

## General Terms and Conditions of Sale and Delivery (GTC) of Börsig GmbH

– July 2020 –

### 1. Scope of application - Miscellaneous

- 1.1 These GTC apply to all business transactions between Börsig GmbH (hereinafter: "Seller") and its customers (hereinafter: "Buyer"), even if they are not mentioned in later contracts. These GTC are only valid if the Buyer is an entrepreneur within the meaning of § 14 German Civil Code. They apply exclusively. Conflicting, additional or deviating conditions of the Buyer shall not become part of the contract unless the Seller has expressly agreed to their validity. Individual agreements made with the Buyer in individual cases shall in any case take precedence over these GTC.
- 1.2 These GTC also apply to all online business transactions between the Buyer and the Seller in e-commerce. Furthermore, they apply accordingly to work and services.
- 1.3 These GTC shall also apply if the Seller, being aware of conflicting or deviating terms and conditions, carries out the delivery without reservation or does not attach these GTC to future transactions in individual cases.
- 1.4 Rights which the Seller has to be entitled to according to the legal regulations beyond these GTC remain unaffected.
- 1.5 The contract language is German. The German version of these GTC shall be decisive in case of questions of interpretation.

### 2. Offer and conclusion of contract

- 2.1 The Seller's offers are subject to change and non-binding, unless they are expressly designated as binding. They only represent an invitation to the Buyer to submit a corresponding offer to the Seller by placing an order.
- 2.2 The Buyer's orders contain binding offers. The Seller may accept orders within 14 days of their receipt. Orders are accepted by a separate order confirmation, delivery of the ordered products, invoicing or other execution of the ordered service.
- 2.3 If the Buyer orders products in e-commerce, the Seller will immediately confirm receipt of the order by electronic means. These letters of confirmation do not constitute acceptance of the contract. In e-commerce, the Buyer shall ensure that only authorized persons can place binding orders and declarations on his behalf and have access to his passwords and other access control functions.
- 2.4 Seller may electronically store and process the data required for the execution of the contract. The data will also be used for the further maintenance of the

business relationship for direct advertising, unless the Buyer objects to this.

- 2.5 If the Buyer has any objections to the contents of the order confirmation or the products sent, he must object to these immediately. Otherwise, the contract shall be concluded in accordance with the provisions and content of the order confirmation.
- 2.6 The Buyer is only entitled to change or cancel orders or postpone delivery dates with the Seller's consent. In case of accepted cancellations a fee of 15 % of the order value is due immediately.
- 2.7 The conclusion and fulfilment of the contract are subject to the proviso that there are no obstacles due to German, US American or other applicable national, EU or international regulations of foreign trade law or embargoes or other sanctions. The Buyer is responsible for compliance with export control regulations. In particular, the Buyer is obliged to provide all information, permits and documents required for export, shipment or import. The Buyer undertakes not to export the products to a country to which export is prohibited. The refusal of an export or import licence does not entitle the Buyer to withdraw from the contract or to claim damages. Clause 13.10 applies accordingly.
- 2.8 The Seller may discontinue the sale of individual products at any time for justified reasons, without the Buyer being able to derive any rights or claims against the Seller from this.

If the Seller makes recommendations of a technical nature to the Buyer, these are deemed to be a non-binding sales-promoting concession. The Seller assumes no responsibility or liability for the content of such recommendations. The Seller shall also not undertake any development work, product suitability studies or special technical tests for the delivered products and the Buyer's products processed therewith without special cause or separate express agreement.

### 3. Description of Products

- 3.1 Information about the products sold by the Seller (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings, descriptions and other illustrations), in particular in brochures, type lists, catalogues, sales catalogues, advertising material and other technical documents or certificates (e.g. certificate of compliance), are to be understood as approximate values only. In any case, they do not constitute a guarantee of quality or durability on the part of the Seller. Nor does the Seller

give any warranty with regard to the marketability of the products or their adequacy or suitability for any particular purpose or use.

