

## General Terms of Business Cinegate GmbH

### I. General

#### Section 1 Scope

1. Our General Terms of Business shall apply exclusively to transactions with business entities or entrepreneurs as defined by Section 310 of the German Civil Code (BGB).
2. The present terms shall apply to all our contracts, deliveries and other services, unless they are modified or excluded with our express written consent. They shall, in particular, also apply to services provided by us without reservation while being unaware of diverging terms being stipulated by our contractual partners. Any general terms of business stipulated by our contractual partners shall only apply if their validity is confirmed by us in writing.
3. Our terms shall also govern all future contracts and orders even if this text is not sent again to our contractual partner with our quotation or confirmation of order.

#### Section 2 Quotation and conclusion of contract

1. Our quotations shall be without engagement. Contracts and other agreements shall only become binding through our written confirmation or our performance.
2. All agreements between us and our contractual partners shall be concluded in writing. All agreements - including subsequent ones - shall only become valid with our written confirmation; the power of attorney held by our employees or representatives shall be limited in this respect.

Our failure to object to commercial letters of confirmation sent by a contractual partner shall not be construed as a tacit agreement to a contract whose contents diverges from our own written confirmations and our other written declarations.

## II. General terms for the rental of filming, lighting, stage, camera and audio equipment including accessories, other technical equipment, studios as well as vehicles and generators

#### Section 3 Rental price

Unless agreed otherwise in writing, the price for the rental of our equipment shall be the price stated in our price list valid at the time of concluding the contract. All prices are shown exclusive of value added tax payable at the rate prevailing at the end of the rental period. Our quotation shall remain binding for a period of two weeks from the date of its issuance. All equipment offered shall, however, be subject to technical modifications. The full rental price shall be payable for equipment sets with accessories for which a lump-sum price is agreed based on the price list even if individual accessories are not provided pursuant to the customer's instructions.

#### Section 4 Rental period

1. The rental period shall commence at the time of the binding order of the equipment, however, at the latest at the time of its provision or delivery from our warehouse and end at the time of its return, however, at the earliest at the end of the agreed rental period, with the return of the equipment within our opening hours, Monday – Friday from 08:00 a.m. to 06:00 p.m. Transport time shall be deemed rental time. The time of delivery shall be deemed to start once the equipment is ready for shipment from the respective warehouse.

The equipment shall be returned at the latest by 10:00 a.m. on the day after the end of the rental period. If the equipment is returned after 10:00 a.m., the full daily rate shall be charged for the return day.

2. Delivery delays due to force majeure or other unforeseen circumstances for which we cannot be held liable such as breakdowns, strikes, lockouts, lack of transportation, raw material procurement problems, official directives, delayed deliveries by our suppliers shall not be deemed a delay in performance on our part. A delivery date that may have been agreed shall be postponed for the duration of the impediment. If the impediment lasts for more than one month, we and the customer shall be entitled to withdraw from the unperformed part of the contract after expiry of an adequate period of grace.

## **Section 5 Transport**

1. If the equipment is not picked up at our warehouse but shipped to another location, the cost for transportation, packaging and insurance shall be borne by the customer. The equipment shall be deemed made available to the customer at the time of its handover to the carrier. Irrespective of the place of shipment, the risk shall pass to the customer at the time the equipment leaves the warehouse. The above regulations shall also apply in case of transportation by our employees or a third party commissioned by us.

2. If equipment is shipped abroad, the customer shall be responsible for proper customs clearance and bear the related costs and risks. Any transport damages shall immediately be reported to us and the forwarder and all possible persons or business entities (e.g. carrier, forwarder, other author of the damage) shall immediately be held liable by the customer.

## **Section 6 Loan for use to third parties, protection of ownership**

The customer shall not lend the rented equipment to third parties, neither for a consideration nor free of charge, without our express written consent. Any loan of the equipment to third parties in violation of this contract shall entitle us to immediately terminate this rental agreement and demand the return of the equipment.

The customer shall immediately inform us of any judicial enforcement measures regarding the rented equipment. The costs of any measures taken to protect our rights of ownership shall be borne by the customer. The same shall apply to any losses incurred as a result of equipment not being available due to judicial enforcement measures against the customer.

## **Section 7 Duty to complain, damages and liability**

1. The customer shall inform us accurately and in every detail of the intended use of the equipment. During the rental period, the customer shall assume unlimited liability for the rented equipment and its accessories, including for random damages. For the duration of the rental period, the customer shall treat the rented equipment with care and keep it in good condition.

