

The following terms are the general terms of delivery and payment of the following companies of the Baumann Group: (a) Baumann Federn AG, Ermenswil / CH-8630 Rüti; (b) Baumann GmbH, Friedrich-List Strasse 131, DE-72805 Lichtenstein; (c) Baumann Schlegel GmbH, Friedrich-List Strasse 131, D-72805 Lichtenstein; (d) Prodotti Baumann SRL, Via Brescia 261, IT-25075 Cortine di Nave (BS); (e) Baumann Muelles S.A., Poligono Industrial Gojain C/ Padurea 13, ES-01170 Legutiano; (f) Baumann Ressort SAS, 727 route des Tattes de Borly Boite Postale 3, FR-74380 Cranves Sales; (g) Baumann Springs s.r.o., Na Novém Poli 384/6, CZ-73301 Karviná – Staré Město; (h) Baumann Springs Co. (S) Pte. Ltd., 33 Gul Lane, SG 629427; (i) Baumann Springs (Shanghai) Co. Ltd., 358-2 Shen Xia Road, Jiading District, Forward High Tech. Zone, Shanghai 2011818 CN; (j) BAUMANN SPRINGS USA Inc., 3075 No. Great Southwest, Pkwy. # 100, Grand Prairie, TX 75050 USA; (k) BAUMANN SPRINGS LEÓN S. DE R.L. DE C.V., Kappa 310 y 312, Fracc. Industrial Delta, MEX – 37545 León, Gto. (l) Baumann Springs & Coating Pvt Ltd. 5, Prime Rose Mall, Baner Road Pune, IN 411045

EACH OF THE COMPANIES MENTIONED ABOVE ACTS IN ITS OWN NAME AND ON ITS OWN ACCOUNT

## 1 Definition

"Supplier" shall be the company of the Baumann Group mentioned in the offer or if there is an order confirmation, in the order confirmation.

"Customer" shall be the company accepting the offer of the Supplier or the company making the Supplier an offer for the conclusion of a supply agreement which the Supplier accepts.

"Product" shall be the item to be delivered on the basis of an agreement concluded between the Customer and Supplier.

## 2 Scope

2.1 The following business terms shall only apply vis-à-vis companies, legal persons, public law entities and public law special funds.

2.2 The following business terms shall apply exclusively; the Supplier shall not acknowledge contradictory or divergent terms of the Customer unless (i) this involves purchase terms in accordance with the recommendation of the German Association of the Automotive Industry (VDA) for general terms and conditions for the procurement of production material and spare parts intended for the automobile in the version of 05. 12. 2002 or (ii) it has expressly agreed in writing to their application. The following terms shall also apply if the Supplier carries out the delivery to the Customer without reservations in the knowledge of terms of the Customer that are contradictory or deviate from its terms.

2.3 If the business terms of the Customer correspond to the above-mentioned VDA terms, the latter shall take precedence over these terms if they diverge from the terms of the Supplier.

2.4 In the case of continuous business relations these terms shall also apply to future agreements.

## 3 Offers - offer documents, order confirmation

3.1 If the Customer places an order without the order including supplements, restrictions or other changes compared with a valid, binding offer of the Supplier, acceptance of the offer shall take effect as soon as the Supplier receives the order unless the Supplier revoked its offer before receipt.

3.2 Acceptance of an order shall take effect if the Supplier despatched an order confirmation and it does not include any supplements, restrictions or other changes compared with the order.

3.3 The Supplier shall retain title and copyright to illustrations, drawings, calculations and other documents. This shall also apply to those written documents designated as "confidential." Transfer to third parties shall require express written approval by the Supplier.

## 4 Prices, terms of payment

4.1 All prices of the Supplier shall be EXW INCOTERMS 2010® plus the legally valid VAT at the time of invoicing unless a divergent INCOTERM clause is agreed. All ancillary costs, e.g. costs for freight, insurance, export, transit, import and other approvals and certifications shall be at the expense of the Customer. The Customer must also bear all kinds of taxes, charges, duties and customs duties.

