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## 1 Exclusive Application

- 1.1 This framework contract shall apply to all purchases by the purchaser from the supplier.
- 1.2 The supplier's General Terms and Conditions of Delivery shall not apply to such purchases, even if reference thereto is made in quotations, order acknowledgements or other documents, or such terms and conditions are part of individual purchase contracts.
- 1.3 Specifically agreed delivery clauses such as FOB, CIF, DDP etc. shall be governed by Incoterms 2010. In the event of inconsistencies, the provisions of this framework contract shall apply.

## 2 Quotations and Quotation Requests

- 2.1 In any event, quotations from the supplier shall be free of charge for the purchaser, even if submitted at the purchaser's request.
- 2.2 Unless otherwise contained in the purchaser's quotation request, the supplier shall be bound to its quotation for 6 weeks from receipt at the purchaser.

## 3 Form of Purchase Orders

- 3.1 Purchase orders shall be binding only if placed by the purchaser in writing by post, fax or email, using the purchaser's form. Verbal agreements, supplements or amendments shall only be valid if confirmed by the purchaser in writing, by fax or by email.
- 3.2 The supplier shall query the purchaser, if it is evident to the supplier that any integral part of the contract contains an error or unclear points, particularly regarding the quantity, price or deadline. The supplier hereby warrants that it has familiarised itself with all data and circumstances material to the performance of the purchase order, and as regards the intended purpose, and is aware of its procurement options relating to third-party deliveries/services.

## 4 Subcontracting

- 4.1 The supplier shall, under the same terms and conditions as those applicable to its own delivery, be liable for the parts procured from its sub-suppliers. The supplier shall, if possible, endeavour, to call in sub-suppliers that have a recognised quality assurance system and can, in any event, submit a corresponding declaration.
- 4.2 If the supplier intends to appoint third parties to manufacture units or components normally manufactured by the supplier in its own workshops, the purchaser's prior written consent shall be obtained in due time. In any event, the same shall apply, if the supplier is based in the European Economic Area, but not its sub-supplier or its branch or subsidiary that renders part of the delivery. The supplier's exclusive responsibility for the entire purchase order shall not be affected by the purchaser's consent.
- 4.3 The sub-supplier shall be placed under the same non-disclosure obligation as that entered into by the supplier in relation to the purchaser.

## 5 Prices

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5.1 The prices agreed upon in the individual purchase order shall be deemed to be fixed prices, and shall remain unchanged during the entire execution of the purchase order. Value-added tax shall be shown separately at the respective valid rate.

5.2 If materials certificates or quality documentation requested are delivered late, the purchaser shall have the right to extend the agreed period for payment accordingly.

5.3 The purchaser shall only be able to process invoices, if the supplier quotes therein the purchase order number as specified in the purchase order. The supplier shall be responsible for all consequences ensuing from any failure to comply with this obligation.

5.4 Except where otherwise agreed upon in writing, the purchaser shall pay the purchase price within 14 days of delivery, and receipt of the invoice, with a 3 % cash discount or net within 30 days of receipt of the invoice.

5.5 The purchaser shall be entitled to rights of set-off and retention to the statutory extent.

5.6 If the delivery does not conform to the contract, particularly if the delivery is defective, the purchaser shall be entitled to retain payment until the delivery has been properly performed, without losing any rebates, cash discount or similar price reductions.

5.7 In the event of advance payments, the purchaser shall be entitled to demand a directly enforceable bank bond. No payment shall be due until such bond has been received.

## 6 Ordering of Materials

6.1 Insofar as the purchaser supplies parts to the supplier, the purchaser shall retain title thereto. Any processing or remodelling by the supplier shall take place on behalf of the purchaser on the supplier's own account. If the purchaser's goods under retention of title are processed together with other items not belonging to the purchaser, the purchaser shall acquire joint title to the new item in the ratio of the value of the purchaser's item to the other processed items at the time of processing. The supplier shall hold such sole or joint property in safekeeping for the purchaser.

6.2 If the item supplied by the purchaser is inseparably mixed with other items not belonging to the purchaser, the purchaser shall acquire joint title to the new item in the ratio of the value of the item under retention of title to the other mixed items at the time of mixing. If mixing takes place in such a manner that the supplier's item is to be regarded as the main item, it shall be deemed agreed that the supplier shall transfer joint title to the purchaser on a pro-rata basis. The supplier shall hold such sole or joint property in safekeeping for the purchaser.