- 3.2 The respective manufacturer's data sheets are authoritative for the description of products, their quality and use.
- 3.3 If the contract relates to products which are subject to technical development, the Seller shall be entitled to deliver the products in accordance with the latest development status or manufacturer's data sheet, provided that the usability for the Buyer for the intended use is not impaired. Deviations customary in the trade, changes in design, choice of material, specification and type of construction as well as deviations due to legal regulations are also permissible, provided they do not impair the usability for the contractually intended purpose. The Buyer is obliged to inform the Seller if his interest is limited exclusively to the type ordered and may not deviate from this type under any circumstances.
- 3.4 Samples of the products sold by the Seller are considered test samples and do not constitute a guarantee with regard to the quality of the products without express agreement.
- 3.5 The manufacturer's reliability data on the delivered products serve as statistical averages for orientation purposes only, do not represent quality data or guarantees and do not refer to individual deliveries or delivery lots. The applicable tolerances must be observed.
- 3.6 Seller delivers REACH and RoHS compliant products. In the absence of any particular indications, the Seller shall not carry out any separate testing of the products and shall rely on the information provided by the manufacturer of the products for compliance.

#### **4. Master or call-off orders**

- 4.1 Master or call-off orders, in which the Buyer orders a certain quantity of products to be delivered in several partial deliveries over a certain period of time, are only possible with a separate agreement on a fixed schedule of the individual deliveries. Unless otherwise agreed, the blanket order may not exceed a term of 12 months. Remaining stocks are due for delivery at the end of the term and must be accepted by the purchaser.
- 4.2 If the total order quantity is not allocated on fixed delivery dates, the Seller will place between 30 % and 40 % of the frame quantity in stock. Fixed quantities are delivered on the requested dates. Cancellation or partial cancellation is only possible if the Seller has other Buyers for the products and/or the manufacturer agrees to the cancellation and possible return of the products in stock. The fixed price is

12 months, calculated from the date of the order. The total quantity ordered can be divided into a maximum of 6 partial deliveries. Each partial delivery will be charged with postage and packaging costs.

- 4.3 If, after 12 months within the meaning of Clause 4.1, the call for the entire quantity of products ordered and their delivery has not yet been made in full, the Seller shall be entitled, after the expiry of a reasonable period of grace, to deliver and invoice the products or to withdraw from the contract and, if the Buyer has acted culpably, to demand compensation for damages instead of performance. If the call dates are not met by the Buyer, the Seller reserves the right to change the price and to claim storage costs at the time of the originally agreed call.

#### **5. Prices, price adjustment**

- 5.1 Unless otherwise agreed, the prices stated in the Seller's order confirmation shall apply. The prices shall apply ex works of the Seller (EXW Incoterms® 2020) and only for the scope of services and delivery stated in the order confirmation. Not included are in particular costs for packaging, freight, insurance, customs, public charges and value added tax.
- 5.2 If, between the conclusion of the contract and the delivery of the ordered products, cost increases occur which are not justifiable by the Seller and which were unforeseeable at the time of the conclusion of the contract, in particular due to changes in the market, procurement, material and raw material prices, and which result in the Seller being able to obtain the products from his supplier only under worse economic conditions than were foreseeable at the time of the conclusion of the contract with the Buyer, the Seller is entitled to adjust the prices agreed with the Buyer within the framework of the changed circumstances and without calculating an additional profit if the products or a part thereof are not to be delivered until at least 6 months after the conclusion of the contract. If the increase in the purchase price agreed is more than 15 %, Buyer may withdraw from the contract concluded.
- 5.3 Seller is entitled to carry out or provide outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, he becomes aware of circumstances which are likely to substantially reduce the credit worthiness of the Buyer and which jeopardise the payment of outstanding receivables. This also results in the immediate maturity of all claims against the Buyer and entitles Seller to withdraw from the contract after a reasonable period of grace and to claim damages for non-performance. The provision applies ac-

cordingly if the Buyer refuses or fails to pay outstanding claims and if he has no undisputed or legally established objections.

## **6. Payment terms**

- 6.1 Unless otherwise agreed in writing, all Seller's invoices are to be paid without deduction and immediately free of charges, in the currency shown on the invoice, to the bank account named by the Seller, at the latest within 30 days of the invoice date.
- 6.2 If Buyer defaults on a due payment, Seller shall be entitled to charge interest from the due date on each invoice at a rate of 9 percentage points above the respective base rate plus a lump sum for default of EUR 40.00, reasonable collection costs and lawyers' fees and to make all outstanding invoice amounts immediately due for payment.
- 6.3 Bills of exchange and cheques are only accepted on basis of an express written agreement and only on account of payment. Discount charges and other bill and cheque costs are to be borne by the Buyer. The Seller's rights from § 10 of these GTC shall remain in force until all bill of exchange claims have been met in full.
- 6.4 Seller is entitled to offset payments made by the Buyer against his oldest debt. If costs and interest have already been incurred, Seller is entitled to set off the payment first against the costs, then against the interest and finally against the principal claim.
- 6.5 If the Buyer does not accept purchased products after expiry of a grace period granted to him (default of acceptance), the due date of the purchase price shall be the date of the declaration of readiness for dispatch. At the same time, the Seller may demand reimbursement of a lump sum for storage costs from the date of default of acceptance. This shall amount to 0.5 % of the purchase price per week or part thereof without the need for special proof and shall be limited to 5 % of the purchase price. The parties have the right to prove that no lower or higher storage costs have been incurred in connection with the default of acceptance by the Buyer. Other claims remain unaffected.

