

## **General Terms and Conditions of Sale**

### **1. Scope of application**

1.1 Any offer, sale, delivery or service on the part of Wirtgen India Pvt. Ltd. is governed exclusively by these General Terms and Conditions of Sale ("Sales Conditions"). Any conflicting or differing terms or conditions applied by the Buyer shall be deemed invalid, regardless of when Wirtgen India Pvt. Ltd. learns of them. This shall be the case even if Wirtgen India Pvt. Ltd. is aware of conflicting or differing terms or conditions applied by the Buyer but nevertheless makes delivery to the Buyer without reservations. Any deviation from these Sales Conditions shall be valid only if confirmed in writing by Wirtgen India Pvt. Ltd.

1.2 These Sales Conditions shall also apply to any subsequent business transaction with the same Buyer, even if no additional agreement to this effect has been concluded.

1.3 Deliveries that require assembly on location are, in addition, subject to Wirtgen India Pvt. Ltd.'s Terms and Conditions for Repair and Assembly.

### **2. Offers and conclusion of contract**

2.1 Unless expressly indicated otherwise, all offers made by Wirtgen India Pvt. Ltd. are non-binding. Cost estimates are non-binding. Unless otherwise agreed upon, initial offers shall be made free of charge. Wirtgen India Pvt. Ltd. reserves the right to charge adequate remuneration for further offers as well as for design work, if a sales contract is not concluded.

2.2 A sales order becomes a valid contract, only if it is confirmed in writing by Wirtgen India Pvt. Ltd. The validity of any modifications, amendments or ancillary agreements to the sales contract is also subject to written confirmation by Wirtgen India Pvt. Ltd.

2.3 Documents supporting the offers, such as illustrations, drawings or specifications of weights and measurements, are approximate unless they have expressly been agreed upon as binding. Wirtgen India Pvt. Ltd. reserves all ownership rights and copyright in illustrations, drawings, cost estimates, calculations, and other documents. They may not be disclosed to third parties without prior express written consent from Wirtgen India Pvt. Ltd. Such materials are to be returned to Wirtgen India Pvt. Ltd. immediately in the event that

(i) a contract is not concluded or

(ii) performance under a contract has been fully completed.

### **3. Purchase price and payment**

3.1 Unless otherwise agreed upon, Wirtgen India Pvt. Ltd.'s prices are unpacked "ex works". The rate of VAT applicable on the day the invoice is issued is to be added to the contract price.

3.2 Unless otherwise agreed upon, the payment must be made in full, and without any costs arising for Wirtgen India Pvt. Ltd., as follows:

Machines: Prior to delivery, nett.

Spare parts: Prior to delivery, nett.

Other: Within 14 days after the date of the invoice, nett.

3.3 Bills of exchange and checks shall, at all times, be accepted only on account of performance. All bank charges and exchange costs are borne by the Buyer.

3.4 Payments by Letter of Credit are governed by the ICC's Regulations "Uniform Customs and Practice for Documentary Credits", as then in force.

3.5 The Buyer is not entitled to any set-off, retention or reduction of the purchase price, unless the Buyer's counterclaims are either undisputed by Wirtgen India Pvt. Ltd. or have been confirmed by a final court decision. The same shall apply to warranty claims.

3.6 In the event that the Buyer is late in making payment, Wirtgen India Pvt. Ltd. is entitled to charge interest at the rate of the German legal provisions applicable for delay in payment. If Wirtgen India Pvt. Ltd. establishes that its actual damages resulting from the Buyer's delay of payment were higher, then Wirtgen India Pvt. Ltd. is entitled to claim compensation for such higher damages. The Buyer shall, however, be entitled to prove that the actual damages resulting from its late payment were lower.

3.7 Where circumstances come to Wirtgen India Pvt. Ltd.'s attention indicating that the Buyer's creditworthiness is questionable, all deferred debts become due immediately. Moreover, in such a case, Wirtgen India Pvt. Ltd. is entitled to demand payment in advance or the provision of security.

#### 4. Delivery

4.1 Applicable delivery dates shall be agreed individually. A delivery period indicated by Wirtgen India Pvt. Ltd. shall commence only once all issues required for the performance of the order have been resolved. This means, in particular, that any required documents, permits or releases that must be provided by the Buyer actually have been provided by the Buyer and received by Wirtgen India Pvt. Ltd., or that an agreed upon down payment actually has been received by Wirtgen India Pvt. Ltd.

4.2 Compliance with the agreed delivery date is subject to the correct and due delivery of the goods to Wirtgen India Pvt. Ltd. itself.

4.3 Unless otherwise agreed upon, all deliveries are "ex works". As between the parties, the Buyer shall assume Wirtgen India Pvt. Ltd.'s obligations under the Federal German Ordinance on Packaging (Verpackungsverordnung) and holds Wirtgen India Pvt. Ltd. harmless with respect to the obligations under this ordinance.