4.2 Unless otherwise expressly agreed, offers and invoices shall be in the currency of the supplier factory.

4.3 Unless otherwise agreed, invoices shall be due upon invoice receipt. Subject to revocation of the grant of credit, invoices shall

如下的条款是交货和付款的通用条款，适用于宝马集团的如下公司：(a) Baumann Federn AG, Ermenswil / CH-8630 Rüti; (b) Baumann GmbH, Friedrich-List Strasse 131, DE-72805 Lichtenstein; (c) Baumann Schlegel GmbH, Friedrich-List Strasse 131, D-72805 Lichtenstein; (d) Prodotti Baumann SRL, Via Brescia 261, IT-25075 Cortine di Nave (BS); (e) Baumann Muelles S.A., Poligono Industrial Gojain C/ Padurea 13, ES-01170 Legutiano; (f) Baumann Ressort SAS, 727 route des Tattes de Borly Boite Postale 3, FR-74380 Cranves Sales; (g) Baumann Springs s.r.o., Na Novém Poli 384/6, CZ-73301 Karviná – Staré Město; (h) Baumann Springs Co. (S) Pte. Ltd., 33 Gul Lane, SG 629427; (i) Baumann Springs (Shanghai) Co. Ltd., 358-2 Shen Xia Road, Jiading District, Forward High Tech. Zone, Shanghai 2011818 CN; (j) BAUMANN SPRINGS USA Inc., 3075 No. Great Southwest, Pkwy. # 100, Grand Prairie, TX 75050 USA; (k) BAUMANN SPRINGS LEÓN S. DE R.L. DE C.V., Kappa 310 y 312, Fracc. Industrial Delta, MEX – 37545 León, Gto. (l) Baumann Springs & Coating Pvt Ltd. 5, Prime Rose Mall, Baner Road Pune, IN 411045

上面提及的各个公司实行独立核算。

## 1 定义

"供应商"是指报盘中，或如果有订单确认，则订单确认中提及的宝马集团的公司。

"客户"是指因供货协议的订立，接受供应商报盘的公司、或者是供应商接受其报盘的公司。

"产品"是指客户和供应商之间基于协议完成交付的产品。

## 2 范围

2.1 以下商业条款将只适用于公司、法人、公法实体和公法专项资金。

2.2 以下是专门适用的商业条款；客户的矛盾条款或分歧条款除非 (i) 与德国汽车工业协会 (VDA) 汽车所用生产材料和备件的采购通用条款和条件2002年12月5日版本中的推荐相一致，或者 (ii) 是经过明确书面同意的采购条款，否则供应商将不承认。如果供应商在知道客户条款有矛盾或不同的情况下，无保留地向客户交货，那么下面的条款也将适用。

2.3 如果客户的商业条款符合上面提及的与德国汽车工业协会条款，那么如果这些条款与供应商的条款有分歧，则与德国汽车工业协会的条款优先。

2.4 对于长期的业务关系，这些条款也适用于未来的合同。

## 3 报价、报价文件、订单确认

3.1 如果客户发的订单与供应商的有效报盘相比不包括补充、约束或其他变更，供应商一收到订单报价，就被看作接受生效，除非供应商收到前客户撤回其报价。

3.2 如果供应商发的订单确认与订单相比没有任何补充、约束条件或其他变更，订单接受将生效。

3.3 供应商将保留对插图、图纸、计算结果和其他文件的版权。这也适用于那些被定为"confidential(机密)"的书面文件。这些机密文件须得到供应商明确的书面认可才可转让给第三方。

## 4 价格、付款条件

4.1 除非与国际贸易惯例有分歧的条款被同意，否则供应商的所有价格应该是 EXW INCOTERMS 2010® 价加上开具发票时的法定增值税。所有附带的费用，如运费、保险费、出口费、转运费、进口和其他许可和证照费应由客户承担。客户也必须承担所有的税、收费、关税。

4.2 除非另有明确约定，否则报价和发票的货币应是供应商工厂方的货币。

4.3 除非另有约定，否则收到发票时要付款。信贷可被撤回，发票开具后30天内应支付发票款项。如果合同约定了现金折扣，给予折扣应根据所有之前应付发票的结算。

4.4 对于所有的付款方式，供应商或第三方要求付款的、供应商会最终划掉那笔钱的日期应被视为收到款项的日期。

4.5 客户将有义务按照协议支付采购价格并接受货物。如果客户不能按照协议或法律完成其某项义务，那么卖方可以停止交货或停止履行合同，并保留自己其他的合法索赔权利。

4.6 如果协议订立后很清楚供应商的付款要求因合作方的实力不足造成无法支付，供应商可以拒绝履行协议并为客户确定一个合适的期限，在这个期限内，客户必须现金付款或为未偿的付款金额提供抵押。如果客户拒绝现金付款或不能提供任何相应的抵押，那么供应商在适当期限到期后有权撤销合同并索赔损失。

4.7 如果未约定有约束力的订单数量，那么供应商应按用户所说明的、不具约束力的订单数量 (目标数量) 为基础计算。

4.8 如果客户接受低于目标数量的订单，那么供应商将有权相应增加单价。

4.9 如果供应商无可否认地提供了不合格的货物，尽管如此，客户应有义务支付

be payable net within 30 days of the invoice date. If a cash discount was contractually agreed, granting of a discount shall depend on the settlement of all previously due invoices.

