



## Sales Conditions for the Automotive Industry

### 1. Scope

- 1.1 These Sales Conditions for the Automotive Industry (hereinafter "**Sales Conditions**") shall apply to all offers, declarations of acceptance and contracts (in whatever form, including, without limitation, any framework agreements, delivery schedules, annual orders, and delivery call-offs of the customer) of Henkel AG & Co. KGaA (hereinafter "**Seller**") for the delivery of products, including advice thereon, and other related services (hereinafter the products "**Delivery Item(s)**" and jointly with the services "**Service(s)**") vis-à-vis entrepreneurs, legal entities under public law and special funds under public law (hereinafter each equally "**Purchaser**", Seller and Purchaser hereinafter each a "**Party**" and collectively the "**Parties**") in the field of (direct or indirect) automotive industry including e-mobility and products for the field of "After Sales"/"Vehicle, Repair and Maintenance" (VRM), in their most current version. Any terms and conditions of the Purchaser deviating from or supplementing these Sales Conditions, including, without limitation, any quality, logistics and/or packaging terms and conditions, manuals, norms and/or standards (hereinafter "**Purchaser Terms and Conditions**") shall only apply if the Seller expressly acknowledges such terms and conditions in writing. This shall also apply in particular if the Seller, being aware of deviating or supplementary Purchaser Terms and Conditions, carries out deliveries without reservation or accepts payments or fulfils requirements of the Purchaser in accordance with such Purchaser Terms and Conditions in whole or in part. Confirmation of the Purchaser Terms and Conditions, for example in portals, shall expressly not be deemed to be acceptance thereof.
- 1.2 Within the scope of an ongoing business relationship, these Sales Conditions shall also apply to all future transactions concerning the above deliveries and/or services with the Purchaser.
- 1.3 The Seller clarifies that, unless expressly agreed otherwise in writing, the Delivery Items are in particular process materials, other direct or indirect materials, injection molded parts, seal pads, 2D pads, 3D parts in particular for "acoustics & structurals" and/or cleaning cloths (wipes), but not components, set parts, electronic components, hardware, software or engine control units or parts for engine control units. Any laws, regulations and/or contractual provisions of Purchaser relating to the aforementioned product groups shall therefore not apply. Also, due to the nature of the Deliverables, Seller shall not provide prototypes except for injection molded parts and seal pads, unless expressly agreed. Laws, regulations and/or contractual provisions of the Purchaser in this respect shall therefore also generally not apply.
- 1.4 All contractual agreements between the Parties shall apply exclusively *inter partes*. Group companies of the Seller within the meaning of sections 15 et seq. of the German Stock Corporation Act (*AktG*) are entitled to refer to agreements between the Parties, but not third Parties, in particular Tier 1 suppliers of the Purchaser, unless expressly agreed otherwise in writing.

### 2. Offer and conclusion of contract

- 2.1 The offers of the Seller are subject to change and are to be understood only as an invitation to place an order, unless the Seller determines otherwise. By placing an order, the Purchaser submits an offer in each case. Conclusion of a contract shall generally require a written order confirmation or other written contractual statement by the Seller and shall be governed exclusively by the content of the order confirmation or written contractual statement by the Seller and/or by these Sales Conditions. In particular, releases in portals of the Purchaser shall not fulfill the written form requirement, unless expressly agreed otherwise. In no case shall a contract be concluded between the Parties on the basis of fictitious consent or silence on the part of the Seller. The Seller reserves the right to accept an order of the Purchaser by executing a delivery. However, this shall only apply to the extent that the order complies with the terms and conditions agreed between the Parties (in particular, but not exclusively, the agreed prices).
- 2.2 To the extent that Purchaser places orders or delivery schedules via EDI, the order or delivery schedule (hereinafter equally an "**Order**") shall be deemed accepted to the extent that the Order (i) complies with the prices and terms agreed in writing between the Parties, (ii) does not exceed any Forecasts (as defined in section 3 below), (iii) Seller has not notified any supply shortage for the ordered products and (iv) Seller does not reject the Order (depending on the complexity of the Order and the resulting verification requirements at Seller) within four (4) weeks. In all other respects, i.e. in the case of section 2.1, Seller may accept Purchaser's Orders within two (2) weeks after submission, unless Purchaser specifies a longer acceptance period. Acceptance of the offer shall be at the Seller's discretion. Non-acceptance or rejection shall not give rise to any claims on the part of the Purchaser, including to claims for reimbursement of any damage suffered by the Purchaser in reliance on acceptance of the Order, in particular, if the offer for an individual contract for Delivery Items based on a blanket order is rejected.
- 2.3 Any delivery of the Seller upon conditions unilaterally transmitted by the Purchaser and deviating from the Purchaser's Offer is purely a gesture of goodwill and subject to all rights. Verbal agreements before and after the conclusion of the contract shall only be binding if they are confirmed in writing (including by e-mail) by the Seller.
- 2.4 Delivery conditions including INCOTERM clauses (as amended from time to time) to which the Purchaser refers in the Order shall only become part of the contract if they are expressly confirmed by the Seller in writing.
- 2.5 Purchaser Terms and Conditions, other requirements of Purchaser, regulations and standards including VDA, IFRS and IMDS shall only apply if Seller has expressly agreed to them in writing and only in the respective agreed version. Otherwise, the Purchaser is not obligated to comply with them and expressly objects to them.

### 3. Delivery schedules and Forecasts

- 3.1 If the Parties have concluded an individual contract for Delivery Items on the basis of a blanket order and the delivery quantities and delivery dates have not yet been agreed, the individual deliveries shall be specified by delivery call-offs of the Purchaser. The following provisions shall apply to delivery call-offs.
- 3.2 Simultaneously with each delivery call-off, Purchaser provide Seller with a preview of the delivery call-offs to be expected in the next twelve (12) months ("**Forecast**"). Seller shall adjust its production and delivery capacities in a reasonable manner to the extent possible. Seller expressly disclaims any volume and/or capacity assurance or commitment in any form unless otherwise expressly agreed in writing. Should the Parties have agreed in writing on a capacity commitment, this shall in any case not be understood as a guarantee by Seller and shall be limited to the basic, technical readiness for production at the respective production site and shall in particular not contain any declaration regarding the availability of raw materials.
- 3.3 Each delivery call-off received by the Seller shall at the same time include the release for production and delivery of the called-off Delivery Items.
- 3.4 The lead time for Delivery Items for make-to-stock deliveries (MTS) shall generally be seven (7) working days for domestic deliveries and twelve (12) working days for cross-border deliveries from receipt of the delivery call-off, unless otherwise agreed or notified to the Purchaser in writing. For make-to-order deliveries (MTO), the agreed lead time, otherwise the lead time notified to the Purchaser in writing shall apply.
- 3.5 Minimum order values, minimum order quantities (MOQ) and minimum order units (MIQ) (jointly and individually hereinafter "**Minimum Quantities**") notified by Seller to Purchaser shall be observed. In principle, unless otherwise agreed, only full pallets can be ordered and delivered.
- 3.6 Delivery call-offs are binding for the Purchaser as soon as they have been received by the Seller. In all other respects, section 2.2 shall apply.
- 3.7 Unless expressly agreed otherwise, the Purchaser's respective Forecast shall be binding as follows:
- (a) For the manufacture and delivery of the finished Delivery Items in the week in which the Forecast is transmitted and in the following week (so-called "**Frozen Zone**"), the Purchaser shall be bound by its Forecast and shall be obliged to order and accept in accordance with the Forecast. If, in an individual case, the Seller agrees to a change in the delivery schedule within this period and if the Purchaser is responsible for this change in the delivery schedule, the Seller may charge the Purchaser a contractual penalty of at least EUR 1,500. The payment of the contractual penalty shall not exclude the assertion of a claim for damages in excess thereof upon corresponding proof. The contractual penalty shall be offset against any possible compensation for damages.
  - (b) For the manufacture and delivery of the finished Delivery Items during a period of two (2) to five (5) weeks after transmission of the Forecast (so-called "**Short Term**"), the Purchaser shall be obliged to order and accept +/- 20% of the quantities specified in the Forecast.
  - (c) For the manufacture and delivery of the finished Delivery Items during a period of six (6) to thirteen (13) weeks after transmission of the Forecast (so-called "**Mid Term**"), the Purchaser shall be obliged to order and accept +/- 30% of the quantities specified in the Forecast.
  - (d) For the manufacture and delivery of the finished Delivery Items during a period of fourteen (14) to fifty-two (52) weeks after transmission of the Forecast (so-called "**Long Term**"), the Purchaser shall not be bound by its Forecast.
- 3.8 If, contrary to the information binding in a Forecast pursuant to section 3.7 (a) to (c), the Purchaser does not place any or insufficient delivery calls with the Seller, the Purchaser shall in any case bear all costs and/or expenses for the purchase, processing, storage and/or destruction of Delivery Items, raw materials, input materials, raw, auxiliary and operating materials and/or labels and/or packaging specially manufactured for the Purchaser, unless the Seller can use them otherwise - if applicable with sufficient advance notice before the expiry of the best-before date. To the extent that the aforementioned purchased items have not yet found their way into Seller's production, Purchaser shall reimburse Seller at least for the purchase prices (including for labels) plus a markup of 5%.
- 3.9 If the Seller recognizes upon receipt of the Forecast that it will not be able to fulfill the delivery call-offs likely to be received on the basis of the Forecast, the Seller shall, if possible, object to the Forecast within fourteen (14) calendar days of its receipt at the latest. The Seller shall then not be obliged to fulfill the corresponding delivery call-offs.
- 3.10 The Forecast periods shall each be extended by the period expiring at the same time, so that each Forecast shall have a rolling character until the Purchaser submits a new delivery schedule with a Forecast or a new Forecast to the Seller.