## **7. Off-setting, retention, assignment**

- 7.1 Counterclaims of the Buyer only entitle him to off-setting and/or to retention if they are legally established or undisputed. In the event of defects in the products, the Buyer's counter claims, in particular in accordance with Clause 13.10 of these GTC, shall remain unaffected.
- 7.2 The assignment of any Buyer's claims against the Seller from this contractual relationship requires the written consent of the Seller to be effective. The

Seller will only refuse his consent out of justified interest.

## **8. Delivery, delivery time and partial deliveries**

- 8.1 Deliveries shall be ex works of the Seller (EXW Incoterms® 2020).
- 8.2 Delivery periods and dates stated by the Seller are estimated, non-binding periods and dates; in any case, the following applies: "subject to prior sale". The Seller is not liable for delays in delivery. Delivery periods and dates shall only be binding for the Seller if he has expressly designated or confirmed them as binding in writing. Unless otherwise agreed, deliveries shall be deemed to have been made by the Seller on time if the products are handed over at the factory or warehouse by the Seller to a transport person for delivery to the Buyer or if the Seller has notified the Buyer that the products are ready for dispatch after the Buyer has delayed acceptance.
- 8.3 Agreed delivery periods are ex works of the Seller and do not begin before Buyer has provided all documents and approvals to be obtained by him, but under no circumstances before receipt of an agreed down payment or advance payment. Compliance with the delivery period or delivery date shall be subject to the timely and proper fulfilment of the Buyer's other obligations and shall be subject to the timely and proper supply of the Seller's own supplies.
- 8.4 If the Seller does not receive deliveries or services from manufacturers, sub-suppliers or sub-contractors for reasons for which he is not responsible, despite proper congruent procurement, or does not receive them correctly or on time, or if events of force majeure occur, i.e. obstacles to performance for a period of more than 6 weeks through no fault of his own, Seller will inform the Buyer in writing in good time. In this case, the Seller shall be entitled to postpone the delivery or performance for the duration of the impediment or, if the Seller has complied with its aforementioned duty to inform and the impediment to performance lasts longer than 3 months, to withdraw from the contract in whole or in part with regard to the part of the contract not yet fulfilled. Force majeure shall include strikes, lock-outs, official interventions, shortages of energy and raw materials, transport bottlenecks through no fault of the Seller, operational hindrances through no fault of the Seller, for example due to fire, water, breakdowns or restrictions in electronic data exchange and cyber attacks, damage to plant or machinery, epidemics, pandemics, officially ordered plant closures and all other hindrances which, from an objective point of view, have not been culpably caused by the Seller.

8.5 If a delivery date or a delivery period has been bindingly agreed and if this period or this date is exceeded by more than 3 months due to events in accordance with Clause 8.4 or if the Buyer cannot reasonably be expected to accept the delivery or service in any other way as a result of the delay, the Buyer may withdraw from the unfulfilled part of the contract vis-à-vis the Seller after the fruitless expiry of a reasonable grace period with the threat of refusal. The occurrence of the delay in delivery shall be determined in accordance with the statutory provisions.

8.6 Partial deliveries are permissible if the partial delivery is usable for the Buyer within the scope of the contractual purpose, the delivery of the remaining ordered products is ensured and the Buyer does not incur any considerable additional work or considerable additional costs as a result.

8.7 If the Seller is in default with the delivery, the Buyer may - provided he can credibly demonstrate and prove that he has suffered damage as a result - demand compensation for each completed week of the delay of 0.25 % each, but not more than a total of 5 % of the order value of the delayed delivery which he could not use for the intended purpose due to the delay.

8.8 The Seller reserves the right to make excess or short deliveries of up to 1 0% of the scope of delivery for production related reasons. A refund will not be made in the event of short deliveries.

#### **9. Transfer of risk / shipment**

9.1 The risk of accidental loss and accidental deterioration of the products shall pass to the Buyer upon hand-over of the products to the forwarding agent, carrier or other person designated to carry out the shipment to the Buyer. This shall also apply if partial deliveries are made, the Seller assumes the export or installation and a freight-free shipment for the Buyer is agreed.

