

BRAVAT

BY DIETSCHHE  1873

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**Roman Dietsche GmbH General Terms
And Conditions Of Supply**

August 2017

General Terms and Conditions of Contracts and Delivery

of

Roman Dietsche GmbH

in business transactions with companies

status August 2017

1. Scope, general

1.1 These General Terms and Conditions of Contracts, Delivery and Services apply exclusively (i) to companies within the meaning of Section 14 of the German Civil Code (*BGB*) i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes and to entities subject to public law and special funds under public law.

1.2 The terms and conditions set forth below (**General Terms and Conditions**) apply exclusively to our business relations with our customers, also with respect to information and advice. Where our General Terms and Conditions are implemented in business with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing.

Differing terms and conditions of the buyer and/or ordering party - hereinafter referred to as "**customer/s**" - shall only apply if and to the extent that we expressly acknowledge them in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General Terms and Conditions shall apply in place of any Conditions of Purchase of the customer, also where, according to such Conditions of Purchase, acceptance of an order is deemed to be the unconditional recognition of the Conditions of Purchase, or we deliver or perform after the customer has indicated the validity of its General Terms and Conditions of Purchase unless we have expressly waived the validity of our own General Terms and Conditions. The exclusion of the customer's General Terms and Conditions shall also apply if the General Terms and Conditions do not include a separate regulation for individual stipulations. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the Conditions of Purchase.

1.3 If framework contracts or other contracts have been concluded with our customers, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific stipulations are agreed.

1.4 If damage claims are specified below, this shall in the same way also mean claims for the reimbursement of expenses within the meaning of Section 284 *BGB*.

2. Information / Advice / Properties of the products and services / Cooperation of the customer

2.1 Information and explanations regarding our products and services provided by ourselves or our employees and vicarious agents shall be provided solely based on our experience to date. They do not constitute any properties or guarantees whatsoever in relation to our products or services. Values specified in this context shall be deemed average values of our products and/or services.

Unless otherwise expressly agreed, it shall not be required of us that our products and/or services are suitable for the purpose intended by the customer.

2.2. Any information about our products and services, especially information in our quotations and brochures and on the internet and the illustrations, drawings, measurement, property or performance characteristics contained therein and other data, especially technical data or information on ingredients, shall be deemed to be approximate average values unless designated a "binding property" of our delivery items. This shall apply accordingly to statements made by our employees unless otherwise agreed. Data of our products without tolerances too as included on our website or in our catalogues and/or brochures are subject to production-related deviations and changes which are customary in the trade and/or customary in the industry, especially due to circumstances of production technology and related materials.

2.3 If we provide instructions for use/operating instructions, these shall be drawn up with the care customary in the industry but do not release our customers from the obligation to check the products carefully regarding their suitability for the purpose intended by the customers. The customer shall remain obliged in any case, unless otherwise agreed, to check whether our products and/or services can be used for the purpose intended by the customer. This applies to information on import, customs and certification regulations.

2.4 We only assume an obligation to provide advice regarding our products and their use exclusively based on a separate, written consultancy agreement.

2.5 Reference to standards, similar regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures resp. on the internet and in our advertising and to analyses or description of physical properties provided shall only represent information about a property of our products when we have expressly declared the quality to be a "*property of the product*". These are otherwise non-binding, general specifications of performance. This shall also apply to statements made by our employees unless otherwise agreed.

2.6 We shall only be deemed to have given a guarantee in the legal sense (assumption of no-fault liability) if we have designated a property and/or the outcome of performance as "*guaranteed by law*" in writing.

2.7 We shall assume no liability for the usability and/or eligibility for registration and/or marketability of our products or services for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer. This shall not affect the stipulation in paragraph 11.

2.8 The customer shall be obliged to provide us with all information and data required to perform in due time and in full prior to execution of the order.

3. Specimens / Documents and data provided / Samples / Estimates of cost

3.1 Properties of samples or specimens shall only become an integral part of the contract if this was *expressly* agreed in writing with us. The customer shall *not* have the right to exploit and pass on samples.

Where goods are sold by us based on a sample, deviations therefrom in the goods supplied shall be admissible and shall not give cause for complaints and claims against us if they are customary in the trade and the goods supplied comply with any agreed specifications, unless otherwise agreed.

3.2 We shall retain all title and copyright to samples, illustrations, drawings, data, estimates of cost and other documents about our products and services disclosed or provided to the customer. The customer undertakes not to make the samples, data and/or documents specified in the foregoing sentence available to third parties unless we give our express written consent. The customer shall return them to us on request if an order based on them has not been placed with us within 4 weeks after being provided to the customer.

