

**General Purchasing Terms and Conditions  
of Deharde GmbH,  
Deharde Bremen Grund und Besitz GmbH and  
Deharde GmbH Bremen Operations  
(hereinafter called "Deharde")**

**§ 1 Scope of Application**

- (1) These purchasing terms and conditions apply to all purchase, work, and other performance contracts between Deharde GmbH, Deharde Bremen Grund und Besitz GmbH or Deharde GmbH Bremen Operations (hereinafter each company individually "Deharde" or "we") as purchaser / customer and the Supplier (hereinafter "Supplier" or "he") as seller / contractor / performance provider.
- (2) Our offers and acceptances are made solely on the basis of these purchasing terms and conditions. By concluding the contract, at the latest on the delivery / performance of the order, the Supplier accepts and acknowledges to be validly bound by these purchasing terms and conditions. Unless otherwise agreed in writing, these purchasing terms and conditions apply exclusively. We do not accept divergent general business terms and conditions of the Supplier even if in the individual case we do not specifically object to them, unless we have expressly and in writing approved their validity. Our purchasing terms and conditions apply exclusively, even if we accept delivery / performance from the Supplier without any reservation despite knowing the Supplier to have contrary or divergent terms and conditions. These purchasing terms and conditions shall also apply to any future transactions with the Supplier, irrespective of whether we refer to them again or not; they remain effective until we replace them by new terms and conditions, in particular by way of sending these to the Supplier.
- (3) Specific agreements made in individual cases take precedence over these purchasing terms and conditions. Differing agreements, changes in contract conditions, additions, and ancillary agreements shall be made in writing for evidentiary purposes. Subject to evidence to the contrary, the written agreement or our written confirmation shall be authoritative regarding the existence and the content of differing agreements.
- (4) Legally relevant declarations and notices of the Supplier must be in written form. More stringent formal requirements under legal provisions or agreed-upon in individual contracts shall remain unaffected.
- (5) References to the validity of provisions of law have clarifying significance only. Legal provisions apply even without corresponding clarification, unless they are directly changed in, or expressly excluded by, these purchasing terms and conditions or elsewhere by agreement between us and the Supplier.

**§ 2 Order, conclusion of contract, and confirmation of order**

- (1) Drafts, offers, cost proposals, the submitting of samples, etc., must be prepared for us at no charge and without any other obligation on our side. This applies even if we do not place an order.
- (2) In cases of doubt, our enquiries to the Supplier are merely requests for the submitting of contract offers, unless a legally binding nature of our enquiry as a contractual offer is clearly evident. We have no obligation to uphold contractual offers made by us, i.e. we are entitled to revoke them at any time until declaration of acceptance by the Supplier. Offers made by us expire if they are not accepted by the Supplier in writing within ten days unless stipulated otherwise in the order.
- (3) Offers by the Supplier are irrevocably binding unless they are expressly designated non-binding. In case of doubt, the Supplier is bound by his offer for three months, unless a different period is specified.
- (4) If we can expect acceptance of our offer, particularly if our order is made in the context of an ongoing business relationship, after consensual preliminary negotiations, or on the basis of price lists or other documentation of the Supplier, the Supplier is obligated to expressly reject our offer in writing within three business days. Otherwise our order shall be deemed accepted by the Supplier.
- (5) The Supplier's offer shall comply with our enquiry / call for tenders. If a statement of acceptance or a letter of confirmation

of the Supplier contains deviations from, or additions to, our enquiry / call for tenders / order, this must be clearly pointed out by the Supplier. Such deviations are only valid if confirmed by us in writing.

- (6) All letters, order confirmations, shipping documents and invoices must contain the order numbers, order positions, article and commission numbers, inventory numbers and, where related to letters from us, the reference numbers and dates of those.

