

# General Terms and Conditions of Purchase

Last updated: July 2016

## § 1 General, Scope of Application

(1) The below General Terms and Conditions of Purchase (GTCP) shall apply to all procurement transactions between

- a) **Elsdorfer Molkerei und Feinkost GmbH** or
- b) German companies affiliated with a)

hereafter referred to individually or collectively as "Buyer", on the one hand, and our business partners and suppliers (also "Seller"), on the other hand. These GTCP only apply if the Seller is an entrepreneur as defined in § 14 German Civil Code (BGB), a legal entity organised under public law, or a special public fund.

(2) Our General Terms and Conditions of Purchase apply in their latest version and to all subsequent transactions without any need of express reference or agreement upon their conclusion.

(3) These Terms and Conditions of Purchase apply to all procurement transactions such as tools, machines, equipment, parts, raw materials, other materials, software, performed work or services of any kind ("delivery item" or "deliverable").

(4) To the extent that the contractual services are construction services, statutory regulations shall apply exclusively under exclusion of the VOB/B (German Construction Tendering and Contract Regulations, part B.)

(5) Our General Terms and Conditions of Purchase (GTCP) shall apply exclusively. Any differing, conflicting or additional General Terms and Conditions of the Seller shall become a part of any contract only to the extent to which we expressly agree to them in writing. This requirement of consent shall apply in every case, e.g. also if we agree without reservation to accept a delivery in full knowledge of the Seller's General Terms and Conditions.

(6) Any individual agreements made with the Seller in individual cases (including ancillary or supplementary agreements or amendments) shall always take precedence over these GTCP. A written contract or our written confirmation shall be definitive for the content of such agreements, subject to evidence to the contrary.

(7) Legally relevant declarations and notifications that are to be submitted to us by the Seller after conclusion of contract (e.g. deadlines, reminders, declaration of withdrawal) require the written form to be effective.

(8) Any references to the applicability of statutory provisions only serve for purposes of clarification. Even without such clarification, the statutory provisions apply, unless directly modified or expressly excluded by these GTCP.

## § 2 Conclusion of Contract

(1) Our order shall be binding at the earliest when issued or confirmed in writing. Prior to accepting the order, the Seller shall advise us of obvious errors (e.g. typos or calculation errors) and incompleteness of the order, including order documents, for the purpose of correction or completion; otherwise the contract shall be regarded as not concluded.

(2) The Seller is required to confirm our order in writing within one week or in particular to carry out the order by dispatching the goods without reservation (acceptance). Late acceptance is considered to be a new offer and requires acceptance by us.

(3) The Seller obliges to always comply with the specifications of the Buyer and shall not change them without our prior written approval. We reserve the right to change the specifications at any time if this should become necessary due to applicable statutory food regulations.

(4) We reserve the right to extend the specifications to warehousing and transport requirements. We shall inform the Seller without delay of any such change.

## § 3 Deliverables / Modifications / Spare Parts

(1) The content and scope of deliverables result from the individual order and from the documents referenced in the individual order as well as from these General Terms and Conditions of Purchase. Any ideas, drafts, models, samples, or other work results produced by the contractor when providing the contractual services are part of the deliverable.

(2) The Seller will check any specifications, work descriptions and other information made available to the Seller for the execution of a supply contract, and any items, parts or other materials made available to the Seller for the execution of the supply contract, to determine their suitability for the purpose intended by the Buyer and the Buyer's final

customer. Should it become evident through this examination that it is necessary or advisable to make modifications or corrections to either the items provided or the objects of the agreement, the Seller is to inform the Buyer without delay. The Seller shall then inform the Buyer in writing whether, and where necessary, which amendments the Seller is to make. If in the Seller's view, such modifications may lead to the agreed costs of the contractual items being changed or if deadlines cannot be met, the Seller is to point this out to the Buyer without delay. Appropriate arrangements for handling any such effects, particularly with regard to additional or reduced costs and negotiated deadlines, are to be mutually agreed upon. If no consensus is reached within a reasonable period of time, the Buyer shall decide as he/she sees fit.

(3) The Seller shall undertake to ensure that he/she has timely knowledge of any information and circumstances necessary to the fulfilment of his/her contractual obligations, and also of the Buyer's intended use of the deliverables. The Seller may only claim that necessary documents are missing if he/she sent a timely written request in good time yet did not receive the documents within a reasonable period. The Seller is responsible for ensuring that his/her deliveries encompass all deliverables necessary for approved, safe usage, that they are suitable for the intended use, and comply with current state of science and engineering.

