

**General Terms and Conditions of Sale, Delivery, Service and Payment of
BRIMATO Catering Automation Technology GmbH
Last updated March 2022**

Part A – General Information

1. Scope

1.1. These General Terms and Conditions of Sale, Delivery, Service and Payment (hereinafter also referred to as “General Terms and Conditions” or “GTC”) shall apply only with respect to entrepreneurs within the meaning of Section 14 of the German Civil Code [BGB].

1.2. All deliveries and services effected by us shall be governed by these General Terms and Conditions exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us. Even if we refer to written communication containing or making reference to deviating terms of the customer or a third party such shall not constitute any agreement to the validity of these terms and conditions.

General terms and conditions, including shrink wrap, clickwrap or other pre-formulated provisions, used by the customer and its suppliers shall not apply.

1.3. Unless otherwise expressly agreed, the following shall be an integral part of the contract in the following order of priority

1. our offer (contract) including its annexes,
2. the Special Provisions of the GTC (Parts B – F),
3. the General Provisions of the GTC (Part A), and
4. our technical performance specification of the offer (except commercial and legal content).

1.4. Unless otherwise agreed, these GTC shall apply as a framework agreement also for similar future contracts in the version applicable at the time the order was placed by the customer and/or in the text form last communicated [*“text form” as defined under § 126b GERMAN CIVIL CODE*] to the customer, without any requirement on our part to refer to them in each individual case.

1.5. Any individual agreements entered into with the customer in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these General Terms and Conditions. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written acknowledgment. In cases of doubt, commercial terms are to be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version applicable at the time the contract was concluded.

1.6. All agreements must be made in writing to be effective. This shall apply both to collateral agreements and assurances and warranties and to subsequent amendments to the contract, including this provision.

1.7. Unless otherwise agreed in the following, legally relevant declarations and notifications from the customer relating to the contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract or price reductions) must be given in writing exclusively, i.e. in written or text form. Any legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party shall remain unaffected hereby.

- 1.8. Any reference to the application of statutory provisions shall be for the purpose of clarification only. The statutory provisions shall thus also apply without such clarification, unless they are directly modified or expressly excluded by these General Terms and Conditions.

2. Offer, Conclusion of Contract and Content, Changes and Documents

- 2.1. Our offers and cost estimates are without obligation and are not binding, unless they have been expressly stipulated to be binding. This shall also apply if we provide the customer with catalogs, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve title and copyrights.

The order of the deliveries and/or services by the customer shall be deemed a binding contract offer. The customer can place its orders with us by returning the signed offer or by sending an order by mail, fax or email.

The binding period of the offer results from our non-binding offer. By placing an order, the customer makes a binding offer of contract, which we can accept within 10 working days.

The contract shall be concluded upon receipt of our order confirmation by the customer or by delivery of the delivery items to the customer or by provision of the services. An order confirmation may be sent by mail or email.

- 2.2. The contents of the contract shall be governed exclusively by our offer or our order confirmation. If the customer has any objections as to the contents of the order confirmation, the customer must oppose such order confirmation in writing without delay. Otherwise, the contract shall take effect in accordance with the order confirmation.
- 2.3. With the exception of our managing directors or authorized signatories [*German "Prokuristen"*], our employees shall not be entitled to make verbal agreements that deviate from the written agreement. For compliance with the requirement of the written form, it shall be deemed sufficient to transmit such documents by means of telecommunication, in particular by email, provided that the copy of the signed declaration is transmitted.
- 2.4. If we contractually undertake to deliver an item that requires one or more assembly service(s) (assembly, installation, commissioning of systems/machines) to enable its use, we shall only owe these assembly services if we have expressly contractually undertaken to provide them.
- 2.5. If and to the extent that this is reasonable we reserve the right to change the deliveries or services with regard to
 - minor and non-significant deviations in dimensions, weight, quantity, shape, surface structure and design
 - product and/or process changes in accordance with general product development and improvement,
 - other visual deviations customary in the trade
- 2.6. If our scope of services needs to be modified as a result of incomplete or incorrect information provided by the customer, we shall be entitled to effect such modifications. Any costs or damage incurred thereby must be reimbursed to us by the customer. Such shall also apply if we provide additional required services based on the fact that the customer changes drafts, drawings or other specifications after conclusion of the contract or requests additional functionalities of the delivery item after conclusion of the contract that go beyond the scope of the contractual agreements.
- 2.7. The customer shall be responsible for the correctness and completeness of the drawings, plans, models, items provided, calculations and other information, documents and data

provided by the customer as well as for ensuring that these are not encumbered with any third-party rights that conflict with the execution and fulfillment of the order by us:

- 2.8. If our delivery item is to work together with other systems, conveyor belts or other machines provided by the customer or any third party, the customer shall be responsible for providing us with all necessary information for trouble-free and smooth operation with the delivery item in full, in writing and before ordering

The customer must reimburse us for any costs incurred by us as a result of this information not being provided to us in full or on time or incorrectly. The customer must also reimburse us for any costs incurred by us as a result of the fact that the systems, conveyor belts and other machines of the customer or a third party are not in perfect technical and operational condition or are not compatible with the items delivered.

- 2.9. Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as the depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximates unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.
- 2.10. We reserve title and copyrights to all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogs, models, prototypes, tools, software and similar documents, data and resources made available to the customer. Without our express written consent, the customer must not make these items accessible to any third party, disclose them, use or reproduce them itself or through any third party. At our request, these items must be returned to us immediately and in full and any copies that may have been made must be destroyed if they are no longer needed in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

3. Delivery, Delivery time, Place of Performance, Delay in Delivery

- 3.1. Any binding delivery dates and periods must be expressly agreed in writing.

Delivery periods shall be deemed to have been adhered to if the delivery item has left our premises or if readiness for dispatch has been notified by the time such periods and dates expire.

The period for performance or service shall be deemed to have been adhered to if, by the time it expires, the service is ready for acceptance by the customer, or in the case of a contractually agreed test, is ready to be tested. Insofar as acceptance is to take place on the basis of a contractual agreement, the time of acceptance, which is governed by the provisions of item 6 hereof, shall be decisive.

In the event of non-binding or approximate delivery dates or delivery periods (approx., about, etc.) we will use our best efforts to meet such delivery dates and periods. If a calendar week is agreed as the delivery period, we shall have the right to provide our services up to and including Sunday of the respective calendar week.

- 3.2. Compliance with the delivery times is based on the proviso that all commercial and technical questions are clarified and the customer has met all obligations incumbent on it.

These are in particular:

- the return of the fully completed standard dimension table provided by us,

- the provision of all information that the customer has to supply, in particular flow rate, documents, permits and approvals,
- the defect-free, complete and timely provision of the materials and the objects on loan specified in the order confirmation by the customer in accordance with item 4 below,
- compliance with the agreed terms of payment (such as payment of a down payment by the customer),
- the provision of securities by the customer.

If this is not the case, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.

The plea of non-performance of contract shall remain reserved.

3.3. We shall only be under the obligation to render performance out of our own stock [*German „Vorratsschuld“ – debt settled out of one's own stock*].

3.4. If the delivery or acceptance of the deliveries and/or services is delayed for reasons for which the customer is responsible, if the customer is in default of acceptance or culpably breaches other obligations to cooperate, we shall be released from the obligation to comply with the agreed (delivery) dates and shall be entitled to demand compensation for the damage incurred by us thereby, including additional expenditures which may have been incurred (e.g. storage costs). For this, we will charge a flat-rate compensation amounting to 0.5% of the amount of the invoice for each completed calendar week, commencing with the delivery period or – in the absence of a delivery period – with the notification that the delivery item is ready for dispatch or acceptance.

The right to provide proof of a higher damage as well as our claims laid down by law (including but not limited to the reimbursement of additional expenditures, reasonable compensation, termination) shall remain unaffected; however, the flat rate shall be set off against further monetary claims. The customer shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.

If a reasonable time period has passed without result, we shall also be entitled to otherwise dispose of the delivery item or to supply the customer with a reasonably extended time period.

3.5. We shall be entitled to effect partial deliveries insofar as this is not unacceptable for the customer.

3.6. If we are in default of delivery, the customer must first grant us a reasonable grace period of at least 14 days – provided that this period is not unreasonable – in order to render performance. If this time period elapses without result, any claims for damages for breach of duty – irrespective of the reason thereof – shall apply only subject to the provisions of item 3.7 below. Setting an additional period of time for performance may only be dispensed with if the requirements of Section 323 [2] of the German Civil Code are met.