2. The customer shall expertly examine the equipment when it is taken over to ensure it is complete and in faultless condition and shall immediately complain about any defects or missing parts. Any defects that could not be detected through careful expert examination at the time of takeover shall be immediately reported in writing by the customer following their detection. If no complaint is lodged, the equipment shall be deemed to have been without defects. Any claims, be they reductions of the rental price, claims for damages or rights of retention, resulting from defects of the rented equipment that have not been duly reported shall be excluded, including, in particular, our liability for any direct and indirect losses incurred as a result of a breakdown or failure of the rented equipment and its accessories or for damages incurred at the film location.

3. Any damage to, deterioration or other change of the rented equipment during the rental period as well as any losses/expenses incurred as a result of such events shall be borne by the customer, unless the customer proves that it is not responsible for the loss or respective event or that the loss results only from a contractual use of the equipment for whose consequences the customer cannot be held liable. The customer shall be liable for every fault of its employees, representatives, any sub-lessees or other persons (including the carrier) who come into contact with the rented equipment in connection with the activities of the customer.

All defects of the equipment or its accessories, losses or transport damages incurred during the rental period shall in any case be reported to us immediately.

The customer may only repair or otherwise change the equipment with our express written consent.

The cost of all repairs that may become necessary during the rental period shall be borne by the customer, with the exception of the removal of defects expressly reported at the time of or in connection with the takeover of the equipment or of defects for which the customer or its employees, representatives or other persons for whose behaviour the customer is responsible cannot be held liable, which has to be proven by the customer.

Our liability for losses due to loss of life, bodily injury, damage to health or restriction of freedom of our contractual partner resulting from a culpable violation of our duties shall neither be excluded nor limited.

We shall only be liable for any other losses incurred by our contractual partner if they are based on a wilful or grossly negligent violation of our duties by us, one of our legal representatives or vicarious agents.

We shall only be liable for losses caused by slight negligence if they are due to a violation of material contractual duties; in this case, our liability shall be limited to reasonably foreseeable losses. All other claims for damages by our contractual partner due to a violation of duties, unlawful act or any other legal reason shall be excluded. The above limitations of liability shall not apply to missing warranted qualities if and to the extent to which such warranty was given to protect the customer against damages other than any damage to the rented equipment itself. These exclusions or limitations of our liability shall also apply to the personal liability of our employees and vicarious agents.

The above exclusions of liability shall in any case also apply to consequential losses. However, the above exclusions of liability shall not apply to any claims under product liability law.

4. With the exception of defects expressly reported at the time of takeover of the equipment or defects which could not be detected through careful expert examination at the time of takeover and have been immediately reported in writing at a later date, the occurrence of breakdowns and failures shall not release the customer from its duty to pay the rent nor entitle the customer to reduce the rent.

5. The customer shall return the equipment in faultless condition. The customer shall be liable for all losses incurred as a result of inexpert or improper use of the rented equipment. The occupational accident prevention regulations and the guidelines of the German Electrical Engineers Association (VDE) as well as the International Electrotechnical Commission shall be complied with. The customer shall be liable for all losses incurred as a result of a delayed or improper return of the rented equipment. We shall not be obliged to examine the equipment immediately upon its return. Acceptance of the equipment without complaint shall not be interpreted as confirmation of it being complete and without defects. We expressly reserve the right to examine the equipment in detail after its return.

## **Section 8 Insurance**

The customer shall be obliged to take out insurance against the general liability risk associated with the respective production.

If the lessee acquires his own equipment insurance, he must make sure that the devices are insured at new value. This means if devices cannot be replaced due to their age that they will be replaced by the corresponding successor model. The lessee has to submit his own acquired equipment insurance to the lessor in advance.

In addition, we can insure the rented equipment under the General Conditions Relating to Electrical Equipment (Allgemeine Bedingungen für die Elektroversicherung, ABE) and the General Machinery and Damage Insurance Conditions Relating to Mobile and Transportable Equipment (Allgemeine Bedingungen für die Maschinen- und Kaskoversicherung von fahrbaren und transportablen Geräten, ABMG). The respective insurance terms can be viewed at our premises at any time. The customer shall pay a fee equalling 9% of the agreed gross price to us for this insurance. We stress that this insurance contains several exclusions of liability and that there is a deductible of EUR 1250.00 per claim. Damages that result from stunt- and special shootings like filming from vehicles, the air and high mountain areas as well as underwater and/or above the surface of water are not covered.

