



**Purchasing General Terms & Conditions**  
**for**  
**HOERBIGER companies of Division Compression and Business Units Rotary, Engine and Safety**  
**registered in AUSTRIA ("Buyer")**  
**Goods & Services**

## 1 Scope, Form

- 1.1 These General Purchasing Terms & Conditions ("**GTC**") shall apply for all purchasing agreements made by the Buyer with business partners and suppliers ("**Seller(s)**"). The GTC shall only apply if the Seller is an entrepreneur a legal person under public law or a special fund under public law.
- 1.2 The GTC shall in particular apply for contracts for the purchase of movable items ("**Goods**") - regardless of whether the Seller manufactures the Goods itself or buys them from suppliers – and for contracts for services ("**Services**") (Goods and Services hereinafter collectively referred to as "**Work**"). Unless otherwise agreed, the GTC shall apply in the version applicable at the time of release of the Buyer's purchase order or last communicated to the Seller in text form (Textform) as a framework agreement also covering similar and future transactions without the Buyer having to refer to them again in every single case. The prevailing version of the GTC can be retrieved from the service portal of the Buyer's purchase department ([procurement.hoerbiger.com](http://procurement.hoerbiger.com) (go to "Downloads for Suppliers"))
- 1.3 These GTC shall apply exclusively. Any differing, conflicting or supplementary terms of business set out by the Seller shall only constitute part of the contract if and insofar as the Buyer has expressly consented to their validity in writing. This requirement for consent shall apply in all cases, that is even if the Buyer accepts the deliveries of the Seller without reservation in the knowledge of the Seller's general terms and conditions.
- 1.4 Declarations and notices of legal relevance made by the Seller in relation to the contract (e.g. the setting of a time limit, reminder, withdrawal) must be given in writing, i.e. in written or text form (e.g. letter, email), in order to be legally effective. This shall be without prejudice to statutory requirements on form and other documentary evidence, particularly if there is doubt about the authority of the declarer.
- 1.5 For the purpose of this contract "working days" are all days with the exception of Saturdays, Sundays, public holidays and shutdowns at the Buyer's location.

## 2 Conclusion of Contract, Reservation of Changes

- 2.1 Binding purchase orders of the Buyer shall be in writing.
- 2.2 The Seller is required to confirm purchase orders of the Buyer in writing within a period of three (3) working days or to execute such purchase orders by sending the Goods without reservation ("**Acceptance**").
- 2.3 The Buyer shall have the right to ask for changes with regard to the Work even after the contract has been concluded, particularly in respect of specifications, drawings, design, construction, the time and place of delivery, packaging, quality, quantity and means of transport. The legitimate interests of the Seller must be taken into account in any such request for changes, i.e. the changes must be acceptable for the Seller, which shall in particular be the case if the change is only minor and/or objectively justified. If a change entails an increase or decrease in the costs for the Seller or potentially delays the time of delivery, the Seller must advise the Buyer of this without undue delay. The parties shall then negotiate an appropriate adjustment of the remuneration of the Seller, with regard to which - in the case of agreement - the Buyer will issue an amended purchase order. The content of an amended purchase order will be deemed agreed if the Seller does not object to the amended purchase order in writing within ten (10) working days of receipt.

## 3 Delivery Period and Delay in Delivery

- 3.1 The delivery period indicated by the Buyer in the purchase order shall be binding. If the delivery period is not indicated in the purchase order and has not been agreed elsewhere, it shall be two (2) weeks from conclusion of the contract.
- 3.2 If the Seller does not render its performance or does not do so within the agreed delivery period or is in default (*Schuldnerverzug*), the rights of the Buyer – particularly the right of withdrawal (*Rücktritt*) and compensation (*Schadenersatz*) - shall be governed by statutory provisions. This shall be without prejudice to the clauses in sections 3.3 and 3.4.
- 3.3 In case of serial orders and if the Seller is in default (*Schuldnerverzug*) even just with a partial supply or service the Buyer shall have the right, after a reasonable grace period (*Nachfrist*) has expired without result, to withdraw from only the purchase order affected by the default or optionally from all still outstanding partial supplies or services in accordance with statutory. However, the Buyer shall also have the right to choose to render itself or to obtain from third parties some or all of the Work owed by the Seller under the still outstanding partial supplies or services in order to maintain series production and to withdraw from the affected partial supplies or services to the corresponding extent by reducing accordingly both the forecast delivery requirements and the affected binding purchase orders without thereby being obliged to make payments to the Seller, regardless of the legal grounds. The Buyer shall also have the right to demand that the Seller surrenders (*herausgeben*) all tools, documents, materials, etc. that are necessary for rendering the Work and provide expert and technical assistance and support for as long as the Seller is unable to deliver.
- 3.4 If the Seller is in default (*Schuldnerverzug*), the Buyer - in addition to further statutory claims - is entitled to demand a lump sum compensation payment for the losses suffered due to the delay (*Vertragsstrafe*) at one (1) percent of the net price per started calendar week, however, capped at five (5) percent of the net price of the late performance. The Buyer's right to demonstrate that a greater loss has been suffered shall remain unaffected. The Seller's right to demonstrate that no loss at all or a substantively lower loss has been suffered shall remain unaffected.
- 3.5 The Seller may only appeal on the basis that the Buyer failed to provide the necessary documents, information, materials or packaging if it had requested these again in writing and had not received them within a reasonable period of time.

