

## **General Terms and Conditions of Pella Sietas GmbH (GTC)**

Status: 19/11/2020

### **Preliminary note:**

The following General Terms and Conditions (GTC) form an integral part of all purchase agreements between Pella Sietas GmbH – hereinafter uniformly referred to as “**Buyer**” – and the supplier - hereinafter referred to as “**Seller**”. Deviating agreements, in particular conflicting terms and conditions of the Seller, as well as collateral agreements will only become part of the agreement if the Buyer has expressly given the Seller his written consent for including the deviation. If deviations from these GTCs are agreed for certain orders and enclosed with the order, these General Terms and Conditions will apply subordinately and complementarily.

### **1 CONCLUSION OF THE AGREEMENT**

- 1.1 Offers made by the Seller to the Buyer are always binding and free of charge. With regard to quantity, quality, execution, assembly and other details, the Seller must comply with the enquiry or tender invitation of the Buyer. Any deviations must be referred to explicitly in writing in the offer. In order to be enforceable, all orders of Pella Sietas GmbH must be in writing.
- 1.2 Verbal agreements must be confirmed in writing, in order to be enforceable. The signed duplicate of the order must be returned to the Buyer within 14 days, by way of order confirmation or acceptance of the agreement.
- 1.3 Other than provided for in Article 127, BGB (Bürgerliches Gesetzbuch [German Civil Code]), electronic form is not equivalent to written form.
- 1.4 The Seller must submit all offers in writing. Special attention must be drawn to deviations from the request / order of the Buyer, if any. The Buyer may require amendments even after conclusion of the agreement, provided they are reasonable for the Seller.
- 1.5 An agreement comes into existence after fourteen (14) calendar days have elapsed since the date of the written order of the Buyer and the Buyer is entitled to withdrawing from it. If the order does not correspond to the declarations of the Seller and if deviations arise as a result, the Seller must give written notice of such deviations within seven (7) calendar days.

### **2 PRICES**

- 2.1 All prices are fixed prices without the statutory value added tax and exclude subsequent claims of any kind.
- 2.2 The prices agreed with the Seller include the remuneration for all deliveries and services obtained from the Seller (including any required certificates, drawings, evaluations, etc. in the German and English languages), are understood to carriage paid to the shipyard (in accordance with INCOTERMS 2010, DDP) or carriage paid to another delivery address specified by the Buyer and include all additional costs.
- 2.3 The Seller must, at its own expense, take out a transport insurance policy with a sufficient insured sum (meaning at least the value of the contractual deliveries and services plus foreseeable indirect consequential damages) for the items to be delivered and/or services to be rendered by it (hereinafter collectively referred to as the “subject matter of the agreement”) and must submit evidence of the such insurance to the Buyer upon first request. If the Seller does submit evidence of the transport insurance when requested to do so, the Buyer will be entitled to taking out a transport insurance policy with sufficient coverage for the Seller and to deducting the insurance premiums from the remuneration to be paid to the Seller.

### **3 INVOICES AND PAYMENT TERMS**

- 3.1 After the performance has been rendered as per agreement, the Seller must submit in writing to the Buyer, separately for each order, its invoice in duplicate, stating the value added tax at the respective statutory rate. Collective invoices will only be accepted if agreed separately. All invoices must bear the order code, the order no., the item no., the article no., the goods tariff no. and item description as well as all obligatory details such as for example the VAT identification no.
- 3.2 Payment claims of the Seller are due for payment at the Buyer's option either within 14 days with deduction of a 2 % discount or within 30 days without deduction, in each case after the Seller has completed rendering his service in accordance with the agreement and – where productive work is concerned – after Acceptance of his work and invoices will have been issued properly in accordance with Paragraph 3.1, above. If the Seller renders his service before the agreed deadline, the payment periods mentioned above will commence to run on the contractually agreed delivery or completion dates.
- 3.3 The Buyer will not owe delay interest. Claims of the Seller to payment of delay interest on late payments remain unaffected. An event of default on the part of the Buyer will occur as stipulated by law. However, in all cases dunning by the Seller will be required.
- 3.4 The Seller will only make down payments after separate written agreement. The prerequisite for this is collateralisation of the down payment of the Buyer acceptable to the Buyer (for example by means of a guaranty issued by a major German bank). The payment will be to an account, whilst payment to a factoring bank is not acceptable.
- 3.5 Delivery under reservation of title is excluded.