6.3 Insofar as the collateral rights to which the purchaser is entitled under 6.1 and 6.2 exceed, by more than 20 % in terms of the net value, the purchase price of the goods provided by the purchaser to the supplier under retention of title, the purchaser shall release collateral rights at the supplier's request.

6.4 The purchaser shall retain title to its tools. The supplier shall use such tools exclusively for manufacturing the goods ordered by the purchaser. The supplier shall, at its own expense, insure the tools belonging to the purchaser against fire damage, water damage and theft on a replacement value ba-

sis. The supplier shall carry out in due time, at its own expense, any and all necessary servicing and inspection work. The supplier shall immediately notify the purchaser of any and all malfunctions. If the supplier culpably omits to do so, damage claims shall remain unaffected.

## 7 Delivery Period and Consequences of Delay

7.1 The delivery deadline shall be deemed complied with, if the delivery/service has been handed over in accordance with the delivery agreement, i.e.:

- in the case of delivery ex works, if the agreed delivery is ready for dispatch, and this has been communicated to the purchaser, before the deadline expires,
- in all other cases, if the agreed delivery/service arrives at the destination before the deadline expires.

7.2 Foreseeable delays in delivery shall be given notice of forthwith, along with the reasons, regardless of whether all or part of the delivery is affected.

7.3 If the agreed delivery deadline is exceeded, the purchaser shall have the right to assert the statutory claims to which it is fully entitled, regardless of whether the supplier has given notice of such delay or whether a contractual penalty has been agreed upon.

7.4 If delivery is made after the agreed deadline, the supplier shall owe the purchaser a contractual penalty. Such contractual penalty shall, for every week after the commencement of default, amount to 1 % of the agreed net selling price for the entire delivery. The contractual penalty shall not exceed 5 % of the total selling price. The purchaser shall be entitled to assert any further damage claim.

7.5 The supplier may at any time plead that the purchaser has failed to deliver any necessary documents or supplementary items or individual parts to be delivered by the purchaser.

## 8 Packaging, Transportation

8.1 In the absence of shipment instructions contrary hereto from the purchaser, deliveries shall be made on a carriage-paid basis. The supplier shall be liable for proper and appropriate packaging. Freight charges shall be shown separately.

8.2 The packaging shall, insofar as necessary, be designed in such a manner that the goods are protected against damage and corrosion during transportation and subsequent short-term storage at the purchaser (i.e. up to a maximum of 60 days). The supplier shall be liable for loss incurred as a result of improper packaging, non-observance of the purchaser's directives regarding transportation, customs clearance etc.

8.3 If special packaging (seaworthy or long-term packaging) is agreed upon, the purchaser's instructions shall be followed.

8.4 Packaging costs not included in the price shall be borne by the purchaser only insofar as such costs are necessary and have been separately shown in the quotation.

8.5 If special care is to be applied when unpacking the goods, the supplier shall point this out to the purchaser in due time and, in particular, affix to the packaging a suitable, clearly visible warning.

## Section 9 Delivery

9.1 Before the goods are delivered, the supplier shall check that the goods conform to the purchase order in terms of quality and quantity. Such check shall be confirmed by rubber-stamping the delivery note. Only material found to be good may be delivered.

9.2 No subdelivery or advance deliveries may be made without the purchaser's express consent.

9.3 A detailed delivery note (dispatch note) containing the purchaser's references, particularly its purchase order number, shall be enclosed with every consignment. For consignments to different delivery points, the purchaser shall require separate dispatch notes. Invoices shall be sent to the purchaser in duplicate by separate post. Extra costs incurred as a result of non-compliance shall be borne by the supplier.

9.4 All correspondence (letters, delivery notes, invoices etc.) must contain the purchaser's purchase order number, the date of the order and information on the article, including details of the quantity. Furthermore, shipping documents shall include details of the gross and net weight. The point of receipt as specified in the purchaser's purchase order shall be stated in the consignment note.

