

## **General Terms and Conditions for Goods and Services Provided by GKD - Gebr. Kufferath AG**

### **§ 1 Scope of application of these General Terms and Conditions**

- 1.1 All goods and services (referred to as “**Supplies**”) supplied by us, GKD - Gebr. Kufferath AG, as well as offers made by us, take place exclusively on the basis of these General Terms and Conditions (referred to as these “**Terms**”).
- 1.2 Terms and conditions of the contracting counterparty that conflict with or differ from these Terms shall apply only where, in the individual case, these have been approved expressly prior to the entering into the contract by a member of the management board or an authorised signing officer (*Prokurist*) or by a representative authorised by us, even where these are contained in other documents (e.g. specifications, data sheets, technical documentation, advertising materials, order confirmations or delivery certificates). The general terms and conditions of the contracting counterparty also remain non-binding where their application is not expressly objected to. The recognition of the general terms and conditions of the contracting counterparty by way of reference to materials of that contracting counterparty and/or the implied acceptance of the general terms and conditions of the contracting counterparty by way of conclusive behaviour such as silence, acceptance of the Supplies and/or payments are excluded. Part B of the Regulation on Tendering for Construction Services (*VOB*) shall not apply.
- 1.3 These Terms also apply to contractual relationships founded in the future. They shall apply regardless of whether special reference to these is made in individual cases or not.

### **§ 2 Offers and formation of contracts; copyrights in our documentation; restrictions on the use of documentation**

- 2.1 Where we make an offer, any such offer is subject to change without notice and is non-binding. A contract is generally entered into only where we confirm the acceptance of an order placed by the contracting counterparty. A contract between us and the contracting counterparty shall be entered into even without a confirmation on our part where the goods/services are provided by us and the contracting counterparty accepts these.
- 2.2 We are entitled to accept orders received by us that are characterised as an offer in terms of § 145 of the German Civil Code (BGB) within two weeks of receipt by us.

Technische Weberei für Industrie & Architektur

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- 2.3 Unless otherwise agreed, we shall retain all title to and copyrights in any offers or cost estimates provided to us and diagrams, images, descriptions and other documents and materials (referred to collectively as “**Materials**”) made available by us or by a third party to a contracting counterparty. The contracting counterparty may not make such Materials (or their contents) available to third parties without our express consent. Any use of the Materials or their copying is permitted only to the extent required for entering into or performing agreements. Accordingly, the contracting counterparty may provide the Materials only to those employees who need to know these. The Materials and any copies of these must be protected against unauthorised access and shall immediately be returned to us at the cost of the contracting counterparty where no agreement is entered into or where these are no longer needed for the further performance of an agreement.
- 2.4 The contracting counterparty shall comply with our instructions with respect to the use of the items and documentation referred to in clause 2.3. In particular, the contracting counterparty must comply with any restrictions on use contained in the documentation and may not make use of such items and documentation for any purposes that these are not provided for.
- 2.5 Text form (e.g. letter, email, fax) is sufficient for declarations and notices that have legal significance. Legal requirements of form and our rights to request additional evidence, in particular where doubt is posed with respect to the legitimacy of the person providing the declaration, remain unaffected.

### **§ 3 Prices and payment terms; rights of set-off and withholding**

- 3.1 Unless otherwise agreed on, our prices shall apply *ex works*. Our prices are quoted in Euros and do not include value-added tax, packaging, freight, shipping costs and insurance costs. Packaging is accounted for at own-cost; any return acceptance of packaging materials is governed by the German Packaging Act (*Verpackungsgesetz*).
- 3.2 Where in the period between an agreement being entered into and the date of delivery one or more of the following factors is increased, such as energy costs and/or the costs of raw or preliminary materials and/or auxiliary and operating materials, we are entitled to adjust our prices to that amount by which the acquisition or manufacturing costs of the goods/services delivered have been increased. However, the cost reductions that have occurred within the same period for those factors set out in sentence 1 shall also be deducted. In the event of a price increase pursuant to sentence 1 we will provide accounts of the costs increases and reductions based on type and amount. Where the price increase exceeds 5 % of the originally agreed price the contracting counterparty is entitled to withdraw from the agreement.