**§ 3 Subsequent contract changes**

- (1) Subsequent changes that we desire regarding specifications or volumes of orders must be accepted by the Supplier provided they are reasonable for the Supplier and can be performed. If they lead to additional costs or deadline overruns compared to the original order, the Supplier must inform Deharde of these implications without undue delay and before commencing the pertinent work. If the Supplier fails to do so, the changes desired by us are deemed accepted by the Supplier at no change to price and timeline. If the Supplier informs us that the changes desired by us lead to additional costs or deadline overruns, he must present a binding offer of contract change under reasonable conditions within five business days after receipt of the change desire.
- (2) The Supplier's change offer requires explicit acceptance by us. If the Supplier executes the desired changes in the absence of such acceptance, no increased payment shall be owed by us for the execution of the desired changes. If we accept the Supplier's change offer, the changes shall become part of the contract, provided, however, that such acceptance by Deharde is always subject to subsequent examination of the Supplier's offer for appropriateness of terms. The acceptance of the Supplier's change offer does not yet constitute an approval of the appropriateness of the terms, nor does it yet constitute a waiver of any claims for inappropriateness of terms. All claims and rights arising out of violation of the Supplier's obligation pursuant to paragraph 1 to provide a change offer on reasonable terms and conditions, shall continue to be held by Deharde, notwithstanding unrestricted acceptance by Deharde.
- (3) If we do not accept the Supplier's change offer, performance of the contract is to be continued without change.
- (4) During an ongoing change of contract procedure according to the foregoing provisions, the Supplier shall continue to carry out the contract as it is, unless we demand the Supplier in writing to halt or limit performance until a decision on the change will have been made. However, where such temporary continuation means that works or services will be rendered which would become useless as a result of agreement on the change, the Supplier shall point this out in writing to us without undue delay.

**§ 4 Performance of order, Quality, Quality control and documentation, accompanying documentation**

- (1) The Supplier must strictly comply with the agreed characteristics of the goods / services to be manufactured / delivered / provided by the Supplier. The Supplier is responsible for the unobjectionable quality of the goods / services which are manufactured / delivered / provided by the Supplier. In particular, the Supplier warrants that its performance shall accord with the current state of the art and shall have neither physical nor legal defects. The Supplier warrants that its goods / services accord with all legal and technical requirements (e.g. product safety laws). The Supplier is obligated to comply (i) with all pertinent quality standards, particularly DIN standards, and (ii) with all generally recognized technical, safety and occupational health care rules and (iii) with all industrial protection rules, labor protection rules, accident insurance and emission protection provisions, and (iv) with all other pertinent laws, rules, guidelines and pamphlets that are issued by the legislator, competent supervisory bodies, professional associations, or technical surveillance associations. Any

safeguards required by accident prevention regulations are to be included in the Supplier's deliveries. Electrical installations must accord with the VDE regulations. Separately agreed-upon quality control agreements, if any, are to be complied with as well.

- (2) By the acceptance of our order the Supplier assures us that he has the necessary professional competence and that he will carry out his contractual duties in full compliance with all applicable engineering rules and safety regulations.
- (3) Unless Deharde has issued binding pertinent specifications, the Supplier is solely responsible for the flawless manufacture and for the choice of both the appropriate manufacturing / treatment procedures and the appropriate materials.
- (4) If Deharde provides parts, materials, data (particularly 3D data or drawings) or tools (hereinafter called: Deharde Contributions), or if Deharde issues instructions pertaining to materials or processing procedures, then the Supplier must inform Deharde immediately – if possible, before starting work – and in writing about any concerns the Supplier may have, in particular (i) regarding the foreseen performance procedure (e.g. with a view to the level of protection against risk of accidents) or (ii) regarding the suitability and quality of Deharde Contributions (e.g. in case of errors or inconsistencies of data provided by Deharde), or (iii) regarding the services of other enterprises. In such cases the Supplier may only carry out the order if Deharde explicitly and in writing adheres to the Deharde specifications / insists on the use of the unchanged Deharde Contributions despite the Supplier's written advice. In the event of a violation of his foregoing obligations, the Supplier cannot invoke Deharde's responsibility for Deharde's Contributions and instructions. In addition, the Supplier must compensate Deharde for all damages resulting from the Supplier's violation of the aforementioned obligations.
- (5) The Supplier is obligated to perform reasonable quality testing of its supplies and services and to maintain an up-to-date state of the art documented quality management system. The Supplier is also obligated to perform materials tests, test runs, and the preparation of null series to a reasonable extent. The results of the quality tests are to be documented in writing. We are entitled at any time to demand access to the quality testing records and to check the compliance of the Supplier's performance with the respective orders, in particular by way of (i) inspection of the operations at the Supplier's premises which the Supplier must allow us at any requested time during business hours, and (ii) inspection of the performance documents. We are also entitled to demand from the Supplier, to a reasonable extent, to deliver random production samples, including samples of interim products. The Supplier is neither entitled to claim reimbursement of expenses, nor to raise any other claims against us, on the grounds of our exercising rights pursuant to this paragraph. Our costs for routine checks which are carried out without a concrete indication that the Supplier may have violated its duties will be borne by ourselves. By contrast, the Supplier has to bear our costs for any checks which are carried out based on concrete indications that the Supplier may have violated its duties or which are carried out due to the fact that previous checks lead to the discovery of such violations.
- (6) The Supplier may contract subcontractors to perform its obligations only with our prior written approval. Designated subcontractors must be reported to us in a timely manner before the signing of the contract. Even if we approve the use of subcontractor companies, the Supplier remains unrestrictedly responsible and liable to us.
- (7) The Supplier must name a qualified employee (contact person) and ensure the latter's availability in terms of time. The contact person must be able to answer questions relating to the execution of the contract and he must be authorized to either make necessary decisions himself or to prompt such to be made by others.
- (8) We are entitled to perform quality audits (product, process and systems audits) to evaluate the effectiveness of the quality

