

# **STANDARD TERMS AND CONDITIONS OF PURCHASE**

## **of CFH GmbH\***

**As of November 2019**

### **§ 1 General scope**

1. Our terms and conditions of purchase (T&Cs) apply exclusively; unless we expressly consent to their application, we do not recognise standard terms and conditions from the supplier or contract partner that are contrary to or deviate from our terms and conditions of purchase, in particular in the form of standard terms and conditions of delivery and sale; these will otherwise be rejected. Our terms and conditions of purchase also apply exclusively if we accept a delivery and/or performance from the supplier without reservation in the knowledge of terms and conditions from the supplier contrary to or deviating from our terms and conditions of purchase.
2. With the initial delivery or performance by the supplier on the basis of these terms and conditions of purchase these terms and conditions of purchase shall also apply to all further deliveries by the supplier to us.
3. If framework contracts or individual contracts are concluded between us and the supplier, these shall have priority over the T&Cs. Unless otherwise agreed there in special provisions, they will be supplemented by the present terms and conditions of purchase.
4. All agreements that are concluded between us and the supplier for the purpose of implementation of the contract shall be stipulated in the contract in written or text form. This shall not affect s. 305b German Civil Code (BGB – priority of individually agreed terms) in respect of individual agreements of whatever kind.
5. Our terms and conditions of purchase shall apply *solely* to entrepreneurs as defined in s. 14 BGB, that is, to natural or legal persons or partnerships with legal personality that act in exercise of their trade, business or profession when entering into a legal transaction

### **§ 2 Transmitted data, illustrations, formulas, drawings, calculations**

1. We reserve sole title to and copyright in illustrations, formulas, recipes/information on production or use, drawings, calculations and other documentation and data on our part; the supplier may not make them accessible to third parties without our explicit consent. In addition, they shall be used *solely* for processing our order or for processing the contractual relationship entered into with us and after processing of the order and, in the case of long term commitments, on their termination, shall be returned to us including all copies without request or be destroyed after our request. The supplier shall keep them secret with regard to third parties, insofar as there is no official or statutory disclosure obligation in respect of

them. If these illustrations, formulas, drawings, calculations and other documentation are embodied in data, these shall be deleted completely at any time on our request by overwriting and the supplier shall confirm the deletion without delay in writing or in text form.

2. Products that are made by the supplier or its vicarious agents using documentation and/or recipes and/or data drafted by us and/or our vicarious agents (e.g. drawings, samples or models and similar) or on the basis of information designated or marked by the latter as confidential or with features and/or characteristics of a product that are unknown to the public or their tools or copied tools, may not be used by the supplier itself outside our order or offered or supplied to third parties. The supplier shall agree this including at the cost of its vicarious agents and in our favour as a genuine contract benefitting third parties and shall provide evidence of this to us on first request by us.

### **§ 3 Offers from the supplier / highly personal performance**

1. Offers from the supplier shall be submitted in writing or in text form.
2. Offers from the supplier must describe the delivery / performance item in full and show a complete list and all additional products and/or performances required for the safe and economically efficient use by us of the delivery / performance item and factor them in the supplier's offer.
3. Unless otherwise agreed, goods or components of goods and/or performances or components of performances that are not shown in the supplier's offer but are essential for safe operation or appropriate use of the goods and/or performance in accordance with the agreed properties, are regarded as components of the delivery and/or performance item and are to be provided by the supplier together with this.
4. The supplier shall indicate risks and environmental hazards or the possible infringement of third party rights connected with the supplied goods or provision of the agreed performance, as well as the necessity of special handling of the goods (in particular with regard to storage), together with its offer, and, in the event of new findings by the supplier after preparation of the offer, immediately after knowledge thereof explicitly in writing or emphasised in text form.
5. Unless otherwise agreed, the supplier must provide the performance as a "highly personal performance."

\* Also valid for all German subsidiaries of CFH GmbH (CFT GmbH Compact Filter Technik, CST GmbH Customer Savings Technology, WAT Wärme-Austausch-Technik GmbH und DFT GmbH Deichmann Filter Technik).

**§ 4 Declaration of acceptance, conclusion of the contract, order processing**

1. In order to enable orderly contract controlling for us, only orders in writing and in text form with our sender identification shall be valid.

Amendments and supplements to our order must be in writing or text form. This shall apply to the waiver of the agreement of the written form itself, whereby this shall not affect the priority of individually agreed terms pursuant to s. 305b BGB for all types of individually agreed terms. Our silence with regard to offers, requests or other statements by the supplier shall only be regarded as consent if this was agreed explicitly in writing or in text form. The content of the order is solely decisive for the order.

2. The supplier shall be obliged to show exactly our order number and/or the name of the person ordering on all shipping documents and delivery notes. If this is not done, we shall not be responsible for delays in processing and payment.

The supplier shall acknowledge the order in writing or in text form within 5 working days after receipt of the order (at its registered office), in the case of orders from us in an electronic order platform of the supplier, within 3 working days at the supplier's registered office, whereby receipt of the acknowledgement by us is decisive. Unless otherwise agreed, after expiry of this time limit we shall have the right to revoke our order. Claims by the supplier based on an effective revocation for this reason are excluded.

