

**General terms and conditions of sale**  
**of the**  
**Vorwerk Group**

**§ 1 Scope, Form**

(1) These General Terms and Conditions of Sale (GTCS) shall apply to all business relations between VORWERK + Sohn GmbH & Co. KG or its affiliated companies within the meaning of § 15 of the German Stock Corporation Act (Aktiengesetz) (hereinafter referred to as "VORWERK") and all contractual partners ("Purchaser"), to whom deliveries or other services are provided or are to be provided as a customer by one or more of our companies, if the Purchaser is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCS shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or, in any case, in the version last notified to the Buyer in text form shall also apply as a framework agreement for similar future contracts and orders, even if their validity is not communicated to our contractual partner again in connection with the future order.

(3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's general terms and conditions. The Buyer's general terms and conditions shall only apply if we confirm them in text form (e.g. letter, e-mail, fax).

(4) Legally relevant declarations and notifications of the Buyer with regard to the contract (e.g. notice of defects, withdrawal or reduction), must be made in text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(5) References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

**§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN or comparable standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights.

(2) The order of the goods by the Buyer shall be deemed to be a binding offer of contract.

(3) Acceptance can be declared either in text form (e.g. by order confirmation) or by delivery of the goods to the buyer.

(4) The contractual partner must point out obvious errors (e.g. spelling and calculation errors) and incompletenesses to us for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

**§ 3 Text form**

(1) Legally relevant declarations and notifications of the contractual partner (e.g. setting of deadlines, reminders, withdrawal), which are made to us after conclusion of the contract, must be in text form to be effective. Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(2) In so far as text form is provided for in the GTCS, it shall also be deemed to have been complied with if the corresponding declarations are transmitted by fax or e-mail. A written agreement shall also be deemed to have been concluded by the fact that we and our contractual partners each submit declarations in text form with identical content.

**§ 4 Delivery Periods and Delay in Delivery**

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order. Delivery periods and dates shall only be deemed binding if expressly confirmed by us in text form.

(2) A performance period determined only in terms of duration shall commence at the end of the day on which agreement has been reached on all details of the content of the order, at the earliest upon acceptance of the order by us, but not before all documents, approvals, releases and provisions to be procured by the Buyer have been provided and not before receipt of any down payment to be made by the Buyer. A delivery period or a delivery date shall be deemed to have been observed if the goods or, in cases where goods cannot or should not be dispatched, our notification of our readiness to deliver has been dispatched by us by the expiry of the period. Delivery periods shall be extended by the period in which the buyer is in default with his obligations - within an ongoing business relationship also from other contracts - or does not create the conditions for the commencement or continuation of the work which are to be created by him, in particular if he does not provide the necessary documents, plans, approvals, releases or provisions. The burden of proof that he has provided the necessary documents, plans, approvals, releases or materials shall be on the buyer.

(3) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the buyer of this without delay and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the buyer. In addition to unforeseen production difficulties, a case of non-availability of the service in this sense is in particular the failure of our supplier to deliver on time if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case. Strikes and lockouts shall also be deemed to be an

act for which we are not responsible within the meaning of this paragraph.

(4) The occurrence of our default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the buyer is required, with which he has set us a reasonable grace period of at least four weeks for delivery, whereby he reserves the right to grant us a reasonable grace period of less than four weeks if in the individual case a grace period of at least four weeks for delivery is unreasonable for him.

(5) The rights of the Buyer pursuant to § 10 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

### **§ 5 Force majeure**

(1) In cases of force majeure, the contracting party affected thereby shall be released from the obligation to deliver and accept for the duration and scope of the effect. Force majeure is any event beyond the control of the respective contracting party as a result of which it is prevented in whole or in part from fulfilling its contractual obligations. Force majeure shall in particular include fire damage, floods, strikes, lawful lock-outs, riots, armed conflicts, terrorism or war (or imminent threat thereof), orders of public authorities, quarantines, the existence of a disease (including epidemics and pandemics) as assessed by the World Health Organisation WHO, or other unforeseeable, unavoidable and serious events beyond the reasonable control of the contracting party.

(2) The affected Party shall immediately notify the other Party of the occurrence as well as the cessation of the Force Majeure and shall use its best efforts to remedy the Force Majeure and limit its effects to the extent possible.