- 3.3 Statutory value-added tax is not included in our prices. It shall be calculated in the amount provided for at law on the date on which invoices are issued and shall be set out separately to the extent that our delivery of goods/services is subject to value-added tax. For Supplies provided outside of Germany, the contracting counterparty shall bear all fees and charges incurred for transportation to the destination country, in particular customs duties, and any fees and charges that are imposed at law in the destination country itself. The contracting counterparty shall reimburse us for any fees and/or charges that we are initially required to make payment of ourselves when providing Supplies outside of Germany.
- 3.4 Unless otherwise agreed on, amounts that are invoiced for are due payable immediately in their net amounts (without deductions) and shall be paid within 30 days of receipt of the invoice by the contracting counterparty; timely payment is based on the timely crediting of the amount due on one of our business accounts. The contracting counterparty shall be in default (*Verzug*) upon the expiry of that payment period without any separate reminder or default notice being required. In addition, subject to prior notice, we shall be entitled to cease our provision of goods/services under that contractual relationship, as well as under any other contractual relationship with the contracting counterparty, for such time until payment takes place. Our right to assert damages extending beyond this remains unaffected.
- 3.5 Unless otherwise agreed on, we shall grant a 2 % discount where payment of an amount invoiced for is made within 10 days of the invoice date. For cashless transfers of funds, the timely crediting of the amount due to one of our business accounts shall be determinative with respect to compliance with that period.
- 3.6 The contracting counterparty is entitled to set off claims to which it is entitled only where such claims have been determined on a legally-binding basis (*rechtskräftig festgestellt*), are undisputed or have expressly been acknowledged by us. The same shall apply for any withholding rights.
- 3.7 All payments made to us shall be made on a cashless basis by way of transfers of funds to the account designated by us. In particular, we will not accept any cash payments, cheques or bills of exchange without a special agreement.

#### **§ 4 Delivery period and delivery delays**

- 4.1 Our compliance with the delivery period set out on our acceptance of the order is conditional upon clarification of all technical questions, the timely receipt of all documentation to be provided by the contracting counterparty, other information and any potentially necessary approvals and releases. This also applies to prepayments by the contracting

counterparty. Where these conditions are not met for reasons for which we are not responsible, delivery deadlines shall be extended by appropriate amounts.

- 4.2 Business interruptions due to force majeure, strikes for which we are not responsible or lock-outs and/or a lack of operating or raw materials shall entitle us to withdraw from an agreement that has not yet been fully performed where those circumstances render our performance impossible on a basis that is not merely temporary and, in addition to that, where these circumstances were not foreseeable at the time the agreement was entered into. Agreed delivery deadlines shall be extended by that period during which we are prevented from effecting performance as a result of those circumstances referred to. We will notify the contracting counterparty of the beginning and end of that period.
- 4.3 Timely and correct delivery by our own suppliers remains reserved.
- 4.4 Where we are in delay of performance, or where the provision of goods or services by us is impossible, any claim for damages on the part of the contracting counterparty is limited by the terms of § 13 of these Terms.
- 4.5 The contracting counterparty is not entitled to withdraw from an agreement due to delays in delivery for which we are not responsible. Where the contracting counterparty has a right to withdraw from an agreement due to a delay in delivery of goods or services for which we are responsible, the contracting counterparty shall notify us upon request and with a reasonable notice period whether it will withdraw from the agreement or whether it will insist on such delivery. Where the contracting counterparty fails to issue such a notice within the reasonable notice period set by it, the contracting counterparty shall provide us with an additional reasonable period for us to deliver the goods or services and may withdraw from the agreement only where this additional period has lapsed without delivery.
- 4.6 Where it has been agreed with the contracting counterparty that our delivery of goods or services will not take place at a fixed date, but instead, within a certain period, we shall also be entitled to make such delivery of goods or provide such services prior to the expiry of that period. Where a fixed delivery date was agreed on with the contracting counterparty we shall be entitled to make premature delivery of goods or provision of services at reasonable terms and once we have provided the contracting counterparty with reasonable advance notice thereof. This shall not apply where the delivery of goods or performance of services can occur only on the agreed date for reasons which are recognisable to us.
- 4.7 Where the goods or items owed are not picked up by the contracting counterparty on the agreed date, the shipping of these will be delayed at the request of the contracting counterparty or, where the contracting counterparty fails to pick up the goods or items owed after notice of the availability of these has been issued, including a reminder notice, the contracting counterparty shall be charged costs incurred for storage and financing commencing as of the expiry of the agreed date, notice of shipping readiness or the receipt

