



Transportbänder · Conveyor belts · Bandes transporteuses

General Conditions of Sale (hereafter: AVB) of
Märtens Transportbänder GmbH

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1. General Provisions

- 1.1 The conditions named hereinafter only apply to commercial business undertakings between Messrs. Märtens Transportbänder GmbH, Lise-Meitner-Straße 18, D-24941 Flensburg, (hereafter: Seller) and companies as defined in the German Civil Code - § 310 Abs. 1 BGB (Hereafter: Buyer/Buyers). The Seller's products are intended solely for commercial use and are not fit for consumers.
1.2 All agreements between the Seller and the Buyer, as well as any offers from the Seller towards the Buyer are governed by the following conditions. Deviating Buyer's conditions, not expressly accepted by the Seller in writing on a case-by-case basis, are not binding, even if they are not expressly being protested. Any deviant or supplemental understandings require a written agreement in order to become legally binding. Unless other arrangement(s) are agreed upon, deviant or supplemental rules apply on a case-by-case basis, only.
1.3 Insofar as reference is made to commercial contractual terms in the order confirmation or correspondence, the International Commercial Terms (INCOTERMS) shall be applied and they shall have precedence over any potential contradictory rules in this AVB.
1.4 In so far as further contractual terms and conditions previously drafted by the Seller are integrated in the contract as for example data sheets, etc., these are only valid as supplements to the following provisions of the general terms and conditions of sale (AVB), which are always paramount, or they are to be interpreted in accord with those terms and conditions.

## 2. Offer, Placement of Order

- 2.1 The Seller's offers are subject to change and non-binding, unless expressly qualified otherwise by the Seller.
- 2.2 Should the order be qualified as a legally effective and binding offer to conclude a contract (this could also pertain to the placing of an electronic order by the Buyers through an intranet system developed by them, if applicable), the Seller may accept such offer within 2 weeks time. A purchasing contract only comes about by written acceptance of an order by the Seller. Only the written order acceptance by the Seller obligates the Seller towards the Buyer.
- 2.3 Should the Seller qualify an offer expressly as binding or firm, then he is bound by it for a duration of 10 days after submission of the offer, unless other agreements were explicitly made between the parties.
- 2.4 Orders for the delivery of the desired products (out of new production or ex warehouse) must contain details informing the seller clearly about the following points:
- a) Reference to a potential offer (letter correspondence, visit, transmission of price lists etc.),
  - b) Quantity and dimensions,
  - c) Article description with reference to potentially known order number,
  - d) Intended conditions of use for the product, desired material characteristics
- 2.5 The categorical right for Call-off orders requires prior written agreement. Call-off orders as well as any changes or supplements to them require proper written form. With Call-off orders, delivery will be made after a written call is placed by the buyer. In case, the scheduled Call-off order period ends and no call was placed, the Seller shall have the right to deliver and invoice the merchandise that was placed on standby, to the Buyer.
- 2.6 Statements in regards to the object and the extent of the delivery or the performance (such as weights, measurements and technical data), as well as their portrayal (such as drawings and depictions) are merely approximations of the specifications of the goods and performances or of their specific characteristics and do **not** represent warranted characteristics or guarantees for the condition of said merchandise. Guarantees for the condition of the merchandise will only be submitted in writing by the Seller and they have to be explicitly labeled as such.
- 2.7 The Seller reserves the intellectual, tangible and other rights (including, but not limited to copyrights) to depictions, drawings, calculations and other documents. This applies to such written documents that are labeled "confidential", as well. Before relinquishing such items to Third Parties, the Buyer needs the express written consent of the Seller.
- 2.8 The depiction of merchandise on the internet does not represent any kind of offer, but a non-binding invitation towards the customer to order.

