

## General terms and conditions of sale and delivery

Version November 2022

Applicable for following companies:

- Exide Technologies GmbH
- Exide Technologies Operations GmbH & Co. KG

A contract is concluded with the respectively performing company.

A joint and several liability between Exide Technologies GmbH and Exide Technologies Operations GmbH & Co. KG is excluded.

### § 1 General

1. Our following Terms and Conditions of Sale apply exclusively to any sales and deliveries made by our company (hereinafter referred to as “we” or “us”). These shall form part of the agreement concluded with us.
2. These terms and conditions of sale shall only apply vis-à-vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).
3. The purchase conditions of the buyer do not bind ourselves even if we do not expressly contradict them or if the contract is performed without reservation. Even if we refer to a document which contains terms and conditions of the buyer or of a third party or which refers to those, this shall not constitute any agreement to the applicability of said terms and conditions.
4. These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
5. We hereby object to any counter confirmation, counter-offer or other reference by the buyer to its general terms and conditions; any dissenting terms and conditions of the buyer shall only apply if we have confirmed the same in writing.
6. Where reference is made in these General Terms and Conditions of Sale and Delivery to "written form" or the word "in writing" is used, this includes the written and text form (e.g. letter, e-mail, facsimile).

## § 2 Offers; Orders

1. Our offers shall be indicative, notably with regard to quantities, price and delivery time.
2. Orders placed by the buyer shall not be regarded as accepted until these have been confirmed by us in writing. If we should fail to confirm an agreement in writing which we have agreed verbally or in a telephone conversation, then our invoice shall be regarded as confirmation.
3. Details provided by us in relation to deliverables or services, including technical data and specifications, tolerances and load-bearing capacity are only approximately authoritative, unless such details are part of the agreed specification (*Beschaffenheitsmerkmal*) and unless usability for the contractually intended purpose requires exact conformity. They shall not be construed as a seller's guarantee (*Garantie für die Beschaffenheit oder Haltbarkeit der Sache*) within the meaning of Section 443 of the German Civil Code. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements as well as the replacement of components with equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose.
4. We reserve all proprietary rights and copyrights to any illustrations, drawings, models, tools, calculations, concepts and other documents and materials provided as part of our quotation. This applies in particular to written documents designated as "confidential". Customer may not disclose any such materials to third parties or use, reverse-engineer, modify or copy them before obtaining our explicit written consent and shall return them upon our request and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The storage of electronically provided data for the purpose of usual data backup is excluded from this.

## § 3 Prices and Payment

1. Our prices are ex works, exclusive of the respective statutory VAT and exclusive of costs for packaging, except as otherwise expressly agreed upon.

The packaging is charged at cost price. Postage, freight, other dispatch expenses, insurance, customs as well as the costs of possible return of the products or of the packing material are at the expense of the buyer.

2. Price changes are permissible if more than 4 months elapse between completion of contract and agreed delivery date. Afore-mentioned limitation

does not apply in case of continuing obligations (*Dauerschuldverhältnisse*).

3. Our prices shall apply subject to the proviso that no significant cost increases have occurred between the conclusion of the contract and the delivery which significantly exceed the normally expected price increases on the procurement side. The price calculation is based on items like e.g. wages, raw materials, energy costs, freights, duties, customs, taxes or other costs. If the above items show a price increase in the period between contract completion and delivery or new charges arise, we are authorized to increase the price reasonably (§ 315 of the German Civil Code) in line with the cost increases, unless cost reductions in other areas offset them. The usual market prices shall be taken into account. The buyer is only entitled to withdrawal if the increase in prices exceeds more than 10 % of the initial purchase price.
4. This must be asserted against us by the buyer within two weeks of knowledge of the price increase, whereby the receipt of the declaration of withdrawal by us is decisive for the observance of the deadline. After expiry of the two-week period, withdrawal due to the price increase is excluded.
5. No cash discount may be deducted unless we have agreed to the contrary in writing.
6. Unless otherwise specified in the order confirmation, the net purchase price (without deduction) shall become due and payable by no later than 30 days after the invoice date. After the due date, default interests shall accrue at a rate of 9 percentage points above the respective base rate if the buyer is in default. In this case, deliveries are made exclusively against prepayment or cash on delivery (COD). The claim of further rights and claims, in particular damage claims (such as the lump-sum reminder fee of EUR 40 according to § 288 para. 5 of the German Civil Code), higher default interest, interest according to §§ 352, 353 of the German Commercial Code, by us remains unaffected.
7. The Customer shall inform us without undue delay (*unverzüglich*) in writing of changes of address, changes of ownership, company legal form or other circumstances which may affect the economic circumstances of the Customer. We are entitled to carry out deliveries only against advance payment or to request a security, should we become aware of circumstances which are likely to substantially reduce the creditworthiness of the buyer and which could jeopardise the payment of our outstanding claims arising out of the respective contractual relationship. If payment or the provision of collateral does not take place within 7 working days of such a request, we are entitled to rescind the contract.
8. Bills of every kind are only accepted by agreement and with reservation. The acceptance of checks or bills is reserved only for payment plus charge of all costs.