If the customer commercially sub-lets our equipment with our express consent, the customer shall be obliged to take out insurance for the equipment and settle any claims under this insurance. In this case, claims under our insurance shall be excluded. On request, the customer shall provide us with proof of insurance without delay. The costs for extending the insurance cover shall be borne by the customer.

In addition, the provisions of the German Insurance Contract Act (Versicherungsvertragsgesetz, VVG) shall be observed. The customer shall be responsible for any disadvantages and liable for any damages resulting from any violation of legal duties (VVG) or contractually agreed duties (ABE, ABMG). The customer shall furthermore report any loss to us and the insurance companies without delay. All losses through burglary, theft or fire shall be reported to the police and a list of stolen assets shall be submitted to the police without delay in case of burglary or theft. The customer shall keep all damaged parts and return them to us on request irrespective of any insurance benefits. In case of a loss, the customer shall make the damaged equipment immediately available to us on request. We shall be entitled to begin repairs immediately.

## **Section 9 Rental of studios**

1. As a general rule, the studios and ancillary rooms (hereinafter referred to as "studios") let by us shall only be available Mondays to Fridays unless expressly agreed otherwise. The contractual partner shall only be entitled to ordinary use of the rented studios. All other uses of the studios, especially uses involving special risks (e.g. pyrotechnics, water basins, heavy loads on the cross beams), shall require our express prior consent.

2. The following shall apply to additional services provided in connection with the rental of studios:

- a) Telecommunications, media and data service costs  
Telephone, fax, electronic media and data service costs as well as other fees for communications equipment shall be charged based on our price list applicable at the time.
- b) Power supply

The quantity of electric energy required for ordinary studio use shall be made available by us. The related fees shall be calculated based on our price list applicable at the time and the studio meter readings at the beginning and the end of the rental period. Any consumption of electric power exceeding the ordinary level of power consumption shall require our prior written consent.

- c) Heating  
Adequate heating of the studios shall be made available. The related costs shall be determined and charged based on our price list applicable at the time and the quantity of heating energy consumed.
- d) Water  
The quantity of water required for ordinary studio use shall be made available. The related costs shall be charged based on our price list applicable at the time and the quantity of water actually consumed.
- e) The rented studios shall be made available in proper and clean (broom swept) condition and shall be returned in this condition. If our contractual partner fails to return the rented studios by 12:00 p.m. of the last day of the rental period, we shall be entitled to restore the premises to their contractual condition at the cost of our contractual partner without delay. Any disposal costs incurred in this context shall be borne by our contractual partner. In addition, our contractual partner shall bear the full studio rent for days on which the premises cannot be restored to their contractual, clean (broom swept) condition by 6:30 a.m., unless the customer proves that no loss or a lower loss has been incurred by us in spite of the delayed return. Any further claims for damages against our contractual partner shall remain unaffected by the above. Application of Section 545 of the German Civil Code (BGB) shall be excluded.

## **Section 10**

### **Rental of vehicles and generators**

1. The deductible for rented vehicles and generators is EUR 1,500, respectively, for each individual case of damage. This deductible does not include any exemption from liability for loss of rent. Special vehicle superstructures are not covered by the insurance. The costs for any supplementary insurance that may be required shall be borne by the customer. In the event of damage, a € 30,00 administration fee will be charged. The generators may only be used to power filming equipment. They may not be used as power supplies for catering, make-up and wardrobe rooms, etc. The customer shall be liable for all resulting losses. The use of vehicles for trips abroad shall require our prior written consent. The customer shall not be entitled to use the vehicle for commercial transportation of passengers or goods. The vehicle may only be driven by the driver designated in the rental agreement or by a professional driver employed by the customer. The customer shall ensure that all legal and official requirements for driving the vehicle are met prior to departure. The customer shall carefully secure the vehicle against theft and only leave it in guarded car parks. All accidents shall be reported to the police, even if there is no other party involved. No declarations regarding the question of guilt shall be made to other parties involved in the accident. The customer shall be obliged to immediately submit a truthful written report of the accident to us.