## 3. Transfer of Risk

Risk(s) and Peril(s) transfer to the Buyer:

- 3.1 when the merchandise is to be shipped by the Seller - upon loading onto the mode of transportation chosen by the Seller, ex works or warehouse of the Seller, from which the dispatch of the merchandise begins, regardless of any recourse against the ordered carrier. This even holds true, when the Seller has covered the transportation expenses and any further expenses related to the delivery and placement;
- 3.2 in case of merchandise bought by the buyer „ex works“ or „ex warehouse“ and which is advised ready and positioned for pick up at the production facility or warehouse of the Seller. The same applies, when the pick up or the delivery is postponed by the Buyer and the Seller arranges for the proper segregation (of product) at the agreed time, or when the Seller's obligation to deliver is waived in terms of article 4.10 of these conditions/AVB.
- 3.3 As long as nothing to the contrary can be deducted from the order confirmation, delivery terms “ex works” are deemed agreed.

#### 4. **Delivery**

- 4.1 The delivery period begins on the date of the order confirmation. The delivery period does not, however, begin, before all details of the execution of the order are clarified and all other conditions that need to be fulfilled by the ordering party have been met. The objection against a non-fulfilled contract shall remain reserved. This applies accordingly for delivery dates.
- 4.2 Deliveries made before the end of the delivery period are permitted. Partial deliveries are permitted, unless the buyer has an obvious interest in not receiving partial deliveries.
- 4.3 The Seller is entitled, but not obligated to consolidate multiple order into one delivery, unless the buyer has an obvious interest in receiving partial deliveries.
- 4.4 Delivery periods and delivery dates as well as performance periods and performance dates are valid only as approximations, unless a firm period or a firm date was agreed upon (business to be settled on a firm date). If dispatch was agreed upon, delivery periods and delivery dates refer to the point in time of the transfer (of merchandise) to the freight forwarder, carrier or other person or company assigned to carrying out the transport. Apart from that, in order to stay in compliance with the delivery periods and delivery dates, the advice of readiness to dispatch, given to the Buyer, is sufficient.
- 4.5 In cases of an Act of God and other disturbing events that were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds [even machine/equipment breakdown], difficulties in obtaining materials or energy, transportation delays, strikes, lockouts; workforce, energy or raw materials' shortage(s), official government measures), which are beyond the control of the Seller and which severely impede or negate his ability to deliver or perform, the obligation of the Seller to fulfill the contract is dropped/suspended, as long as the hindrance affecting delivery is only temporary in nature, for the duration of such hindrance, plus an appropriate reactivation period. Should such hindrance last more than two weeks, both Buyer and Seller are entitled to rescind the contract; the other party will not have the right to claim compensation in regards to this.
- 4.6 Correspondingly, the same applies during difficulties in procurement of required official permits, i.e. import licenses or approvals, regardless of whether or not it would have been possible for the Seller to recognize these difficulties at the time of the signing of the contract.
- 4.7 The Seller has to inform the Buyer immediately in writing about such hindrance and why this temporary hindrance occurred or why the impossibility of the delivery took came about.
- 4.8 In case such a hindrance refers to a due delivery, which is part of a contract covering multiple, consecutive deliveries, then the right to withdrawal applies only to the due delivery and not to the future ones.

- 4.9 Should the Seller have already completed a part of the order at the time of such temporary or long term delivery hindrance, then the Buyer is obligated to accept the completed goods at the agreed upon terms. This does not apply, if the Buyer legitimately has no interest in a partial fulfillment and is entitled to rescind.
- 4.10 Should the Seller, due to contractual agreement, be obligated to transport the merchandise and should this, due to such events as described under article 4.5 be impossible, then the Seller shall, for the duration of the hindrance, be exempt from the obligation to deliver. The Seller must inform the Buyer immediately and the Seller has to make the merchandise available for pickup to the Buyer, in a segregated fashion on his premises or at another warehouse.
- 4.11 Should the delivery or fulfillment become impossible without any fault from the Seller's side, then the Seller shall become exempt from the obligation to deliver, without the Buyer having the right to claim damages.

