will only be taken out by order and for the account of the Customer. We disclaim any obligation to take out transport insurance for the goods.

5.7 Operational interruptions and force majeure events as well as any events which are beyond our control, including, but not limited to, delays in delivery etc. by our upstream suppliers, will entitle us – under exclusion of any legal claims, particularly for warranty, rescission on account of mistake or damages – to either extend the deadlines accordingly or withdraw from the contract with regard to the part not yet fulfilled. This applies also where such events occur at a time when we are in delay. Force majeure includes any external or internal events and/or circumstances which cannot be foreseen and prevented using reasonable and acceptable means; such events include particularly events caused by forces of nature such as fire, earthquake, landslides etc., but also war or warlike events, revolutions, epidemics, pandemics, riots, breakdowns, state-stipulated or governmental measures, labor disputes, blackouts, delays in delivery by upstream suppliers, and similar comparable circumstances.

5.8 Any risk as to price and performance shall pass to the Customer at the time when we notify the Customer that the goods are ready for shipment or when the goods have left our warehouse or, in case of direct delivery, our supplier's warehouse, at the latest, irrespective of any pricing scheme that may have been separately agreed for the shipment; this applies even if we have agreed to provide additional services. If delivery of goods ready for shipment or delivery as agreed is impossible for reasons beyond our control, then we shall, at our discretion, be entitled to place the goods in storage at the Customer's expense and risk, whereby delivery shall be deemed to have been made; we shall be entitled to store the products ourselves at usual market prices or put the goods ready for shipment in storage with third parties on behalf and for the account of the Customer. Irrespective of any agreement on the place of delivery and the payment of any charges for shipment, the location of our registered office shall be the place of performance.

5.9 Preliminary acceptance of our Contractual Products will take place in Kirchham within our general opening hours, unless otherwise agreed. At the time of preliminary acceptance, the Contractual Item will be in a pre-assembled condition, so that it can be inspected and tested on site. For preliminary acceptance, Weingärtner provides a test unit in compliance with the material specifications contained in DIN 1.7225 (42 CrMo4 / US4140) to demonstrate the full functionality of the machine and all of the equipment. The preliminary acceptance process comprises checking the scope of delivery, conducting geometric (measuring) inspections of random samples and the production of a sample. After completion of the preliminary acceptance process, a test report shall be prepared and signed by both parties. For preliminary acceptance via online media, an electronic signature or a digital image of a handwritten signature on the test report is permitted and sufficient. Preliminary acceptance testing is conducted according to the state of the art. Where preliminary acceptance in the form of on-site testing is not possible or advisable, preliminary acceptance via online media using an acoustic and visual two-way connection in real-time is a possibility, if agreed separately. If the Customer fails to keep the agreed appointment for preliminary acceptance within 30 days for reasons attributable to the Customer or refuses to sign the test report in the course of preliminary acceptance without giving reasons, the machine shall be deemed to have been preliminarily accepted.



5.10 Final acceptance testing will take place at the Customer's premises. Before the final handover and upon checking the scope of delivery, conducting geometric (measuring) inspections of random samples and the production of a sample, a test report must be signed by both parties. For final acceptance via online media, an electronic signature or a digital image of a handwritten signature on the test report is permitted and sufficient. Acceptance testing is conducted according to the state of the art. Where final acceptance in the form of on-site testing is not possible or advisable, final acceptance via online media using an acoustic and visual two-way connection in real-time is a possibility, if agreed separately. The Customer undertakes to provide the necessary technical infrastructure at the Customer's premises. The machine shall be deemed accepted as soon as it is being used in production. If the Customer fails to make the machine installation and/or final acceptance, as agreed, possible within 90 days of delivery for reasons attributable to the Customer or refuses to sign the test report in the course of final acceptance without giving reasons, the machine shall be deemed to have been accepted.

5.11 Incoterms® as in force at the date when the contract is made shall apply, it being specified that EXW is the shipping arrangement generally used by us; notwithstanding, Article 16.3 of these General Terms and Conditions of Sale and Delivery shall apply.