(4) In carrying out his/her contract performance, the Seller shall observe all relevant standards, laws and legal provisions under applicable law, in particular any relevant provisions pertaining to safety, environmental protection, food, hazardous substances and materials, and accident prevention, as well as the generally-accepted safety rules and relevant requirements of the Buyer and his/her final customer.

(5) The Seller is to inform the Buyer of any permits and reporting obligations required by the authorities for the import and operation of the deliverables. The Seller is especially obliged to comply with the export control regulations in effect at the time delivery is made. Without being separately requested to do so, the Seller is required to notify the Buyer in writing, no later than upon delivery, of any export control designation of the contract items or parts thereof according to applicable law at the time of delivery, especially according to relevant EU and US regulations. The relevant export control list and list position are to be designated for every delivery item, or parts thereof, subject to export controls.

(6) The Buyer is entitled, at any time prior to acceptance, to request that the Seller make modifications to the deliverable, particularly if these concern design and construction. This does not include standard materials that the Seller also delivers to other contractual partners in a standardised form. The Seller is obliged to make the modifications without delay, based on the existing contractual terms and conditions. If in the Seller's view, such modifications may lead to the agreed costs of the contractual items being changed or if deadlines cannot be met, the Seller is to point this out to the Buyer without delay. Appropriate arrangements for handling any such effects, particularly with regard to additional or reduced costs and existing deadlines, are to be mutually agreed upon. If no consensus is reached within a reasonable period of time, the Buyer shall decide as he/she sees fit.

(7) The Seller warrants that for a period of 10 years following delivery of the contractual items, he/she shall be able to supply the Buyer with additional contractual items or parts thereof, as spare parts, at reasonable market prices, unless, based on technological progress, a compatible or adequate part can be supplied.

(8) If the Seller discontinues delivery of spare parts upon expiry of the period specified above in number 7, the Buyer shall be given an opportunity to place an order one last time.

## § 4 Delivery Time and Delivery Delay

(1) The delivery time specified by the Buyer in the order is binding. If the delivery time is not stated in the order and has not been agreed otherwise, it shall be two weeks from the conclusion of contract. The Seller is required to notify us in writing, without delay, if – for whatever reason – he/she anticipates not being able to meet the agreed delivery times.

(2) If the Seller does not render his/her deliverable or not within the agreed delivery time, or if he/she is in default, our rights – in particular with respect to withdrawal and claims for damages – shall be determined by statutory provisions. Additional costs, in particular in case of necessary

# General Terms and Conditions of Purchase

Last updated: July 2016

covering purchases, shall be at the Seller's expense. The acceptance of a late delivery without reservation does not constitute a waiver of claims for compensation. The provisions in para. 3 remain unaffected.

(3) If the Seller is in default, we are allowed to demand lump-sum compensation for the damage caused by the delay - in addition to further statutory claims. This compensation shall equal 1% of the net price for each completed calendar week of delay up to a maximum of 5%, however, of the net price of the delayed goods. We reserve the right to provide documentation that the actual damage was higher. The Seller shall be entitled to prove that no damages at all or significantly fewer damages were incurred as a result of the delay.

## § 5 Delivery, Transfer of Risk, Default of Acceptance

(1) Delivery shall occur within Germany "carriage paid" to the destination specified in the order and within goods receiving hours according to § 6. If the destination is not stated and no other agreement was made, the delivery is to be made to our company headquarters in Elsdorf, Germany. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to deliver).

(2) The delivery must be accompanied by a delivery note indicating the date (issue and shipment), content of the delivery (item number and quantity), our order code (date and number), as well as the supplier's lot number. If the delivery note is missing or is incomplete, we do not accept responsibility for any resulting delays of handling and payment. Separate from the delivery note, we are to receive a relevant notification of dispatch with the same content.

(3) Deliveries are to be effected on the terms "Delivery At Place" ("DAP") (pursuant to Incoterms 2010), unless otherwise agreed in the individual order.

(4) Delivery by the Seller or an appointed transport company shall occur in a clean vehicle in compliance with hygiene regulations. The vehicle driver shall wear clean clothing pursuant to food regulations. He/she has a food transport permit, which he/she is prepared to present upon request. In case one or more of the conditions named here are not fulfilled, we are entitled to reject part or all of the delivery.