The stipulations in sentences 1 and 2 shall apply accordingly to the customer's documents, drawings or data. We may, however, make them available to such third parties, to whom we are permitted to transfer contractual deliveries and / or services with the customer or whom we use as vicarious agents or suppliers.

4. Conclusion of contracts / Scope of delivery and service / Procurement risk and guarantee

4.1 Our quotations are subject to change unless they are expressly designated as binding or expressly contain binding commitments or their binding nature was otherwise expressly agreed. They are requests for orders.

The customer shall be bound by its purchase order as a contract application for 14 calendar days - in the case of electronic purchase orders 5 working days (in each case at our registered office) - after our receipt of the purchase order unless the customer must expect to receive our acceptance on a regular basis at a later date (Section 147 *BGB*). This shall also apply to reorders of the customer.

4.2 A contract is created - also in day-to-day business - only when we confirm the customer's purchase order by order confirmation in writing or text form (i.e. also by telefax or email). An order confirmation shall only apply subject to the proviso that payment arrears of the customer still outstanding are settled and that any credit assessment of the customer undertaken by us does not disclose any negative information unless otherwise expressly agreed with us by the customer.

Where delivery is made or a service provided within the period by which the customer is bound by the quotation, our order

confirmation can be replaced by our delivery, whereby the date of shipment of the delivery shall be decisive.

4.3 We shall also have the right in the event of call orders or acceptance delays caused by the customer to procure the material for the entire order and to manufacture the total quantity ordered immediately resp. to buy the total quantity ordered. After the order is placed, change requests by the customer can, therefore, no longer be considered unless this has been expressly agreed in writing between ourselves and the customer.

4.4 The customer must notify us in writing in due time prior to conclusion of the contract of any special requirements of our products and/or services which have not been expressly offered to the customer. Such notification shall not, however, extend our contractual obligations and liability.

Unless otherwise expressly agreed, we shall only be obliged to supply the products ordered by the customer from us as goods which are marketable and eligible for approval in the Federal Republic of Germany.

4.5 We shall only be obliged to deliver from our own stock (obligation to deliver from stock).

4.6 Assumption of a procurement risk within the meaning of Section 276 BGB is not based solely on our obligation to deliver an item which is defined solely by its class.

4.7 We shall only assume a procurement risk within the meaning of Section 276 BGB by virtue of a separate written agreement stating "we assume the procurement risk..."

4.8 If there is a delay in taking delivery of the products or in their shipment or the acceptance of our service is delayed for a reason for which the customer is responsible, we shall have the right, after setting an extension of 14 days and expiry of the extension, at our option to request immediate payment of the remuneration, or to rescind the contract or refuse performance and request damages in lieu of full performance. The time limit must be given in writing or text form. We do not have to refer again in that to our rights under this clause.

In the event of our requesting damages as stipulated above, the damages to be paid shall amount to a lump sum of 20% of the net delivery price in the case of purchase contracts. The right is reserved for either party to prove a different amount of damage or that no damage was incurred. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

4.9 Furthermore, we shall have the right, after the foregoing time limit expires according to sentence 1 of para. 4.8, to dispose of the contract goods otherwise, and to make a new delivery to the customer after a reasonable period.

4.10 If an order or call for delivery is delayed by the customer, we shall have the right to postpone the delivery by the same period as the customer is behind schedule plus a scheduling period of 4 working days at the place of our registered office.

If a purchase on call is concluded, we must receive the individual calls in writing or text form, unless otherwise agreed, at least 6 weeks prior to the requested delivery date, unless a shorter call or delivery period was agreed. Unless agreed to the contrary, the customer shall be obliged to take delivery of the purchased goods in full from us within 6 months of the contract being concluded. If the calls are not made in due time, we shall have the right to remind the customer of the calls and their planning and to set an extension of time for making calls and planning of 14 days. If the time limit expires without effect, we shall have the right to rescind the contract for that part not fulfilled or to request damages in lieu of performance. In doing so, we do not have to refer again to our rights under this clause. Para. 4.8 (2) shall apply accordingly.

4.11 Unless otherwise expressly agreed in writing or text form or if we are subject to different mandatory legal provisions, we shall only be required to provide user information for our products and a product label in German or, at our option, in English.

The customer shall be responsible for providing us with any necessary information regarding the ordered goods within a reasonable period to allow the purchase order to be executed according to the contract.

