

**Terms and Conditions of Sale and Delivery of the HOMAG Group  
for foreign delivery transactions No. 07/2019  
Effective as of January 1, 2019**



**I. General, scope of application**

- (1) All offers, deliveries and other services of all German companies of the HOMAG Group made in respect of the customers listed in Section (2) shall be subject to the following TERMS AND CONDITIONS OF SALE AND DELIVERY OF THE HOMAG GROUP FOR FOREIGN DELIVERY TRANSACTIONS exclusively. German Companies of the HOMAG Group are all companies affiliated with HOMAG Group AG located within the Federal Republic of Germany. Counter-confirmations of the customer referring to its own general terms and conditions and/or terms and conditions of purchase are hereby objected to. Deviating or contrary general terms and conditions of the customer can only become part of the supply contract if they have been expressly accepted by us in writing. Our TERMS AND CONDITIONS OF SALE AND DELIVERY OF THE HOMAG GROUP FOR FOREIGN DELIVERY TRANSACTIONS shall also apply to all future offers, deliveries and other services provided to the customer, even if they are not expressly agreed upon again.
- (2) Our TERMS AND CONDITIONS OF SALE AND DELIVERY OF THE HOMAG GROUP FOR FOREIGN DELIVERY TRANSACTIONS shall apply only in respect of customers located abroad (outside the Federal Republic of Germany), and who are acting in relation to their business and commercial activities when contract is concluded. Our TERMS AND CONDITIONS OF SALE AND DELIVERY FOR DOMESTIC DELIVERY TRANSACTIONS shall apply only to our customers located in the Federal Republic of Germany.

**II. Contract documents, conclusion of the supply contract, the customer's information obligations**

- (1) Our offers shall be subject to confirmation and non-binding, unless they are expressly and in writing indicated as binding or contain a specific acceptance period. This shall also apply if we have provided the customer with drawings, plans, catalogues, samples, cost estimates and other documents as well as software, if any.
- (2) A binding supply contract shall be concluded only upon the customer signed our written offer in due time, provided that this written offer was expressly indicated by us as binding or contains a specific acceptance period; in all other cases, a binding supply contract shall be concluded only upon our written order confirmation or the signing of a written contract by both parties.
- (3) We reserve all rights in ownership, copyrights and all intellectual property rights (including the right to file applications for these rights) in all drawings, plans, catalogues, samples, cost estimates, other documents and software provided to the customer prior to or after the conclusion of a supply contract. The aforementioned documents, in particular also offers and order confirmations as well as software, are confidential and shall only be used for the conclusion and execution of the corresponding supply contract between us and the customer ("Intended Purpose") and shall only be provided to third parties upon our prior written consent. The confidentiality obligation and the prohibition of use for any other than the Intended Purpose shall also apply if no supply contract is concluded and shall survive the termination of the supply contract, irrespective of how the supply contract ends.
- (4) If no supply contract is concluded between us and the customer, any documents and software already provided to the customer shall be returned to us in full upon first request. In doing so, the customer shall ensure and confirm to us in writing that it does not have any copies, transcripts, films or copies on data carriers and that it did not share any of the above with a third party. Any retention right of the customer regarding documents and software the return of which is requested by us shall be excluded – irrespective of its legal basis.
- (5) Prior to any conclusion of a supply contract, the customer shall inform us in writing if the requested delivery item
  - is not intended to be exclusively fit for customary use;
  - will be used under unusual conditions or under conditions placing higher demands on the delivery item or representing an increased risk to health, safety or the environment; or
  - is intended for the processing of unusual materials.

- (6) A warranty for the suitability of the delivery item for a specific use is granted only, if we have warranted such suitability in the supply contract in writing.