#### **§ 4 Quantity; Execution of Delivery**

1. Excess and deficient deliveries up to 10 % of the ordered quantities are permissible.
2. The scope of our duty to deliver is derived solely from this contract. Alterations in construction, form and colour based on (i) technological improvements or (ii) legal requirements or (iii) the exchange of use of other identical parts (*Gleichteile*) or (iv) reasonable modifications which do not affect the essential characteristics or the load-bearing capacity/performance of the products are reserved, insofar as the alterations are not material or in any other way unacceptable to the buyer. The buyer will be informed accordingly in advance if the changes are essential or affect the essential characteristics of the products or affect the load-bearing capacity and performance.

#### **§ 5 Shipment; Delivery, Transfer of risks; Other cooperation duties of the buyer, Provision of materials by the buyer**

1. The goods shall be made available ex works (Incoterms 2020) for collection. If the buyer requests us, to organize the transport of the goods, the goods shall be transported uninsured and in any event at the risk of the buyer. The risk of accidental loss or accidental deterioration of the products shall pass to the buyer upon dispatch of the order to the buyer or upon handover to the transport company. This shall also apply in cases of any delivery free of charge and regardless of which means of transport shall be used. Any transport insurance shall be provided only upon express demand of the buyer. Any costs arising therefrom shall be at the expense of the buyer only.
2. The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable discretion and be without liability for the cheapest and fastest transport.
3. If the buyer provides the means of transport, then it shall responsible for its availability on time. We shall immediately be informed of any delays. Any costs arising therefrom shall be at the expense of the buyer.
4. We shall have the right to reasonable delivery in instalments, if
  - 4.1. the part delivery is useable for the customer within the framework of the contractual stipulation of purpose,
  - 4.2. the supply of the remaining ordered goods is guaranteed and
  - 4.3. no significant additional work and expenses or additional costs are incurred for the customer thereby (unless we agree to bear such costs).

5. Our delivery obligation shall always be subject to timely and orderly receipt of the goods from our own suppliers. If, despite the conclusion of a corresponding covering transaction, we are not supplied in good time for reasons for which we are not responsible, we shall be entitled to withdraw from the contract. We shall inform the purchaser immediately of the non-availability and reimburse any counter-performance already made by the purchaser without delay. Any further claims of the buyer are excluded.
6. Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding. As far as possible, the buyer will indicate approximate dates or the calendar week of delivery.
7. If any agreed time of delivery or unloading shall be exceeded and there shall be no supply incident referred to in § 6 below, then the buyer must specify to us a reasonable cure period of minimum two weeks. If we shall fail to meet such deadline also, then the buyer shall have the right to rescind the Agreement. Compensation claims of the buyer for breach of contract or default are excluded, unless in cases of wilful misconduct or gross negligence on our part or if damages resulting from injury to life, limb or health are concerned. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the buyer is required. If we are in default of delivery, the buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has suffered no damage at all or only significantly less damage than the aforementioned lump sum. Any further claims for damages are excluded subject to paragraph 7, sentence 3.
8. The rights of the Buyer pursuant to § 9 of these terms and conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.
9. The indication of delivery periods is in principle subject to the reservation of cooperation by the buyer in conformity with the contract. Compliance with our obligation to deliver presupposes the fulfilment of the buyer's duties in a timely and orderly fashion. The beginning of the delivery deadline shall be postponed accordingly if and as long as these duties of the buyer are not fulfilled. Our plea of unfulfilled contract remains unaffected.
10. The buyer shall timely provide to us any and all information and technical data required for the due fulfilment of the contract. If the buyer is in default of acceptance (*Annahmeverzug*) or if he is breach of other cooperation duties, we may claim compensation for the damages and additional expenses incurred insofar by us. Further claims remain unaffected. The risk

of accidental destruction or deterioration of the purchase goods passes to Customer (*Gefahrübergang*) if the buyer is in default of acceptance (*Annahmeverzug*).