control system or to cause such quality audits to be performed by third parties retained by us. The Supplier warrants us the right to audit, insofar as the audits concern the quality management system and the goods / services to be supplied. Subject to advance notice, Deharde, Deharde's respective customer, if any, and monitoring authorities, e.g. the Aviation Authority, will be granted access to the business premises and manufacturing facilities and will be given access to quality assurance documentation and quality records.

- (9) We are entitled at all times to demand reports on the state of the operation and to check whether our orders are being carried out in compliance with the contractual provisions. In particular, we are authorized at any time in the production period to monitor the Supplier's performance, to object to inappropriate execution and to reject even prior to delivery defective parts and production respectively. Within business hours, we can demand access to the workplaces, workshops, factories and storage facilities in which the contractual items or parts thereof are being manufactured or in which materials designated for the production of the contractual items are being stored. Upon request, design and construction documents must be presented to us. We are also entitled to grant our customer, if any, the same right to monitor the Supplier's performance without losing our right to do the same. We are, however, not under any duty to monitor the execution of the contract. Monitoring measures taken by us do not affect the Supplier's obligations. All information which we may gain regarding the Supplier's production methods and trade secrets will be kept in confidence by us.
- (10) The goods supplied must be accompanied by detailed accompanying documents, in German and English (in duplicate), if necessary in digital or easily reproducible form, at no charge. Accompanying documents include in particular drawings and documents that describe in detail the function of the object supplied and documents that describe the erection, servicing, monitoring, repairs, procurement of replacements, and maintenance of the object and document that are necessary for obtaining required permits. The delivery shall not be deemed complete until all accompanying documents have been delivered. We are entitled to use these drawings and documents in order to manufacture replacement parts and to modify the object, including by third parties retained by us.
- (11) Where chemical agents and similarly dangerous goods are delivered, the applicable safety data sheets must be provided as well, even in the absence of any specific prior request by us.
- (12) The Supplier remains fully responsible for his drawings, plans, calculations, etc. that he uses in connection with his services, even if we have approved their use.
- (13) The Supplier is obligated to check the goods delivered to him by third parties with adequate due care for possible defects. The Supplier shall not employ any sub-suppliers known to him as not altogether reliable.
- (14) The Supplier warrants the availability of replacement parts and replacement products for his deliveries and services for a period of ten years after delivery.
- (15) If for reasons not within our control a project cannot be carried out, or if we terminate it for such reason, the Supplier shall not have any claim for compensation. However, we are entitled to demand the work results from him. Insofar as we exercise this right, the Supplier shall be entitled to an amount corresponding to the contractually agreed compensation for such work results.
- (16) The Supplier undertakes to maintain complete documentation concerning his supplies and services, including the results of the quality control tests, for a period of ten years after delivery, unless a longer period is required by separate agreement or by the provisions of law.

## **§ 5 Responsibility for Deharde Contributions**

- (1) The Supplier is aware that Deharde Contributions (§ 4 paragraph 4) provided for the execution of the contract can pose high risks to health if they are not handled with adequate care. The Supplier is obligated to strictly observe all

instructions concerning the use of Deharde Contributions. In case of any doubts, the Supplier has to ask Deharde. In case of any violation of these duties by the Supplier Deharde is not liable for any damages suffered by the Supplier or third parties employed by the Supplier as a result of improper handling of Deharde Contributions. In such cases the Supplier has to keep Deharde indemnified against all liability towards third parties.