## 5. Delay or Omission to Accept

- 5.1 Should the Buyer omit to pick up the merchandise placed at his disposal or choose to delay the due delivery of the goods, then the Seller is entitled to place those items into storage for the account of the buyer or he shall be allowed to charge warehousing fees, even if the Seller is housing the merchandise in his own warehouse.
- 5.2 Should the Buyer claim an event that is beyond his control, as delineated as events under article 4.5 of this AVB, then the Seller may, after a period of 2 weeks, withdraw from the contract, without either of the parties being able to claim damages on grounds of said withdrawal.
- 5.3 Should the Buyer not be able to cite such an event, then the Seller may withdraw from the contract after a grace period of 2 weeks and he shall also be entitled to claim compensation for damages.
- 5.4 Should such hindrance affect only part of a contract with multiple, consecutive deliveries, then the right to withdraw and the right to claim damages shall apply only to the due deliveries, not future ones.

## 6. Basis for Invoicing

- 6.1 Should, after signing of the contract, but before dispatch of goods, freight charges, insurance costs or public dues and expenses (such as duties, import/export related dues) be newly introduced or increased, then the Seller shall be entitled to add such extra burdens to the agreed upon price, even if the delivery terms are to be understood as 'delivered' or 'DDP' ('delivered duty paid'/'delivered customs cleared').
- 6.2 Billing for all products shall be done according to the billing mode indicated on the order confirmation. The Seller is entitled to change his billing modes without express announcement.
- 6.3 All prices are, unless explicitly marked otherwise, to be understood in EURO, and represent net prices, plus any legally applicable Value Added Tax. In case of deliveries 'ex works' with foreign final destinations, the Seller is entitled to invoice the legally required Value Added Tax, as long as the Buyer has not proven the export from the Federal Republic of Germany. The charged VAT will be reimbursed to the Buyer, once sufficient proof of exportation from the Federal Republic of Germany through appropriate documents has been surrendered.

## 7. Payment

- 7.1 Commercial Travelers and Salesmen of the Seller are only permitted to collect open invoice amounts, when they are expressly authorized for such task by the Seller.
- 7.2 Risks and costs of payment: The costs and risks involved in transferring the funds for the invoice amount are for the account of the Buyer.
- 7.3 Checks offered will be accepted by the Seller only on the basis of a special agreement and merely on account of performance, and under the condition that the demand for the purchase amount shall stay intact (until the check clears). The Seller undertakes however, not to sue for the outstanding amount in the interim, unless the check is not covered. The Seller undertakes to present the check for cashing within 4 weeks; the buyer bears the risk of a bank returned/bounced check.
- 7.4 Offered up (bank-) drafts will only be accepted by the Seller based on special written agreement and merely on account of performance, and under the condition that the demand for the purchase amount shall stay intact (until the draft clears). Only re-discountable and properly taxed drafts can be accepted. Their acceptance shall occur upon presentation and supra protest. Credit notes for checks and draft are tentatively valid, pending the receipt (of funds) and less note charges and other draft related expenses and with a value date on the day, on which the Seller has free disposal of the proceeds. When the Seller accepts drafts as payment, the Buyer bears any draft/note expenses, as well as the costs of a potential bank discounting.
- 7.5 Unless other agreements were made, payment has to be effected 10 days after invoice date. After expiration of that period the Buyer becomes delinquent, unless he can prove that the Seller has not yet completed his contractual fulfillment obligations up to this point. Once the Buyer falls delinquent, he has to pay interest on the amount owed at the legally applicable rate valid for commercial business transactions (currently 8% with a reference date of Nov.1, 2008) above the base interest rate. The Seller reserves the right to seek compensation for further damages.
- 7.6 Should the Seller become aware of facts that indicate a lacking financial capability of the Buyer after the ratification of the contract, particularly a significant deterioration of the Buyer's assets (e.g. due to repossession, insolvency, cessation of payment, liquidation, garnishment or transfer of merchandise, supplies or accounts receivables as security or if the Buyer does not settle due invoices, despite multiple reminders), then the Seller can, given any corroborating facts indicating failure of consideration (i.e. payment), refuse his own fulfillment and make all receivables from the Buyer due immediately. The right to refuse fulfillment does not apply, when consideration is furnished or when a security for it is furnished.
- 7.7 The Seller may opt to give the Buyer an adequate time line, in which the Buyer, at his choosing, has to furnish consideration/payment concurrently against delivery/Seller's fulfillment. After unsuccessful expiration of such grace period, the Seller may withdraw from the contract.