### 4. Prices

- 4.1 Unless otherwise expressly agreed, prices are quoted in Euro net ex delivery warehouse or factory plus statutory value added tax, if any, and exclusive of all other taxes, duties, levies and insurance. All taxes, customs duties and levies in connection with the delivery shall be borne by the Purchaser or reimbursed to the Seller.
- 4.2 If delivery is agreed on the basis of the Seller's price list, the prices shall apply which have been communicated or otherwise made known to the Purchaser for the delivery date specified in the order or otherwise agreed, alternatively the Seller's price list valid on the date of the order. Price lists communicated or otherwise made known to the Purchaser shall be an integral part of the contract unless they conflict with separate agreements. If a delivery has been agreed on the basis of individual written price agreements, these shall always have priority and may not be changed, in particular, by deviating information provided by the Purchaser in its electronic procurement portals and corresponding releases of the Seller. Section 2.3. sentence 2 shall apply accordingly.

- 4.3 If a fixed price has been agreed, the Seller shall be entitled to reasonably adjust the agreed prices if and to the extent that the costs of the materials or raw materials required by the Seller for the production of the Delivery Items, labor costs, costs of external service providers for packaging, filling and/or labeling, energy costs and/or import duties and taxes have increased or decreased by at least 5%. The extent of the adjustment will be based on the actual change in costs. An increase or decrease in any cost item may result in a price adjustment only to the extent not offset by decreases or increases in other cost items. Seller shall notify Purchaser of the price adjustment, in the case of a price increase, at least one (1) month before the new prices take effect. As far as possible, public information shall be sufficient to prove cost changes. In the event of a price increase, the Purchaser may terminate the Contract by written notice within two (2) weeks of receipt of the notice of the price increase.
- 4.4 Furthermore, even in the case of a fixed price, the Seller may request that the Parties negotiate in good faith an increase in the prices if the quantity actually taken by the Purchaser falls short by more than 5% of the agreed delivery quantity provided for in the annual forecast or the delivery quantity used as a basis for determining the prices. If the Parties are unable to agree on new prices within three (3) months from the opening of price negotiations by one of the Parties, either Party shall be entitled to terminate the relevant contract or the relevant price agreement as well as all supply contracts concluded thereunder with immediate effect. Orders already in execution shall still be processed after termination.
- 4.5 For the interpretation of commercial clauses, the INCOTERMS shall apply in the version valid at the time of the call for delivery for the requested delivery date.
- 4.6 Obligations of the Seller to grant, offer or maintain the best and/or most competitive prices and conditions (so-called "best price clauses") do not exist.
- 4.7 The Seller shall be entitled to issue partial invoices for partial deliveries within the meaning of section 8.9.

## 5. Terms of payment

- 5.1 Invoice amounts are due net within thirty (30) days from the invoice date, unless otherwise agreed in writing. Payment periods stated on the order confirmation or invoice, in particular also for the calculation of the period for cash discount deductions, shall commence on the invoice date. Agreed cash discounts (*Skontoabzüge*) are only permissible if the Purchaser is not in default with the payment of invoice amounts already due from the business relationship. If the Purchaser has granted the Seller a SEPA direct debit mandate, collection shall take place on the due date. The Seller shall inform the Customer of the collection of the SEPA direct debit no later than one day before the due date. Formal reasons concerning the contents of the invoice shall not entitle the Purchaser to withhold or delay payment.
- 5.2 In the event of default in payment by the Purchaser, the Seller shall be entitled to charge interest at a rate of 9 percentage points above the respective base interest rate.
- 5.3 The Customer is obliged to provide the Seller with all data required for the business relationship and to update them. Costs incurred by the Seller due to missing or not up-to-date data, e.g. for invoicing, shall be borne by the Customer.
- 5.4 The Purchaser may set off only those claims which are undisputed or have been finally determined by a court of law. Affiliated companies of the Purchaser shall not be entitled to offset claims of the Purchaser arising from the contractual relationship with the Seller. The Purchaser shall only be entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is undisputed or has been finally adjudicated. The rights of the Seller to offset and/or withhold performance and to enforce any claims and rights shall be governed by applicable law.
- 5.5 The Seller may demand the provision of security prior to delivery if after the conclusion of the contract a significant deterioration in the solvency or creditworthiness of the Purchaser becomes apparent as a result of which a claim of the Seller is jeopardized, in particular in the event of suspension of payments, an application for the opening of insolvency proceedings against the assets of the Purchaser or a seizure. If the Purchaser refuses to provide security within a reasonable period of time set by the Seller, the Seller may withdraw from the contract in whole or in part. All other rights of the Seller remain reserved.

## 6. Production release

If the Parties have agreed on a production part approval (PPA) for the Delivery Items to be manufactured, this shall take place in the respective plant of the Seller in the absence of any other agreement; the production part approval shall be given in writing by the Purchaser in each case. Unless otherwise agreed or unless the Purchaser expressly objects thereto in writing, such release shall be deemed to have been granted within two (2) weeks after the Seller has provided the essential release documents. The Seller shall not be obliged to manufacture (and deliver) the Delivery Items before the written release for manufacture has been provided by the Purchaser. Any damages, expenses, costs and losses incurred by either Party as a result of delayed release shall be borne by Purchaser. Any delivery or performance deadlines etc. shall be extended accordingly.

## 7. Change Request Procedure

- 7.1 Either Party may request a change in the service at any time (hereinafter "**Change Request**"). The Change Request must be in writing and contain sufficient information to enable the other Party to evaluate the Change Request.
- 7.2 Insofar as changes to the performance (including the labels and packaging) or the tools required for the manufacture of the Delivery Items trigger costs, these shall in any case be borne by the Purchaser. The Purchaser shall bear the costs with regard to any other changes, unless the Seller is responsible for the change.
- 7.3 Seller shall submit an offer to Purchaser within a reasonable time after receipt of the Change Request. If the Customer designates the Change Request as urgent, the Seller shall submit the offer without undue delay.

7.4 A Change Request shall become binding when the Parties have agreed in writing on the change and its effects, in particular on the assumption of the costs and the time delays associated with the change (hereinafter "**Change Agreement**"). Consent to the change may not be unreasonably withheld. The Seller shall not be obliged to carry out any changes prior to the conclusion of the Change Agreement. A valid Change Agreement shall be deemed to have been agreed if Seller requests a change in the performance in writing and notifies Purchaser of the general conditions thereof and Purchaser has not objected to this Change Request in writing within a period of two (2) weeks after receipt or has not asserted a need for further clarification in writing.