- (2) The Supplier is responsible for the proper storage, securing, insurance, and use of Deharde Contributions.
- (3) If Deharde Contributions are damaged, destroyed, or lost at the Supplier's, the Supplier is liable therefor to the full extent and must compensate Deharde for the resulting damage. For example, if the Supplier produces scrap, the Supplier must reimburse Deharde for the full value of the thus wasted Deharde Contributions, including Deharde's processing costs incurred.

## **§ 6 Price, Payment**

- (1) Unless otherwise agreed, prices are quoted "gross including shipping and insurance", i.e. include the costs of usual packaging, loading and shipping, transport insurance (where such insurance is customary or has been agreed upon), value-added tax and other dues and fees (such as customs duties, stamp duties). The Prices cover all the performances necessary to fill our order, e.g. the costs accruing from the technical processing, test runs, null series, means of production etc.
- (2) Unless otherwise agreed, all prices are firm fixed prices in EURO.
- (3) For orders that are to be invoiced according to time and material expended, the information concerning time and materials must be signed by us or by an authorized party and must be sent us together with the invoice.
- (4) The remuneration will be paid within 30 days, with a deduction of 3 per cent in case of payment within the first 14 days. The periods begin with receipt of a proper invoice or, if the goods arrive after the invoice, with the complete receipt of the goods, including all necessary accompanying documents, in no case, however, before the agreed-upon incoming goods date. Payment does not constitute a confirmation of the proper performance of the contractual obligations by the Supplier.
- (5) Invoices must show the order numbers, order positions, and quantities, with individual price and line position price, date of order, article and commission numbers, and inventory numbers. Invoices for partial deliveries may be supplied only for partial deliveries that are exceptionally permissible, and must bear a pertinent notice. Incorrect invoices shall not be paid by Deharde.
- (6) Should we be in default, the payment delay interest rate shall be six percentage points above the basic interest rate.
- (7) Our rights of offset and withholding for individual claims against the Supplier are unlimited. In addition, we are entitled to offset any claims of the Supplier against us with claims of companies related to Deharde against the Supplier. In addition, we are entitled to offset any claims of the Supplier against companies related to Deharde with claims of Deharde against the Supplier. The Supplier is entitled to offset and/or withhold only if his counterclaim is either undisputed or has been finally legally established.

## **§ 7 Dates**

- (1) The delivery dates or deadlines indicated in the order/confirmation of order are binding. The Supplier bears the procurement risk for its services.
- (2) The determining factor for compliance with delivery deadlines or delivery periods is proper receipt of the goods or perfect performance of the service including delivery of complete documentation and complete accompanying documents at the receiving locations indicated by us.
- (3) As soon as it becomes apparent that a delivery or other service will be delayed the Supplier has to inform us without undue delay stating the reasons for the delay as well as its estimated

duration. Such notice does not work to prevent the Supplier from falling into debtor's delay.

- (4) If the Supplier falls in debtor's delay with his duty to deliver / perform otherwise, we are entitled to a lump sum compensation in the amount of 0.5 per cent of the performance's value of which the Supplier is in delay for each (fully or partially) elapsed week of delay, but only up to 5 per cent of the total performance's value of which the Supplier is in delay. The Supplier may prove that substantially less or no damage at all has been caused by the delay. We reserve all our further legal rights in particular (i) the right to establish that the actual damage caused by the delay was higher than the lump sum compensation and (ii) the right to set an adequate grace period and to claim damages in lieu of performance after fruitless expiry of this grace period. In case of a higher loss the lump sum compensation will be credited.