3.7. If a right of retention can be asserted such shall exclude the occurrence of default.

3.8. The onset of our being in delay in delivery shall be determined on the basis of the statutory provisions. In any case, however, a reminder by the customer shall be required.

If the customer incurs any damage on account of our delayed delivery, the customer shall have the right – to the exclusion of any further claims – to claim compensation for the delay. Such compensation shall amount to 0.5% of the net payment for each completed week that the delivery of the goods and/or service as a whole is in default, however not exceeding 5% of the net remuneration of the total delivery and/or total service which, due to the delay, cannot be delivered and/or provided by us in time or in accordance with the contract. Any further compensation paid by us for the damage caused by the delay shall be excluded.

Such shall not apply if we have acted on intent, with gross negligence or maliciously, in the case of claims for injury to life, limb or health and if a fixed date of delivery within the meaning of the law has been agreed and a performance guarantee has been given or a procurement risk has been assumed in accordance with Section 276 of the German Civil Code and in the case of compulsory statutory liability.

We reserve the right to prove that the customer has suffered no damage at all or that the amount of the damage was significantly below the above flat rate.

4. Provision of Material / Loaned Items

- 4.1. If it is agreed that we incorporate items provided by the customer or a third party at the instigation of the customer (hereinafter referred to as "items provided") into our delivery items, the customer must send the items provided to our premises in accordance with the agreed specifications free of charge and in good time in a defect-free condition. This provision shall apply mutatis mutandis if the customer or a third party is under the obligation, at the instigation of the customer, to provide us with loaned items.
- 4.2. Items provided to us by the customer will, upon receipt, only be inspected by us with respect to identity and externally detectable transport damage. Any damage detected by us will be notified by us within 10 working days. We shall not be subject to any additional inspection and notification obligations. With regard to loaned items, we shall not be subject to any inspection and notification obligations.
- 4.3. We shall store and handle items provided and loaned items with the ordinary care and diligence exercised by us. We shall be under no obligation to store the items provided or the loaned items separately, designate them as items provided or loaned items or to have them insured.
- 4.4. We shall assume no liability for the technical functionality and for quality defects of items provided by the customer. We reserve the right to refuse the installation of materials and semi-finished products provided if these do not meet the quality requirements and specifications of our company.
- 4.5. Any additional costs based on defects in the items provided by the customer (travel costs / installation / dismantling) shall be borne by the customer.
- 4.6. The return of the loaned items shall be at the expense of the customer.

5. Prices and Packaging / Price Adjustment

- 5.1. The prices stated in the order confirmation shall be authoritative. Unless otherwise agreed, our prices shall be EXW (Hilter) in accordance with the Incoterms and shall be exclusive of packaging, postage, freight, insurance, customs duties, other expenses and the statutory VAT.
- 5.2. In the case of sale by dispatch (item 6.1), the customer shall bear the transport costs ex warehouse as well as the costs of any transport insurance which may be requested by the customer. If we do not invoice the transport costs actually incurred in the individual case, a lump sum for transport costs (excluding transport insurance) in the amount of EUR 250.00 shall be deemed to have been agreed. Any customs duties, fees, taxes and other public dues shall be borne by the customer.
- 5.3. Unless otherwise agreed, the customer shall bear all costs required for the assembly of the delivery item.

- 5.4. If additional expenses required for the provision of the service are incurred by us in the execution of the order of which we were not aware at the time of the conclusion of the contract, we shall have the right to charge these costs to the customer.
- 5.5. We shall be entitled to unilaterally raise compensation accordingly in the event of an increase in the costs of material production and/or material product procurement, wage costs and ancillary wage costs, social security contributions as well as energy costs and costs incurred as a result of environmental requirements and/or currency regulations and/or customs changes, and/or freight rates and/or public charges, if such have a direct or indirect effect on the manufacturing or procurement costs or the costs of our contractually agreed services and if there are more than four months between the conclusion of the contract and delivery.

An increase in the sense of the aforesaid shall be excluded insofar as the increase in costs for individual or all of the above factors is offset by a reduction in costs for other of the above factors in relation to the overall financial burden for the delivery. If any of the above-mentioned cost factors are reduced without the cost reduction being offset by an increase in any other of the above cost factors, the cost reduction must be passed on to the customer as part of a price reduction.

If the new price is 20% or more above the original price due to our aforementioned right to price adjustment, the customer shall be entitled to withdraw from contracts that have not yet been fully fulfilled. However, the customer may only exercise this right immediately following notification of the price increase.

- 5.6. The prices of the offer shall only apply if the full scope of the deliveries and services offered are ordered.
- 5.7. A pallet exchange shall be deemed agreed in principle. The right to make such decision and the respective arrangements shall be reserved for the customer and the shipping agent.
- 5.8. If a delivery and/or service cannot be provided for reasons for which we are not responsible, deliveries and/or services already provided by us as well as expenses incurred must be compensated by the customer.

6. Shipment and Passing of Risk

- 6.1. Unless otherwise agreed in writing, delivery shall be effected EXW (Hilter) in accordance with the Incoterms.

At the request and expense of the customer, the delivery will be sent to another place of destination (sale by dispatch to a place other than the place of performance).

- 6.2. Unless otherwise agreed, we shall be entitled to determine the respective shipping method, in particular select the shipping company, shipping route, packaging) ourselves. However, we will endeavor to take into account the customer's requests with regard to the shipping method and the shipping route – which shall however not constitute any entitlement to this effect by the customer. Any additional costs incurred thereby – also if delivery carriage paid (CPT as per Incoterms) has been agreed– shall be borne by the customer.
If we select the shipping method, the route or the shipping agent, we shall only be liable for intent or gross negligence in such selection.
- 6.3. If no acceptance has been agreed, the following stipulations on the passing of risk shall apply:

The risk of accidental loss and accidental deterioration of the delivery item ("risk") shall pass to the customer upon delivery at the latest.

If there is an obligation to collect or send goods [*German "Hol-" or "Schickschuld"; "Holschuld" = liability to be discharged at our domicile, "Schickschuld" = obligation involving the dispatch of the goods*], the risk shall pass to the customer as soon as the delivery item leaves our premises.

However, in the case of sale by dispatch the risk shall already pass with delivery of the delivery item to the carrier, forwarding agent or other person or entity charged with the shipping of the delivery items.

The provisions of Section 6.3 shall also apply if an agreed partial delivery is made or if we have taken over other services (e.g. assembly services).

If the customer is in default of acceptance, if the customer fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, the risk shall pass to our customer at the time when the customer is in default of acceptance or in debtor's delay.

- 6.4. If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. Acceptance must be carried out immediately on the acceptance date stated in the order confirmation, or alternatively within 1 working day after our notification of readiness for acceptance. If it is not possible for the customer or its vicarious agents to be present at the agreed place of acceptance on the acceptance date, the customer must authorize a third party in good time to declare or refuse acceptance with effect for and against the customer.

At the time of acceptance, a report which shall be signed by us and the customer or its duly authorized representative must be drawn up confirming conformity with the agreed service description ("acceptance report").

Acceptance cannot be refused in the event of an insignificant defect.

- 6.5. If acceptance is to take place the delivery items shall be deemed accepted ("Deemed Acceptance") if
- the delivery and, if we have also expressly undertaken by contract to provide assembly services, such assembly services have been completed,
 - we have informed either the customer or its duly authorized representative hereof making reference to the Deemed Acceptance according to this clause and have requested them to perform acceptance,
 - 14 working days have passed since delivery or since the last assembly work was performed or use of the assembled system has commenced not merely for test purposes (e.g. if the system delivered has been put into business operation) and if, in such case, six working days have passed since delivery or the last work was performed on assembly, and
 - if the customer or its duly authorized representative has failed to perform acceptance within this time period.

7. Terms of Payment, Set-off and Retention

- 7.1. Unless otherwise agreed in writing, payment shall be due without deduction within 14 days of the date of the invoice and delivery or acceptance of the delivery item or provision of service.

However, even in the context of an ongoing business relationship, we shall be entitled at any time to effect delivery in whole or in part only against advance payment. We shall declare

the respective reservation with the order confirmation at the latest

7.2. Upon expiry of the above payment period, the customer shall be in default.

The price of the delivery item and prices for ancillary services shall be due for payment in cash upon delivery of the delivery item - but no later than 8 days after receipt of the notification of readiness - and hand-over or sending of the invoice. The customer shall be in default of payment no later than 30 days after receipt of the invoice. The possibility of putting the customer in default by means of a reminder shall remain unaffected.