(3) The contracting parties shall agree on the further course of action in the event of force majeure and determine whether, after its termination, the products not delivered during this period shall be subsequently delivered. Notwithstanding the foregoing, either contracting party shall be entitled to withdraw from the affected orders if the force majeure lasts for more than six weeks since the notification pursuant to paragraph 2. Claims for damages by the contracting party, on whatever legal grounds, shall be excluded in the event of withdrawal due to force majeure.

### **§ 6 Deliveries, Transport, Transfer of Risk, Acceptance Periods and Default of Acceptance**

(1) Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the buyer's request and expense, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the buyer upon delivery of the goods to the forwarding agent, the carrier or any other

person or institution designated to carry out the shipment, unless we ourselves are responsible for the transport and we are at fault. The above provisions shall also apply if freight-free delivery has been agreed as an exception. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Handover or acceptance shall be deemed equivalent if the buyer is in default of acceptance.

(3) If the buyer wishes an expedited shipment of the goods (in particular air freight, express freight, express), he shall reimburse the additional costs incurred thereby.

(4) Insofar as we are obliged to take back packaging, the buyer shall bear the costs for the return transport of the packaging used.

(5) At the request of the buyer and at his expense, we shall insure the goods against any insurable risk requested by the buyer, in particular against theft and transport damage.

(6) Cases of transport damage must be reported to us immediately; furthermore, the recipient must ensure upon delivery that the corresponding claims and reservations are registered with the carrier.

(7) We are entitled to make partial deliveries and to invoice them separately.

(8) Orders on call shall only be accepted with acceptance deadlines. If the acceptance period is not specified precisely, it shall end three months after conclusion of the contract. The goods shall be accepted in approximately equal monthly quantities. If acceptance does not take place within the agreed period, we shall be entitled to deliver completed deliveries without further notice or to store them at the expense of the buyer. In addition, we are entitled to set the buyer a grace period for acceptance, combined with the threat that we will refuse acceptance of the goods if the grace period expires fruitlessly. If this period of grace expires fruitlessly, we shall be entitled to withdraw from the contract by terminating our delivery obligation and to claim damages instead of performance, but only with regard to the part of the contract not yet fulfilled by us. Our rights pursuant to paragraph 10 shall remain unaffected.

(9) If the buyer does not carry out a classification of the goods incumbent upon him at the latest within one month after expiry of the period agreed for the classification, or in the absence of such an agreement at the latest within one month after request by us, we may classify and deliver the goods at our discretion. In addition, we are entitled to set the buyer a period of grace for classification, combined with the threat that we will refuse acceptance of the goods in the event of fruitless expiry of the deadline. If the period of grace then expires fruitlessly, we shall be entitled to withdraw from the contract while terminating our delivery obligation or to demand damages instead of performance, but limited to the part of the contract not fulfilled by us. Our rights according to para. 10 remain unaffected by this.

(10) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs and rent, insurance costs). Unless otherwise agreed, we shall charge a lump-sum compensation of 0.5 per cent of the invoice amount for each month or part thereof, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch. However,

we shall not be obliged to insure stored goods. The proof of a higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The buyer shall be entitled to prove that we have not suffered any damage at all or that the damage is considerably less than the aforementioned lump sum.

## **§ 7 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, ex warehouse, plus value added tax as applicable by law at the time of delivery or performance.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 paragraph 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) Unless otherwise agreed, the purchase price shall be due and payable within 14 days from the date of invoice and delivery or acceptance of the goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation. If a cash discount right has been agreed in favour of the buyer, it may only be exercised in any case if all the payments due at the time of the Invoices due for payment with a cash discount shall be settled at the same time. The receipt / crediting of the payment amounts by us shall be decisive for compliance with an agreed cash discount period. Any reservations or other conditions made at the time of payment shall prevent the right to deduct a cash discount.

(4) Upon expiry of the aforementioned payment period, the buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time in accordance with Section 288 (2) BGB. With respect to merchants, our claim to the commercial due date interest rate (§§ 352, 353 of the German commercial code (HGB)) remains unaffected. Further claims due to default of the buyer shall also remain unaffected.

(5) Our invoices shall be deemed accepted if our contractual partner does not object in text form within 10 days after receipt of the invoice. We will point this out to our contractual partner with each invoice.