9.5 Unless otherwise agreed upon, delivery shall be made in accordance with DDP Incoterms 2010 Dormagen.

9.6 If the supplier discontinues its payments, or if insolvency proceedings concerning its assets, or any judicial or out-of-court composition proceedings, are applied for, or if protests concerning a bill of exchange or a cheque have been made against the supplier, the purchaser shall be entitled to rescind the contract in respect of the part not performed, without any claims against the purchaser being derivable therefrom.

## 10 Transportation Insurance

10.1 Unless otherwise agreed upon in writing, transportation shall be insured by the supplier at its expense. The supplier's transportation insurance costs shall be borne by the purchaser only on the basis of express written agreements.

## 11 Passage of Use, Title and Risk

11.1 Unless otherwise agreed upon, use and risk shall pass to the purchaser upon the transfer of title to the delivery. Transfer of title shall occur at the time of delivery, i.e. when the delivery arrives at the destination. The supplier shall not be entitled to any rights to retain title.

11.2 If the requested shipping documents relating to a delivery are not delivered as agreed, the delivery shall be stored on the supplier's account and at the supplier's risk until these documents are received.

## 12 Manufacturing Control, Supplier Declaration, Safety Regulations

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12.1 The purchaser or representatives of the purchaser shall have the right to inspect and regularly monitor the manufacturing, and/or reject defective parts during manufacturing. Inspections or monitoring by the purchaser shall not release the supplier from its exclusive responsibility for its entire deliveries/services. During the execution of the order, the supplier shall allow permanent access to its manufacturing facilities (also at subsuppliers) during customary business hours.

12.2 If a claim is subsequently made against the purchaser or its customers by a customs authority as a result of the purchaser's declarations of origin being incorrect, or if the purchaser or its customers incur any other pecuniary disadvantage as a result thereof, and if such error is due to an incorrect statement of origin from the supplier, the supplier shall be liable for this.

12.3 The supplier's deliveries and services shall conform to the statutory provisions, particularly the safety and environmental protection provisions, including the *Verordnung über gefährliche Stoffe* [Regulation on Hazardous Materials], the *ElektroG* [Electrical and Electronic Equipment Act] and the safety recommendations of the relevant German expert committees or trade associations, e.g. VDE, VDI, DIN. Relevant certifications, test certificates and proof shall be included in the delivery free of charge.

12.3 The supplier shall ascertain the current version of the directives and laws relating to its components in respect of restrictions on materials, and shall comply therewith. The supplier shall not use any prohibited materials. Materials to be avoided and hazardous materials according to applicable laws and directives shall be stated in the specifications by the supplier. If applicable, the safety data sheets shall already be submitted (in German) together with the quotations and, in the case of the respective first delivery, together with the delivery note.

12.3 When making deliveries or rendering services, the supplier shall be solely responsible for complying with the accident prevention regulations. Any protective devices necessary under those regulations, as well as any instructions from the manufacturer shall be included in the delivery free of charge.

## 13 Acceptance and Warranty

13.1 The purchaser hereby reserves the right to possibly check the goods at the supplier prior to delivery.

13.2 Unless a specific agreement has been made, an acceptance inspection shall, at the purchaser's expense, take place after the delivery has been received at the destination.

13.3 The supplier hereby guarantees that the deliveries/services shall not contain any defects that impair their value or their suitability for the intended use, shall have the features warranted, also including the stipulated services and specifications, and shall conform to the relevant laws, regulations and other provisions. In the case of pipes ordered by the purchaser, test procedures that reliably show the leak tightness of such pipes for use in heat exchangers shall be carried out. If it becomes apparent during the guarantee period that the deliveries/services or parts thereof do not fulfil the aforementioned guarantees, the supplier shall, at the purchaser's option and the supplier's expense, remedy the defects forthwith on site, itself or through a third party, or deliver a defect-free replacement to the purchaser free of charge.

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13.4 The supplier hereby guarantees that it and its subsuppliers shall apply the quality assurance principles under the relevant standards ISO 9000 to 9004 when carrying out the purchase order. Furthermore, the supplier hereby guarantees that all goods delivered by it, and all services rendered by it, shall conform to the latest state of the art, the relevant legal provisions and the regulations, decrees and directives issued by authorities, mutual indemnity associations and trade associations, and shall be suitable for the intended purpose.