7.3. Invoice amounts shall bear interest at a rate of 9 percentage points above the respective base interest rate from the due date, even without a reminder. We reserve the right to assert further damage caused by the delay. With regard to merchants, our claim to the interest as of the due date for merchants dealing inter se (Section 353 of the German Commercial Code) shall remain unaffected. The same shall apply to any open instalments as far as payment by instalment has been agreed.

7.4. At our discretion, invoices can be sent either by mail or email. The customer agrees to receive invoices electronically. Electronic invoices will be sent to the customer in PDF format by email to the email address provided. At the express request of the customer provided in text form [*“text form” as defined under § 126b of the German Civil Code*], the dispatch of invoices can also be changed to delivery by mail at any time.

7.5. For as long as due invoices are not paid by the customer, we shall be entitled to assert a right of retention with regard to the processing of new orders owed by us. If a right of retention is asserted, such shall exclude the occurrence of default.

7.6. In the event of circumstances that indicate a significant deterioration in the economic situation of the customer, we shall be entitled to immediately declare all claims due. In this case, we shall also be entitled to demand advance payment or the provision of corresponding security. If this is not complied with although we have set a deadline, we shall be entitled to withdraw from the contract.

7.7. If partial payments have been agreed and the customer is in default of payments with two consecutive installments, we may, without prejudice to our rights under Part A, item 10.3, withdraw from the contract or claim damages for non-performance after setting a reasonable grace period.

7.8. The customer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established and is non-appealable or is undisputed. Furthermore, the customer may only enforce a right of retention if such right is based on the same contractual relationship.

8. Claims for Defects of Title

8.1. If use of the delivery item and or the service provided infringes industrial property rights or copyrights we will on principle, at our discretion and at our expense, procure for the customer the right to make further use of the delivery item, or we will modify the delivery item in a way acceptable to the customer so that it no longer infringes the property right. If such is not possible at conditions reasonable from an economic point of view or within a reasonable time period, the customer shall have the right to withdraw from the contract. Under the aforementioned conditions, we shall also have the right to withdraw from the contract.

8.2. The obligations referred to in item 8.1 above shall only apply if:

- the customer informs us immediately of any property right or copyright infringements that have been asserted,

- the customer provides adequate support in our defense of the claims asserted and/or enables us to carry out the modification measures described under item 8.1 above,
- all defensive measures, including out-of-court settlements are reserved to us,
- the defect of title is not the result of an instruction given by the customer and
- the infringement was not caused by the fact that the customer has on its own authority modified the delivery item or used it in a manner contrary to the contract.

9. Other Liability

- 9.1. Unless otherwise provided for in these General Terms and Conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the provisions laid down by law.
- 9.2. We shall be liable for damages, irrespective of the legal grounds on which such claims are based, within the scope of liability based on fault in the event of intent and gross negligence. In the event of slight negligence, we shall be liable, subject to statutory limitations of liability (e.g. due diligence in our own affairs; insignificant breach of duty), only
- a) for damage resulting from injury to life, limb or health
 - b) for damage resulting from the breach of an essential contractual obligation (fundamental obligation going to the root of the contract the fulfilment of which is essential for the proper execution of the contract in the first place and the observance of which the customer regularly relies on and may rely on); in this case, however, our liability shall be limited to the compensation of foreseeable damage that typically occurs.
- 9.3. The limitations of liability resulting from the above item 9.2. shall also apply in the event of breaches of duty by or to the benefit of persons whose fault we are responsible for in accordance with statutory provisions. The limitations of liability shall not apply if we have fraudulently concealed a defect or have furnished a guarantee for the quality of the delivery item and for claims of the customer under the Product Liability Act.
- 9.4. The customer may only withdraw from the contract or give notice of termination based on a breach of duty that does not consist of a defect if we are responsible for the breach of duty. Unrestricted right of termination of the customer (in particular pursuant to Sections 650, 648 of the German Civil Code) shall be excluded. In addition, the statutory requirements and legal consequences shall apply.
- 9.5. The statutory provisions relating to the burden of proof shall remain unaffected by the above provisions.
- 9.6. If we provide technical information or act in an advisory capacity and if this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
- 9.7. The interface responsibility for the integration of our deliveries and services into any systems shall remain with the customer.
- 9.8. Liability for damage caused by data loss or hardware malfunctions at the customer's site, which are caused by incompatibility of the customer's existing hardware and software components with our deliveries and services, shall be excluded by us due to lack of responsibility. We shall neither be liable for system malfunctions that may result from existing misconfigurations or older driver software that has not been completely removed.

10. Retention of Title

- 10.1. We retain title to all delivery items until each and every claim against the customer has been paid in full, even if the delivery items concerned have already been paid. Claims shall also include claims on checks and bills of exchange as well as receivables from current account. If, in connection with payment by way of bill of exchange, a liability to recourse is created against us, retention of title shall only become extinct if it is ruled out that a creditor might have recourse against us from such bill of exchange.
- 10.2. If the customer is in default of payment or if it becomes apparent that our claims for payment are at risk due to the customer's inability to honor its commitments, we shall be entitled to claim the surrender of the delivery items based on the retention of title. Such claim for surrender shall not require withdrawal from the contract.

The customer must inform us immediately of any impairment of the delivery items subject to retention of title and any enforcement measures taken by any third party against the delivery items subject to retention of title by providing us with the documents required for asserting our rights. The customer will inform the third party in advance of such existing rights to the delivery items. The customer shall bear the costs of legal enforcement if the executing third party is not able to reimburse such costs. The customer shall bear all costs which need to be incurred in order to ensure that such intervention discontinues and to ensure the recovery of the delivery item, to the extent that such costs cannot be collected from the respective third party.

- 10.3. Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the delivery item within the framework of the ordinary course of business. In the event of resale, as early as with the present the customer shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, up to the sum total of the invoice (including VAT), irrespective of whether the delivery item was sold without or after binding, mixing or processing.

Subject to our admissible revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. For good cause we shall have the right to notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the debt. If the right to collect the debt is revoked, we can require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all information required for collection, to hand over all relevant documents and to notify the debtors of the assignment.

- 10.4. Processing and transformation of the delivery item by the customer shall always be undertaken on behalf of us. We shall be deemed to be the manufacturers within the meaning of Section 950 of the German Civil Code, without any further obligation. If the delivery item is processed together with other items which do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the delivery item and the value of the other processed goods at the time of processing. In all other respects, the provisions applicable to the item delivered subject to retention of title shall apply to the new product created by such processing.
- 10.5. If the delivery item is mixed, blended or combined with other items which do not belong to us, we shall acquire co-ownership of the new product in proportion to the sum total of the invoice of the delivery item and the value of the other mixed, blended or combined products at the time of mixing, blending or combining. If mixing, blending or combining is done in such a way that the product of the customer is to be considered as the principal thing, it shall be deemed agreed that the customer assigns to us co-ownership on a pro-rata basis. The customer shall store the sole property or joint property for us.

- 10.6. If the realizable value of the securities exceeds our claims by more than 10%, we will, upon customer request, release securities at our option.

11. Supply by our own Suppliers and Force Majeure

- 11.1. If, for reasons for which we are not responsible, we are not supplied, not correctly supplied or not supplied on time by our sub-suppliers for the provision of our contractually owed deliveries or services despite proper and sufficient coverage of requirements before conclusion of the contract with the customer in accordance with the quantity and quality resulting from our supply or performance agreement with the customer (*matching cover transaction*) or if events of Force Majeure occur which continue for a not insignificant length of time, we will inform our customer thereof in writing or in text form in good time. In such case, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract that has not yet been fulfilled, insofar as we have fulfilled our aforesaid obligation to provide information and have not assumed the procurement risk or a delivery guarantee.

If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract, either in whole or in part; we will reimburse any consideration already provided by the customer without delay.

Force Majeure shall be equivalent to war, civil war, revolution, riots, terrorism, earthquakes, floods, storms and other natural disasters, epidemics, pandemics, diseases or quarantine, industrial disputes, strikes, lockouts, embargoes, calls for boycotts, border closures, import and export bans and other trade barriers due to the relevant nationally and internationally applicable provisions of foreign trade law, official interventions, changes in the legal situation, virus and other attacks by third parties on our IT system, insofar as these took place despite our taking the customary due care with regard to protective measures, energy and raw material shortages, transport bottlenecks or impediments for which we are not responsible, operational impediments for which we are not responsible, e.g. on account of fire, water or machine damage, power failure - and all and any other impediments which, from an objective point of view, have not been culpably caused by us.

