

PURCHASE ORDER TERMS AND CONDITIONS

As used herein, “Seller” includes seller and its subsidiaries and affiliates and “Buyer” includes Apex Tool Group GmbH & Co. OHG (or any other German operating entity as above and its subsidiaries and affiliates. Seller hereby agrees as follows:

1. General Terms

Only the terms and conditions set forth herein below apply to contracts based on orders placed by Seller or Buyer. Opposing conditions and any conditions deviating from these terms and conditions of Buyer, in particular Seller’s terms of delivery, shall not apply unless explicitly agreed to by Buyer in writing or in text form. The terms and conditions set forth herein below shall also apply, if Buyer accepts Seller’s delivery without reservation although it has knowledge of Seller’s opposing conditions or of conditions deviating from those of Buyer. This also applies, if Seller states that Seller only wishes to effect delivery in accordance with Seller’s conditions.

There are no other agreements, representations or warranties other than those expressly provided for in the order or in these terms and conditions. Any additional and/or different terms and conditions contained in any document or writing sent to Buyer at any time are hereby expressly objected to and rejected. Except as otherwise agreed to in writing or in text form by Seller and Buyer, and work commenced by Seller shall be exclusively governed by the terms and conditions set forth herein.

In addition take notice of our environmental regulations in accordance to our company policy. Our company policy is visible on the internet under www.apexpowertools.eu “Unter uns \ Unternehmenspolitik”.

2. Acceptance of Purchase Order.

(a) The Terms and Conditions contained herein shall govern the purchase of products and services (collectively, the “Products”) pursuant to a purchase order issued to Seller by Buyer (“Order”), subject to any additional terms and conditions appearing on the face of the Order. In the event there is a conflict between the terms and conditions appearing on the face of an Order and the terms and conditions herein, the terms and conditions on the face of an Order shall prevail.

(b) If the Order is construed as an offer by Buyer, Seller’s acceptance is strictly limited to the terms of this offer. Any different or additional terms in Seller’s acceptance are valid only upon express assent given by Buyer in writing or in text form. If the Order is construed as Buyer’s acceptance of Seller’s offer, this acceptance is expressly conditional on Buyer’s additional assent in writing or in text form to any terms additional to or different from Seller’s offer contained herein. Acceptance of the Products delivered under the Order shall not constitute acceptance of any terms additional to or different from Seller’s

offer contained herein or on the face of an Order unless Buyer's additional assent has been provided in writing or in text form.

3. Prices and Payment Terms.

(a) Seller's price shall be as stated in the Order. If the price is not stated in the Order, the price will be Seller's lowest market price.

(b) The purchase price for each Product shall be all-inclusive and represents the sole and exclusive consideration to Seller hereunder for the Product, except for taxes that are calculated directly on the purchase price payments made by Buyer hereunder and which Seller is legally required to collect and pay over to tax authorities. The taxes for which Buyer is responsible shall include sales and use taxes, but shall exclude, without limitation, Seller's franchise or business taxes, taxes based on Seller's income or gross receipts and taxes for which Buyer is exempt by law as shown by a valid tax exemption certificate, when such a certificate is required.

(c) Terms of payment are net ninety (90) days, either after receipt of Seller's valid invoice or after receipt of the Products, whichever is later. At Buyer's option, all invoiced amounts shall be subject to a two percent (2%) early payment discount for all payments remitted by Buyer within twenty (20) days of Buyer's receipt of such invoice.

(d) Buyer may withhold and apply any moneys payable by it under the Order to the payment of any obligations of Seller to any subcontractors or suppliers.

4. Title, Delivery and Risk of Loss.

(a) All Products are to be shipped CPT (Destination as stipulated by the Order) (Incoterms 2000). Seller will comply with all country of origin marking instructions and all instructions for exports to Buyer. Title to the Products shall pass upon Buyer's receipt at the destination.

(b) All shipments must be made in accordance with shipping and routing instructions as specified by Buyer, but in any event, in compliance with all applicable government or freight company regulations and Seller shall assume full responsibility for failure to comply with such instructions, including liability for a release of hazardous materials into the environment prior to Buyer's receipt of Products. Seller shall be held liable for any loss or damage incurred in transit or delivery through improper boxing, crating, packing, cartage or trucking.

