

## **General Terms and Conditions of Purchase for the Supply of Goods and Services to Companies of the Pfannenber Group**

**Last revised: March 2023**

### **1. Application**

- 1.1 These General Terms and Conditions of Purchase ("**Conditions of Purchase**") shall apply to the purchase of all goods and services by Pfannenber, Inc. or any of its subsidiaries or affiliates ("**Customer**") by the vendor, contractor or service provider ("**Contractor**") to whom Customer has addressed the purchase order or service order. The Conditions of Purchase shall form part of all contracts entered into with the Contractor, even if they are not expressly referred to in subsequent contracts.
- 1.2 These Conditions of Purchase, together with any documents incorporated by reference in Customer's order, is the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings, agreements and communications, both written and oral, with respect thereto. All purchases by Customer are subject to these Conditions of Purchase. Customer's order expressly limits Contractor's acceptance to the terms of the order. These Conditions of Purchase prevail over any terms or conditions contained in any other documentation and expressly exclude any of Contractor's general terms and conditions of sale or any other document issued by Contractor in connection with any order. Failure of Customer to object to provisions contained in any order acknowledgment or other communication from Contractor will not be construed as a waiver of these Conditions of Purchase nor an acceptance of any such provisions. If Customer and Contractor have entered into master agreements or individual contracts executed by both Customer and Contractor, such signed agreements shall take precedence over these Conditions of Purchase to the extent of any conflicting terms, but such signed agreements shall be supplemented by these Conditions of Purchase unless Customer and Contractor expressly agree otherwise in writing.
- 1.3 No amendment or change to these Conditions of Purchase shall be binding upon Customer unless expressly agreed to in writing by Customer

### **2. Purchase orders, formation of contract**

- 2.1 Unless otherwise agreed in writing, the Contractor shall provide all offers and cost estimates free of charge.
- 2.2 The Contractor shall only deliver goods or provide services on the basis of a purchase order from the Customer. Purchase orders from the Customer shall only be binding if they are issued by the Customer in writing or electronically or, in the case of purchase orders issued orally, by telephone or using other means of telecommunication, if they are properly confirmed by the Customer in writing or electronically, stating the order number. Purchase orders that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed written purchase orders. If the Customer does not respond to offers, requests or other declarations from the Contractor, this shall only be deemed consent if an express written agreement to this effect has been made between Customer and Contractor. To the extent that a purchase order contains obvious mistakes, misspellings or calculation errors, it shall not be binding upon the Customer.

- 2.3 The Contractor shall, without undue delay and in any case no later than five (5) working days after the receipt of the purchase order, issue an order confirmation in which the price and the delivery date and/or the date for the provision of the services are expressly stated. If the order confirmation deviates from the purchase order, the deviations shall not be deemed agreed unless and until they are expressly confirmed by the Customer in writing. If Customer and Contractor have entered into a master agreement regarding future deliveries, purchase orders (requests for delivery) issued by the Customer shall be binding if not objected to by the Contractor in writing within three (3) working days after they have been received.
- 2.4 No change to any purchase order is binding upon Customer unless it is in writing, specifically states that it amends the purchase order and is signed by an authorized representative of Customer. If it turns out during the performance of a contract that deviating from the originally agreed specifications is deemed necessary or advisable by the Contractor, the Contractor shall so advise the Customer immediately, including detail specifying any proposed delivery date and purchase price changes for review and consideration of approval by Customer.

### **3. Delivery**

- 3.1 The delivery shall correspond to the purchase order issued by the Customer in terms of execution, scope and scheduling. Time is of the essence. The delivery periods and delivery dates stated by the Customer in the purchase order shall be binding. Delivery periods shall commence on the day the purchase order is issued.
- 3.2 The date on which the goods are delivered to the Customer in accordance with the contract shall be decisive for compliance with the delivery date or delivery period. Contractor shall use best efforts to deliver the goods or perform the services in compliance with the applicable delivery date. Unless otherwise agreed, delivery shall be made in accordance with DPU Incoterms® 2020. If no place of delivery has been agreed, DPU Incoterms® 2020 – Pfannenberg Inc., 68 Ward Road, Lancaster, NY 14086 shall apply.
- 3.3 The Contractor shall notify the Customer immediately in writing if it can be foreseen that the delivery dates and delivery periods will be exceeded, stating the reasons for and the expected duration of the delay. In the event of a delay in delivery, the Customer shall have the right to terminate the contract without penalty or liability to Customer upon notice to Contractor. In the event of default on the part of the Contractor, including any failure to deliver goods on the applicable delivery date, the Customer may demand and Contractor shall pay to Customer liquidated damages in an amount equal to 0.5% of the net order value for each commenced week of delay, but not more than 5% of the order value in total. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Customer without limiting Customer's right to other rights and remedies, including Customer's right to terminate this Agreement for default. Acceptance of a late delivery shall not constitute a waiver of claims for damages.
- 3.4 The delivery of goods and/or provision of services before the agreed delivery and/or service provision date shall only be permitted with the Customer's prior written consent. The Customer may return any goods that are delivered early at the expense of the Contractor, or store them at the Contractor's expense until the agreed delivery date.
- 3.5 Customer reserves the right at any time, upon notice to Contractor, to change any purchase order, including changes to the specifications of goods or services, the amount of goods or services to be purchased or the delivery date, and if such change causes an

increase or decrease in price for delivery of goods or services, an equitable written adjustment shall be made.