3. We request an acknowledgement of order as a single copy. Unless otherwise explicitly agreed, offers and cost estimates by the supplier shall be supplied *free of charge* and are nonbinding for us.
4. In the absence of a deviating agreement and subject to other proof, official values, and in their absence values we determine after receipt of the goods, shall be decisive for numbers of pieces, weights and dimensions and quantities delivered. Weights shall be shown in the shipping documents in all shipments, if this is customary or agreed with us or if payment is based on weight.
5. If our order or documents or data on which it is based contain faults, errors, spelling mistakes or miscalculations that are obvious or are detected by the supplier, we shall not be bound in this respect. Rather, in such cases the supplier shall be obliged to inform us without delay of such errors in writing or in text form so that we are in a position to correct and renew our order. This obligation shall apply analogously if recognisably necessary documents are not sent with the order.

In addition, the supplier shall inform us in writing or in text form with the acknowledgement of order if the delivery items are dual-use goods, i.e. goods with a dual purpose; objects, technologies and knowledge that usually serve civil use but can also be used for military purposes and are governed by the EU Dual Use Regulation.

6. The supplier declares its readiness at our request to grant access to its production facilities to authorities and trade associations that are responsible for quality and environmental management, prevention of risks to health or approval of our products, product safety and social security matters at our registered office, at the place of delivery and/or performance and/or at the supplier's registered office, and in this context to provide us with all technical, financial or logistical support that is acceptable for the supplier, if authorities test with regard to a product or substance delivered to us by the supplier, and/or a performance provided for us by the supplier, or lodge a complaint because of alleged breaches of the law through such products and/or performance in which the supplier was involved with a delivery or subcontractor performances, or enabled production or our performance. We agree to act accordingly ourselves in the reverse situation.

7. If the supplier accepts our order only with modifications, it shall make these modifications quite clear in its acknowledgement of order.

8. In addition, the supplier shall inform us in writing or in text form about amendments to contract terms and conditions or order data and/or order terms and conditions.

The supplier shall notify us without delay in writing or in text form of amendments/extensions to the scope of the contract whose necessity does not become clear until performance of the contract. Amendments/extensions shall not become legally valid until we have consented to them in writing. This shall not affect the priority of individual agreements pursuant to s. 305b BGB in oral, text or written form.

9. Unless otherwise agreed with regard to the commissioning of assembly, repair or construction work, before carrying out the work the supplier shall be obliged to obtain sufficient information on local circumstances relevant for the carrying out of the work by inspecting plans in our possession on the type of execution and scope of the work and through an on-site inspection of the construction site and/or the assembly location or the location of other work to be carried out by the supplier.

10. The supplier shall designate and request from us in writing or in text form all documentation that we have to supply in good time before provision of the performance.

11. If the supplier must make material samples, test records, quality documents or other documents available to us in accordance with the contract or as an ancillary obligation, the completeness of the delivery and/or performance requires the complete delivery of these samples, records and documents in German.

**§ 5 Prices, payment, invoice, assignment, setting off, retention, packaging, waste disposal**

1. Unless otherwise explicitly agreed, agreed prices are fixed prices and, unless otherwise agreed in writing, include all costs of packaging, transport to the agreed receiving or

- shipping point (delivery DDP - Incoterms 2010), and for customs formalities and duty. Unless otherwise explicitly agreed, the place of delivery shall be our registered office.
2. Unless otherwise agreed with the supplier, all payments shall be made by bank transfer after complete and due delivery of the goods and surrender of the documentation. If a customer bill or promissory note is given in payment we shall pay the stamp duty and discount in an amount to be agreed.
  3. The applicable VAT is included in the price, unless the price was stated and agreed explicitly to be net.
  4. Please understand that we can only process invoices if, in accordance with the requirements in our order, they show the order number and/or the name of person placing the order and are auditable, and also contain the VAT identification number. If this information is missing, we shall not be responsible for delays in processing and payment.
  5. Unless otherwise agreed in writing, we shall settle incoming invoices
    - within 14 days counting from the date of the invoice with 3% discount,
    - net within 30 days counting from the date of the invoice.

Discount deductions are also permissible if we make use of a right to set off.
  6. Payments by us shall not be regarded as acceptance or waiver of possible defect rights and do not represent any recognition of performance of the contract.
  7. Unless otherwise agreed, in the event of acceptance of early delivery and/or performance the payment term shall be based on the originally agreed delivery date.
  8. In the event of incomplete or defective delivery and/or performance we shall have the right to retain payment until due performance in whole or pro rata in the ratio between the due and pro rata defective delivery/performance.
  9. Invoices are to be completed in duplicate by the supplier and posted after performance of the contract separately in accordance with the relevant order to the invoice address shown in the order. All invoicing documents shall be enclosed in full. Part performance invoices shall be marked "Advance invoice", "Part-performance invoice", "Final invoices". Electronic invoices shall not be regarded as due invoicing unless we have explicitly agreed this with the supplier.
  10. If advance payments are agreed, these shall not be due until the supplier issues us with a directly enforceable guarantee from a German bank or Sparkasse that is a member of a deposit protection fund to secure the advance payment.
  11. The supplier shall only be entitled to rights of retention and setting off with regard to claims by us for such claims that we have recognised or were upheld by a court of law. Setting off shall also be valid if the counterclaim that is to be set off is synallagmatic with our claim (that is, two performances in the contract concluded with us are reciprocal).