(c) Each delivery of Products to Buyer shall include a packing list, which contains at least the following items: i) the Order number; ii) Seller's part number; iii) Buyer's part number; iv) quantity shipped; and v) the date of shipment.

(d) Seller shall give Buyer written notice promptly upon determining that any or all Products under an Order will not arrive by the required delivery date and will take all

reasonable steps at Seller's own cost to expedite delivery. If only a portion of the Products is available for shipment to meet the required delivery date, Seller shall ship the available Products unless directed by Buyer to reschedule shipment.

(e) If Seller and Buyer have agreed that time is of the essence and Seller fails to deliver on time, Buyer may purchase replacement products elsewhere and Seller will be liable for costs and damages that Buyer incurs.

(f) Delivery dates and delivery periods as set forth in the Order are binding. Compliance with the delivery date or delivery period is determined by the date of receipt of the Products by Buyer or at any other location agreed between Buyer and Seller in writing or in text form.

— If delivery of the Products is late for reasons such as mobilization, war, interaction, strike, lockout or the occurrence of other unforeseeable, similarly serious impediments as regards compliance with the delivery period and if such impediments are beyond Seller's control, the delivery period shall be extended appropriately. The Seller will immediately inform Buyer on any such events.

— (g) In case of late delivery, Buyer may – provided that Buyer can credibly show that it has incurred damage as a result – demand compensation for each complete week of delay in an amount of 0.2% per week of the price of that part of delivery which could not be put to pertinent use due to the delay but not exceeding 2% of the price thereof. Buyer's further rights on account of late delivery shall remain unaffected.

If Buyer and Seller agree on a contractual penalty on top of this lump-sum, Buyer's right to rescind the contract and/or assert further claims shall also remain unaffected. Buyer may demand the contractual penalty up to the time of the last payment, even if it accepted the delivery or service performed by Seller without any special reservation.

— (h) If it becomes apparent that Seller will be unable to meet the delivery dates, Seller shall contact Buyer without delay. The rights to which Buyer is entitled on account of late delivery under the terms of the Order, these Terms and Conditions or by Statute, shall not be restricted even if Seller contacts Buyer in accordance with this aforementioned obligation.

(i) Buyer reserves the right to suspend shipment by Seller of all or part of the Order in the event of strikes, lockouts, or other labor disturbances, or other contingencies beyond Buyer's control.

(k) Buyer is a SLVS waiver customer (SLVS-Verzichtskunde). This means that the transport risk is insured by Seller.

5. Inspection.

As soon as any defects in the delivery of material, workmanship and Products are established in accordance with the circumstances prevailing during the normal course of business, Buyer shall notify Seller thereof immediately in writing or in text form, unless otherwise agreed, notably in quality assurance agreements in which Buyer is released from its obligation to examine the goods and give notification of defects as provided for in Sect. 377 of the German Commercial Code (HGB). Notification of defects is deemed to be in time, if it is received by Seller within a period of five working days after Buyer has gained knowledge of the respective defect. To this extent, Seller waives the defense of delayed notification of defects. Buyer may require Seller to repair, replace or reimburse the purchase price of rejected materials or Buyer may accept any Products and, upon discovery of nonconformance, may reject or keep any such Products not so conforming. Cost of repair, replacement, inspection, transportation, repackaging and/or re-inspection by Buyer shall be at Seller's expense. Buyer's acceptance of Products shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud or misrepresentation on the part of Seller exists.

If inspection and testing are made upon agreement of Seller and Buyer on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and test required by the inspectors in the performance of their duty.

6. Warranty.

(a) Seller hereby warrants to Buyer and Buyer's customers that, for a period of three (3) years following Buyer's taking delivery of the Products hereunder (the "Warranty Period"), such Product shall: i) be fit for its intended purpose and be of merchantable quality; ii) be free from defects in materials, workmanship, and design; iii) conform strictly to the performance, functionality and other specifications and descriptions set forth in Seller's catalogs, product brochures, or other representations, depictions, samples or models to the extent such were known to Buyer at the time of making the Order; and iv) conform strictly to all specifications, drawings and descriptions referenced or set forth in the Order (collectively, the "Performance Warranty"). The Performance Warranty shall survive the termination and expiration of the Warranty Period with respect to any claim made by Buyer prior to such termination or expiration. Seller agrees that in case of direct delivery to Buyer's customer as provided for in the Order, Buyer's customers may enforce such Performance Warranty against Seller on, in and for such customer's own behalf, name and benefit, and that Buyer may enforce such Performance Warranty against Seller on, in and for Buyer's or such customer's behalf, name or benefit.