11. In the case of defective, incorrect or delayed provision of materials by the buyer, he bears the costs and damage thus caused to us.
12. If the buyer is in delay with the call-off, the acceptance or collection of the goods or if he is responsible for a delay in dispatch or in delivery, we are entitled, without prejudice to more far-reaching claims, to demand a lump-sum amounting to locally customary storage costs, regardless of whether we store the goods ourselves or with a third party. The buyer retains the right to prove that no damage or less damage has occurred.

## **§ 6 Force Majeure**

1. A Force Majeure Event is any event:
  - 1.1. unforeseeable, and
  - 1.2. beyond our reasonable control, and
  - 1.3. which could not reasonably have been prevented or eliminated by us, and
  - 1.4. preventing us from performing our obligations under the contract or delaying the performance of the said obligations or making the performance of the contractual obligations unreasonable or extremely onerous.
2. Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility having the afore-mentioned characteristics, including, without limitation,
  - 2.1. war (whether declared or not), hostilities, invasion, extensive military mobilisation, civil war, riot, rebellion and revolution, insurrection, act of terrorism, sabotage or piracy;
  - 2.2. currency and trade restrictions, embargos, sanctions, subsequent cease of export or import opportunities;
  - 2.3. act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, nationalisation;
  - 2.4. plague, pandemic, epidemic, endemic, lockdowns, natural disaster or extreme natural event;
  - 2.5. explosion, fire, destruction of equipment or facilities, prolonged break-down of transport, telecommunication means, information system;
  - 2.6. general labour disturbance and labour action (*Arbeitskampfmaßnahmen*) (in particular strikes, flashmobs and/or lawful lockouts at our site or at the site of our suppliers).



- 2.7. shortage of labour,
- 2.8. operational disruptions of any kind,
- 2.9. difficulties in the procurement of materials or energy, energy or raw materials, transport delays,
- 2.10. difficulties in obtaining necessary official permits, acts of public authorities,
- 2.11. and our reservation of timely supply from on own supplies in accordance with subsection § 5 (5) above

shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading. This shall also apply in the event of such delivery incidents or events occurring at a sub-supplier or upstream supplier. They shall entitle us to also withdraw from the Agreement which shall not result in any compensation claims of the buyer.

3. With respect to the consequences/measures linked to the Covid-19 pandemic or any other pandemic or epidemic, these shall be considered individually when assessing whether they fulfil the requirements stated in subsection 1, i.e. it should be considered whether each individual lockdown or other restrictive measure was foreseeable at the time of the conclusion of the contract. The same should apply to the war (e.g. in Ukraine) and to any event known or foreseeable at the time of signature but involving unknown or unforeseeable consequences/measures susceptible to affect the contract.

## **§ 7 Hardship**

1. The parties shall renegotiate the terms of the contract, as described in this § 7, in case of the occurrence of exceptional circumstances:
  - 1.1. that could not have been reasonably foreseen or considered at the time of the conclusion of the contract, and
  - 1.2. beyond our control, and
  - 1.3. that cannot be reasonably avoided or overcome, and
  - 1.4. creating a significant economical imbalance between the parties, or
  - 1.5. having for effect that the continued performance of our contractual obligations has become excessively onerous for us. Exceptional circumstances include, but are not limited to, if energy costs, raw material costs (in particular lead), transport costs rise above the normally expected price increases on the procurement side.
2. We shall notify the customer without undue delay of our intention to rely on

this § 7.

3. The parties shall then have two (2) months to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event. The new conditions shall apply retroactively from the notification of the exceptional circumstances.
4. If the parties fail to reach an agreement within the negotiation period stated in para. 3, we shall have the right to unilaterally terminate the contract upon the provision of a two-months prior notice.

### **§ 8 Duty to Inspection and Objection**

1. Upon delivery at the agreed destination or (in the event of self supply) upon taking possession, the buyer shall immediately
  - 1.1. check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note and
  - 1.2. carry out a quality control and inspect the goods themselves for external condition and functionality.
2. In case of a notice of defect the buyer shall comply with the following procedures and deadlines:
  - 2.1. The notification of apparent defects shall be made within seven calendar days on which the delivery of the goods to the agreed destination or on which possession of the goods has been taken. In the event of an hidden defect which, despite a first inspection in accordance with subsection (1) above, has remained undiscovered, this defect must be notified without undue delay, but in any event no later than within seven days after the defect has been discovered in the orderly course of business.
  - 2.2. The detailed notice shall be delivered to us within the above referenced deadlines in writing, by email or fax. Any notice by telephone conversation shall not be accepted.
  - 2.3. The notice must clearly specify the kind and amount of the alleged defect.
  - 2.4. The buyer agrees to make available for inspection the objected goods at the place of inspection; such inspection may be done by us, our suppliers or any expert we may have designated.
3. No objections with regard to quantities, weight or packaging of the goods shall be possible unless a note has been placed on the delivery note or a consignment note or a receipt of acknowledgement in accordance with subparagraph 1.1 above. Moreover, any right to object shall cease to exist, when the buyer has mixed, used or resold the goods delivered or shall have started its processing without first having carried out a proper inspection.