- 11.2. If a delivery date or a delivery period has been bindingly agreed and the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with item 11.1. above, the customer shall be entitled – after a reasonable grace period has expired without result – to withdraw from the contract on account of the part that has not yet been fulfilled. In such case, any further claims of the customer, in particular claims for damages, shall be excluded.
- 11.3. The above provision pursuant to item 11. 2. shall apply accordingly if, for the reasons stated in item 11.1. above, even without contractual agreement of a fixed delivery date further adherence to the contract cannot objectively be expected of the customer.

12. Statute of Limitation

- 12.1. In derogation from Section 438 [1], number 3, of the German Civil Code, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.
- 12.2. If the delivery or service is a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness (building material), claims will become statute-barred in 5 years from delivery in accordance with the statutory provision (Section 438 [1], no. 2, German Civil Code). Any additional special provisions on limitation periods laid down by law shall remain unaffected (in particular

Section 438 [1], no. 1, [3], Sections 444, 445b of the German Civil Code).

- 12.3. The aforesaid limitation periods stipulated by sales law shall also apply to contractual and non-contractual claims for damages by the customer based on a defect of the deliveries and/or services – unless the standard statutory limitation periods (Sections 195, 199 of the German Civil Code) would, in an individual case, result in shorter limitation periods. However, claims for damages of the customer in accordance with item 9.2 above as well as claims under the Product Liability Act shall become statute-barred in accordance with the statutory limitation periods exclusively.

13. Export Control, Import Regulations

- 13.1. In the absence of any derogating contractual agreements concluded with the customer, the delivery items are intended to be placed on the market within the European Union for the first time, or, in case of deliveries and services outside the European Union to the agreed country of first delivery (country of first delivery).
- 13.2. The delivery items may be subject to the export control regulations of the Federal Republic of Germany, the European Union, the United States of America or other countries.

If the customer intends to export or bring the delivery item to a country or territory against which the United Nations, the European Union or the United States of America has imposed or enacted an embargo or other export or re-export restrictions or to use it for such a country or territory, the customer shall inform us of this in writing before the conclusion of the contract. If the customer makes this decision after conclusion of the contract, such export, transfer or use shall require our prior written consent. Notwithstanding the foregoing, the customer assures that the customer:

- will comply with the relevant export control regulations, including embargoes and other sanctions in force in Germany, the European Union and the United Nations and
- will also comply with all other foreign export control provisions, including embargoes and sanctions, provided that Germany, the European Union or the United Nations have issued regulations, embargoes or sanctions comparable to those in the countries concerned.

In the event of resale of the delivery item by the customer, the customer will ensure by means of appropriate agreements that these obligations be passed on throughout the entire supply chain up to the end customer with whom the delivery item will remain. In the event of a breach of this provision, we shall be entitled to withdraw from the contract with immediate effect.

14. Transfer of Rights and Obligations

- 14.1. We shall be entitled to transfer our rights and obligations to third parties without prior consultation with the customer. However, we shall always remain directly responsible to the customer.
- 14.2. However, the assignment of the rights and/or the transfer of the customer's obligations arising out of the contractual relationship to a third party shall require our written consent. This shall not apply if and to the extent that monetary claims are involved.

15. Place of Performance, Place of Jurisdiction

- 15.1. Unless otherwise agreed, place of performance for all and any obligations arising out of the contractual relationship shall be the seat of our company.

For merchants with seat in the European Union, Liechtenstein, Iceland, Norway and Switzerland when the proceedings are initiated exclusive place of jurisdiction - also internationally - for all and any disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent for the seat of our company. In deviation herefrom we may, at our discretion, also bring an action at the seat of the customer. Any statutory provisions taking priority, in particular with regard to exclusive jurisdiction, shall remain unaffected thereby.

- 15.2. If item 15.1. above is not applicable, any disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.

16. Applicable Law

The contractual relationship shall be governed by German law exclusively, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

Part B - Sale and/or Delivery of Movable Items

1 Scope and Scope of Services

- 1.1 These Special Provisions of the General Terms and Conditions - Part B (Sale and/or-Delivery of Movable Items) effective as of the time of conclusion of the contract for the sale and/or delivery of movable items shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.
- 1.2 These Special Provisions shall apply in particular to contracts for the sale and/or delivery of movable items, regardless of whether we manufacture the delivery items ourselves or purchase them from suppliers (Sections 433, 650 German Civil Code).

2. Claims for Material Defects

- 2.1 Unless mandatory by law, claims for material defects arising from the purchase contract for used movable items shall be excluded.
- 2.2 Unless otherwise stipulated in the following, the provisions laid down by law shall apply to the customer's rights in the event of material defects (including incorrect delivery and short delivery as well as incorrect assembly or inadequate assembly instructions).

In all cases, the statutory special provisions for reimbursement of expenses in the event of end delivery of the newly manufactured delivery items to a consumer shall remain unaffected (supplier recourse as per Sections 478, 445a, 445b and/or 445c, 327 [5], 327u German Civil Code). Claims from supplier recourse shall be excluded if the defective delivery item was further processed either by the customer or another entrepreneur, e.g. by incorporation into another product. In all cases, the statutory special provisions in the event of end delivery to a consumer (supplier recourse as per Sections 445a, 44 of the German Civil Code) shall remain unaffected unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement.

- 2.3 Our liability for defects shall above all be based on the individual agreement made about the quality of the delivery item. An agreement on the quality of the delivery item shall be deemed all product descriptions and manufacturer's information that are the subject-matter of the individual contract or that have been published by us (in particular in catalogs or on our internet homepage) at the time of conclusion of the contract. A quality agreement according to the objective requirements shall be excluded.

To the extent that the quality has not been agreed, it must be determined whether or not a defect exists based on the provisions laid down by law (Section 434 [3] of the German Civil Code). Public statements made by the manufacturer or on behalf of the manufacturer, in particular in advertising or on the label of the goods, shall take precedence over statements of other third parties.

Unless otherwise expressly agreed in writing, any statements and data contained in offers, product descriptions, catalogs, data sheets, drawings or other documents on technical data, dimensions, quantities, colors, potential applications and other properties, in particular on availability etc., only include information on the quality and guaranteed characteristics of the delivery item but do not constitute any guarantees.

- 2.4 As a matter of principle, we shall not be liable for defects that the customer is aware of at the time of the conclusion of the contract or is not aware of due to gross negligence (Section 442 German Civil Code). Furthermore, unless acceptance has been agreed, the claims for defects asserted by the customer require that the customer has observed its statutory obligations regarding inspection and reporting (Sections 377, 381 of the

German Commercial Code [*HGB*]). In the case of building materials and other delivery items intended for installation or other further processing, an inspection must in any case be performed immediately before processing.

The customer is under the obligation to inspect delivery items that are delivered to it without delay and to notify us of any apparent defects in writing immediately. Any hidden defects must be communicated by the customer in writing as soon as they are detected. If the customer breaches the obligation to inspect the delivery items without delay and to notify defects immediately our delivery and service shall be deemed accepted and our liability shall be excluded for the defect that was not notified and/or not notified in time or not notified in the proper form or manner in accordance with the provisions laid down by law.

In the case of drop shipping, notification of defects must always be made along the lines of the purchase contract relationships. Drop shipping consists of a sequence of two or more sales by dispatch, e.g. we sell the delivery items to the customer that, in turn, resells these delivery items to a third party and instructs us to deliver directly to such third party; four or more persons can be involved in drop shipping.

- 2.5 If the item delivered is defective, we may first of all choose to effect supplementary performance by either remedying the defect (repair) or by delivering an item free from defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

Unless we have expressly confirmed the existence of a defect in writing, any repair or replacement delivery or any new production will on principle at most be effected by us as a gesture of goodwill and *ex gratia*, i.e. without admitting legal responsibility.

- 2.6 For essential third-party products, our liability for material defects shall be limited to the assignment of our claims for material defects against our supplier. If the fulfillment of the assigned claims for material defects fails, the customer's claims against us arising from material defects shall be reinstated.
- 2.7 After consultation with us, the customer must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected delivery item for inspection and verification or otherwise grant us access to the rejected delivery item - otherwise we shall be released from liability for the resulting consequences (self-help). In the case of replacement delivery, upon our request, the customer must return the defective item to us in accordance with the provisions laid down by law; however, the customer shall have no entitlement to enforce a claim for the return of the defective item. Supplementary performance shall include neither the disassembly, removal or deinstallation of the defective item nor the incorporation, attachment or installation of an item free from defects if we were not originally under the obligation to perform these services; any claims of the customer for compensation of the respective costs ("dismantling and installation costs") shall remain unaffected hereby.

In the event of replacement delivery, the customer must return the defective delivery item to us in accordance with the statutory provisions. We shall be entitled to a claim of transfer of ownership of the replaced parts.