## **§ 8 Delivery, Transfer of Title, Passing of Risk**

- (1) All deliveries have to be made to the place of delivery stated in our order or, in the absence of a specific agreement, to our registered office.
- (2) For their protection the goods must be packaged and labeled in the proper and customary way. The Supplier is obligated to transport the goods at his own expense to the place of delivery and to take out – at his expense – a transport insurance where commercially obtainable for the goods at issue.
- (3) Two delivery tickets must be attached to the delivery. In case of delivery from a foreign customs territory the Supplier must contact us in due time concerning the customs and import procedures. All original documents must be submitted to us not later than seven business days before the arrival of the goods. All additional costs and damages resulting from delayed customs and import procedures shall be borne by the Supplier.
- (4) Deliveries of larger or smaller than agreed quantities as well as deliveries in parts are only admissible upon our express written approval.
- (5) At our request the Supplier has to take back / pick up the packaging material free of charge.
- (6) The passing of risk shall take place only upon unloading at the place of delivery, irrespective of whether the Supplier carries out the shipping himself or by a third party. This applies also in cases where we – as an exception – have undertaken to bear the shipping costs.
- (7) Loading or unloading support provided to the delivery persons / the Supplier on a voluntary basis by members of our staff is not part of our obligations and shall be considered performance assistance of these individual members of staff to the transport company / the Supplier. We are not liable for loading / unloading damages.
- (8) Title passes to us upon delivery of the goods at the latest. The Supplier does not have a right to retention of title unless expressly agreed otherwise. If our payment is made before delivery, the title passes to us upon payment and a no-cost administration and custody relationship is deemed to exist between us and the Supplier until the delivery.

## **§ 9 On-call contracts**

If we have entered into a contract with the Supplier for on-call deliveries, then we are, unless expressly provided otherwise, entitled to request deliveries if and when needed and in any (partial) quantities. There is no obligation on our side to call forward specific or unvaried quantities or to specific or periodic dates. Unless otherwise agreed, the on-call period is the whole term of the contract. The Supplier is not entitled to request that we call at earlier points of time. An obligation to call forward the complete volume does not exist unless a firm on-call quantity or minimum quantity is agreed upon. Foreseeable quantities are merely non-binding expectations of needs. Unless otherwise agreed, the Supplier is obligated to keep on-call goods immediately available and to make delivery within three business days or on the date specified by us.

## **§10 Documentation, Storage, Confidentiality Obligations**

- (1) We reserve all our rights, particularly all and any rights of ownership and copyright, regarding all and any documents, illustrations, drawings, parts lists, models, plans, descriptions, calculations, and other embodied information provided by us to the Supplier, be it before or after the conclusion of the contract, (collectively: the “**Documentation**”). The same applies to verbal information provided by us to the Supplier.
- (2) The Supplier is obligated to protect at any time, including after the termination of the contract, the confidentiality of all the Documentation made available to the Supplier as well as the confidentiality of any not yet generally known information that has come to the Supplier’s knowledge in the context of the negotiation, conclusion or implementation of the contract, be it information on operational methods, key figures, other business and working secrets or be it other information of technical, commercial or other nature whatsoever. The confidentiality obligation does not end until, and only to the extent that, the content of the Documentation or confidential information supplied has become generally known. The Supplier must properly store any Documentation, in particular the Supplier must ensure that third parties cannot gain access to it. The Supplier may use the Documentation and all other confidential information solely for the contractually specified purpose. No piece of Documentation may be reproduced, given to third parties, or disclosed in any other manner without our written approval. Upon request any piece of Documentation is to be returned to us immediately. The Supplier must impose corresponding confidentiality obligations on its sub-suppliers.
- (3) The Supplier undertakes to pay us a reasonable penalty for each culpable breach of confidentiality obligations pursuant to paragraph 2. The amount shall be determined by us in our reasonable discretion, taking into consideration the scope and severity of the breach. In the event of a dispute about the reasonableness, the Supplier is free to have it verified by the competent national courts. Each breach counts separately, the plea of a continuation link (“Fortsetzungszusammenhang”) between breaches is excluded. In the event of permanent breaches every commenced week of breach shall be deemed a separate breach. Claims for damage compensation remain unaffected, but penalty payments count against claims for damage compensation.