(5) Delivery shall occur on food-grade Euro pallets (800x1200mm) or industry pallets (1000x1200mm). Unless otherwise agreed, the maximum pallet height (incl. pallet) is 1950 mm. The pallets must be in a clean, dry condition, sturdy and free of any defects (e.g. cracks, extensive splintering, missing blocks, and protruding nails). All pallets undergo a contour inspection during goods receiving.

(6) The pallets must be marked with at least 2 transport labels that comply with the GS1 standard.

(7) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon handover at the place of performance. If acceptance has been agreed, this is definitive for the transfer of risk. Also in other respects, for any acceptance of goods, the statutory provisions of service contract law shall apply. Handover or acceptance shall be deemed rendered if we are in default of acceptance.

(8) Statutory provisions shall apply to the occurrence of our default of acceptance. The Seller must, however, expressly offer us his/her performance if a specific or specifiable calendar date is agreed for an action or participation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand compensation for his/her additional expenses in accordance with statutory provisions (§ 304 German Civil Code). If the contract involves a unique item manufactured by the Seller (custom-made item), the Seller shall only be entitled to more extensive rights if we have obliged to cooperate and are responsible for the failure to cooperate.

## § 6 Goods Receiving Hours

(1) The goods receiving hours are Monday to Friday between 07:00am and 3:00pm. Outside of these hours, goods receiving is only possible upon consultation with the Buyer.

(2) Other goods receiving hours for other delivery items are to be agreed upon with the Seller prior to initial delivery.

## § 7 Return of Empties and Pallets

(1) Unless disposable packaging is used, the return of empties or pallets and packaging material shall be made freight collect at the supplier's expense. The empties account is directly settled exclusively with the supplier. If delivery is made via forwarder, the supplier shall manage the empties account.

## § 8 Use of Sub-contractors

In the absence of our prior written consent, the Seller is not entitled to have third parties (e.g. sub-contractors) render performance for which he/she is responsible. The Seller bears the procurement risk for his/her contractual obligations unless agreed otherwise in a particular case (e.g. limitation to inventory).

## § 9 Prices, Terms of Payment, Set-offs and Right of Retention

(1) The price stated in the order is binding. The applicable VAT will be added to all of the prices specified.

(2) Unless agreed otherwise in a particular case, prices include all performance and ancillary services of the Seller (e.g. assembly, installation) as well as all additional costs (e.g. proper packaging, transportation costs, including shipping or liability insurance).

(3) Invoices are to be issued to the client as single copies, indicating the purchase order number, purchase codes and numbers of each order item. Further, the invoice must include all the details needed to authorise the deduction of input tax, in particular the tax number or VAT ID number, and other mandatory details of an invoice pursuant to the relevant legal provisions of applicable law. Should the invoice fail to include the above-mentioned data, then the Buyer is not obliged to pay the VAT shown. Should the Buyer be unable to deduct input tax due to an improper invoice, the Seller shall refund to the Buyer the VAT paid.

(4) The agreed price shall be due within 30 calendar days from the date of complete delivery and performance (including any agreed acceptance if required) as well as the receipt of a proper invoice, unless otherwise negotiated. If we make payments within 14 calendar days, the Seller shall grant us a 3% discount on the net invoice amount. Payment by bank transfer is made in due time if our transfer instruction is received by our bank prior to the end of the payment period; we do not accept responsibility for delays caused by the banks involved in the payment transaction.

(5) We do not owe any interest after the due date. Statutory provisions shall apply to arrears in payment.

(6) We are entitled to rights to set-off and retention within the scope permitted by law as well as the objection of non-performance of the contract. In particular, we are entitled to withhold due payments as long as we have claims against the Seller, based on incomplete or inadequate performance.

(7) The Seller is only entitled to rights to set-off or retention in case of counterclaims that are undisputed and legally binding.

## § 10 Confidentiality

(1) The Seller obliges to hold strictly confidential all commercial and technical details that are not commonly known to which the Seller becomes privy through the business relationship and to safeguard them against unauthorised access, loss or use. This also applies in particular to any provisions (jointly referred to below as "information"). Information is not allowed to be made available or handed over to unauthorised third parties without the Seller's written approval. This does not apply to information which (a) is or becomes generally known, without any breach of this obligation, (b) is made known to the Seller by a third party, without breach of any relevant obligation, or (c) the Seller can prove either to have possessed it before this obligation came into effect, or to have found it out independently afterwards.