Only in urgent cases, e.g. in the event of a threat to operational safety or to avert disproportionate damage, whereby we must be informed to this effect immediately, the customer shall have the right to remedy the defect itself or by a third party and claim reimbursement of the necessary expenditure from us.

- 2.8 The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as dismantling and

installation costs, if applicable, shall be borne or refunded by us in accordance with the statutory provisions, if a defect that we are responsible for actually exists. If such costs increase because the delivery item was taken to a place other than the place of delivery such costs shall be borne by the customer. If no defect exists, we shall have the right to demand reimbursement from the customer for the costs incurred as a result of the unjustified demand for remedy of defect (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.

- 2.9 Within the framework of the statutory provisions, the customer shall have the right to withdraw from the contract if we - taking into account the statutory exceptions - allow a reasonable deadline set by the customer for rectification or replacement delivery to fruitlessly expire. However, in the event of only a minor defect, the customer shall only be entitled to a reduction in price. Otherwise, the right to a reduction in price shall remain excluded.
- 2.10 Without prejudice to Section 275 [2] and [3] of the German Civil Code, we shall be entitled to refuse supplementary performance if it entails disproportionately high effort or is only possible at disproportionate cost. When the reasonableness is assessed, the value of the item in a defect-free condition, the significance of the defect and the question of whether we can avail ourselves of the other type of supplementary performance without significant disadvantages for the customer must in particular be taken into account.
- 2.11 Claims for defects by the customer shall be invalid if the customer or a third party has handled our delivery item improperly or has used the delivery item even though the customer or the third party was aware of the defect. In such cases, liability on our part shall only be considered if the customer proves that the defects were not caused, neither in whole nor in part, by the aforementioned handling.
- 2.12 Claims for defects due to causes that cannot be attributed to a fault on our part shall be invalid, for example:

We do not provide any warranty for defects that are due to measures or designs that the customer has expressly requested or that occur in materials or products that the customer has provided or made available to us or use of which the customer has expressly requested contrary to our instructions.

In addition, the customer may not, in particular, assert any claims for defects in the following cases - unless we are answerable for them or such measures have been carried out with our express written consent: in the event of natural wear and tear, excessive stress, unsuitable and improper use - in particular in breach of the information in the operating instructions or manual - faulty assembly or commissioning by our customer or any third party, subsequent wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials / replacement materials, defective construction work, unsuitable sub-soil, unsuitable installation site, in particular installation surface, lack of stability or unsuitable securing of the power supply, chemical or electrical influences, harmful environmental conditions unknown to us.

Furthermore, claims for defects shall not arise if the software provided is combined by the customer with third-party software and such third-party software is not compatible with the software, nor if defects are based on non-contractual or improper use of the software by the customer. Neither shall claims for defects arise if the customer does not use the required system configuration, in particular infrastructure, hardware, operating system and database.

- 2.13 Claims for defects by the customer shall be excluded if the systems, conveyor belts and other machines of the customer or a third party are not in technically sound and operational condition or are not compatible with the items delivered, if the customer's

technical systems, such as supply lines, wiring and the like, are not in a technically sound and operational condition or are not compatible with the items delivered, insofar as such circumstance is the cause of the defect.

2.14 The delivery items may only be used by qualified and appropriately trained personnel.

2.15 Warranty obligations shall not apply

- if the delivery items have been improperly handled, stored, assembled, used, exposed to unsuitable chemical, electrochemical or electrical influences that have not been contractually specified or have been exposed to undue stress, or
- if the delivery items are combined with defective construction projects or unsuitable building ground, or
- if the delivery items have been altered in a manner not approved by us, or
- in the event of changes, additions or modifications to the delivery items not agreed with us or if third-party accessories or spare parts are used - unless the customer provides proof that there is no causal link between the asserted defect and such measure, or
- if the customer has not complied with the rules and regulations concerning the treatment, maintenance and care of the delivery items (e.g. operating instructions), unless it can be ruled out that one of these instances has caused the occurrence of the defect.

2.16 We do not assume any guarantees or warranties. Furthermore, we shall not be liable for such qualities of the delivery items that are based on drawings, samples or other information and specifications of the customer – in particular on a design prescribed by the customer or the use of a material stipulated by the customer. This shall apply in the aforesaid cases in particular if the delivery items prove to be unsuitable for the customer.

2.17 In case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under Part A, item 9 ("Other Liability"), and shall otherwise be excluded.

Part C – Digital Products and Goods with Digital Elements

1. Scope

These Special Provisions of the General Terms and Conditions - Part C (Digital Products and Goods with Digital Elements) effective as of the time of conclusion of the contract for digital products within the meaning of Sections 327 et seq. of the German Civil Code and goods with digital elements within the meaning of Section 475a of the German Civil Code shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.

2. Exclusion

2.1 Unless otherwise agreed, Sections 327 et seq. of the German Civil Code shall not apply.

2.2 Sections 474 to 477 of the German Civil Code shall not apply.

3. Duties to Cooperate

The customer shall prepare its working environment appropriately for the use of the software and shall participate in the delivery and/or provision of services free of charge, in particular by providing employees, IT systems, data and telecommunications equipment.

4. Scope of Delivery and Rights of Use

4.1 Insofar as software is included in the scope of delivery of a system or machine, the customer shall be granted the following rights of use.

We shall owe neither training nor support, maintenance or the provision of updates or upgrades. Such services can be separately agreed by contract.

The customer shall be granted the following rights of use:

- a. For third-party programs, the license terms of these manufacturers shall apply. Such shall also apply to open-source licenses if a software component is subject to an open-source license. Unless the license already includes the obligation to transmit the license conditions and other mandatory information, we will make terms and conditions of the third-party manufacturers available to the customer at the customer's request
- b. The customer shall be granted the temporally and geographically unrestricted, non-transferable and non-exclusive right to use the software along with the documentation from the time it is made available. Unless otherwise agreed, the type of license results from the contract.

4.2 Copyright notices and trademarks and other legal reservations, serial numbers and other attributes must not be deleted, changed, made unrecognizable or suppressed and must always be transferred when backup copies are made.

4.3 In particular, the right to use the software shall not include the right to edit, translate, rent out or lend the software or to distribute, publicly communicate or make it available online to third parties outside the customer's company; furthermore, the right of use shall not include the right to reproduce the software, unless this is necessary for the intended purpose or for the production of backup copies. The use of the software in outsourcing, service bureau, ASP operation or similar shall not be permitted. The transfer of the rights of use to any third party shall not be permitted, unless such third parties are business partners of the customer commissioned by the customer who require

access to the software in order to fulfill their order and for the customer's operational purposes.

- 4.4 The software may only be made available to third parties in its entirety and with written notification of the transfer. The customer must completely and permanently forgo its use of the software and also surrender all and any copies to the third party or destroy them. Furthermore, these license conditions must be passed on to the third party.
- 4.5 The customer shall not be entitled to the delivery and use of the source code of the software and the source code documentation. The Customer shall not be permitted to decompile, disassemble or otherwise apply reverse engineering to the software in order to obtain the source code (reverse engineering). Section 69e of the German Act on Copyright and Related Rights shall remain unaffected by this.

5. Claims for defects

In the case of goods with digital elements or other digital content, we shall only owe the provision and, if necessary, an update of the digital content if this is expressly stated in a quality agreement pursuant to Part B 2.2. In this respect, we shall assume no liability for public statements made by the manufacturer and other third parties.

Part D – Terms and Conditions of Assembly

These Special Provisions of the General Terms and Conditions - Part D (Terms and Conditions of Assembly) effective as of the time of conclusion of the contract for assembly shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.

1 Scope and Scope of Services

Assembly services within the meaning of these terms and conditions of assembly shall comprise the set-up, installation and commissioning of a system in connection with a purchase contract. The customer shall be entitled to individual assembly services only if we have undertaken to provide such services in accordance with item 2.4 (Part A). In no event shall the agreement of an individual assembly service (e.g. set-up) result in the obligation to provide all additional assembly services.

2. Prices

- 2.1 Assembly will be invoiced at the cost rates applicable at the time, which can be requested from us.
- 2.2 Surcharges will be charged for work outside usual working hours.
- 2.3 Travel and waiting times shall count as working time.