**III. Scope of delivery, reservation of the right to make changes**

- (1) Content and scope of our performance obligation shall be determined exclusively by the content of (i) our written offer indicated by us as binding or containing a specific acceptance period respectively, (ii) our written order confirmation or (iii) the written supply contract signed by both parties. All information regarding the delivery item provided in catalogues, product descriptions, data sheets, plans, non-binding offers, drawings, specifications, in particular information on the availability, performance data, quantity, dimension, use, color, etc., are non-binding; they shall only become a legally binding part of the supply contract if and to the extent they are expressly referred to in (i) our written offer indicated by us as binding or containing a specific acceptance period, (ii) our written order confirmation and/or (iii) the written supply contract signed by both parties; in this regard, information and features only represent warranted characteristics if they are expressly identified as such in writing.
- (2) Certain delivery items can be delivered as "tapio ready". This means that these delivery items are equipped with a device which technically enables the use of the delivery item in connection with offers available on the digital platform "tapio" for the value-added chain in the wood industry. This does not constitute any claim of the customer to use the offers provided on the tapio platform. A usage of such offers requires the customer's registration on the tapio platform, the authorization of the customer by the platform operator, the acquisition of a specific offer intended to be used for the delivery item as well as the corresponding activation of the delivery item. As long as these requirements are not fulfilled, the "tapio ready" function only ensures that, upon switching on the delivery item, a connection to the operation service of the tapio platform is automatically established in order to check on the basis of the delivery item's machine number whether the delivery item is already activated for the use of an offer available on the tapio platform.
- (3) Side agreements and supplements/amendments to the supply contract shall only be valid if and to the extent as they are confirmed by us in writing.
- (4) Our order acceptance, order confirmation and contract signing shall be subject to the confirmation of cover by our commercial credit insurance or any other form of security for our payment claims, e.g., a bank guarantee.
- (5) If a change in applicable law or the state of the art during the term of the supply contract requires a change to the scope of delivery and performance, we will inform the customer accordingly. To the extent that a change to the scope of delivery and performance is either required by law or requested by the customer, a supplement agreement shall be concluded. We are entitled to an extension of the contractually agreed time schedule. Further, we are entitled to reimbursement of additional costs caused by changes requested by the customer. We will inform the customer without undue delay of any effects on the time schedule or costs and submit a supplementary offer. We shall not be obliged to perform as long as no agreement has been concluded on the supplementary offer.
- (6) We reserve the right to change the design or materials to the extent that the delivery item's customary use or its use required by the supply contract is not significantly impaired and the changes are reasonable to the customer.
- (7) If the delivery item is manufactured in accordance with customer's demands and is not a serial product manufactured by us (customized designs), the pertaining documentation may deviate from our documentation standard as well as from the documentation standard customary throughout the HOMAG Group. In particular, scope, form and function of the documentation can deviate and/or be less comprehensive.

**IV. Prices, payment**

- (1) Unless otherwise specifically agreed in writing, prices shall be Ex Works (EXW Incoterms 2010). All additional costs such as packaging, shipping, insurance as well as value-added taxes and all other taxes and duties are not included. The costs for packaging,

shipping as well as for insurances expressly requested by the customer shall be separately charged at the prices applicable at the time the costs are incurred. If we exceptionally take over the unloading and bringing-in of the delivery item, we may, in addition to the agreed price, demand from the customer reimbursement of the necessary costs incurred for the unloading and bringing-in of the delivery item. If we have also assumed the installation, assembly or commissioning, the customer shall also bear – unless otherwise agreed in writing – in addition to the agreed price for the delivery, all costs incurred for the installation, assembly or commissioning according to the price list applicable at the time the work is performed.

- (2) The prices quoted shall only be valid for the respective supply contract. The agreement of a fixed price shall require an express written agreement.
- (3) If the customer decides after entering into the contract to process the order using a leasing company with which we do not have an ongoing business relationship, we are entitled to request a flat-rate surcharge from the customer of 3% of the net order value up to a maximum amount of 10,000 €. The customer is entitled to prove that no additional costs were incurred or that these are considerably lower.
- (4) The payment terms agreed with the customer shall apply. Unless otherwise expressly agreed in writing, we may request from the customer an advance payment in the amount of the material costs of the delivery item as well as payment according to the work progress. Prior to delivery, at least 90% of the contract price must be paid to us. Payments shall be made in the currency specified in our offer or order confirmation. Unless otherwise expressly agreed in writing, invoices shall be due for payment in full within 10 days from the date of the invoice.
- (5) Payments shall be made free of charge and without any deductions to our bank account indicated in the invoice. Irrespective of the method of payment, payment shall only be deemed to have been made when the full invoice amount has been irrevocably credited to our bank account so that we can dispose of it (receipt of payment). All additional costs arising from the method of payment chosen by the customer, shall be borne by the customer.
- (6) If the customer fails to pay the contract price within 10 days after the date of the invoice or within any deviating, expressly agreed payment period in writing respectively, we may demand interest of 9% p.a. above the main refinancing interest rate of the European Central Bank without the need for a reminder and without prejudice to any other legal remedies. We reserve the right to prove higher actual damage. Our rights under Section VI. paragraph (1) shall remain unaffected.
- (7) Any set-off by the customer shall only be permissible with regard to legal claims of the customer that have been recognized by us or have been finally adjudicated. To the extent permitted by law, any rights of retention of the customer are excluded.
- (8) In case of agreed installment payment, the entire remaining debt, including all bills of exchange not yet due, shall become due for immediate payment if the customer
  - a) is in default of payment of an installment for 14 days; or
  - b) is in default of payment with at least two installments in whole or in part and the amount in arrears is 10% or more of the contract price; or
  - c) has stopped its payments or is subject to an insolvency application regarding its assets or is subject to foreign proceedings having the same purpose and effect as the insolvency application.