(6) If it becomes apparent after the conclusion of the contract (e.g. through an application for the opening of insolvency proceedings, written credit information from a bank or credit agency indicating the credit unworthiness of the buyer or a considerable deterioration in his financial circumstances, or a cheque or bill of exchange of our contractual partner accepted by us is not honoured or is protested) that our contractual partner is in default, we shall be entitled to cancel the contract. If it becomes apparent to us that our claim to the purchase price is jeopardised by the buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB), we may demand advance payment and revoke agreed or granted terms of payment or demand immediate payment. In the case of contracts for the

manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

(7) If, in the case of orders which are to be fulfilled later than four months after conclusion of the contract or which can only be fulfilled later than four months after conclusion of the contract for reasons for which our contractual partner is responsible, our purchase prices and/or the collective wage agreement applicable to us increase between conclusion of the contract and execution of the order, we shall be entitled to demand a proportionately increased price corresponding to the percentage share of the affected purchase price and/or the affected wage costs in the agreed price. In the case of continuing obligations, we shall also have these rights if there is a shorter period than the four-month period between conclusion of the contract and performance.

(8) In the case of new developments, the transition from the sample price to the series price can only take place with our express consent. At the latest at this point in time, all tooling costs associated with the corresponding item shall be due for payment.

## **§ 8 Retention of title**

(1) We retain title to the goods sold until all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full. Our contractual partner shall clearly mark the goods as our property.

(2) The goods subject to retention of title ("goods subject to retention of title") may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) have or are about to have access to the reserved goods. The buyer is obliged to treat the reserved goods with care, in particular to insure them adequately at replacement value against fire, water and theft damage at his own expense.

(3) In the event of conduct by the buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand surrender of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the

resulting product as to the goods delivered under retention of title.

(b) The Buyer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph 2 shall also apply with regard to the assigned claims.

(c) The buyer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the buyer's authorisation to further sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the buyer's request.

(e) If our retention of title should lose its validity in the case of deliveries abroad or for other reasons, or if we should lose title to the goods subject to retention of title for reasons of any kind, the buyer shall be obliged to grant us without delay another security for the goods subject to retention of title or another security for our claims which is effective under the law applicable to the buyer's place of business and which comes as close as possible to the retention of title under German law.

## **§ 9 Quality of Goods, Excess and Shortfall in Performance**

(1) Our specifications regarding the object of performance and the intended use, dimensions, weights, hardness, utility value or other properties, whether contained in catalogues, brochures, price lists, descriptions, drawings or other documents, are merely approximate values customary in the industry. They serve merely to describe our products and do not contain any guarantee or assurance of properties.

(2) In the event of technical necessity, we reserve the right to deliver the ordered goods with deviations in quality, dimensions and other properties, provided that we have received approval for the deviation. In this respect, however, the buyer shall not be entitled to any claims for defects if and to the extent that the changes do not lead to any significant impairment of the usability of the products for the buyer.

(3) We reserve the right to make deliveries up to 10% below or above the ordered quantity, insofar as the usability of the delivered items is not significantly impaired as a result.

(4) We reserve the right to relocate production to another of our production sites without the need for a renewed initial sampling and/or approval by the buyer in this case. We shall notify the buyer of such production relocations in advance, whereby we reserve the right in individual cases to notify the buyer of the production relocation only subsequently if there is an important reason (e.g. production relocation in order to maintain the ability to deliver).

## **§ 10 Claims for defects of the buyer**

(1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB).

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which have been made public by us shall be deemed to be an agreement on the quality of the goods.

(3) Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 paragraph 1 S. 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects must be notified to us in writing within five working days of delivery and defects which are not apparent on inspection must be notified within the same period of time from discovery. If the buyer fails to properly inspect the goods and/or notify us of defects, our liability for the defect not notified in time or not properly notified shall be excluded in accordance with the statutory provisions, unless we have acted fraudulently.

(5) For the purpose of examination and determination of claims of the buyer due to defects of the item, our contractual partner shall, upon request, promptly provide us with a sufficient quantity of what it considers to be defective parts for testing by us or third parties, whereby we shall bear the costs of shipment.

(6) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(7) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.

(8) The buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall neither include the removal of the defective item nor its re-installation if we were not originally obliged to install it.