9.2 The Seller shall, at the request and expense of the Buyer, insure the products by means of a transport insurance against the risks to be specified by the Buyer.

9.3 If the handover or shipment is delayed due to circumstances for which the Buyer is responsible, the risk shall pass to the Buyer on the day on which the products are ready for shipment and the Seller has notified the Buyer of this. The same applies in the event of default of acceptance by the Buyer.

9.4 If the Seller selects the type of dispatch, dispatch route and/or dispatch person, he shall only be liable for intent or gross negligence in the selection.

9.5 The purchaser may not refuse to accept deliveries

due to minor defects.

9.6 Insofar as the Seller is obliged under the German Packaging Ordinance to take back the packaging of products used for transport and/or sale, the Buyer shall bear the costs of the return transport and the necessary costs of disposal or - insofar as this is possible - the necessary costs additionally incurred for the re-use of the packaging. The Buyer is obliged to take packaging that is not returned to the recycling facility provided for under the Packaging Ordinance.

#### **10. Retention of title**

10.1 The delivered products remain the property of the Seller until all claims of the Seller against the Buyer arising from the business relationship have been paid in full.

10.2 The Buyer is obliged to treat the products subject to retention of title with care for the duration of the retention of title. In particular, he is obliged to insure the products at his own expense against fire, water damage and theft sufficiently at replacement value. The Buyer hereby assigns to the Seller all compensation claims arising from this insurance. The Seller hereby accepts the assignment. Upon request, the Buyer shall provide the Seller with evidence of the conclusion of the insurance.

10.3 The Buyer is only permitted to sell the products subject to retention of title in the ordinary course of business. The Buyer is not entitled to pledge the products subject to retention of title, to assign them by way of security or to make any other dispositions that endanger the Seller's property. In the event of seizure or other interventions by third parties, the Buyer shall immediately notify the Seller in writing and provide all necessary information, inform the third party of the Seller's ownership rights and cooperate in the Seller's measures to protect the products subject to retention of title. The Buyer shall bear all costs for which he is responsible which are necessary to remove the seizure and to recover the products, insofar as they cannot be collected from the third party.

10.4 The Buyer hereby assigns to the Seller the claims from resale of the products with all ancillary rights, irrespective of whether the products subject to retention of title are resold without or after processing. The Seller accepts this assignment already now. If an assignment is not permitted, the Buyer hereby irrevocably instructs the third-party debtor to make any payments only to the Seller. The Buyer is revocably authorised to collect the claims assigned to the Seller in trust for the Seller. The collected amounts are to be transferred to the Seller immediately. The Seller may revoke the Buyer's col-

lection authorization as well as the Buyer's authorization to resell the products if the Buyer does not properly meet his payment obligations to the Seller, is in default of payment, suspends payments or if an application is made to open insolvency proceedings against the Buyer's assets. Any resale of the receivables requires the prior consent of the Seller.

10.5 In the event of the Buyer's default in payment, the Seller shall be entitled, without prejudice to its other rights, to withdraw from the contract and the Buyer shall grant the Seller or a third party commissioned by the Seller immediate access to the products subject to retention of title, hand them over or inform the Seller where they are located.

10.6 The processing or transformation of the products subject to retention of title by the Buyer is always carried out for the Seller. The expectant right of the Buyer to the products subject to retention of title shall continue in the processed or transformed item. If the products are processed, combined or mixed with other items not belonging to the Seller, the Seller shall acquire co-ownership of the new item in the ratio of the value of the delivered products to the other processed items at the time of processing.

10.7 The Seller is obliged to release the securities to which he is entitled at the request of the Buyer to the extent that the realisable value of the securities, taking into account customary bank valuation discounts, exceeds the Seller's claims from the business relationship with the Buyer by more than 20 %.

10.8 In the case of delivery of products to countries with other legal systems, in which the retention of title regulations in accordance with Clauses 10. 1 – 10.7 do not have the same security effect as in the Federal Republic of Germany, the Buyer shall grant the Seller a corresponding security interest. If further declarations or actions are required for this purpose, the Buyer shall make these declarations and cooperate in all measures necessary for the effectiveness and enforceability of such security interests.