4.4 The delivery requirements shall be deemed fulfilled if the goods have left Wirtgen India Pvt. Ltd.'s warehouse for shipment prior to the end of the delivery period or if the Buyer has been notified that the goods are ready to be sent. Where the Buyer is obligated to accept the delivery, except in case of a justified rejection of the acceptance, the date of acceptance is decisive, or, respectively, the day on which the Buyer has been notified that the delivery is ready for acceptance.

4.5 Wirtgen India Pvt. Ltd. may make partial deliveries or partial performances at any time.

4.6 Wirtgen India Pvt. Ltd. is not responsible for any delays in delivery or performance, even where fixed delivery dates or periods are affected and even if Wirtgen India Pvt. Ltd. is late, if these delays result from force majeure or any circumstances which significantly impede or prevent delivery by Wirtgen India Pvt. Ltd., in particular, such circumstances include strikes, lockouts or any instructions issued by competent authorities, even if such circumstances occur at the suppliers' or sub-supplier's of Wirtgen India Pvt. Ltd. Under such circumstances, Wirtgen India Pvt. Ltd. is entitled to delay its delivery or performance for the duration of the delay caused by the particular circumstances, plus a reasonable period of time for recommencing operations, or to withdraw from the contract in part or in full with regard to the outstanding delivery or performance. Wirtgen India Pvt. Ltd. must inform the Buyer as soon as possible of the beginning, the end and the presumed duration of the delay caused by the afore-mentioned circumstances.

4.7 Wirtgen India Pvt. Ltd.'s deliveries shall not be deemed to be late if the Buyer is provided with replacement goods within the agreed delivery period, which fulfill the technical and functional requirements of the Buyer in all substantial respects, for the period of time until the delivery of the actual goods. Wirtgen India Pvt. Ltd. shall bear all costs arising from the provision of the replacement.

4.8 In the event that Wirtgen India Pvt. Ltd. is delayed, the Buyer must grant WIRTGEN a reasonable extension of time for performance of the contract.

4.9 In the event that Wirtgen India Pvt. Ltd. delays delivery and thus causes any damage to the Buyer, the Buyer shall be entitled to demand a flat amount of compensation for damages caused by such delay. This amount is 0.5% for each full week of delay, but the total amount of compensation is not to exceed 5% of the value of the part of the delivery which could not be used as stipulated in the contract, or in due time.

In the event that the Buyer grants a reasonable extension of time for performance of the contract to Wirtgen India Pvt. Ltd., taking into account any legal exceptions thereof, and if such a delivery period is not met, the Buyer is entitled to withdraw from the contract in accordance with statutory provisions.

The flat amount of compensation for damages shall settle all claims due to delay in delivery. Any claims exceeding this can only be made in accordance with Clause 8.2.

## 5. Transfer of risk, transport and delivery in acceptance

5.1 Risk shall pass to the Buyer as soon as the goods have left Wirtgen India Pvt. Ltd.'s warehouse for shipment. This shall also apply in the case of partial deliveries or in the event that Wirtgen India Pvt. Ltd. has taken over any further services such as delivery expenses, delivery or installation. Insofar as the Buyer is obligated to accept the delivery, transfer of risk will occur upon such acceptance. The acceptance shall take place either upon the delivery date, or, alternatively, upon the day on which the Buyer has been notified by Wirtgen India Pvt. Ltd. that the delivery is ready for acceptance. The Buyer is not entitled to refuse acceptance if a defect is not material.

5.2 In the event that transport or the acceptance is delayed or becomes impossible due to circumstances that are not attributable to Wirtgen India Pvt. Ltd., the risk shall pass to the

Buyer upon the day on which it has been notified that the goods are ready for dispatch or acceptance.

5.3 Unless otherwise agreed upon, transport of the goods is affected at the risk and expense of the Buyer.

5.4 If the Buyer so wishes, Wirtgen India Pvt. Ltd. shall insure the shipment at the Buyer's costs against theft, breakage, damages resulting from transport, fire and water, as well as against other insurable risks.

5.5 In the event that the Buyer delays acceptance or violates its duty to cooperate in any other way, Wirtgen India Pvt. Ltd. is entitled to claim compensation for the damages caused by such delay or violation, including any additional expenditure, in particular, any costs incurred in the delayed acceptance of delivery.

5.6 Where commercial terms such as FOB, CFR, CIF, etc. are agreed upon, they shall be interpreted in accordance with the ICC Incoterms currently in effect.