(9) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (not: removal and installation costs), if there is actually a defect. Otherwise, we may demand reimbursement from the buyer

of the costs (in particular inspection and transport costs) arising from the unjustified request to remedy the defect, unless the lack of defectiveness was not recognisable to the buyer.

(10) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the buyer shall have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be notified immediately of such self-execution, if possible in advance. This right of self-execution does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(11) If the subsequent performance has failed or if a reasonable deadline to be set by the buyer for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal. If only a part of the goods delivered by us is defective, the seller's right to withdraw from the purchase contract, to claim damages or to reduce the purchase price shall be restricted to the defective part of the delivery, unless this restriction is impossible or unreasonable for the buyer.

(12) Claims of the buyer for damages or reimbursement of futile expenses also exist in the case of defects only in accordance with § 11 and are otherwise excluded.

#### **§ 11 Other liability**

(1) Insofar as nothing to the contrary arises from these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for diligence in our own affairs) only

(a) for damages resulting from injury to life, body or health,

(b) for damages arising from the not inconsiderable breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.

(4) The buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

#### **§ 12 Producer's liability**

(1) The buyer shall indemnify us against all claims for damages asserted against us by third parties on the basis of the provisions on tort, product liability or by virtue of any other provision due to defects or deficiencies in the goods manufactured or delivered by us or by the buyer, insofar as such claims would also be justified against the buyer or are merely no longer enforceable against him due to the statute of limitations which has occurred in the meantime. Under these conditions, the buyer shall also indemnify us against the costs of legal disputes brought against us on account of such claims.

(2) Insofar as the claims asserted against us are also justified or are merely no longer enforceable against us due to the statute of limitations having occurred in the meantime, we shall have a pro rata claim for indemnification against the buyer, the scope and amount of which shall be governed by § 254 BGB.

(3) Our obligations under § 10 and § 11 or under mandatory statutory law shall remain unaffected by the above provisions under paragraph 1 and paragraph 2. In all cases, the special statutory provisions in the case of final delivery of the goods to a consumer (supplier's recourse pursuant to §§ 478, 479 BGB) shall remain unaffected.

#### **§ 13 Declarations on the choice of rights after setting a time limit for subsequent performance**

In all cases in which the buyer has set us a deadline for subsequent performance due to non-delivery or improper delivery and this deadline has expired, we are entitled to demand that the buyer declare within a reasonable period of time whether, despite the expiry of the deadline, he will continue to assert the claim for performance / subsequent performance or whether he will transfer to the other rights optionally given to him. If the buyer does not make a declaration within the reasonable period of time set for him, the claim for performance or subsequent performance shall be excluded. If the buyer does not declare within the set, reasonable period of time that it continues to demand performance or subsequent performance, it shall be at liberty to set a new deadline for this and, in the event of its fruitless expiry, to make use of its other rights.

#### **§ 14 Cancellation of Orders, Taking Back of Goods and Compensation in Lieu of Performance**

If, at the request of the buyer, we agree to the cancellation of an order placed or if we take back goods delivered by us for reasons for which we are not responsible, releasing the seller from his obligation to accept and pay, or if we are entitled to claim damages in lieu of performance, we may demand 20% of the contract price corresponding to the affected part of the delivery item as compensation without providing evidence. Our right to claim higher damages actually incurred shall remain unaffected.

#### **§ 15 Ownership of documents, confidentiality and contractual penalty**

(1) Illustrations, drawings, calculations, samples and models remain our property. The buyer is not permitted to make such items or the information embodied in them accessible to third parties - irrespective of the respective

form (embodied or not embodied) - without our express written consent.

(2) The buyer shall be obliged to treat all commercial or technical details of which it becomes aware in the course of its cooperation with us and which are not in the public domain as its own business secrets and to maintain absolute confidentiality in respect of such details vis-à-vis third parties if and to the extent that we have not consented in writing to such disclosure.

(3) For each case of culpable infringement of the aforementioned obligations, the buyer shall be obliged to pay us an appropriate contractual penalty for each individual case and with concrete assessment of the respective infringement. The buyer is granted the right to have the appropriateness of the contractual penalty determined by us thereafter reviewed by the courts. Our right to demand compensation for any damage actually incurred in excess of the contractual penalty shall remain unaffected.