- 4.4 The day on which the Supplier or third parties with a claim against the Supplier can finally dispose of the amount shall be regarded as the day of receipt of payment in the case of all means of payment.
- 4.5 The Customer shall be obliged in accordance with the agreement to pay the purchase price and accept the goods. If the Customer fails to meet one of its obligations according to this agreement or the law, the Seller may retain all of its deliveries or performance without prejudice to its additional legal claims.
- 4.6 If it becomes clear after conclusion of the agreement that the payment claim of the Supplier is endangered by lack of capacity of the partner, the Supplier may refuse performance and determine an appropriate period for the Customer within which the latter must pay cash on delivery or provide security to the amount of the outstanding claim. If the Customer refuses cash on delivery payment or fails to provide any corresponding security, the Supplier shall be entitled after expiry of an appropriate period to rescind the agreement and demand damages.
- 4.7 If a binding order quantity is not agreed, the Supplier shall take as the basis for its calculation the non-binding order quantity (target quantity) stated by the Customer.
- 4.8 If the Customer accepts less than the target quantity, the Supplier shall be entitled to increase the unit price appropriately.
- 4.9 If the Supplier indisputably supplied defective goods, the Customer shall nevertheless be obliged to make the payment for the fault-free portion of the delivery unless the Customer has no interest in the partial delivery.

## 5 Reservation of title

- 5.1 The Supplier shall reserve title to the delivery items until receipt of all payments from the business association with the Customer.
- 5.2 Assertion of the reservation of title and attachment of the delivery items by the Supplier shall not be regarded as rescission of the agreement unless this is expressly stated by the Supplier in writing.
- 5.3 The Customer shall be entitled to resell the delivery items in the normal course of business; however, it shall already now assign all claims accruing to the Customer from the resale to the Supplier to the amount of the purchase price agreed between the Supplier and Customer (including VAT), irrespective of whether the delivery items are resold without or after processing. The Customer shall be authorised to collect these claims after their assignment. This shall not affect the authority of the Supplier to collect these claims itself; however, the Supplier shall undertake not to collect these claims as long as the Customer meets its payment obligations properly and is not in arrears. However, if this is the case, the Supplier may demand that the Customer disclose the assigned claims and their debtors, provide all information required for collection, hand over the associated documents and notify the debtors (third parties) of the assignment.
- 5.4 Processing or conversion of the goods by the Customer shall always be carried out for the Supplier. If the delivery items are processed with other items that do not belong to the Supplier, the Supplier shall acquire co-ownership in the new item in proportion to the value of the delivery items to the other processed items at the time of processing.
- 5.5 If the delivery items are inseparably mixed with other items that do not belong to the Supplier, the Supplier shall acquire co-ownership in the new item in proportion to the value of the delivery items to the other mixed items at the time of processing. The Customer shall safeguard the co-ownership for the Supplier.
- 5.6 The Customer may neither pledge, nor assign the delivery items as security. In the event of attachment and seizure or other disposition by third parties, the Customer must inform the Supplier of this immediately and provide it with all information and documents that are necessary to safeguard its rights. The title of the Supplier must be pointed out to the execution officials or third parties.
- 5.7 The Supplier shall undertake to release the collateral security to which it is entitled on the request of the Customer to the extent that the realisable value of the security exceeds the claims to be secured by more than 20%. The Supplier shall be responsible for the selection of the securities to be released.

## 6 Scope of delivery, delivery time, delivery quantities

- 6.1 Observance of the agreed delivery and performance dates shall presume that all technical questions have been clarified and payments or other obligations of the Customer are available or

