

# General Terms and Conditions of Sale of Atlas Copco EPS GmbH



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company-specific technical knowledge of Scheugenpflug GmbH of which it becomes aware (irrespective of the manner) in the course of the business relationship. This obligation does not apply to knowledge that is in the public domain.

## I. Scope

1. These general terms and conditions of sale apply to all the business relationships of Scheugenpflug GmbH (in the following also "we/our" or "vendor") with its customers (in the following "customer"), in particular for contracts related to the sale and/or the delivery of moveable items ("goods purchased"), without consideration of whether we manufacture the goods purchased or procure them from suppliers (§§ 433, 650 BGB (German Civil Code)). If not otherwise agreed, the general terms and conditions of sale apply in the version valid at the time of the customer's purchase order, or the version last provided to the customer in text form as a framework agreement; the general terms and conditions of sale also apply to similar future contracts without the need for us to refer to them in every single case.
2. The general terms and conditions of sale only apply if the customer is business person (§ 14 BGB (German Civil Code)), a legal entity under public law or a public-law special fund.
3. Our general terms and conditions of sale apply exclusively. Deviating, contradictory or supplemental general terms and conditions of business from the customer only form part of the contract if and as far as we have specifically approved their applicability. This requirement for approval applies in any case, for example also if we make the delivery to the customer without reservation but with knowledge of the customer's general terms and conditions of business.
4. Notes on the applicability of statutory regulations are only of clarifying significance. Even without such clarification, the statutory regulations therefore apply if they are not directly modified or expressly excluded in these general terms and conditions of sale.

## II. Conclusion of contract

1. If not expressly marked as binding or not containing a specific acceptance period, all our quotations are subject to change and are not binding. We can accept purchase orders or orders within fourteen days of receipt.
2. Primarily definitive for the legal relationships between us and our client is the purchase contract concluded by means of the written quotation and written acceptance, including these general terms and conditions of sale. These declarations reflect in full all agreements between the parties to the contract in relation to the object of the contract. Clause 2 para. 4 is definitive in relation to the requirement for the written form.
3. However, individual deviating agreements (including side agreements, additions and changes) made in the specific case with the customer have priority. A written contract or our written confirmation as per para. 4 is definitive for the content of such agreements, subject to proof to the contrary.
4. All legally relevant declarations and notifications made by the customer or us in relation to the contract (e.g. setting a deadline, defect notification, withdrawal or diminution) are to be submitted in writing, i.e. in written form or text form (e.g. letter, email, fax). Statutory formal requirements and other supporting documents, in particular if there are doubts about the legitimacy or the declarer, remain unaffected.
5. We reserve the title and copyright to all quotations and cost estimates issued by us as well as to the drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the client. The customer is not allowed to make these objects, either as such or their content, available to third parties, to disclose them, to use them or provide them to third parties to use, or to duplicate them. On request the customer must return these objects in full to us and destroy any copies made, if the customer no longer requires them for the orderly course of business or if negotiations do not lead to the conclusion of a contract.
6. If it is reasonable for the customer – taking into account the customer's interests – we are entitled, for technical or production-related reasons or to meet statutory requirements, to change the construction or the manufacture of the goods supplied. The criterion for reasonable is the effects for the customer on the value and functionality of the goods purchased.
7. The customer undertakes to maintain complete confidentiality in relation to all business and trade secrets, the product know-how and the