7.5 Changes in raw materials, relocation of machinery, change of subcontractors or sub-suppliers and other changes which do not affect the Specification do not require a Change Request. Seller may make such changes at any time in its sole discretion.

## **8. Delivery times and dates**

8.1 Delivery dates and delivery periods shall only be binding if they have been confirmed by the Seller in writing or are provided for in a delivery call-off (unless the Seller has objected to it).

8.2 The agreed delivery period shall commence on the date of the order confirmation or other contractual declaration within the meaning of section 2.1, insofar as such is required, but not prior to the provision of the documents, approvals, releases and/or other information and documents required for the delivery to be procured by the Purchaser, as well as the fulfillment of any advance or down-payment obligations of the Purchaser. The Seller reserves the right, if the Purchaser is in default with the fulfillment of its obligations to provide and/or pay on the basis of previous orders, to process the order only after the fulfillment of existing obligations. In this case, the delivery time shall be extended accordingly without the need for an express declaration by the Seller. The deadlines shall also be extended accordingly in the case of additional or extension orders placed at a later date.

8.3 Unless expressly agreed otherwise in writing, just-in-time and just-in-sequence deliveries are excluded.

8.4 With regard to the deliveries of such Delivery Items for which the Seller obtains raw materials from suppliers, as well as for the involvement of subcontractors, the timely self-delivery is reserved. Accordingly, in the event of untimely delivery by its suppliers or subcontractors, of which it shall inform the Purchaser immediately, the Seller shall be released from its own obligation to perform and may withdraw from the contract with the Purchaser. In this case, the Seller shall immediately reimburse the Purchaser for any payments already made.

8.5 Unforeseeable, unavoidable events beyond the Seller's control and for which the Seller is not responsible (such as force majeure, war, natural disasters, strikes, lockouts, official measures, energy or raw material shortages or shortages for whatever reason, fire and explosion damage, cyber-attacks, geopolitical tensions, traffic and operational disruptions (e.g. fire, machine breakdown, delivery bottlenecks, performance disruptions or other supply difficulties of raw material suppliers or other upstream suppliers of the Seller, disruptions in the packaging and clearance process or transport bottlenecks), currency, trade policy, other sovereign measures or similar events) shall release the Seller for their duration from the obligation to deliver or perform on time. These events according to sentence 1 also include, without limitation, the outbreak of an epidemic and/or pandemic (such as COVID-19) including its continuation and the recurrence of the same at a later point in time as well as the Ukraine war and in each case the consequences resulting therefrom, such as, inter alia, plant closures at Seller and/or suppliers and subcontractors of Seller, border closures/congestion, material shortages, quarantine measures, official orders of local, regional or national authorities of any kind restricting or excluding the normal conduct of business, including curfews, travel restrictions or rules on keeping distance, import and export restrictions and other sanction measures. Events of force majeure and events equivalent thereto shall be notified by Seller to Purchaser in a reasonable manner. Agreed deadlines shall be extended by the duration of the hindrance. If the hindrance lasts longer than three (3) months, both Parties shall be entitled to withdraw from the contract. In the case of a partial delivery that has already taken place, the Purchaser shall only be entitled to withdraw from the contract under the aforementioned conditions with regard to the part of the delivery that has not been fulfilled. Payment for a partial delivery that has already been made may not be refused on account of the unfulfilled part of the delivery.

8.6 If an agreed delivery date is exceeded, the Purchaser shall be entitled to withdraw from the contract if the Seller fails to perform within the reasonable grace period to be set by the Purchaser and is responsible for this. The setting of a deadline is not required if this is dispensable by law. The withdrawal must be declared in writing and at the latest within two (2) weeks after expiry of the grace period set. After expiry of the aforementioned period for withdrawal, the Purchaser shall only be entitled to withdraw from the contract after setting and expiry of a further reasonable period of grace to be set by the Purchaser, insofar as the Seller does not perform within this further period of grace and is responsible for this.

8.7 For any claim against the Seller due to delay in delivery by the Purchaser, para. 16 shall apply. In all other respects, the Purchaser's claim for damages on account of the Seller's culpable delay shall be limited to 1.0% for each full week of delay, but in no case more than a total of 10% of the net price of the part of the Supplies in default. This limitation shall not apply in case of intent or gross negligence.

8.8 If delivery or shipment or collection of the Delivery Item is delayed at the request of the Purchaser or if the Purchaser is in default of acceptance, fails to cooperate or if delivery is delayed for other reasons for which the Purchaser is responsible, the Seller shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). The claim shall amount to a lump sum of 0.5% of the price of the affected scope of delivery for each commenced calendar week, beginning with the delay in acceptance or the otherwise relevant delay. The lump-sum claim for additional expenses is limited to a maximum of 10% of the price of the affected scope of delivery. The proof of a higher damage as well as legal claims of the Seller (especially compensation of additional expenses, adequate compensation, termination) remain unaffected; however, the lump-sum claim is to be credited against further monetary claims. The Purchaser shall be entitled to prove that the Seller has not incurred any damage or only significantly less damage than the aforementioned lump sum.

8.9 The Seller may make partial deliveries for justified reasons, provided that they are reasonable for the Purchaser.

## **9. Shipping**

- 9.1 Unless otherwise agreed, domestic deliveries shall be made in accordance with EXW (INCOTERMS 2020) ex works/warehouse (place of delivery) to the agreed destination. The choice of the transport route and the carrier shall be made by the Seller. Unless otherwise agreed, the Seller shall not make any deliveries outside the Federal Republic of Germany. Unless otherwise agreed, deliveries outside the Federal Republic of Germany shall be made in accordance with FCA (INCOTERMS 2020). Express shipments (incl. CEP) shall generally only be made at the request and expense of the Purchaser. Cartage and demurrage at the place of receipt, surface freight as well as additional freight for express goods and air freight shipments shall in any case be borne by the purchaser. Insofar as a delivery is owed, the Seller has the right to choose whether to deliver the goods himself or have them delivered by a third Party.
- 9.2 If the Seller has notified the Purchaser of minimum quantities prior to the Purchaser's order or if the Purchaser has confirmed its order after being notified thereof in any form whatsoever and the Seller accepts an order below the minimum quantities, the Purchaser shall be charged the actual freight/shipping costs for the delivery or the flat freight/shipping rate specified by the Seller for such cases.
- 9.3 For the determination of the weight of the delivery, the weight determined at the time of dispatch in the supplying plant or warehouse shall be decisive.