#### **4 DEADLINES AND DATES, DELAY**

- 4.1 As the Seller is aware, the Buyer builds ships and plants in accordance with a production process organised for maximum efficiency and relying on the highest punctuality and adherence to schedules and is therefore highly sensitive to external disturbances. Even short overruns of the agreed delivery and completion dates by the Seller can severely disrupt the production process of the Buyer and lead to very high damage compensation obligations of the Buyer.
- 4.2 For this reason, delivery and performance deadlines (hereinafter referred to as “deadlines”) and delivery, performance and completion dates (hereinafter referred to as “dates”) must be strictly adhered to. Periods until deadlines start running upon conclusion of the agreement. Should a delay arise on account of missing documents, it can only be appealed to after prior written dunning. The dunning must have been lodged with the Buyer in good time.
- 4.3 If the Seller becomes aware that he will not be able to meet the agreed deadline or comply with the agreed date, the Seller must inform the Buyer forthwith in writing of the reason for the delay and its expected duration. All costs incurred by the Buyer for culpably omitted or delayed notification will be for account of the Seller.
- 4.4 In the event of default on the part of the Seller, the Buyer will be entitled to the full extent of the statutory claims and rights in addition to the contractual penalty stipulated in Clause 5; any exclusions and limitations of liability of the Seller will not apply.
- 4.5 If the Buyer and the Seller are simultaneously implementing several independent agreements that have not yet been fully completed, neither the Buyer nor the Seller will have the right of temporarily withholding or definitively refusing to perform under the other (second) contractual relationship or of withdrawing from the agreement under the other (second) contractual relationship on account of an alleged delay in performance or of alleged poor performance by the other party under the first contractual relationship.

This arrangement also applies to framework agreements within the individual sub-agreements.

The exclusion of extending the objection from one contractual relationship to the other contractual relationship applies for as long as the other contractual party objects to the extension. The exclusion of objection ends when the alleged breach of agreement is acknowledged by the party breaching the agreement when the breach has been legally established.

Neither do the Buyer and the Seller have the right to refuse to perform themselves under an existing contractual relationship with reference to the fact that the other contractual party is in default on performing under a completely different contractual relationship with third parties or that the other contractual party is not performing well vis-à-vis the third party.

The stipulations stated above do also apply if the Seller, when refusing to perform vis-à-vis the Buyer, does initially not refer expressly but only subsequently to an alleged delay or alleged breach of agreement by the Buyer in other contractual relationships between the two contracting parties, in the event that the Buyer avails of the performance.

In any case of a violation of the above-mentioned prohibition of refusal to perform by the Seller, the Seller will be liable to pay a contractual penalty for the duration of the failure to perform his obligations, in accordance with the following Clause 5 of these GTC. Absolute refusal to perform or withdrawing from the agreement will be treated as a delay in performance to be measured in calendar days.

This does not exclude further claims for compensation.

## **5 CONTRACTUAL PENALTY**

If, as a result of a delay, the Seller does not honour the deadlines and/or dates agreed with him, he must pay to the Buyer, for each calendar day of the delay, a contractual penalty in the amount of 0.1 % of the agreed net contract price, with a maximum of 5 % of the net contract price. Also, when several individual dates and/or deadlines are missed, the amount of the contractual penalty is limited to 5 % of the net contract price. The penalty can be imposed until Acceptance of the final payment. Payment of the contractual penalty does not release the Seller from fulfilling his contractual obligations nor from obligations of paying further damages – particularly on account of delay(s).