The customer shall pay interest in the amount of 9% p.a. above the main refinancing interest rate of the European Central Bank on the remaining debt due for payment.

#### **V. Delivery period, delay in delivery, impossibility of performance, doubts as to the creditworthiness, takeover of the delivery item**

- (1) The delivery period shall be agreed between the contractual parties. Delivery on time requires the timely submission of all documents to be provided by the customer and the complete clarification of the technical and commercial questions to be answered by

the customer as well as the details to be provided by the customer regarding the demanded design, including the approval of plans. If these requirements are not complied with in time, we will reasonably extend the delivery periods and dates. The time in which the customer is in default with an agreed payment shall not be considered for the delivery period, i.e. the delivery period shall be extended by the time the default in payment exists.

- (2) Unless otherwise expressly agreed in writing, the delivery period shall be deemed met if we have notified the customer of the readiness for shipment within the delivery period or the delivery item has left the manufacturing plant.
- (3) The delivery period shall be reasonably extended if we are unable to meet our delivery obligation, or unable to meet our delivery obligation on time, due to circumstances beyond our control and which were not reasonably foreseeable at the time the supply contract was concluded. Circumstances beyond our control shall in particular include the failure of our suppliers to deliver properly and on time, force majeure, labor disputes as well as delays in obtaining government approvals. We shall inform the customer as soon as possible about the beginning and the end of the respective circumstance. If the impairment lasts longer than six months or if it has been established that it will last for more than six months, both the customer and we may declare the cancellation of the supply contract. In all of these cases, any liability for damages vis-à-vis the customer shall be excluded.
- (4) If we are culpably in delay of delivery due to a circumstance we are responsible for, the customer may, after having set a reasonable grace period of at least 90 days in writing, which lapsed unsuccessfully, rescind from the supply contract within another eight calendar weeks – calculated from the last day of the grace period set. If the customer does not exercise this right in writing within this time period or if the delivery item is ready for delivery prior to the receipt of the customer's rescission declaration by us, the customer loses the right to rescind from the supply contract (= forfeiture).
- (5) To the extent permitted by law, any further contractual or non-contractual claims, in particular any liability or damages claims of the customer against us due to a delay in delivery shall be excluded – irrespective of whether or not we are responsible for the delay in delivery.
- (6) In case of a partial impossibility of performance, the customer may only rescind from the supply contract if a partial delivery is demonstrably of no interest to it. If this is not the case, the customer shall pay the contract price proportional in the amount of the partial service or partial delivery. If the impossibility of performance occurs during default in taking over the delivery item or due to customer's fault, the customer shall remain obliged to pay the full contract price. If neither we nor the customer are responsible for the impossibility of performance, we shall be entitled to a remuneration proportional in the amount of the work performed by us. In all other respects, Section XII. shall apply.
- (7) If, after the conclusion of the supply contract, we become aware of any circumstances that justify reasonable doubts as to the customer's solvency or creditworthiness and on the basis of which our payment claim under the concluded supply contract is at risk, we may refuse our performance until the payment under the concluded supply contract has been received or a security for the payment has been provided, and the customer has fulfilled any other due payment claims of the companies of the HOMAG Group.
- (8) Unless otherwise expressly agreed in writing, the customer shall take over the delivery item within 10 days after the receipt of the notification that the delivery item is ready for shipment at our manufacturing plant. If this takeover period is exceeded by more than 5 days, this shall be deemed as a material breach of the supply contract and we may – without prejudice to other legal remedies – arrange the shipment of the delivery item to the customer and all associated formalities at customer's expense. If the delivery item is not taken over, this shall not affect the customer's obligation to pay the contract price. We may, at our sole discretion, instead of shipping the delivery item to the customer, also dispose otherwise of the delivery item and deliver to the customer a substitute delivery item within a reasonably extended delivery period. The below provisions of Section VI. regarding any default in taking delivery shall remain reserved.

## **VI. Default in taking over the delivery, postponement of the delivery date at the customer's request**

- (1) If the customer is in default in taking over the delivery item or in default of payment of the contract price, we may, after having set a short grace period, rescind from the supply contract and/or request damages in lieu of performance. If we assert damages in lieu of performance, we may – without providing any evidence – request damages
  - in the amount of 20% of the contract price, if the delivery item is a serial or standard product; or
  - in the amount of 100% of the contract price, if the delivery item is a custom-made product according to the special demands of the customer.

However, we reserve the right to provide evidence of and assert any higher actual damage. Moreover, the rules resulting from the statutory provisions regarding the determination of damages shall remain unaffected to the extent that we have already completely fulfilled our contractual obligations.