## **10. Packing, Labeling**

- 10.1 The Delivery Items shall be provided and delivered by the Seller in customary packaging and labeled. Any further requirements must be agreed in writing. The costs for the customary packaging will be invoiced additionally.
- 10.2 Insofar as an agreement is concluded on the provision of the Delivery Items on pallets, the Seller shall be entitled, at its sole discretion, to make deliveries on Euro pool pallets with dimensions of 800 x 1200 mm or on disposable pallets. Deliveries on Euro pallets shall be made at the Seller's option in exchange step by step, i.e. the same number of undamaged empty pallets (Euro pool pallets only) must be provided in exchange for the pallets delivered with the goods or a pallet bill must be issued. Euro pool pallets returned to the Seller damaged but repairable shall be invoiced at the cost of repair insofar as this does not exceed the cost of a replacement; damaged but non-repairable Euro pool pallets shall be invoiced at the replacement value less the residual value, unless the Customer is not responsible for the return of damaged Euro pool pallets. If the Purchaser, contrary to its duty to exchange or its duty to issue a pallet bill, does not provide any or insufficient Euro pool Pallets as empty pallets, it shall provide such pallets after setting a reasonable period of time or, unless it proves that it is not responsible for the breach of its duty to exchange, it shall pay to the Seller, at the Seller's option, an amount equal to the replacement cost. The risk for Euro pool pallets provided by the Purchaser by way of exchange shall pass to the Seller upon delivery to the Seller. If delivery is made on one-way pallets, the Customer shall be responsible for repalletizing and disposing of the pallets.
- 10.3 Insofar as Euro display pallets are used, these shall generally be CHEP pallets which shall remain with Purchaser and be collected by CHEP. Purchaser shall deregister such pallets with CHEP without undue delay, but no later than within six (6) days of delivery. The Purchaser shall bear any costs incurred due to untimely deregistration, unless the Purchaser is not responsible for the untimely deregistration. The same shall apply if 1/1 CHEP is used as (basic) load carrier.
- 10.4 The following provisions shall apply to other loan packaging, loading aids and loan displays provided by Seller: The loan packaging provided by the Seller as well as any loading aids and loan displays shall not be sold along with the delivery and shall remain the property of the Seller. They must be handled with care and may not be used for purposes other than storage of the delivery. The return of the returnable packaging as well as loading aids and returnable displays must be made immediately after emptying, carriage paid, in perfect, usable condition with indication of the department listed in the invoice to the specified or agreed empties collection point. If returnable packaging, loading aids or returnable displays are not returned on time, the Seller shall be entitled to charge them at replacement value after setting and expiry of a reasonable period of time, unless the Customer is not responsible for the untimely return. If loaned packaging, loading aids or loaned displays become unusable, the Seller shall be entitled to charge them at the replacement value, unless the Purchaser is not responsible for the unusability. The Purchaser shall be liable for damages arising from or in connection with a breach of the aforementioned obligations of the Purchaser, unless the Purchaser is not responsible for the breach of obligation.
- 10.5 The return of packaging that is not returnable packaging shall be governed by the provisions of the German Packaging Directive (*VerpackV*) in the version valid at the time of conclusion of the contract and any supplementary agreements.

## **11. Transfer of risk**

- 11.1 In the case of delivery EXW or FCA (cf. section 9.1), the transfer of risk shall be governed by this INCOTERM. In all other respects the following shall apply: The risk of accidental deterioration or accidental loss shall pass to the Purchaser – unless otherwise agreed – when the Delivery Item leaves the supplying plant or warehouse from which it is dispatched, but no later than when it is handed over to the transport person. If the handover or dispatch is delayed for reasons for which the Purchaser is responsible, the risk shall pass to the Purchaser at the latest on the date of notification that the Delivery Item is ready for dispatch.
- 11.2 The Purchaser shall bear the risk during the return transport of the delivery, insofar as the return transport takes place after a withdrawal of the Seller due to a breach of duty by the Purchaser or as a gesture of goodwill on the part of the Seller. A return transport is in any case only permissible after prior notification under communication of the respective reference number with the consent of the Seller.
- 11.3 In case of shipment of the Delivery Items by the Seller, the Seller shall insure the shipment against transport, breakage, fire and accidental damage at the Purchaser's request and at the Purchaser's expense.

## 12. Retention of title

- 12.1 The Delivery Items shall remain the property of the Seller until all outstanding claims arising from the business relationship with the Purchaser have been settled in full. In the case of a current account, the reserved property shall apply as security for the balance claim to which the Seller is entitled.
- 12.2 The retention of title shall also extend to the new items created by processing, combining or mixing or, if the Seller does not become the sole owner of the new item, to corresponding co-ownership shares of the Seller in the new item (*verlängerter Eigentumsvorbehalt*). The processing of the delivery shall be carried out for the Seller as manufacturer without any obligation on the part of the Seller. In the event of processing, combining or mixing with material not owned by the Seller, the Seller shall always acquire co-ownership of the new item in the ratio of the value of the delivery to the value of the other processed, combined or mixed items at the time of processing, combining or mixing. If the Seller's ownership lapses as a result of combining or mixing, the Purchaser hereby assigns to the Seller co-ownership of the new item in the ratio of the value of the delivery to the value of the other combined or mixed items and shall keep the item in safe custody for the Seller to this extent.
- 12.3 The Purchaser is authorized to resell the delivery subject to retention of title (hereinafter: "**Retained Goods**") in the ordinary course of business. Any other disposal, in particular pledging, transfer by way of security or transfer by way of exchange, is not permitted. The Seller must be notified immediately of any seizure made by a third Party – even after processing, combining or mixing – as well as of any other impairment of the rights to the reserved goods. The Purchaser hereby assigns to the Seller, who accepts the assignment, all claims against its customers to which it is entitled from the resale of the reserved goods. In the event that the reserved goods are resold by the Purchaser together with other goods not owned by the Seller, the assignment of the claims arising from the resale shall be made only to the amount of the value of the Retained Goods. If the claim arising from the resale of the goods subject to retention of title is included by the Purchaser in a current account relationship with its customer, the assigned current account claim shall be replaced by the acknowledged balance, which shall be assigned in the amount of the resale value of the respective goods subject to retention of title sold. The Purchaser is authorized to collect the claims arising from the resale of the Retained Goods. The Seller shall be entitled to revoke the authorization to resell and/or to collect claims if a) the Purchaser is in default with payments arising from the business relationship; b) the Purchaser has disposed of the Retained Goods outside the ordinary course of business; or c) after the conclusion of the contract, a material deterioration in the Purchaser's solvency or creditworthiness becomes apparent as a result of which a claim of the Seller is jeopardized, in particular in the event of cessation of payments, an application for the opening of insolvency proceedings against the assets of the Purchaser or a seizure. After the revocation of the authorization to collect receivables, the Purchaser shall immediately accumulate assigned outstanding accounts in a special account with the designation to be specified separately by the Seller. After the revocation of the authorization to collect receivables, the Purchaser shall, upon the Seller's request, immediately notify the debtors of the assigned receivables in writing and notify the debtors of the assignment.
- 12.4 If the Purchaser is in default with his payment obligation towards the Seller or if he violates one of the obligations resulting from the reservation of title, the Seller shall be entitled, subject to section 107 para. 2 of the German Insolvency Act (*InsO*), to demand the surrender of the Retained Goods after a withdrawal from the contract and to collect them from the Purchaser.
- 12.5 The Seller shall be obligated to release security interests upon the Purchaser's request to the extent that their realizable value exceeds the Seller's total claim to be secured by 10% in each case.
- 12.6 Insofar as the retention of title cannot take effect in the foreign country of destination of the Delivery Items or products subject to retention of title or cannot take effect to the extent provided for herein, the Purchaser shall cooperate accordingly in the provision of those securities which come closest to this retention of title in their scope and effect.

## 13. Acceptance

- 13.1 If an acceptance of the Delivery Items has been expressly agreed between the Parties as well as for services of the Seller which constitute work performances, the acceptance shall take place in the relevant plant of the Seller in the absence of deviating provisions.
- 13.2 Upon completion of the Services, the Seller shall notify the Purchaser in writing of the completion and accordingly notify the Purchaser that the Services are ready for acceptance (hereinafter "**RFA**"). Acceptance shall take place immediately following the RFA notification. The Parties shall agree on an appropriate date for this purpose. Acceptance shall take place in the simultaneous presence of an employee of the Seller and of the Purchaser. An acceptance report shall be prepared on the acceptance, which shall contain details of the time, place, any defects found in the Delivery Item including the services and other comments and shall be signed by both the Seller and the Purchaser. Unless otherwise agreed, each Party shall bear the costs arising from the acceptance itself.
- 13.3 Acceptance cannot be refused due to insignificant defects.
- 13.4 A service shall also be deemed to have been accepted if the Seller has set the Purchaser a reasonable deadline for acceptance after completion of the service and the Purchaser has not refused acceptance within this deadline, stating at least one defect.
- 13.5 After acceptance, the Seller shall be entitled to carry out the delivery of the Delivery Items to the Purchaser or to store the Delivery Items accordingly at the Purchaser's expense and risk.
- 13.6 Upon acceptance, the risk for the Delivery Items shall pass to the purchaser, unless the transfer of risk has already taken place in accordance with section 11 has already taken place.