## 6. Retention of title and other security interests

6.1 Wirtgen India Pvt. Ltd. retains title to all goods delivered to the Buyer until all Wirtgen India Pvt. Ltd.'s claims for payment against the Buyer under the business relationship including any future claim under contracts signed simultaneously or later have been satisfied by the Buyer in full. This shall also apply, if either individual claims for payment or all of Wirtgen India Pvt. Ltd.'s claims for payment have been included in a current account, and the balance was struck and accepted. In the event the Buyer acts in breach of contract, in particular, there is a delay in payment, Wirtgen India Pvt. Ltd., on demand of payment, shall be entitled to take back the delivered goods and simultaneously declare rescission of the contract. In this event, the Buyer is obligated to return the delivered goods.

6.2 The Buyer is entitled to dispose of the delivered goods in the ordinary course of business, provided and to the extent that the conditions to secure Wirtgen India Pvt. Ltd.'s claims for payment laid down in Clauses 6.3, 6.4, and 6.5 have been fulfilled. Any violation of the obligation contained in the aforementioned sentence gives Wirtgen India Pvt. Ltd. the right to terminate the entire business relationship with the Buyer with immediate effect.

6.3 Wirtgen India Pvt. Ltd. and the Buyer hereby agree that on conclusion of an individual sales contract between the two parties all claims of the Buyer arising out of the future resale or lease of the delivered goods to a third party or for any other legal reason (insurance, tortious act, etc.) shall be assigned to Wirtgen India Pvt. Ltd. to serve as security for all Wirtgen India Pvt. Ltd.'s claims that may arise out of its business relationship with the Buyer. The Buyer shall, however, remain entitled to collect the assigned claims, as long as Wirtgen India Pvt. Ltd. has not requested that the assignment be notified to the third party in question. The Buyer may not re-assign any claims that have already been assigned to Wirtgen India Pvt. Ltd.. The Buyer is obligated to assign to Wirtgen India Pvt. Ltd. the title or any other right to any goods, machinery parts or used machines of any type that the Buyer has accepted in lieu of payment as soon as the Buyer acquires such title or other right. The Buyer must hold the above-mentioned goods in custody for Wirtgen India Pvt. Ltd., take proper care of them, and insure them as appropriate.

6.4 If the security interests provided for in Clauses 6.1, 6.2, and 6.3 have not been legally recognized in the country where the delivered goods are located, or are not fully enforceable, then the Buyer is obligated to notify Wirtgen India Pvt. Ltd. immediately to this effect and offer security of equivalent value.

6.5 The Buyer shall process or transform any goods supplied to it by Wirtgen India Pvt. Ltd. under retention of title only on behalf of Wirtgen India Pvt. Ltd.. In the event the item under retention of title is processed together with other goods not owned by Wirtgen India Pvt. Ltd., Wirtgen India Pvt. Ltd. acquires co-ownership of the new item in proportion to the value of the item supplied by Wirtgen India Pvt. Ltd. in comparison with the value of the other processed goods. This value is to be determined at the time of processing.

In the event that Wirtgen India Pvt. Ltd.'s goods are combined with other movable goods to form one composite good, or are blended inseparably with other goods, and if the other goods are regarded as the main item, the Buyer shall assign Wirtgen India Pvt. Ltd. a proportionate co-ownership to the item, insofar as the Buyer owns the main item.

The Buyer is to keep the goods to which Wirtgen India Pvt. Ltd. has ownership or co-ownership in safe custody. The same conditions applicable to the goods under retention of title shall apply to the item after processing or transformation.

6.6 If the value of the securities granted to Wirtgen India Pvt. Ltd. under Clauses 6.1 to 6.5 exceeds Wirtgen India Pvt. Ltd.'s claims arising out of the business relationship with the Buyer by more than 20%, Wirtgen India Pvt. Ltd. shall, at the request of the Buyer, release securities of Wirtgen India Pvt. Ltd.'s choice, to the extent that the threshold is exceeded.

6.7 The Buyer must insure the goods to which Wirtgen India Pvt. Ltd. has retained title against theft, breakage, fire, water and other risks ordinarily insured against. Wirtgen India Pvt. Ltd. may require the Buyer to prove that a suitable insurance policy has been taken out, and may, if necessary, take out insurance against the above-mentioned risks itself at the expense of the Buyer.

6.8 In case of seizure, attachment or any other intervention by any third party against the goods or claims in which Wirtgen India Pvt. Ltd. has a security interest, the Buyer must notify Wirtgen India Pvt. Ltd. thereof immediately, and must assist WIRTGEN with the enforcement of Wirtgen India Pvt. Ltd.'s rights. To the extent that it is not possible to request the third party in question to reimburse Wirtgen India Pvt. Ltd. for court or extra judicial fees, any such costs shall be borne by the Buyer.

6.9 If an application for commencing insolvency proceedings has been filed against the Buyer, Wirtgen India Pvt. Ltd. is entitled to rescind the contract with immediate effect and request immediate return of the delivered goods.

6.10 Clauses 6.1, 6.3, and 6.9 shall apply accordingly with regard to the goods, machinery parts and used machines of any type, which may have been accepted by the Buyer in lieu of payment pursuant to Clause 6.3.