2. Consumables, especially fuel, oil, etc. shall not be included in the rental price for vehicles and generators. Extra kilometers from 100km per rental day will be charged. The billing for toll fees accrued in Germany for trucks over 7,49t is done using the information from the Toll Collect On Board Units. For this service, an additional € 1,50 per day of used toll road and max. € 19,50 per rental month is charged.

3. The lessee is liable without limitation for all violations against traffic and administrative violations and all other legal provisions as well as all possession disorders caused by the lessee or third party to whom the lessee entrusted the vehicle. For vehicles with a load capacity over 2,8t, the steering and rest periods including all further regulations of the current valid driver's regulations (FpersV) and regulation (EG) 561/2006 B shall apply. The lessee shall indemnify us of all penalty and warning tickets, fees and other costs which authorities or other offices charge us on the occasion of such violations. As compensation for the administrative efforts incurred for the processing of inquiries sent to us by enforcement authorities or third parties investigating offenses, crimes or faults committed during the rental period, we receive from the lessee for every such inquiry a flat rate for efforts in the amount of € 15,00, in addition it is our liberty to claim a further damage.

4. Sole responsibility for proper loading and securing the load shall lie with the customer.

#### **5. Additional Stipulations for Generators**

The generator lessee agrees:

- to have the generator inspected by an authorized and competent workshop after 350 running hours.
- to check the generator's oil and water levels after every 10 running hours.
- to make sure that the fire extinguisher is in the correct position before starting the generator.

6. The customer will receive a fuel-filled vehicle / generator. All vehicles / generators have to be returned fuel-filled by the customer. In case the tank is not completely filled, higher costs will be charged. Current regulations can be found in vehicle reports, which have to be signed by the customer when receiving the car.

## **Section 11**

### **Rent payment terms**

Our invoices shall be due for payment without any deduction immediately upon receipt. Offsetting against counterclaims which have been disputed by us and are not legally effective shall not be permitted. The assertion

of a retaining lien for claims that do not result from the same contractual relationship shall be excluded if these claims have not been recognised by us and are not legally effective. Failure to meet payment dates shall entitle us to terminate the rental agreement with immediate effect and to demand the immediate return of our equipment. The customer shall waive its right to undisturbed possession, use and control of its premises and authorise us to access every room in which the rented equipment is stored to recover our property. The customer shall not be entitled to any retaining lien that does not result from the same underlying rental relationship.

We shall be entitled to interest at a rate of eight percent above the base interest rate applicable at the time from the due date without any further demand for payment. Any additional claims - especially due to delayed performance by our contractual partner - shall remain unaffected.

### **III. Terms of selling and supply contracts**

#### **Section 12 Prices, price increases and payment**

1. Our prices shall be in euro exclusive of value added tax, packaging, freight, postage and insurance.
2. In case of a material change in the costs of labour, materials and energy during long-term contracts (contracts with a term of more than 12 months or contracts of unlimited duration), we shall be entitled to demand an adequate adjustment of the price which takes these factors into account.
3. We reserve the right to make our services and equipment available only against contemporaneous payment of the agreed prices. Unless agreed otherwise in writing, our invoices shall be due for net payment within 14 days of receiving our goods/services as well as the corresponding invoice or, in cases where this is sufficient for our claims to become due, after our contractual partner has been notified that the goods/services are ready for shipment and has received the invoice.
4. Our invoices shall be deemed accepted if they are not disputed in writing by our contractual partner within 14 days of receiving the invoice. We shall inform our contractual partner accordingly on every invoice.
5. We shall be entitled to interest at a rate of eight percentage points above the base interest rate applicable at the time from the due date without any further demand for payment. Any additional claims - especially due to delayed performance by our contractual partner - shall remain unaffected.  
Offsetting against counterclaims which are disputed by us and are not legally effective shall not be permitted. The assertion of a retaining lien for claims that do not result from the same contractual relationship shall be excluded if these claims have not been recognised by us and are not legally effective.