- 3.6 Along with the goods, the Contractor shall supply the necessary protective devices, proof of origin, storage, assembly and operating instructions as well as safety data sheets at no cost to the Customer. The same shall apply to the documentation needed for the servicing of, and repairs to, the goods supplied.
- 3.7 Partial deliveries and excess or short deliveries shall not be permitted, to the extent not otherwise agreed. The Customer reserves the right to recognise such deliveries in individual cases and charge the Contractor a flat processing fee of \$50.00 USD for the additional expenses incurred as a result of the partial deliveries.
- 3.8 Notwithstanding the Incoterms® 2020 clause agreed in clause 3.2 above, the Contractor shall additionally be obliged to handle, and pay for, the import clearance and the prepayment of the freight and other costs of delivering the goods on the Contractor's own responsibility. This shall also include all the formalities prescribed by the relevant country of import and required for import, for example, the import licence, security clearance for import, inspection of the goods prior to loading and any other official permits. Note: All deliveries originating outside the USA require the full legal company name and address of the manufacturing location where the goods were produced to be included on all commercial documents. Contractor will assume responsibility for any expenses resulting from the detention of goods as a result of not including required information on documents.
- 3.9 These Conditions of Purchase shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, the Contractor shall have no right to assign, transfer or subcontract (including by change of ownership or control, by operation of law or otherwise) these Conditions of Purchase or its obligations under this contract in whole or in part to third parties (e.g. subcontractors) or engage third parties to perform the services and work entrusted to it without first obtaining the Customer's prior written consent. This shall also apply to services for which the Contractor's business is not prepared. Any assignment or transfer without such consent shall be void and of no effect. The transfer of orders by subcontractors to further third parties shall also require the Customer's prior written consent. Regardless of the Customer's consent to any of the foregoing, the Contractor shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and understands these Conditions of Purchase. The Customer may assign its rights or obligations under these Conditions of Purchase to any Customer affiliate, successor or other third party without the Contractor's consent.
- 3.10 The Contractor shall ensure that the contractual services meet the Customer's technical specifications. The Contractor shall be obliged to document any tests carried out in this connection and archive all test, measurement and check results for a minimum period of 10 years. Upon prior announcement, the Customer may inspect and make copies of such records during normal business hours.
- 3.11 To the extent not otherwise agreed in writing, the Contractor shall mark the delivery items in such a manner that they can be permanently identified as the Contractor's products.

#### **4. Transfer of risk, shipment, documents, packaging**

- 4.1 The Contractor shall bear the risk of accidental loss or destruction or accidental deterioration of the goods until they are delivered in accordance with the contract as

specified in clause 3.2 above and accepted by the Customer (DPU Incoterms® 2020). If the Contractor is obliged to set up or assemble the goods in the Customer's business, the risk shall not pass to the Customer until after the goods have been accepted in full and commissioned so as to be ready for use.

- 4.2 Each delivery shall be announced to the Customer by means of a notice of dispatch when it is carried out, at the latest.
- 4.3 All correspondence between Contractor and Customer and all invoices and shipping documents shall state the Customer's order number. In addition, each delivery shall be accompanied by a delivery note which contains the date (of issue and dispatch), the order and materials numbers, a list of the batches supplied, the description of the goods, the quantities supplied and the weight. Any failure to comply with these documentation requirements shall constitute a material breach of contract by the Contractor. The Contractor shall be liable to compensate the Customer for any damage suffered by the latter as a result of such non-compliance, unless the Contractor is not responsible for the breach of duty. If the delivery note is not included or is incomplete, the Customer shall not be responsible for any resulting delay in processing and payment. The regulations regarding the transport of dangerous goods shall be observed; in particular, any dangerous goods shall be marked as such.
- 4.4 The Contractor shall observe the Customer's requirements for the shipment of the goods. In addition, the goods shall be packed in accordance with the Pfannenberg Packaging Rules, in accordance with applicable law and in such a manner sufficient to ensure that the goods are delivered in undamaged condition. Superfluous packaging materials shall be avoided. Only environmentally friendly, recyclable packaging materials may be used. The Customer may, at the Contractor's expense, return the packaging to the Contractor or, at the Customer's option, recycle it or dispose of it.
- 4.5 The Contractor undertakes to use environmentally friendly products and processes, within the limits defined by the economic and technical possibilities.
- 4.6 If the Contractor violates any of the provisions set out in this clause 4 Contractor shall be deemed to have materially breached the contract and the Customer may, upon written notice to Contractor, terminate the contract for cause and claim damages and demand to be indemnified against any third-party claims and administrative fines imposed as a result of such violation.