4.12 We reserve the right to change the specifications of the goods in so far as this is necessary to comply with legal requirements provided that such change does not cause any deteriora-

tion in terms of quality and usability for the usual purpose, and, if fitness for a specific purpose was agreed, for that purpose.

4.13 We shall have the right to make excess or short deliveries of up to 5% of the agreed delivery quantity.

In addition, we shall have the right to supply products with deviations customary in the trade in terms of quality, dimensions, weight, colour and equipment. Such goods shall be deemed to comply with the contract.

5. Delivery / Place of performance / Delivery time / Default in delivery / Packaging

5.1 Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

Unless otherwise agreed, the place of our performance is the registered office of our company, Theodor-Heuss-Str. 18, 35440 Linden.

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all economic, technical and logistics details about the execution of the order have been clarified between the customer and ourselves and all other requirements to be fulfilled by the customer have been fully met, in particular advance payments or securities agreed and cooperation required are made resp. provided in full by the customer. This shall apply accordingly to delivery and/or service dates. If the customer requests changes after placing the order, a new, reasonable delivery/service period shall begin upon our confirmation of the change.

5.3 Deliveries may be made prior to expiry of the delivery time. The date of delivery for obligations to be performed at the debtor's place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The date of delivery for obligations to be performed at the creditor's place of business shall be deemed the date of delivery at the agreed place of delivery.

5.4 In the absence of other written agreement, the customer's interest in our performance shall only not apply if we fail to deliver material parts or deliver with delay.

5.5 If we default in delivery, the customer must first set us a reasonable extension of time for performance of at least 14 days, unless this is unreasonable. If this elapses without effect, damage claims for breach of duty, for whatever reason, shall exist only as stipulated in para. 11.

5.6 We shall not be in default as long as the customer is in default in fulfilling obligations towards us; this shall also include obligations under other contracts.

5.7 Unless otherwise agreed, we shall take back packaging only by reason of and within the scope of our legal obligation.

6. Force majeure / Delivery subject to availability

6.1 If we do not receive deliveries or services from our sub-contractors to provide a delivery or service which is due from us under the contract, despite due and proper stocking prior to conclusion of the contract with the customer in terms of quantity and quality under our delivery or service agreement with the customer (*congruent stocking*) or it is incorrect or not in due time for reasons for which we are not responsible or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer immediately in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk according to Section 276 BGB. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks or obstructions through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery and/or service date or a delivery and/or service period is agreed with binding force and the agreed date or the agreed period is exceeded due to events according to para. 6.1., the customer shall have the right, after a reasonable extension of time has elapsed without effect, to rescind the contract for that

part of the contract not yet fulfilled. The customer shall have no further claims, especially damage claims, in this case.

6.3 The above provision according to para. 6.2 shall apply accordingly if, for the reasons stated in para. 6.1, also without contractual agreement of a fixed delivery date, the customer cannot be objectively expected to adhere further to the contract.

7. Shipment / Passing of risk / Acceptance

7.1 Unless otherwise agreed, we shall not assume an obligation to be performed at the debtor's place of business with the debtor having to dispatch the goods.

In the case of a sale involving the carriage of goods, we shall also have the right to send the goods to be delivered from a place other than the place of fulfilment.

7.2 Unless otherwise agreed, we reserve the right to choose the route and means of transport where shipment is agreed. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment without, however, the customer having a right to this. Any additional expenses as a result, also where delivery freight paid is agreed, shall, like the transport and insurance costs, be borne by the customer.

If shipment is delayed with respect to the agreed date at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In such case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

If the goods are stored, the customer shall pay a storage lump sum of 0.5 % of the net remuneration for each week for the stored goods. The right is reserved for either party to prove that costs were lower or higher; the right is also reserved for the customer to prove that no costs were incurred at all.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer, in the case of an obligation to be performed at the debtor's place of business, upon the products to be delivered being handed over to the customer, in the case of an obligation to be performed at the debtor's place of business with the debtor having to dispatch the goods, upon the goods being handed over to the forwarding agent, carrier or firms otherwise entrusted with shipping the products but at the latest when the products leave our works or our warehouse unless an obligation to be performed at the creditor's place of business is agreed. The foregoing shall also apply if an agreed partial delivery is carried out. In the case of an obligation to be performed at the creditor's place of business, the risk shall pass to the customer upon delivery at the agreed place.

7.4 If a shipment is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date on which the notice is sent to the customer stating that the delivery is ready for shipment and/or the service can be performed.