## III. Delivery period and delayed delivery

1. The delivery period is agreed individually or is stated by us on conclusion of the contract.
2. It is a prerequisite for compliance with an agreed delivery period that all documents, necessary approvals and clearances to be provided by the customer are received in good time, and the agreed payment conditions are complied with. If these prerequisites are not met in good time, we can – irrespective of our rights stemming from the customer's delay – request an extension from the customer to the periods for delivery and the provision of services, or postpone the periods for delivery and the provision of services by the period during which the customer does not fulfil the contractual obligations.  
Subsequent contractual changes to the goods purchased or related to the services provided by the vendor also - if not agreed otherwise - result in an appropriate postponement of the deadlines or extension to the delivery periods.
3. a) The vendor is not liable for the impossibility to deliver or for delivery delays if these are caused by an Act of God (e.g. natural disasters, etc.) or other events not foreseeable at the time of the conclusion of the contract (e.g. industrial problems of any nature, difficulties in the procurement of material or energy, transport delays, strikes, lawful lockouts, the shortage of labour, energy or raw materials, difficulties in obtaining any official approvals necessary, official measures, etc.) for which the vendor is not responsible.  
b) The vendor is not liable in particular for delivery delays due to the vendor failing to receive deliveries from the vendor's suppliers, incorrect or delayed deliveries by the vendor's suppliers (self-delivery reservation) for reasons for which the vendor is not responsible.  
c) If such events described above make delivery or provision of the service significantly more difficult or impossible for the vendor and the hindrance is not temporary, the vendor is entitled to withdraw from the contract. Temporary hindrances extend the delivery periods or periods for the provision of services by the period of the hindrance plus a reasonable lead time. If the customer cannot be reasonably expected to accept the delivery or service due to the delay, the customer can withdraw from the contract by means of a written declaration made without delay to the vendor.
4. The statutory regulations specify when our delivery is delayed. However, in any case a reminder from the customer is required.
5. If a delivery delay occurs, the customer can request lump-sum compensation for the damages caused by the delay. The lump sum for damages is 0.5% of the net price (delivery value) for each complete calendar week of the delay, however a maximum of 5% of the delivery value of the goods purchased delivered late. We reserve the right to demonstrate that the customer has not suffered any damages or only damages significantly lower than the lump sum stated above.
6. If shipment has been agreed, the time of handover to the carrier, freight carrier or other party tasked with the transport is definitive for compliance with the delivery period. If the handover cannot take place due to reasons for which we are not responsible, notification of readiness to ship is sufficient.
7. The rights of the customer as per clause 9 of these general terms and conditions of sale and our statutory rights, in particular if the duty to perform is excluded (e.g. due to impossibility or unreasonableness of the service and/or retrospective fulfilment), remain unaffected.

## IV. Delivery, transfer of risk, delayed acceptance

1. The delivery is made – if not otherwise agreed - ex works (EXW) Gewerbepark 23, 93333 Neustadt, Federal Republic of Germany (Incoterms © 2020), which is also the place of fulfilment for the delivery and any retrospective fulfilment. On request and at the expense of the customer, the goods purchased will be sent to a different destination (sale with shipment). If not otherwise agreed, we are then entitled to specify the type of shipment (in particular the carrier, shipment route, packaging).
2. We are entitled to make partial deliveries if (i) the partial delivery can be used by the customer in the context of the contractually intended purpose and (ii) the delivery of the rest of the goods purchased with the

purchase order is assured and (iii) the customer does not incur any significant additional effort or costs as a consequence (unless the vendor states he is prepared to accept these costs).

- Risk is transferred at the latest with the handover of the goods purchased (where the start of the loading process is definitive) to the carrier, freight carrier or other third party intended to undertake shipping to the client. This statement also applies if partial deliveries are made or the vendor has taken on other services (e.g. shipment, installation, re-commissioning). If shipment or handover is delayed due to a situation for which the customer is responsible, the risk is transferred to the customer from the day on which the goods purchased are ready for shipment and the vendor notifies the customer of this fact.
- If acceptance by the customer is delayed, the customer fails in a duty to co-operate, or our delivery is delayed for other reasons for which the customer is responsible, we are entitled to request compensation for the resulting damages including additional expenses (e.g. storage costs). In particular, for storage we are entitled to charge lump-sum compensation in the amount of 0.25% of the gross amount invoiced for the stored goods supplied per elapsed week. The substantiation of higher damages and our statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be charged against any further monetary claims. The customer has the right to demonstrate that we have not suffered any damages or only damages significantly lower than the lump sum stated above.
- The shipment will only be insured by the vendor against theft, breakage, fire and water damage or other insurable risks at the express wish of the customer and at the customer's expense.
- Parts that are produced with a machine or plant before final acceptance of the machine or plant (e.g. for test purposes) do not form part of the sale and are only allowed to continue to be used at the customer's own risk.