## **5. German Electrical and Electronic Equipment Act, German Electrical and Electronic Equipment Substances Ordinance, REACH**

- 5.1 The Contractor is in compliance with and will comply with all applicable laws, regulations and ordinances in Contractor's performance of the contract. The Contractor has and will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the contract. The Contractor shall notify Customer, in advance of shipment, of any goods that are considered under applicable law to be hazardous or dangerous. The Contractor shall mark and ship such goods in full compliance with all applicable laws or regulations.
- 5.2 The Contractor warrants compliance with the provisions of the German Act on Placing on the Market, Taking Back and Disposing in an Environmentally Sound Manner of Electrical and Electronic Equipment or, briefly, German Electrical and Electronic Equipment Act (*Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten – ElektroG*) and that it will perform the Customer's obligations arising from said Act and, to the extent that

such obligations cannot be transferred, help the Customer perform them. In particular, the Contractor undertakes, to the extent necessary, to affix the manufacturer's marking pursuant to Section 9 (1) German Electrical and Electronic Equipment Act (*ElektroG*) to the contractual item in accordance with the Customer's specifications at no cost to the Customer and, to the extent required by the German Electrical and Electronic Equipment Act (*ElektroG*), mark the respective contractual item with the appropriate symbol pursuant to Section 9 (2) German Electrical and Electronic Equipment Act (*ElektroG*) in conjunction with Annex 3 to the German Electrical and Electronic Equipment Act (*ElektroG*) in accordance with the Customer's specifications.

- 5.3 The Contractor warrants compliance with the requirements under Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (Restriction of Hazardous Substances – RoHS) and with the requirements under the national implementing acts. In addition, the Contractor shall affix a CE marking pursuant to Section 7 German Product Safety Act (*Produktsicherheitsgesetz – ProdSG*) to the equipment and products, to the extent necessary and permitted. This CE marking shall be affixed in a visible, legible and indelible form to the item of electrical or electronic equipment or the data plate.
- 5.4 If the Contractor supplies electrical and electronic equipment, including cables and spare parts, the Contractor shall provide the Customer with a written declaration of RoHS conformity before the first delivery takes place. The packaging of such products shall have a RoHS conformity marking on it. On the delivery note, RoHS conformity shall be confirmed with the statement "RoHS-konform/RoHS compliant". Furthermore, the Contractor shall notify the Customer without undue delay, and without waiting for a request, in writing if the information provided in the declaration of conformity is no longer correct. Compliance with the maximum permitted values shall be proven by means of an internal analysis or through a technically qualified laboratory commissioned for this purpose. At the request of the Customer, this proof shall be handed over. It shall be sent to the following e-mail address: ***materialcompliance@pfannenberg.com*** .
- 5.5 The Contractor warrants that the goods supplied by it comply with the provisions of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("**REACH Regulation**"). At the request of the Customer, the Contractor shall, at the latest upon delivery, provide a current and complete safety data sheet in the German language that meets the requirements of the REACH Regulation in accordance with Article 31(1) to (3) REACH Regulation. With each update/revision of the statutory provisions, the Contractor shall again provide the Customer with the appropriate safety data sheet. The safety data sheet shall additionally be sent in paper form or in an electronic format to the following address: ***materialcompliance@pfannenberg.com***. The mere availability of the safety data sheet on an Internet webpage is not considered sufficient proof that it was actually transmitted.
- 5.6 The Contractor warrants that the product does not contain any substances of very high concern within the meaning of the REACH Regulation in a concentration above 0.1% weight by weight (w/w). If the Contractor nevertheless supplies the Customer with products that contain substances of very high concern of which one or more are present in a concentration above 0.1% weight by weight (w/w) and which meet the criteria of Article 57 REACH Regulation and have been included in Annex XIV to the REACH Regulation (candidate list for authorisation) and/or have been identified pursuant to Article 59(1) REACH Regulation (candidate list), the Contractor shall provide information about the name of the substance, the pertinent CAS number, the concentration of the substance in the product and the safe use of the product within 45 days in accordance with Article 33 REACH Regulation. The information shall be sent to the following e-mail address: ***materialcompliance@pfannenberg.com***.

- 5.7 If the Contractor violates any of the provisions set out in clauses 5.1 to 5.5 above, the Customer may, in accordance with the statutory provisions, rescind its contracts with the Contractor or terminate them and claim damages and demand to be indemnified against any third-party claims and any administrative fines imposed as a result of such violation.

## **6. Prices, terms of payment, set-off, right of retention**

- 6.1 The prices stated in the purchase order shall be binding. Unless otherwise agreed in writing, the prices shall be DPU Incoterms® 2020 and shall include packaging and prepayment of the import costs pursuant to clause 3.8 above. Unless otherwise specified in the purchase order, the prices stated in the purchase order include all transportation costs, insurance, customs duties, fees and applicable taxes. No increase in the price is effective, nor will any surcharge or other amount other than the price be payable by Customer, without the prior written consent of Customer.
- 6.2 A proper invoice must meet the requirements set out in the purchase order. The Contractor's invoices shall state the order information (order number, order date, quantity and price), the number of each single item (batches) and the delivery note number. Otherwise, the invoices cannot be processed and, therefore, will be deemed not received. Copies of invoices shall be marked as duplicates. Unless otherwise agreed, all invoices shall be issued in USD. Online invoices shall only be permitted with the Customer's prior written consent.
- 6.3 Payment shall be made using means of payment of the Customer's choice and after delivery and acceptance of the goods and receipt of the invoice, within 30 days with a 3% discount or within 60 days net, unless other terms have been agreed in writing. In the event of a defective delivery, the Customer may withhold payment until the delivery has been properly performed without forfeiting any rebates, discounts or similar price reductions. To the extent that the Contractor is obliged to provide materials tests, inspection reports, quality documents, documents pursuant to clause 5 above or other records, the receipt of these records shall be a further prerequisite for the acceptance of the goods. The time allowed for payment shall not commence until all defects have been fully remedied. If goods are delivered early, the time allowed for payment shall not commence until the agreed delivery date.
- 6.4 The Customer shall not be in default of payment without first having received an overdue payment notice from Contractor. .
- 6.5 Payment shall be made subject to review of the invoice. Payments do not imply that the delivery is recognised as being in accordance with the contract. All payments shall be made subject to subsequent claims.
- 6.6 Ownership of the goods shall be transferred to the Customer free of any liens and encumbrances when the goods are paid for, at the latest. All payments shall be made to the Contractor only. Extended or prolonged retention-of-title clauses shall not be permitted.