## **§ 11 Retention of Title regarding Deharden Contributions**

- (1) If we provide the Supplier with Deharden Contributions (e.g. parts, materials or tools) we retain ownership therein. Any processing, rework or alteration by the Supplier is deemed to be made on our behalf as producer. If the Supplier combines, or processes, our property with other objects not owned by us so to form together new products, then we shall automatically acquire co-ownership shares in the new products in relation of the value – at the time of the processing – of on the one hand our property and on the other hand the other processed objects. In respect of cases where the legal rules provide for the Supplier to become the sole owner, the Supplier hereby transfers to us already now a co-ownership share – according to the ratio between on the one hand the value of our property and on the other hand the value of the other (main) object.
- (2) The Supplier is obligated to use tools contributed by us solely for the execution of the contract with us. Where maintenance and repair work becomes necessary for these tools, the Supplier will carry out such work without undue delay and at its own expense. All contributed tools must be returned to us without undue delay after the execution of the contract. The Supplier has to make good for any excessive wear of, or other damage to, these objects.
- (3) The Supplier is obligated to maintain our property carefully, and in particular to protect it from external influences and third-party access. The Supplier is obligated to insure, at his expense, the objects we own at their reinstatement values

against fire, water and theft damage. The Supplier hereby assigns to us any and all claims for damage compensation against the insurer and third parties. We hereby accept the assignment.

- (4) The Supplier must report to us immediately any access to, or any breaches of, our property by third parties, particularly seizures, confiscations, damages, and the Supplier must furnish us with all information and documentation necessary for intervention. The Supplier shall be liable for the costs needed for the elimination of the breach, particularly for the costs of a third-party motion to vacate, if such costs cannot be obtained from the enforcing creditor.

## **§ 12 Inspection on Receipt / Acceptance**

- (1) The goods supplied shall be inspected by us, within a reasonable period, for transport damages and quality and quantity discrepancies. Our inspection obligation is, however, limited to defects which either come to light even in merely-from-outside inspections of incoming goods and delivery papers, or that become visible in random-sample quality control inspections. In the case of work contracts and in other cases where it has been agreed upon to carry out an acceptance, we are under no inspection obligation. Our complaint to the Supplier shall in any case be deemed to be in due time, if obvious defects are complained about within seven business days from receipt of the goods, respectively if other defects that are however identifiable by appropriate inspection of the goods are complained about within four weeks after receipt of the goods. For compliance with the complaint period, dispatch of the complaint shall be sufficient.
- (2) Even if we do not make a reservation when receiving goods or other services and even if we sign receipt confirmations or delivery notes, this shall not constitute a waiver of any rights from belated or defective performance. It is understood by the Supplier that we always reserve our right to carry out subsequent quantity and quality testing in line with the foregoing paragraph.
- (3) Payments do not constitute any acknowledgement that the delivery or other performance would have been correct and free from defect.
- (4) In case of contracts for work or for work and materials, a formal acceptance of the Supplier’s performance must be carried out.

## **§ 13 Rights in case of Defects**

- (1) In case of defective performance on the Supplier’s part we are unrestrictedly entitled to exercise all and any right provided by the law. If a return of goods to the Supplier becomes necessary, the risk and costs are to be borne by the Supplier.
- (2) Cure (“Nacherfüllung”) includes the removal of the defective goods as well as the re-installation, if the goods had been mounted in another object according to their assigned purpose. The costs incurred by the Supplier for inspection and cure (including removal and installation costs) shall be borne by the Supplier, even if it turns out that there was actually no defect. We shall be liable to the Supplier for his damages from unjustified cure requests from our side, but only if we had actually realised that no defect existed or if we had failed to realise it due to gross negligence on our part.
- (3) In purchase agreements and in contracts for works and materials, section 637 of the German Civil Code shall apply analogously. That is, after fruitless expiration of a reasonable period we shall be entitled to cure the defect ourselves or to cause the same to be cured by third parties (substitute performance) and to demand reimbursement of our necessary expenditures from the Supplier, unless the Supplier was entitled to reject our demand for cure. Setting the Supplier a cure period is not required in the cases specified in section 637 paragraph 2 of the German Civil Code; for example if the Supplier seriously and definitively refused to cure, or if immediate cure by ourselves or third parties is justified on the basis of special circumstances, or if a cure attempt by the

Supplier failed; or if we cannot reasonably be expected to allow for a cure attempt by the Supplier. Further going statutory rights remain unaffected.

- (4) The warranty period is 36 months unless the law provides for a longer warranty period. The warranty period begins even in the case of acceptance of partial performances only with the delivery or acceptance of the entire agreed work or other performance. The warranty period is suspended (i) if and as long as the performance is being checked for defects or (ii) if and as long as efforts to remedy such defects are under way. The period begins to run again once either the defect is removed or the Supplier refused to continue his attempts to remove the defect.
- (5) If a customer of ours or a third party raises claims against us - on the grounds of product liability, liability for defects or liability for damages on other grounds - with respect to a performance which we had received from the Supplier, then the Supplier has to provide us without undue delay with all the information and documentation required or useful for our legal defense. The Supplier is obligated to indemnify us in full, unless the Supplier proves that he is not responsible for the defect or damage.