#### **Section 13 Deterioration of the contractual partner's financial circumstances, doubts about the contractual partner's ability to pay**

1. If one of the following events occurs or if the existence of such an event prior to conclusion of the contract becomes known to us after conclusion of the contract, we shall be entitled to demand advance payment of the agreed price by our contractual partner, revoke any credit agreed or granted or return any outstanding bills of exchange and demand immediate payment. This shall apply in case of the following events:  
Judicial or out-of-court insolvency or composition proceedings over the assets of our contractual partner are opened or the opening of such proceedings is declined by a court because of insufficient assets; we receive a written credit report from a bank or credit reporting agency which shows that our contractual partner is unworthy of credit or that its financial circumstances have deteriorated materially or a cheque or bill of exchange made out by our contractual partner and accepted by us is not paid or is dishonoured.
2. If our contractual partner fails to meet our legitimate request for advance payment within an adequate period of grace set by us, we shall be entitled to withdraw from the contract or demand damages in lieu of performance, however, the latter only with respect to the part of the contract not yet performed by us.

#### **Section 14 Shipping and transfer of risk**

1. Irrespective of the location from which the goods are dispatched, the risk shall pass to our customer when the goods are dispatched, including in those exceptional cases where shipping and/or assembly at no charge to the customer have been agreed. The above shall not apply when the goods are transported by our own employees or when our employees are responsible for any damage to or loss of the goods.
2. If we have received no shipping instructions from our contractual partner or if a deviation from such instructions is considered necessary, we shall ship the goods as we see fit without being obliged to use the cheapest or fastest shipping method.

if expressly wished by our contractual partner, we can insure the goods against any insurable risk desired by our contractual partner, including in particular theft and transport damage. The cost of such insurance shall be borne

by our contractual partner. Any transport damage shall be reported to us without delay; moreover, the recipient shall ensure that the related claims and reservations are asserted to the carrier upon delivery.

3. If the shipping of the goods is delayed on request of our contractual partner or due to reasons for which our contractual partner is responsible, the risk shall pass already to our contractual partner when we notify our contractual partner that the goods are ready for shipment. In this case, the goods shall be stored at our contractual partner's own expenses and risk.

4. We shall be entitled to make partial shipments and make out separate invoices to a reasonable extent.

### **Section 15 Delivery periods**

1. Delivery periods and dates shall only be binding if they have been confirmed in writing by us.

Delivery periods shall begin on the day we post our order confirmation and are extended accordingly in cases where we cannot be held liable for any delays or our contractual partner fails to meet any obligations - resulting from other contracts - towards us.

2. A delivery period or delivery date shall be deemed to have been met if the goods or, in cases in which the goods cannot or are not to be shipped, our notification that the goods are ready for delivery have been dispatched before expiry of the deadline.

### **Section 16 Declaration on the rights exercised after a period of grace for final performance has been set**

If our contractual partner has set a period of grace for final performance following non-delivery or improper delivery, and if such a period of grace has expired, we shall be entitled to ask the customer to declare within a reasonable period of time whether the customer continues to demand final performance despite the expired period of grace or whether the customer elects to exercise any other rights. If our contractual partner makes no declaration within the reasonable period of time set, its claim to final performance shall be excluded. If our contractual partner declares within such a reasonable period of time that our contractual partner continues to demand performance, our contractual partner shall be entitled to set another period of grace and exercise its other rights after its expiry.

### **Section 17 Delayed performance, exclusion of the duty to perform**

In case of delayed performance by us or exclusion of our duty to perform in accordance with Section 275 of the German Civil Code (BGB), we shall only be liable for damages under the conditions and to the extent set out in Section 20 (4); however, the following additional provisions shall apply:

- In case of delayed performance by us, our contractual partner shall only be entitled to damages in lieu of performance after having set a reasonable period of grace for delivery of at least four weeks; our contractual partner shall, however, have the right to set an adequate deadline of less than four weeks in individual cases where a period of grace of four weeks is unacceptable to it;
- As a general rule, any right to claim rescission of contract or any claim for damages to which the contractual partner is entitled shall be limited to the unperformed part of the contract, unless the customer is reasonably no longer interested in the performed part of the contract;
- The statute of limitations for claims for damages brought against us due to delayed performance or an exclusion of our duty to perform in accordance with Section 275 of the German Civil Code (BGB) shall be 12 months from the start of the legal period of time;
- The above provisions shall not apply to losses due to loss of life, bodily injury, damage to health or restriction of freedom of our contractual partner or losses due to a wilful or grossly negligent violation of our duties by us, one of our legal representatives or vicarious agents. In case of delayed performance, the above provisions moreover shall not apply if a firm deal has been struck.