8. Notice of defects / Breach of duty due to material defects (warranty)

8.1 The customer must give us notice in writing or text form of recognisable material defects in our delivery items immediately but at the latest 12 calendar days after collection, in the case of delivery ex works or storage location, otherwise after delivery. Notice of hidden material defects must be given to us in writing or text form immediately after they are detected but at the latest within the period of limitation in respect of warranty pursuant to para. 8.7. A notice of defects that fails to comply with requirements of time or form shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects or a procurement risk pursuant to Section 276 BGB or other mandatory statutory basis for liability. This shall not affect the special legal provisions in the case of final delivery of the goods to a consumer (*recourse against suppliers*, Sections 478, 479 BGB).

8.2 The delivering transport operator must also be notified of any material defects in our delivery items recognisable on delivery, and the recording of defects in written or text form must be arranged by the transport operator. Failure to have the delivering transport operator arrange the recording of the notice of defects in due time shall exclude any claim by the customer for breach of duty due to defects. This shall not apply in the case of a fraudulent, intentional or grossly negligent act by us, in the event of injury to life, limb or health, or the assumption of a procurement

risk pursuant to Section 276 BGB, a guarantee for the absence of defects, or liability according to a mandatory statutory basis for liability, and in the event of the right of recourse in the supply chain (recourse against suppliers, Sections 478, 479 BGB).

If defects in number and weight were already recognisable upon delivery by reason of the foregoing obligations to inspect, the customer must make a complaint about these defects to the delivering transport operator upon receipt of our delivery items, and have this complaint certified. Failure to give notice of defects in due time to the transport operator shall also exclude any claim in this respect by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional or grossly negligent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, the assumption of a procurement risk according to Section 276 BGB, or in the case of a mandatory statutory basis for liability, and in the event of the right of recourse in the supply chain (recourse against suppliers, Sections 478, 479 BGB).

8.3 When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall apply if the products are shipped on from their original destination unless this corresponds to the normal use of the delivered goods.

8.4 *The customer must give notice in writing or text form immediately of other breach of duty by us, setting a reasonable time limit for remedy, before asserting further rights, otherwise this shall cause the customer to forfeit the rights resulting therefrom.* This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee or a procurement risk pursuant to Section 276 BGB or in the case of a mandatory statutory basis for liability.

8.5 We shall remedy any defects for which the customer itself is responsible and eliminate any unjustified complaints on behalf of and at the expense of the customer if the customer is a business person within the meaning of the *Handelsgesetzbuch* [German Commercial Code].

8.6 If breach of duty does not by way of exception relate to the performance of work by us, the contract may not be rescinded if our breach of duty is not material.

8.7 We shall provide a warranty for a period of 12 months for material defects, unless otherwise expressly agreed in writing or text form, calculated from the date the risk passes (see para. 7.3), in the case of the customer's refusal to accept or take delivery as of the date of the notice that the goods are available to be taken over. This shall not apply to damage claims resulting from a guarantee, from the assumption of a procurement risk within the meaning of Section 276 BGB, claims for injury to life, limb or health, a fraudulent, intentional or grossly negligent act by us, or in the cases of Sections 478, 479 BGB (recourse in the supply chain), Section 438 (1) No 2 (construction of buildings and delivery of objects for buildings), and Section 634 a (1) No 2 BGB (building defects), or if otherwise a longer statutory period of limitation is mandatory by law. This shall not affect Section 305 b BGB (precedence of an individual agreement in verbal, text or written form). There is no connection between the reversal of the burden of proof and the foregoing stipulation.

8.8 If the customer or a third party rectifies the products supplied by us incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any changes in the delivery item undertaken without our prior consent.

8.9 Further claims by the customer for or in connection with defects or consequential harm caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 11.

8.10 Our warranty within the scope of purchase contracts concluded with us (i.e. claims for breach of duty due to defective performance in the case of material defects in connection with the purchase contract concluded with us) and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proved to be due to defective manufacturing substances, defective construction and/or production and/or processing or, if owed, defective instructions on use. Warranty and liability arising therefrom due to breach of duty for defective performance in particular shall be excluded with respect to the consequences of incorrect use, inappropriate storage and transport conditions, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences which do not correspond to average standard influences specified by us in our product description and/or operating instructions or a product specification otherwise agreed or the respective product-specific

data sheet. This shall not apply in the case of a fraudulent, grossly negligent or intentional act by us, or injury to life, limb or health, the assumption of a guarantee, a procurement risk pursuant to Section 276 BGB and liability due to other mandatory basis for liability prescribed by law.