## **7. Termination**

- 7.1 Customer may, at any time, terminate any purchase order, in whole or in part, without cause, upon written notice to Contractor. Upon any such termination Contractor shall, to the extent specified by Customer, stop all work on the purchase order, and cause its suppliers and subcontractors to stop work. In the event of partial termination, Contractor shall perform the non-terminated balance of work under the purchase order. Charges for any such termination of a purchase order by Customer shall be limited to actual non-

recoverable costs incurred by Contractor that Contractor can demonstrate were properly incurred for the ordered goods or services prior to the date of termination. Contractor shall use commercially reasonable efforts to mitigate such non-coverable costs. In no event will Customer reimburse Contractor for anticipated profits or revenue or other economic loss for undelivered goods or unperformed services. Any goods or materials for which Contractor is reimbursed shall become Customer's property.

- 7.2 Customer may, after providing Contractor with ten (10) calendar days written notice, and upon Contractor's failure to cure such default in that ten (10) day period ("Cure Period"), terminate any purchase order in whole or in part at any time by notice in writing for (i) breach of any one or more of the terms of the purchase order or these Conditions of Purchase, (ii) failure to deliver goods or services within the time specified by the purchase order or any written extension, (iii) failure to make progress so as to endanger performance of the purchase order, or (iv) failure to provide adequate assurance of future performance; provided, however, there shall be no Cure Period for default related to failure to meet the delivery schedule or for defaults incapable of cure. Any such termination shall not relieve Contractor from any liability hereunder.
- 7.3 To the extent allowed by law, Customer may also terminate a purchase order in whole or in part without a Cure Period in the event of Contractor's suspension of business, insolvency, bankruptcy, appointment of a receiver for Contractor's property or business, or any assignment, reorganization or arrangement by Contractor for the benefit of its creditors (collectively hereinafter "Insolvency"). Contractor agrees to provide detailed written notice to Customer within five (5) days of initiating such Insolvency proceedings. In the event of partial termination, Contractor shall perform the non-terminated balance of work under the Purchase Order. Any such termination shall not relieve Contractor from any liability hereunder.

## **8. Provision of items by the Customer**

- 8.1 All samples, models, drawings, plans, sketches and other technical documents provided to the Contractor for the fulfillment of purchase orders shall remain the Customer's property. Models, tools and devices which the Contractor produces or procures at the expense of the Customer shall become the Customer's property upon payment by the Customer. The Contractor shall treat this property of the Customer with care, mark it as the Customer's property and, to the extent feasible, store it separately from other products of the Contractor and insure it at the Contractor's own expense against loss and other damage. Any products and parts which are produced using these models and tools or using these devices may only be manufactured and supplied on behalf of and/or to the Customer. At the request of the Customer, the Contractor shall deliver the models, tools and devices to the Customer free from third-party rights.
- 8.2 The Customer's property pursuant to clause 8.1 above shall be returned to the Customer without undue delay at any time following a request or, without a specific request, after the order has been fulfilled.
- 8.3 Any processing or transformation by the Contractor of items provided shall be made on behalf of the Customer. If any such items are processed together with other items that do not belong to the Customer, the Customer shall acquire co-ownership of the new item in proportion to the ratio of the value of the Customer's item to the value of the other processed items at the time of processing.