- (2) If the customer is in default in taking over the delivery, we may charge any additional expenses, in particular storage costs. If we store the delivery item with third parties, we may request from the customer the storage costs charged by such third party as well as the transportation costs to the place of storage. If we store the delivery item at our premises, we may, without providing evidence, request from the customer a storage fee in the amount of 0.1% of the contract price for each commenced week of the default in taking over the delivery and/or the delay, however, no more than 5% of the contract price. We reserve the right to provide evidence of a higher damage.
- (3) If we request damages from the customer in case of a default in taking over the delivery or default of payment of the contract price in addition to performance under the supply contract or if we postpone the delivery date at the customer's request, we may also request from the customer the payment of additional expenses, in particular storage costs, pursuant to the above paragraph.

## **VII. Delivery, passing of risk and insurance**

- (1) We may make partial deliveries, unless excluded by the parties in writing.
- (2) Unless otherwise expressly agreed in writing, delivery shall always be made Ex Works (EXW Incoterms 2010); accordingly, all transportation and customs costs shall be borne by the customer and the risk shall pass to the customer at the time the delivery item is ready for shipment at our manufacturing plant.
- (3) Unless otherwise expressly agreed in writing, delivery shall also be agreed to be Ex Works (EXW Incoterms 2010) if the transportation is organized by us and/or the supply contract stipulates that we shall install, assemble and/or commission the delivery item at the place of destination.
- (4) If other delivery terms than a delivery Ex Works (EXW Incoterms 2010) are agreed upon, in particular other Incoterms clauses, unless otherwise expressly agreed in writing, the risk shall also pass to the customer at the latest with receipt of the delivery item by the first freight carrier.
- (5) If the shipment and/or the transportation of the delivery item are delayed due to circumstances we are not responsible for, irrespective of the agreed delivery terms, the risk shall pass to the customer at the latest upon the notification of the readiness for shipment.
- (6) Irrespective of the agreed delivery terms – unless otherwise expressly specified in writing in the order confirmation –, the unloading as well as transportation of the delivery item from the unloading site to the place of installation shall not be part of our obligations.
- (7) At the customer's request, all deliveries shall be insured at its expense from the passing of risk and until the contract price has been paid in full. In the event of any damage, we shall assign to the customer any claims arising from the insurance policy concurrently (*Zug um Zug*) in exchange for the fulfillment of all contractual obligations of the customer (including the reimbursement of the insurance premium).

To the extent that the customer does not desire such an insurance by us, the customer shall insure the delivery item at the reinstatement value from the passing of risk and until the contract price has been paid in full. If the customer does not provide evidence within 10 days after the conclusion of the supply contract at the latest that such an insurance has been concluded in its name and at its expense, we may conclude the specified insurance contracts at the customer's expense; the customer hereby irrevocably grants us the corresponding power of attorney.

## **VIII. Preparation of assembly work, etc.**

- (1) To the extent that we have expressly and in writing agreed on delivery, installation, assembly and or commissioning services with the customer and have agreed on a respective date, the customer shall prepare the place of performance in a timely manner at its expense so that the planned work can be carried out. In particular, the customer shall make the following available at the place of performance in a timely manner:
  - any earthworks, construction works and other ancillary works from other sectors and industries including any skilled and non-skilled personnel, construction materials and tools required in this respect;
  - a foundation that meets the requirements of our installation plan;
  - any commodities and materials, such as scaffolding, lifting tools, lubricants and fuels, etc. required for the installation, assembly and commissioning;
  - electrical connections, power, heating, water, pressed air connections, extraction unit and sufficient lighting;
  - the required suitable non-skilled personnel in the number and for such time as necessary;
  - sufficiently large, suitable, dry and lockable rooms for storing the machine parts, equipment, materials, tools, etc. and appropriate work and recreation rooms for our staff, including sanitary facilities; apart from that, the customer shall take the same measures for protecting our property and staff on the construction site that it would take for protecting its own property and staff;
  - protective clothing and protective devices required due to special circumstances prevailing at the place the work is carried out.
- (2) Prior to the commencement of the work, the customer shall provide to us without any request the required information about the location of hidden power lines, gas and water pipes or similar facilities as well as the required static data.
- (3) If the customer's preparatory measures do not correspond to the agreed requirements, we may refuse or cease the work until the agreed condition has been reached; in particular if the foundation does not correspond to our installation plan. If the customer wants to prevent us from installing the intended protection devices on the delivery item, in particular protective fences, we may deactivate the delivery item.
- (4) If the customer is responsible for the fact that we cannot carry out the specified work, cannot carry it out completely or not within an adequate period of time, in addition to a proper fulfillment of the contractual obligations by the customer, we may request a contractual penalty in the amount of 0.1% of the net order value per working day, however, no more than 10% of the net order value, for the duration of the delay and/or the duration the delivery period is exceeded. We may provide evidence of any damage exceeding the contractual penalty and request respective damages, in particular the reimbursement of additional costs incurred due to additional trips by our staff and the working time of our staff that is spent to no avail or required in addition. When determining the damages, the additional costs for the additional work of our staff and the additional costs for additional trips can be calculated on the basis of our general terms and conditions of assembly (*Montagebedingungen*) as applicable from time to time.