## 6. Terms of payment, default, exclusion of set-off, deliveries abroad

6.1 We may choose electronic invoicing. The Customer has expressly agreed to receive electronic invoices. If or to the extent to which our quotation contains no terms of payment, all invoices are payable by transfer from a bank account to the account indicated in the (pro forma) invoice within ten (10) days after receipt of our (pro forma) invoice. All payments shall be at the expense and risk of the Customer. Agents or assistants are not entitled to collect receivables except where a separate written authorization has been issued. We are entitled to demand payment in advance at any time, even before accepting an order and/or prior to delivery. Invoices are payable free of expenses and without any deductions, in particular without discount. Unless otherwise agreed in writing or in the absence of a statutory obligation, retention of payment to secure warranty claims is not recognized and considered as default in payment. Bills of exchange or checks will not be accepted unless an express agreement has been made. We reserve the right to allocate incoming payments to open accounts receivable as we see fit.

6.2 If the Customer defaults on payments, we shall be released from all further performance and delivery obligations and we shall be entitled to withhold outstanding deliveries or services or to demand payments in advance and/or guarantees. Moreover, the Customer will have to pay default interest, regardless of culpability, at the legal interest rate for businesses valid in Austria (if such a rate is no longer published, at least 1 % per month), with us being entitled to charge a usual bank interest rate exceeding that rate. Moreover, the Customer shall reimburse us for any dunning and debt collection expenses incurred. The Customer shall pay for all costs incurred by us for asserting our claims (including reasonable lawyer's fees), including the collection of amounts due for Contractual Products.

6.3 If after contract formation the Customer's financial position deteriorates significantly or if we become aware of any circumstances which, according to our discretion, are likely to substantially reduce the creditworthiness of the Customer, all outstanding receivables will become due immediately. This will also apply when a payment is not made by the due date or the Customer becomes insolvent. Further deliveries will only take place in return for payment in advance in this case.

6.4 Set-offs, deductions and counterclaims of any kind in connection with the specified total purchase price for the Contractual Products are excluded.

6.5 In the case of export transactions, it is exclusively the Customer's obligation to obtain and maintain at its own expense the required export, customs and other approvals. We give no warranties or guarantees of any nature as to the legality of the export of a Contractual Item. The Customer shall send all original export and customs documents etc. to us. Otherwise, the Customer may have to pay value added tax. Moreover, in the case of deliveries abroad, the opening of an irrevocable documentary credit at a bank of our choosing which can be used upon presentation of shipment documents or the freight forwarding company's taking-over certificate is a prerequisite for our delivery.

6.6 In the event of interruptions which are not provided for in the contract terms and which are not attributable to us, we will be entitled to render separate invoices.

## 7. Retention of title

7.1 We retain legal ownership of all Contractual Items delivered by us or parts thereof until the purchase price has been paid in full, interest and associated costs included, irrespective of the legal basis. An order consisting of several part deliveries constitutes a single order, and the retention of ownership of all goods delivered shall remain in effect until payment of all receivables from that transaction is made in full. Asserting title to Contractual Items does not constitute a withdrawal from the contract, unless we rescind the contract, which we are entitled to do unilaterally, and does not relieve the Customer of its obligations, including, but not limited to, the obligation to pay the remuneration.

7.2 The Customer is entitled to transfer its expectant right in regard of a Contractual Item subject to our retention of title within its normal course of business, but not to hypothecate or assign the Contractual Item as security. This right of the Customer may be revoked by us at any time.

7.3 The Customer must inform us immediately of a seizure or other interference with our property through the actions of a third party. The Customer will be obligated to pay the expenses and measures required to ward off the intervention, including, but not limited to, the cost of any third-party proceedings etc.

7.4 We also retain title to any products generated through processing. Where the Contractual Products are processed or combined with other materials or with premises, we become the co-owner of the newly created items according to the proportions of the value added. The Customer is obligated to impose this legal consequence on its customers.

7.5 The Customer hereby assigns, as security and for settlement, all claims arising from the sale of goods over which we have rights of ownership, in the amount of our co-ownership share, if applicable. We accept this assignment. The Customer shall provide us with the names and addresses of its customers as well as an inventory and the amount of the claims resulting from the resale without delay; the Customer must also verifiably inform the respective customer about the assignment of receivables without delay. Moreover, the Customer shall be obligated to appropriately enter the assignment of these claims to us in its books. We shall be entitled to inform the Customer's customer of the assignment at any time. The Customer shall be liable for any fees associated with such assignment.