## **11. Contractual condition and use**

11.1 The basis of the Seller's liability for defects is primarily the agreed quality of the products. The information on specifications, durability and use according to the manufacturer's data sheet shall be deemed the agreed quality. The Seller warrants that the delivered products have the characteristics which have been specified in writing by the manufacturer or by mutual agreement in testable technical parameters. Attachments, lists and other documents of the Buyer and his suppliers shall not become a quality agreement unless the Seller has expressly agreed to their validity.

11.2 The delivered products are only intended for the purposes and uses recommended or approved by the respective manufacturer in the respective product specification or in the manufacturer's data sheet ("intended use"). If the Buyer needs the products for other purposes and uses, he must check their specific suitability for this purpose - also with regard to product safety - and their compliance with all relevant technical, legal or official regulations at his own responsibility before the planned use. The intended use does not include the use of the products in life-supporting or the intended use does not include the use of the products in life-supporting or life-supporting medical equipment, in military systems, in nuclear facilities, in aerospace technology, in firing control systems, in safety equipment and in devices or systems in which a failure or malfunction of the products can, at reasonable assessment, lead to injury to life, limb or health or to extraordinarily high material and/or financial damage (hereinafter: "reserved purposes"), unless the use of the products for such reserved purposes has been expressly confirmed in writing by the respective manufacturer or the Seller. If, without such express written confirmation, the Buyer nevertheless uses a products for purposes other than the intended purpose or for purposes which are not intended, unsuitable, improper or reserved, such use shall be at the sole risk of the Buyer. The same shall apply if the Buyer uses the products in contravention of German, US American or other applicable national EU or international regulations of foreign trade law or embargoes or other sanctions of prohibited dimensions.

11.3 The Seller shall not be liable for expenses and damages resulting from improper, unsuitable or inappropriate use, for faulty assembly or treatment, chemical, electrochemical, thermal, mechanical or electrical influences or for purposes that are not recommended or not approved, reserved or prohibited without prior express written confirmation. The Buyer undertakes to indemnify the Seller against all claims of third parties in so far as these have arisen in connection with the use of the products for prohibited or reserved purposes without prior express consent of the respective manufacturer or the Seller.

11.4 The Buyer is solely responsible for the suitability and safety of the products for a Buyer's application, unless otherwise expressly agreed. Due to the variety of possible uses, different requirements and individual conditions of use, the Seller cannot give any warranty as to the suitability of the products for a particular use unless the Seller has expressly warranted the suitability in writing.

11.5 The Buyer is obliged to check the suitability of the products for the use intended by him. This applies equally to the analysis and examination of information and recommendations of the Seller and of manufacturer's data on environmentally hazardous components of the products, for the correctness of which the Seller does not guarantee, nor does it guarantee that the products do not contain any environmentally hazardous or prohibited components above permissible limits. Unless expressly agreed otherwise, the Seller does not warrant the composition, quality or durability of the products.

## **12. Procut inspection, notification of defects**

12.1 The Buyer's rights in respect of defects presuppose that he has complied with his statutory obligations to inspect and notify defects, in particular that he has inspected the delivered products immediately upon receipt and has notified the Seller in writing of obvious defects and defects which were easily recognisable in a simple inspection immediately upon receipt of the products, stating the specific complaints and symptoms of the defect, the place, number and date of their occurrence and the products complained about in detail, including production and delivery batches. Hidden defects must be reported by the Buyer to the Seller in writing immediately after their discovery, stating the specific complaints and defect symptoms, place, number and date of their occurrence as well as the products complained about with details of the production and delivery batches concerned. The notification shall be deemed to be without delay if it is made within 5 working days, whereby the dispatch of the notification or complaint shall be sufficient to comply with the dead-line. If the Buyer fails to immediately inspect and/or notify the Seller of defects in accordance with this provision, the products shall be deemed to be approved as free of defects and the Seller's liability for defects shall be excluded for the defect not, not properly or not immediately notified.

12.2 The Buyer shall inspect the products immediately upon receipt in the manner he expects the Seller, who receives the products from his supplier, to inspect the products on receipt. Apart from this, the Seller shall only subject the products delivered to him by his supplier to the random inspection customary in the ordinary course of business with regard to identity, quantity and easily recognisable transport damage.

12.3 The Buyer shall immediately document and notify the Seller of any defects of the products discovered by him or notified to him, stating the place, date and number of their occurrence.

12.4 The Buyer shall give the Seller the opportunity within a reasonable period of time to investigate its notice of defects, customer complaints made in this respect or measures taken by the Buyer in this respect with the involvement of third parties. For this purpose, the Buyer shall submit to the Seller the products complained about, the products processed therewith as well as the test and customer reports made for this purpose.