## 7. Warranty

7.1 The following warranty rules shall apply to the delivery of new machines and new spare parts:

7.2 Wirtgen India Pvt. Ltd. warrants that the delivered goods are free from defects in accordance with current design and technical standards, provided that with respect to any defects, it can be proved that they were introduced through circumstances that occurred before risk passed to the Buyer, in particular due to a design fault, poor materials or defective workmanship. Any further warranty beyond the above-mentioned conditions is granted only if and to the extent that Wirtgen India Pvt. Ltd. has expressly assumed a guarantee for the quality of the delivered goods in the relevant individual sales agreement.

7.3 The Buyer may only assert a warranty claim provided that it first has examined the delivered goods for the existence of any defects within one week of delivery, and in the event of a defect, it has notified Wirtgen India Pvt. Ltd. immediately in writing of the defect. Any defect that could not be detected by a thorough examination within this period shall be notified to Wirtgen India Pvt. Ltd. in writing immediately after detection. Delivery within the meaning of the first sentence of this Clause is deemed to be the time at which the delivered goods come under the control of the Buyer or could have come under the Buyer's control if the Buyer had not been at fault.

7.4 Changes in the design or specifications of goods that were made before delivery as part of general design or production changes at Wirtgen India Pvt. Ltd. shall not be deemed to be defects in the delivered goods, unless such changes render the delivered goods useless for the purpose intended by the Buyer.

7.5 The warranty against defects in the delivered goods shall comprise the remedy of defects either through repair or replacement, at Wirtgen India Pvt. Ltd.'s option. Wirtgen India Pvt. Ltd. receives title to any replaced parts.

In the event Wirtgen India Pvt. Ltd. fails to remedy the defects in question, the Buyer is entitled to specify a realistic period of time within which Wirtgen India Pvt. Ltd. must complete further repairs or replacement. If Wirtgen India Pvt. Ltd. once again fails to remedy the defect, then the Buyer may either request a reduction in the purchase price corresponding to the amount by which the value of the delivered goods was reduced due to the defect, or rescind the contract, at the Buyer's option. In the event of an insubstantial defect, the Buyer is only entitled to a reduction in the purchase price.

7.6 In agreement with Wirtgen India Pvt. Ltd., the Buyer shall arrange for Wirtgen India Pvt. Ltd. to have sufficient time and opportunity to carry out all repairs or replacements that are required in Wirtgen India Pvt. Ltd.'s judgment. If the Buyer does not do so, Wirtgen India Pvt. Ltd. is released from its warranty obligations and any liability arising out of those obligations. The Buyer is only entitled to remedy a defect covered by Wirtgen India Pvt. Ltd.'s warranty by itself or have it remedied by a third party at Wirtgen India Pvt. Ltd.'s expense if this is necessary to avert a dangerous risk to the safety of operations and/or to avoid a disproportionately high damage. The Buyer must notify Wirtgen India Pvt. Ltd. immediately in such an event.

7.7 Wirtgen India Pvt. Ltd.'s warranty does not cover any incidental costs arising from the work required to remedy a defect, including, in particular, freight costs, import costs and customs duties, travel expenses, food and lodging, towing and crane charges, and costs required to assign mechanics and temporary staff.

7.8 Wirtgen India Pvt. Ltd.'s warranty for major components that have not been produced by Wirtgen India Pvt. Ltd. is limited to the assignment of its claims against the supplier of such components. In the event that justified warranty claims by the Buyer are not satisfied by the supplier of the components in question, even though the Buyer has taken all reasonable steps to enforce its claims, including the pursuit of legal proceedings, Wirtgen India Pvt. Ltd. shall, pursuant to the provisions of this Clause 7, assume secondary responsibility for fulfilment of the warranty. However, such secondary responsibility shall exclude responsibility for any costs incurred by the Buyer in pursuing its legal rights against the supplier of the components in question.

7.9 Wirtgen India Pvt. Ltd. is not liable for any damage unless it can be proven that such damage is a result of Wirtgen India Pvt. Ltd.'s fault. This applies in particular, but is not limited to:

- \* normal wear and tear;
- \* unsuitable or improper use;
- \* faulty assembly or putting into service by the Buyer or third parties;
- \* faulty or negligent handling;
- \* use of unsuitable fuel, oils and lubricants;
- \* use of unsuitable replacement materials and parts;
- \* chemical, electrochemical, electromagnetic, electrical or similar influences.

Wirtgen India Pvt. Ltd.'s warranty obligations also expire where the delivered goods are not main-tained and serviced at the stipulated maintenance intervals by either Wirtgen India Pvt. Ltd. itself, any authorized Wirtgen India Pvt. Ltd. dealer, or the Buyer or operator of the product according to Wirtgen India Pvt. Ltd.'s instructions (the operating manual).