## **9. Warranty, lapse of time, liability**

- 9.1 Contractor warrants for a period of three (3) years after delivery of the goods to the Customer that the goods will be free from defects in design, material, workmanship and title; will conform in all respects to the descriptions, specifications and terms of Customer's purchase order, will be fit and suitable and perform satisfactorily for the purposes and under the conditions made known by Customer or reasonably to be inferred; will be at least equal to nationally recognized standards or codes or of the best quality, if no quality is specified; will conform to and satisfy any applicable performance requirements set forth or referenced in the purchase order and any other performance characteristics provided, published or communicated by Contractor in any product literature, on its website or otherwise, and were or will be produced, sold and delivered in strict compliance with all applicable laws, regulations and industry standards, including health, safety and environmental requirements and standards. This is in addition to any warranty or service guarantee offered by Contractor or implied or provided by law. If the goods or any part of them do not conform to these warranties, and Customer notifies Contractor within a reasonable time after discovery, Contractor will promptly correct such nonconformity at its sole expense. Goods used to correct such nonconformity will be similarly warranted. This guarantee does not affect Customer's right to commence an action against Contractor within applicable limitation periods. Except as otherwise provided in these terms and conditions, Contractor's liability extends to all damages proximately caused by a breach of the foregoing warranties or guarantees.
- 9.2 If the Contractor has any concerns about the design or type of performance requested by the Customer, it shall so advise the Customer without undue delay in writing.
- 9.3 Customer has the right to inspect and test the goods at any time prior to shipment and to final inspection within a reasonable time after delivery. The goods will not be deemed accepted until after final inspection. The making or failure to make any inspection of, payment for, or acceptance of the goods, in no way impairs Customer's right to reject nonconforming goods or to avail itself of any other remedies, notwithstanding Customer's knowledge of the nonconformity, its substantiality or the ease of its discovery. Customer may return at Contractor's cost any materials or goods that are defective, unsatisfactory, or of inferior quality or workmanship, or fail to meet its specifications. Such materials will, unless used by Customer beyond a reasonable time necessary to determine a defect, remain the property of Contractor and may be returned at Contractor's risk and expense. Customer may, at its sole option, either give Contractor a reasonable time to correct the nonconformance or cancel its order and retain its rights with respect to cover as provided by law.
- 9.4 In the event of bulk deliveries, the Customer may carry out random inspections. If these inspections show that significant portions of the random samples do not meet the contractual requirements, the Customer shall not be obliged to carry out further inspections and shall have the right to reject the entire delivery.
- 9.5 If the goods contain defects, the Customer may, without prejudice to its statutory claims for defects, demand that the Contractor remedy the defects or, at the Customer's option, that it deliver goods which are free from defects by way of subsequent performance. The Contractor shall bear all the necessary expenses for subsequent performance.
- 9.6 The Contractor shall bear all expenses incurred in connection with the identification and correction of defects, in particular, the cost of examinations, disassembly or removal and installation costs, transport, travel, labour and materials costs and travelling expenses.
- 9.7 If the Contractor fails to perform its warranty obligation within a reasonable period of time set by the Customer, the Customer may take the necessary measures itself or have them



taken by third parties at the expense and risk of the Contractor, without prejudice to the Contractor's warranty obligation. In case of urgency, the Customer may, upon consultation with the Contractor, carry out the repairs directly itself or have them carried out by a third party at the Contractor's expense.

- 9.8 Measures to remedy minor defects, to prevent disproportionately large damage or to prevent risks to operational safety on the part of the Customer or third parties may be taken by the Customer or by a third party commissioned by the Customer at the Contractor's expense without prior consultation. The Customer shall promptly notify the Contractor of the reasons for and the type and scope of such measures. This shall not affect the Contractor's warranty obligation.
- 9.9 For deliveries or parts of deliveries that cannot be used by the Customer or the end customer while the defect exists and/or during the correction of the defect, the warranty period shall be extended by the duration of the interruption of use. If the Contractor fulfils its subsequent performance obligation by making a replacement delivery, the limitation period shall commence anew for the goods delivered as a replacement upon acceptance of these goods.
- 9.10 If the Contractor supplies goods for which spare parts are needed, the Contractor shall be obliged to supply the Customer upon expiry of the limitation period for another 10 years with the required spare parts, accessories and tools. If the Contractor intends to discontinue the supply of spare parts for such goods upon expiry of the aforesaid 10-year period, the Contractor shall be obliged to inform the Customer promptly in writing of its intention and give the Customer the opportunity to place one last purchase order.
- 9.11 The Contractor shall respond to notices of defects and complaints about goods without undue delay and provide an initial statement within 48 hours. At the Customer's request, the Contractor shall provide the Customer with the findings of the fault analysis (if any) carried out by the Contractor. If the Contractor does not comply with such a request within a reasonable period of time, the Customer shall have the right to carry out, or have carried out, its own fault analysis at the Contractor's expense.
- 9.12 The Contractor shall, without undue delay and without waiting for a request, notify the Customer of any changes in the composition of the materials processed for the manufacture of the contractual goods or in the performance of its deliveries. All changes shall require the written consent of the Customer. The Contractor shall be obliged to notify the Customer without undue delay of any risks of infringement or cases of infringement that become known in connection with the supply of the contractual goods and services and counteract any claims in this respect together with the Customer by mutual agreement.

## **10. Indemnification; Insurance**

- 10.1 The acceptance of goods supplied and/or the acknowledgement of their receipt shall not relieve the Contractor of its warranty and liability obligations, even if the Customer was aware of a defect. The same shall apply *mutatis mutandis* to the acceptance of works.
- 10.2 The Contractor shall defend, indemnify, and hold the Customer, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, customers, and assigns harmless from and from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorneys' fees, expenses, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of the Contractor; (ii) the goods supplied hereunder; (iii) a breach of any of the Contractor's warranties or

any other term and condition of these Conditions of Purchase; (iv) the Contractor's negligent, unauthorized or wrongful acts or omissions with regard to the transportation, use, handling, disposal, processing or installation of regulated materials; (v) a claim that any goods or services furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; (vi) a claim of any lien, security interest or other encumbrance made by a third party; (vii) a violation of federal or state law, regulation, statute or ordinance; (viii) a recall or product field action involving the goods to the extent they relate to or arise out of a breach of the Contractor's warranties or any other term and condition of these Conditions of Purchase; or (ix) failure to comply with the confidentiality obligations set forth herein. Notwithstanding the foregoing, the Contractor shall not hold the Customer harmless from claims arising out of the gross negligence or willful misconduct of the Customer.