We shall have the right to set off against claims with claims by companies affiliated to us.

  12. Assignment by the supplier of claims against us shall require our prior consent, unless this involves pecuniary claims in the course of trade (s. 354a German Commercial Code (HGB)).
  13. The supplier shall pack items/materials to be delivered solely in environmentally friendly containers in such a way that transport and or storage damage is prevented during customary handling. Unless otherwise explicitly agreed with the supplier, packaging for the respective delivery items shall be included in the price. The supplier shall dispose at its own expense of waste that arises on delivery or assembly by the supplier.
  14. If in an exceptional case different agreements were concluded between the supplier and us, the supplier shall charge packaging at cost. In this case, the supplier shall select the packaging that we stipulate and request us in good time in text form to make this selection. If the packaging we selected is not suitable for secure and adequate packaging of the delivery item, the supplier shall inform us of this without delay in writing or in text form.
  15. If the packaging used to ship the goods is invoiced separately on the basis of an agreement, unless otherwise explicitly agreed with the supplier, we remain free to make this packaging available again in a usable condition carriage paid in return for a credit note for at least 2/3 of the invoiced net price. The supplier has the right to show proof that the returned packaging is worth considerably less (at least 10% less). In this case the reimbursement shall be adjusted accordingly.
  16. In the case of the above paragraph 14 we shall have the right to send the packaging to the supplier at its expense.
- § 6 Subcontracts**
- The supplier shall have the right to award subcontracts, *if and insofar as highly personal performance from it was not agreed*. However, in this case of the supplier's right to subcontract we shall have the right to object to the award of subcontracts by the supplier for cause. In this case the supplier shall execute the order itself or through another subcontractor. Cause is found in particular if on an objective basis the subcontractor does not provide a guarantee for the due performance of the contract concluded between us and the supplier and of the work insofar taken over by the subcontractor.
- The supplier shall inform us in good time in writing or in text form of the employment of a subcontractor together

with all relevant information (e.g. trading name, address, qualification, references) in such a way, that we are able to check before the planned performance whether cause as defined above is found and can inform the supplier of the results of the check.

### **§ 7 Delivery, delivery date**

1. Agreed dates and deadlines for delivery and/or performances must be complied with. If an obligation to be performed on the creditor's premises is agreed, compliance shall comprise receipt of the goods on our premises or at the agreed delivery location.
2. The supplier shall be obliged to notify us without delay in writing or in text form if situations occur or become noticeable to it that indicate that agreed delivery or performance dates cannot be complied with. This also applies if the supplier is not responsible for delays in delivery. In the case of a breach of this obligation we shall be entitled to compensation from the supplier for the damage or loss this causes.
3. In the event of delivery or performance earlier than agreed, we reserve the right to return at the supplier's expense or to reject execution of the performance, or to refuse to accept delivery. If goods are not returned in the event of delivery ahead of schedule, they will be stored until the delivery date at the supplier's expense and risk.
4. Part deliveries or performances by the supplier are permissible only after explicit agreement with us. In case of agreed part deliveries, the remaining quantities must be provided unambiguously.

### **§ 8 Transfer of risk, documents**

1. Unless otherwise agreed with us, delivery shall be carried out DDP (Incoterms 2010) and at the supplier's risk until the time of complete delivery and, in the case of performances under a contract for work and services, until acceptance by us at the contractually agreed point of performance.
2. The supplier shall be obliged in the framework of the business relationship to handle each order separately in the overall correspondence. It shall be obliged to refer in all documents, for example, emails, letters, notifications of shipping, delivery and packing notes, invoices, waybills, accompanying addresses at least to the complete order number, order date and the reference number of the buyer as well as our transaction number. If delivery ex works is agreed, the supplier shall prepare and transmit to us the waybill, customs and shipping documents and package lists immediately EXW.
3. Single copies of the above-mentioned papers such as invoices, delivery notes and packing slips shall be enclosed with each shipment. In the case of deliveries of goods, the minimum contents of these documents are:

quantities and unit of quantity, gross, net and where applicable calculated weight, as well as the order

number, article description, remaining quantity in the case of part deliveries, and our order number.

4. The supplier shall be obliged as an essential contractual obligation to hand over to us with the delivery of the goods the certificates of origin and quality with regard to the delivery items in German or English. *Payment for these is already included in the payment for the main performance.*
5. In the case of contracts for work and services and purchase agreements in which acceptance of the delivery item is agreed, transfer of risk shall not take place until our formal acceptance of the performance and/or delivery. In other cases the transfer of risk takes place with delivery of the delivery item at our premises or at the agreed place of delivery and performance. Fictitious acceptances are excluded in these cases.