4. Any good for which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

## **§ 9 Warranty**

1. The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below.
2. The basis of our liability for defects is, above all, the agreement reached on the characteristics of the goods and the purpose of use of the goods assumed by us (including accessories and instructions).
3. In the case of goods with digital elements or other digital content, we only owe the provision and, if applicable, the updating of the digital content insofar as this expressly results from an agreement on the characteristics of goods in accordance with paragraph 2.
4. As a matter of principle, we shall not be liable for defects of which the buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the buyer's claims for defects presuppose that he has fulfilled his statutory duties of examination and notification (§ 377HGB) in accordance with the above § 8.
5. If the buyer fails to properly inspect the goods and/or give notice of defects, our liability for the defect that was not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for incorporation, attachment or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, there shall in particular be no claims by the buyer for reimbursement of corresponding costs ("removal and incorporation costs").
6. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected. If the costs of subsequent performance amount to more than 50% of the delivery value, we are in any case entitled to refuse subsequent performance.
7. The buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement

delivery, the buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the buyer shall not have a claim for return. Subsequent performance does not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if we were not originally obliged to perform these services; claims of the buyer for reimbursement of corresponding costs ("dismantling and assembly costs") remain unaffected.

8. If a reasonable period of time to be set by the buyer for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price according to the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.
9. Claims of the buyer for reimbursement of expenses according to § 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 para. 5, 327u BGB). Claims of the buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall also exist in the event of defects of the goods only in accordance with the following §§ 9 and 10.
10. Any warranty claims of the buyer are excluded, if defects or damages were attributable to the following causes:
  - 10.1. unsuitable and/or improper use and/or storage of the supplied products,
  - 10.2. incorrect installation, non-observance of existing guidelines and test specifications on installation of our goods in complete systems,
  - 10.3. faulty installation and/or operation by the buyer or third parties contrary to supplied proper assembly and operating instructions,
  - 10.4. natural wear and tear, in particular in the case of parts which, due to their material properties, are subject to premature wear dependent on their use,
  - 10.5. faulty, forcible or negligent handling,
  - 10.6. excessive loads,
  - 10.7. unsuitable expendables, or
  - 10.8. influences contrary to their purpose or otherwise harmful.
11. In large battery systems, individual cells may fail. These can be replaced individually. Replacement of the complete battery system is not necessary. Notwithstanding afore-mentioned, the buyer's other claims for subsequent performance shall remain unaffected. Withdrawal from the contract and/or claims for damages in lieu of performance due to the failure of one or more cells (whether simultaneously or consecutively) are excluded.

## § 10 Liability, limitations of liability

1. Insofar as nothing to the contrary arises from these 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 statutory provisions, as follows:
2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence.

In the case of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only

- 2.1. for damages resulting from injury to life, body or health,
- 2.2. for damages arising from the breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage. The typically occurring damage amounts to a maximum of two times the respective product price concerned.
- 2.3. Liability for consequential, indirect or incidental damages as well as for loss of profit is excluded, unless these damages are insured. In this case, our liability is limited to the insurance benefit and to the extent of the insurance benefits provided by the insurance. The above limitation of liability shall not apply in the case of intent, gross negligence on our part, or in the case of paragraph 2.1. or insofar as liability under the ProdHaftG or other mandatory liability is concerned or in the case of the assumption of a guarantee within the meaning of § 443 BGB. § 443 BGB.
3. The limitations of liability resulting from para. 2 above shall also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They do not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the buyer under the Product Liability Act.
4. The buyer may only withdraw from or terminate the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 11 Limitation period**

1. Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance.
2. If the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 no. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall remain unaffected.
3. Claims for damages by the buyer pursuant to § 10 para. 2 sentence 1 and sentence 2 subpara. 2.1 as well as pursuant to the German Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

## **§ 12 Offset, right to retain, Assignment**

1. The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
2. The purchaser is entitled to claim rights to retain only to the extent such rights are based on the same transaction.
3. The buyer may not assign any claims arising from transactions with us without our written approval. § 354a of the German Commercial Code remains unaffected.