(b) During the Warranty Period, Seller shall, at no additional cost to Buyer, repair or replace at Buyer's option any Product that fails to conform to its Performance Warranty in any respect whatsoever (each, a "Defective Product"). If Buyer's option is to replace such Product, the replacement Product must conform to the Performance Warranty in all respects ("Conforming Product(s)"). Replacement Products must be new product if the Defective Product was supposed to be new product; no repaired or remanufactured

product will be accepted. Seller shall replace, at Buyer's option, each Defective Product and re-deliver a Conforming Product to Buyer as soon as possible, and in all events within a reasonable period of time set by Buyer after notice that a Product is a Defective Product. All return shipments of Defective Products to Seller shall be at Seller's sole cost, risk, and expense. Seller shall bear all shipping costs for warranty returns and replacements. Seller shall bear all reasonable direct and indirect costs and expenses incurred by Buyer to replace a Defective Product with a Conforming Product, including, but not limited to, labor and travel expenses. Buyer has the right to return Product on a per occurrence basis. No minimum quantity shall be required for returns.

(c) If, due to the type or serious nature of the defect of the Defective Product, the defect cannot be remedied within a period of time reasonably acceptable to Buyer either by repair or replacement, Buyer has the right to reduce the purchase price or to rescind the contract with immediate effect. In the latter case, Buyer shall be entitled to an immediate and full refund of the purchase price paid to Seller for such Defective Product against returning the Defective Product. In the case of defects which can be remedied, Buyer has the right to reduce the purchase price or to rescind the contract after expiration to no avail of a reasonable time set by Buyer.

No period of reasonable time has to be set by Buyer, if the Seller has seriously and definitively refused repair or replacement, if such repair or replacement is abortive or the setting of a date for repair or replacement is not reasonably acceptable to Buyer. Any repair or replacement is deemed to be abortive after the second unsuccessful attempt, unless something can be derived from the nature of the product or the defect or the conduct of the Seller.

Nor does a reasonable time for repair or replacement has to be set if, on account of a defect claimed by a consumer which defect already existed before the Product was delivered to Buyer, Buyer had to take the Product back as a result of the defective nature either from Buyer's customer in the delivery chain or directly from the consumer, or if the consumer reduced the purchase price.

Buyer's right to claim damages remains unaffected.

(d) Where at fault, Seller shall be responsible for all direct, indirect and consequential damages incurred by Buyer resulting from the provision of a Defective Product or from the late delivery of a Product.

(e) After the end of the Warranty Period, Seller shall continue to offer Product support to repair and/or provide service parts for a period of ten (10) years beginning with the date the Product is discontinued or no longer offered for sale by Seller. In the event that Seller cannot, or chooses not to, offer such Product support, then Seller shall provide one (1) year's notice before discontinuing such Product support and shall provide all of the necessary technical drawings and documentation, as well as a royalty-free, non-revocable license to all applicable intellectual property required for the continued repair or manufacturing of Products by Buyer or Buyer's designee.

7. Compliance with Laws.

(a) Seller represents, warrants and covenants that all of the Products, merchandise, and materials delivered and/or services rendered hereunder will be, and will have been produced and/or provided, in compliance with all applicable laws, rules, regulations, orders, treaties and other requirements of respective European Union and/or German federal, national, state, provincial and local/municipal governments and agencies thereof, and that Seller and Seller's business do and will comply with all applicable laws, rules, regulations, orders, treaties and other requirements of European Union and/or German federal, national, state, provincial and local/municipal governments and agencies thereof. Where applicable, Seller hereby agrees to comply with the recognized Rules of Technology and, in particular, with the Specifications and Regulations prescribed by the government, supervisory authorities, profession associations and the VDE (Association of German Electrotechnical Engineers) with regard to construction, exigent prevention and environmental protection as well as with the ATEX Directive.