8.11 Claims by the customer for expenses required for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded if the expenses increase because the delivery item has been transferred subsequently to a place other than the customer's delivery branch unless in doing so this complies with its intended use.

8.12 Claims based on defects shall not exist in the case of only a minor deviation from the agreed or customary quality or usability.

8.13 Recognition of breach of duty in the form of material defects shall only be valid when given in writing.

9. Prices / Payment terms / Objection of uncertainty

9.1 All prices are ex works resp. warehouse and in principle quoted net in euros, including packaging, excluding freight (unless otherwise stipulated in para. 2 below), postage and, if a transport insurance was agreed, insurance costs, value added tax (if incurred by law) which shall be borne by the customer at the legally valid rate, any country-specific charges in the case of delivery to countries other than the Federal Republic of Germany, and customs duties and other fees and public charges for the delivery/service. Unless otherwise agreed with the customer, the valid prices follow from our general price list respectively valid when the contract is concluded between ourselves and the customer.

Delivery is carriage paid for the following:

- sanitary and sink fittings as well as bathroom accessories:

as of a net value of the goods of €90.--.

Postal and express shipments, where the costs exceeding the normal package freight are charged to the customer.

Otherwise freight and packing costs incurred shall be charged to the customer.

9.2 Payment methods other than cash payment or bank transfer shall require separate agreement between ourselves and the ordering party. This shall apply in particular to the issue of cheques and bills of exchange.

9.3 If taxes or charges are incurred by the customer or ourselves on the service provided by us (withholding tax), the customer shall indemnify us against such taxes and charges.

9.4 We shall have the right to issue partial invoices according to the progress of order processing and / or request payments on account corresponding to the progress of processing.

9.5 The purchase price in the case of an obligation to be performed at the debtor's place of business shall be due for payment upon receipt of notification that the goods are available; in the case of an obligation to be performed at the debtor's place of business with the debtor having to dispatch the goods, upon the goods being handed over to the carrier; and, in the case of an obligation to be performed at the creditor's place of business, upon delivery of the goods. The customer shall have the right to cash discount of 3 % if and in so far as payment is made within 10 calendar days of receipt of the invoice - receipt of the money on our account - and the customer is not in arrears with the payment of other invoices. A subsequent deduction of cash discount or subsequent invoking of cash discount inadvertently not deducted shall be excluded.

9.6 If the customer pays in a currency other than euros, payment shall only be satisfied when the foreign currency payment corresponds to the agreed euro amount on the date of receipt of payment.

9.7 Services that are not an integral part of the agreed scope of delivery shall be carried out, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.8 We shall have the right unilaterally to increase the remuneration accordingly in the case of an increase in material production costs and/or material costs and/or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental charges and/or currency regulations and/or changes in customs duties and/or freight rates and/or public charges if these have a direct or indirect impact on the manufacturing costs of the goods or procurement costs or costs of our contractually agreed services and if more than 4 months elapse between conclusion of the contract and delivery. An increase as mentioned above shall be

excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the above-mentioned factors with respect to the overall cost burden for the delivery (*cost balancing*). If the above-mentioned cost factors are reduced without the reduction in costs being set off against the increase in other of the above-mentioned cost factors, the reduction in costs shall be passed on to the customer through a price reduction.

If the new price based on our right to adjust prices as stated above is 20% or higher than the original price, the customer shall have the right to rescind contracts not yet executed in full with respect to that part of the contract not yet fulfilled. The customer can, however, assert this right only immediately after notification of the increased price.

9.9 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear the additional costs arising from tariff increases in freight rates after the contract was concluded.

9.10 Payment periods agreed shall run with effect from the time specified in para. 9.5.

9.11 Once in default, default interest of 9 percentage points above the respective base interest rate pursuant to Section 247 BGB shall be charged when the claim for payment falls due. We reserve the right to assert damage in excess of this.

9.12 Where a bank transfer is agreed, the date on which money is received by us or credited to our account resp. the account of the place of payment specified by us shall be deemed the payment date.

9.13 *The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange and payment by instalment, all the customer's liabilities due to us shall in this case become due for payment immediately.*

9.14 If payment terms are not met or circumstances known or recognisable which, in our proper commercial judgment, give rise to justified doubts as to the customer's creditworthiness, also including such facts which existed when the contract was concluded but were not known to us or did not have to be known to us, we shall have the right, notwithstanding further legal rights in such cases, to cease further work on current orders or stop the delivery, and to request advance payments or the provision of adequate, customary securities, e.g. in the form of a bank guarantee issued by a German credit institution participating in the Deposit Protection Fund, for deliveries still outstanding, and, after expiry of a reasonable extension of time to provide such securities without effect, to rescind the contract with respect to that part of the contract not yet fulfilled irrespective of other legal rights. The customer shall be obliged to reimburse us for all damages incurred by the non-execution of the contract.