7.6 If the Customer fails to meet its obligations or defaults in payment, the entire remaining debt will become immediately due, even where bills of exchange with a later maturity have been accepted. In such a case, we are entitled to immediately demand that the Contractual Item be returned, with any retention rights being excluded. Upon return of the Contractual Item, it is in our discretion to either sell the Contractual Item and to offset the revenue minus 20 % resale charges against the Customer's debt or to take the Contractual Item back at the invoice price minus depreciation, if any, and charge the Customer rent at the customary rate for the time the products delivered remained with the Customer.

## 8. Warranty, delivery of wrong item, product liability

8.1 The Customer must give written notice of defect providing a detailed fault description without delay but not later than 14 days after delivery and before processing or machining the Contractual Item, failing which any warranty claims and/or claims for damages and/or rescission on account of error are excluded; notice of defect given does not entitle the Customer to withhold payment of the invoice amount or parts thereof.

8.2 For defects that could not be identified by inspection upon delivery, the warranty period is six months from the date of delivery. This period will be neither extended nor interrupted by attempts at improvement; it applies also to partial deliveries. Such defects must be asserted in writing within 14 days of discovery, failing which any warranty claims and/or claims for damages and/or rescission on account of error are excluded; notice of defect given does not entitle the Customer to withhold any payment of the invoice amount or parts thereof.

8.3 Deviations of the Contractual Item delivered from the Contractual Item ordered, such as in case of wrong dimensions or delivery of wrong item (aliud), must be asserted within 3 days of the delivery date and prior to any transfer and/or processing or machining of the item. Otherwise, the Contractual Item will be deemed to be approved and cannot be taken back or exchanged by us.

8.4 Any advice given by us, whether written or oral, is non-binding and does not relieve our Customers from their obligation to test the Contractual Item for its fitness for the intended purpose. No warranty is given that there will be an exact match between follow-up deliveries and the initial delivery.

8.5 Any technical requirements concerning the plant design and installation of the products delivered by us contained in manuals, operating instructions etc. are not necessarily exhaustive but only common minimum requirements. The Customer is obligated to comply with the relevant state of the art. Otherwise, any warranty claims and any guarantees granted by us will expire. In particular, we do not give any warranty about and shall not be liable for the fitness of the Contractual Item provided by us for the uses intended by the Customer, except where a separate agreement was made in writing.

8.6 No warranty is given for wear parts such as wipers, filters, belts, oils etc.

8.7 Any warranty and/or obligation to provide updates for goods with digital elements and digital services (§7 VGG (Austrian Consumer Warranty Act)) is excluded, unless individual agreements provide otherwise. Such an agreement has to be in writing in any case.

8.8 The Customer must prove in all cases that the Contractual Item was defective at the time of delivery; the presumption laid down in § 924 ABGB (Austrian General Civil Code) is expressly excluded.

8.9 For Contractual Items we purchase from a subcontractor, we give only such warranty as is given by the subcontractor to us.

8.10 For Contractual Items delivered by us, we only warrant that they will have the properties that can be reasonably expected in commercial transactions regarding such items. We give no warranty for any properties beyond that, particularly properties indicated in public statements such as advertising materials and information attached to the Contractual Items, except where such properties have been assured by us in writing when the order was placed.

8.11 Notwithstanding any other provisions in these General Terms and Conditions of Sale and Delivery, the warranty expires when

- 8.11.1 the Customer or a third party alter or repair the Contractual Item without our written consent,
- 8.11.2 no original accessory parts are used,
- 8.11.3 the Contractual Item is used in an unusual way,
- 8.11.4 the assembly and operating instructions are disregarded.

8.12 We give warranty for the functionality of our products but not for their appearance. Any potential warranty obligation is limited to the defective components without exception and does not cover the working hours needed for corrective actions and travel expenses.

8.13 Unless otherwise separately agreed in writing, the location of our company's registered office shall be the place of performance for the services we are required to provide to meet our warranty obligations.



8.14 We shall fulfill warranty claims at our discretion by replacement, improvement, price reduction or cancellation of the contract.

8.15 The assignment of warranty claims or claims for damages etc. – except for purely pecuniary claims – is not permitted. The right of recourse as defined by § 933 b ABGB (Austrian General Civil Code) is excluded.