3. Customer's Duties to Cooperate

- 3.1 To the extent necessary, the customer must support our employees in meeting the contractually owed services at its own expense.
- 3.2 The customer must name at least one responsible person (hereinafter referred to as "Authorized Representative") for the entire assembly process, who will be permanently present at the assembly site during the execution of the assembly services and who shall be authorized to make declarations of intent with direct effect for and against the customer in his/her own name.
- 3.3 The customer must ensure that our employees are adequately protected at the assembly site and are informed about existing special safety regulations, insofar as these are of importance to our employees. If necessary, special protective clothing must be provided to our employees free of charge. If any of our employees violate such safety regulations, the customer shall notify us immediately.
- 3.4 In addition, the customer must ensure at its own expense that:
 - 3.4.1 our employees have access to the assembly site at the agreed time; any waiting times of our employees will be invoiced at the agreed hourly rates;
 - 3.4.2 technical assistants are available in a timely manner in the number and for the time necessary for the provision of the services; the supporting staff must follow the instructions of our employees; we do not assume any liability for the supporting staff;
 - 3.4.3 the equipment or systems required for the performance of the assembly services is/are available at the assembly site at the agreed time and that the assembly site and the equipment/systems are protected against harmful influences of any kind;

- 3.4.4 all earthwork, construction, bedding and scaffolding work has been carried out and necessary building materials have been procured;
- 3.4.5 the load-bearing capacity of existing building elements (foundations, ceilings, beams, walls, etc.) on which the installation is to be erected is guaranteed;
- 3.4.6 the necessary heating, lighting, operating power, water, compressed air and electricity, including the necessary connections, are provided;
- 3.4.7 all necessary equipment and heavy tools (e.g. lifting equipment, compressors) as well as necessary requisites and materials (e.g. construction wood, wedges, supports, lubricants) are provided;
- 3.4.8 the required dry and lockable rooms are provided for the storage of our employees' tools;
- 3.4.9 suitable, theft-proof common rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) as well as first aid are provided for our employees;
- 3.4.10 any other action is taken that is necessary for the performance of a contractually agreed commissioning;
- 3.4.11 permits required for the installation and commissioning of the system have been obtained in good time;
- 3.4.12 any additional technical services listed separately in our offers and order confirmations are provided.
- 3.5 The customer must ensure that assembly can be started immediately when our employees arrive and can be performed without any delays up until acceptance by the customer.
- 3.6 The customer shall be under the obligation to confirm the working hours of our employees on a daily basis. The confirmation can be made by the responsible person authorized by the customer in accordance with item 3.2 above. If confirmation is not provided, we shall nevertheless be entitled to invoice the customer for the working hours of our employees.
- 3.7 If the customer does not fulfil the obligations incumbent on it, or does not fulfil them on time, and if this results in delays and/or additional time or expense, we shall be entitled to demand compensation for the additional expenses incurred as a result.
- 3.8 If services cannot be carried out without endangering the life and health of our employees due to non-compliance with occupational safety regulations, either adequate corrective measures must be taken or the work shall be suspended until occupational health and safety is guaranteed. In this case, the time delays shall extend any deadlines accordingly.

4. Acceptance

- 4.1 Our services shall be deemed accepted 14 working days after we have notified readiness for acceptance, unless the customer notifies us in writing of significant defects within this period.
- 4.2 At the time of acceptance, a report which shall be signed by us and the customer must be drawn up confirming conformity with the agreed service description ("acceptance report"). If it is not possible for the customer or its vicarious agents to be present at the

agreed place of acceptance on the acceptance date, the declaration of acceptance must be submitted by the Authorized Representative.

Acceptance cannot be refused in the event of an insignificant defect. If the work contains defects that do not entitle the customer to refuse acceptance, acceptance must be given subject to the condition that the defects will be remedied.

Refusal of acceptance or reservations against acceptance must be made without delay in writing, indicating and describing the claimed defect.

- 4.3 Upon acceptance, our liability for apparent defects shall expire, unless the customer has reserved the right to assert a specific defect.
- 4.4 If, in addition to providing the assembly service, we have also undertaken to deliver the system that is to be assembled, the acceptance of the delivery item and the acceptance of the assembly service must be declared separately. The terms for acceptance of the delivery item shall conform with the Special Provisions of the GTC - Part B (Sale and/or Delivery of Movable Items) effective as of the conclusion of the contract for assembly, which shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.
- 4.5 Our assembly services shall be deemed accepted ("Deemed Acceptance") if
- the assembly services have been completed,
 - we have informed either the customer or the Authorized Representative hereof making reference to the Deemed Acceptance according to this clause and have requested them to perform acceptance,
 - 14 working days have passed since the last work was performed on the assembly or use of the assembled system has commenced not merely for test purposes (e.g. if the assembled system has been put into business operation) and if, in such case, six working days have passed since the last work was performed on assembly, and
 - if the customer or the Authorized Representative has failed to perform acceptance within this time period.
- 4.6 If the customer puts the delivery item or the item to which our service relates into use, this shall be deemed as acceptance.

5. Claims for Defects

- 5.1 The customer may only assert claims for defects on the proviso that the customer has duly met its inspection and notification obligations in accordance with Section 377 of the German Commercial Code [*HGB*]. In the case of building materials and other delivery items intended for incorporation or other further processing, an inspection must in any case be made immediately before processing.

In the case of drop shipping, notification of defects must always be made along the lines of the purchase contract relationships. Drop shipping consists of a sequence of two or more sales by dispatch, e.g. we sell the goods to the customer that, in turn, resells these goods to a third party and instructs us to deliver directly to such third party; four or more persons can be involved in drop shipping.

- 5.2 At our discretion, we will deliver an item free from defect or will remedy defects – this is, however, on the proviso that it can be proven that the delivery item was already defective at the time the risk passed in accordance with item 6.3 (Part A).
- 5.3 If the item delivered is defective, we may first of all choose to effect supplementary performance by either remedying the defect (repair) or by delivering an item free from

defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

Unless we have expressly confirmed the existence of a defect in writing, any repair or replacement delivery or any re-manufacturing will on principle at most be effected by us as a gesture of goodwill and ex gratia, i.e. without admitting legal responsibility.

- 5.4 After consultation with us, the customer must grant us the necessary time and opportunity for any supplementary performance owed by us and must, in particular, provide us with the rejected delivery item for inspection and verification or otherwise provide us access to the rejected delivery item.

In the event of replacement delivery, the customer must return the defective delivery item to us in accordance with the statutory provisions. We shall be entitled to a claim of transfer of ownership of the replaced parts.

If the supplementary performance fails, the customer may remedy the defect itself in accordance with Section 637 of the German Civil Code ("Self-help") or reduce the payment appropriately.

However, the right of the customer to remedy the defect itself shall not apply if we were entitled to by law to refuse a corresponding supplementary performance.

- 5.5 The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as dismantling and installation costs, if applicable, shall be borne or refunded by us in accordance with the statutory provisions if a defect actually exists. If such costs increase because the delivery item was taken to a place other than the place of delivery, such costs shall be borne by the customer. Otherwise, we can demand compensation from the customer for the costs incurred as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.

- 5.6 Within the framework of the statutory provisions, the customer has the right to withdraw from the contract if – taking into account the statutory exceptions – a reasonable grace period granted to us by the customer for repair or replacement delivery has expired without result. In the event of an insignificant defect, the customer shall only be entitled to a reduction in price. In all other respects, the right to a reduction of the price shall be excluded.

- 5.7 Without prejudice to Section 275 [2] and [3] of the German Civil Code, we shall be entitled to refuse supplementary performance if it entails disproportionately high effort or is only possible at disproportionate cost. When the reasonableness is assessed, the value of the item in a defect-free condition, the significance of the defect and the question of whether we can avail ourselves of the other type of supplementary performance without significant disadvantages for the customer must be taken into account.

- 5.8 Claims for defects by the customer shall be invalid if the customer or a third party has handled our delivery item improperly or has used the delivery item even though the customer or the third party was aware of the defect. In such cases, liability on our part shall only be considered if the customer proves that the defects were not caused, neither in whole nor in part, by the aforementioned handling.

- 5.9 Claims for defects due to causes that cannot be attributed to a fault on our part shall be invalid, for example:

We do not provide any warranty for defects that are due to measures or designs that the customer has expressly requested or that occur in materials or products that the

customer has provided or made available to us or use of which the customer has expressly requested contrary to our instructions.

In addition, the customer may not, in particular, assert any claims for defects in the following cases - unless we are answerable for them or such measures have been carried out with our express written consent: in the event of natural wear and tear, excessive stress, unsuitable and improper use - in particular in breach of the information in the operating instructions or manual - faulty assembly or commissioning by our customer or any third party, subsequent wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials / replacement materials, defective construction work, unsuitable sub-soil, unsuitable installation site, in particular installation surface, lack of stability or unsuitable securing of the power supply, chemical or electrical influences, harmful environmental conditions unknown to us.