(4) The foregoing obligations shall not apply if and to the extent that the Buyer is required to make such access or disclosure by order of a competent court or governmental or other body or by law or the rules and regulations of a stock exchange, in which case the Buyer shall take all reasonable steps to prevent or limit such disclosure to the maximum extent possible.

#### **§ 16 Tools, moulds and equipment**

(1) If tools, moulds or equipment are manufactured or procured by us for the manufacture of the goods as agreed, these shall only become the property of the buyer if agreed accordingly.

(2) Unless otherwise agreed, the Buyer shall not acquire any claim to the tools, moulds or equipment through the payment for them; rather, the tools shall remain our property and in our possession. We undertake to keep the tools, moulds and equipment for the buyer for one year after the end of series production. If the buyer informs us before the expiry of this period that orders will be placed within a further year, the storage period shall be extended by a further year. After this period and in the absence of follow-up orders, we may freely dispose of the tools, moulds and equipment.

(3) If tools, moulds or equipment are to become the property of the buyer as agreed, the following shall apply:

Our contractual partner shall notify us of the expiry of a series. If no call-offs are made by our contractual partner for a period of at least three months, we shall assume that the corresponding series has expired. In this case, the following options exist:

(a) Our contractual partner places the order for the production and delivery of an all-time requirement at the series price, subsequently our contractual partner gives us the scrapping release for the tool, mould or equipment or takes it back, whereby the transport of the latter is at the expense of our contractual partner.

(b) Our contractual partner agrees with us on a holding period for the tool. Within this period, call-offs can then be made with a reasonable period of notice, and delivery will be made at a parts price to be agreed. Our contractual partner shall bear the storage costs.

(c) If our contractual partner does not report, we shall either send him the tool, mould or equipment or we shall arrange

for it to be scrapped, whereby the costs for the respective measure shall be borne by our contractual partner.

(4) The following shall apply both to tools, moulds or equipment which remain our property and to those which become the property of the buyer:

(a) Change requests by the buyer and changes to tools, moulds or equipment required as a result will be invoiced separately; the corresponding additional costs are to be paid immediately by the buyer.

(b) If tools, moulds or equipment show signs of wear and tear which are not due to defective manufacture, and if the necessary quality of the parts is no longer guaranteed on a sustained basis as a result, we shall notify the buyer of this in order to obtain approval for the procurement of a new tool at the buyer's expense. If the buyer does not give us permission to do so, we shall be released from claims for defects with regard to the deviations of the produced parts caused by the wear and tear. In addition, our obligation to deliver expires four weeks after our notification of wear and tear.

#### **§ 17 Industrial property rights**

(1) If the goods are to be manufactured according to drawings, samples or other specifications of the buyer, the buyer shall be responsible for ensuring that no third-party rights, in particular patents, utility models, other industrial property rights and copyrights, are infringed thereby and shall indemnify and hold us harmless from any third-party claims arising from a possible infringement of such rights. In addition, the Buyer shall reimburse us for all costs incurred by us as a result of third parties asserting rights against us arising from such infringement and of our defending ourselves against such claims.

(2) If, in the course of our development work, results, solutions or techniques are created which are in any way capable of being protected by industrial property rights, we alone shall be the owners of the resulting property rights, copyrights and rights of use and we reserve the right to file the corresponding applications for industrial property rights in our own name and in our name.

#### **§ 18 Assignments**

We are entitled to assign our claims against the buyer to third parties. The buyer shall only be entitled to assign claims against us with our written consent.

#### **§ 19 Limitation**

(1) Notwithstanding § 438 paragraph 1 no. 3 BGB, the general limitation period for claims of the buyer arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The foregoing shall apply mutatis mutandis to claims of the buyer based on default, in particular pursuant to § 4.

(2) If, however, the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be five years from delivery in accordance with the statutory provision (§ 438 paragraph 1 no. 2 BGB). Other special statutory provisions

on limitation (in particular § 438 paragraph 1 no. 1, paragraph 3, §§ 444, 479 BGB) shall also remain unaffected.

(3) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. However, claims for damages by the Buyer pursuant to § 11 paragraph 2 sentence 1 and sentence 2(a) as well as pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

## **§ 20 Choice of law and place of jurisdiction**

(1) These GTCS and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Wuppertal. The same shall apply if the buyer is an entrepreneur within the meaning of § 14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the buyer. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected by the above provisions.