9.15 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.

9.16 The customer can only exercise a right of retention if its counter-claim is based on the same contractual relationship.

9.17 Incoming payments shall first be used to repay costs, then interest and finally the principal claims according to age.

Any determination to the contrary by the customer when making payment shall be disregarded.

9.18 Timeliness of payment, by whatever means it is made, shall be determined solely by the date on which it is credited to our account. The value date shall be decisive for cheque payments. Payments by the customer must be made for our benefit, all postage and charges paid.

10. Retention of title, attachment

10.1 We retain title to all goods we deliver (hereinafter referred to as a whole as "**goods subject to retention of title**") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance for our benefit when any or all claims are incorporated by us in a current account and the balance has been established.

10.2 The customer must insure goods subject to retention of title at their replacement value, in particular against fire and theft. Claims against the insurance arising from an event of damage

relating to goods subject to retention of title are herewith already assigned to us in the value of the goods subject to retention of title.

10.3 The customer shall have the right to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by a third-party buyer when resold, the customer shall be obliged to resell under retention of title only. The right to resell the goods subject to retention of title shall cease to apply automatically if the customer suspends its payment or defaults in payment to us.

10.4 The customer herewith already assigns to us all claims including securities and ancillary rights that accrue to the customer against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its buyers that excludes or prejudices our rights in any way or nullifies the assignment of the claim in advance. If the goods subject to retention of title are sold with other items, the claim against the third-party buyer amounting to the delivery price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The customer shall continue to have the right to collect claims assigned to us until revoked by us, this revocation being admissible at any time. We undertake, however, to revoke the collection authorisation only in the event of a legitimate interest. Such legitimate interest exists, for example, if the customer fails to fulfil its payment obligations in proper form or defaults in payment. At our request, the customer shall be obliged to give us the information and documents in full which are required to collect assigned claims and, unless we do so ourselves, notify its buyers immediately of the assignment to us.

10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall already now assign to us any recognised closing balance resulting for its benefit in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

10.7 The customer must notify us immediately if the customer has already assigned claims to third parties arising from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or has made other agreements which can prejudice our current or future security interests according to para. 10. In the case of unreal factoring, we shall have the right to rescind the contract and request products already delivered to be surrendered. This shall also apply to real factoring if, according to the contract with the factor, the customer cannot freely dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through the customer's fault, especially in the case of default in payment, we shall have the right, after rescinding the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to surrender the goods subject to retention of title immediately and shall bear the transport costs required for taking back the goods. The fact of our taking back the goods subject to retention of title shall constitute a rescission of the contract. Once the contract is rescinded, we shall have the right to realise the goods subject to retention of title. Proceeds from the realisation, less reasonable costs for realisation, shall be set off against those claims which the customer owes us from the business relationship. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. The customer must notify us immediately in writing of any third-party attachment of goods subject to retention of title or claim assigned to us.

10.9 If the value of the securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged, at the customer's request, to release securities at our option.

10.10 We treat and process goods subject to retention of title as manufacturers but without obligation on our part. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the net invoice amount for our goods to the net invoice amounts for the other processed or connected items. If our goods are connected with other movable items into a uniform item that is deemed the principal item, the customer shall already now assign co-ownership thereof to

us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to pursue our ownership or co-ownership rights.

10.11 If, in the case of deliveries abroad, specific additional measures and/or declaration in respect of the agreement of the retention of title are required from the customer in the importing country to ensure the effectiveness of our above-mentioned retention of title or our other rights indicated above, the customer shall take such measures and/or make such declarations at its expense immediately resp. make such declarations in the prescribed form. We shall cooperate on this to the required extent. If the law of the importing country does not allow retention of title but allows us to reserve other rights to the delivery item, we can exercise all such rights at our reasonably exercised discretion (Section 315 BGB). If we cannot secure the claims against the customer in such an equivalent amount, the customer shall be obliged at its expense to provide us immediately with other appropriate securities for the goods supplied or other securities according to our reasonably exercised discretion (Section 315 BGB). This shall not affect the customer's right to judicial review and correction (Section 315 III BGB).