Furthermore, claims for defects shall not arise if the software provided is combined by the customer with third-party software and such third-party software is not compatible with the software, nor if defects are based on non-contractual or improper use of the software by the customer. Neither shall claims for defects arise if the customer does not use the required system configuration, in particular infrastructure, hardware, operating system and database.

- 5.10 Claims for defects by the customer shall be excluded if the systems, conveyor belts and other machines of the customer or a third party are not in technically sound and operational condition or are not compatible with the items delivered, if the customer's technical systems, such as supply lines, wiring and the like, are not in a technically sound and operational condition or are not compatible with the items delivered, insofar as the circumstance is the cause of the defect.
- 5.11 The delivery items may only be used by qualified personnel.
- 5.12 Warranty obligations shall not apply
- if the delivery items have been improperly handled, stored, assembled, used, exposed to unsuitable chemical, electrochemical or electrical influences that have not been contractually specified or have been exposed to undue stress, or
 - if the delivery items are combined with defective construction projects or unsuitable building ground, or
 - if the delivery items have been altered in a manner not approved by us, or
 - in the event of changes, additions or modifications to the delivery items not agreed with us or if third-party accessories or spare parts are used - unless the customer provides proof that there is no causal link between the asserted defect and such measure, or
 - if the customer has not complied with the rules and regulations concerning the treatment, maintenance and care of the delivery items (e.g. operating instructions), unless it can be ruled out that one of these instances has caused the occurrence of the defect.
- 5.13 We do not assume any guarantees or warranties. Furthermore, we shall not be liable for such qualities of the delivery items that are based on drawings, samples or other information and specifications of the customer – in particular on a design prescribed by the customer or the use of a material stipulated by the customer. This shall apply in the aforesaid cases in particular if the delivery items prove to be unsuitable for the customer.
- 5.14 The customer shall only be entitled to withdraw from the contract if our services are demonstrably of no interest to the customer despite the price reduction.

- 5.15 The customer shall bear the burden of proof that it has not taken measures to remedy the defect itself.
- 5.16 Notwithstanding the aforesaid provisions, the customer undertakes to document both the defect and any resulting damage in accordance with generally accepted technical standards.
- 5.17 In case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause 9 (Part A) and shall be excluded in all other respects.

6. Compensation by the Customer

If, through no fault of our own, the devices or tools provided by us are damaged at the assembly site or if they are lost through no fault of our own, the customer shall be under the obligation to compensate such damage. Damage caused by normal wear and tear shall not be taken into account.

Part E – Terms and Conditions of Repair and Maintenance

1 Scope and Scope of Services

These Special Provisions of the General Terms and Conditions - Part E (Terms and Conditions of Repair and Maintenance) effective as of the time of conclusion of the contract for repair and maintenance shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.

2. Prices

2.1 Repair and maintenance will be invoiced at the cost rates applicable at the time, which can be requested from us.

2.2 Surcharges will be charged for work outside usual working hours.

2.3 Travel and waiting times shall count as working time.

3. Customer's Obligation to Provide Information and to Cooperate in the event of Repair/Maintenance outside our Factory

3.1 The customer must inform us in writing in good time about contamination, any health-endangering residues in the items to be repaired/maintained as well as transport risks and other measures relevant to repair or maintenance to be taken.

3.2 To the extent necessary, the customer must support our employees in meeting the contractually owed services at its own expense.

3.3 The customer must name at least one responsible person (hereinafter referred to as "Authorized Representative") for the entire repair/maintenance process, who will be permanently present at the repair/maintenance site during the execution of the repair/maintenance services and who shall be authorized to make declarations of intent with direct effect for and against the customer in his/her own name.

3.4 The customer must ensure that our employees are adequately protected at the repair/maintenance site and are informed about existing special safety regulations, insofar as these are of importance to our employees. If necessary, special protective clothing must be provided to our employees free of charge. If any of our employees violate such safety regulations, the customer shall notify us immediately.

3.4 In addition, the customer must ensure at its own expense that:

3.4.1 our employees have access to the repair/maintenance site at the agreed time; any waiting times of our employees will be invoiced at the agreed hourly rates;

3.4.2 technical assistants are available in a timely manner in the number and for the time necessary for the provision of the services; the supporting staff must follow the instructions of our employees; we do not assume any liability for the supporting staff;

3.4.3 the repair/maintenance site and the equipment/systems to be repaired/maintained are protected against harmful influences of any kind;

3.4.4 all earthwork, construction, bedding and scaffolding work has been carried out and necessary building materials have been procured;

- 3.4.5 the necessary heating, lighting, operating power, water, compressed air and electricity, including the necessary connections, are provided;
- 3.4.6 all necessary equipment and heavy tools (e.g. lifting equipment, compressors) as well as necessary requisites and materials (e.g. construction wood, wedges, supports, lubricants) are provided;
- 3.4.7 the required dry and lockable rooms are provided for the storage of our employees' tools;
- 3.4.8 suitable, theft-proof common rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) as well as first aid are provided for our employees;
- 3.4.9 any additional technical assistance listed separately in our offers and order confirmations are provided.
- 3.5 The customer must ensure that repair/maintenance can be started immediately when our employees arrive and can be performed without any delays up until acceptance by the customer.
- 3.6 The customer shall be under the obligation to confirm the working hours of our employees on a daily basis. The confirmation can be made by the responsible person authorized by the customer in accordance with item 3.2 above. If confirmation is not provided, we shall nevertheless be entitled to invoice the customer for the working hours of our employees.
- 3.7 If the customer does not fulfil the obligations incumbent on it, or does not fulfil them on time, and if this results in delays and/or additional time or expense, we shall be entitled to demand compensation for the additional expenses incurred as a result.
- 3.8 If services cannot be carried out without endangering the life and health of our employees due to non-compliance with occupational safety regulations, either adequate corrective measures must be taken or the work shall be suspended until occupational health and safety is guaranteed. In this case, the time delays shall extend any deadlines accordingly.

4. Transport and Insurance in case of Repair/Maintenance in our Factory

- 4.1 Unless otherwise agreed in writing, the delivery and removal of the repair/maintenance item carried out at the customer's request - including any packaging and loading, if applicable - shall be carried out at the customer's expense; otherwise, the repair/maintenance item will be delivered to us by the customer at its expense and collected by the customer after the repair/maintenance work has been carried out.
- 4.2 The customer shall bear the transport risk.
- 4.3 At the request of the customer, transport to and from (if applicable) our premises will be insured at the customer's expense against the insurable transport risks, e.g. theft, breakage, fire.
- 4.4 There is no insurance cover during the period of repair/maintenance work in our factory.

The customer must ensure that existing insurance cover for the repair/maintenance item is maintained and continues, e.g. with regard to insurance against fire, water damage, storm and machinery breakdown. Insurance cover of these risks can only be obtained at the express request and expense of the customer.

At our discretion, the repair/maintenance item may also be stored in another manner or elsewhere. The costs and risk of storage shall be borne by the customer.

5. Acceptance

5.1 Our services shall be deemed accepted 14 working days after we have notified readiness for acceptance, unless the customer notifies us in writing of significant defects within this period.

5.2 At the time of acceptance, a report which shall be signed by us and the customer must be drawn up confirming conformity with the agreed service description ("acceptance report"). If it is not possible for the customer or its vicarious agents to be present at the agreed place of acceptance on the acceptance date, the declaration of acceptance must be submitted by the Authorized Representative.

Acceptance cannot be refused in the event of an insignificant defect. If the delivery item contains defects that do not entitle the customer to refuse acceptance, acceptance must be given subject to the condition that the defects will be remedied.

Refusal of acceptance or reservations against acceptance must be made without delay in writing, indicating and describing the claimed defect.

5.3 Upon acceptance, our liability for apparent defects shall expire, unless the customer has reserved the right to assert a specific defect.

5.4 Our repair and/or /maintenance services shall be deemed accepted ("Deemed Acceptance") if

- the repair and/or maintenance services have been completed,
- we have informed either the customer or the Authorized Representative hereof making reference to the Deemed Acceptance according to this clause and have requested them to perform acceptance,
- 14 working days have passed since the last repair and/or maintenance work was performed or use of the repaired and/or maintained system has commenced not merely for test purposes (e.g. if a repaired and/or maintained system has been put into business operation) and if, in such case, six working days have passed since the last repair and/or maintenance work was performed, and
- if the customer or the Authorized Representative has failed to perform acceptance within this time period.

5.5 If the customer puts the delivery item and/or the item to which our service relates into use, this shall be deemed as acceptance.

6. Claims for Defects

6.1 The customer may only assert claims for defects on the proviso that the customer has duly met its inspection and notification obligations in accordance with Section 377 of the German Commercial Code [*HGB*]. In the case of building materials and other delivery items intended for incorporation or other further processing, an inspection must in any case be made immediately before processing.