### **§ 9 Delay**

1. In the event of delay in delivery and/or performance on the part of the supplier, we shall be entitled to the full statutory rights. In particular, we shall be entitled following expiry of a suitable period of grace to demand damages instead of performance.
2. In the event of delay in delivery and/or performance on the part of the supplier, we shall be entitled to demand a contractual penalty in the amount of 0.5% of the net payment for the delayed delivery or performance per complete week of delay, but not more than a total of 5% of the net payment for the delayed delivery or performance; we reserve further statutory rights, in particular claims for damages, but taking the contractual penalty into account in full. We may claim the contractual penalty within three months after becoming aware of the delay.
3. In the case of a threatened delay in delivery and/or performance, or one that has already occurred, the supplier shall on demand allow us to inspect its complete relevant documents in connection with the legal relationship on which the delivery or performance with regard to its component suppliers and/or subcontractors is based and designate us with regard to all relevant component suppliers and suppliers as contractors with the right to inspect. However, the supplier shall be obliged to disclose operational or business secrets as defined in s. 2 German Business Secrets Act, that is such information and/or data that are known only to a narrow group or persons, refer to our company, have a financial value and are identifiable, only after it is in possession of an offer from us regarding a confidentiality agreement that binds us with regard to the information to be disclosed for the benefit of the supplier.
4. If in case of a delay in delivery and/or performance on the part of the supplier there is an objective reason for this for our benefit, the supplier shall grant us the rights to contact all relevant component suppliers and suppliers directly on its part in the framework of order processing for us, in order to avert a delay in delivery and/or performance resulting from this or to shorten it as far as possible.

5. The supplier shall remain fully responsible for the order in the event of circumstances in accordance with the above-mentioned paragraphs 3 and 4.
6. Acceptance of a delayed delivery shall not comprise a waiver of claims for damages and a contractual penalty agreed for our benefit.

#### **§ 10 Change management**

1. The necessity of changes to the order content cannot always be avoided because of demands for change by our end consumers. We shall therefore have the right to demand changes to the delivery item even after conclusion of the contract in accordance with the following rules, if the modifications are objectively technically and logistically reasonable for the supplier, taking account of its object of business, its production and performance skills and its order book. The supplier shall check the demand for change without delay and notify us of its effect on the contract structure without delay in writing. This obligation to notify shall include a statement on whether the desired changes are technically and/or logistically possible and expedient in the first place, as well as a statement on the effects of the requested changes on the previously agreed contract structure, for example, concept, deadlines, dates, acceptance modalities and payment, in the form of an offer. We shall then decide without delay on implementation of the changes with respect to the supplier.
2. The change shall become a component of the contract with the positive decision and agreement on the changes to the terms of the contract.
3. A change to the contract terms by the supplier may not be demanded in case of technical changes that are financially insignificant for the supplier.

#### **§ 11 Acceptance**

1. All performances by the supplier for which acceptance is possible are subject to formal acceptance. If the check of the supplier's performances requires start-up of a system or machinery, the acceptance will not take place until after successful conclusion of the function tests. In other cases, unless otherwise explicitly agreed the test time limit for us shall be 21 calendar days after receipt of the completion notice. The supplier insofar waives the defence of late notice of defect.
2. If the supplier has to provide a performance that requires acceptance by us, the supplier shall be obliged to notify us in writing or in text form of its request for acceptance not less than 21 calendar days before the date to be agreed for the acceptance.
3. If defects are detected during the acceptance inspection, a partial acceptance of performances free of defects is possible after consultation with us, without the supplier having a legal right to this. However, this partial acceptance shall not be regarded as final acceptance as defined in s. 640 BGB.

4. Acceptances require an acceptance record in writing or text form that is signed on the part of the parties. Acceptance fictions are explicitly excluded, if we do not use the results of the work commercially for the intended purpose other than for test purposes for more than 30 days continuously.

#### **§ 12 Defects investigation, warranty, liability for defects, limitation period for claims under material defects and defects of title**

1. The supplier warrants, and in the scope of application of the United Nations Convention on the International Sale of Goods (CISG), guarantees that (i) all deliveries/performances conform fully to the agreed specifications and/or recipes, are free from impurities and pesticides, in the case of technical items conform to the **state of the art** at the time the contract was concluded, the relevant legal provisions and the regulations and directives of authorities, trade associations and professional associations of the Federal Republic of Germany and the European Union, in particular, where relevant, the EU Machinery Directive, and the country of use that was notified before the conclusion of the contract, and (ii) conform to the agreed specifications and (iii) are suitable for the intended purpose that we notified, and (iv) have those properties that delivery items or performances of the type commissioned commonly possess.

In addition, the supplier warrants, and in the scope of application of the United Nations Convention on the International Sale of Goods (CISG), guarantees the environmental compatibility of the delivered products and the packaging materials.

The supplier shall be obliged to comply with all relevant statutory provisions and directives regarding the delivery item and/or the contractual performances. If compliance with technical regulations and standards is agreed for the products or their components, such as CE, CSA, or UL and EAC specifications, the supplier shall provide us with proof of this and shall make the proof available to us with the invoice as a prerequisite for payment for the demand for payment. Together with the supplier's contractual obligation these specifications must be conformed to in particular so that customs regulations can be complied with.

2. We shall be entitled without restriction to the statutory claims based on defects and in the scope of application of the United Nations Convention on the International Sale of Goods (CISG) the rights resulting from this in cases of defective delivery and/or performance.
3. We shall have the right in any case to demand at our option remedy of the defect or delivery of a new item.
4. If the products delivered do not conform to the warranty provided by the supplier or, in the scope of application of the CISG, the guarantee, the supplier shall be liable for all resulting damage including consequential damage to the statutory extent.