## **IX. Retention of title, provisional right of repossession**

- (1) We retain title to the delivery item until the contract price as set out in Section IV. has been paid in full. By concluding the supply contract, the customer authorizes us to disclose the retention of title or

enter it into public registries, books or similar records in the required form at the customer's expense and in accordance with the applicable national laws and rules.

- (2) The customer shall take all measures necessary to preserve the retention of title or of a functionally equivalent security interest recognized in the country of destination (registered office of the customer). The breach of this obligation by the customer shall constitute a material breach of the supply contract.
- (3) During the existence of the retention of title, the customer shall be prohibited from pledging or transferring the delivery item by way of security, as well as any sale, transfer and renting or other provision of the delivery item to third parties shall only be permitted upon our prior written consent and by preserving our retention of title. The customer shall treat the delivery item with care. The customer shall inform us without undue delay of any seizures, confiscations or other dispositions or interventions of third parties that can result in a loss of our rights in the delivery item.
- (4) In case of a delay in payment or if the customer breaches any other material contractual obligations, we are entitled to provisionally repossess the delivery item until the outstanding amount has been paid and/or the violation of the material contractual obligation has been remedied. The exercise of the right of repossession shall not constitute a withdrawal from the supply contract.
- (5) Instead of the provisional right of repossession specified in paragraph (4) above, in case of a delay in payment, we may, after expiration of a notice period of four weeks to no avail, shut down the delivery item, in particular by means of remote access, until the outstanding amount has been paid.
- (6) The provisions on the passing of risk as defined in Section VII. shall not be affected by this agreement on the retention of title.

#### **X. Acceptance test, acceptance of delivery item**

- (1) The parties may agree in writing that a joint acceptance test will be performed to ensure that the delivery item is in conformity with the supply contract, in particular where installation and/or assembly work is performed. If the acceptance test is to be performed while the delivery item is operated by employees of the customer, the customer must provide machine operators with sufficient know-how and experience in the operation of corresponding wood processing machines. If during the acceptance test the delivery item does not meet the acceptance criteria agreed in writing, we may immediately perform another acceptance test with the delivery item being exclusively operated by our staff. If the delivery item then meets the acceptance criteria, the customer shall confirm acceptance of the delivery item.
- (2) If an acceptance test has been agreed in writing but no acceptance date has been fixed, we shall inform the customer of the date of the acceptance test.
- (3) The costs of the acceptance test (including the costs of test materials as well as supplies) shall be borne by the customer. The customer shall also provide a sufficient amount of the agreed test material for the acceptance test. We shall bear the costs for our staff.
- (4) A written acceptance protocol to be signed by both parties shall be prepared on the acceptance test. Any defects of the delivery item shall be recorded.
- (5) The delivery item shall be accepted if
  - the delivery item does not show any or no material defects or quantity variances; or
  - the acceptance test could not be performed at the customer's fault; or
  - the customer has commenced operation of the delivery item.
- (6) If the acceptance test reveals defects of the delivery item, the provisions of the below Section XI., in particular its paragraph (5), shall apply.

#### **XI. Notification of defects and warranty rights**

- (1) The customer may only refuse receipt and/or acceptance of the delivery item if the delivery item is obviously and significantly defective or if the quantity deviates significantly. Such refusals shall be made in writing without undue delay, stating the reasons. In this context, the customer is aware that the full operational capability of

individually designed machines will only be achieved after expiry of a reasonable running-in period.

- (2) Unless it has been agreed in writing that a joint acceptance test will be performed (Section X.), the customer shall inspect the delivery item and/or the documents without undue delay after receipt and send us a written notification regarding any obvious defects in the delivery item and/or the documents without undue delay, however, no later than within 7 calendar days after receipt, and specify the type of defect in detail. If an acceptance test has been agreed in writing (Section X.), inspection and notification shall be made no later than by the end of the day on which the acceptance test was performed or – if it was not performed at the customer's fault – should have been performed. If the customer commenced operation of the delivery item already prior to the acceptance test agreed in writing, notification shall be made no later than within 7 calendar days as of the commissioning.

The customer shall lose all the rights in case of defects in the delivery item and/or the documents recognizable within the scope of an inspection, if it fails to notify us accordingly in writing within the above-mentioned periods, specifying the type of defect in detail, irrespective of the customer's reasons for not complying with these requirements. The customer's written notification of defects shall be sent within the above-mentioned periods and/or provided to us no later than by the end of the acceptance test agreed in writing; moreover, the notification of defects sent in due time must actually be received by us.