of the reminder notice, and in any event at least 0.5 % of the corresponding net invoice amount for each commenced month of delayed acceptance, but in no case more than 5 % in total, provided that the contracting counterparty does not prove that lower costs were incurred. The assertion of higher damages remains expressly reserved.

- 4.8 After we set a reasonable deadline and such deadline lapses without results, we shall also be entitled to dispose of the items owed in another manner and to supply the contracting counterparty with other goods subject to setting a reasonable extended deadline. The foregoing provisions apply *mutatis mutandis* to any agreement on additional or supplementary orders that result in a delay in delivering the goods or services owed. Additional claims extending beyond this remain reserved.
- 4.9 Goods that are delivered shall be accepted by the contracting counterparty even where these display non-material defects and without prejudice to the contracting counterparty's rights under § 11 of these Terms. The contracting counterparty shall be in default of acceptance (*Annahmeverzug*) in the event of an illegitimate rejection of the goods or services delivered.

## **§ 5 Transfer of risk, return shipments**

- 5.1 Goods shall be delivered ex works unless otherwise agreed on.
- 5.2 Risks (transportation and compensation risks) shall be transferred to the contracting counterparty upon the transfer of possession (*Übergabe*) of the goods to the contracting counterparty, shipping agent, freight agent or other person or institution charged with performing shipment – including by way of own vehicles and also for FOB and CIF transactions and also in cases of freight-free shipping. We shall use due care in arranging for shipment and selecting the transportation means, the transportation route and packaging suitable for the purpose. § 13 of these Terms shall otherwise apply. We are entitled, but not obliged, to obtain shipping insurance; the contracting counterparty shall bear the costs thereof.

## **§ 6 Delivery; Packaging; Use of third parties**

- 6.1 Partial deliveries are permitted provided that these can reasonably be accepted by the ordering party. This shall also apply to excess or reduced deliveries of up to 10 %. Differences in size, weight and quality are permitted under applicable industry norms or where this is customary practice. Unless regulated otherwise by an industry norm, waste of up to 5 % is permitted.

- 6.2 Unless otherwise agreed on we shall select the lowest cost packaging and shipping method known to us unless we, at our reasonable discretion, consider the lowest cost packaging and/or shipping method to be unsuitable for the goods or services delivered.
- 6.3 The packaging used by us solely functions as transport packaging in the sense of § 3 (1) No. 3 of the German Packaging Act (*Verpackungsgesetz*). This packaging is not intended to be passed on to third parties, but shall be taken back by us in accordance with Section 15 (1) of the German Packaging Act as follows: If we deliver to places of delivery located within the Federal Republic of Germany, the contractual partner shall have the opportunity to send back the transport packaging to us at its own expense or to return them, also at its own expense, to our premises in Düren. In both cases, the relevant address is Metallweberstraße 46, 52353 Düren. The risk of damage or destruction as well as loss of our packaging shall be borne by the contractual partner until receipt of the transport packaging by us. If the place of delivery is outside the Federal Republic of Germany, the individual regulations agreed in the delivery contract shall apply.
- 6.4 We are entitled to make use of third parties in order to fulfil our duties to complete the order.