In the case of drop shipping, notification of defects must always be made along the lines of the purchase contract relationships. Drop shipping consists of a sequence of two or more sales by dispatch, e.g. we sell the goods to the customer that, in turn,

resells these goods to a third party and instructs us to deliver directly to such third party; four or more persons can be involved in drop shipping.

6.2 At our discretion, we will deliver an item free from defect or will remedy defects – this is, however, on the proviso that it can be proven that the delivery item or the service was already defective at the time the risk passed in accordance with item 6.3 (Part A).

6.3 If the item delivered or service provided is defective, we may first of all choose to effect supplementary performance by either remedying the defect (repair) or by delivering an item free from defect (replacement delivery). Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby.

Unless we have expressly confirmed the existence of a defect in writing, any repair or replacement delivery or any new production will on principle at most be effected by us as a gesture of goodwill and *ex gratia*, i.e. without admitting legal responsibility.

6.4 After consultation with us, the customer must grant us the necessary time and opportunity for any supplementary performance owed by us and must, in particular, provide us with the rejected delivery item or service for inspection and verification or otherwise provide us access to the rejected delivery item.

In the event of replacement delivery, the customer must return the defective delivery item or the service to us in accordance with the statutory provisions. We shall be entitled to a claim of transfer of ownership of the replaced parts.

If the supplementary performance fails, the customer may remedy the defect itself in accordance with Section 637 of the German Civil Code (“Self-help”) or reduce the payment appropriately.

However, the right of the customer to remedy the defect itself shall not apply if we were entitled to by law to refuse a corresponding supplementary performance.

6.5 The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labor and material costs as well as dismantling and installation costs, if applicable, shall be borne or refunded by us in accordance with the statutory provisions if a defect actually exists. If such costs increase because the delivery item or the service was taken to a place other than the place of delivery, such costs shall be borne by the customer. Otherwise, we can demand compensation from the customer for the costs incurred as a result of the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not discernible for the customer.

6.6 Within the framework of the statutory provisions, the customer has the right to withdraw from the contract if – taking into account the statutory exceptions – a reasonable grace period granted to us by the customer for repair or replacement delivery has expired without result. In the event of an insignificant defect, the customer shall only be entitled to a reduction in price. In all other respects, the right to a reduction of the price shall be excluded.

6.7 Without prejudice to Section 275 [2] and [3] of the German Civil Code, we shall be entitled to refuse supplementary performance if it entails disproportionately high effort or is only possible at disproportionate cost. When the reasonableness is assessed, the value of the delivery or service in a defect-free condition, the significance of the defect and the question of whether we can avail ourselves of the other type of supplementary performance without significant disadvantages for the customer must be taken into account.

6.8 Claims for defects by the customer shall be invalid if the customer or a third party has handled our delivery item or interfered with our service improperly or has used the delivery item or service even though the customer or the third party was aware of the defect. In such cases, liability on our part shall only be considered if the customer proves that the defects were not caused, neither in whole nor in part, by the aforementioned handling.

6.9 Claims for defects due to causes that cannot be attributed to a fault on our part shall be invalid, for example:

We do not provide any warranty for defects that are due to measures or designs that the customer has expressly requested or that occur in materials or products that the customer has provided or made available to us or use of which the customer has expressly requested contrary to our instructions.

In addition, the customer may not, in particular, assert any claims for defects in the following cases - unless we are answerable for them or such measures have been carried out with our express written consent: in the event of natural wear and tear, excessive stress, unsuitable and improper use - in particular in breach of the information in the operating instructions or manual - faulty assembly or commissioning by our customer or any third party, subsequent wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials / replacement materials, defective construction work, unsuitable sub-soil, unsuitable installation site, in particular installation surface, lack of stability or unsuitable securing of the power supply, chemical or electrical influences, harmful environmental conditions unknown to us.

Furthermore, claims for defects shall not arise if the software provided is combined by the customer with third-party software and such third-party software is not compatible with the software, nor if defects are based on non-contractual or improper use of the software by the customer. Neither shall claims for defects arise if the customer does not use the required system configuration, in particular infrastructure, hardware, operating system and database.

6.10 Claims for defects by the customer shall be excluded if the systems, conveyor belts and other machines of the customer or a third party are not in technically sound and operational condition or are not compatible with the items delivered, if the customer's technical systems, such as supply lines, wiring and the like, are not in a technically sound and operational condition or are not compatible with the items delivered, insofar as the circumstance is the cause of the defect.

6.11 The delivery items may only be used by qualified and appropriately trained personnel.

6.12 Warranty obligations shall not apply

- if the delivery items or services have been improperly handled, stored, assembled, used, exposed to unsuitable chemical, electrochemical or electrical influences that have not been contractually specified or have been exposed to undue stress, or
- if the delivery items or services are combined with defective construction projects or unsuitable building ground, or
- if the delivery items or services have been altered in a manner not approved by us, or
- in the event of changes, additions or modifications to the delivery items or services not agreed with us or if third-party accessories or spare parts are used - unless the customer provides proof that there is no causal link between the asserted defect and such measure, or
- if the customer has not complied with the rules and regulations concerning the treatment, maintenance and care of the delivery items (e.g. operating instruc-

tions) or services, unless it can be ruled out that one of these instances has caused the occurrence of the defect.

- 6.13 We do not assume any guarantees or warranties. Furthermore, we shall not be liable for such qualities of the delivery items or services that are based on drawings, samples or other information and specifications of the customer – in particular on a design prescribed by the customer or the use of a material stipulated by the customer. This shall apply in the aforesaid cases in particular if the delivery items prove to be unsuitable for the customer.
- 6.14 The customer shall only be entitled to withdraw from the contract if our services are demonstrably of no interest to the customer despite the price reduction.
- 6.15 The customer shall bear the burden of proof that it has not taken measures to remedy the defect itself.
- 6.16 Notwithstanding the aforesaid provisions, the customer undertakes to document both the defect and any resulting damage in accordance with generally accepted technical standards.
- 6.17 In case of defects, any claims of the customer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under clause 9 (Part A) and shall be excluded in all other respects.

6. Compensation by the Customer

If, through no fault of our own, the devices or tools provided by us are damaged at the repair/maintenance site or if they are lost through no fault of our own, the customer shall be under the obligation to compensate such damage. Damage caused by normal wear and tear shall not be taken into account.

Part F – Services under Contracts for Work and Services

1 Scope and Scope of Services

- 1.1 These Special Provisions of the General Terms and Conditions - Part F (Contracts for Work and Services) effective as of the time of conclusion of the contract for work and services shall always apply in combination with the General Provisions of the GTC (Part A) as an integral part thereof.
- 1.2 Services under a contract for work and services shall only be deemed accepted by us if we have designated a service in writing as a "service under a contract for work and services" or a "contract for work and services".
- 1.3 The content in detail and the work included in the scope of services result from the respective work/service specification. In addition to these provisions, Sections 631 et seq. of the German Civil Code shall apply.

2. Payment

- 2.1 Unless otherwise agreed, the customer shall effect payments as follows:
- 60% down payment after receipt of the order confirmation,
 - 40% after service or notification of readiness for delivery/acceptance of the principal parts,
- the remaining amount after the passing of risk.
- 2.2 We shall be entitled to make the commencement of our work/services dependent on receipt of the agreed down payment.

3. Duties to Cooperate

The provisions of clause 3 (Part D) shall apply mutatis mutandis.

4. Changes

- 4.1 The customer may request changes to the content and scope of the work/services. This shall also apply to work/services already provided and delivered.
- 4.2 If the changes are not just insignificant, we will calculate the time delays and the additional expense incurred as a result of the requested changes and will agree with the customer on the corresponding adjustment to the contract. If we do not reach an agreement, we shall be entitled to reject the request for change.
- 4.3 Before implementation of such changes begins, all and any changes to the work/service must be defined in a written supplementary agreement, stipulating also the additional fee and any changes to the time schedule.

5. Changes

The provisions of clause 5 (Part E) shall apply mutatis mutandis.

6. Defects

The provisions of clause 6 (Part E) shall apply mutatis mutandis.

7. Notice of Termination

If the customer avails itself of its right of termination in accordance with Section 648, sentence 1, of the German Civil Code, we shall be entitled to demand a flat-rate compensation amounting to 15% of the agreed fee if we have not yet started performance of the work/service. If we have already started performance, 80% of the agreed fee must be paid. The customer shall have the right to prove that we have suffered no damage at all or that the damage was significantly below the above flat rate.