10.12 In the event of attachment or other intervention by third parties, the customer shall notify us immediately in writing to enable us to bring an action pursuant to Section 771 ZPO [German Code of Civil Procedure]. If the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action pursuant to Section 771 ZPO, the customer shall be liable to us for the loss incurred by us.

11. Exclusion / Limitation of liability

11.1 Subject to the exceptions specified below, we shall *not* be liable in the case of breach of duty arising from the obligation, in particular not for claims by the customer for damages or reimbursement of expenses, for whatever legal reason.

11.2 The above exclusion of liability pursuant to para. 11.1 shall not apply if statutory liability is mandatory, and:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations; *"material contractual obligations" are such obligations, the fulfilment of which defines the contract, and on which the customer may rely;*
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of our goods or the existence of an outcome of performance or a procurement risk within the meaning of Section 276 BGB;
- in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory liability.

11.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in bullet points 4, 5 and 6 of para. 11.2 above exist, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage.

11.4 Our liability is limited for each individual event of damage to a maximum liability coverage of EUR 500.000,00. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health, and in the case of a claim based on a tortious act or an express, assumed guarantee or assumption of a procurement risk pursuant to Section 276 BGB or in cases of different higher liability coverage prescribed by law. Any further liability shall be excluded.

11.5 Exclusion resp. limitation of liability according to para. 11.1 to 11.4 above and para. 11.6 below shall apply to the same extent for the benefit of our bodies, our executive and non-executive employees and other vicarious agents as well as our sub-contractors.

11.6 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

12. Property rights, licence

12.1 Unless otherwise agreed, we shall only be obliged to deliver in the Federal Republic of Germany exempt from third-party industrial property rights and copyrights.

If a third party raises justified claims on account of infringement of property rights by products supplied by us to the customer, we shall be liable to the customer within the time limit specified in para. 8.7. as follows:

- We shall at our option first either try to obtain a right of use at our expense for the deliveries in question or change the delivery item while complying with the properties agreed under the contract so that the property right is not infringed, or exchange the delivery item. If we cannot do so on reasonable conditions, the customer shall be entitled to its legal rights which are defined, however, on the basis of these General Terms and Conditions of Contracts and Delivery.

- The customer shall, in the event of infringement of property rights by our delivery items, only be entitled to rights against ourselves if the customer gives us written notification immediately about the claims asserted by third parties, does not acknowledge any infringement, and all defensive measures and settlement negotiations are reserved for us.

- If the customer stops using the products for reasons of damage minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of the infringement of a property right.

- If an appeal is filed by third parties against the customer for infringement of property rights resulting from the use of products supplied by us, the customer undertakes to notify us of this immediately and give us the opportunity to participate in any legal action. The customer shall support us in every way in conducting such a legal action. The customer must not take any action which could prejudice our legal position.

12.2 The customer shall have no claims if it is responsible for infringement of a property right. The customer shall also have no claims if the infringement of the property right is due to the customer's special instructions, an application which we could not foresee or the fact that the products are changed by the customer or used with products not supplied by us, which do not comply with the intended use, if the infringement of the property right is based on this.

12.3 If the customer duly fulfils its contractual obligations, it shall have the right to use the services as provided in the contract.

All copyrights, patent rights or other industrial property rights shall remain with us unless otherwise and expressly agreed in writing. Section 305b *BGB* (precedence of an individual agreement) shall not be affected in the case of individual agreements in verbal, written or text form.

If patentable inventions are made at our company within the scope of implementing the contract, we shall grant the customer a non-exclusive and non-transferable right to use them under preferential economic conditions. This shall not affect the customer's entitlement to receive all rights arising from the invention if the achievement of the invention is a main contractual obligation on our part.

13. Return / Export control / Product approval / Import regulations

13.1 Goods delivered by us shall be taken back only after prior written agreement, except in the case of justified rescission. The return delivery note issued by us and to be included with the goods shall constitute consent. Goods can only be returned carriage paid resp. free domicile. In such case, we shall refund the value of the goods less 25 % handling charges but at least € 25.--. No credit shall be given for goods which are not in their original packaging or not in a condition suitable for resale.

Goods on consignment / Procurement goods shall be excluded in general from return.

13.2 In the absence of any contractual agreements to the contrary with the customer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of Germany, to the agreed country of first delivery (first country of delivery).