货物的合格部分，除非客户对部分交货没有兴趣。

## 5 所有权的保留

- 5.1 在收到业务往来客户的所有付款前，供应商将保留对货物的所有权。
- 5.2 供应商声称保留和扣押货物不应被视为对合同的撤消，除非供应商有明确的书面陈述。
- 5.3 客户将有权利随业务的正常发展转售交付的货物；不过，客户现在应用从转售获得的钱按供应商和客户间约定的采购价金额（含增值税）偿付，不论转售的货物是没加工还是加工过。在转售后，客户被授权收集这些债权。这将不影响供应商自己收这些债权的权利；然而，只要客户完成其付款义务并不再欠款，供应商不应去收这些债权。然而，如果情况是这样，那么供应商可能要求客户公开转让的债权和其债务方。
- 5.4 客户对货物的加工或转换应代供应商执行。如果交付的货物与不属于该供应商的其他货物一起被加工，那么在加工时，供应商将按交付货物与其他加工货物的价值比例获得新货物的共同所有权。
- 5.5 如果交付的货物与不属于该供应商的其他货物无法分开地混合在一起，那么在加工时，供应商将按交付货物与其他被混合货物的价值比例获得新货物的共同所有权。客户应替客户保护共同所有权。
- 5.6 客户不得将货物典当，也不得将其作为抵押品。倘若出现第三方抵押和扣押或其他处置的情况，客户必须立即告知供应商并提供保护供应商权利所需的所有资料 and 文件。必须向执行官员或第三方指出供应商的权利。
- 5.7 抵押品的变现价值超出抵押索赔20%以上的对客户有资格请求的附带抵押品，供应商应承担释放附带抵押品的义务。供应商将负责选择要释放的抵押品。

## 6 交货范围、交货时间、交货量

- 6.1 遵守约定的交付和履行日期将意味着所有的技术问题已被澄清，客户的付款或其他义务已准备好或已提前被满足。如果情况不是这样，那么周期将被适当延长。如果客户要求重新设计或产品变更，那么交货期的计算将暂停。客户一批变更，交货期就再次开始计算。
- 6.2 除非另有约定，为了遵守交货期，发货或提货准备就绪的声明必须是明确的。
- 6.3 供应商应按其交货能力供应给客户合同货物。
- 6.4 在不影响使用的情况下才允许部分交货。
- 6.5 如果客户因不可抗力、无能为力情况和恶劣的气候条件违反合同，那么交货期应延长。
- 6.6 生产相关的增加或减少量应允许在10%的总订单数量。合同总价格应按照其程度变化。

## 7 发货、风险转移

- 7.1 如果订单确认未出现异议，那么就同意了工厂交货 (ex works) 方式。
- 7.2 为了遵守交货期，供应商对发货或提货准备就绪的声明必须是明确的。
- 7.3 除非另有约定，否则被告知准备好发货的货物必须立即由客户验收。如果客户违反该义务，供应商有权自己决定发送货物给客户或储存货物在自己的仓库或第三方的仓库，客户承担费用和 risk。
- 7.4 除非另有约定，否则如果货物未按EXW INCOTERMS 2010@交付，那么货物风险转嫁到第一承运人。

## 8 工业产权

- 8.1 客户应有义务立即告知供应商第三方对交付产品工业产权的所有权请求，并将合法辩护权给供应商。甚至在货物交货后并收到付款后，供应商有权应第三方的工业产权要求进行产品更改，费用由供应商承担。
- 8.2 如果供应商被工业产权所属的第三方禁止制造或交货，除非供应商对工业产权的侵犯负责，否则供应商有权在客户和第三方澄清合法地位前停止工作。如果对供应商来说因延误使得订单的延续不再合理，供应商将有权撤销。
- 8.3 客户应保证供应商提供的服务免于侵犯第三方的权利。客户应向供应商指出所有相应的第三方权利。

## 9 延迟交货的责任

- 9.1 如果供应商未能依照合同完成其交付货物的义务，并且按照§ 286 (2) No. 4 German Civil Code (BGB)或§ 376 German Commercial Code (HGB)的定义，相关的采购合同是固定日期的交货交易，以及客户不再有兴趣继续合同，那么除非供应商对违反合同不负责，否则供应商应依法律规定负相应的责任。
- 9.2 如果供应商不能依据合同完成交付义务，如果客户要根据供应商委托机构或代表的故意或重大疏忽提出损失索赔，那么供应商根据法律规定承担责任。在供应商责任范围内未被指控有任何国际性的合同违约，那么赔偿责任应仅限于可预见的、实际发生的损失。