- 10.3 During the term of the purchase order and for a period of at least five (5) years from the last delivery to the Customer, the Contractor will, at its own expense, maintain and carry in full force and effect at least the following types and amounts of insurance coverage with financially sound and reputable insurers: commercial general liability (including product liability and product recall) with a limit no less than \$3,000,000 for each occurrence and \$5,000,000 in the aggregate; worker's compensation with limits no less than the minimum amount required by applicable law; commercial automobile liability with limits no less than \$1,000,000 combined single limit; and umbrella (excess) liability with limits no less than \$10,000,000. Contractor will deliver to Customer a certificate of insurance with the Customer, its subsidiaries and affiliates named as additional insureds thereon. Such insurance must insure against all goods and products supplied. Contractor will provide the Customer with 30 days' advance written notice in the event of a cancellation or material change in Contractor's insurance policy. Except where prohibited by law, Contractor must require its insurer to waive all rights of subrogation against the Customer, the Customer's insurers and any indemnitees.

## **11. Rights of use, third-party rights**

- 11.1 To the extent that the delivery or service includes software, the Contractor shall, unless expressly otherwise agreed in writing, grant the Customer at least a non-exclusive, royalty free, transferable right, unlimited in time, content and geographic scope, to use the software and the pertinent documentation, as well as any updates, upgrades or other further developments. The Customer shall have the right to grant sub-licences to the extent that the Contractor's copyright is safeguarded in the process. The Contractor shall be obliged to check the software for viruses, Trojan horses and similar malware or bugs using current, customary anti-virus programmes before carrying out the delivery or providing the relevant services.
- 11.2 To the extent that any licence fees are payable for using the delivery item in accordance with the contract, also in combination or interaction with other items, these fees shall be borne by the Contractor.
- 11.3 The Contractor guarantees that the items delivered by it are free from third-party rights and that their delivery or their use in accordance with the contract, also in combination or interaction with other items, does not infringe any patents or other industrial property rights of third parties in the Federal Republic of Germany and the European Union.
- 11.4 Without limiting the Customer's rights and remedies hereunder, if the Customer reasonably believes that the goods or services supplied by the Contractor are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right of a third party, the Contractor shall be obliged to ensure that the infringement or misappropriation no longer exists by procuring

the relevant rights or – insofar as it is acceptable for the Customer – by modifying the delivery item or delivering an altered delivery item. Any modified or altered delivery item must have equivalent functionality as compared to the original item.

- 11.5 The Contractor shall promptly notify the Customer without undue delay of any risks of infringement of rights or alleged infringements of rights that become known with respect to goods or services supplied to the Customer pursuant to the Conditions of Purchase..

## **12. Export control and customs**

12.1 The Contractor undertakes to observe and comply with all relevant export control and customs regulations when carrying out the legal transaction. This shall also and in particular apply in the event that the Contractor purchases the goods to be supplied to the Customer from its own suppliers, or that it uses any parts or raw materials purchased from such suppliers for the manufacture of the goods.

12.2 Before the legal transaction is entered into with legal effect, the Contractor shall be obliged to inform the Customer of any import or export restrictions in relation to the goods that are to be supplied by the Contractor, in particular of any obligations to obtain a licence or a permit or of import or export bans, under German, European or US export control and customs regulations, as well as of the export control and customs regulations of the country of origin of the Contractor's goods. To this end, the Contractor shall provide at least the following information:

- the item number pursuant to Annex AL to the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*);
- the item number pursuant to the Annexes to the EU Dual Use Regulation;
- comparable item numbers pursuant to applicable export control regulations, in particular under existing embargo regulations;
- for US goods, the ECCN (Export Control Classification Number);
- the trade origin of its goods and their components, including technology and software;
- whether the goods were or will be transported through the USA, manufactured or stored in the USA, or manufactured using US technology;
- the statistical goods code (HS code) of its goods; and
- a contact person in its company who can be contacted to clarify any queries from the Customer.

At the Customer's request, the Contractor shall be obliged to provide all further foreign trade data in relation to its goods and their components to the Customer in writing and to additionally inform the Customer of all changes in the above data in writing without undue delay (even after the delivery of the goods concerned).

- 12.3 If the Contractor violates any of the provisions referred to in clauses 12.1 and 12.2 above and the Customer is, therefore, unable to resell the goods ordered or already supplied (and, if applicable, further processed), the Customer may rescind the contract and claim compensation for all resulting damage.

- 12.4 If the Contractor violates any of the provisions referred to in clauses 12.1 and 12.2 above and the Customer is, therefore, held liable by a third party, the Customer may also give notice to rescind the contract. The Contractor shall additionally be obliged to indemnify the Customer against all claims asserted against the Customer by third parties as a result of the Contractor's violation and compensate the Customer for any damage resulting from such claims.
- 12.5 The provisions of clause 12.4 above shall apply *mutatis mutandis* in the event that the Contractor violates any of the provisions referred to in clauses 12.1 and 12.2 above and the Customer or individual persons who work for the Customer are, therefore, held responsible for a criminal or administrative offence.
- 12.6 If it becomes impossible for the Customer to resell the goods ordered or already supplied (and, if applicable, further processed) as a result of a restriction on foreign trade (e.g. an embargo or the tightening of an embargo) that comes into effect after the contract has been entered into, the Customer may give notice to rescind the contract.