## **6 DELIVERY, PACKAGING, DISPATCH, RECEPTION AND ACCEPTANCE, PASSAGE OF RISK**

All deliveries to be made by the Seller must be sent to the place specified by the Buyer. There, the risk of their accidental loss or accidental impairment passes to the Buyer. If formal Acceptance is agreed, it will be determinant for the passage of risk. The legal stipulations on governing agreements on work and services will apply mutatis mutandis in the case of Acceptance. Services must be rendered at the place of performance specified by the Buyer. Goods must be dispatched, and services must be rendered in accordance with the following stipulations:

- 6.1 The Seller must take out insurance against accidental loss and accidental culpable impairment at replacement value, at his own expense, for parts completed under the respective agreement and made available for collection (particularly as a result of fire and theft, transport and storage) with cover until the risk passes to the Buyer. Any claims existing or arising against third parties and/or insurers for damage, destruction, perishing or loss of the item to be delivered/service to be rendered are ceded to the Buyer upon placing the order, by way of surety for performance under the agreement by the Seller.
- 6.2 A delivery note must accompany every dispatch; the goods in each dispatch must be labelled individually. Delivery notes and bills of lading or waybills must bear the order number of the Buyer. The positions of the delivery notes must be analogous to the respective order, specifying the position number, article number and fiscal address. If there is no delivery note included or if the details on it are wrong or incomplete, the Buyer has the right of refusing to accept the delivery at the expense of the Seller.
- 6.3 For all deliveries/services of any kind, the Seller must provide suitable auxiliary and transport facilities that prevent any impairment and/or damage to the deliveries/services to be rendered by him or to any other objects that will be involved in rendering the performance.
- 6.4 If goods are dispatched by lorry, rail or ship, the Buyer must be notified 24 hours (lorry, rail) or 10 working days (ship) in advance in writing. When goods (with individual weights of 5 t and over) are dispatched for which specific technology is required for unloading at the destination wharf, the

Buyer must be notified in advance of the time of arrival and of the designation of the goods. Details of the delivery must be provided upon request.

- 6.5 On the day that the goods are dispatched, dispatch notes in duplicate must be sent to the Buyer, separately for each order. If the goods are sent to another recipient designated by the Buyer instead of to the Buyer himself, similar dispatch notes in duplicate must additionally be sent to that other recipient.
- 6.6 Packaging must comply with prevailing environmental protection regulations (for example DIN regulations, EU Hazardous Substances Datasheets).
- 6.7 The use of hired packaging requires the express written consent of the Buyer. Hired packaging must be stated separately on the delivery documentation. Deposits for hired packaging must be paid by the Seller. Moreover, the Seller must return the hired packaging under his own responsibility and free of charge to the Buyer.
- 6.8 The seller is responsible for disposing of packaging materials. In this regard, the regulations on empty and hired packaging of the Buyer must be complied with, of which the version prevailing at the time of concluding the agreement forms an integral part of these GTC.
- 6.9 The Seller must assure a 100 % outgoing goods inspection (see quality assurance regulations). The Seller or his agent must obtain a written acknowledgment of proper receipt from the inward goods department of the Buyer. Where it has been agreed that the goods will not be delivered to the Buyer but to a third party, the Seller must submit to the Buyer suitable proof of the delivery to the third party (for example written acknowledgement of receipt or similar). Delivering to another reception point than the reception point designated by the Buyer will not lead to passage of Risk from the Seller, even if such other reception points takes delivery of the goods or services.
- 6.10 The Buyer is not obliged to accept delivery of the goods or services outside the normal working hours of the inward goods department. Goods must be delivered, or services must be rendered during the normal working hours of the wharf (consult the schedule on the order). If delivery outside normal working hours has failed, the Seller must, within 24 hours from the first attempt, again deliver to the inward goods department of the Buyer, but during normal working hours (of the Buyer). The Buyer will forthwith give notice of apparent deficiencies, as soon as possible within the prevailing business process, and in any case not later than within five business days from receipt of the goods by the Buyer.
- 6.11 In the event of invoicing according to quantities, dimensions and weights, the values measured by the Buyer during the arrival inspection will be determinant.
- 6.12 The Buyer is not obliged to accept partial or excess or short deliveries that have not been agreed.
- 6.13 Costs and damages resulting from incorrect or omitted declarations and/or improper packaging must be borne by the Seller, unless these costs and damages would also have been incurred if the declarations and/or packaging were to have been correct.
- 6.14 If it has been agreed that documents must be submitted (test certificates, documentation, etc.), they must be made available separately on the agreed delivery date, quoting the order number. The delivery/service will only be deemed to have been fulfilled, after these documents too have been received by the Buyer in the agreed form.
- 6.15 An Acceptance test agreed with the Buyer is carried out at the wharf. If, exceptionally, the parties have agreed that Acceptance testing will take place elsewhere (for example on the premises of the Seller), passage of risk in relation to the subject of the agreement will, in deviation from the legal stipulations, not occur until delivery. Material costs in relation to Acceptance are for the account of the Seller. The Seller and the Buyer will each bear their own staffing costs and travel expenditure in conjunction with the Acceptance.
- 6.16 Deliveries and/or services of which the contractual condition can only be determined after completion or commissioning of work down the line, will only be accepted by the Buyer after completion or commissioning of such work down the line and, if applicable, its Acceptance by the competent authorities (for example TÜV (Technischer Überwachungsverein [Safety Standards Authority]), classification society, SeeBG (See-Berufgenossenschaft [Seamen's Professional Association])).