#### **§ 14 Third Parties' Rights, Property Rights**

- (1) The Supplier warrants that the delivered goods are free of third parties' rights, in particular free of retentions of title, industrial property rights, liens and other charges. This applies to foreign industrial property rights only insofar as the Supplier when the contract was made knew that the goods would be delivered in the geographical area where such rights are valid.
- (2) The Supplier indemnifies us from all obligations that result from the delivered goods being encumbered with third parties' rights. Additional legal rights remain unaffected.
- (3) If partially due to contributions by us know-how which is suitable for registration as patent or industrial design is developed in the course of the preparation or execution of the contract, the Supplier and we will jointly file for registration. The exploitation of such know-how will have to be carried out in fair consideration of the mutual interests.

#### **§ 15 Damages and Rescission**

- (1) We are entitled to claim compensation for damages and to rescind the contract where the legal rules provide for such rights.
- (2) Where we are thus entitled to claim damages in lieu of performance we shall have the right to ask for a lump sum in the amount of 15 per cent of the agreed remuneration. The Supplier may prove that our actual damage is smaller. We reserve the right to assert that our actual damage exceeds the lump sum amount.

#### **§ 16 Product Liability, Insurance**

- (1) If the Supplier is liable for product damage, the Supplier must hold us harmless from third-party claims to the extent that the cause stems from the Supplier's management and organizational sphere and the Supplier is itself liable externally. The Supplier must reimburse us for all expenses resulting from or in connection with third-party claims. The Supplier must also refund the costs incurred by us in any recall program. Concerning the objects and scope of recall programs we shall inform the Supplier, to the extent possible and reasonable, and give the Supplier the opportunity to express its opinion. Further going legal rights remain unaffected.
- (2) The Supplier further undertakes to maintain at its own expense product liability insurance with a minimum coverage amount of EUR 10 million per personal/material damage. The Supplier also undertakes to maintain a public liability insurance with a coverage of EUR 10 million, which also covers damages on further delivery by us. At our request, the Supplier must produce evidence of the pertinent insurance and must send us a copy of the liability policy. The existence of such insurance does not limit our direct claims against the Supplier.

#### **§ 17 Poaching of Staff**

- (1) The Supplier undertakes during the term of the contract and for six months after termination of the contract to refrain from poaching any Deharde personnel.
- (2) In the event of a violation of this provision against poaching, the Supplier is obligated to pay a contractual penalty of EUR 25,000.00 per individual case.

#### **§ 18 Customer Protection**

- (1) Regarding any customer of ours with whom we have an actual business relationship or with whom we had one in the preceding 12 months the Supplier agrees to refrain during the whole contract period and an additional twelve-month period from any kind of direct or indirect offering and/or rendering such services as are either part of our customer relation or of our general field of business and which we could perform by ourselves or third parties.
- (2) The Supplier undertakes to pay a reasonable penalty for every case of culpable breach of the customer protection agreement. The amount shall be determined at the discretion of Deharde, with due consideration for the scope and severity of the breach. In the event of a dispute, the Supplier is entitled to have the reasonableness of the amount verified by the competent national courts. Each breach counts separately, the plea of a continuation link ("Fortsetzungszusammenhang") between breaches is excluded. In the event of permanent breaches every commenced week of breach shall be deemed a separate breach. Claims for damage compensation remain unaffected, but penalty payments count against claims for damage compensation.

#### **§ 19 Final Provisions**

- (1) The law of the Federal Republic of Germany applies but to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The place of jurisdiction for all disputes arising out of this contractual relationship is Varel, but we are also entitled to file actions against the Supplier at its place of general jurisdiction.
- (3) Changes in and additions to the contract and ancillary agreements must be made in writing.
- (4) Should one or more provisions of the contract be or become invalid, the validity of the other provisions shall not be affected thereby. This rule applies analogously if the contract contains a gap. In such cases the invalid provision(s) shall be replaced with the provision that comes commercially as close as legally possible to the purpose of the invalid provision, respectively the gap shall be filled with the provision that fits best the parties' common intent.

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