5. In the case of a warranty claim (*breach of duty based on defective performance*) the supplier shall be obliged to pay all expenses that are required for the purpose of remedying the defect or the substitute delivery. These shall include as well sorting and dismantling and reinstalling costs for the delivery item. The supplier shall also pay costs that arise or increase through the delivery item being brought to a location other than our branch. The re-working location is the place at which the delivery item is located in accordance with the terms of the contract at the time of the notice of defect.
  6. We shall be entitled to check quality or quantity deviations of the goods by taking representative random samples, if this conforms to due and proper business operations and the type and scope of the delivery.
  7. If the supplier is in default with the elimination of a defect we shall be entitled to demand flat-rate compensation for delay in remedying the defect in the amount of 0.5% of the agreed net payment, but not exceeding 5% of the agreed net payment, for the defective delivery and/or performance for each full period of 7 calendar days of delay for the defective delivery or performance without further evidence of damage. However, the supplier shall have an opportunity to prove to us that we did not suffer any damage, or suffered considerably less (= at least 10% less) damage. This shall not affect further statutory and contractual rights and, in the scope of application of the United Nations Convention on the International Sale of Goods (CISG), rights on our part that result from this. The above-mentioned contractual penalty shall be set off in full against any claim for damages. We may claim the contractual penalty within three months after becoming aware of the delay by the supplier in remedying the defect.
  8. In the case of defects of title based on a culpable breach of duty by the supplier or its vicarious agents, the supplier shall indemnify us and our buyers against claims in this regard by third parties, including the costs of a legal defence and our administrative costs. The above-mentioned indemnification obligation shall not apply if the supplier produced its delivery or performance on the basis of documentation we handed over, for example models or drawings, or on the basis of our explicit order, and could not know that this resulted in infringements of third-party proprietary rights.
  9. If we take back products we made and/or sold as a result of the defectiveness of the delivery item delivered by the supplier or if claims are asserted against us in any other way, we shall be entitled to unrestricted recourse against the supplier, where the otherwise necessary setting of a time limit is no longer required for the exercise of our defect rights.
  10. Claims by us against the supplier based on material defects shall become time-barred in the case of purchase contracts 36 months after transfer of risk, and 36 months after acceptance in the case of contracts for work and services, unless a longer limitation period in respect of warranty applies under law, in which case the latter shall apply.
  11. The limitation period for defects in title is 5 years, calculated from acceptance; if acceptance is not provided for, from delivery of the results of the performance owed under the contract.
  12. If the supplier is subjected with our agreement to a test of the existence of a defect or the remedy of the defect, the limitation period is suspended until the supplier has notified us of the finding of the test in writing or in text form, or declares to us in the above-mentioned form that the defect has been eliminated, or it refuses to continue with the elimination or refuses the elimination itself in writing or text form.
- § 13 Force majeure**  
Unless we have assumed warranty liability, force majeure, industrial disputes, interruptions of operations for which we are not responsible, riots and other unavoidable incidents shall entitle us to withdraw from the contract wholly or in part, without prejudice to our other rights, insofar as they are not of insignificant duration (i.e. do not last less than 4 weeks) and result in a considerable reduction of our demand and we notify the supplier of the hindrance without delay.
- § 14 Product liability, indemnity, liability insurance cover**
1. Insofar as the supplier is culpably responsible for product damage we suffer, or a third party that we supplied suffers, unless otherwise explicitly agreed it shall be obliged to indemnify us and our buyers against all claims by third parties for damages and reimbursement of expenses where the cause is found in its area of control and organisation. Together with payment of damages to third parties the supplier's obligation to indemnify shall also include the usual and necessary costs of a legal defence (up to an hourly rate of EUR 300.-- plus any VAT that may be due), recall costs, costs of testing, installation and dismantling costs.
  2. In the framework of its liability for cases of damage as defined in paragraph 1, the supplier is also liable to reimburse any expenses that arise from or in connection with a recall action we carried out. Where possible and reasonable in terms of time, we shall inform the supplier in advance of the content and scope of the recall measures that are to be carried out and give it an opportunity to make a statement. This shall not affect other statutory or contractual rights.
  3. The supplier shall be obliged from the date of the first conclusion of the contract with us to maintain public liability insurance with minimum cover of EUR 5,000,000.00 per case of personal injury/damage to property and EUR 1,000,000.00 for financial losses, flat rate, for a period up to 38 months after the last delivery to us and/or performance; if we have further claims for damages, these shall not be affected by this. The supplier shall provide us with evidence on first demand of the above-mentioned insur-

ance and of payment of the premiums. If evidence of the insurance and of payment of the premiums is not provided to us within 7 calendar days following our demand, we shall be entitled to withdraw wholly or partly (with regard to the part that has not been performed) from contracts that have not yet been performed.