## V. Prices and payment conditions

- If not otherwise agreed in the specific case, our prices at the time of the conclusion of the contract apply, specifically ex works (EXW – INCOTERMS © 2020), in particular excluding packaging and installation, re-commissioning and, for export deliveries, customs duties as well as fees and other official levies, and do not include statutory value added tax.
- For a sale with shipment (clause 4 para. 1 sentence 2) the customer bears the transport costs ex works including the packaging and the costs for any transport insurance required by the customer. Any customs duties, fees, taxes and any other official levies are also to be paid by the customer.
- Our invoices are due for payment immediately without any deduction, if not otherwise agreed. If delivery or (if installation is agreed) the acceptance of the goods purchased is also required for the customer's obligation to make payment to become due, the invoice is due also without delivery/acceptance if customer acceptance is delayed or delivery/acceptance is delayed for reasons for which the customer is responsible.  
We are, also in the context of an ongoing business relationship, entitled at any time to make a delivery either in full or in part only against payment in advance. We will declare such a caveat at the latest with the order confirmation.
- The statutory provisions specify when a customer payment obligation is delayed. Interest is to be charged on the purchase price during the delay at the related statutorily applicable interest rate as per § 288 para. 2 BGB (German Civil Code). We reserve the right to assert claims for further damages due to the delay. In relation to business persons, our claim to commercial interest on arrears (§ 353 HGB (German Commercial Code)) is unaffected.
- The customer only has rights of offset or retention as far as his claim is legally established or is undisputed. If there are defects in the delivery, the reciprocal rights of the customer as per clause 7 para. 5 sentence 2 of these general terms and conditions of sale remain unaffected.
- If it becomes apparent after conclusion of the contract (e.g. due to an application to commence insolvency proceedings) that our claim to the purchase price is jeopardised by the customer's inability to make payments, then we are entitled to withdraw from the contract according to the statutory regulations related to performance refusal and, where appropriate, after setting a deadline (§ 321 BGB (German Civil Code)).

For contracts related to the manufacture of specific items (one-off manufacture) we can declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

- The vendor reserves the right, after timely notification of the customer and before delivery of the goods purchased, to increase the price of the goods purchased as necessary due to general external price increases outside the vendor's control (for instance exchange rate fluctuations, currency regulations, customs duty changes, a significant increase in material or manufacturing costs) or due to supplier changes and assures a price reduction will be made if external costs taken into account (e.g. customs duties) are reduced or removed all together.
- We also reserve the right to make price adjustments if additional equipment, jigs, tools or similar are required to ensure the correct function of the goods purchased with the purchase order, and at the time of the submission of the quotation as well as order confirmation these were not foreseeable, or they became necessary due to subsequent customer wishes.