#### 14. Texture

- 14.1 The Seller warrants that at the time and place of dispatch (passing of risk) the Delivery Items comply with the subjective requirements agreed between the Parties, namely the respective Certificate of Analysis (CoA) in the version valid at that time (hereinafter "**Specification**"); this CoA conclusively describes the quality standard owed for the Delivery Item. Unless expressly agreed otherwise in writing, no additional subjective requirements within the meaning of section 434 (2) of the German Civil Code (*BGB*) (in the version valid as of 01.01.2022) shall be agreed. Additional objective requirements within the meaning of section 434 para. 3 of the German Civil Code (*BGB*) (in the version valid from 01.01.2022) are also not owed subject to an express written agreement to the contrary.
- 14.2 In particular, in the absence of actual verifiability of the real conditions of use of the Delivery Items for the Seller, the Seller shall not assume any guarantee or warranty for a specific intended use (unless expressly agreed otherwise in writing). This shall apply in particular even if the Purchaser informs the Seller of the intended use or otherwise brings it to the Seller's attention and/or the Seller carries out a production part approval procedure (PPAP) with the Purchaser and/or the Seller develops or adapts Delivery Items specifically for the Purchaser. Rather, the Purchaser shall bear the sole responsibility and risk for the suitability for the intended use as well as for the processing and application of the Delivery Items. In particular, the Purchaser shall carry out sufficient own tests and trial processing in order to verify and ensure the suitability of the Delivery Items for the intended processes and processing and application purposes. The sole purpose of the production release procedure and the provision of product samples is to enable the Purchaser to do this.
- In the event that the Delivery Items are manufactured in accordance with the Specification prepared and/or released by the Purchaser, the subjective requirements shall be measured exclusively in accordance with these Specifications and any further agreements on quality reached between the Parties. The Purchaser shall not be entitled to any warranty claims against the Seller for defects of the Delivery Item based on these Specifications. In particular, the Purchaser shall be solely responsible for the correctness and feasibility of all specifications and supplements thereto prepared by the Purchaser and released to the Seller.
- If the Parties have agreed on a production approval procedure (PPA) and the delivered item corresponds to the samples accepted by the Purchaser, the Purchaser shall not be entitled to any warranty claims against the Seller, provided that the other subjective requirements are also met.
- Nor does the Seller assume any responsibility or warranty for a specific minimum shelf life of the Delivery Items upon delivery and/or on the basis of any product samples provided.
- 14.3 Information on the Seller's website or in catalogs, material data sheets (with the exception of the CoA), price lists and other information material provided to the Purchaser by the Seller as well as product-describing information (including factory standards, material sheets, test certificates, etc.) shall under no circumstances be construed as guarantees or warranties for a particular positive quality or a positive fitness for purpose of the Delivery Item; such guarantees and/or warranties must be expressly agreed in writing.
- 14.4 Customary deviations in quantity and weight within the scope of up to 10% of the order quantity are permissible. Also permissible are customary quality deviations / deviations in quality which are caused by the Delivery Item and its manufacture.
- 14.5 Claims for defects shall be excluded if the defect of the Delivery Items is due to the violation of technical data sheets (TDS), material safety data sheets (MSDS), other data sheets and/or instructions, unsuitable or improper use (including the mixing of multi-component materials) by the Purchaser or third Parties, transport, packaging or storage, faulty or negligent handling as well as other interventions in the Delivery Items carried out by the Purchaser or third Parties (outside the intended, proper further processing of the Delivery Items by the Purchaser).
- 14.6 The Seller does not owe that the coding (e.g. GTIN) applied to a deliverable is readable. Any non-readability of a code shall not constitute a defect.
- 14.7 In any case, Seller shall be free to choose raw materials, sub-suppliers, subcontractors and other contractual partners. There is expressly no obligation or duty to dual sourcing in the cost interest of both Parties.

#### 15. Obligation to inspect, defect rights

- 15.1 The Seller shall not be obliged to inspect outgoing goods. Purchaser shall inspect the Deliverables without undue delay, but no later than within seven (7) calendar days after receipt thereof, in accordance with the requirements of IATF 16949 for quantity, identity, compliance with the transport documents and obvious damage, for example to the packaging, and shall perform the quality control tests agreed with Seller or, alternatively, those customary in the industry. The Purchaser shall immediately notify the Seller in writing of any damage, defects or other irregularities detected during such inspection and quality control tests. Damage in transit shall also be noted on the Proof of Delivery (*PoD*). Other defects and/or irregularities shall be notified to the Seller in writing without undue delay, however, no later than within five (5) calendar days after discovery, in case of resale of the Delivery Items (in original or processed condition) by the Purchaser after receipt of material defect relevant complaints from its Purchaser or third Parties within the supply chain. Otherwise, the delivery shall be deemed approved in view of the material defect and the Purchaser waives any claims in respect of defects or damage to the Delivery Items delivered by the Seller.
- 15.2 Upon request, the Purchaser shall give the Seller the opportunity to inspect the Delivery Items on its part in the form delivered and/or to send samples of the products complained about to locations designated by the Seller for testing purposes. If the Purchaser repeatedly complains about Delivery Items due to the same defect, the Purchaser shall be obliged to make at least 20% of the Delivery Items complained about available to the Seller for examination upon request. The costs shall be borne by the Purchaser insofar as the defectiveness of the Delivery Items has not been confirmed and the Purchaser is responsible for the unjustified complaint.

- 15.3 If samples have been taken by neutral samplers at the place of loading, these samples alone shall be decisive for the assessment of the delivery or Delivery Items. Neutral samples shall be deemed to be equivalent to the retained samples of the delivery or Delivery Items of the Seller on which the processing or onward shipment is based, which are available at the Purchaser's premises. This shall also apply to retained samples of the production batch at the Seller's premises from which the delivery or Delivery Items complained about originated.
- 15.4 In the event of acceptance of the delivery by a railroad company, shipping company or other carrier without complaint, it shall be presumed that the packaging of the delivery or Delivery Items was flawless at the time of handover to the carrier.
- 15.5 The Purchaser may not refuse acceptance of the performance due to insignificant defects.
- 15.6 If a defect exists at the time of the passing of risk, the Seller shall, at its option, provide subsequent performance either by remedying the defect or by making a subsequent delivery. For the purpose of subsequent performance, the Purchaser shall first give the Vendor the opportunity to sort out the defect and to rectify it or to make a subsequent delivery, either by its own staff or by third Parties commissioned by the Vendor, before commencing production, processing or installation. In the event of resale of the Delivery Items by the Purchaser, the Purchaser shall ensure that the Seller is involved in the subsequent performance at the end customer.
- 15.7 The Purchaser may only remedy a defect itself or take remedial action itself if the Seller has expressly agreed to this in writing. The consent to self-remedy shall be at the Seller's discretion.
- 15.8 The Seller shall bear the transport, travel, labor and material costs incurred for the purpose of subsequent performance in accordance with the statutory provisions if a defect is actually present. If the notice of defect proves to be unjustified due to intent or gross negligence and if this was recognizable to the Purchaser prior to the filing of the notice of defect, the Purchaser shall be obligated to reimburse the Seller for all expenses (for example, travel or shipping costs) and damages incurred in this connection.
- 15.9 A series defect or series damage shall only be deemed to exist if there is an accumulation of defective batches (at least 10 batches) with the same cause of defect and the resulting failure rate per production month in one or more production months exceeds 5% of the parts manufactured by the Purchaser with the affected batches.
- 15.10 The Seller may refuse subsequent performance if it is only possible at disproportionate cost. The assessment of whether the costs are disproportionate shall be made taking into account the circumstances of the individual case. Indications for the existence of disproportionality are in particular if the chosen type of supplementary performance exceeds the costs for the alternative possible type of supplementary performance by more than 20% (so-called relative disproportionality) or if the costs of supplementary performance exceed 150% of the value of the item in a defect-free condition or 200% of the defect-related reduced value (so-called absolute disproportionality).
- 15.11 If the supplementary performance fails, if it is unreasonable for the Purchaser or if the Seller has failed to remedy the defect in accordance with section 15.10 or section 439 para. 4 of the German Civil Code (*BGB*), the Purchaser may, at its option, rescind the contract or reduce the purchase price in accordance with the statutory provisions. In the event of a supplier's recourse pursuant to Sec. 445a para. 2 of the German Civil Code (*BGB*), this shall only apply to the extent that the Purchaser has complied with its obligation to involve the Seller in the supplementary performance pursuant to section 15.6 sentence 3 and the last contract in the supply chain is not a purchase of consumer goods.
- 15.12 Otherwise, claims for damages and reimbursement of expenses of the Purchaser shall be governed by Sec. 16.