## 8. Reservation of the Right to Ownership

Barring rules of public order of the buyer's country, particularly those concerning insolvency law, the following shall apply in absence of any written agreements to the contrary:

- 8.1 The Seller retains ownership of the merchandise delivered by him until full payment of all outstanding claims of the Seller towards the Buyer from the business relationship has been effected.
- 8.2 The Buyer may, in line with practiced, orderly business execution, integrate these goods into his own production equipment for temporary purposes, process or retail them. Other forms of disposal, particularly their pawning or utilization as security are not permitted for the Buyer.

- 8.3 The connection of the merchandise with an essential part of the real estate, e.g. with production machinery/equipment of the Buyer, may be undertaken exclusively for temporary purposes, until full payment has been effected. This way, the merchandise can merely become quasi-component(s) of the real estate, as delineated in § 95 BGB (German Civil Code), so that the retention of proprietary rights according to the rules of article 8 of this AVB will be upheld, even after a (physical) connection. The Seller will transfer ownership of the merchandise after complete payment of all receivable demands of the Seller against the Buyer out of their business relationship, so that the quasi-component status can be removed afterwards.
- 8.4 Processing or re-shaping of the goods, that are object of the ownership retention/title retention, occurs for the Seller according to § 950 BGB (German Civil Code), however without any consequences in terms of duties or obligations for the Seller. Should other products, not belonging to the Buyer, be co-processed or irreversibly commingled with such goods into new products, then the Seller becomes co-owner of those goods, pro rata, based on the value of the portion of his merchandise under title retention, that went into the newly created product. The Buyer will safeguard the Seller's owned or co-owned new merchandise (processed or re-shaped), free of charge. The Buyer is obligated at anytime and upon demand to furnish the Seller with information needed to maintain his legal rights of ownership or co-ownership.
- 8.5 The Buyer relinquishes all claims, including securities and any ancillary rights, which are generated through the sale of the processed or non-processed, fully or partially 'title retained' goods, to the Seller, namely in exchange for the now decrepit ownership/title of the goods due to said sale, as security for the Seller up to the amount of the value of the goods, that were subject to the ownership retention. Upon demand of the Seller, the Buyer has to inform his customer of this relinquishment.
- 8.6 If the Buyer integrates receivables resulting from the resale of the title retained goods into an open account relationship existing with his customer, he assigns to the Seller, even at the point of signing the purchasing contract, the balance or final balance anticipated due him, corresponding to the total amount of the receivables included in the current open account relationship resulting from the sale of the title retained goods.
- 8.7 The Buyer is obligated to immediately inform the Seller of any intent to make assignments of receivables (factoring) out of the sale of merchandise delivered by the Seller or of future deliveries to Third Parties and he is also obligated to inform him of already made assignments of such receivables to Third Parties. This particularly holds true in case agreements were made with those Third Parties in regards to recourse or non-recourse factoring, that could be impacted by the securities rights of the Seller under article 8.1 to 8.6 herein. In case of recourse factoring, the seller is entitled to withdraw from such contract, in which the securities rights are or would be compromised, and he further can demand release of merchandise already delivered. The same goes for non-recourse factoring, if the Buyer cannot freely dispose of the purchase price after contracting with the factoring entity.
- 8.8 The Seller is obligated to release any securities due him upon demand of the Buyer insofar, as the liquidable value out of the securities surmounts the demands to be secured by more than 20%; the Seller shall have the pick of the securities to be released.
- 8.9 The Buyer has to insure such merchandise, which is under title retained status, against loss and damage, particularly against fire and theft. Any demand of the Buyer against the insurers from a claim in regards to title retained goods will be relinquished to the Seller anticipatorily already upon ratification of the contract, in the amount of the value of the title retained merchandise.
- 8.10 The Buyer must immediately inform the Seller in writing of any Third Party measure that is contradictory to the reservation to the right to ownership/title retention, such as garnishment of the merchandise, which is the object of the aforementioned retention.