13.5 If the supplier defaults on remedying defects, or if an urgent case exists, the purchaser shall be entitled to remedy the defects, itself or through a third party, at the supplier's expense and risk.

13.6 Section 377 *HGB* [German Commercial Code] shall not apply to the contractual relationship between the Parties. Notice of defects shall be given upon the discovery of defects. The supplier hereby waives the plea of late notice of defects. If the agreed scope of delivery includes attestations, test reports and similar documents, the details contained therein shall be deemed to be warranted features, even if such attestations etc. originate from subsuppliers of the suppliers.

13.7 The time limit for claims dependent upon defects in quality shall be 36 months from delivery at the respective destination.

13.8 Materials where defects are discovered by the purchaser or its customers during processing shall be replaced by the supplier forthwith free of charge.

13.9 In the event of differences in respect of quality values, an expert opinion shall be obtained. If, within three weeks of receipt of notice of defects, the Parties are unable to agree upon who is to perform the function of expert, an expert report shall be drawn up by *TÜV-Rheinland* [Rhineland Technical Control Board]. The Parties hereby undertake to accept the results of the mutually appointed expert or *TÜV-Rheinland*. The cost of such expert report shall be borne by the Party whose assertions have not been confirmed by the expert or *TÜV-Rheinland*.

13.10 In the event of a replacement delivery, a replacement part shall be loaned to the purchaser for use free of charge until a faultless replacement has been delivered in an operable state.

13.11 A warranty shall be provided for replacement deliveries and improvements to the same extent as for the delivery item itself. In this respect, however, the time limit under 14.7 for repaired or replaced parts shall begin to run anew from the time when they are newly put into operation.

13.12 The statutory claims based on defects in quality shall remain reserved to the purchaser without limitation.

## 14 Working at the Plant

In addition to this framework contract and the respective individual contract, the purchaser's safety instructions and the regulations applicable to external companies shall apply in the case of work at the purchaser's plant or on building or assembly sites. At the supplier's request, these shall be made available to the supplier, and the supplier shall give written acknowledgement of receipt.

## 15 Drawings, Test Attestations and Operating Rules

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15.1 Approval of as-built drawings by the purchaser shall not release the supplier from its responsibility for its delivery.

15.2 The definitive as-built drawings, test attestations, maintenance and operating rules, as well as spare parts lists for proper servicing of the delivery shall be handed over to the purchaser in the requested number and language no later than together with the delivery.

## 16 Property Right and Maintenance of Secrecy

16.1 Property rights to all documents such as plans, sketches, calculations, samples, models etc. provided to the supplier prior to or after the conclusion of the contract shall remain with the purchaser. The supplier shall use such documents exclusively for the purpose of carrying out the purchase order. Without the purchaser's prior written consent, the supplier shall not be entitled to manufacture products for third parties on the basis of such documents or copy such documents or, also beyond the end of this contract, bring such documents in any way to the attention of third parties who have not been directly appointed by the supplier to carry out the purchase order or parts thereof. The supplier hereby acknowledges the purchaser's exclusive copyright in respect of the drawings, drafts and models etc. made available to the supplier. In case the supplier acquires a copyright of its own as a result of the purchaser's own processing of drawings, drafts, models etc. made available to the supplier, the supplier hereby grants the purchaser, without limitation as regards time, an exclusive and free right of use in respect of this copyright.

16.2 On request, all documents along with all copies or duplicates shall be provided to the purchaser forthwith. If delivery does not materialise, the supplier shall return the documents to the purchaser, even without being requested to do so.

16.3 Publications for advertising purposes that mention the purchaser may only be made with the purchaser's prior written consent.

## 17 Infringement of Third-party Rights

17.1 As the purchaser will deliver the products also to its customers abroad, the supplier hereby warrants that no third-party rights at home or abroad shall be infringed in connection with its delivery.

17.2 If a third party brings a claim against the purchaser on account of the foregoing, the supplier shall, on first written request, indemnify the purchaser against these claims. The purchaser shall not be entitled to make any agreements whatsoever, particularly a settlement, with such third party without the supplier's consent, unless the supplier defaults on such indemnification.

17.3 The supplier's duty to indemnify shall relate to all necessary expenditure resulting to the purchaser from or in connection with a claim brought by a third party.