### **13. Social responsibility and protection of the environment**

The Contractor undertakes to comply with the respective regulations on how to deal with employees, on the protection of the environment and on safety at work and to work towards reducing the long-term effects of its activities on human beings and the environment. To this end, the Contractor shall implement a suitable management system (e.g. according to ISO 14001) and further develop such system, as far as possible. Furthermore, the Contractor shall observe the principles of the Global Compact initiative of the United Nations. These principles essentially concern the protection of international human rights, the right to collective bargaining, the elimination of forced and compulsory labour and the abolition of child labour, the elimination of discrimination in employment and occupation, environmental responsibility and the prevention of corruption. Further information about the UN Global Compact initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

### **14. Compliance**

- 14.1 The Contractor hereby confirms that it complies with all relevant laws and regulations of the respective applicable legal systems, in particular those from the areas of labor and employment, criminal, antitrust, social security and administrative offences law and those regarding minimum wages and the avoidance of child labor, in connection with the supply of the goods and/or services to the Customer.
- 14.2 The Contractor confirms that it complies in particular with the relevant anti-corruption laws and regulations and that it does not make any financial or other gifts to employees of the Customer or their family members for the purpose of obtaining orders from the Customer. The Contractor will not engage in any such practices in the future, either.
- 14.3 The Contractor shall be obliged to require its subcontractors and suppliers to comply with the provisions set out in clauses 14.1 to 1.1 above.
- 14.4 If the Contractor violates any of the provisions set out in clauses 14.1 to 14.3 above, the Customer may, in accordance with the statutory provisions, rescind or terminate its contracts with the Contractor, discontinue all contract negotiations and claim damages and demand to be indemnified against any claims which third parties may assert against the Customer.

## **15. Force majeure**

- 15.1 If force majeure within the meaning of clause 15.2 below prevents the Customer from performing its contractual obligations, in particular from accepting the goods, the Customer shall be released from its obligation to perform for the duration of the impediment and a reasonable start-up period without being liable to the Contractor for damages. The same shall apply if it is unreasonably difficult or temporarily impossible for the Customer to perform its obligations as a result of unforeseeable circumstances for which the Customer is not responsible, in particular as a result of official measures (regardless of whether they are lawful), official orders, measures or restrictions due to an epidemic (in particular, the COVID-19 epidemic), energy shortage, lack of means of transport, power outage, failure of telecommunication connections or significant operational disruptions.
- 15.2 Force majeure means all unusual, unforeseeable events that are independent of the parties' will and influence, in particular, natural disasters, terrorist attacks, political unrest, epidemics, official measures, blockades, sabotage, embargoes, strike, lockout and other forms of industrial action.
- 15.3 The Customer shall promptly inform the Contractor of the force majeure events that have occurred.
- 15.4 The Customer shall have the right to rescind the contract if an impediment within the meaning of clause 15.1 above lasts longer than 30 days and if, as a result of such impediment, the fulfilment of the contract is no longer of interest to the Customer. At the request of the Contractor, the Customer shall declare after the expiry of the aforesaid time period whether it makes use of its right to rescind the contract or whether it will accept the goods within a reasonable period of time.

## **16. Quality assurance and quality control**

- 16.1 The Contractor shall have in place a quality management system that is suitable in terms of type and scope, is state-of-the-art and has at least been certified according to ISO-9001 and/or, to the extent applicable, ISO/TS 16949 as well as according to FSSC 22000 and shall provide the Customer with proof thereof upon request. The Contractor shall regularly keep records of the quality checks carried out by it and make these records available to the Customer at short notice upon request. If deemed necessary by the Customer, the Contractor shall enter into a corresponding quality assurance agreement with the Customer.
- 16.2 If a special quality control is to be carried out for the goods as part of the acceptance procedure, the personnel costs of the acceptance procedure shall be borne by the Customer and the cost of the materials and equipment used for the acceptance procedure shall be borne by the Contractor, unless otherwise agreed in writing.
- 16.3 If it becomes necessary to carry out a further quality control as a result of defects found, the personnel costs of this further control shall also be borne by the Contractor. The same shall apply if the goods are not presented to the quality officer on the date set for the quality control referred to in clause 16.2 above.
- 16.4 Upon prior agreement with the Contractor, the Customer may – at its own expense, to the extent not otherwise agreed – carry out quality audits at the Contractor's places of business.