12.5 If the products are delivered by the Seller in lots which allow a statistical incoming quality inspection according to the usual principles in this respect, at least this inspection shall be carried out as incoming inspection.

12.6 Claims resulting from the fact that the processing of the products is not stopped immediately after knowledge or need to know of a defect are excluded. The same applies if the destination of the products concerned is impossible due to mixing with the same products of different origin or delivery by the Buyer.

## **13. Warranty and Liability**

13.1 Insofar as the following provisions do not provide otherwise, the Buyer is entitled to the statutory claims in the event of a defect in the products at the time of delivery.

13.2 If a defect is present and the Buyer requests subsequent performance, the Seller shall be entitled, at its own discretion and within a reasonable period of time, to first remedy the defect or deliver defect-free products.

13.3 The Seller is entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. The Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.

13.4 The Seller can demand the return of the products concerned from the Buyer at any time. This shall also apply to such products removed from products of the Buyer, stating the place, date and occasion of removal as well as the type and serial number of the Buyer's products affected by such removal.

13.5 If a defect is present at the time of delivery, the Seller shall assume the expenses directly necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, insofar as these have actually been incurred, without profit shares, overheads or other surcharges. Measures are required which contribute in particular to the rectification of the defect and which a reasonable third party would also have undertaken.

- 13.6 If the Buyer has installed the products in his products or attached them to them in accordance with the intended purpose, the Seller shall also bear the expenses directly required for the removal and installation of the products in accordance with Clause 13.5 within the scope of subsequent performance. Otherwise, the Seller shall not be obliged to reimburse any removal and installation costs within the scope of subsequent performance. Expenses or their part which are higher than the usual market expenses at the Seller's place of business or which have increased due to the Buyer refusing a reasonable and suitable subsequent performance offered by the Seller or due to the fact that the products have been taken by the Buyer to a place other than the delivery address, unless the products were intended to be taken to a different place according to the contract and their nature. Furthermore, no expenses are required which are incurred or increased by the fact that the Buyer grants his customers rights or payments beyond their legal claims without contractual obligation or the Buyer waives or does not assert the defences or objections to which he is entitled vis-à-vis his customers.
- 13.7 Insofar as removal and installation of the products is only possible at disproportionate cost, taking into account in particular the value of the products, the significance of the defect and the extent of the products affected, and insofar as the Seller is not responsible for the delivery of defective products, the Seller shall reimburse the necessary expenses only to the extent of three times the order value of the delivery of the products affected. Any liability for damages shall remain unaffected by this provision insofar as the Seller is responsible for the delivery of defective products. In this case, Clause 13.10 shall apply accordingly.
- 13.8 Defect-related consequential damages, in particular lost profits, operating loss costs, profit shares, sorting costs and other business-as-usual costs shall not be deemed to be necessary dismantling and installation costs to be borne by the Seller within the scope of subsequent performance.
- 13.9 Claims under a right of recourse of the Buyer against the Seller in accordance with § 445a German Civil Code for reimbursement of expenses which the Buyer has to bear in relation to his customers are excluded, provided that the Seller is not culpably responsible for the expenses and the last contract for the products in the supply chain is a purchase of consumer products in accordance with § 474 German Civil Code.
- 13.10 If the Seller culpably breaches an obligation towards the Buyer, in particular if he is culpably responsible for the delivery of defective products, the Buyer may claim damages. The Seller's liability for damages resulting from a breach of a guarantee or from injury to life, body or health is unlimited. The same applies to intent, gross negligence on the part of its organs and executive staff, to the mandatory legal liability of the Seller under the Product Liability Act and to liability for fraudulent concealment of defects. For simple negligence, the Seller shall otherwise only be liable in the event of a breach of a material contractual obligation which arises from the nature of the contract, the fulfilment of which is essential for the proper performance of the contract and on which the Buyer may regularly rely. In the case of simple negligence of essential contractual obligations, the liability of the Seller is limited to the foreseeable, typically occurring damage up to a maximum of EUR 50,000.00 per case of damage. In the event of delay and impossibility, liability is limited to a maximum of EUR 10,000.00 per case. Unless otherwise regulated above, the Seller's liability is excluded for whatever legal reason and on whatever basis.
- 13.11 The exclusions and limitations of liability regulated above shall apply to the same extent in favour of the Seller's organs, legal representatives, employees and other vicarious agents.
- 13.12 The Buyer's claims for defects are excluded if he knew of the defect in the products at the time of conclusion of the contract or when the products concerned were called up or if the defect remained unknown to him due to gross negligence. In addition, claims of the Buyer for payment of dismantling and installation costs are excluded if he knew of the defect of the products at the time of acceptance, resale, processing or installation or if he was unaware of it due to gross negligence. The exclusion of liability for gross negligence shall not apply in the case of fraudulent intent or a guarantee of quality by the Seller. Gross negligence on the part of the Buyer shall be deemed to have occurred in particular if the Buyer fails to carry out reasonable inspections in the ordinary course of business or does not immediately arrange for additional inspections of the products following frequent complaints.
- 13.13 The limitation period for claims for defects by the Buyer is one year. For warranty claims for defects and recourse claims in accordance with § 445a German Civil Code, the limitation period begins with the delivery of the products to the Buyer. For all other claims, including claims in tort, the limitation period begins with knowledge or grossly negligent ignorance of the circumstances justifying the claim and