- 6.17 The Buyer may refuse to accept deliveries of goods and rendering of services in the event of force majeure or of any other circumstances outside the control of the Buyer (including labour disputes), which make it unreasonable or impossible for the Buyer to accept delivery of the goods or rendering of the service.

## **7 OBLIGATIONS OF THE SELLER, QUALITY ASSURANCE, DEFICIENCIES, LIABILITY FOR DEFICIENCIES AND PERIOD OF LIMITATION**

- 7.1 The Seller warrants that the subject of the agreement is of the exact quality agreed with the Buyer and does correspond to the state of the art in terms of science and technology. He must also ensure that the subject of the agreement will not be subject to any circumstances that undo or reduce its value or suitability for the usual purpose of use or for the purpose that has been laid down in the agreement concluded with the Buyer. The Seller does also warrant that rights of third parties, especially patents or other intellectual property rights, will not be violated by making use of the subject of the agreement.

- 7.2 The Seller must maintain a certified quality management system in accordance with DIN EN ISO 9001 or must manufacture his products in accordance with a quality management system that meets the requirements of DIN EN ISO 9001 in essence. The subject of the agreement will not be released and dispatched by the Seller, before it will have successfully passed the requisite tests for proving the contractually agreed quality.

The Buyer reserves the right of carrying out quality audits in accordance with generally accepted standards. Should the buyer provide measurement reports, test plans or similar, they must be completed in advance by the Seller and be submitted to the Buyer upon delivery of the goods.

- 7.3 Constructional deviations must be reported. The Seller is obliged to notify the Buyer in writing at the time that they are determined. In principle, they always require the consent of the Buyer.

For components and products subject to classification/certification, the competent neutral authority following the construction must also be informed in writing. The latter will decide in conjunction with the Buyer on how to proceed.

- 7.4 If the subject of the agreement is deficient or does not conform to the agreement for other reasons, the Buyer will have the right of seeking all legal remedies available to him; any exclusions and limitations of liability of the Seller will not apply.

- 7.5 The deadline for lodging claims for deficiencies is 10 days as stipulated in Article 377, HGB (Handelsgesetzbuch [German Commercial Code]); in the case of hidden deficiencies, especially of those that do not come to light until processing or commissioning of the subject of the agreement, the period of 10 days will commence upon discovery of the deficiency. The Buyer's obligation to inspect is limited to deficiencies that can be detected through external examination by the naked eye during the inward goods inspection by the Buyer and by inspecting the delivery documents, as well as through random quality controls applied by him.

- 7.6 In the event of subsequent performance, the Seller will also bear those additional expenses, especially transport, travel, labour and material costs, that are incurred because the subject of the agreement was subsequently taken to a location other than the location of fulfilment, provided that this change of location is within the scope of the intended use of the subject of the agreement. This expenditure will not be taken into consideration when assessing the disproportionateness of the subsequent performance in accordance with Articles 439, Paragraph 3, and 635, Paragraph 3, BGB (Bürgerliches Gesetzbuch [Civil Code]).

- 7.7 If the Seller does not render the subsequent performance within a reasonable period determined by the Buyer, the Buyer will have the right

of wholly or partially withdrawing from the agreement without paying compensation

or of demanding a reduction in price, or

of remedying the deficiencies himself or of having them remedied or of taking a replacement delivery, all at the expense of the Seller, and

of demanding compensation for damages instead of performance.