## 9. Customer Complaints, Material Defects

- 9.1 The Buyer or the consignee designated by him has to inspect the merchandise without delay upon receipt at destination in accordance with the stipulations of § 377 HGB (German Commercial Code).
- 9.2 The entering of the Seller into negotiations about defects put on notice by the Buyer merely represents an attempt to reach an amicable settlement. This shall not be construed as tacit relinquishment of protest for late notice of defect.
- 9.3 Admissibility: Customer complaints are only effective, if they received in writing and the following time limits are met:
- a) Immediately after discovery, but within 3 business days after receipt of the merchandise at destination in case of transport related damages. Exterior visible damages of the merchandise and its packaging are to be noted by the Buyer on the freight documents immediately. This documentation itself is no substitute for a formal notice of defect, but merely serves to narrow down the point in time, in which the damage occurred.
  - b) Immediately after discovery, but within 5 business days after receipt of the merchandise at destination at the latest, in case of obvious discrepancy of the delivery versus the order in respect to quality/variety or quantity or upon obvious nonperformance of warranties made, as an exception, for the properties and condition;
  - c) Immediately after discovery, but within 14 days after arrival of the merchandise at destination at the latest, in case of defects or irregularities, that could be detected by superficial examination or simple check;
  - d) Immediately after discovery, but within one year after arrival of the merchandise at destination in case of defects or irregularities that can only be substantiated after extensive examination, through an experiment or by running it through the normal production line.
  - e) Should the Buyer be unable to issue a formal notice of defect within the aforementioned delineated time frames due to the special circumstance involving the practice of drop shipping, despite best efforts and the appropriate general information of the consumer about the time limitations to be adhered to, then the Buyer may demand an extension of the above named times limits by maximally 14 days in writing.
- 9.4 Should the Buyer omit to issue the formal and timely notice of defect, the merchandise is considered approved. Crucial for the adherence to the time line is the timely dispatch of the notice by the Buyer. The Buyer bears the full burden of proof for all prerequisites to a claim, particularly for the defect itself and its existence during the passing of the risk, for the point in time, when the defect is discovered as well as for the timeliness of the notice of defect.
- 9.5 The establishment of a defect of part of the merchandise obligates the Buyer to undertake an immediate examination as to the extent of which the whole shipment is defective. The defectiveness of part of the merchandise does not warrant a complete rejection of the goods.
- 9.6 A defect or deficiency exists, when the object does not possess the agreed upon properties and composition, when it is not feasible for utilization as delineated under the contract and when it does not have a property usually found in similar/comparable objects and that the Buyer has a reasonable expectation to find in this kind of object.

The samples merely indicate the properties of the object of the contract and they do not represent a warranty (§ 276 BGB) nor a guarantee about consistency (§ 443 BGB).