## VI. Retention of title

- Until complete payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain the title to the goods purchased.
- The goods purchased subject to retention of title are not allowed to be pledged to third parties or assigned as security before complete payment of the secured claims. The customer must inform us in writing without delay if an application to commence insolvency proceedings is made or if the goods purchased belonging to us are seized (e.g. attachments) by third parties.
- If the customer acts contrary to the contract, in particular on failure to pay the purchase price due, we are entitled to withdraw from the contract according to statutory regulations or/and to request the surrender of the goods purchased based on the retention of title. The request to surrender does not imply declaration of withdrawal at the same time; we are entitled to request only the surrender of the goods purchased and reserve the right to withdraw. If the customer does not pay the purchase price due, we are only allowed to assert these rights if we have first unsuccessfully set the customer a reasonable deadline for payment, or the setting of such a deadline is unnecessary according to statutory regulations.
- Until revocation as per (c) below, the customer is authorised to sell and/or process the goods purchased subject to retention of title in the orderly course of business. In this case the following provisions apply in addition.
  - The retention of title covers the products produced by processing, mixing or joining of our goods purchased to their full value whereby we are deemed to be the manufacturer. If, during processing, mixing or joining with goods from third parties, these third parties have title, we acquire joint title in the ratio of the invoice values of the goods processed, mixed or joined. Otherwise, the same applies to the product produced as to the supplied goods purchased with retention of title.
  - As surety, the customer already assigns to us claims arising from the sale of the goods purchased or the products against third parties either in full or in the amount of our portion of the joint title as per the paragraph above. We accept the assignment. The obligations of the customer stated in para. 2 also apply in relation to the claims assigned.
  - The customer remains entitled, along with us, to request payment of the claim. We undertake the obligation not to request payment of the claim as long as the customer fulfils his payment obligations in relation to us, the customer has no difficulty making payments and we are not asserting the retention of title due to the exercise of a right as per para. However, if this is the case, we can request that the purchaser makes known to us the claims assigned and the debtors, provides all information necessary to request payment, provides the necessary documents and informs the debtors (third parties) about the assignment. In this case we are also entitled to revoke the customer's authority to sell and process the goods purchased subject to retention of title.
  - If the value that can be realized from the sureties exceeds our claims by more than 10%, we will release sureties at our discretion on request from the customer.
- On the occurrence of attachments or other interventions by third parties, the customer must inform the vendor without delay so that the vendor can protect the vendor's rights. If the customer does not fulfil this obligation, the customer is liable for the resulting damages.

## VII. Warranty

1. For the rights of the customer if there are material or legal defects (including incorrect delivery and underdelivery, as well as incorrect installation or inadequate installation instructions), the statutory regulations apply, if not otherwise specified in the following. In all cases the special statutory regulations on the final delivery of the unprocessed goods purchased to a consumer remain unaffected, even if the consumer has further processed them (supplier regress as per §§ 478 BGB (German Civil Code)). Claims from supplier regress are excluded if the defective goods purchased have been further processed by the customer or another business person, e.g. for installation in another product.
2. The basis for our liability for defects is the agreement made on the properties of the goods purchased. If there was no agreement on the properties, whether there is a defect or not is to be assessed according to the statutory provision (§ 434 para. 1 sentence 2 and 3 BGB (German Civil Code)). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
3. It is a prerequisite for claims for defects by the customer that the customer has fulfilled the customer's statutory duties of inspection and complaint notification (§§ 377, 381 HGB (German Commercial Code)). If a defect is apparent on delivery, on inspection or at any other time later, we are to be notified in writing without delay. In any case, obvious defects are to be notified in writing within 5 working days of delivery and defects not apparent during inspection are to be notified within the same period following discovery. If the customer fails to inspect properly and/or to provide notification of defects, our liability for the defects not notified, not notified in time or not notified correctly according to statutory regulations is excluded.
4. If the delivered goods purchased are defective, we can initially choose whether we will fulfil retrospectively by rectifying the defect (improvement) or by delivering defect-free goods purchased (replacement delivery). Our right to reject retrospective fulfilment remains unaffected given the statutory prerequisites. Parts replaced or removed become the property of the vendor.
5. We are entitled to make any retrospective fulfilment due dependent on payment by the customer of the purchase price due. However, the customer is entitled to withhold part of the purchase price in relation to the defect.
6. The customer must give us the time and opportunity necessary for the retrospective fulfilment due, in particular to provide for the purposes of inspection the goods purchased that are the subject of the complaint. In the event of a replacement delivery, the customer must return to us the defective goods purchased according to the statutory regulations. Retrospective fulfilment does not include the removal of the defective goods purchased or renewed installation if we did not have the obligation to install originally.
7. We will pay the expenses necessary for the purpose of inspection and retrospective fulfilment, in particular transport, travel, labour and material costs as well as any removal and installation costs according to the limits in the statutory provision, if there is actually a defect. Otherwise we can request compensation from the customer for the costs (in particular inspection, transport and travel costs) resulting from the unjustified request for the rectification of a defect, unless the lack of a defect could not be discerned by the customer.
8. If retrospective fulfilment has failed or a reasonable deadline for the retrospective fulfilment to be set by the customer has elapsed without success or is unnecessary according to the statutory regulations, the customer can withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal for an insignificant defect.
9. Expressly, claims under the warranty do not apply for damages that are a consequence, after the transfer of risk, of:
  - a) Unsuitable or incorrect use
  - b) Incorrect or negligent handling
  - c) Incorrect maintenance
  - d) Excessive loading
  - e) Unsuitable equipment
  - f) Poor construction work
  - g) An unsuitable building site
  - h) Chemical, electrochemical or other effects that are not prerequisites according to the contract