(b) Seller shall, in the performance of an Order, comply with all applicable laws and regulations in effect on the date the Order is issued and as such may be amended from time to time. All sales of Products must be in conformance with European Union, German, and other applicable export control laws, U.S. Foreign Assets Control and the U.S. Foreign Corrupt Practices Act ("FCPA") laws and regulations and similar anti-corruption laws and regulations that may be in effect in the countries of export and import.

(c) Seller acknowledges that it is familiar with the FCPA and its prohibitions regarding the payment or giving of anything of value either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in their official capacity or inducing the official to use their or their party's influence with that government, to obtain or retain business involving the goods. Seller agrees that it cannot cooperate with or cause Products to be delivered to any destination or entity that is restricted by U.S., European Union or German law. Further, Seller recognizes that Buyer cannot cooperate with, agree to, or comply with any terms or requests, including documentary requests, which are prohibited or are penalized under U.S., European Union or German Anti-boycott laws or regulations.

(d) Seller represents, warrants and covenants that neither it nor any of its owners or customers are or will be on any of the prohibited parties lists maintained by various agencies of the U.S. government or their European Union counterparts, including, without limitation, the denied persons list, the unverified list, the entity list, the debarred list or the specially designated nationals list (including, without limitation, those persons and entities listed pursuant to the diamond trading, narcotics trafficking, nonproliferation and terrorist sanctions programs administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury).

(e) If any of the Products are imported into any other country, Seller will be responsible for all legal, regulatory and administrative requirements associated with any

importation and the payment of all associated duties, taxes and fees. Upon Buyer's request, Seller shall provide Buyer with an appropriate certification stating the country of origin for Products, sufficient to satisfy the requirements of: i) the customs authorities of the country of receipt; and ii) any applicable export licensing regulations.

(f) Seller shall, at its sole cost, secure and maintain all necessary licenses, permits, authorizations or other approvals required for the operation of Seller's business or any property used therein, or as necessary for Seller's performance hereunder. Seller shall immediately notify Buyer in the event that Seller is not in compliance with any provision of this Section.

(g) If Seller is a Company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, then Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and/or the applicable European Union or German agency and understands its obligation to comply with U.S International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and their applicable European Union and German counterparts. Seller shall control the disclosure of and access to technical data information and other items received under outstanding Orders in accordance with U.S., European Union and German export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with an Order shall be provided to any foreign national or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of Buyer and the Seller's obtaining the appropriate export license, technical assistance, agreement or other requisite documentation for ITAR-controlled technical data or items. Seller agrees to notify Buyer if Seller is listed on the Denied Parties List published by the U.S. Department of Commerce, or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part. Seller shall indemnify Buyer for all liabilities penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violation of import or export laws or regulations by Seller.

(h) If any of the Products are purchased for incorporation into products sold under a government contract or subcontract, the terms required to be inserted by that contract or subcontract shall be deemed to apply to the applicable Order. All rating or certification requirements specified in such government contract or subcontract or of which Seller has knowledge shall be complied with. Seller agrees to furnish Buyer a certificate of compliance with any such laws and certification requirements in such form as may be requested by Buyer.

(i) Seller is and remains solely responsible for the full compliance of delivered Products or parts of Products with any applicable rules and regulations ("Legislation") on restriction of hazardous substances ("RoHS") such as, without limitation, Directive 2002/95/EC as of 27 January 2003, the Administrative Measures on the Control of Pollution Caused by Electronic Information Products as of 28 February 2006, etc. and all further releases as well as all national or local regulations issued in execution of the