- 7.8 The Seller has the obligation of the supplying the Buyer with spare parts throughout the normal economically useful life of the subject of the agreement, on market-conform conditions and at market-conform prices.
- 7.9 Expenditure that arises as the result of determining deficiencies, even if on the wharf, must be borne by the Seller. These encompass the inspection costs, dismantling and installation costs, transport, travel, labour and material costs, etc.
- 7.10 In cases of remediation of deficiencies or of new delivery, the Seller must ensure that the order will be fulfilled as soon as possible. In urgent cases, it might necessitate deploying multiple shifts, overtime and working on weekends and bank holidays. Should the Seller not honour his obligation emanating from the liability for deficiencies in good time, the Buyer will have the right, where possible, of remedying the deficiencies himself or having them remedied by third parties, at the expense of the Seller.
- 7.11 If more than five percent of a delivery shows deficiencies, prevalence of a serial deficiency may be assumed. In such a case, the Buyer will have the right of declining the entire delivery and seek the legal / contractually agreed remedies for claims for deficiencies.
- 7.12 In deviation from the stipulations of the Civil Code, the period of limitation for claims for material and legal deficiencies is three years, except when expressly agreed otherwise (also in case of multi-shift operation).
- 7.13 The period of limitation for material and legal deficiencies is held in abeyance for the period from notification of deficiency by the Buyer until the deficiency will have been remedied and/or the defective part will have been replaced. The period of limitation for material and legal deficiencies will be extended by that period, however, not for longer than up to five years from delivery respectively Acceptance of the subject of the agreement.
- 7.14 The Seller is obliged to examine components (for example raw materials, building materials) provided by the Buyer or supplied by his secondary suppliers, manufacturers and any other third parties for obvious and hidden deficiencies and to notify his secondary suppliers or – if provided by the Buyer – the Buyer forthwith of any deficiencies found. Delivery of products free of legal deficiencies is contractually of the essence to the Buyer. Accordingly, the Seller commits himself to verifying the delivered goods and/or the rendered service for absence of legal deficiencies and to notifying the Buyer of any possible conflicting proprietary rights. Violations of these obligations is subject to the standard statutory periods of limitation.

## **8 CESSION, OFFSETTING AND WITHHOLDING**

- 8.1 Without the consent of the Buyer, the Seller does not have the right of wholly or partially ceding to third parties his claims and rights against the Buyer.
- 8.2 The Seller may only offset against claims of the Buyer that are undisputed, have been legally established or have been proved (are ready for decision).
- 8.3 The Seller may only exercise a withholding right if his claim emanates from the same contractual relationship and if the Buyer is not entitled to withholding part of the compensation as stipulated in Article 641, Paragraph 3, Civil Code.

## **9 PROPRIETARY RIGHTS, MOULDS, DRAWINGS, ETC.**

- 9.1 The Seller is be liable for all damages and disadvantages incurred by the Buyer for violating rights of third parties as a result of using, installing or onward selling of the supplied goods/rendered services.
- 9.2 If a third-party lodges a claim against the Buyer on account of infringement of his rights, the Seller is obliged to indemnify the Buyer against such claims upon first demand. This obligation of indemnifying the Buyer encompasses all damages and expenditure that he will incur as a result of or in conjunction with the claim lodged by the third party.
- 9.3 For the duration of a dispute about an infringement of proprietary rights, the Seller must put up a

surety to the Buyer in the form of a bank guaranty in the amount of the claim for damages and costs threatening the Buyer. In this guaranty, the guarantor must waive the plea of recourse, contestability and offsetting if and to the extent that the counterclaims of the Seller have not been legally established and/or proved. Semi-finished and finished products manufactured in accordance with information, drawings, samples, moulds or other documents, may only be delivered to the Buyer and may under no circumstances be made available to third parties.

9.4 All documents that are the property of the Buyer, particularly samples, moulds and drawings in any form whatsoever, of which copies or reproductions may only be produced with the express consent of the Buyer and must be treated confidentially, remain the economic and intellectual property of the Buyer and must be returned to the Buyer without special request, together with any copies that may have been made, upon completion of the enquiries and orders. Enhancement or suggestions for enhancements that would seem feasible in conjunction with the implementation of other orders, must be communicated to the Buyer by the Seller, although the Buyer will have the exclusive right of applying them under patent law or within the framework of other proprietary rights.

9.5 Generally, all secondary suppliers are bound by the confidentiality clause. In this regard, all commercial or technical details and documents or databases that are not in the public domain and of which knowledge has been gained by virtue of the business relationship, must be treated as business secrets.