the person of the debtor. If the products have been used for a building in accordance with their normal use, the statutory limitation regulations shall apply. These also apply to the Seller's liability for damages arising from breach of a guarantee or from injury to life, body or health, as well as for malice, intent and gross negligence and in accordance with the Product Liability Act. A statement by the Seller in response to a notification of defects or a complaint does not constitute an acknowledgement or entry into negotiations, unless the Seller expressly declares this to be the case.

#### **14. Product liability**

- 14.1 The Buyer will not modify the products, in particular he will not modify or remove existing warnings about dangers in case of improper use of the products. In the event of a breach of this obligation, the Buyer shall indemnify the Seller in the internal relationship from product liability claims of third parties, insofar as the Buyer is responsible for the defect which gives rise to liability.
- 14.2 If a product defect in the products causes the Seller to recall or issue a product warning, the Buyer shall support the Seller and take all reasonable measures ordered by the Seller. To this end, Buyer shall provide Seller with all documents relating to the production, delivery and complaint of the products. The Buyer shall bear the costs of the product recall or warning to the extent that the Buyer is responsible for the product defect and the damage incurred. Further claims of the Seller remain unaffected.
- 14.3 The Buyer shall immediately inform the Seller in writing of any risks of which he becomes aware in connection with the use of the products and of possible product defects or product failures in each individual case.

#### **15. Industrial property rights and copyrights**

- 15.1 Unless otherwise agreed, the Seller is obliged to provide the delivery without infringing the industrial property rights and copyrights of third parties (hereinafter referred to as property rights), provided that the place of delivery is located in the same country as the Seller's registered office.
- 15.2 If a third party asserts justified claims against the Buyer on account of an infringement of industrial property rights by deliveries made by the Seller and used in accordance with the contract, the Seller shall be liable to the Buyer in accordance with the time limit set out in Clause 13.13 as follows:
- a) The Seller shall, at his own expense and at his discretion, either obtain a right of use for the deliveries concerned, modify them so that the property right is not infringed, or exchange them. If this is not possible for the Seller under reasonable conditions, the Buyer

shall be entitled to the statutory rights of withdrawal or reduction.

b) The Seller's obligation to pay damages is governed by Clause 13.10.

c) The above obligations of the Seller shall only apply if the Buyer notifies the Seller immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and leaves all defensive measures and settlement negotiations to the Seller's discretion. If the Buyer ceases to use the delivery for reasons of mitigation of damage or other important reasons, he shall be obliged to point out to the third party that the cessation of use does not imply any acknowledgement of an infringement of property rights.

- 15.3 Claims of the Buyer are excluded, as far as he is responsible for the violation of property rights.
- 15.4 Claims of the Buyer are further excluded if the infringement of property rights is caused by special specifications of the Buyer, by an application not foreseeable by the Seller or by the fact that the delivery is modified by the Buyer or used together with products not delivered by the Seller.
- 15.5 In all other respects, the provisions of Section 13 shall apply accordingly.
- 15.6 Insofar as software is included in the scope of delivery, the Buyer must comply with the license conditions for the software.

#### **16. Software, intellectual property**

- 16.1 If software or intellectual property is included in the scope of delivery, the Buyer is granted a non-exclusive right to use the delivered software or intellectual property including its documentation within the scope of the intended use of the products. Use of the software or intellectual property on more than one system is prohibited.
- 16.2 The Buyer may only reproduce, transfer, translate or convert from object code to source code the software or intellectual property to the extent permitted by law (§§ 69 a ff. German Copyright Act). The Buyer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the express consent of the Seller or the sub-supplier.