- 9.7 As long as the Seller has followed the special instructions of the Buyer during the manufacture of the products, particularly the instruction about the mandatory use of materials to be used, then the Buyer bears the responsibility regarding the achieved consistency of the products resulting from this composition. In such case the Seller is, in regards to the followed instruction of the Buyer, not liable for the feasibility of the products for the contractually delineated use and/or that they display certain characteristics/qualities. The Seller will inform the Buyer, should anything prompt him to have doubt that the utilized material is even suitable for the use intended by the Buyer.
- 9.8 The rights of the Buyer from material defects are initially limited to supplementary performance. The supplementary performance occurs at Seller's choice by remediation of a defect or through (re-)delivery of flawless material. The Seller is not liable for arising expenses that are based upon the circumstance that the goods were transferred to a different location than the place of fulfillment.
- 9.9 Should the supplementary performance fail, then the Buyer is, after expiration of a grace period to be set at 10 days, entitled to reduce the purchase price or – in case of Seller's fault – to demand compensation for damages according to Article 10.
- 9.10 As far as the Buyer makes demands from material defects/deficiencies due to public statements made by the Seller or his performing agents, particularly in advertisements or from the marking of certain properties, the Buyer bears the burden of proof that the statement was in fact reason for placing the order. The Seller will not be liable for statements from advertisements of Third Parties.
- 9.11 Entitlements from defects by the Buyer are subject to a period of limitation of one year after passing of the risk(s). The statute of limitations in case of a delivery recourse according to §§ 478, 479 BGB (German Civil Code) remain untouched.
- 9.12 If the Buyer was forced to take back the newly manufactured material(s) from the consumer or should the Buyer's buyer have reduced the purchase price as a consequence of the material's deficiency, the legal rights of the Buyer for defects/deficiencies apply without the warranty claims named in this stipulation, except for the entitlement to compensation for damages (§ 478 BGB German Civil Code).
- 9.13 The Seller has the right to conclude the transportation contract under application of the Allgemeine Deutschen Spediteurbedingungen (ADsP General German Freight Forwarders' Conditions). When the risk has passed to the Buyer, the Seller is entitled to pass on the thus far incurred expenses to the Buyer.

The Seller is not liable for transport damages, after the peril transferred onto the Buyer. In that case, potential claims from the transportation contract are to be handled only between the Buyer and the carrier. Potential claims of the Seller against the carrier from the transportation contract are transferred to the Buyer anticipatorily and he (the Buyer) accepts such transfer upon ratification of the purchasing contract.

The Seller is liable for transport damages if the peril did not transfer to the Buyer, in the following fashion, limited as per Allgemeine Deutsche Spediteurbedingungen (ADSp); **the ADSp limits in its article 23 ADSp the legal liability for damages to goods as per § 431 HGB (German Commercial Code) for damages occurring in forwarding custody to €5,00/kg; occurring within multimodal transports under inclusion of a maritime transportation leg to 2 SZR/kg (SZR=Special Drawing Rights), and further per each case of damage or damage occurrence to € 1 million or € 2 million, respectively, or 2 SZR/kg, depending on which amount comes out to be higher.** Article 27 ADSp does not act as waiver of liability in terms of article 25 of the Montreal Convention.

- 9.14 The Buyer must examine before processing of the merchandise, if the delivered goods - compliant with (given) specifications, is indeed suitable for the intended use.

Should the Buyer fear or determine that

- a) the merchandise is not fit for the intended use and/or

- b) the merchandise is deficient and/or
- c) in the opinion of the Buyer in connection with the composition of the merchandise problems will arise upon processing,

any further processing of the merchandise in question may only be pursued after express written agreement from the Seller. Should processing be undertaken without this written approval by the Seller, the merchandise will be considered approved.

- 9.15 The Seller is not liable for defects/deficiencies of the material or for any subsequent damages, should such defect and/or subsequent damage occur through improper storage or processing. If in doubt, the Buyer must inform himself explicitly through the Seller about appropriate storage and/or processing.
- 9.16 The Buyer is obligated to test a product of the Seller that he (the Buyer) has already been using and which is supposed to be utilized within a new application, ahead of running it in a real production run.
- 9.17 Should the Seller obtain knowledge of any delivered merchandise not being fit for an intended application intended by the Buyer or knowledge of danger of subsequent damages to the processing equipment, then the Seller will advise the Buyer accordingly. At that point, the Buyer is entitled to claim the rights as per article 9.8 of these conditions. Should the Buyer utilize the merchandise despite the knowledge of the dangers conveyed by the Seller, the Seller will not be liable for damages resulting hereof, since those could have been avoided by the Buyer.