- have been met in good time. If this is not the case, the period shall be extended appropriately. Redesigns and article changes requested by the Customer suspend the running of the delivery periods. They shall only begin running again once the Customer has approved the changes.
- 6.2 Unless otherwise agreed, notification of readiness for despatch or collection shall be decisive for observance of the delivery date.
- 6.3 The Supplier shall supply the Customer with the contractual goods in accordance with its delivery possibilities.
- 6.4 Partial deliveries shall be permissible insofar as this does not lead to any disadvantages for use.
- 6.5 The delivery period shall be extended by the duration of the hindrance if the Customer infringes the agreement and in the event of force majeure, strike, non-culpable incapacity and inclement weather conditions.
- 6.6 Production-related additional or reduced quantities shall be permitted within a tolerance of 10% of the total order quantity. The total price agreed shall change according to their extent.
- 7 Despatch, passage of risk**
- 7.1 If nothing else emerges from the order confirmation, delivery "ex works" shall be agreed.
- 7.2 Notification of readiness for despatch or collection by the Supplier shall be decisive for observance of the delivery date or delivery period.
- 7.3 Unless otherwise agreed, goods notified as ready for despatch must be accepted immediately by the Customer. If the Customer infringes this obligation, the Supplier shall be entitled at its discretion to despatch the goods at the expense of the Customer to the Customer or store the goods at the expense and risk of the partner on its premises or those of third parties.
- 7.4 If the goods are not delivered EXW INCOTERMS 2010®, the risk shall pass upon transfer of the goods to the first transport person, unless otherwise agreed.
- 8 Industrial property rights**
- 8.1 The Customer shall undertake to inform the Supplier immediately of industrial property right claims of third parties concerning the products delivered and to leave the legal defence to the Supplier. The Supplier shall be entitled to carry out the changes required due to the industrial property right claims of third parties at its own expense, even in the case of goods delivered and paid for.
- 8.2 Should the Supplier be prohibited from manufacture or delivery by a third party by reference to an industrial property right belonging to the latter, the Supplier shall be entitled to stop the work until clarification of the legal position by the Customer and the third party unless the Supplier is responsible for the industrial property right infringement. Should continuation of the order no longer be reasonable for the Supplier as a result of the delay, it shall be entitled to rescission.
- 8.3 The Customer shall guarantee the Supplier that the services provided are free from third party rights. It shall indemnify the Supplier against all corresponding third party rights.
- 9 Liability for delayed delivery**