The confidentiality agreement also covers all developments, presentations, experiments, findings and results. Exempt from the agreement are such details and findings that are already in the public domain and can, therefore, no longer be protected.

The Seller commits himself to keeping strictly secret all confidential information and neither to make use of it, sell it nor to pass it on to third parties, without express written consent. With the aim of ensuring confidentiality, (name) commits himself to making details available to his staff and employees on a need-to-know basis only and to ensuring that the concerned recipients will also sign the concerned confidentiality agreement.

The confidentiality agreement will survive the period of the business relationship. The confidentiality agreement will not lapse either if the business relationship does not come to fruition or if it must be terminated prematurely. Upon termination of the cooperation, all records and materials must be returned to the originator and all copies and other multiplications must be destroyed.

The Seller is fully liable for all damages emanating from violations of the contractual obligations. In addition to the compensation for damages, a contractual penalty of 20,000 euros will be payable for each violation of the contractual agreements.

## **10 PROCESSING ORDERS (WORK AND WORK DELIVERY AGREEMENTS)**

10.1 The Seller must forthwith verify the materials made available by the Buyer in accordance with the technical rules and regulations upon compliance with the normal respectively the in casu specific requirements. If necessary, he must return the materials immediately to the Buyer and request replacement.

10.2 If, during processing, previously not apparent deficiencies should come to light, the processing must be stopped without delay and the Buyer must be forthwith informed.

10.3 At any and all points during processing, the manufacturing is done by order of the Buyer as manufacturer. At no point will the Seller gain ownership.

10.4 If the processing is done wholly or partially by a third party, the third party will be a fulfilment agent. In such case, the claim for surrender against the third party is ceded to the Buyer.

10.5 If, through fault of the Seller, a workpiece provided by the Buyer becomes scrap, the Seller will be liable for the costs of processing the scrap, of procuring a replacement part and for any other costs incurred by the Buyer as a result of it becoming scrap.

10.6 Other than that, the agreed work agreements apply.

## **11 LIABILITY OF THE BUYER, EXEMPTION FROM PRODUCT LIABILITY AND INSURANCE**

11.1 Claims for compensation for damages and reimbursement of expenses (hereinafter collectively referred to as “claims for compensation of damages”) against the Buyer are excluded, regardless of the legal grounds. This does not apply to claims under the Produkthaftungsgesetz (Product Liability Act), claims based on wilful or grossly negligent breach of duty by the Buyer, failure to comply with a guaranty for the existence of a characteristic feature, damage to health or physical injury to the Seller or his employees as a result of at least a negligent breach of duty or breach of a material contractual obligation (“cardinal obligation”) by the Buyer. In case of violation of significant contractual obligations, liability of the Buyer is limited to foreseeable damage that is typical within the framework of the agreement.

Breach of duty by the Buyer is equal to breach of duty by his legal representatives or fulfilment agents. The arrangements above do not amount to a change in the burden of proof to the disadvantage of the Seller.

11.2 If third parties should lodge claims against the Buyer under product liability in accordance with Articles 823 ff., Civil Code, the Seller must indemnify the Buyer against such claims to the extent that the damage has been caused by the raw materials or semi-finished products supplied by the Seller or because of the services rendered by him.

11.3 Furthermore, the Seller is obliged to compensate the Buyer for any damages and expenditure emanating from and in conjunction with a recall action carried out by the Buyer as a result of a deficiency in the subject of the agreement. If at all possible and reasonable for the Buyer, he will inform the Seller about the nature and scope of the recall action to be carried out and must accord the latter the opportunity to express his opinion. Liability of the Seller as stipulated by law, is not affected.

11.4 The Seller is obliged to maintain product liability insurance with a minimum insured sum of €3.5 million for every event of personal injury and material damage and submit proof of such insurance to the Buyer upon first demand.

## **12 SAFETY REGULATIONS, SAFETY DATASHEETS**

12.1 The Seller must warrant that no materials will be used that are harmful to health when manufacturing the objects supplied by him and providing the services rendered by him.

12.2 The Seller warrants that all relevant statutory, official, trade association or other safety regulations will be complied with in the production of the goods to be delivered/services to be rendered and will be liable for any damage resulting from a breach of these regulations.