## 18 Liability

18.1 Damage claims of the supplier against the purchaser on any legal basis whatsoever, particularly on account of any breach of duties arising from the obligatory relationship or tort, shall be excluded. This shall not apply in the case of:

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- any loss arising from mortal injury, physical harm or health damage based on a breach of duty imputable to the purchaser, and/or
- any other loss due to any intentional, fraudulent or grossly negligent breach of duty on the part of the purchaser, and/or
- any violations of the *Produkthaftungsgesetz* [Product Liability Act], and/or
- any culpable breach of a duty that needs to be fulfilled in order for the contract to be properly implemented in the first place, and whose breach would jeopardise the attainment of the purpose of the contract, and/or upon the performance of which the client may rely. In such case, the purchaser's liability shall, except where such breach of duty has been committed by gross negligence or wrongful intent, be limited to the sum of the foreseeable direct loss. Claims based on lost profit, unexpended costs, third-party damage claims or any other indirect or consequential loss shall not be assertable in the case of only ordinary negligence, unless a quality feature guaranteed by the purchaser was specifically intended to protect the supplier against such loss.

18.2 The purchaser shall be entitled to statutory or contractual damage claims against the supplier without limitation.

18.3 Insofar as the supplier is responsible for product damage, it shall also indemnify the purchaser against third-party damage claims on first request, insofar as the cause lies within the supplier's sphere of control and organisation.

18.4 To this extent, the supplier shall also reimburse any expenditure ensuing from or in connection with any recall campaign, or sending of warning notices, carried out by the purchaser. Insofar as possible and reasonable, the purchaser shall inform the supplier of the content and scope of the recall measures to be carried out, and shall give the supplier the opportunity to comment.

18.5 The supplier shall maintain product liability insurance covering - on a blanket basis - 5 million € per case of personal injury / property damage, and shall furnish proof thereof by means of suitable documents at the purchaser's request. If the purchaser is entitled to further damage claims, these shall remain unaffected.

## 19 Order of Precedence between Contractual Documents

In the event of inconsistencies between individual documents, the following order of precedence shall apply:

1. the purchase order
2. the technical provisions such as assembly or safety instructions
3. these Terms and Conditions of Purchase
4. Incoterms 2010.

If these Terms and Conditions of Purchase exist both in German and in another language, the German version shall prevail in the event of any inconsistencies and/or unclear points.

## 20 Place of Performance, Applicable Law and Place of Jurisdiction



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20.1 Insofar as the supplier has full merchant status or is a legal entity under public law or a special fund under public law, the place where the purchaser's registered office is situated shall be the exclusive place of jurisdiction, except where otherwise ensues from 20.2. However, the purchaser shall be entitled to also bring an action against the supplier at the place where the supplier's registered office is situated.

20.2 Item 20 (1) shall not apply insofar as the supplier's registered office is situated in a country that is neither a member of the EU nor a member of the EFTA (the member states of the EFTA are Iceland, Norway, Switzerland and Liechtenstein). Instead, all disputes ensuing from or in connection with the respective contract shall be definitively settled in accordance with the Arbitration Code of the International Chamber of Commerce (ICC) by three arbitrators designated in accordance with the above rules. Düsseldorf / Germany shall be the venue for arbitration proceedings. The applicable substantive law shall be the laws of the Federal Republic of Germany, excluding

- the conflict-of-law provisions of international private law and
- the provisions of UN sales law (CISG).

German shall be the language of arbitration proceedings.

20.3 Except where otherwise ensues from the purchase order, the place where the purchaser's registered office is situated shall be the place of performance.

20.4 This contract and its formation shall be governed exclusively by the laws of the Federal Republic of Germany, with the exception of UN sales law.

## 21 Miscellaneous

21.1. The supplier hereby declares that the respective purchase items supplied by it shall have been obtained or manufactured in observance of the minimum standards laid down in the ILO Core Labour Standard. The supplier shall, in turn, place its suppliers under an obligation, by means of collateral contractual terms and conditions, to observe the minimum standards laid down in the ILO Core Labour Standard.

21.2 The supplier shall not grant or promise any advantages to the purchaser's employees.

21.3 If any individual provisions in these General Terms and Conditions of Purchase are or become ineffective in law, this shall not affect the effectiveness of the other provisions.