- (3) Notifications with respect to hidden defects shall be made in writing without undue delay, however, no later than within 7 calendar days after the customer detected such defect. The customer shall lose all rights in case of a hidden defect if it fails to notify us accordingly in writing within such period, specifying the type of defect in detail, irrespective of the customer's reasons for not complying with these requirements. The customer's written notification of defects shall be sent within 7 calendar days after the customer detected such defect; moreover, the notification of defects sent in due time must actually be received by us.
- (4) If, after the customer has sent a notification of defects, a defect in the delivery item cannot be ascertained, the customer shall reimburse us for any costs incurred in connection with the inspection of the delivery item.
- (5) If there is a defect in the delivery item or the documents, we may remove such defect at our sole discretion, either by repair or by replacement delivery. If the customer does not give us this opportunity, we shall not be liable for the resulting consequences.

To the extent that the defect in the delivery item or the documents is not removed within a reasonable period of time by repair or by replacement delivery, the customer may – after having set in writing another reasonable grace period of at least 90 days to no avail – request reduction of the contract price in an amount proportional to the reduced value of the delivery item. If there is a defect in the delivery item or the documents, the customer may not request cancellation of the supply contract instead of reduction of the contract price.

Any and all other rights in case of defects, claims and rights on the part of the customer for removal of defects, any liability or damage claims as well as any and all further contractual and non-contractual claims of the customer against us shall be excluded to the extent permitted by law.

- (6) In the absence of a deviating written contractual provision, a defect does not exist merely because the delivery item does not comply with the technical and other norms applicable in the country of destination (registered office of the customer) or because the delivery item is not suitable for specific purposes.
- (7) A defect shall not be deemed to exist in the event of a merely insignificant deviation from the quality agreed, a merely insignificant impairment of the usefulness, an inappropriate or improper use of the delivery item, an incorrect assembly and/or commissioning by the customer or by a third party not engaged by us, natural wear and tear (in particular of consumables), an incorrect or negligent handling of the delivery item, insufficient maintenance measures, changes or extensions made by the customer or third parties and the resulting consequences, inappropriate supplies and replacement materials, poor construction works, inappropriate ground, chemical, electrochemical, electric or electronic influ-

ences, insofar as they are not attributable to our fault. If a customer or third party makes improper repairs, we shall not be liable for the resulting consequences. The same shall apply to changes to the delivery item made without our prior written consent.

- (8) The limitation period within the meaning of Article 210 and Article 371 Swiss Code of Obligations (*Obligationenrecht*; "OR") for the assertion of claims arising from defects as to quality and defects in title shall – to the extent permitted by law and in deviation from the statutory provision – be limited to 12 months as of the day of receipt of the delivery item by the customer. If an acceptance test has been agreed in writing, the limitation period of 12 months shall commence upon expiry of the day on which the acceptance test was performed or – if it was not performed due to the customer's fault – should have been performed, however, no later than upon expiry of the day on which the customer commenced operation of the delivery item.

With respect to repairs or replacement deliveries made by us, the limitation period for the assertion of claims arising from defects as to quality and defects in title shall end at the same time as the limitation period applicable to the delivery item pursuant to this Section ends.

These limitation periods shall also apply to any non-contractual claims arising from defects as to quality and defects in title. The assertion of claims shall always be subject to the prior, timely notification of defects pursuant to the above paragraphs. (2) and (3).

- (9) Unless otherwise expressly agreed in writing, we shall deliver the delivery item free from intellectual property rights and copyrights of third parties exclusively in the country to which our delivery is made. If the normal use of the delivery item results in an infringement of intellectual property rights or copyrights in the country of delivery, we shall, at our expense, procure the right to further use of the delivery item for the customer, or reasonably modify the delivery item for the customer in such a way that the intellectual property right is no longer infringed. If this is not possible on commercially reasonable terms or within a reasonable period of time, the customer may rescind from the supply contract and request repayment of the contract price from us. Under the aforementioned conditions, we may also rescind from the supply contract.
- (10) Our obligations set forth in Section XI. paragraph (9) shall be final and conclusive in the event of an infringement of intellectual property rights or copyrights. Any and all further rights based on defects, claims and rights of the customer for removal of defects, any liability or damage claims as well as any and all further contractual and non-contractual claims of the customer against us shall be excluded to the extent permitted by law.