### **Section 18 Delayed acceptance by our contractual partner**

1. In case of delayed acceptance of all or part of our services by our contractual partner, our claim for payment of the respective goods shall become due immediately. In this case, we shall furthermore be entitled to either withdraw from the contract or demand damages in lieu of performance, however, the latter only with respect to the part of the contract not yet performed by us, after expiry of an adequate period of grace which we have set informing our contractual partner that we will reject the acceptance of our services by the contractual partner after expiry of this deadline. Our legal rights in case of delayed acceptance by our contractual partner shall remain unaffected by the above.

2. Any storage costs, warehouse rents and insurance expenses incurred by us for goods due for acceptance that have not been accepted yet shall be refunded to us by our contractual partner. However, we shall not be obliged to take out insurance for stored goods.

3. If delivery of the goods is delayed on our contractual partner's request or in case of delayed acceptance by our contractual partner, we shall be entitled to charge a storage fee in an amount of 0.2% of the invoice amount per month or part thereof after expiry of one month after we have notified our contractual partner that the goods are ready for delivery; we, however, reserve the right to claim higher actual damages incurred by us.

### **Section 19 Nature of goods, improved and reduced performance**

1. The information regarding the goods and their intended use, dimensions, weight, durability, practical value or other properties provided in our catalogues, brochures, price lists, descriptions, drawings and other documents are only customary approximate values which merely describe our products and shall only be binding if this is expressly confirmed by us.

2. In case of goods to be produced or delivered by us based on drawings, specifications, samples or other instructions of our contractual partner, the risk that the goods are suitable for the intended use shall be borne by our contractual partner.

3. Deviations in nature, dimensions, weight, technical specifications and other properties shall be reserved to the extent that these have no material impact on the usability of the delivered goods and that the deviations are not unacceptable to our contractual partner for other reasons.

### **Section 20 Liability for defects and damages in case of sales**

1. Claims of our contractual partner in relation to defective goods shall only be permitted if our contractual partner has properly fulfilled its duty to investigate and complain as defined in Section 377 of the German Commercial Code (HGB), with the complaint having to be lodged in writing. If our contractual partner fails to lodge a proper and timely complaint, our contractual partner shall no longer be entitled to assert any claims resulting from the reported circumstances, unless we have acted fraudulently.

2. In order to permit the investigation and determination of claims of our contractual partner in relation to defective goods, our contractual partner shall promptly make a sufficient number of the allegedly defective parts available to us for examination by us or third parties, with the shipping costs being borne by us. Should the complaint prove to be unjustified, the shipping and investigation costs shall be borne by the customer.

3. Our contractual partner's rights in relation to defective goods shall be governed by the legal regulations with the precondition that our contractual partner shall be obliged to grant us an adequate period of grace for final performance of at least 4 weeks; our contractual partner shall, however, have the right to set an adequate deadline of less than four weeks in individual cases where a period of grace of four weeks is unacceptable to the customer. The period of grace for performance shall never begin before the date on which our contractual partner has returned the defective goods to us, with the return shipping costs being borne by us. This provision shall only be excluded if returning the goods is unacceptable to our customer (e.g. if the goods have meanwhile been processed or otherwise installed).

If only some of the goods delivered by us are defective, our contractual partner's right to demand withdrawal from the contract or damages in lieu of performance shall be limited to the defective part of the delivery, unless this restriction is impossible or unacceptable to our contractual partner.

Claims for damages of our contractual partner in relation to defective delivery or performance shall otherwise be limited as defined in Section 7 (3).

4. The statute of limitations for warranty claims shall be 12 months from the transfer of risk, unless the defect has been grossly negligently or wilfully caused by us or fraudulently concealed by us.

### **Section 21 Reservation of title in case of sales**

1. Until all our current or future claims due from our contractual partner have been satisfied, our contractual partner shall grant us the following collateral which we shall release as we see fit if its nominal value clearly exceeds our claim by more than 20%:

The delivered goods shall remain our property.

Any processing and modification of the goods shall be performed for our benefit, however, without any obligation on our part. If the goods delivered by us are processed together with other objects not owned by us, we shall acquire co-ownership of the new asset in proportion of the invoice amount of the goods delivered by us to the invoice amount of the other goods used at the time of processing.

If our goods are combined or mixed with other movable objects into a single asset and if this asset is considered as a principal asset, our contractual partner shall transfer a fractional co-ownership to us, provided the principal

asset is owned by our contractual partner.