- 9.1 If the Supplier fails to meet its obligation to deliver the goods in accordance with the agreement and the underlying purchase agreement is a transaction for delivery by a fixed date in the meaning of § 286 (2) No. 4 German Civil Code (BGB) or § 376 German Commercial Code (HGB) and the interest of the Customer in continued contractual fulfilment has not lapsed, the Supplier shall be liable according to the statutory provisions unless the latter is not responsible for the contractual breach.
- 9.2 If the Supplier fails to meet its obligation to deliver the goods in accordance with the agreement, it shall be liable according to the statutory provisions if the Customer asserts claims to damages based on intent or gross negligence of the representatives or vicarious agents of the Supplier. If the Supplier is not accused of any intentional breach of contract within the context of this liability, the liability for damages shall be limited to the foreseeable, typically occurring losses.
- 9.3 If the Supplier fails to meet its obligation to deliver the goods in accordance with the agreement, it shall be liable according to the statutory provisions if it culpably breached an essential contractual obligation. If the Supplier is not accused of any intentional breach of contract in this case, the liability for damages shall be limited to the foreseeable, typically occurring losses.
- 9.4 This shall not affect liability on account of culpable injury to life,
- 9.3 如果供应商不能依照合同完成其交付货物的义务, 如果供应商因过错违反了基本合同义务, 那么供应商要承担法律规定的责任。这种情况下, 如果供应商未被指控有任何国际性的合同违约, 那么赔偿责任应只限于可预见的、实际发生的损失。
- 9.4 这不会影响其对过失造成对生命、身体或健康伤害的法律责任。
- 9.5 除非上面另有规定, 否则延期交货的额外责任应被排除。
- 10 质量缺陷责任**
- 10.1 对于已明确规定的产品, 如果被接受的、生产涉及的公差被遵守, 产品应没有技术缺陷。只有经明确的书面同意, 客户才可以援引客户拟援用的申请。
- 10.2 除非供应商明确规定手册和样本中包含的信息和插图是有约束力的, 否则它们只是通常的工业近似值。
- 10.3 除非合同方另有约定, 否则货物应符合发货方所在国的规定。非发货方所在国的其他国家的标准要求必须经过明确的书面同意。
- 10.4 明显的缺陷必须立即报给供应商并提出指责。如果存在的缺陷不是供应商的责任, 那么供应商自己决定是否进行后续的改进或替换。如果出现要后续改进的情况, 供应商将有义务承担消除缺陷需要的所有费用, 特别是运输费、差旅费、人工费和材料费——由于货物已被带到另一地点, 但这些成本不得高于履行地。如果供应商选择后续的改进, 客户必须应供应商请求将货物提供给供应商在工厂进行后续改进。
- 10.5 如果改进的结果不成功, 那么客户有权自己决定要求撤回或要求降低购买价格。
- 10.6 如果供应商欺骗性隐瞒质量缺陷或假意对货物质量的保证, 那么供应商将为质量缺陷承担相应法律规定的责任。
- 10.7 如果客户根据供应商委托机构或代表的故意或重大疏忽提出损失索赔, 那么根据法律规定供应商将承担责任。如果在质量缺陷责任的框架内, 供应商未被指控有任何国际性的合同违约, 那么赔偿责任应只限于可预见的、实际发生的损失。
- 10.8 如果供应商有过错地违反了基本的合同义务, 那么供应商将依据法律规定承担法律责任。如果供应商未被指控有任何国际性的合同违约, 那么赔偿责任应只限于可预见的、实际发生的损失。
- 10.9 过错造成生命、身体或健康伤害的质量缺陷责任将不受影响, 产品责任法规定的责任也不受影响。
- 10.10 除非上面另有规定, 否则质量缺陷责任应被排除。
- 10.11 依照§ 437 BGB提出的索赔将在风险移交后的12个月过期, 除非涉及的项目按其正常用途与建筑并造成其有质量缺陷。
- 10.12 根据§§ 478, 479 BGB, 交货追索权的限制周期将不受影响; 其期限将是自不良品交货起算起的5年。
- 11 全部责任**
- 11.1 按照§823 BGB, 因有其他责任违约或因有材料损害赔偿的非法索赔要求, 供应商将根据第十部分的5、6、7和8节损失的额外索赔的规定承担法律责任, 不论索赔要求的法律性质, 特别是对于那些造成合同终止的错误引起的索赔。附加责任将另外排除。
- 11.2 如果供应商的赔偿责任被排除或限于该部分, 那么对于供应商的代表和委托机构、人员、工人、员工的人员赔偿责任, 它也适用。
- 11.3 对于产品质量缺陷, 18个月的免责期应作为所有不受索赔追诉时效限制的追诉时效。它从无重大疏忽的客户应已获得损失情况和知道谁造成损失的时间开始。
- 12 工具、设备**
- 12.1 除非另有约定, 工具或其他设备(模板、模型等等)的发票将与交付货物的发票分立。
- 12.2 如果在工具或设备的生产期间, 客户暂停或终止合作, 那么到那时为止产生的所有制造费用应由客户承担。
- 12.3 除非另有明确的书面约定, 否则由供应商制造或获得的工具或设备将仍然是供应商的财产。
- 12.4 一般来说, 工具成本或成本分摊应与货物的货值分开开发票。除非另有约定, 否则交付首样时必须付工具或设备的费用; 如果未要求付款, 那么首次交货时必须付。
- 12.5 在完成客户最终交货后, 供应商将保证将这些工具或设备保留3年。如果客户在期限到期前告知到期后一年内在会发订单过来, 那么供应商将有义务为这段时间保留工具或设备。否则, 供应商可以自由处置工具或设备。
- 13 反诉、可转让性**
- 13.1 如果客户的反诉已经建立具有法律约束力, 并且供应商对反诉无争议或被供应商承认, 那么客户将只有资格获得补偿。此外, 如果客户的反诉是基于相同的合同关系, 那么客户只有权实施其扣押权。