## 17. Confidentiality

- 17.1 Each party shall be obliged to use all information, data, records and other means received from the other party directly or indirectly or as part of the performance of the contract, whether orally, in writing, electronically or in any other manner, or otherwise obtained in this context (“**Confidential Information**”) exclusively for the performance of its obligations, to treat such Confidential Information as strictly confidential, to implement appropriate security measures to protect the Confidential Information and, in particular, not to make such Confidential Information available to unauthorised third parties. The Confidential Information shall also and in particular include computer applications, documented work processes and other know-how.
- 17.2 However, the aforesaid obligation shall not apply to information that:
- a) is already in the public domain (i.e. easily accessible to any third party) at the time it is provided by the parties, or has come into the public domain after it was provided without breach of any duties of confidentiality, in particular those under this clause 17, and without violation of any obligations under these Conditions of Purchase or the contract; or
  - b) was already known to the parties at the time it was provided, as can be proven; or
  - c) is required to be disclosed by the parties based on an official order or a statutory duty, provided that the party required to make the disclosure has provided the other party with advance notice of the disclosure and has given it the opportunity to otherwise ensure the fulfilment of the order or duty.
- 17.3 Upon termination of the contract, the parties shall return all Confidential Information generated in connection with the supply of goods and/or services or received from the respective other party or from third parties or otherwise obtained, including any copies made thereof, in an orderly manner. If the Confidential Information is in an electronic format, it must be irretrievably deleted upon delivery of a copy. In the event of destruction or deletion, the destruction of the Confidential Information must be confirmed in writing at the request of the respective other party.
- 17.4 All employees and suppliers involved in the performance of the contract shall be required by the parties in writing to maintain confidentiality in accordance with this entire clause 17 even after their employment has ended, to the extent permitted under employment law. In addition, the parties shall disclose the Confidential Information only to employees and suppliers who need to know the Confidential Information for the performance of the contract. The Contractor expressly declares that it will take responsibility for any culpable violation committed by its representatives (in particular, its employees and suppliers).
- The Contractor undertakes, in particular, to use the Customer’s records and materials exclusively for the Customer’s purposes and exclusively to the extent permitted by the Customer and not to reproduce them or make them available to third parties without the Customer’s prior written consent.
- 17.5 The Contractor may only refer to its business relationship with the Customer after obtaining the Customer’s prior written consent. The Contractor is not authorised to use any trade names, logos or trademarks of the Customer.
- 17.6 The Contractor shall be prohibited from presenting at trade fairs and/or making available to third parties any delivery items manufactured or processed specifically for the Customer.
- 17.7 All obligations under this entire clause 17 shall survive the termination of the contract.

17.8 The Contractor warrants that the supply of goods and/or services by the Contractor does not infringe any industrial property rights or copyrights of third parties. In the event of a corresponding culpable infringement of rights, the Contractor shall indemnify the Customer at its first request against any third-party claims and compensate the Customer for all damage and expenses suffered or incurred as a result of the Customer being held liable.

## **18. Governing law, place of jurisdiction, place of fulfilment**

18.1 These Conditions of Purchase, all purchase orders and the entire legal relationship between Contractor and Customer are governed by and must be construed according to the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction). Any legal suit, action or proceeding arising out of or relating to these Conditions of Purchase, any purchase order or the purchase and sale of Contractor's goods or services by the Customer must be instituted in the United States federal courts or the courts of the State of New York in each case located in the City of Buffalo and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Any action or proceeding relating to the purchase of the Contractor's goods or services by the Customer may only be commenced and will remain exclusively in New York State Supreme Court, Erie County, or in the United States District Court for the Western District of New York.

18.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Conditions of Purchase or any purchase order.

18.3 THE CONTRACTOR AND THE CUSTOMER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THE CONDITIONS OF PURCHASE OR ANY PURCHASE ORDER.

## **19. Severability; Remedies; Additional Terms**

19.1 Should any provision, or any part of any provision, of these Conditions of Purchase or of other agreements made between Contractor and Customer violate any provisions of law or be or become invalid or impracticable on other grounds, this shall not affect the validity of the remaining provisions or agreements. In this case, the parties shall be obliged to replace the invalid or impracticable provision with such provision as comes closest to what the contracting parties wanted in economic terms when entering into the contract. The same shall apply *mutatis mutandis* if there is a gap in the contract.

19.2 Customer's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or equity. The failure of Customer to enforce at any time or for any period of time any of the provisions hereof will not be construed to be a waiver of such provisions or of the right of Customer thereafter to enforce each and every such provision. In no event and under no circumstances will Customer's liability to Contractor or any other person under or related to any purchase order or these Conditions of Purchase exceed the purchase price of the goods, products or services listed on the face of the applicable purchase order.

19.3 All provisions, representations and warranties contained herein which by their nature are required or intended to be observed or performed after termination of these Conditions of Purchase or any purchase order will survive its termination. These provisions include, without limitation, Sections 3, 5 – 12, 14, 17, 18 and 19 hereof.

19.4 Contractor will perform the Order as an independent contractor, and the Order and these Terms will not be construed to create between the parties the relationship of principal and agent, joint-venturers, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each party. Contractor represents that Contractor is engaged in similar business for other clients. Contractor will conduct its business under its own name as an independent contractor, and is hereby expressly prohibited from holding itself out as an employee, agent, partner or representative of Customer. It is agreed that any person employed by Contractor to perform hereunder will not be deemed to be an employee of Customer, and Contractor and its suppliers, subcontractors, agents or representatives will not be, or represent themselves to be, officers, employees, agents or representatives of Customer and will not bind, or attempt to bind, Customer to any agreement, liability or obligation of any nature.