## **§ 7 Export and export control regulations**

Prior to any intended exporting of goods the contracting counterparty undertakes to comply with all applicable German and foreign legal regulations and, in particular, to obtain any export licence required under the respectively-applicable foreign trade laws of the Federal Republic of Germany, the European Union and/or the United States of America. The contracting counterparty is responsible for compliance with such foreign trade regulations, including by its customers, and shall indemnify us from liability to this extent.

## **§ 8 Provision of consulting or advisory services**

- 8.1 Unless expressly otherwise agreed on, the agreements entered into between us and the contracting counterparty contain no consulting or advisory services (*Beratungsleistungen*). Consulting or advisory services are owed and shall be performed by us only where a separate agreement on the provision of such services is entered into by the contracting parties.
- 8.2 Where we are expected to provide the contracting counterparty with advice on the suitability and ability of our products to be used, the contracting counterparty shall be obliged to provide us in advance and without being requested with all information and documents required for such advice.

- 8.3 Where we advise the contracting counterparty on the assembly and/or installation of our products, absent any separate agreement on this, such advice shall be oriented only towards answering specific questions in connection with such assembly and/or installation, irrespective of whether the assembly and/or installation is undertaken by the contracting counterparty itself or by third parties, and shall not consist of any monitoring of the assembly and/or installation.

## **§ 9 Special provisions on assembly and installation**

- 9.1 Any assembly and installation undertaken by us takes place only on the basis of a separate agreement and will be invoiced for separately.
- 9.2 Where we undertake any assembly and installation, the contracting counterparty shall, at its cost, provide us on a timely basis with all necessary professional and support personnel, operating materials, energy and water at the site of use, including any necessary connections, heating and illumination, and shall take all other preparatory measures for the assembly and installation.
- 9.3 The contracting counterparty shall further provide us with the necessary workspace.
- 9.4 The contracting counterparty shall in all cases inform us of all conceivable dangers and special circumstances with respect to the assembly and installation.

## **§ 10 Templates and manufacturing equipment**

- 10.1 Unless otherwise agreed on, the manufacturing costs for templates and manufacturing equipment (*Fertigungsmittel*) (tools, forms, patterns, etc.) shall be invoiced for separately from the goods that are to be supplied. This also applies to manufacturing equipment that needs to be replaced due to wear and tear.
- 10.2 The costs for maintenance and proper storage and the risk of any damage to or destruction of the manufacturing equipment shall be borne by us. Where the contracting counterparty suspends its collaboration with us or terminates it during the period in which the templates or manufacturing equipment are being manufactured, all of the manufacturing costs accrued until that date shall be imposed upon it.
- 10.3 The manufacturing equipment shall remain in our possession at least until the supply agreement has been fully performed and even where the contracting counterparty has paid for such equipment. After that, the contracting counterparty is entitled to take delivery of the manufacturing equipment where a mutual agreement was arrived at on the date of delivery and the contracting counterparty has performed all of its contractual obligations in full.



- 10.4 We shall store the manufacturing equipment at no cost for three years after the last delivery to our contracting counterparty. After that, we will ask our contracting counterparty to issue instructions on the further use of this equipment within 6 weeks. Our duty to store this equipment expires where no instructions are provided within that 6 week period or no new order is placed.