Any delivery to us required to acquire ownership or co-ownership shall be replaced by the herewith concluded agreement that our contractual partner shall keep the asset on our behalf like a hirer or, if our contractual partner is not in possession of the asset, that delivery shall herewith be replaced by assignment of the right to recover possession from the owner.

Assets (co-)owned by us in accordance with the above provisions shall be hereinafter referred to as "reserved goods" (i.e. goods subject to reservation of ownership).

2. The contractual partner shall be entitled to sell the reserved goods in the ordinary course of business as well as to combine, process or mix them with goods owned by third parties. The contractual partner shall herewith assign any claims resulting from the sale, combination, processing or mixing to us in full or pro-rata to our fractional co-ownership of the sold or processed object. Upon transfer of such claims to the current account, this assignment shall also include all balances claimed. The assignment shall have priority over the rest.

We shall authorise the contractual partner to collect the assigned claims, subject to revocation. The contractual partner shall pay the collected amounts to us without delay as soon as and to the extent that our claims become due. To the extent that our claims have not become due yet, the collected amounts shall be recorded separately by the contractual partner.

Our right to collect the claims ourselves shall remain unaffected. We shall, however, undertake not to collect the claims as long as our contractual partner meets its payments from the collected amounts, there is no delay in payment and, in particular, no insolvency or composition petition has been filed or payments have not been stopped. On our request, our contractual partner shall be obliged to disclose the assigned claims and their debtors to us, to hand over the related documents to us and to give us all information required for collection. If we are entitled to collect the claims, our contractual partner shall be obliged to give us all information required for collection and to inform third-party debtors about the assignment, with us being entitled to inform the debtors about the assignment ourselves.

In case of a stoppage of payment, an insolvency petition or the opening of insolvency proceedings, judicial or out-of-court composition proceedings, our contractual partner's rights to resell, process, combine, mix and install the reserved goods and to collect the assigned claims shall lapse even without our revocation.

3. Our contractual partner shall inform us immediately of any third-party action against the reserved goods and assigned claims. Any cost incurred to oppose and repel such actions shall be borne by the contractual partner.

4. The contractual partner shall be obliged to treat the reserved goods with care and, in particular, to adequately insure them on a reinstatement value basis against fire and water damage and theft at its own expenses.

5. In case of any breach of contract by the contractual partner - especially delayed payment - we shall be entitled to demand return of the reserved goods at the contractual partner's expenses or the assignment of its rights to recover possession from third parties without having to withdraw from the contract previously or simultaneously. In particular, a demand to return or an attachment of the reserved goods by us shall not be deemed a withdrawal from the contract, unless we expressly declare in writing that we withdraw from the contract.

6. Should our reservation of title become invalid due to deliveries abroad or other reasons or should we lose ownership of the reserved goods due to any reason, our contractual partner shall be obliged to grant us without delay another form of security in the reserved goods or other collateral for our claims which is effective under the law applicable at the customer's domicile and comes as close as possible to a reservation of title under German law.

## **Section 22**

The assignment of any kind of claim due from us by our contractual partner shall require our written consent.

# **IV. Terms of procurement**

## **Section 23**

### **Orders**

1. If our contractual partner does not accept our orders within 10 days, our order shall no longer be binding.

2. Our orders shall only be valid and binding if they have been placed in writing.

## **Section 24**

### **Prices**

The prices indicated in our orders shall be fixed prices in euro. Prices shall be "free location of receipt". Value added tax shall be shown separately in invoices for goods.



## **Section 25 Payment**

Payment shall be made 14 days after receipt of the goods and invoice. If delivery dates or deadlines have been agreed, the period of payment shall begin at the agreed delivery date rather than the date on which the goods are received in case of earlier delivery.

## **Section 26 Offsetting, retaining lien**

We shall in any case be entitled to set off payment against any counterclaims or to exercise a retaining lien.

## **Section 27 Delivery and transfer of risk**

1. Our contractual partner shall be responsible for the correct delivery of its goods and services as well as the proper and full completion of the shipping documents. Shipping notes shall be sent separately to us immediately upon dispatch of every consignment.

The date and number of our order shall be indicated in the shipping documents including the delivery and shipping note; partial shipments shall be marked as such.

2. The performance and price risk shall in any case only pass to us upon arrival of the goods and services at our premises or the location of receipt indicated by us.