i) Software bugs that are not reproducible

10. If incorrect modifications or repairs are made by the customer or third parties, claims under the warranty also do not apply to these or the resulting consequences and any claims for defects also do not apply. The same applies if spare parts other than our original spare parts or the spare parts recommended in writing by us are installed in the goods purchased. The warranty does not cover normal wear and tear, in particular wearing parts and parts that carry material.
11. Claims by the customer for compensation for damages or futile expenses only apply for defects according to the limits of clause 9 and are otherwise excluded.

## VIII. Industrial property rights and copyright, defects of title

1. If not otherwise agreed, we are only obliged to deliver the goods purchased free of industrial property rights and third-party copyright (in short: property rights) in the country in which the purchaser has its registered office.
2. If a third party asserts claims against the customer due to the infringement of property rights by the delivery from Scheugenpflug GmbH used according to the contract, we are liable within the period specified in clause 12 para. 1 as follows:
  - a) Each party to the contract will notify the other party to the contract without delay if claims are made due to the infringement of property rights.
  - b) In the circumstance that the goods purchased infringe an industrial property right, the vendor will either obtain a right of use for the related delivery at the vendor's expense or modify or replace the goods purchased such that the property right is not infringed, at the vendor's discretion. If this action is not possible under reasonable conditions, the customer is entitled to statutory withdrawal or diminution rights.
3. Further rights due to the infringement of property rights, in particular compensation for damages, are excluded.

## IX. Other liability

1. If not otherwise specified in these general terms and conditions of sale including the provisions below, we are liable for an infringement of contractual or extra-contractual obligations according to statutory regulations.
2. We are liable for compensation for damages – irrespective of the legal reason – in the context of fault-based liability if there is wilful or gross negligence.

For simple negligence we are liable conditional upon a milder scope of liability according to statutory regulations (e.g. for diligence in our own affairs) only

  - a) For damages from harm to life, the body or the health,
  - b) For damages from the not insignificant infringement of an essential contractual obligation (obligation that must be met to make the proper fulfilment of the contract possible at all and compliance with which the party to the contract can reasonably expect to rely upon); however, in this case our liability is limited to compensation for the foreseeable, typically occurring damages.
3. The liability limitations stemming from para. 2 also apply on breaches of duty by or in favour of persons for whose culpability we are responsible according to statutory regulations. They do not apply if we maliciously conceal a defect or have assumed a guarantee for the properties of the goods purchased; they also do not apply for claims by the customer according to the law on product liability.
4. Due to a breach of duty that does not involve a defect, the customer can only withdraw or terminate if we are responsible for the breach of duty. A free right of termination by the customer (in particular as per §§ 650, 648 BGB) is excluded. Otherwise the statutory prerequisites and legal consequences apply.

## X. Product law on export

1. For the requirements on the goods purchased, subject to para. 2 – along with the contractual agreements – only the statutory provisions that apply in Germany are applicable. In particular, the vendor is not liable for compliance with the statutory product provisions applicable outside Germany.
2. Irrespective of the statutory provisions applicable in Germany, the goods purchased are also in compliance with this purchase contract if

the statutory regulations applicable at the customer's registered office are not contradictory to the normal utilisation of the goods purchased.