#### **§ 15 Rights of use, inventions**

1. Insofar as recipes, drawings, individual electronic data processing programs, photo and print material and layouts for print media or other documents and/or data are created during the deliveries or performances that the supplier has to implement for us, we shall receive an exclusive assignable right to use these in all types of use, unlimited as to time, location and contents, which is paid in full with the agreed price.
2. Insofar as the deliveries or performances are protected by the supplier's copyright, the supplier shall grant us an irrevocable, assignable right, unlimited as to time, location and contents, to use the delivery or performance in all types of use in any manner without charge, in particular to reproduce, disseminate, exhibit and to change and process.
3. Insofar as copyrighted rights of use, industrial property rights and/or other rights in the results of the performances and other written, machine readable and other work results are created during the deliveries or performances that the supplier has to implement for us, we shall be entitled to these as part of the performance exclusively and without restriction, and they are paid in full with the agreed price. The supplier shall be obliged to notify us without delay in text form of the existence of such circumstances and to coordinate further action with us.
4. The supplier shall also be obliged to claim inventions of its employees and, where applicable, component suppliers at its own expense with indemnity for us so that it can assign rights in these inventions to us.
5. Insofar as we apply for a property right for the invention we shall pay the costs arising for the application for and maintenance of the property right.
6. If we decide against applying for inventions/work results, or if we are no longer interested in an existing property right, the supplier may pursue the application or maintenance of the property right at its own expense. However, in this case we shall retain free of charge a nonexclusive and assignable right to use.
7. Insofar as the use of property rights of the supplier that the supplier already had before providing the delivery or performance is necessary in the framework of exploitation by us of the deliveries or performances, the supplier shall provide us with a nonexclusive and assignable right to use these property rights, which is paid in full with the agreed price.

#### **§ 16 Spare parts and readiness for delivery**

1. Unless a different spare part availability was explicitly agreed with us, the supplier guarantees that delivery of spare parts is ensured by it for a period corresponding to the usual technical availability period of the delivery item, but not less than 10 years after delivery to us of the last delivery of the relevant delivery item. The supplier shall be obliged to supply us during this period with these parts under customary economic and legal terms and conditions.
2. If the supplier intends to discontinue delivery of spare parts that are the subject of the contract for the delivery item after expiry of the above-mentioned time limit, we shall be given an opportunity with advance notice of not less than 90 calendar days to submit a final order, which must be able to correspond at least to the last average order quantities for the product concerned in the previous three years. This shall also apply in case of discontinuance before expiry of the time limit, whereby we shall not lose our claims for damages through the repeat order.

#### **§ 17 Provision, co-ownership, retention of title**

1. Raw materials, tools, materials, parts, containers and packaging that we supply may only be used by the supplier for the intended purpose for implementation of the order we issued by the supplier. If they are passed to subcontractors, the supplier shall ensure this on the part of the subcontractors as a contract for our benefit and show proof to us without request.
2. Tools and recipes we provide shall remain our property.
3. If we provide parts to the supplier we shall retain title to them (**reserved goods**). Processing or restructuring by the supplier shall be done for us. If our reserved goods are processed with other items that do not belong to us, we shall acquire co-ownership of the new thing in the ratio of the gross value of our thing (purchase price plus VAT) to the other processed things at the time of processing.
4. If the thing we provided is inseparably mixed with other things that do not belong to us, we shall acquire co-ownership of the new thing in the ratio of the gross value of the reserved goods (purchase price plus VAT) to the other mixed things at the time of mixing. If mixing is carried out in such a way that the supplier's thing is to be regarded as the principal thing, it is deemed to be agreed that the supplier assigns us pro rata co-ownership in the above-mentioned ratio; the supplier shall safeguard ownership or co-ownership for us.
5. The supplier shall be obliged to insure raw materials and tools that belong to us and that we make available to it against damage by fire, water and theft at replacement value at its own expense. At the same time, the supplier hereby assigns to us all claims for compensation under this insurance; we hereby accept the assignment.
6. The supplier shall also be obliged to carry out necessary maintenance and inspection work for our tools and all

servicing and repairs at its own expense in good time and to show us proof of the implementation. It shall notify without delay in writing of any malfunctions of the machinery and/or tools that were handed over; if it culpably fails to do this, we shall be entitled to a claim for damages in the event of damage.

7. Insofar as the security rights to which we are entitled in accordance with paragraphs 1 to 6 exceed the purchase price of all our reserved goods that have not yet been paid by more than 10%, we shall be obliged on demand by the supplier to release security rights at our option.

### **§ 18 Third party property rights**

1. The supplier guarantees that no rights of third parties within the Federal Republic of Germany and the European Union and the country of delivery and/or use of the delivery item and/or the performance that is made known to us with the order are infringed in connection with its delivery and/or performance. Liability shall be excluded if the supplier proves that it neither knew nor could know of the existence or the future creation of such rights when delivering the delivery item or providing the performance.
2. If claims are asserted against us by a third party because of a culpable infringement of rights under paragraph 1 by the supplier, the supplier shall be obliged to indemnify us against these claims on first written demand; we shall not be entitled to conclude agreements of any kind with the third party, in particular to conclude a settlement with the owner of the rights, without the consent of the supplier.
3. The supplier's indemnification obligation refers to all expenses that necessarily arise for us from or in connection with the claim by a third party.
4. The limitation period for liability arising from infringement of property rights shall commence as soon as the claim comes into being and we acquire knowledge of the circumstances establishing the claim, or should have acquired without gross negligence. The limitation period for claims of this nature on our part is 5 years.