(2) The copying of such information is only allowed within the scope of operational requirements and copyright provisions. The information provided to the Seller is to be handed over to the Buyer without a special request upon completion of work, in adherence with the confidentiality clause, or securely destroyed upon consultation with the Buyer. The Seller shall not retain or archive any copies, duplicates etc., unless he/she is obliged to archive materials based on statutory regulations. Subject to any

# General Terms and Conditions of Purchase

Last updated: July 2016

other rights, the Buyer may request their return as soon as the Seller is in breach of duty.

(3) Employees and sub-contractors are to be bound by the same obligations.

(4) Unless other terms have been agreed upon in the purchase order, this confidentiality obligation is to remain in force for a period of five (5) years after delivery and/or performance.

(5) The Seller is only entitled to use this business relationship for advertising purposes with written approval of the Buyer.

## § 11 Retention of Title

(1) The items provided are processed, blended or combined (further processing) by the Seller on our behalf. The same shall apply when the supplied goods are processed by us, such that we are considered to be the manufacturer and acquire title to the product no later than the date of processing, subject to statutory provisions.

(2) Ownership of the goods must be transferred to us unconditionally, irrespective of payment of the price. If we nevertheless accept an offer in a particular case from the Seller in which transfer of ownership is conditional on payment of the purchase price, the Seller's retention of title shall lapse no later than on the date on which the purchase price is paid for the supplied goods. In the normal course of business, we remain entitled to re-sell the goods, even prior to payment of the purchase price, by assigning the resulting claim in advance (alternatively, by exercising simple retention of title and extended to re-selling). All other forms of retention of title are thus excluded, in particular extended retention of title, transferred retention of title and that which is extended to further processing.

## § 12 Force Majeure

(1) In the event of force majeure, in particular labour disputes, civil unrest, official measures and other unforeseeable, unavoidable and serious events, the parties to the contract are to be temporarily and mutually relieved of their obligations for the duration of the disruption. The parties are obliged to supply the necessary information without undue delay, to the extent reasonably possible, and to adapt their commitments to the changed circumstances in good faith.

(2) Should force majeure cause obligations to be suspended for a period exceeding one week, the client shall be entitled to terminate the contractual relationship with immediate effect. In this case, the contractor shall be able to demand reimbursement of any documented expenditures incurred based on his/her trusting in the continuation of the contractual relationship up until suspension of the contractual obligations.

## § 13 Defective delivery

(1) Statutory provisions shall apply to our rights in the event of material defects and defects of title in the goods (including wrong and short delivery as well as improper installation, and defective assembly, operation or user manuals) and other breaches of duty by the Seller, unless otherwise specified below.

(2) According to statutory provisions, the Seller is liable in particular for ensuring that the goods have the agreed condition and quality upon transfer of risk to us. An agreement on the condition and quality comprises in any case those product descriptions which – in particular through description or reference in our order – are subject to the respective contract or were included in the contract in the same way as these GTCP. In this respect, it does not matter whether the product description originates from us, from the Seller or from the manufacturer.

(3) Notwithstanding § 442 para. 1 sentence 2 German Civil Code, we are also entitled to claims for defects without restriction if the defect remained unknown to us upon conclusion of contract as a result of gross negligence.

(4) Concerning the commercial obligation to inspect goods and report defects, the statutory provisions (§ 377, 381 German Commercial Code (HGB)) shall apply, subject to the following: our obligation to inspect the goods is restricted to defects that become apparent during our goods receiving inspection, upon superficial examination, including the delivery documents, as well as during our quality control through sampling procedures (e.g. shipping damage, incorrect or short deliveries). There is

no obligation to inspect the goods if an acceptance has been agreed. In addition, it depends on whether an inspection is deemed appropriate in the normal course of business, taking into account the circumstances of the individual case.

Our obligation to notify in case of defects discovered at a later date shall remain unaffected. In all cases, our complaint (notification of defect) shall be considered prompt and timely if it is received by the Seller within 14 working days.

(5) If the Seller does not fulfil his/her obligation of supplementary performance – at our option either by remedying the defect (rectification) or by delivery of goods free from defects (replacement) – within an adequate period stipulated by us, we may carry out remedial actions ourselves and claim compensation for the necessary expenditure or an advance payment from the Seller. If supplementary performance by the Seller has failed or is not a reasonable option for us (e.g. in particularly urgent cases, danger to operational safety or impending incidence of disproportional damages), a notice period is waived; we shall inform the Seller without delay, if possible in advance.

(6) Furthermore, we are entitled to a reduction in the purchase price or to withdrawal from the contract in accordance with statutory provisions in the event of a material defect or a defect of title. In addition, we are entitled to compensation for loss and expenses in accordance with statutory provisions.