## XI. Special conditions for installation services

1. If we have assumed contractually, along with delivery, also the erection or installation (for the purpose of simplification both are referred to in this clause 11 consistently as "installation") of the goods purchased, the provisions of this clause 11 apply in addition, if not otherwise agreed expressly in writing (in the context of clause 2 para. 4 of the general terms and conditions of sale).
2. The installation of the goods purchased is charged in addition to the purchase price based on the time taken according to the agreed hourly rate plus the related statutory value added tax.
3. The installation/erection location (for the purpose of simplification both are referred to in the following consistently as "installation location") must be prepared for the installation work, in particular the customer must undertake, at the customer's expense, all preliminary work necessary to install the goods purchased. The customer must ensure, in particular, that an appropriate, adequately resilient foundation is available and the access routes to the installation location are levelled and cleared and are suitable for the movement of the items of equipment necessary.
4. At the customer's expense, the customer must support the installation personnel deployed by the vendor while undertaking the installation. During this work, the customer must provide, in particular, the support services and the items stated below at the installation location at the customer's expense
  - a) Take the necessary measures to protect personnel and property at the installation location including the instruction of the installation supervisor on existing special regulations if these are relevant for the installation personnel,
  - b) The jigs and heavy tools (e.g. lifting equipment, compressors) necessary for installation and putting into service as well as the necessary implements and materials (e.g. scaffolding timber, wedges, packing, cement, plastering and sealing material, lubricants, fuels, ropes and belts),
  - c) Energy and water as well as lighting including the necessary connections at the installation location,
  - d) Adequately large, suitable, dry, lockable rooms for the storage of the installation personnel's tools and appropriate, secure work and break rooms for the installation personnel (with heating, lighting as well as sanitary facilities),
  - e) Protective clothing and protective equipment required due to special circumstances at the installation location as well as all measures necessary for the prevention of accidents to protect the installation personnel deployed,
  - f) Materials and execution of all other actions necessary for the adjustment of the object to be installed and to undertake a trial as foreseen in the contract,
  - g) Transport of the items to be installed,
  - h) Protection of the installation/erection location and the installation materials against damaging effects of any nature, cleaning the installation location,
  - i) Notification in good time and without specific request about all concealed electrical cables, gas pipes, water pipes or similar installations,
  - j) Notification in good time and without specific request about structural data.
5. The items to be provided by the customer necessary to start the installation work (para. 4) must be at the installation location before the start of the installation and the preparatory work (para. 3) must be sufficiently advanced before the start of installation that the installation work can be started as per the contract and undertaken without interruption.
6. If undertaking the installation or commissioning is delayed for reasons for which the vendor is not responsible, then
  - a) The vendor can request an appropriate extension to the period agreed for the execution of the installation taking into account the duration of the delay plus an appropriate supplement for restarting the work and any postponement into a less favourable time of the year,
  - b) The services already provided are charged according to the related contractual prices and also the costs that have already arisen for the contractor are reimbursed, as are the costs for the part of the service included in the contractual prices that has not yet undertaken,

c) The customer must – if the customer is responsible for the delay - pay the vendor's additional costs arising due to the delay (in particular additional installation personnel travel, storage costs as per clause 4 para. 4 of the general terms and conditions of sale, etc.).

- Otherwise the statutory rights in the event of a delay apply in favour of the vendor.
7. If, during the provision of the installation services, the vendor is delayed according to statutory provisions, the customer can request lump-sum compensation for the damages caused by the delay. The lump sum for damages is 0.5% for each complete calendar week of the delay, however a maximum of 5% of the installation price for the part of the goods purchased to be installed by the vendor that cannot be used as a consequence of the delay. We reserve the right to demonstrate that the customer has not suffered any damages or only damages significantly lower than the lump sum stated above.
  8. If, after completion, the vendor requests - possibly also before the agreed period for the execution of the installation has elapsed - the acceptance of the service (delivery and installation), then the purchaser must undertake acceptance within two weeks, otherwise the service is considered accepted after two weeks have elapsed following notification of the completion of the service if the customer does not reject acceptance by notification to us within this period of a defect that makes the use of the goods purchased impossible or significantly impairs their use. If the customer has used the goods purchased delivered/installed or a part thereof before acceptance (e.g. due to commissioning), acceptance is also considered granted.
  9. If the equipment or tools provided by the installer are damaged at the installation location and the installer is not responsible for the damage, or the equipment or tools are lost and the installer is not responsible, the customer is obliged to compensate this damage. Damage due to normal wear is not taken into account.