7.10 In the event that either the Buyer or any third party carries out repairs improperly, Wirtgen India Pvt. Ltd. is not liable for the consequences arising from this improper repair. The same shall apply to any alterations made to the delivered goods without the prior consent of Wirtgen India Pvt. Ltd..

7.11 Wirtgen India Pvt. Ltd. may refuse to honour its warranty obligations as long as the Buyer has not fulfilled its contractual obligations.

7.12 The provisions laid down in Clause 7 are the final and exclusive provisions that govern Wirtgen India Pvt. Ltd.'s warranty obligations for delivered goods. Any further claims of the Buyer, in particular for damage other than to the delivered goods themselves, are subject exclusively to the provisions of Clause 8.

7.13 The exclusions and limitations of Wirtgen India Pvt. Ltd.'s liability set out in the foregoing provisions shall also apply to exclude and limit the personal liability of Wirtgen India Pvt. Ltd.'s employees and other staff as well as their representatives and persons appointed by Wirtgen India Pvt. Ltd. to perform its obligations.

7.14 Wirtgen India Pvt. Ltd. does not take on any warranty for the delivery of used machines and spare parts. Wirtgen India Pvt. Ltd.'s liability pursuant to Clause 8 shall remain unaffected by this exclusion of warranty.

## 8. Liability for ancillary obligations

8.1 If the Buyer is unable to use the goods in accordance with the contract due to a fault of Wirtgen India Pvt. Ltd. by having omitted or provided faulty advice or proposals, or due to the violation of other contractual ancillary obligations by Wirtgen India Pvt. Ltd., in particular in instructions for the operation and maintenance of the delivered goods, the provisions of Clauses 7 and 8.2 shall apply accordingly, excluding any further claims by the Buyer.

8.2 Wirtgen India Pvt. Ltd. only becomes liable for any damage caused to other than the delivered goods themselves, for whatever legal reasons, in the case of:

- \* wilful intent on the part of Wirtgen India Pvt. Ltd.;
- \* gross negligence by Wirtgen India Pvt. Ltd.'s owners, its corporate bodies, the management or senior staff;
- \* culpable infringement of life, physical well-being and health;
- \* defects concealed fraudulently by Wirtgen India Pvt. Ltd. or a guaranteed lack of defects;
- \* defects caused to the delivered goods to the extent that liability for personal or material damage resulting from goods that are used for private purposes is subject to the provisions of the Product Liability Act.

In the event of culpable infringement of contractual obligations amounting to a fundamental breach of contract, Wirtgen India Pvt. Ltd. is also liable for gross negligence by its employees not belonging to the senior staff. In the event of simple negligence, the aforementioned liability is limited to damage that is reasonably foreseeable and typical for that type of contract. Any further claims are excluded.

## 9. Statute of limitations

Any claims by the Buyer, submitted for whatever legal reasons, shall become statute-barred after the expiry of 12 months. In the case of intentional or fraudulent conduct and in case of claims submitted pursuant to the provisions of the Product Liability Act, the statutory limitation terms shall apply.

## 10. Use of software

10.1 As far as the scope of delivery contains software, the Buyer is granted the non-exclusive right to use the delivered software, including its documentation. The Buyer may use the software only in conjunction with the delivered good for which the software is to be utilized. Any use of the software in more than one system is prohibited.

10.2 Any other rights concerning the software and its documentation, including copies, must remain with the supplier and/or software supplier. Sub-licences may not be granted.

## 11. Applicable law, choice of forum, severability clause

11.1 The contractual relationship between Wirtgen India Pvt. Ltd. and the Buyer is governed exclusively by the law of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.2 The sole and exclusive court of jurisdiction for any legal dispute arising from the contractual relationship between Wirtgen India Pvt. Ltd. and the Buyer, including claims relating to bills of exchange or checks, shall be the competent court for the head office of Wirtgen India Pvt. Ltd.. Wirtgen India Pvt. Ltd. shall, however, at its option be entitled to bring an action against the Buyer with the competent court that has general jurisdiction over the Buyer.

11.3 Only the German text of these Sales Conditions is legally binding for the contractual relationship.

11.4 If any or more of the provisions or parts of the provisions contained in these Sales Conditions are or should become invalid for any reason whatsoever, this shall not affect the validity of the remaining provisions thereof. The Buyer and Wirtgen India Pvt. Ltd. agree to replace any such invalid provision or part of a provision by a provision reflecting the purpose of this contract to the best extent possible. The same shall apply in the case of any material gap that has not been contemplated within in these Sales Conditions.