## **Section 28 Delivery dates, call-offs**

1. The agreed delivery and call off dates and deadlines shall be binding; they shall begin at the date of our order or confirmation. In case of a potential delay in delivery for whatever reason, our contractual partner shall inform us without delay in writing about the reasons for the delay and its probable duration.

2. Our call-offs shall at the latest become binding if our contractual partner does not object within 10 days after their receipt.

## **Section 29 Liability for defects**

1. We shall only be required to immediately lodge a complaint to our contractual partner in case of obvious defects that can be easily detected without examination or any defects detected by us as well as improved and reduced performance; in all other cases, Section 377 of the German Commercial Code (HGB) shall not apply.

2. Our contractual partner shall herewith assign its warranty claims (claims due to liability for defects) due from third parties, suppliers or sub-contractors in connection with the production, delivery or performance of the goods and services ordered by us to us. This assignment shall neither exclude nor limit our contractual partner's own liability for defects. We shall, however, be obliged to re-assign the respective claims to our contractual partner if and to the extent that our contractual partner meets the obligations towards us due to defects itself.

On request of our contractual partner, we shall be obliged to make any declarations that may be required or make sense to assert or protect the assigned claims to third parties, suppliers or sub-contractors of our contractual partner or to take any cooperative action that may be required or make sense at anytime.

## **Section 30 Damages due to delay, damages in lieu of full performance**

1. In case of delayed delivery by our contractual partner, the latter shall pay a lump-sum compensation of 1% of the delivery value per full week of delay, however, no more than 9% of the delivery value; our contractual partner shall, however, have the right to prove that no loss or a lower loss has been incurred as a result of the delay.

Our right to claim further damages shall remain unaffected.

2. In every case in which we are entitled to damages in lieu of full performance, we shall be entitled to demand 15% of the contract price as compensation without proof, unless our contractual partner proves that no loss or a lower loss has been incurred.

Our right to claim higher actual damages shall remain unaffected.

### **Section 31 Product liability**

Our contractual partner shall indemnify us for all claims for damages asserted by third parties based on the regulations regarding unlawful acts, product liability or other regulations regarding defects of the goods manufactured or supplied by us or our contractual partner to the extent that such claims could also be lodged to our contractual partner or can only no longer be lodged due to expiry of the statute of limitations. Under these preconditions, our contractual partner shall also indemnify us for the costs of legal actions taken as a result of such claims. If the claims could also be lodged to us or can only no longer be lodged to us due to expiry of the statute of limitations, we shall have a pro-rata right of indemnity against our contractual partner whose scope and amount shall be governed by Section 254 of the German Civil Code (BGB).

Our rights of indemnity, claims for expenses and damages pursuant to Sections 437 (3), 478 and 634 (4) of the German Civil Code (BGB) shall remain unaffected by the above provisions.

### **Section 32 Industrial property rights**

Our contractual partner shall guarantee that the goods supplied do not violate any third-party rights, including, in particular, patents, industrial designs and other industrial property rights and copyrights. Our contractual partner shall indemnify us for any third-party claims that may result from any violation of such rights. Our contractual partner moreover shall bear all costs incurred by us due to the assertion of such claims by third parties and our opposition against them.

### **Section 33 Moulds and tools, documents, secrecy**

1. Models, samples, drawings, diagrams, calculations, dies, templates and other production facilities and tools which we make available to or pay for our contractual partner shall remain or become our property. Our contractual partner shall undertake not to make such objects available to third parties in any form without our express consent and to use them exclusively to perform contracts concluded with us. For every violation of the above obligation, our contractual partner shall pay a contract penalty in an amount of EUR 6,000 per violation.

2. Our contractual partner shall be liable for the loss of, damage to or misuse of documents or objects in the meaning of (1) above and shall return them immediately after completion or execution of the order without request.

3. The contractual partners shall mutually undertake to keep all commercial and technical details that have become known to them in connection with the cooperation and that are not obvious secret.

## **V. Concluding provisions**

### **Section 34 Place of performance, jurisdiction, applicable law**

1. Place of performance and exclusive place of jurisdiction for all disputes between the parties shall be the place of our business establishment; we shall, however, be entitled to proceed against our contractual partner at another place of jurisdiction applicable to it pursuant to Section 12 ff. of the Code of Civil Procedure (ZPO).

The relationship between the contractual partners shall be governed exclusively by the laws of the Federal Republic of Germany excluding the United Nations Sales Convention.

June 2017