## **§ 13 Retention of Title**

1. Up to the fulfilment of all outstanding debts (including all balance claims of current account), which we are entitled against the orderers now or in future, we will receive the following securities, which will be released on request depending on our decision, as long as their value exceeds the claims by considerably more than 10%. The goods remain our ownership until due and complete payment of the contractually agreed compensation.
2. The buyer is entitled to sell or process the goods in the ordinary course of business. Production or modification is always carried out by us as the manufacturer, without our commitment. In the case of processing, joining or commingling of the goods subject to reservation of ownership with other goods, our joint ownership in the new corporeal thing arises in principle, in

the case of processing in the proportion of the value (= gross invoiced value including incidental expenses and taxes) of the goods subject to reservation of ownership to the value of the other goods. The buyer holds the sole ownership or joint ownership in safe custody for us. Products, which we are entitled to, consequently are designated as reserved products.

3. The buyer shall treat the reserved goods with due care and insure them at his own cost with sufficient coverage for their value as new against damage by fire, water and theft.
4. The buyer shall clearly mark the reserved goods as being owned by us and shall not re-move any property markings.
5. The buyer hereby assigns to us all claims against a customer or third parties which accrue to him/her from the resale of the purchased goods. The buyer remains empowered to collect such receivables also after their assignment. Our right to collect such receivables is not affected thereby; however, we undertake not to collect such receivables as long as the customer meets his payment and other commitments in the proper manner.
6. The buyer is required on request to disclose to us the assigned receivables and the names of the debtors, supply all particulars necessary for collection, make available the records pertaining thereto, and inform the debtors of the assignment.
7. Pledges or security transferences are inadmissible.
8. If third parties claim the reserved products, the buyer will point to our ownership and inform us immediately.
9. In case of the buyer acting contrary to the contract - in particular default of payment - we are entitled after an adequate extension and in case of non-fulfilment by declaration of withdrawal of the contract to take back the reserved products or to demand cancellation of the buyer's surrendering demands against third parties where appropriate.

#### **§ 14 IP-Rights**

1. We assume warranty for our products with regard to third-party property rights only for the territory of the Federal Republic of Germany. At the request of the buyer, we can carry out an examination for other countries against reimbursement of expenses.
2. If deliveries are made according to drawings or other information provided by the purchaser, the buyer shall be responsible for the correctness and for ensuring that the industrial property rights of third parties are not infringed. He shall indemnify us against all claims of third parties in this respect. Moulds, models, tools and equipment required for the ordered goods may be charged by us in full or pro rata. They remain our property unless

otherwise expressly agreed with the customer. If they are made according to special specifications of the buyer, they shall be used exclusively for deliveries to the buyer as long as the business relationship continues and no other agreement has been made.

3. Each contracting party shall notify the other contracting party in writing without undue delay if claims are asserted against it due to the infringement of industrial property rights or copyrights of third parties.
4. In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the buyer by concluding a licence agreement with the third party. If we do not succeed in doing so within a reasonable period of time, the buyer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the buyer are subject to the limitations of § 10 of these General Terms and Conditions of Delivery.
5. In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and upstream suppliers for the account of the buyer or assign them to the buyer. In such cases, claims against us shall only exist in accordance with this § 14 if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or is futile, e.g. due to insolvency.
6. The aforementioned obligations only apply if and to the extent the buyer (i) informs us without undue delay in writing of any third party claims which are related to goods delivered by us, (ii) does not acknowledge any infringement or any obligation vis-à-vis the third party without our prior written consent and (iii) any and all defense measures and settlement negotiations remain reserved by us. If the buyer discontinues use of the delivered goods in order to minimize damage or for other important reasons, he shall inform the third party that this shall not imply acknowledgement of an infringement of any IP right.
7. Any claims of the buyer related to infringement of third party IP rights shall be excluded if and to the extent the buyer is responsible for such infringement or the infringement is due to (i) specifications for the delivered goods provided by the buyer, (ii) use of the delivered goods we could not have foreseen, in particular excessive use or use which is not in accordance with the specification or documentation of the goods, (iii) modification of the delivered goods by the buyer or (iv) use of the delivered goods in conjunction with products not delivered by us.

## § 15 Final Provisions

1. Unless otherwise agreed in the respective contract, our registered place of business is the place of performance (*Erfüllungsort*).
2. The courts at our registered place of business shall have exclusive jurisdiction over all disputes arising from these terms and conditions, and any contract. However, we are also entitled to file a suit against the purchaser at his general place of business.
3. These terms and conditions shall be exclusively governed by the laws of Germany, however, the UN Convention (CISG) on the International Sale of Goods and the rules of conflict of laws being excluded.
4. The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions.

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