body or health.

- 9.5 Unless otherwise regulated above, additional liability for delayed delivery shall be excluded.

## 10 Liability for defects

- 10.1 Insofar as a product has been specified, it shall be free of technical defects if acknowledged production-related tolerances are observed. The Customer may only invoke an application it intended if this was expressly agreed in writing.
- 10.2 The information and illustrations included in the brochures and catalogues are customary industry approximate values unless they were expressly designated by the Supplier as binding.
- 10.3 Unless the parties have agreed otherwise, the goods shall correspond to the agreement if the goods correspond to the regulations of the sender country. Normative requirements in countries other than the sender country must be expressly agreed in writing.
- 10.4 Obvious defects must be reported immediately to the Supplier and reprimanded. If a defect exists for which the Supplier is responsible, subsequent improvement or replacement delivery shall be made at the discretion of the Supplier. In the event of subsequent improvement, the Supplier shall be obliged to bear all expenses required for the purpose of defect elimination, especially transport costs, travel, work and material costs to the extent these costs are not higher due to the purchase item having been brought to another place than the place of performance. If the Supplier chooses subsequent improvement, the Customer must at the request of the Supplier make the item available for subsequent improvement in the manufacturer's factory.
- 10.5 If the subsequent specific performance is unsuccessful, the Customer shall be entitled at its discretion to demand rescission or reduction of the purchase price.
- 10.6 The Supplier shall be liable for defects according to the legal provisions if it fraudulently concealed the defect or assumed a guarantee for the quality of the item.
- 10.7 The Supplier shall be liable for defects according to the legal provisions if the Customer asserts claims to damages based on intent or gross negligence of the representatives or vicarious agents of the Supplier. If the Supplier is not accused of any intentional breach of contract within the framework of defect liability, the liability for damages shall be restricted to the foreseeable, typically occurring losses.
- 10.8 The Supplier shall be liable for defects according to the legal provisions if it culpably infringed an essential contractual obligation. If the Supplier is not accused of any intentional breach of contract, the liability for damages shall be restricted to the foreseeable, typically occurring losses.
- 10.9 Defect liability on account of culpable injury to life, body or health shall be unaffected as well as liability according to the Product Liability Act.
- 10.10 Unless otherwise regulated above, defect liability shall be excluded.
- 10.11 Claims according to § 437 BGB shall become statute-barred twelve months after the passage of risk unless the items involved are used for a building according to their normal manner of use and caused it to be defective.
- 10.12 The period of limitation in the case of delivery recourse according to §§ 478, 479 BGB shall remain unaffected; it shall be five years calculated from delivery of the defective item.

## 11 Overall liability

- 11.1 The Supplier shall be liable according to Section X, paragraphs 5, 6, 7 and 8 for additional claims to damages, irrespective of the legal nature of the claim asserted, especially for those arising from fault upon conclusion of the agreement, on account of other breaches of obligation or on account of tortious claims for the compensation of material damage pursuant to § 823 BGB. Additional liability shall otherwise be excluded.
- 11.2 If the damages liability of the Supplier is excluded or restricted on account of this section, this shall also apply with regard to the personal damages liability of personnel, workers, employees, representatives and vicarious agents of the Supplier.
- 11.3 An exclusion period of 18 months shall apply to the limitation of all claims that are not subject to limitation on account of a defect of an item. It shall begin from knowledge or from the time from which the Customer without gross negligence ought to have obtained knowledge of the loss and the identity of the person who caused the loss.

- 13.2 客户只能经供应商批准从与供应商缔结的合同中转让其权利。

## 14 供应商撤回、终止无固定期限合同的权利

- 14.1 供应商将有权部分或全部撤销合同，除非出现非供应商责任的无法预见的事件——该事件严重改变了经济重要性或履行内容或者事件对供应商的运营有重大影响，以及出现非供应商责任的无法对证的情况，这样部分撤销对客户来说是不合理的，就无法部分撤销。该条款将不影响其他合法的撤销权利。
- 14.2 对这种撤回，客户将没有对损失索赔的权利。如果供应商希望使用撤回权，即使原本已经同意交货期的延长，那么供应商必须告知客户。
- 14.3 供应商可以终止无固定期限的合同，须提前三个月通知。

## 15 履行地、仲裁法庭，其他

- 15.1 除非另有明确约定，否则供应商注册的经营场所应是合同履行地。
- 15.2 如果客户是商人、公法合法实体或公法特殊基金，那么与合同相关的所有争议或其有效性将最终依据德国仲裁机构的仲裁法令决定，不诉诸于普通法庭。
- 15.3 如果供应商的注册的营业场所所在欧洲，那么仲裁诉讼地将是苏黎世。如果供应商的注册的营业场所所在亚洲，那么仲裁诉讼地将是香港。如果供应商的注册的营业场所所在北美或南美，那么仲裁诉讼地将是纽约。
- 15.4 应有三个仲裁人。
- 15.5 在仲裁诉讼开始时，将使用仲裁法令（参见：[www.dis-arb.de](http://www.dis-arb.de)）。
- 15.6 如果这些条款的某一条或某条款的一部分是无效的或变成无效的，那么其余的条款或条款的其余部分仍然有效。