— aforesaid RoHS Legislation or any equivalent applicable European Union or German federal, provincial or municipal laws, rules, regulations, orders, treaties and other requirements in particular but not limited to the German Act on Placing on the Market Recovering and the Environmentally Compatible Disposal of Electric and Electronic Equipment (ElektroG) as amended from time to time and to ensure that the goods delivered do not contain any of the prohibited substances pursuant to § 5 ElektroG as amended from time to time. If Products delivered should contain even minor quantity of the following prohibited substances: lead, mercury, cadmium or hexavalent chrome, Seller is obliged to notify Buyer hereof without delay in order to enable Buyer to comply with the requirements of the ElektroG as amended from time to time. All delivered Products or parts of Products must be suitable and fit for RoHS compliant production and sale. Seller will complete and sign Buyer's standard Declaration of RoHS Compliance at the part number level, use appropriate systems and processes to ensure the accuracy of these determinations and maintain appropriate records to allow traceability of all Products or parts of Products. Insofar as Products or parts of Products are not supplied in accordance with the aforementioned requirements, Buyer reserves the right to cancel blanket or single Orders. Seller undertakes to duly and immediately inform Buyer of any changes affecting RoHS compliance. In case of cancellation of blanket or single Orders or proven violations of national or international RoHS compliance by the Seller, Seller undertakes to indemnify and hold Buyer harmless from any claim, liability, loss, damage, judgment and external responsibility, irrespective of their jurisdiction and/or legal ground, and to bear any and all harm, loss or damage arising to Buyer's disadvantage.

— (k) To the extent required by applicable law, Seller shall be responsible for the collection, treatment, recovery or disposal of: (i) the Products or any part thereof when they are deemed by law to be 'waste'; and (ii) any items for which the Products or any part thereof are replacements. If Seller is required by applicable law, including, without limitation, waste electrical and electronic equipment Legislations, European Directive 2002/96/EC ("WEEE") and related Legislations in EU Member States, to dispose of 'waste' Products or any part thereof, Seller shall dispose of such Products entirely at its own cost (including all handling and transportation costs).

— (l) Seller is and remains solely responsible for the full compliance of delivered Products, parts of Products or substances with the requirements of Regulation (EC) No. 1907/2006 ("REACH") as of 18 December 2006 as amended or varied and all further releases as well as any national regulations issued in execution of this regulation. Seller guarantees that all obligations under REACH, in particular all information requirements vis-à-vis Buyer, have been fulfilled. This includes in particular the provision of a comprehensive safety data sheet in accordance with REACH. Insofar as Products, parts of Products or substances are not supplied in accordance with the aforementioned requirements, Buyer reserves the right to cancel any Order. Seller undertakes to duly and immediately inform Buyer of any changes affecting REACH compliance. In case of cancellation of blanket or single Orders or proven violations of national or international REACH compliance regulations by Seller, Seller undertakes to indemnify and hold Buyer harmless from any claim, liability, loss, damage, judgment and external responsibility,

irrespective of their jurisdiction and/or legal ground, and to bear any and all harm, loss or damage arising to Buyer's disadvantage.

8. Indemnification.

(a) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT BUYER'S REQUEST, DEFEND BUYER, ITS OFFICERS, DIRECTORS, CUSTOMERS, AGENTS AND EMPLOYEES, AGAINST ALL CLAIMS, SUITS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS OF SUIT ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION: i) ANY CLAIM BASED ON THE DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION OR DAMAGE TO PROPERTY, FOR COMMERCIAL DAMAGES INCLUDING LOST PROFITS, OR FOR CONTAMINATION OF THE ENVIRONMENT AND ANY ASSOCIATED CLEAN UP COSTS, IF AND TO THE EXTENT THE CAUSE OF SUCH CLAIM LIES WITHIN SELLER'S ORGANIZATION OR DOMAIN OF CONTROL WHEREBY IT IS PROVIDED THAT THIS PROVISION DOES NOT RESULT IN A CHANGE OF THE BURDEN OF PROOF TO THE DETRIMENT OF THE SELLER; ii) ANY CLAIM BY A THIRD PARTY AGAINST BUYER CREDIBLY ALLEGING THAT THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, INFRINGE A PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF A THIRD PARTY, WHETHER SUCH ARE PROVIDED ALONE OR IN COMBINATION WITH OTHER PRODUCTS, SOFTWARE OR PROCESSES IF AND TO THE EXTENT THE CAUSE OF SUCH CLAIM LIES WITHIN SELLER'S ORGANIZATION OR DOMAIN OF CONTROL WHEREBY IT IS PROVIDED THAT THIS PROVISION DOES NOT RESULT IN A CHANGE OF THE BURDEN OF PROOF TO THE DETRIMENT OF THE SELLER. SELLER SHALL NOT SETTLE ANY SUCH SUIT OR CLAIM WITHOUT BUYER'S PRIOR WRITTEN APPROVAL. SELLER AGREES TO PAY OR REIMBURSE ALL COSTS THAT MAY BE INCURRED BY BUYER IN ENFORCING THIS INDEMNITY, INCLUDING ATTORNEY'S FEES.