### **§ 19 Materials and secrecy**

1. All commercial or technical or product-related information, calculation data, preparation guides, recipes, internal production information and data, of whatever kind that we made available to the supplier, including other development or production characteristics shown in writing, as samples, properties or as data that can be seen in any items, documents or data that were handed over and other knowledge or experiences acquired by us or our customers that are notified to the supplier, shall be kept secret from third parties as long and so far as they are not demonstrably public knowledge, or there is a statutory or official obligation to disclose, and may only be made available to such persons in the supplier's operations who have necessarily to be included to use them for the purpose of the delivery or performance for us and are also obliged in writing to secrecy; they shall remain our sole property.

2. With the exception of deliveries to us, such information may not be reproduced or used commercially without our prior explicit agreement. The above nondisclosure agreement shall continue to apply after the end of the delivery or performance relationship until it lawfully enters the public domain, but for no longer than 5 years after the end of the contract processing between us and the supplier in relation to the contract in the context of which the relevant information was disclosed or handed to the supplier. The above obligation of secrecy shall not exist if the supplier can prove that it developed the transmitted information itself legally before disclosure, or was already aware of it (whereby the supplier shall inform us of this in writing or in text form without delay after transmission of the information, but no later than within 14 calendar days after this; if this is not done, it may no longer have recourse to this exception), or this entered the public domain by means of a written statement on our part, or there is a statutory or official obligation to disclose.
3. All information and data that originates from us (where applicable including copies or records that were made) and items handed over as loans shall be returned on demand by us without delay and in full or destroyed and the destruction confirmed in writing or in text form. If the information that was passed to the supplier is incorporated in data, these shall be deleted in full by being overwritten at any time on first demand by us and the deletion confirmed in writing and without delay.
4. In addition, in the case of data we transmitted to the supplier we have the right to submission to us by the supplier of a declaration of discontinuance under penalty that contains a contractual penalty for each culpable incident of contravention of the declaration of discontinuance of further use of data that we transmitted or copies thereof, their return or deletion by the supplier, which we may stipulate at our reasonably exercised discretion (§. 315 BGB) relative to the payment for the supplier and the tendency to cause damage of the breach of duty. This may be reviewed by the courts and reduced on application by the supplier (§. 315 III BGB). The supplier shall not be obliged to discontinue if it is subject to a statutory duty to disclose or use data.
5. We reserve all rights to such information and data (including copyright and the right to apply for industrial property rights such as patents, utility models, trademark protection, etc.). Insofar as these were made available to us by third parties, this reservation of rights shall apply as well for the benefit of these third parties.
6. Licences or warranties are not connected to samples, models, information and/or data passed to the supplier.
7. The supplier may not use, offer or supply to third parties any products that are produced using materials we drafted, e.g. drawings, samples or models or similar, or based on our confidential information or with our formulas that are not in the public domain or our tools or recreated tools.



## **§ 20 Safety regulations, other requirements for deliveries and performances**

1. The supplier shall comply for its deliveries with safety regulations applicable in the Federal Republic of Germany and the European Union and in the country of delivery and/or use for the delivery item and/or the performance that was made known to it on conclusion of the contract and shall conform with its delivery/performance to the technical data or limit values corresponding to the state of the art on conclusion of the contract or the agreed more stringent technical data or limit values and our supplier code, as may be amended from time to time.
2. The supplier shall be obliged to use only materials that conform to statutory safety requirements and regulations, as amended from time to time, in the European Union, in particular for toxic and hazardous substances and, where relevant, the REACH Regulation of the EU (Regulation (EC) 1907/2006). This applies analogously to safeguards to protect the environment and regulations in connection with electricity and electromagnetic fields. The above obligation comprises all regulations that are applicable with regard to the contractual delivery and/or performance in the Federal Republic of Germany, the European Union and the country of use notified to the supplier before conclusion of the contract, and, if deviating from these, including regulations in the buyer countries that were notified to the supplier before or with the order. The supplier shall show us proof of compliance with these regulations on first demand and shall cooperate in providing appropriate verifications for the respective competent authorities.
3. We shall have the right to withdraw from the contract if the supplier's products do not conform to the requirements shown in paragraphs 1 to 2. This shall not affect further claims for damages by us.
4. Intended changes to the delivery and performance item must be notified to us in writing or per text form. They require our prior written approval.

## **§ 21 Quality and documentation**

1. Unless otherwise explicitly agreed, the supplier shall pay the costs of conformity declarations, certificates of origin and other proof of certification. (e.g. where relevant ISO 9001, ISO 13485, CE, CSA, or UL specifications). Conformity declarations shall be submitted to us without delay with each delivery in German and English.
2. Regardless of this, the supplier shall comply with the quality of the delivery item and check it continuously until delivery. It shall notify us without delay of possible improvements. The supplier shall point out noticeable errors in specifications and foreseeable complications to us without delay in writing or in text form.

This shall be ensured and documented by means of suitable testing and measuring methods. We shall have the right to demand publication in written form of the findings of this review at any time and without additional costs.

3. The scope of delivery comprises the product-specific and/or technical documentation, the conformity certificates (at our option in German and/or English) and other records, certificates and operating instructions required for the ordered item or its use, warning notices and other user information at our option in German and/or English, as well as the statutorily required marking of parts and the product and/or their packaging.
4. The supplier shall ensure that exact traceability of the delivery item is guaranteed via batches or serial numbers.