## **16. Liability and compensation**

- 16.1 Claims for damages and reimbursement of expenses by the customer, regardless of the legal basis (breach of obligations arising from the contractual relationship, contract, tort, etc.), are excluded.
- 16.2 The exclusion of liability pursuant to para. 16.1 shall not apply:
- (a) in the event of liability under the Product Liability Act,
  - (b) in cases of intent or gross negligence,
  - (c) in the event of culpable injury to life, limb or health,
  - (d) insofar as the Seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the Delivery Items, or
  - (e) in the event of culpable breach of material contractual obligations, i.e. obligations the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the customer regularly relies on and may rely on. However, liability for breach of material contractual obligations shall be limited to compensation for the foreseeable damage typical for the contract, unless liability is based on intent or gross negligence, injury to life, limb or health or under the Product Liability Act.
- 16.3 Insofar as the liability of the Seller is excluded or limited, this shall also apply in favor of the legal representatives, employees, subcontractors and vicarious agents of the Seller.
- 16.4 A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
- 16.5 The Purchaser's claims for damages against the Seller shall, unless effectively excluded, be governed by the statutory provisions and shall require in particular that the Seller has acted culpably, and that the Purchaser proves its damage and that it was caused by the Seller. The compensability of the damage shall be determined in accordance with sections 249 et seq of the German Civil



Code (*BGB*). In particular, costs based on contractual warranty commitments of the Purchaser to its customers shall not be recoverable.

- 16.6 The Purchaser shall not be entitled to claim lump sums for damages (e.g. action costs, handling lump sums, etc.) or compensation for other costs not proven in detail. In all other respects, regulations on the settlement of claims, recourse processes, recourse handling as well as contractual penalties shall also not apply unless this is expressly provided for in these Sales Conditions or expressly agreed in writing.
- 16.7 The Purchaser shall always be obliged to take reasonable measures to avert or mitigate the damage. This includes in particular, but not exclusively, the immediate examination and possible qualification of an available alternative product offered by the Seller as well as the provision of all documents and information which are expedient or necessary for the assessment and remedy of the defect by the Seller, unless justified confidentiality interests of the Purchaser outweigh the interests of the Seller, also taking into account section 24.
- 16.8 In determining the amount of compensation to be paid by the Seller, the nature, scope and duration of the business relationship as well as the scope of the supply (including the value of the Delivery Items in relation to the value of the end product and the extent of the damage), any contributions to causation and/or fault on the part of the Purchaser in accordance with section 254 of the German Civil Code (*BGB*) and a particularly unfavorable installation situation of the Delivery Item shall be reasonably taken into account in favor of the Seller. In particular, the compensation, costs and expenses to be borne by the Seller must be in reasonable proportion to the value of the Delivery Item.
- 16.9 The Seller shall not be obliged to indemnify the Purchaser against claims of third Parties or to hold the Purchaser harmless.
- 16.10 The Seller shall be entitled to request the Purchaser to enter into negotiations on further limitations of liability, in particular on an appropriate sum-related limitation of the Purchaser's claims per calendar year and/or damage event as well as on a limitation or exclusion of liability for consequential damages and indirect damages, in particular loss of profit. The Parties shall conduct the negotiations in good faith and with due regard to Seller's interest in a liability that is in reasonable proportion to the value of the Delivery Item.

#### **17. Product liability, recall and field actions**

- 17.1 If the Purchaser sells the Delivery Item, it shall indemnify the Seller internally against product liability claims of third Parties insofar as it is responsible for the defect giving rise to the liability.
- 17.2 The Purchaser shall inform the Seller in writing in advance of any safety relevance of the Delivery Items.
- 17.3 The Seller shall only be liable for measures taken by the Purchaser to prevent damage (e.g. recall or field actions) subject to and in accordance with the statutory provisions.
- 17.4 Recalls or owner notification programs may be initiated or conducted by Purchaser only if required by law or lawful governmental order to prevent personal injury or property damage, and the Parties have agreed that the foregoing requirements are met in the relevant case.
- 17.5 Field Actions may be initiated or performed by Purchaser only if Delivery Items of the same type delivered within one calendar year have a defect rate of more than 5% of the same type of defect for each relevant defect and the Parties have agreed that the foregoing requirements are met in the relevant case.
- 17.6 Seller shall be liable for costs incurred as a result of recalls, owner notification programs and field actions conducted pursuant to the foregoing only to the extent Seller is responsible for the relevant product defect and the cost-triggering action was necessary and required under applicable law to achieve the purpose of the recall, owner notification program or field action.
- 17.7 The Purchaser shall inform and consult with the Seller immediately and comprehensively if the Purchaser wishes to make a claim against the Seller under the above provision. The Purchaser shall give the Seller the opportunity to investigate the claim. The Parties shall agree on the measures to be taken, in particular in the case of settlement negotiations.
- 17.8 Sections 16.7, 16.8 and 16.10 apply *mutatis mutandis*.

#### **18. Acceptance of returns as a gesture of goodwill**

In the event of acceptance of pre-approved returns as a gesture of goodwill, the Seller shall charge 20% of the net price of the scope of Delivery Items concerned plus transport costs, unless otherwise specified by the Seller at the latest at the time of acceptance of the Purchaser's request for return.

#### **19. Limitation**

- 19.1 The limitation period for claims based on defects shall be one year from the statutory commencement of the limitation period. Notwithstanding the foregoing, the statutory limitation period shall apply a) in the case of section 438 para. 1 no. 1 of the German Civil Code (*BGB*) (rights in rem of third Parties), in the case of section 438 para. 1 no. 2 and section 634a para. 1 no. 2 of the German Civil Code (*BGB*) (buildings), in the case of claims under a right of recourse pursuant to section 445a of the German Civil Code (*BGB*) (supplier recourse), provided that the last contract in the supply chain is a consumer goods purchase and with the exception of claims for damages not falling under b), and generally to the extent that the Seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the item; b) for claims for damages based on intent or gross negligence, culpable injury to life, limb or health or liability under the German Product Liability Act (*ProdHaftG*).

19.2 As a matter of principle, the Seller shall rectify or replace the Delivery Items as a gesture of goodwill and without acknowledging any legal obligation. An acknowledgement with the consequence of a restart of the limitation period shall only exist if the Seller expressly declares it to the Purchaser.

19.3 For other claims of the Purchaser against the Seller, the regular limitation period shall be reduced to two years from the statutory commencement of the limitation period. This shall not apply to claims for damages in accordance with sec. 19.1 b), for which the statutory limitation period shall apply.

## **20. Third Party property rights**

20.1 The Seller reserves all rights to its own sales documents and other data and documents (in particular, but not exclusively, formulations and formulation components, recipes and recipe components, drawings, illustrations, data sheets, certificates of analysis) and the product samples, insofar as these are disclosed or made available in whole or in part, without this giving rise to any obligation to disclose or make them available. They may not be made available to third Parties and shall be returned to the Seller immediately upon request.

20.2 All copyrights, industrial property rights and know-how in connection with the manufacture of the Delivery Items (i.e. in particular patents or process/production know-how) shall remain exclusively with the Seller. In particular, the Purchaser shall also not receive any license and utilization rights in this respect, whether against payment or free of charge, whether limited or unlimited, from the Seller, the companies affiliated with the Seller within the meaning of sections 15 f. of the German Stock Corporation Act (AktG) or subcontractors.

20.3 All copyrights, property rights and know-how in connection with the services and their provision shall remain exclusively with the Seller. The Purchaser shall receive a simple right of use to the services, i.e. it may only use the services for its own purposes and in particular may not pass them on to third Parties. The Purchaser shall be obligated to protect any property rights of third Parties when processing the Delivery Items.