(b) Without limiting the generality of section (a) above, if the use by Buyer of any Product is enjoined (the "Infringing Product"), Seller shall at its expense use its best efforts to procure the right for Buyer to continue using the Infringing Product. If Seller is unable to do so, Seller shall at its expense: (i) replace the Infringing Product with a non-infringing product; (ii) modify the Infringing Product to be non-infringing; or (iii) if unable to replace or modify the Infringing Product, refund in full all amounts paid by Buyer for the Infringing Product.

(c) Without limiting the generality of section (a) above Seller shall, at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all costs and expenses related to or in connection with a recall action which Buyer has to conduct or has conducted, if and to the extent that the cause of the recall lies within Supplier's organization or domain of control whereby it is provided that this provision does not result in a change of the burden of proof to the detriment of the Seller.

9. Insurance.

Seller agrees to obtain and maintain the following insurance policies at Seller's sole cost and expense (collectively, "Insurance Policies"):

(a) Commercial General Liability Insurance covering liability for property damage, personal injury and death arising out of operations, products-completed operations, contractual liability, with minimum limits of EUR 5 million per occurrence (the "CGL Policy");

(b) Automobile Liability Insurance covering liability arising out of any auto (including owned, hired, leased, operated and non-owned autos) with minimum limits of EUR 1 million per occurrence combined single limit (the "Auto Liability Policy");

(c) Statutory Workers' Compensation insurance as required by applicable law (the "Workers' Compensation Policy").

(d) Buyer shall be named as an additional insured on the CGL Policy for all operations of Seller hereunder and for all liability for which Seller is responsible under the Order. The CGL Policy Shall contain standard cross liability clauses, and Seller shall cause such policies to be endorsed to provide contractual liability coverage specifically covering this Agreement as an insured contract, if necessary, to obtain coverage of this Order thereunder. All Insurance Policies shall require that Buyer be given at least thirty (30) days written notice of cancellation, non-renewal, or any material change therein.

10. Cancellation of Purchase Orders.

If Seller fails to confirm Buyer's Order within 14 days of receipt thereof, Buyer shall be entitled to cancel the Order in whole or in part, without an obligation or liability to Seller. Buyer's confirmation form enclosed with the Order or any method of exchange or transmission of electronic data agreed between Buyer and Seller should be used to confirm the Order. In this context, the statement must be given in writing or in text form.

11. Termination.

Buyer may at any time terminate all or part of Seller's performance hereunder by notice in writing or in text form to Seller. Upon receipt of such notice, Seller shall eliminate its performance and all orders and subcontracts to the extent they relate to such performance. Seller shall promptly advise Buyer of the quantities of Products and raw material on hand or purchased prior to termination and of the most favorable disposition thereof. Seller shall comply with Buyer's instructions regarding disposition of Products and raw materials. Seller shall submit to Buyer written notice of its intent to submit claims based on such termination within a reasonable period of time, in general fifteen (15) days from the date of notice of termination and detail and substantiate such claims within a reasonable period of time, in general thirty (30) days thereafter, or Seller waives such claims in their entirety. Buyer shall pay Seller the Order price of finished Products

accepted by Buyer, and the cost to Seller of work in process and raw materials relating hereto, less the agreed value of any Products used or sold by Seller with Buyer's consent or any costs and expenses saved by Seller due to the termination and less any revenues which Seller could have made in using the materials originally designed for the terminated contract but which revenues Seller fraudulently fails to make. Buyer may verify such claims at any reasonable time(s) by any reasonable method. Buyer will not pay for finished work, work in process, or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements hereunder. Notwithstanding the above, payments under this paragraph shall not exceed the aggregate price specified in the Order, less any payments made or to be made. Payment under this paragraph is Buyer's only liability if the Order is terminated. To the extent the Order covers Products normally carried in Seller's inventory, Buyer shall have no liability for any termination of the Order, in whole or in part, prior to shipment.