Moreover, our obligations set forth in Section XI. paragraph (9) shall only exist if

- the customer notifies us without undue delay in writing about any infringement of intellectual property rights or copyrights asserted;
- the customer supports us, to a reasonable extent and at its own expense, in connection with the defense of the claims asserted and/or enables us to perform the modification works pursuant to Section XI. paragraph (9);
- all defense measures, including out-of-court settlements, remain reserved to us;
- the customer is not responsible for the infringement of intellectual property rights or copyrights;
- the legal defect is not based on any instruction by the customer and/or
- the violation of law and/or rights was not caused by the customer changing the delivery item without authorization or using it in any manner not compliant with the supply contract.

Should the customer discontinue using the delivery item for reasons of reducing the damage or for any other good cause, it shall inform the third party that the discontinuance of the use does not imply an acknowledgment of the infringement of the intellectual property right. Any discontinuance of the use shall be coordinated with us in advance. In case the customer is responsible for the infringement, the customer shall indemnify us from third parties claims arising from the infringement.

- (11) If the customer culpably contributed to causing the defects, in particular due to non-compliance with its obligation to prevent and

reduce damage, we may claim damages in an amount equivalent to the respective contribution.

- (12) In the event that any used delivery item is sold, any claims based on defects shall be fully excluded, unless a mandatory liability under statutory law applies.

## XII. Liability, damages

- (1) We shall only be liable for intent and gross negligence on our part. In all other respects, unless otherwise expressly stated in these Terms and Conditions of Sale and Delivery, any contractual or non-contractual liability and liability for damages on our part – irrespective of the legal reason – shall be excluded to the extent permitted by law.
- (2) In particular, any liability and liability for damages for employees, workers, bodies, subcontractors and any other auxiliary persons of ours shall be fully excluded to the extent permitted by law.
- (3) Insofar as a further exclusion of liability is provided for in the provisions relating to delay in delivery (in particular Section V paragraph (5)) and notification of defects/warranty (in particular Sections XI. and XIII.), these provisions shall prevail over paragraph (1) of this Section XII. Paragraph (2) of this Section XII. shall apply in any event.

## XIII. Software

- (1) With respect to software of other providers included in the scope of delivery, the general terms and conditions and license terms of such other providers shall prevail. Should such terms not be available to the customer, we will provide them upon request. Our Terms and Conditions of Sale and Delivery shall apply additionally.
- (2) To the extent that software from us is included in the scope of delivery, the customer shall be granted a non-exclusive right to use such software including its documentation. It shall be provided for use on the delivery item intended for such use. Using the software on more than one system shall be prohibited. The customer may transfer the right of use to future owners or renters of the delivery item. If the right of use is transferred to third parties, the customer shall ensure that the respective third party is not granted any more comprehensive rights of use with respect to the software than those granted to the customer pursuant to this supply contract, and that the respective third party is at least subjected to the obligations under this supply contract existing with respect to the software. In this context, the customer may not retain any copies of the software.
- (3) The customer may not remove manufacturer information, in particular copyright notices. Moreover, the customer may only change manufacturer information upon our prior written consent.
- (4) All other rights in the software and the documentation including the copies shall remain with us and/or the software provider, unless the customer is granted any more comprehensive rights on the basis of mandatory statutory provisions. In particular, we need not provide source codes of the software. The granting of sub-licenses is not permitted.
- (5) Unless otherwise agreed in writing, we need not provide updated versions of the software to the customer.
- (6) The software shall only be deemed to be defective if the customer has proven reproducible deviations from the specification. However, a defect as to quality of the software is not given if it does not occur in the software version that was most recently provided to the customer and the use of which is reasonable for the customer. Notifications of defects by the customer shall be made in writing within one week after the handover. The defect and the corresponding data processing environment shall be described in as much detail as possible in such notification of defect.
- (7) With respect to software, we shall not be liable for claims based on defects
- in case of a merely insignificant deviation from the quality agreed;
  - in case of a merely insignificant impairment of the usefulness;
  - in case of any damage incurred due to incorrect or negligent handling;
  - in case of any damage incurred due to special external influences not assumed under the supply contract;

- in case of any changes or extensions made by the customer or third parties and the resulting consequences;
  - and related to the fact, if and that the software provided is compatible with the data processing environment used by the customer.
- (8) If there is a defect as to quality regarding the software, we may remove such defect at our sole discretion, either by rectification or by replacement delivery.
  - (9) As a substitute, we will provide a new version number (update) or a new version (upgrade) of the software, to the extent readily available for us or obtainable using reasonable efforts. Until an update and/or upgrade has been provided, we will make an interim solution available to the customer in order for the customer to circumvent the defect as to quality, to the extent possible using reasonable efforts and to the extent that the customer is no longer able to perform urgent tasks due to the defect as to quality. If a data carrier or documentation supplied is defective, the customer may only request us to replace such items by items that are free of defects.
  - (10) At our choice, the defect as to quality shall be removed at the customer's or our premises. If we chose to have the defect removed at the customer's premises, the customer shall provide the hardware and software as well as any other operating conditions (including required computing time) together with adequately qualified staff. The customer shall provide us with any of its documentation and information required to remove the defect as to quality. Upon our request, the customer shall allow remote access.
  - (11) Our obligations for software defects set forth in this Section shall be final and conclusive. Any and all other rights based on defects, claims and rights of the customer for removal of defects, reduction of the contract price, cancellation of the supply contract, any liability or damage claims as well as any and all further contractual and non-contractual claims of the customer against us shall be excluded to the extent permitted by law.