## § 14 Supplier Recourse

(1) We are entitled, without restriction, to the legally defined rights of recourse within a supply chain (supplier recourse pursuant to §§ 478, 479 German Civil Code), in addition to the right to claims for defects. We are especially entitled to demand exactly the type of supplementary performance (rectification or replacement) from the Seller that we owe to our customer in an individual case. Our legal right to choose the remedy (§ 439 para. 1 German Civil Code) shall not be restricted by this.

(2) Before acknowledging or fulfilling a claim of defect asserted by our customer (including reimbursement of costs pursuant to §§ 478 para. 2, § 439, para. 2 German Civil Code), we will notify the Seller, explaining the facts in brief, and request a written statement. If the statement is not forthcoming within a reasonable period and no amicable solution is reached, the claim of defect actually granted by us shall be deemed owed to our customer; in this case the Seller is obliged to produce proof of the contrary.

(3) Our claims to supplier recourse shall also apply even if the goods were processed by us or one of our customers, e.g. by integrating them into another product, before they are sold to a consumer.

## § 15 Limitation of Claims

(1) The mutual warranty rights of the contractual parties shall be governed by the general statutory provisions, unless otherwise provided below.

(2) § 438 para 1 no. 3 German Civil Code notwithstanding, the general limitation period for claims for defects shall be three years from the date of the transfer of risk. If acceptance has been agreed, the limitation period begins with acceptance. The three-year limitation period shall also apply in case of claims for defects of title, whereby the statutory period of limitation for actions in rem for recovery of property by third parties (§ 438 para. 1 No. 1 German Civil Code) shall remain unaffected; claims resulting from defects of title shall not expire under any circumstances as long as the third party can still assert the right against us – in particular if the limitation period has not run out.

(3) The periods of limitation under sales law, including the above extension, shall apply to all contractual rights to claims for defects – to the extent permitted by law. To the extent we are also entitled to non-contractual claims for compensation due to a defect, the normal statutory limitation (§§ 195, 199 German Civil Code) shall apply, unless the application of limitation periods under sales law results in a longer limitation period in a particular case.

## § 16 Other Liability / Insurance

(1) The Seller is liable for any claims arising from the infringement of granted and registered industrial property rights as well as copyright violations during contractual use of the deliveries and services. The Seller

# General Terms and Conditions of Purchase

Last updated: July 2016

shall indemnify the Buyer and his/her customers from any claims arising from the infringement of any such industrial property rights. This does not apply in cases where the Seller is working according to drawings, models, data etc. provided by the Buyer, and does not know, or, in connection with the services he/she is providing, does not need to know that industrial property rights are being infringed as a result. In the event of infringement, the Buyer is entitled, at the Seller's expense, to obtain from the owner of such industrial property rights the necessary authorisation to deliver, commission, use, resell, etc. the contractual item. Any further claim for damages by the Buyer above and beyond this shall remain unaffected.

(2) The Seller will indemnify and hold harmless the Buyer from any third party claims arising from product liability, if and to the extent that he/she is responsible for the damage which has occurred, and will reimburse the Buyer for any expenses incurred by or in connection with any recall action or service measures undertaken by the Buyer or one of his/her customers. The Seller shall inform the Buyer, as far as is possible and reasonable, about the content and scope of product recall or service measures and provide the Buyer with the opportunity to comment on this. The principles of § 254 German Civil Code will apply accordingly to the damage adjustment between the Buyer and the Seller.

(3) Should the deliverables provided by the Seller include any work on the business premises of the Buyer or one of his/her customers, then the Seller will implement all precautions necessary to prevent injury to persons or damage to property. The Seller shall indemnify and hold harmless the Buyer from any damage, costs and expenditures caused due to work carried out by the Seller on the Buyer's business premises, unless the damage was caused through no fault of the Seller.

(4) The Seller is liable for his/her representatives, vicarious agents and sub-contractors to the same degree as for his/her own negligence.

(5) The Seller shall undertake to obtain insurance, particularly against personal injury, property damage and financial loss, with typical industrial cover of at least a coverage amount of 8 million Euros per case of damage. If requested to do so, the Seller is to submit to the Buyer appropriate proof of insurance. The Seller hereby assigns to the Buyer in advance all insurance claims against the insurer in connection with the contractual items, and the Buyer accepts this assignment. The act of obtaining insurance and the assignment of insurance claims in no way limits the Seller's liability.