## General Terms and Conditions of Purchase

### I. Overriding General Terms and Conditions

All contracts between Wirtgen India Pvt. Ltd. (Buyer) and our Suppliers shall be exclusively subject to the following General Terms and Conditions of Wirtgen India Pvt. Ltd.. Any agreements between said parties, modifications and collateral agreements thereto shall only be valid if made in writing. Any reference by the Supplier to its own General Terms and Conditions shall herewith be expressly disregarded. Our terms of purchase shall apply even if we are aware of any conditions of the Supplier's that conflict with our terms of purchase and we accept delivery of products or services by the Supplier or pay for the same. Our terms of purchase shall also apply to all future deliveries and services by the Supplier until such time as our new terms of purchase should take effect.

### II. Orders

1. Supply contracts (orders and acceptance) and call orders as well as additions and modifications thereto must be made in writing. Orders and call orders may be effected by telecommunication.

2. If the Supplier does not accept an order within three weeks of receipt, the Buyer shall be entitled to cancel the order. Call-off orders shall become binding, at the latest, if they are not refused by the Supplier within two weeks of receipt.

3. The Buyer may demand such modifications to the construction and design of the goods as may be reasonably expected of the Supplier, in which case an appropriate mutual arrangement shall be made to allow for the consequences thereof, particularly in respect of the increased or reduced costs involved and the time allowed for delivery.

4. Cost estimates and offers of any kind shall be binding and free of charge.

### III. Payments

1. In case of acceptance of early deliveries, the due date for payment shall be based on the originally agreed delivery date.

2. In case of defective delivery the Buyer shall be entitled to withhold payment in proportion to the value of the defective delivery until the order has been properly fulfilled.

3. Without the Buyer's prior written consent, which may not be unfairly refused, the Supplier shall not be entitled to assign its accounts receivable from the Buyer or have third parties collect them. In case of extended reservation of title, said consent shall be deemed given.

4. Prices may not be changed without the Buyer's consent.

5. Unless otherwise provided, payments shall be effected by the Buyer at a 3% cash discount within 14 days of receipt of the goods or net within 30 days.

6. Unless otherwise provided, all prices shall apply DDP as per Incoterms 2000 and shall include packaging. The prices shall not include VAT. The Supplier shall bear the material risk until acceptance of the goods by us or our authorized recipient at the stipulated place of delivery.

### IV. Notice of defects

The Buyer must notify the Supplier of any defects immediately and in writing as soon as they are detected under the prevailing conditions in the ordinary course of business. To this extent the Supplier waives any defence based on late notification of defects.

### V. Secrecy

1. Unless and until such time as it may demonstrably become public knowledge, all business or technical information to which we provide access (including features that may be gleaned from objects, documentation or software provided, and any other know-how) shall be kept secret from third parties and may only be made available to persons at the Supplier's own facilities who must be involved in order to use such information for the purpose of supplying us and who shall be likewise enjoined to secrecy. We shall retain exclusive ownership of said information, which may not be reproduced or commercially used without our prior written consent except for the purpose of supplying us. If we so request, all information we have provided (including any copies made or records thereof) and any objects we have lent must be returned to us, immediately and in full, or destroyed. We reserve all rights to such information (including copyrights and the right to register industrial property rights, such as patents, utility models etc.). If the information has been made accessible to us by third parties, this reservation of rights shall also apply for the benefit of those third parties.

2. Products that are manufactured according to documents designed by us, such as drawings, models, forms, dies or the like, or according to our confidential information or using our tools or reproductions thereof, may not be used by the Supplier itself or offered or supplied to third parties. The same applies mutatis mutandis to our printing orders.

3. Subcontractors shall be enjoined accordingly.

4. The contracting parties may not make use of their mutual dealings for advertising purposes without the other's prior written consent.

#### VI. Delivery dates and deadlines

Stipulated dates and deadlines shall be binding. All delivery dates and deadlines refer to receipt of the goods, including all necessary documents, by the Buyer. If delivery "free works" is not stipulated, the Supplier must make the goods available in good time, taking the usual time of transportation into account.

The Supplier may be required to furnish proof of having effected delivery.

The Buyer reserves the right to send back goods that are delivered too early. Additional expenses thereby incurred shall be borne by the Supplier.

#### VII. Delayed delivery

1. The Supplier shall be liable to the Buyer for any losses due to late delivery.

2. The amount of damages shall depend on the extent of the delay. Unless otherwise provided, 1% of the order value shall be payable in damages for each week of delay that has commenced prior to delivery.

3. The Buyer reserves the right to claim greater proven damages.

4. If we accept late delivery or performance without reservation, that shall not be deemed a renunciation of any damages to which we are entitled for late delivery or performance.

#### VIII. Force majeure

In the event of force majeure, industrial disputes, civil unrest, official action or other unforeseeable, unavoidable and serious occurrences, the contracting parties shall be released from their obligations of performance for the duration of the disturbance and to the extent of its impact. This shall apply even if the party affected is already in default of performance when these events occur. As far as may be reasonably expected, the parties shall immediately furnish the necessary information and adjust their obligations to the altered circumstances in good faith.