## **§ 11 Claims based on material defects**

- 11.1 All information on our supplied goods or other services as of the date of entering into an agreement are purely statements on quality (*Beschaffenheitsangaben*) and are not warranties. Where we provide our goods or services on the basis of a specification sheet or product specification, the quality owed in providing such goods or services is conclusively set out by that.
- 11.2 The state of the art in Germany is determinative for the quality of goods. Otherwise, the quality of the goods is governed by the technical requirements agreed on at the date that the agreement is entered into (among other things schematics, specifications and/or samples provided to us by the contracting counterparty). Where we are obliged to provide goods/services in accordance with these requirements, the product complies with the contract where it matches the schematic, the specification or a diagram prepared by us on the basis of the sample that was agreed on by the contracting counterparty in advance.
- 11.3 Discrepancies that are customary in trade do not amount to defects.
- 11.4 Claims on the part of the contracting counterparty that are based on defects require that the contracting counterparty has properly complied with its duty to issue an objection (*Rügeobliegenheiten*) pursuant to § 377 of the German Commercial Code (HGB). The contracting counterparty is obliged to carefully inspect goods delivered immediately after these are delivered. This shall also apply where we deliver the goods to a third party at the direction of the contracting counterparty. The goods delivered shall be deemed to be approved where a defect that could have been discovered subject to careful inspection is not objected to without delay. If the defect was not recognisable subject to careful inspection, the period for a timely objection shall commence as of the date the defect is discovered. Where a defect is identified prior to the further use of the goods, in particular prior to the installation of the goods, the contracting counterparty must cease all further use of the goods which would impede or render impossible the later examination and determination of the defect, the remedy of the defect or the return to us of the goods delivered in the context of subsequent performance (*Nacherfüllung*) or which results in damage to the goods delivered. Where the acceptance of goods or an inspection of a first sample was agreed on, objections to defects that the contracting counterparty could have identified subject to careful acceptance or a first sample inspection is excluded.



- 11.5 The contracting counterparty shall, to the extent reasonable, provide us with the opportunity without delay and at usual business hours to inspect any defects alleged to exist by the contracting counterparty. The contracting counterparty shall be liable for any damages incurred by us as a result of an intentional or grossly negligent defect objection notice.
- 11.6 We are not liable for defects that are caused by inappropriate handling of the goods supplied by us by the contracting counterparty or by third parties. This shall apply in particular to such defects that are based on incorrect installation. We are also not liable for the wear and tear of the goods delivered by us taking place as a result of operating these.
- 11.7 In the event of a material defect we shall be obliged – at our election – to supply goods that are free of defects or to remedy the delivered goods (subsequent performance). In the context of subsequent performance, we shall be obliged to bear all required expenses, in particular transportation, travel, work and materials costs, provided that these are not increased in that the goods purchased were taken to a site other than the original delivery or shipment site. This shall not apply where taking such goods to another site corresponds to the intended use of the goods delivered. Where we elect subsequent performance by way of supplying alternative goods, the defective goods delivered shall be returned on a freight-free basis to us whereby the contracting counterparty shall be obliged to select the most inexpensive shipping method.
- 11.8 Where a subsequent performance failure occurs, the contracting counterparty shall be entitled – at its election – to withdraw from the agreement, to reduce the purchase price or to claim damages in lieu of performance or compensation for wasted expenses. The contracting counterparty shall not be entitled to damages in lieu of performance or compensation for wasted expenses for insignificant defects; insignificant defects also do not give rise to a right to withdraw from the agreement on the part of the contracting counterparty. A subsequent performance failure occurs where we are not able to remedy the defect within a reasonable period set by the contracting counterparty, where two remedy attempts on our part are failures, where we seriously and conclusively refuse to provide subsequent performance or where subsequent performance is unreasonable for the contracting counterparty. Our rights under § 275 BGB to refuse to provide subsequent performance in a specific manner remain unaffected.
- 11.9 Where the contracting counterparty is entitled due to a subsequent performance failure to continue to demand subsequent performance on the one hand and to assert the statutory rights available to it in place of that on the other hand, we may request that the contracting counterparty exercises its rights within a reasonable period. The contracting counterparty shall notify us of its decision. Our receipt of the contracting counterparty's notice is determinative for compliance with the period. Where the contracting counterparty fails to exercise its rights on time, it may assert these (in particular rights to withdraw

from the agreement or to damages) only where a new reasonable period for subsequent performance that is set by it has lapsed.