#### **17. Export control, customs duties, disposal**

- 17.1 Delivered products are intended to remain in the country of delivery agreed with the Buyer. Products subject to embargo regulations may not be exported by the Buyer from the country of delivery.
- 17.2 The delivered products are subject in particular to German, European and American export controls and embargo regulations. It is incumbent upon the Buyer Insofar as required by law, the Buyer shall be obliged



to dispose of products which are subject to the German „Electrical and Electronic Equipment Act”, “Battery Act” or “Packing Act” in accordance with all statutory provisions at his own responsibility. The Buyer shall assume all related payment and notification obligations to the extent legally possible and shall impose the above obligations on his customers accordingly.

17.4 The Buyer shall be liable to the Seller for all damage caused by its culpable failure to comply with the provisions referred to in Section 17 and shall indemnify the Seller against any claims by third parties.

17.5 If the Seller is required to pay any new, additional or modified customs duties, levies or similar charges directly in relation to the Buyer or, in relation to the Buyer's products, indirectly in relation to its supplier, which were not foreseeable by the Seller in the price calculation in connection with the products purchased under these Conditions at the time of confirmation of the Order to the Buyer and therefore not appropriately taken into account, the Seller may, at its option, either

a) adjust the price specified in the order confirmation vis-à-vis the Buyer by an amount equal to the change for customs duties, levies or comparable costs without calculating an additional profit for the Seller; or

b) in the event of any unreasonable increase or reintroduction of duties, taxes or similar charges by the Seller, refund any amounts already paid by the Buyer in respect of any affected order and cancel the order without any liability on the part of the Seller arising from such cancellation, subject to Clause 13.10.

When adjusting prices in accordance with lit. a), the Seller shall be obliged to take into account cost increases only by taking into account opposite cost reductions of customs duties, levies or comparable costs and to balance such cost increases and reductions. If the increase amounts to more than 10 % compared to the purchase price originally agreed with the Buyer, the Buyer may withdraw from the contract concluded.

## **18. Data protection**

18.1 Personal data on the part of the Buyer shall in principle only be collected, stored, processed and used by the Seller if, to the extent and as long as this is necessary for the establishment, execution or termination of a contract. Any further collection, storage, processing and use of personal data is only carried out if required or permitted by a legal provision or if the person concerned has consented. The legal basis for the aforementioned data processing is Art. 6 para. 1 sentence 1 lit. b) EU-GDPR.

18.2 The Seller is entitled to transfer the personal data to third parties if and to the extent that this is necessary

to carry out pre-contractual measures and to fulfil a contract (e.g. for shipping, invoicing) in accordance with Art. 6 para. 1 sentence 1 lit. b) EU-GDPR or to fulfil a legal obligation in accordance with Art. 6 para. 1 sentence 1 lit. c) EU-GDPR.

18.3 In addition, for the processing of personal data, especially in connection with the visit of the company website [www.boersig.com](http://www.boersig.com) or the online shop [www.boersig.shop](http://www.boersig.shop), reference is made to the Seller's data protection information.

## **19. Final provisions**

19.1 The transfer of the Buyer's rights and obligations to third parties is only effective vis-à-vis the Seller with the Seller's written consent.

19.2 The place of jurisdiction for all disputes arising from the contractual relationship is the registered office of the Seller. The Seller is also entitled to bring an action at the Buyer's registered office as well as at any other admissible place of jurisdiction. Furthermore, the Seller shall have the right to appeal as plaintiff to the court of arbitration at the Chamber of Industry and Commerce (IHK) Stuttgart. In this case, the court of arbitration shall finally decide the legal dispute in accordance with the Rules of Arbitration of the German Institution of Arbitration (“DIS e.V.”) under exclusion of the ordinary course of law. The initiation of judicial dunning proceedings by the Seller does not yet constitute the exercise of the right of choice and is permissible in any case.

19.3 The contractual relationship including its interpretation and execution shall be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of goods (CISG).

19.4 The place of performance for delivery and subsequent performance is the Seller's registered office. The Seller is also entitled to subsequent performance and rectification of defects at the Buyer's registered office.

19.5 Should any provision of these GTC be or become invalid or unenforceable in whole or in part, or should there be a gap in these GTC, the validity of the remaining provisions shall not be affected thereby. In their place, the effective or feasible provision that comes closest to the purpose of the invalid or unenforceable provision shall be deemed agreed; the same shall apply if a matter requiring regulation is not expressly regulated.