If necessary, the Supplier must furnish proof of the impact of the force majeure on the order in question.

#### IX. Quality and documentation

1. In respect of its delivery, the Supplier must adhere to generally accepted engineering standards, regulations regarding safety, accident prevention and protection of employees, standards of industrial medicine, the stipulated technical specifications and consumer protection regulations. Certification of conformity to CE standards must be provided upon delivery with each part supplied if so required by current law (pro tem: EC directives). China Compulsory Certification (CCC) must be submitted once by each Supplier upon first delivery of each new article added to the product range if so required by international law (at present: China National Regulatory Commission for Certification and Accreditation – CNCA). All necessary safety regulations must be furnished in writing with each shipment. Modifications may not be made to the goods without the Buyer's prior written consent.

2. In the absence of any firm agreement between the Supplier and Buyer regarding the nature, means, methods and extent of testing, the Buyer is prepared, at the Supplier's request, to discuss the testing with the latter, to the extent of its know-how and capabilities, in order to determine the level of testing technology that needs to be applied to the goods in question.

3. With regard to the technical documentation, moreover, the Supplier must keep separate records as to when, in what manner and by whom the goods have been tested for the features requiring documentation and as to the results of the required quality tests. The test records must be kept for 10 years and submitted to the Buyer if required. The Supplier must make the same requirements of its own suppliers to the extent provided by law.

4. If the authorities should order an inspection of the Buyer's production sequences and its test records to check for conformity to certain requirements, the Supplier agrees, if so requested by the Buyer, to accord the authorities the same rights in its facilities and to provide all reasonable assistance.

## X. Warranty

1. Acceptance of delivery shall be subject to reservation as to the results of an inspection to ensure that the shipment is free from defects and, in particular, accurate, complete and serviceable.

2. Unless otherwise provided hereinafter, the provisions of law regarding material defects and defects of title shall apply.

3. As a rule, in case of defective delivery the Buyer shall be entitled to demand subsequent performance in the form of its choice. The Supplier shall be entitled to reject our choice of subsequent performance in cases meeting the requirements of German Civil Code (BGB) Section 439(3).

4. If the Supplier does not begin remedying the defects immediately upon receipt of our request to do so, we shall be entitled in cases of urgency, particularly to avert imminent dangers or greater losses or damage, to remedy the defects ourselves or through third parties at the Supplier's expense. Claims for material defects shall become statute-barred 24 months after commissioning of the goods or installation of the spare parts in question or, at the latest, 30 months after delivery to the Buyer unless the goods have been utilized for a construction in accordance with their customary use and have caused the defectiveness thereof.

5. In case of defects of title, moreover, the Supplier shall indemnify us against any existing third-party claims. Claims for defects of title shall become statute-barred after 10 years.

6. For parts of the goods supplied that are repaired during the period of limitation for our claims for defects, the period of limitation shall begin to run anew from the point at which the Supplier has satisfied in full our claims for subsequent performance.

7. The Supplier shall bear any expenses we incur due to defective delivery of the contractual goods, particularly costs of shipping and transport, labour, materials or a more extensive than usual inspection of the incoming goods.

8. If, due to defects in the contractual goods supplied by the Supplier, we recall products we have manufactured and/or sold or if the purchase price we obtain is reduced or any other claims are asserted against us due to said defects, we reserve the right of recourse against the Supplier, in which case we need not allow the Supplier the period of time otherwise required to remedy the defects.

9. We shall be entitled to demand of the Supplier reimbursement of any expenses we have had to bear in our dealings with the customer in question because the latter has asserted a claim against us for reimbursement of expenses necessary for subsequent performance, particularly costs of shipping and transport, labour, materials and import/ export duties.

10. Notwithstanding clause X(4), our claims in cases as per clauses X(8) and X(9) shall become statute-barred not less than two months after we have satisfied the claims asserted against us by our customer, though not more than five years after delivery by the Supplier.

11. If a material defect appears within six months of the transfer of risk, it shall be presumed that the defect already existed at the time of the transfer of risk, unless this presumption is incompatible with the nature of the goods or defect in question.

12. If a sample is sent by the Supplier, the properties of the sample shall be deemed warranted. The goods delivered must be in conformity with the sample. If the goods are custom-made, e.g. based on drawings, the latter shall take precedence over the sample.

13. The Supplier shall maintain a quality assurance system, the nature and scope of which must be suitable and up to state-of-the-art standards, and shall furnish proof thereof upon request. The Supplier undertakes to satisfy in full the quality requirements specified in the supply contract in respect of the goods supplied, production methods and documentation.

14. If any claims under strict liability are raised against the Buyer under foreign law that is not subject to disposition in respect of third parties, the Supplier shall assume liability vis-à-vis the Buyer to such an extent as it would were it directly liable.