- 11.10 Recourse claims against us under § 445a BGB (vendor recourse) shall exist only to the extent that the contracting counterparty has not entered into any agreements with its customers that extend beyond statutory claims based on defects.
- 11.11 Subject to the following sentence, claims and rights on the part of the contracting counterparty based on defective performance (*mangelhafte Leistung*) shall expire in 12 months unless the performance relates to newly-manufactured goods or works services (*Werkleistungen*). This shall not apply where longer periods are provided for at law pursuant to § 438 para. 1 no. 2 (construction works and items for construction works), § 445b (recourse claims) and § 634 a para. 1 no. 2 (construction defects) BGB. Subject to alternative agreements, all rights based on material defects are excluded where used goods are supplied. The shortened liability period and the exclusion of liability shall not apply in cases of intentional or grossly negligent death, damage to bodily integrity or health, in cases of an intentional or grossly negligent breach of duty on our part, to the fraudulent concealment of a defect, or in cases of an applicable quality guarantee or to claims under the German Product Liability Act (*Produkthaftungsgesetz*).

## **§ 12 Claims based on legal defects**

- 12.1 Where we are liable for legal defects with respect to the goods supplied (i.e. defects in title), the replacement of the goods or the remedy of the defect shall be replaced by subsequent performance in the form of the acquisition of the respective rights on our part, entering into a licence agreement with the owner of such rights or a modification of the goods supplied that is reasonable for the contracting counterparty and which excludes an infringement of rights. We are entitled to select from these forms of subsequent performance.
- 12.2 The provisions governing material defects in § 11 of these Terms shall otherwise apply.

## **§ 13 Limitation of liability**

- 13.1 Any damages claims on the part of the contracting counterparty based on a delay in delivery, delivery being rendered impossible, defective supplies (*mangelhafte Lieferungen*) or on other legal grounds, in particular based on a breach of contractual duties and in tort, are excluded unless otherwise provided for in the following provisions. This applies both to claims for damages and to claims for compensation for expenses on the part of the contracting counterparty.

- 13.2 The foregoing exclusion of liability shall not apply (a) in cases where we or our agents have acted intentionally or grossly negligently, (b) to damages based on death or damage to bodily integrity or health (irrespective of the degree of fault), (c) for claims under the German Product Liability Act and (d) for the breach of essential contractual duties ((d) is, however, subject to clause 13.3).
- 13.3 In the event that we are responsible for the breach of an essential contractual duty, damages claims for a breach of essential contractual duties that is based on simple negligence are limited to direct damages that are foreseeable and typical for this type of contract. Essential contractual duties are duties which through their fulfilment make the fundamental proper performance of the contract possible and the performance of which the contracting counterparty is usually entitled to rely on.
- 13.4 To the extent that the contracting counterparty is entitled to damages claims or claims for compensation of expenses that are based on defects, these claims shall expire upon the lapse of the limitation periods applicable to claims based on material and legal defects in accordance with the foregoing clause 11.11 of these Terms. Statutory limitation periods shall apply to damages claims under the German Product Liability Act.
- 13.5 To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our employees, legal representatives and agents.

## **§ 14 Reservation of title**

- 14.1 We retain title in all goods supplied until the fulfilment of all claims in connection with the business relationship with the contracting counterparty, in particular until any debit balance has been settled (netting reservation). Where the contracting counterparty acts in breach of contract, in particular by defaulting on payment, we are entitled to withdraw from the agreement after the lapse of a reasonable subsequent period and to recover the goods delivered by us or to attach these with liens. Upon recovering one or more of the goods delivered we are entitled to dispose of these for the proceeds; the proceeds of realisation shall be applied against the liabilities of the contracting counterparty after deducting reasonable realisation costs. The return of the goods delivered amounts to a withdrawal from the agreement.
- 14.2 The contracting counterparty is obliged to store and handle the goods delivered with care. In particular, the contracting counterparty is obliged to insure the goods delivered at its own cost against fire, water damage and theft losses sufficiently based on their value as new. Where maintenance and inspection works are necessary the contracting counterparty shall perform these at its own cost and on a timely basis.
- 14.3 The contracting counterparty shall inform us immediately where third parties obtain liens or otherwise encroach upon title rights so that we can bring an action in accordance with