12.3 If the goods to be supplied under the agreement contain hazardous substances as stipulated in “Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures”, the safety datasheet (SDS) must be made available on paper and electronically.

## **13 SECONDARY SUPPLIERS**

13.1 For honouring his contractual obligations vis-à-vis the Buyer, the Seller may only engage secondary suppliers after obtaining the consent of the Buyer. Engaging secondary suppliers does not release the Seller from his obligations vis-à-vis the Buyer.

13.2 When placing orders with secondary suppliers, the Seller must ensure that the secondary suppliers too will grant the Buyer the right of being informed and of carrying out tests.

13.3 The Seller cedes to the Buyer by way of surety all existing and future claims against his secondary contractors and suppliers for performance, subsequent performance and damages to which he is entitled, irrespective of the legal grounds, to the extent that such ceded claims are in connection with an order placed with the Seller by the Buyer. Should the Seller default on honouring his obligations towards the Buyer, the Buyer will have the right of collecting himself under the claims ceded to him. When an event of default occurs, the Seller is obliged to provide the Buyer with all

records, documents and information that are necessary for collecting under the ceded claims and to notify the secondary contractor of the cession upon the request of the Buyer.

#### **14 FULFILMENT LOCATION, JURISDICTION, GOVERNING LAW**

- 14.1 Fulfilment location for all goods to be delivered and services to be rendered by the Seller is the statutory seat of the Buyer respectively the statutory seat of the recipient designated by the Buyer, if it is different.
- 14.2 Jurisdiction for hearing all disputes emanating directly or indirectly from the contractual relationship concluded between the Buyer and the Seller, including disputes about deeds, bills of exchange and cheques, is vested exclusively in the courts of the statutory seat of the Buyer. However, the Buyer reserves the right of suing, at his discretion, the Seller before the courts of the latter's statutory seat.
- 14.3 These General Terms and Conditions are governed by the laws of the Federal Republic of Germany, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or of any other treaties governing the international exchange of goods.

#### **15 DATA PROTECTION**

The Seller consents to the Buyer electronically storing the data of the Seller and of the individual agreements that are required within the scope of the business relationship and to him processing and using those data for operational purposes of the Buyer, within the framework of the legal stipulations.

#### **16 EXTRAORDINARY WITHDRAWAL AND TERMINATION RIGHTS**

- 16.1 In addition to the withdrawal rights stipulated by law, the Buyer has the right of wholly or partially withdrawing from the agreement or terminating it, if a) the Seller is in default with a delivery or service and such default continues for more than two weeks after dunning by the Buyer, or if b) the Seller cannot reasonably be expected to honour the agreement for reason vested in the person of the Seller, thereby taking into account the circumstances of the individual case and the mutual interests of the parties, especially in the event of significant deterioration or impending deterioration of the financial circumstances of the Seller and this jeopardises the fulfilment of a delivery and service obligation to the Buyer.
- 16.2 The Buyer does also have the right of terminating the agreement if insolvency proceedings or comparable proceedings against the assets of the Seller have been applied for or have been instigated.
- 16.3 In case of termination by the Buyer, the Buyer may make use of the available equipment or the goods and services already provided by the Seller, against suitable compensation, in order to continue the work.

#### **17 STIPULATIONS GOVERNING EXPORT CONTROLS AND FOREIGN TRADE DATA**

The Seller must comply with all applicable national customs and foreign trade regulations. Not later than two weeks after placing the order and forthwith in case of amendments, the Seller must provide the Buyer in writing with all information and data that the Buyer may require for complying with foreign trade regulations in respect of export, import and reexport.

#### **18 SEVERABILITY CLAUSE**

If individual stipulations of this agreement should be wholly or partially unenforceable or void after changes in the law or of jurisprudence of the highest courts or become wholly or partially unenforceable or void in any other way or if hiatuses exist in this agreement, the parties agree that the remaining stipulations will not be affected and will remain valid. For such an event the parties commit themselves to finding, in good faith, an enforceable stipulation to replace the unenforceable stipulation that comes as closely as possible to the objective and purpose of the unenforceable stipulation and that may be assumed to have been agreed by the parties at the time of

concluding the agreement, if they had known or foreseen the unenforceability of voidness.