12. Special Tooling.

"Special Tooling" means all patterns, dies, fixtures, molds, jigs, models, gauges, inspection devices, special cutting tools, special test devices, drawings, templates and any replacements thereof, which, before the date hereof, Seller did not own or use and which Seller has been or will be required to acquire and use solely for purposes of furnishing Products hereunder, but excludes tools, capital items or property owned or furnished by Buyer. Prior written approval for purchase of any Special Tooling is required, and such request shall detail each item and its price. Seller shall use all Special Tooling solely for performance of the Order or as Buyer directs in writing, maintain Special Tooling in good condition, fully covered by insurance, and replace it at Seller's cost if lost, stolen, destroyed, or otherwise rendered unfit for use to the extent this is attributable to Seller. Seller shall permit inspection and supply Buyer with detailed statements of Special Tooling upon request. Upon completion, cancellation, or termination of work for which Special Tooling is required, Seller shall list Products and the Special Tooling used in connection therewith, including the unamortized cost and fair market value of each item, and shall in writing if Buyer so elects, transfer possession and title of the Special Tooling to Buyer, free and clear of liens and encumbrances, in exchange for the lesser of the unamortized cost or fair market value of the tooling. Buyer may dispose of Special Tooling without taking possession thereof and receive any resulting salvage or resale revenues and may enter Seller's premises to obtain possession of any Special Tooling.

13. Ownership of Work Product.

(a) For purposes of this Order, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, Special Tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the services performed or Products delivered hereunder. Standard Products manufactured by Seller and sold to Buyer without having been designed, customized or modified in any way for Buyer do not constitute Work Product. All

Work Product, if Buyer pays the purchase price relevant for that Work Product, shall at all times be and remain the sole and exclusive property of Buyer. Seller hereby agrees to irrevocably assign and transfer to Buyer and does hereby assign and transfer to Buyer all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Seller hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Buyer will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Buyer deems appropriate. Seller agrees: i) to disclose promptly in writing to Buyer all Work Product in its possession; ii) to assist Buyer in every reasonable way, at Buyer's expense, to secure, perfect, register, apply for, maintain, and defend for Buyer's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Buyer's name as it deems appropriate; and iii) to otherwise treat all Work Product as Buyer Confidential Information as defined herein. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by Buyer to Seller shall remain the sole property of Buyer.

(b) Seller will ensure that Seller's subcontractors appropriately waive any and all claims and assign to Buyer any and all rights or any interests in any Work Product or original works created in connection with this Order. Seller irrevocably agrees not to assert against Buyer or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Buyer affecting the Work Product.

(c) Buyer will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or Buyer Confidential Information, unless: i) such works relate to Buyer's business, or Buyer's actual or demonstrably anticipated research or development; or ii) such works result from any services performed by Seller for Buyer.

14. Confidentiality.

(a) Seller will acquire knowledge of Buyer Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Buyer Confidential Information in confidence during and following termination or expiration of this Order. "Buyer Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by Buyer relating to the current or anticipated business or affairs of Buyer which is disclosed directly or indirectly to Seller. In addition, Buyer Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Products to Buyer. Buyer Confidential Information does not include any information: i) which Seller lawfully knew

without restriction on disclosure before Buyer disclosed it to Seller; ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller; iii) which Seller developed independently without use of the Buyer Confidential Information, as evidenced by appropriate documentation; or iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law but only after Seller provides prompt notice to Buyer of such requirement and gives Buyer the opportunity to challenge or limit the scope of the disclosure.

(b) Seller agrees not to copy, alter or directly or indirectly disclose any Buyer Confidential Information. Additionally, Seller agrees to limit its internal distribution of Buyer Confidential Information to Seller's employees who have a need to know, and to take steps to ensure that the dissemination is so limited. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Buyer Confidential Information.

(c) Seller further agrees not to use Buyer Confidential Information except in the course of performing hereunder and will not use such Buyer Confidential Information for its own benefit or for the benefit of any third party. The mingling of Buyer Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Seller agrees not to design or manufacture any products which incorporate Buyer Confidential Information except as authorized by the Order. All Buyer Confidential Information is and shall remain the property of Buyer. Upon Buyer's written request or the termination of this Agreement, Seller shall return, transfer or assign to Buyer all Buyer Confidential Information, including all Work Product, as defined herein, and all copies thereof.