20.4 The Purchaser shall not analyze or have analyzed any product samples provided to it by the Seller unless the Seller has given its prior written consent thereto or unless corresponding products can be procured commercially. Obtaining knowledge, results, data or other information on the nature, field of application and intended use of the product samples, which the Purchaser obtains by testing with the product samples in the course of the project, shall not be deemed to be analysis in this sense. Notwithstanding the foregoing, the findings, results, data and other information obtained by Purchaser through the relevant tests with the product samples shall be deemed to be confidential information of Seller to which section 24 shall apply.

20.5 Each Party shall notify the other Party in writing if third Parties assert against it that the Delivery Items infringe industrial property rights or copyrights of third parties.

20.6 The Seller warrants that the delivery of the Delivery Items to the Purchaser does not infringe any third-party rights and indemnifies the Purchaser against any legally established claims of third Parties due to third-party rights infringed by the delivery of the Delivery Items. Third-party rights in this context are patents, trademarks, copyrights, utility models and design patents as well as corresponding applications for all of the above. In all other respects, the Seller does not warrant that the Products are free from defects in title. In particular, Seller shall not be liable for any infringement of third-party rights (i) caused by the use or processing of a Delivery Item in Purchaser's goods and/or processes, unless expressly agreed otherwise in writing, (ii) to the extent that the infringement of a third-party right is caused by Purchaser modifying the Delivery Items and/or using them together with products not supplied by Seller or otherwise not using them in accordance with the contract, or (iii) to the extent that such infringement is based on the Specifications, samples or other requirements and/or instructions of Purchaser. In the cases of sentence 3, the Purchaser shall indemnify the Seller internally against claims of third Parties upon first request. Section 16 shall apply to any claim made against the Seller due to the infringement of third-party rights. The Seller shall not be obliged to check the Specifications and samples provided by the Purchaser or other specifications or instructions of the Purchaser for the infringement of proprietary rights.

20.7 Should a claim be made against the Purchaser on the grounds of infringement of industrial property rights or copyrights by the Delivery Items supplied by the Seller, the Purchaser shall inform the Seller without delay and on an ongoing basis of all matters relating to such a claim and shall in particular provide the Seller with the necessary information and documents, unless justified confidentiality interests of the Purchaser outweigh the interests of the Seller, even taking into account section 24. The Seller shall be entitled to join any legal dispute arising therefrom at its own expense.

20.8 In the event that the Delivery Items infringe an industrial property right or copyright of a third party, the Seller shall, insofar as it is liable, at its own discretion and at its own expense, modify or replace the Delivery Items in such a way that no rights of third parties are infringed any longer, but the Delivery Items continue to meet the contractually agreed requirements, or procure the right of use for the Purchaser by concluding a license agreement. The Purchaser shall grant the Seller a reasonable period of time for this purpose.

20.9 Under no circumstances shall the Seller grant the Purchaser the right to manufacture or have manufactured the Delivery Item itself or by third Parties, not even in the event that it is unwilling or unable to deliver the Delivery Item in the owed condition for whatever reason in the short or long term (so-called "emergency manufacturing right"). Even after the end of the business relationship, the Purchaser shall not be entitled to manufacture the Delivery Item itself or to have it manufactured by third Parties. He shall not have any rights against the Seller in this connection, such as, but not limited to, the granting of licenses or rights, know-how, or the disclosure of recipes, formulations or other documents, data and/or information.

## **21. Spare parts delivery**

21.1 The Purchaser shall notify the Seller in writing at least fifteen (15) months prior to the end of the series run (EoP).

- 21.2 The Delivery Items of the Seller for the automotive industry in series production and in the aftermarket (VRM) differ considerably, especially in application and packaging unit. Therefore, the Seller does not assume any obligation to supply the Purchaser with spare parts for a certain period of time during or after series production with the same Delivery Items that the Seller supplies for series production. However, upon Purchaser's request, Seller shall endeavor to supply to Purchaser, to the extent possible and available, substantially similar Delivery Items for the spare parts market as for the series production which correspond to the then applicable state of the art. In any event, Seller shall remain free to discontinue production and supply of VRM Products, regardless of series run, in accordance with the provisions of section 25.
- 21.3 In particular, Seller cannot and is not required to ensure the availability of certain materials, raw materials and/or vendor parts purchased by Seller from third Parties, neither during nor after the end of series production.
- 21.4 The Parties shall negotiate the prices of the spare parts amicably. Sections 3.5 and 4.3 shall apply *mutatis mutandis*.
- 21.5 Claims for defects and liability shall be governed by the provisions in these Sales Conditions.
- 21.6 This section 21 expressly does not apply to Delivery Items in the after-sales business.

## **22. Compliance, sales capability**

- 22.1 The Purchaser is aware that the export of the Delivery Items may be subject to legal provisions, in particular, but not exclusively, to the registration under chemical laws, for example in accordance with European Regulation (EC) No. 1907/2006 (REACH). Compliance with these provisions shall be the sole responsibility of the Purchaser. Unless expressly agreed otherwise in writing, Seller shall not assume any responsibility for the marketability of the Delivery Items in countries other than the place of delivery agreed between the Parties for the respective Delivery Items as well as the compliance of Purchaser in the use, transport and export/import of the Delivery Items.
- 22.2 The Seller is also not obliged to inform the Purchaser about compliance requirements or about legal provisions, regulations, standards or other regulations and/or their respective changes.
- 22.3 Customs clearance in the importing and exporting country is the sole responsibility of the Purchaser.
- 22.4 Purchaser warrants and represents accordingly that it has and will use expertise in connection with the purchase, use, handling, storage, transportation and disposal of the Deliverables. In this regard, Purchaser warrants that it will instruct its employees, independent contractors, agents and customers with respect to safety instructions (including those of the applicable SDS), warnings, hazards, precautions and safe handling practices, including legal rules, regulations and ordinances, relating to the Deliverables. Purchaser assumes the sole responsibility for compliance with laws, ordinances and regulations governing the unloading, storage and handling of the Deliverables.
- 22.5 Purchaser shall indemnify, defend and hold Seller harmless from any and all liability, damages, third Party claims and costs in this regard.

## **23. Disclosure obligations, notification obligations, audits, Product Safety Representative**

- 23.1 The complete article master data incl. logistical data, dangerous goods information and validity periods for the Delivery Items are stored in a master data pool on a corresponding data portal and are updated regularly. Upon request, the Purchaser can be granted access to the data portal.
- 23.2 In order to properly inform the Purchaser about safety requirements and handling of the Delivery Items, the Seller shall also provide the Purchaser with information and data in accordance with applicable law (cf. section 27.4) with respect to the Delivery Items in uncured condition.
- 23.3 Seller shall not assume any further information, notification and/or disclosure obligations, neither about the formulation, formulation components, recipe or recipe components of Delivery Items, suppliers or the origin of raw materials, legal/regulatory requirements, costs (including cost break downs), prices, price calculations, customs duties, deductions, discounts or other financial matters of any kind, balance sheets or the balance sheets of the companies affiliated with Seller pursuant to sections 15 et seq of the German Stock Corporation Act (*AktG*), nor about other business secrets or facts relating to the Delivery Items, other products or the business of the Seller and/or its suppliers. Should the Purchaser request certain information for a justified reason, the Seller shall decide on such request in good faith, taking due account of the interests of the Purchaser. Any provision of information by Seller shall always be on a purely goodwill basis.
- 23.4 The Purchaser is not entitled to inspect the books and business records of the Seller or to have them inspected or audited by third Parties.
- 23.5 The Seller shall be obliged to inform the Purchaser in advance of any significant changes in the formulation. Apart from that, the Seller shall not be obliged to notify the Purchaser unless the Purchaser requests specific information and unless the Seller has a statutory obligation to provide information.
- 23.6 Insofar as the Seller provides the Purchaser with documents (which are not already part of the contractually owed performance), data or information in any form whatsoever regarding the Delivery Items, general compliance inquiries, the question of marketability or in connection with the performance, or provides recommendations or advice (hereinafter collectively "**Information**"), such Information shall be provided without obligation to the best of the Seller's knowledge at the time of provision. Any liability of the Seller for the accuracy, completeness and timeliness of the Information shall be excluded in accordance with section 16, unless expressly agreed otherwise.