## 16 国际性的合同伙伴

如果客户的经营场所在国外，如下条款将作为对上面条款的补充，若适用则作为上面的豁免条款。

- 16.1 只有德国法律适用。
- 16.2 如果有矛盾的合同报价和申报承兑，根据供应商的最终申报条款，该货物将被当作新报价的货物。
- 16.3 如果供应商欠某项义务，倘若交付的货物不合格，如果供应商同意替换货物，那么供应商将只欠换货的义务。
- 16.4 如果客户在货物实际交货后的12个月内不通知供应商，那么客户将失去对不合格的合同货物行使权利的权利。
- 16.5 如果第16章节的条款与其余的付款通用条款和条件相冲突，那么第16章节的条款优先适用。
- 16.6 合同语言是德语。如果合同方使用其他语言，那么德语版本将优先。

## 12 Tools, equipment

- 12.1 Unless otherwise agreed, the manufacturing costs for tools and other equipment (forms, patterns, etc.) shall be invoiced separately from the goods to be delivered.
- 12.2 If the Customer suspends the cooperation or terminates it during the production of the tools or equipment, all manufacturing costs that have arisen up to then shall be at its expense.
- 12.3 Unless otherwise expressly agreed in writing, the tools or equipment manufactured or procured by the Supplier shall remain the property of the Supplier.
- 12.4 Tool costs or cost shares shall in general be invoiced separately from the value of the goods. Unless otherwise agreed, they must be paid for upon transfer of the first sample; if this is not required, upon the first delivery of goods.
- 12.5 The Supplier shall undertake to preserve the tools or equipment for three years after the final delivery for the Customer. If the Customer gives notice before expiry of this period that within a period of up to one additional year orders will be placed, the Supplier shall be obliged to preservation for this period. Otherwise it may freely dispose of the tool or equipment.

## 13 Counterclaims, transferability

- 13.1 The Customer shall only be entitled to offset if its counterclaims have been established as legally binding, are undisputed or acknowledged by the Supplier. Moreover, the Customer shall only be authorised to exercise its right of retention if its counterclaim is based on the same contractual relationship.
- 13.2 The Customer can only assign its rights from agreements concluded with the Supplier with the approval of the Supplier.

## 14 Right of the Supplier to rescission, termination of open-ended agreements

- 14.1 The Supplier shall be entitled to rescind the agreement as a whole or in part, unless partial rescission would be unreasonable for the Customer in the event of an unforeseeable incident for which the Supplier is not responsible, which considerably changes the economic importance or content of the performance or has a considerable effect on the operations of the Supplier and in the event of impossibility that emerges in retrospect and for which the Supplier is not responsible. This provision shall not affect additional legal rights of rescission.
- 14.2 The Customer shall have no claims to damages on account of such rescission. If the Supplier wishes to make use of the right of rescission, it must inform the Customer of this, even if initially an extension of the delivery period had been agreed.
- 14.3 The Supplier may terminate open-ended agreements with a period of notice of three months.

## 15 Place of performance, court of arbitration, miscellaneous

- 15.1 Unless otherwise explicitly agreed, the registered business premises of the Supplier shall be the place of performance.
- 15.2 If the Customer is a businessperson, public law legal entity or public law special fund body, all disputes arising in connection with this agreement or its validity shall be finally decided according to the Arbitration Ordinance of the German Institution of Arbitration (DIS) to the exclusion of recourse to the regular courts.
- 15.3 If the Supplier has its place of business in Europe, the location of the arbitral proceedings shall be Zurich. Should the Supplier have its place of business in Asia, the location of the arbitral proceedings shall be Hong Kong. Should the Supplier have its place of business in North or South America, the location of the arbitral proceedings shall be New York.
- 15.4 There shall be three arbitrators.
- 15.5 The Arbitration Ordinance valid at the time of initiation of the arbitral proceedings shall apply: [www.dis-arb.de](http://www.dis-arb.de)).
- 15.6 Should a provision of these terms or part of a provision be or become invalid, the remaining provisions or the remaining part of the provision shall remain valid.

## 16 International contractual partners

If the Customer has its place of business abroad, the following shall apply in supplement and if applicable in derogation of the above:

- 16.1 German law shall apply exclusively.
- 16.2 In the event of contradictory contractual offers and acceptance declarations, the delivery shall be regarded as a new offer

according to the terms of the last declaration of the Supplier.

- 16.3 If the Supplier owes a specific obligation, it shall only owe a replacement delivery in the event of a defective delivery if it consents to this.
- 16.4 The Customer shall lose the right to invoke the non-conformity of the goods with the agreement if it does not notify the Supplier at the latest within 12 months of the goods actually being delivered.
- 16.5 If the provisions of Section XVI contradict the remaining general terms and conditions of payment, the provision of Section XVI shall take precedence.
- 16.6 The contractual language shall be German. If the contractual partners use another language in addition, the German wording shall take precedence.