## XII. Statute of limitations

1. At variance from § 438 para. 1 no. 3 BGB German Civil Code (BGB), the general statute of limitations for claims for material or legal defects is one year from delivery. If acceptance is agreed, the statute of limitations commences with the acceptance.
2. However, if the goods purchased are a building or an item that has been used for a building according to its normal use and was the cause of the defect (building material), the statute of limitations as per statutory provisions is 5 years from delivery (§ 438 para. 1 no. 2 BGB (German Civil Code)). Other statutory special provisions on the statute of limitations also remain unaffected (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445 b BGB (German Civil Code)).
3. The statutes of limitations stated above from the law on the sale of goods apply also to contractual and extra-contractual claims by the customer that are based on a defect in the goods purchased, unless the application of the standard statute of limitations (§§ 195, 199 BGB (German Civil Code)) would result in a shorter statute of limitations in the specific case. Claims for compensation for damages by the customer as per clause 8 para. 2 sentence 1 and sentence 2 (a) as well as according to the law on product liability lapse, however, exclusively according to the statutory statutes of limitations.

## XIII. Utilisation of software

1. If the scope of delivery includes software, the customer is granted a simple, non-exclusive, non-transferable right to utilise the software delivered including its documentation. The software is not sold, instead it is only provided for use on the intended goods purchased. The utilisation of the software beyond the system on which it is provided is forbidden.
2. The customer is only allowed to utilise the software to the statutory permissible extent (§§ 69 a ff. UrhG (German Act on Copyright and Related Rights)). The customer undertakes the obligation not to remove manufacturer's information – in particular the copyright notices – or to change this information without the express agreement of the vendor.

All other rights to the software and the documentation including copies remain with the vendor or the related software vendor. The assignment of sub-licences is not allowed.

3. If Open Source Software (OSS) components are used, this fact will be stated in the explanations related to the software. At variance from the provisions stated above in this clause 13, for the OSS components the

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licence terms for the OSS used have priority. Any varying licence terms for proprietary software remain unaffected.

#### **XIV. Credit check upon conclusion of contract**

Our company regularly checks your creditworthiness when contracts are concluded and in certain cases in which there is a legitimate interest. Therefore we work with Creditreform Regensburg Aumüller KG Villastraße 4 in 93055 Regensburg from which we receive the data. For this purpose we send your name and your contact details to Creditreform.

Further information on data processing at Creditreform can be found in the detailed information sheet "Creditreform information in accordance with Art. 14 EU-DSGVO".

#### **XV. Contract language, choice of law and place of jurisdiction**

1. The original of these general terms and conditions of sale was written in German and translated into at least one additional language. If there are contradictions between the versions in the different languages, the German version has priority in all cases.
2. For these general terms and conditions of sale and the contractual relationship between us and the customer, the law of the Federal Republic of Germany applies with the exclusion of international uniform law, in particular the UN Sales Convention.
3. If the customer is a merchant (Kaufmann) in the context of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a public-law special fund, the exclusive place of jurisdiction, also internationally, for all disputes resulting directly or indirectly from the contractual relationship is our registered office in Neustadt a. d. Donau. If the customer is a business person (Unternehmer) in the context of § 14 German Civil Code (BGB), the same applies. However, we are also entitled in all cases to bring proceedings in the place of fulfilment of the delivery obligation as per these general terms and conditions of sale or an overriding individual agreement, or at the general place of jurisdiction of the customer. Overriding statutory regulations, in particular responsibilities to be excluded remain unaffected.

#### **XVI. Severability clause**

If the contract or these general terms and conditions of sale contain gaps in the provisions, to fill these gaps those legally effective provisions apply that the partners to the contract would have agreed based on the commercial goals of this contract and the purpose of these general terms and conditions of sale if they had identified the gaps in the provisions.

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