8.16 Our liability for any damage afflicted to our Customer in the context of the transaction shall be limited to the contract value and cases where the damage was caused by gross negligence on our part or on the part of our subcontractors; this does not apply to personal injury, in which case we assume liability also in the event of minor negligence. We are not liable for any indirect damage, consequential damage, operational interruption, loss of profit, information or data. Loss of profit includes also the loss of a commercial opportunity which already constituted an existing independent asset for the Customer (e.g., due to an already existing contract between the Customer and a third party) when the damage occurred. We are not liable for any financial losses suffered by the Customer in connection with work done and expenses paid by the Customer in the context of a warranty case.

8.17 Instructions given in manuals, instructions for use or any other product information must be strictly followed by the Customer to prevent potential damage. Users are expressly warned against using the goods for any purposes not included in the defined areas of application.

8.18 Should our Customer be held liable under the Product Liability Act, the Customer expressly waives the right to recourse as defined by § 12 Austrian Product Liability Act.

8.19 If the Customer places the goods delivered by us on markets that are not part of the European Economic Area, the Customer undertakes to exclude the liability to pay damages under the Product Liability Act vis-à-vis its customer, provided that this is possible according to the governing law or the applicable law agreed upon by them. In this case or in case of failure to ensure this mandatory exclusion, the Customer is obligated to indemnify and hold us harmless from and against any claims of third parties under the title of product liability. The Customer undertakes to take out adequate product liability insurance and present us the policy upon request.

## 9. Provisions for assembly, maintenance and servicing

9.1 The Customer will be responsible for all preparations to ensure that we can carry out any assembly, maintenance and servicing work speedily. In particular, the Customer shall make sure that the parts and equipment needed for starting and conducting any assembly, maintenance and servicing work are in place at the proper site in time, as far as it is the Customer's duty to provide such parts and equipment. The Customer shall ensure that the machines which are to undergo assembly, maintenance or servicing work are in an appropriate condition to allow flawless assembly, maintenance and service under normal circumstances. In particular, the maintenance and/or assembly site must be safe to walk or drive on and in a condition ready for maintenance, particularly in a clean condition. It is the Customer's responsibility to arrange for unloading the machine from the truck and unpacking and cleaning it, moving it to the designated area and aligning it approximatively. The Customer must ensure that the foundation for the machine is in line with the foundation plan provided by us.

9.2 The Customer undertakes to provide, at its own expense and risk, personnel qualified for simple auxiliary services, equipment of any kind (especially tools and lifting equipment) and the other necessary material which is not covered by the assembly, maintenance and servicing work as well as a dry room that can be locked for the safe storage of supplied parts, tools, measuring tools as well as clothes and other property of our service engineers. The required regular measuring equipment including calipers or micrometers etc. is provided by Weingärtner. Additional measuring devices or special materials must be provided by the Customer.

9.3 The Customer is obligated to compensate us for any damage to or loss of any tools, measuring equipment or facilities provided by us, with the exception of any damage resulting from normal wear and tear or attributable to gross negligence or willful intent on our part.

9.4 The Customer shall grant the service engineers unlimited access to the Contractual Items that are to undergo assembly, maintenance and service work and take all necessary measures to ensure this, including the issuance of appropriate access cards.

9.5 Upon commencement of this contractual relationship, the Customer shall give us the name of a contact person and, by its own accord, arrange for a replacement for that person when he or she is prevented (for whatever reason) from acting in that capacity, for the purpose of an ongoing coordination between the Customer and us. This contact person must be suitably qualified and have intimate knowledge of the Contractual Items that are to be assembled, maintained and serviced, and must be authorized by the Customer to make the relevant decisions with regard to assembly, maintenance and servicing tasks. Irrespective of the internal relationship between the designated contact person and the Customer, we shall be entitled to assume that the contact person has authority vis-à-vis us to make decisions regarding assembly, maintenance and servicing tasks.

9.6 The Customer must inform us and/or the service engineer of any additional accident prevention regulations that may have to be observed in sufficient time before the start of any assembly, maintenance and service work. Besides, the Customer must implement, by its own accord and at its own expense and responsibility, the accident prevention measures laid down by law and imposed by authorities or contract.

## 10. Contract adaptation, right to cancel the contract

10.1 When there is an unexpected event that substantially undermines the commercial relevance or changes the content of the performance to be provided or affects our operations substantially, or if it should later be found that performance is impossible, the contract will be adapted as appropriate. If this is not economically feasible, we shall be entitled to cancel the contract in whole or in part. We shall notify the Customer of our intention to exercise this right of cancellation as soon as we recognize the implications of such an event, even if we and the Customer initially agreed to extend the period of delivery.