## 10. Liability and Compensation for Damages

- 10.1 The Seller is liable for damages, regardless of their legal grounds, categorically only for those damages based upon willful intent or gross negligence by the organs and executive employees of the Seller under exercise of their duties, or for damages that are anchored upon other employees and/or performing agents of the Seller violating duties crucial to the contract willfully or in a grossly negligent manner in execution of their work related activities;
- 10.2 The Seller is liable for damages in case of simple negligence, regardless of their legal grounds, only when their organs and/or executive employees and/or other employees or performing agents in execution of their work related activities, violated duties crucial to the contract and thereby endangered the attainment of the respective contractual purpose.
- 10.3 Liability of the Seller, the executive employees, other employees and/or performing agents for damages based upon gross or simple negligence, is limited to damages that are predictable and typical for the type of contract. Liability for excessive and unpredictable risks is excluded.
- 10.4 Demands for replacement due to indirect damages, particularly due to unrealized profits, are excluded in any case.
- 10.5 The liability limitations do not apply in case of bodily injury.
- 10.6 The Seller's liability out of this contract does not extend to Third Parties for damages, that occurred in connection with the fulfillment of the duties under this contract by the Seller, the executive employees, other employees and/or the performing agents. The Buyer keeps the Seller permanently indemnified against such claims from Third Parties upon first request.
- 10.7 The liability limitations do not apply to claims based on the Produkthaftungsgesetz (Product Liability Law).
- 10.8 Should the Buyer demand replacement of expenses that he incurred in good faith, expecting delivery of the

fulfillment (§ 284 BGB German Civil Code), then those expenses are limited by amount to such expenses, that a reasonable Third Party would have incurred.

## 11. Manufacturing Tolerances

The Buyer must inform himself before every order about the currently applicable manufacturing tolerances, through personal access or application for access to the details about manufacturing tolerances, which can be found on the website [www.maertens.de](http://www.maertens.de) or through personal request.

## 12. Other Properties

For all other technical properties, which are not denoted hereinbefore, the Seller will not be liable for minute discrepancies, as long as the delivered merchandise is (still) suitable for the utilization intended at the time of order.

## 13. Final Provisions

- 13.1 The transfer of claims of the Buyer out of the business relation against the Seller is not admissible, with the exception of monetary claims as per § 354 a HGB (German Commercial Code).
- 13.2 The Buyer's right to retain or to offset (monies) exists only in view of such counter claims, that are legally established and that are not being disputed.
- 13.3 The Seller is entitled to offset, even if the reciprocal receivables are in different currencies. As conversion rate, the official exchange rate at the Frankfurt Currency Exchange on the day of the offset declaration.
- 13.4 Place of fulfillment for all deliveries and payments is the location of the branch office of the Seller that the Buyer is concluding the contract with.
- 13.5 Exclusive venue for litigation for all disputes arising directly or indirectly out of the contractual relationship, even for action on a bill of exchange (draft) or on a check, is the domicile of the branch office of the Seller that the Buyer is concluding the contract with. The Seller may file suit at his discretion even at the place of domicile of a Buyer's subsidiary office, which is at least partially involved in the conclusion of the contract.
- 13.6 The parties can agree that disputes in connection with the purchasing contract can be decided by an arbitration court.
- 13.7 Exclusively German Law, as it would apply among domestic merchants – particularly with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) - is applicable for these business conditions and the entire legal relations between the contracting partners. The interpretation of any part of these business conditions shall not be affected by the fact that they have been drawn up in the English language rather than in the German language. In particular, any English term used of these business conditions shall be interpreted in accordance with the German law and practice, irrespective of the relevant German term being added in brackets or not.
- 13.8 If single provisions of these business terms and conditions or the terms and conditions within the framework of other agreements are or become void or ineffective, the effectiveness of other provisions or agreements remains hereby unaffected. The ineffective part is to be replaced in the process of interpretation by a permissible provision which corresponds as closely as possible to the ineffective provision and fulfils the desired economic result to the greatest extent.



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- 13.9 The Buyer is aware of the fact that the Seller has stored data from the contractual relationship for the purpose of data processing in accordance with § 28 Bundesdatenschutzgesetz (Federal Data Protection Law) and that the Seller reserves the right to transfer the data to third parties (e.g. insurances), in so far as this is necessary for the settlement of the contract.

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