- 23.7 The form as well as the manner of the dutiful or super-mandatory provision of information shall in any case be at the free discretion of the Seller. He shall not be bound by portals, samples or other specifications of the Purchaser either for the provision of such Information or otherwise.
- 23.8 The Seller is generally prepared to give the Purchaser the opportunity to audit the quality of the production of the Delivery Items for the Purchaser at the Seller's premises, provided that there is a justified interest in doing so, the Purchaser has announced this with a reasonable lead time of generally at least three (3) weeks and the Parties have agreed on a date. The Seller shall not be obliged to admit third parties, in particular customers of the Purchaser and external experts. Nor shall the Seller be obliged within the scope of an audit to make available all information, in particular confidential information, to allow inspection of documents and to make or have made copies thereof or other reproductions. Audits other than for quality purposes are generally not permitted.
- 23.9 Insofar as the Seller is obliged to provide information or to enable audits, it may do so subject to the conclusion of a non-disclosure agreement.
- 23.10 In no case shall the obligation to provide information or to enable audits extend to group companies of the Seller within the meaning of sections 15 et seq. of the German Stock Corporation Act (*AktG*), sub-suppliers, subcontractors or other third Parties or to the obligation to obtain information that is not available.
- 23.11 The Seller shall not be obliged to appoint a *Product Safety Representative* or *Product Safety and Conformity Officer* (PSCO) for the respective Delivery Items.

## **24. Secrecy**

- 24.1 The Parties undertake to treat as confidential all confidential information received directly or indirectly from the other Party. Offers and all related commercial and technical details shall also be treated as confidential information. In particular, all formulations, recipes, CoAs, TDS, MSDS, illustrations, drawings, calculations, quality guidelines, product samples and similar items received, if any, shall be kept confidential. Duplication and disclosure of formulations or formulation components, formulations or formulation components to employees of the Purchaser not personally authorized by the Seller is expressly prohibited. Furthermore, the reproduction and disclosure of confidential information shall only be permitted within the scope of operational requirements and only to employees of the Purchaser who need to know the confidential information in order to perform their duties and who are appropriately obligated to maintain confidentiality on the basis of their employment contract, even beyond the term of their employment. It may only be disclosed to third Parties with prior consent in writing. In any case, prior to disclosing confidential information to third Parties, the receiving Party shall be obligated to enter into a non-disclosure agreement with such third parties substantially in accordance with this section 24. The Party that legitimately discloses confidential information to third parties shall be liable to the other Party for confidentiality breaches of the third Party as for its own confidentiality breaches.
- 24.2 The foregoing obligations shall not apply to such Confidential Information that the Party receiving the information can demonstrate:
- (a) were already generally accessible at the time of notification or subsequently became generally accessible through no fault of their own;
  - (b) were already in their possession at the time of notification;
  - (c) have been made available to it by a third Party without any obligation of confidentiality or non-use, provided that such third Party has not received the information directly or indirectly from the other Party;
  - (d) must be reported to the authorities due to statutory provisions.
- 24.3 The confidentiality obligation shall survive the termination of the business relationship for a period of 5 years. After termination of the business relationship, the Purchaser undertakes to surrender to the Seller all confidential information received, insofar as it is embodied or stored on electronic storage media. The Purchaser shall confirm the fulfillment of the obligations under the last two sentences to the Seller in writing upon the Seller's request.
- 24.4 For each individual culpable breach by the Purchaser of the obligations under this section 24.1 the Seller shall be entitled to demand payment of a contractual penalty from the Purchaser, the amount of which shall be at the reasonable discretion of the default creditor and, in the event of a dispute, may be reviewed for reasonableness by the competent court. The principles of continuation of the contract are excluded. The payment of the contractual penalty shall not preclude the assertion of a claim for injunctive relief or damages in excess thereof upon corresponding proof. The contractual penalty shall be offset against any possible damages.
- 24.5 Without the prior express consent of the Seller, the Purchaser shall not be entitled to enter into direct contact with subcontractors, sub-suppliers and/or other contractual partners of the Purchaser in connection with the supply relationship vis-à-vis the Seller.

## **25. Termination**

- 25.1 All contracts concluded between the Parties, in particular framework agreements, may be terminated in writing by either Party at any time with six (6) months' notice, framework orders with 18 months' notice to the end of a calendar month. This right of termination shall not apply to individual contracts for the contractual items of which ongoing production or production preparation has already commenced.
- 25.2 Valid delivery schedules shall still be fulfilled in accordance with the contractual terms and these Sales Conditions even after termination of the respective framework agreement or framework order.
- 25.3 Either Party may terminate the contracts concluded between the Parties at any time for good cause in writing without observing a notice period. Good cause shall be deemed to exist in particular in the following cases:

- (a) cessation of payment on the part of a Party , opening of insolvency proceedings against the assets of a Party or their rejection due to the lack of assets or liquidation of one of the Parties;
  - (b) occurrence of a material deterioration in the financial position of one Party (resulting in a threat to the fulfillment of obligations to the other Party );
  - (c) Breach of material contractual obligations; in the case of such breaches which can be cured, however, only after one Party , under threat of termination for cause and subject to a reasonable period of notice of at least four weeks, has unsuccessfully requested the other Party in writing to cure the breach of contract;
  - (d) A Party comes under the controlling influence of a competitor of the other Party as a result of a *change* in its partners or shareholders (*change of control*) and/or is merged into another Party (also absorbing merger);
  - (e) if the production of the targeted delivery quantities of the Delivery Items proves to be not feasible with a reasonable financial and/or temporal effort and/or according to the current state of the art;
- 25.4 The Purchaser shall bear the costs incurred by the Seller up to the time the termination becomes effective and which can no longer be averted due to the terminated contract. This obligation to bear the costs shall also include the investments made by the Seller for the purpose of performing its obligations under the respective contract in order to be able to maintain the purchase quantities intended by the Purchaser and shall in particular also include investments in machinery and premises, etc.
- 25.5 In the event of termination or other termination of a contract:
- (a) the Parties shall, without prejudice to the provisions of para. 25.2 to 25.4 agree on the modalities of the expiry, in particular residual purchase quantities and spare parts supply;
  - (b) the Seller shall return all items, devices and tools belonging to or provided by the Purchaser (to the extent paid in full).
- 25.6 In no event shall the Seller be obliged to reimburse the Purchaser for any costs or expenses incurred in connection with the termination of the contract, unless the Seller has culpably caused the extraordinary termination of the contract by the Purchaser's breach of material contractual obligations. This shall apply in particular, but not exclusively, to the costs and expenses for the qualification of an alternative product.

## **26. General provisions**

- 26.1 The place of performance or place of fulfillment for the services to be rendered by the Seller is the respective plant or warehouse of the Seller from which the Delivery Items are collected or from which they are delivered. The place of performance for any mutual claims is Düsseldorf.
- 26.2 The Purchaser may not assign its claims against the Seller to third Parties without the Seller's written consent. The Seller shall be entitled to assign its claims, rights and obligations against the Purchaser without the prior written consent of the Purchaser in particular to a company affiliated with the Seller pursuant to sections 15 et seq. of the German Stock Corporation Act (*AktG*), as well as to a third Party , if the business area of the Seller concerned is sold to a third Party or transferred in any other way.
- 26.3 A reversal of the burden of proof is not associated with these terms of sale.
- 26.4 Insofar as these Sales Conditions refer to a written form requirement, text form (letter, fax, e-mail, etc.) shall be sufficient to comply with the written form requirement.

## **27. Final provisions**

- 27.1 Amendments and supplements to contractual agreements between the Seller and the Purchaser and/or these Sales Conditions as well as collateral agreements must be made in writing. This shall also apply to any amendment of this written form requirement.
- 27.2 If any provision of the contract and/or these Sales Conditions is invalid in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the Parties undertake to replace the invalid provision with the valid provision that comes closest to the economic purpose of the invalid provision.
- 27.3 The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Düsseldorf. However, the Seller shall be entitled to sue the Purchaser at any other statutory place of jurisdiction.
- 27.4 The legal relations between the Seller and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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