§ 771 of the German Code of Civil Procedure (ZPO). Where the third party is not capable of reimbursing us for the costs of an action in accordance with § 771 ZPO the contracting counterparty shall be liable for any losses incurred by us.

- 14.4 The contracting counterparty is entitled to sell on the goods delivered in the ordinary course of business but may not transfer title to these as collateral or attach a lien upon these. The contracting counterparty assigns to us now in advance all claims in the amount of the final factoring sum (including value-added tax) of our claims that arise on its part against its customers or other third parties. That assignment shall serve to secure our claims in the same scope as the reservation of title set out in clause 14.1 of these Terms. The contracting counterparty remains entitled to collect on such claims even after the assignment. We are, however, entitled to collect on such claims ourselves where the contracting counterparty fails to comply with its payment obligations, is in default of payment or other circumstances found serious doubt as to whether the contracting counterparty will comply with its payment obligations. In such cases we are entitled to revoke the collection authorisation. In addition, we may request that the contracting counterparty immediately informs us of the assigned claims and the debtors of these and provides us with all information and documents necessary for the collection of the claims.
- 14.5 Where the goods delivered are irrevocably commingled or mixed with other items that do not belong to us we shall acquire common title in the value of those goods belonging to us (final factoring sum including value-added tax) in proportion to the value of the commingled or mixed items. Where the commingling or mixing takes place in such a manner that the goods belonging to the contracting counterparty are regarded as principal goods (*Hauptsache*), it is agreed on that the contracting counterparty shall transfer proportionate title in these to us. The contracting counterparty shall store those goods in which we hold exclusive or common title.
- 14.6 The contracting counterparty shall also assign to us all claims against its customers or third party that arise through the joining of the goods delivered with real property as collateral for our claims. Clause 14.4 of these Terms applies *mutatis mutandis*.
- 14.7 We undertake at the request of the contracting counterparty to release that collateral to the extent that the realisable value of our collateral exceeds the claims secured by it by more than 10 %. We are entitled to make the selection of the collateral for release.

## **§ 15 Final provisions**

- 15.1 Where one or more provisions of these Terms and any additional agreements entered into is or shall become invalid, the validity of the Agreement shall otherwise not be affected. The contracting parties undertake to replace the invalid provision with that provision that most closely commercially resembles the invalid provision.

- 15.2 All legal relationships that arise in connection with the entering into, performance or termination of this Agreement are governed by the substantive laws of the Federal Republic of Germany subject to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- 15.3 The place of performance is Düren.
- 15.4 To the extent that the contracting counterparty is a merchant (*Kaufmann*), Düren is the exclusive venue for all legal disputes. We are, however, entitled at our election to bring claims against the contracting counterparty at other venues available to us at law.
- 15.5 Our Terms, in particular at least clauses 15.2 and 15.4 of these Terms, shall apply only vis-a-vis merchants (*Kaufleute*), legal entities governed by public law and special assets (*Sondervermögen*) under public law.
- 15.6 To the extent that the original German-language version of these Terms has been provided to or is available to the contracting counterparty only that original German-language version shall be binding. To the extent these English-language terms apply, the German-language terms used in brackets in these Terms shall be conclusively determinative for the interpretation of the relevant German law concepts to which these are appended. The contracting counterparty is itself exclusively responsible for obtaining any legal advice necessary in order to understand and take account of these German law concepts.

Status: 21<sup>st</sup> March 2023