10.2 In case of default in acceptance or when other circumstances such as default in payment on the part of the Customer occur, we are entitled to cancel the contract with immediate effect, setting a 14-day period of grace, without prejudice to any other claims of any nature. Our withdrawal from the contract becomes legally effective upon our unilateral declaration.

## 11. Training

Unless otherwise agreed in writing, we shall be under no obligation to provide introductory instructions and training in the use of the Contractual Products delivered to the Customer. Introduction and training measures requested by the Customer shall be paid for separately by the Customer as stated in our quotation. Any training or introduction sessions take place at our headquarters, unless otherwise stated in our quotation.

## 12. Industrial property rights

12.1 All documents forwarded to the Customer, including, but not limited to, price estimates, plans, sketches or other technical documentation as well as samples, catalogs, brochures, illustrations and the like shall remain our intellectual property; the Customer will not receive and/or acquire any rights of any nature such as rights of use or exploitation. The Customer will not be entitled to make such information and documentation available to third parties. Upon request, such information and documentation must be returned to us without delay.

12.2 The Customer accepts that we use the Contractual Product sold to the Customer for advertising purposes and may present it, e.g., as a model; we shall, at our sole discretion, choose the design of the presentation and the presentation medium.

12.3 If the goods are manufactured in accordance with specifications submitted by the Customer, the Customer guarantees that the delivery of the goods or other services provided according to contract does not infringe any third-party industrial property rights (patents, trademarks, design rights, copyrights, features, product names, know-how, territorial protection, software licenses and similar rights, even at the application stage). We are under no obligation to check whether any third-party incorporeal rights exist and/or are violated in respect of the product to be manufactured. The Customer must fully indemnify and hold us harmless from and against any third-party claims in this respect.

12.4 We grant our Customer all rights needed for using the Contractual Product. The Customer must observe any licensing terms applying to the Contractual Product covered by an individual order which are in force at the time when risk passes to the Customer; upon request, those terms will be provided to the Customer.

12.5 Subject to the above provisions, we remain the owner and/or sole holder of all intellectual property rights in respect of the Contractual Products.

12.6 The Customer will notify us of any infringement of intellectual property rights that comes to the Customer's attention; in this event and/or when an infringement of third-party intellectual property rights is claimed, the parties shall, at their own expense, immediately make every possible effort to jointly ward off such claims. We shall be the leader in such a defense. We shall carry on any lawsuits unless it is impossible or unless otherwise agreed. If the Customer carries on the lawsuit, continuous coordination with us and compliance with our decisions are required. The Customer must not acknowledge third-party claims or negotiate a relevant settlement independently. If the Customer does it anyway, the Customer must fully indemnify and hold us harmless in this respect.

12.7 If infringement of third-party intellectual property rights through the Contractual Products is established by a legally binding verdict which affects the use of the Contractual Products or makes it impossible, the following shall apply:

12.7.1 The parties, with us in charge, will initially cooperate in a joint effort to obtain the required usage rights. Any costs arising in this connection (including, but not limited to, license fees) will be borne by us.

12.7.2 If the usage rights cannot be obtained or can be obtained only on unreasonable terms, we shall alter the affected Contractual Products at our expense or replace them with other (similar) products in such a way that they do not infringe the intellectual property right concerned. Thus, the Customer will be enabled to use the Contractual Products (and/or other similar products). The agreed specifications shall be observed as far as possible. Minor deviations that do not cause any functional problems shall be deemed to be intellectual property which was in our possession or control at the time when the business relationship was established.

12.7.3 Where none of the above is possible, the general liability and warranty provisions in these General Terms and Conditions of Sale and Delivery shall apply.

12.8 We are under no liability in respect of any alteration of the Contractual Products carried out by the Customer or the Customer's customers. Any further claims of the Customer or claims other than those set forth in this Article 12 are excluded.

## 13. Materials and data provided

13.1 All materials, documents and data of all kinds provided by the Customer (hereinafter referred to as Material) must be delivered on a duty-paid basis at the Customer's expense to our plant or to the location where we need the Material. Acknowledgement of receipt will be given without guarantee as to the accuracy of the quantity stated in the delivery documents. We cannot properly accept and inspect the Material until the production process is under way; we will only be liable for damage caused by our gross negligence. We are entitled to charge the Customer for all costs associated with the inspection and storage of the Material provided.