## XI. Product liability and recall

1. The Supplier promises to take out public and product liability insurance with an adequate sum insured: the policy must also cover measures to remedy defects in parts, accessories or fixtures in motor or rail vehicles or watercraft if these products, when delivered by the Supplier or third parties acting on its orders, were manifestly intended for use or installation in motor or rail vehicles or watercraft. Any further claims for damages to which the Buyer is entitled shall not be thereby affected.

2. If any claims are asserted against us for infringement of official safety regulations or under German or foreign product liability rules or laws, the Supplier shall be required to indemnify us against such claims if and to the extent that the loss or damage was caused by a defect in the goods delivered by the Supplier. In cases of liability based on fault, however, this shall apply only if the Supplier is at fault. To the extent that the Supplier is responsible for the loss or damage it shall bear the burden of proof. In the foregoing cases the Supplier shall bear all costs and expenses, including the costs of any legal or recall action that the Buyer may take upon due and proper consideration of the matter. This shall also apply if public authorities

oblige the Buyer to undertake a such recall action or if such a recall action is undertaken by a third party on behalf of the Buyer. Except as otherwise provided in the foregoing, the pertinent provisions of law shall apply.

## XII. Execution of work

Any persons who carry out work on the company premises in performance of the contract must observe the applicable company regulations. We accept no responsibility for any accidents that occur to these persons on said premises unless they are caused by intentional or grossly negligent dereliction of duty on the part of our statutory representatives or vicarious agents.

## XIII. Provision of materials

Any materials, parts, containers or special packing we provide shall remain our property and may only be used for the purposes intended. The processing of materials and assembly of parts shall be carried out for us. It is agreed that, in the ratio of the value of the materials provided to the aggregate value of the product, we shall be co-owners of the products that are manufactured using our materials and parts, which products the Supplier shall hold in safekeeping for us.

## XIV. Proprietary rights

1. Provided that the goods are used in accordance with the terms of the contract, the Supplier shall be liable for any claims for infringement of proprietary rights or of applications for the same (hereinafter subsumed under the term “proprietary rights”).

2. The Supplier shall indemnify the Buyer and its customers against any and all claims resulting from the use of such proprietary rights.

3. The contracting parties undertake to notify each other immediately of any risks of infringement that should come to their knowledge and coordinate efforts to oppose any alleged claims for infringement.

4. Upon inquiry by the Buyer, the Supplier shall report the use of published and unpublished proprietary rights – of its own or licensed – in the goods and of applications for the same.

5. We shall be entitled to use any software appertaining to the products to be supplied, including the documentation for the same, to the extent permitted by law (German Copyright Act (UrhG) Sections 69a ff.) as well as to use it with the stipulated performance features and to the extent necessary for contractual use of the product. Copies may also be made for this

purpose. We shall be allowed to make a backup copy even without any express agreement to that effect.

#### XV. Use of production materials and Buyer's confidential information

Models, matrices, stencils, patterns, tools and other production materials as well as confidential information that are provided to the Supplier by the Buyer or paid for in full by the latter may not be used to supply third parties without the Buyer's prior written consent.

#### XVI. General Non-discrimination Act (AGG)

The Supplier declares that all its employees who actually or possibly come into contact with Buyer's employees in the course of discharging present or future contractual obligations to Buyer have been obliged to comply with the provisions of the German General Non-discrimination Act (AGG). In particular, the Supplier's employees are aware that it is prohibited to disadvantage, generally or sexually harass the Buyer's employees on account of their race or ethnic origin, sex, religion or ideology, age, disability or sexual identity. Should any of the Supplier's employees violate any of the provisions of the AGG in relations with the Buyer's employees should these employees or third parties consequently assert claims for material or non-material damage against the Buyer, the Supplier shall herewith be obliged to hold the Buyer harmless, in their internal relations, from all claims for damages including the costs of legal action.

#### XVII. General provisions

1. If either contracting party should stop payments or file for bankruptcy or judicial court-supervised or out-of-court composition proceedings, the other party shall be entitled to rescind the as yet unimplemented part of the contract.
2. If any provisions of these General Terms and Conditions or of other agreements made by and between the parties should be or become invalid, the validity of the rest of the contract shall not be thereby affected. The contracting parties shall be obliged to replace the invalid provision with an arrangement that comes as close as possible to it in terms of its economic effects.
3. The contractual relations between the parties shall be exclusively governed by German law to the exclusion of conflicting law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. The place of performance shall be the Buyer's registered office. A different place of performance may be agreed for delivery.
5. The venue for any legal disputes arising directly or indirectly out of the contractual relations that are based on these terms of purchase shall be the court having jurisdiction over the Buyer's registered head office. We shall be entitled, moreover, at our option to sue the Supplier at the court having jurisdiction over its registered office, its branch or over the place of performance.