#### **XIV. Export, data protection**

- (1) If the scope of delivery includes an export on our part requiring permit, the supply contract shall only be deemed concluded upon receipt of the respective permit. The customer shall provide any documents required for the permit. If we agree vis-à-vis the customer in writing to obtain any required export permits, we will make all reasonable efforts in this respect, with the customer having to compensate us for all our incurred costs, unless otherwise agreed in writing. We do not guarantee that an export permit will be granted. The customer shall always be responsible for obtaining an import permit if so required.
- (2) If the customer exports the delivery item, it shall comply with the respective applicable export control provisions. If the customer violates the export control provisions, we may refuse performance of or rescind from the supply contract, with the customer having to compensate us for at least the positive interest in the performance of the supply contract in any case. The customer shall provide use certificates and end-use certificates upon request, even if such certificates are not officially required.
- (3) We will store and process personal data in compliance with the statutory provisions.

#### **XV. Disposal of old electrical devices**

- (1) After the customer has finished using the delivery objects, they are obliged dispose of them at their own expense. Statutory provisions must be observed during that disposal.
- (2) The customer indemnifies us against all manufacturer obligations under EU-Directive WEEE (2012/19/EU - Directive on waste electrical and electronic equipment) and the German Electrical and Electronic Equipment Act (ElektroG), especially from the manufacturer's obligation to take the delivery item back, and from all associated third-party claims.
- (3) If the delivery item is forwarded to third parties, the customer must obligate those third parties to properly dispose of the delivery item after it has been used, while observing statutory provisions. If the delivery item is forwarded again, the third party must be contractu-

ally obligated to impose a corresponding obligation on the recipients of the delivery item.

- (4) A breach of the regulations of Section XV. Paragraph (3) will obligate the customer to take back the delivery item pursuant to XV (1) and dispose of it according to statutory provisions. The customer shall be obliged to indemnify us against any third-party claims.
- (5) Our claims against the customer that result from these provisions will become time-barred at the earliest two years after use of the delivery item has stopped. The time limit will begin when the customer notifies us in writing that they have stopped using the delivery item.
- (6) Any differing agreement requiring us to take back and dispose of the delivery item must be in written form.

#### **XVI. Place of performance, confidentiality, governing law, dispute resolution, severability clause**

- (1) Unless otherwise agreed in writing, the place of performance shall be D-72296 Schopfloch (Federal Republic of Germany).
- (2) The customer shall treat any and all of our manufacturing, trade and business secrets of which the customer has obtained or will obtain knowledge in connection with the contract negotiations, the supply contract or otherwise strictly confidential and to exclusively use such secrets for the purposes of the respective supply contract. Any other use or communication to third parties shall be prohibited. The confidentiality obligation and the prohibition of use shall survive the termination of the supply contract. In particular the customer shall impose the same obligations on its employees and auxiliary persons and shall be liable towards us for compliance with such obligations.
- (3) The supply contract shall exclusively be governed by Swiss law, excluding the Federal Act on Private International Law and the United Nations Convention on Contracts for the International Sale of Goods ("CISG").
- (4) Any disputes arising from or in connection with the supply contract, including any questions relating to the existence, validity or termination of the supply contract, shall be exclusively resolved in arbitration proceedings pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC) in the version applicable as of the time of conclusion of the supply contract by three arbitrators in accordance with said Rules of Arbitration. The language of the arbitration proceedings shall be English. The place of arbitration shall be Schopfloch, Germany. This provision shall prevent neither party from conducting proceedings before the competent ordinary court regarding precautionary measures, i.e. arrest proceedings.
- (5) To the extent the parties have provided for a written form requirement in these Terms and Conditions of Sale and Delivery or in the supply contract and unless otherwise agreed, the electronic transmission, which enables permanent record of the content of the declaration, shall be deemed equivalent to the written form. However, the conclusion of an effective and valid supply contract pursuant to Section II. paragraph (2) requires signatures of the parties in all cases.
- (6) Should any provision of the supply contract or these Terms and Conditions of Sale and Delivery be invalid in whole or in part for any reason, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced in writing by mutual agreement. If the respective provision cannot be replaced by mutual agreement, the invalid provision shall be replaced by such provision coming as close as legally possible by observing the purpose of the respective supply contract as intended by the parties.