13.2 Any excess Material provided by the Customer or Material that is left unused must be collected from us by the Customer within four weeks after completion of the contract, as far as such Material is not supplied by us together with the Contractual Item, there being no obligation for us to do so. After expiry of this deadline, we shall not be liable in any way for any uncollected Material, and we shall be entitled to dispose of the Material at the Customer's expense, without the Customer being entitled to any compensation whatsoever, or, at our discretion, to store the Material on behalf of the Customer on



customary terms ourselves or put it into storage with a third party. In neither case shall we be under an obligation to keep such Material or any items for reuse beyond the period specified.

13.3 We shall be under no obligation whatsoever to check the Material provided by the Customer and/or warn the Customer in this respect. In particular, we will not check stored data for their accuracy where data carriers are provided. We shall be under no liability of any nature in respect of any direct and indirect damage caused by faulty data and Material.

#### **14. Export regulations – Dual use**

14.1 It cannot be ruled out that the Contractual Products are subject to foreign trade restrictions, including dual-use restrictions.

14.2 The contracting parties undertake to adhere to all applicable export controls and laws on economic sanctions in their dispositions of the Contractual Products and to obtain from the competent authorities all licenses and/or permits that are needed for exporting or importing Contractual Products. In particular, Contractual Products which are subject to the U.S. Export Administration Regulations ("EAR") must not be exported without valid licenses/authorizations from the competent U.S. authorities, including non-U.S.-made items with a controlled U.S. origin content exceeding the de minimis level and non-US-made items with a controlled U.S. origin content for which there is no de minimis level.

14.3 Should a contracting party become aware that it violated applicable export controls and laws on economic sanctions in connection with these General Terms and Conditions of Sale and Delivery, it shall notify the other contracting party within 14 days. Any infringement of the aforementioned obligations entitles the other contracting party to terminate any existing contracts for cause.

#### **15. Code of Conduct**

The Customer is obligated to comply with the code of conduct, where applicable, and other compliance provisions.

#### **16. Final provisions**

16.1 The Customer must verifiably give notice of change of business address, by its own accord and without delay, as long as the contractual legal transaction is not completed by both parties. If the Customer fails to do so, communications shall be deemed to have been received by the Customer even if they are addressed to the Customer at the last address it provided to us. The Customer shall bear the burden of proof that the Customer's notice of change was received.

16.2 The contract language is German. Where a contract is drawn up in German and in English, the German wording shall prevail if there is a discrepancy between the two versions.

16.3 The place of performance for all contractual obligations of the contracting parties is the location of our registered office in Kirchham/Austria, irrespective of the place of delivery and the calculation of transport costs or the place of payment.

16.4 All legal transactions, specifically those subject to these General Terms and Conditions of Sale and Delivery, shall be exclusively governed by and construed in accordance with the Austrian substantive law to the exclusion of its conflict of laws rules, particularly the rules of international private law as far as they refer to the application of foreign law. If Austrian law provides for the application of special international substantive law which also applies in Austria, e.g., the UN Convention on Contracts for the International Sale of Goods, where cross-border elements are involved, it shall not be applied and is hereby expressly excluded. The same applies to issues of formation and/or interpretation with regard to these General Terms and Conditions of Sale and Delivery and the contract.

16.5 For the Customer, the competent court of Wels/Austria shall have exclusive jurisdiction to settle any disputes arising out of or in connection with these General Terms and Conditions of Sale and Delivery. We shall have the option to sue the Customer also in any other court which may be competent under national or international law.

16.6 Should any provision of our General Terms and Conditions of Sale and Delivery be or become void, the validity of the contract and the remaining provisions shall not in any way be affected. The contracting parties shall, without delay, replace the invalid provisions by provisions meeting the economic purpose of the invalid provisions to the greatest extent possible. The same applies to regulatory loopholes.

16.7 The headings of the provisions in these General Terms and Conditions of Sale and Delivery are for convenience only and shall not be used for interpretation.

16.8 No business development taking place between the Customer and us and no delay or omission in respect of the exercise of any right, legal redress or remedy granted to us according to these General Terms and Conditions of Sale and Delivery shall be deemed as a waiver of such a right. Each right, relief or remedy granted to us in this document is of a cumulative nature, existing on an equal footing with and separately from and in addition to other statutory rights, reliefs and remedies.