13.3 The export of certain goods by the customer from there may be subject to authorisation e.g. because of their nature or in-

tended purpose or final destination. The customer itself shall be obliged to check this and to comply strictly with the relevant export regulations and embargos for these goods, especially of the European Union (EU), Germany resp. other EU Member States and, if applicable, the USA or Asian or Arab countries and all third countries involved, if the customer exports the products supplied by us or has them exported.

Furthermore, the customer shall be obliged to ensure that before transfer to a country which differs from the first country of delivery agreed with us by the customer, the required national product approvals or product registrations are obtained and that the specifications set out in the national law of the country in question regarding the provision of user information in the national language are complied with as well as all import regulations.

13.4 The customer shall in particular check and ensure, and, on request, provide evidence to us that

- the products provided are not intended for use in armaments, nuclear facilities or weapon technology;

- no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;

- no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with original US products without relevant authorisation;

- no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;

- no military recipients are supplied with the products delivered by us;

- no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;

- all early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.

13.5 Goods supplied by us may only be accessed and used if the above-mentioned checks and assurances have been carried out resp. provided by the customer; otherwise the customer must refrain from carrying out the intended export and we shall not be obliged to perform.

13.6 Where goods supplied by us are passed on to third parties, the customer undertakes to oblige such third parties in the same way as specified in para. 13.2-13.5, and to notify them of the need to comply with these legal provisions.

13.7 The customer shall at its own expense ensure, where delivery outside the Federal Republic of Germany is agreed, that the goods to be supplied by us comply with all national import regulations of the first country of delivery.

13.8 The customer shall indemnify us against all damages and expenses resulting from the negligent breach of the foregoing obligations according to para. 13.1-13.7.

14. Place of performance / Place of jurisdiction / Applicable law

14.1 Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at the creditor's place of business is assumed or as otherwise agreed.

14.2 Any disputes shall be settled, if the customer is a business person within the meaning of the *Handelsgesetzbuch* [German Commercial Code], exclusively before a competent court of law at the location of our company's registered office. For the avoidance of doubt, this jurisdiction regulation in sentences 1 and 2 shall also apply to such circumstances between ourselves and the ordering party which can give rise to non-contractual obligations within the meaning of Regulation (EC) No 864 / 2007. We shall also have the right, however, to bring an action against the customer at its place of general jurisdiction.

14.3 The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the customer and ourselves, in particular to the exclusion of the UN Sales Convention (CSIG). It is expressly stated that this choice of law is also deemed to be such choice within the meaning of Art. 14 (1) (b) Regulation (EC) No 864 / 2007 and shall, therefore, also apply to

non-contractual obligations within the meaning of this Regulation. If the application of foreign law is mandatory in individual cases, our General Terms and Conditions shall be interpreted as meaning that the economic intent they pursue is preserved to the maximum possible extent.

15. Exchange of pallets

Pallets shall be exchanged concurrently according to the respectively applicable UIC standard. We shall pass on additional charges incurred by us because a concurrent exchange of pallets is not possible (e.g. as a result of calling in pallet service providers) to the customer.

16. Incoterms / Amendments and modifications / Severability clause

16.1 If trade terms are agreed according to the International Commercial Terms (INCOTERMS), the INCOTERMS 2010 shall apply.

16.2 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to the waiver of the written form requirement. This shall not affect the precedence of an individual agreement in written, text, verbal or implied form (Section 305b BGB).

16.3 If any provision of these General Terms and Conditions is or shall become invalid / void or unenforceable in whole or in part for reasons relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, legal provisions shall apply.

If any current or future provision of the General Terms and Conditions is or shall become invalid / void or unenforceable in whole or in part for reasons other than the provisions relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, this shall not affect the validity of the remaining provisions of these General Terms and Conditions unless the implementation of the contract, also in consideration of the following provisions, would present an unreasonable hardship for one of the parties. This shall also apply if, after a contract has been concluded, it is found to have a gap that requires filling.

Contrary to any principle, according to which a severability clause in principle is to reverse the burden of proof only, the validity of the remaining provisions of the contract shall be maintained in all circumstances and, therefore, Section 139 BGB waived as a whole.

The parties shall replace an invalid / void / unenforceable provision or gap that requires filling for reasons other than the provisions relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB by a valid provision that corresponds in its legal and economic content to the invalid / void / unenforceable provision and the purpose of the contract as a whole. Section 139 BGB (partial nullity) is expressly excluded. If the invalidity of a provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must be agreed for that provision.

Note:

In accordance with the provisions of the *Datenschutzgesetz* [German Data Protection Act], we draw attention to the fact that contracts are processed at our company on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.

Roman Dietsche GmbH, August 2017