(6) Any further legal or contractual claims shall remain unaffected.

## § 17 Compliance

(1) The Seller is obliged to fully familiarise himself/herself with the code of conduct for suppliers and business partners ("Code of Conduct") of the Buyer, which may be reviewed on the Buyer's website ([www.elsdorfer.de](http://www.elsdorfer.de)).

(2) The Seller acknowledges that compliance with the Buyer's Code of Conduct is of vital importance for a business relationship with the Seller. Consequently, the Seller agrees that in case of a breach of the principles in the Buyer's Code of Conduct, he/she will inform the Buyer of the breach immediately.

(3) In case of any breaches of the Buyer's Code of Conduct communicated by the Seller to or discovered by the Buyer, the Seller shall immediately take remedial action. If this is not successful within a reasonable time, the Buyer is entitled to terminate the existing contracts extraordinarily, without notice for good cause.

(4) The Seller shall compensate the Buyer for any liabilities incurred by the Seller due to an infringement of the principles in the Buyer's Code of Conduct by the Seller or one of his/her sub-contractors, and thus holds the Buyer harmless.

## § 18 Compliance with Minimum Wage Act, Provision of Surety, Special Right of Termination

(1) The Seller guarantees that each of his/her employees is continuously and promptly remunerated at a level not less than the applicable statutory minimum wage. The Seller shall also impose commensurate obligations on any subcontractors and employment agencies with whom the Seller maintains contractual relationships.

(2) With respect to subcontractors and employment agencies with whom the Seller or his/her subcontractor maintain contractual relationships, the

Seller guarantees that each worker employed by them shall be continuously and promptly remunerated at a level not less than the applicable statutory minimum wage.

(3) In compliance with the provisions of data protection laws, the Buyer is entitled to inspect company documentation for the purpose of substantiating the Seller's obligation to pay the minimum wage. For this purpose, upon request of the Buyer, the Seller shall provide free of charge verifiable documentation within a suitable period, in particular documents pursuant to § 17 German Minimum Wage Act (MiLoG) and payrolls, each in anonymised form. The Seller shall also impose commensurate obligations on any subcontractors and employment agencies with whom the Seller maintains contractual relationships.

(4) The Seller fully indemnifies the Buyer from all liability pursuant to § 13 German Minimum Wage Act (MiLoG). In the event that claims are asserted against the Buyer by employees of the Seller, his/her subcontractors or employment agencies with whom the Seller maintains contractual relationships, pursuant to § 13 German Minimum Wage Act (MiLoG), regardless of culpability, the Seller is strictly liable for all respective costs of the claim. To safeguard this right of recourse, the Seller is obliged to provide the Buyer upon request with a surety in the form of an irrevocable and directly enforceable guarantee upon initial request at a bank or credit insurer in Germany authorised to perform these types of transactions. The costs of the guarantee shall be borne by the Seller.

(5) Should the Seller breach his/her obligations under para. 1 or in the event of any claims asserted against the Buyer by employees of the Seller, his/her subcontractors or employment agencies used by the Seller, pursuant to § 13 German Minimum Wage Act (MiLoG), the Buyer shall be entitled to terminate orders and other agreements – in part or whole – without notice.

## § 19 Applicable Law, Place of Jurisdiction and Other Provisions

(1) The laws of the Federal Republic of Germany, excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods, shall apply to these GTCP and the contractual relationship between us and the Seller.

(2) If the Seller is a merchant as defined in the German Commercial Code, a legal entity under public law, or a special public fund, the exclusive – also international – place of jurisdiction for any disputes arising under this contract shall be the Buyer's headquarters. The same applies if the Buyer is an entrepreneur as defined by § 14 German Civil Code. However, we are also entitled in all cases to bring suit at the place of performance of the delivery obligation pursuant to these GTCP or an overriding individual agreement at the Seller's general place of jurisdiction. Overriding statutory provisions, especially for exclusive competent jurisdictions, shall remain unaffected.

(3) Should any or several provisions or an essential part of the order or of these General Terms and Conditions of Purchase be or be rendered ineffective, fully or partially, or should the order or these General Terms and Conditions of Purchase contain any loopholes, this shall not affect the remaining parts of the order or these General Terms and Conditions of Purchase, which will remain in full force and effect. In lieu of the invalid provision, a new provision shall be adopted that most closely fulfils or approximates the intent and purpose of the invalid provision. Any other gaps are to be filled according to best judgement.