15. Blanket Purchase Orders.

If Products purchased are covered under a blanket Order, no shipment can be made, or invoice issued, until a release Order is issued. Unauthorized shipments will be held at Seller's risk and expense. A blanket Order authorizes Seller to procure raw materials sufficient to meet delivery of the quantity of a release Order, but only to manufacture and deliver such respective quantities at such respective times as is indicated on the release Order provided by Buyer. Buyer will not assume any liability in the event Seller engages in any manufacture before the time specified, or in excess of the quantity required to meet such respective deliveries.

16. Changes in Process or Method of Manufacturing.

Seller agrees that it will not invoke any changes in process or method or location of manufacturing without Buyer's prior consent in writing or in text form. Seller further agrees that any contemplated changes in process or method of manufacturing will be submitted

to Buyer in sufficient time to enable Buyer a reasonable opportunity in which to evaluate such changes.

17. Non-Interference With Business.

During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully interfere with the business of Buyer in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Buyer.

18. Non-Exclusive Agreement.

This is not an exclusive agreement. Buyer is free to engage others to perform services or provide Products the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's services and/or goods to others; provided however, that Seller does not breach this Agreement.

19. Limitation of Liability.

IRRESPECTIVE OF THE LEGAL BASIS, BUYER IS ONLY LIABLE FOR DAMAGES

(a) IN CASES OF WILLFUL CONDUCT,

(b) IN CASE OF GROSS NEGLIGENCE OF THE OWNER, THE DULY AUTHORIZED REPRESENTATIVES OR DIRECTORS OF BUYER,

(c) IN CASE OF NEGLIGENT INJURY TO LIFE, BODY OR HEALTH,

(d) IN CASE OF DEFECTS FRAUDULENTLY CONCEALED BY BUYER,

(e) IN THE EXTENT OF A GIVEN GUARANTEE,

(f) IN CASES OF DEFECTS CAUSED BY BUYER AS BUYER IS LIABLE FOR PERSONAL OR PROPERTY DAMAGES OF PRIVATELY USED ASSETS ACCORDING TO THE PRODUCT LIABILITY ACT.

BUYER IS ALSO LIABLE FOR THE BREACH OF ESSENTIAL CONTRACTUAL OBLIGATIONS (OBLIGATIONS THE COMPLIANCE OF WHICH IS A BASIS FOR THE PERFORMANCE OF THE CONTRACT AND THE SELLER MAY REASONABLY RELY ON THE COMPLIANCE WITH SUCH OBLIGATIONS) CAUSED BY GROSS NEGLIGENCE OF NON-EXECUTIVE EMPLOYEES AND CAUSED BY NEGLIGENCE; IN THE LATTER CASE, THE LIABILITY IS LIMITED TO THE TYPICAL ADEQUATELY FORESEEABLE DAMAGE.

ANY ADDITIONAL CLAIMS ARE EXCLUDED.

20. Publicity.

Seller shall not, without the prior written consent of Buyer, advertise or otherwise disclose that Seller has entered into the Order with Buyer. Seller shall not use Buyer's name or trademark in any press release, marketing or advertising materials without Buyer's prior written consent.

21. Waiver.

No waiver of any provision of these terms and conditions (or any right or default hereunder) shall be effective unless in writing and signed by Buyer. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under the Order or applicable law in connection with any other instances or circumstances.

22. Entire Agreement.

These terms and conditions, together with the terms on the face of any Order issued hereunder, constitute the final and entire agreement between Buyer and Seller with respect to the purchase of Products and supersede any terms and conditions in any acknowledgement form, invoice or other document of Seller. These terms and conditions may be amended only by a written instrument duly executed by both parties, and may not be amended orally or by course of performance. This also applies to any amendment of this provision requiring written form as well as to any waiver thereof.

23. Choice of Law and Jurisdiction.

The Order shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, exclusive of the United Nations Convention on the contracts for international sale of goods and without reference to its choice of law rules.

The courts competent for the city in which the Buyer has its registered place of business shall have the exclusive jurisdiction over any issues relating to the Order.

24. Assignment.

Seller may not assign, transfer or subcontract the performance of its services, or any of its rights and/or obligations hereunder, without Buyer's prior written consent.

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