## **§ 22 Software**

1. If the delivery item contains software created for us, we shall without further payment acquire the source code and the right to use the software as well in companies affiliated with us pursuant to s. 15 German Companies Act or otherwise pursuant to company law, to reproduce it optionally, to amend it and to consign it jointly with the delivery item to third parties globally with or without charge.
2. We shall have the right to reverse translation of software for the purposes of maintenance and further development. If the supplier develops individualised software for us, we shall be entitled to unrestricted use and exploitation of the source code at our option
3. Payment for software shall not be due until after implementation of a formal acceptance procedure with a written declaration of acceptance on our part.
4. In case of the delivery of software subsequent performance through new program versions is permissible only following our prior explicit approval. If our approval is granted, the supplier shall be obliged to instruct our employees in the new program version at its own expense.

## **§ 23 Auditing**

1. We, and as a genuine contract for the benefit of a third party as defined in s. 328 BGB, our customers (**authorised to audit**) as well, shall have the right, including with regard to our own possible certification, but are not obliged, to carry out an audit of the supplier ourselves or to have this done by an expert and/or consultant at our option. This comprises a review of the supplier's operations and quality assurance system and a subsequent assessment. The supplier shall ensure in the framework of its legal possibilities that its component suppliers grant us and our customers the same right to audit. The knowledge acquired in this way will be used for the basis of further awards of contracts and for the internal rating of the operations by us.
2. We, and those referred to in paragraph 1 as authorised to audit, shall have the right to inspect the supplier's current operations with prior notice and to monitor quality assurance methods during the usual hours of business and following prior notice.
3. If we provide evidence of a legitimate interest, we have the right to inspect the supplier's relevant documents. A

legitimate interest of this kind is found in particular if findings could be acquired in this way that enables an assessment of the necessity and scope of a recall.

4. In the framework of the exercise of our rights in accordance with the above paragraphs 1 to 3, the supplier is not obliged to disclose business secrets as defined in s. 2 Business Secrets Act (see §9 paragraph 4), unless those authorised to audit who are exercising the right to audit offered in writing to conclude a nondisclosure agreement with regard to the above-mentioned.

#### **§ 24 Minimum Wage Act**

1. The supplier shall be obliged to comply fully with the requirements of the Minimum Wage Act (MWA) with regard to its employees and shall guarantee compliance with the provisions of the MWA by any subcontractors it employs.
2. If the supplier culpably breaches an obligation under the above paragraph 1, it shall be obliged to indemnify us against all claims by third parties in this respect. In addition, we shall have the right in this case to withdraw from all contracts with the supplier in respect of the part that is not yet performed. Claims by the supplier based on the withdrawal are excluded.
3. The supplier shall be obliged without delay at first demand to provide us with evidence of compliance with the provisions of the MWA in respect of its employees or the employees of subcontractors it employs by means of appropriate evidence of wage payment. If the supplier is in default with this for longer than 30 calendar days, the above paragraph 2, sentence 2 shall apply analogously.

#### **§ 25 General terms and conditions, severability clause, venue, choice of law, data storage**

1. Reference to the business relationship with us may only be made to third parties for advertising purposes or as a reference with our explicit approval.
2. The statutory regulations shall apply if a provision of this contract is or becomes wholly or partly invalid/void or infeasible as a result of the provisions governing standard business terms in sections 305 to 310 BGB.  
If a current or future provision of the contract is or becomes wholly or partly ineffective/invalid or infeasible for reasons other than the provisions governing standard business terms in sections 305 to 310 BGB, this shall not affect the validity of the remaining provisions, unless implementation of the contract, even taking the following rule into account, would represent an unreasonable hardship for one of the parties. This shall apply analogously if a gap requiring supplementation arises after conclusion of the contract.  
The parties shall replace the provision that is or becomes wholly or partly ineffective/invalid or infeasible for reasons other than the provisions governing standard business terms in sections 305 to 310 BGB or a gap requiring supplementation with a valid provision that in its legal and economic content corresponds to the ineffec-

tive/invalid/infeasible provision and to the overall purpose of the contract. Section 139 BGB (partial invalidity) is explicitly excluded, including for the purposes of a rules of evidence. If the invalidity of a provision in the above-mentioned case is based on a dimension for the performance or time (period or date) contained therein, the provision is to be agreed with a legally permissible dimension that most approaches the original dimension.

3. The laws of the Federal Republic of Germany shall apply exclusively. If the preconditions of Art. 1, 3 CISG are fulfilled, the provisions of the United Nations Convention on the International Sale of Goods (CISG) shall apply.
4. If court proceedings are held in the Federal Republic of Germany the contract, procedural and court language is German.
5. The place of performance is the agreed delivery/performance location, in the absence of such agreement the location of our registered office.
6. The venue is the location of our company's registered office. However, we also have the right at our option to sue the supplier at the location of its registered office or at the location of the provision of performance.
7. We store data from the contractual relationship pursuant to s. 26 German Federal Data Protection Act and the General Data Protection Regulation (EU) for the purpose of data processing.

Gladbeck, November 2019

**CFH GmbH**