## 4 Performance, Delivery, Passage of Risk, Delay in Acceptance

- 4.1 Without the prior written consent of the Buyer, the Seller shall not have the right to have all or parts of the performance rendered by third parties (e.g. subcontractors).

- 4.2** The Seller shall be bound only to deviate from the respectively applicable state of the drawings, initial sample or material or make process changes, including any transfer or relocation of production equipment, with the prior written consent of the Buyer. In the above cases the Seller shall perform a detailed examination of the effects, including effects on continuous delivery, specifications, suitability, prices, costs, customs and export requirements and treatment, and shall set out the reasons for their necessity. Any deviation shall require the prior written consent of the Buyer. The Seller is to that extent aware that a change can have an effect on functionality and/or safety in the respective application by the Buyer and by the Buyer's customer. The Seller shall bear all costs and expenses incurred as a result of the change process and its implementation.
- 4.3** Unless otherwise agreed with the Seller, the risk associated with the Goods shall pass (*Gefahrenübergang*) from the Seller to the Buyer in accordance with "DDP (named place)" Incoterms 2020. In the absence of agreement with the Seller on the place of performance, Performance shall be rendered at the registered office of the Buyer. If an acceptance procedure is performed (required by law or by agreement between the parties), this shall prevail for the passage of risk (*Gefahrenübergang*). In other respects also the statutory provisions shall apply analogously in the case of an acceptance procedure. This shall be without prejudice to the further clauses in section 4.5.
- 4.4** If the services rendered by the Seller for the Buyer are to produce a work (*Werkleistungen*) (e.g. design services, prototypes, resources, repairs, programming services), the Buyer will conduct an acceptance process for these Works and prepare a written report on the result of the acceptance process. The Seller shall advise the Buyer in writing in good time of all performance elements which it considers required for acceptance in the acceptance process, indicating suitable test methods for the Buyer. Payment of an invoice or reasonable use on a trial basis shall not be considered acceptance by the Buyer of the relevant performance. Until acceptance the Buyer shall have the right to cancel performance of the work it ordered from the Seller at any time.
- 4.5** Unless regulated in the Buyer's logistics and packaging requirements, the Seller shall pack the Work properly in customary recyclable packaging. The Seller shall advise the Buyer in writing in good time beforehand of possible risks associated with the Buyer's logistics and packaging requirements. The Seller shall at the request of the Buyer take packaging material back at its own expense.
- 4.6** In the case of delivery earlier than the delivery date originally agreed, the Buyer reserves the right to reject the Performance and return it at the cost and risk of the Seller or to store it temporarily until the delivery date originally agreed. In the case of temporary storage, the Seller hereby consents to the originally agreed delivery date being the date the Performance is delivered, so that temporary storage will be at the risk of the Seller.

## **5 Force Majeure**

- 5.1** A delay or failure to perform a contractual obligation is excused and can lead to a corresponding extension of the delivery period if and for the time the cause lies in an event or incident that cannot be controlled by the party not performing or not performing properly, if such party is not already in default and hasn't contributed to it culpably. These excused events include in particular governmental measures and orders, pandemics and epidemics, floods, storms, explosions, uprisings, natural catastrophes, war and sabotage ("Force Majeure"). Labor disputes, (including lockouts and strikes) as well as machine breakdown, availability of raw materials and preliminary products are expressly excluded, unless directly caused by Force Majeure.
- 5.2** The party concerned may only invoke Force Majeure (Hohere Gewalt) if it has notified the other party in writing without undue delay of the expected duration and the circumstances that could lead to a case of Force Majeure once it has identified these circumstances. The party concerned shall consult the other party on suitable remedial measures and perform these at its own expense in order to overcome or mitigate the event. This notwithstanding, the Buyer shall have the right to render the Work affected by the Force Majeure itself or obtain it from third parties and reduce both the forecast delivery requirements possibly affected and the binding purchase orders affected by the Force Majeure without thereby being obliged to make payments to the Seller, regardless of the legal grounds. The Buyer shall also have the right to demand that the Seller surrender free of charge all tools, documents, materials, information, etc. that are necessary for rendering the Work and provide expert and technical assistance and support for the duration of the hindrance to delivery.
- 5.3** If a case of Force Majeure lasts longer than thirty (30) calendar days without interruption or sixty (60) calendar days within a term of one hundred and eighty (180) consecutive calendar days, the Buyer may - without prejudice to its other rights - terminate the contract in its entirety at the end of the month with a notice period of one month. In this case neither party shall have the right to demand compensation or damages from the other party. This shall be without prejudice to obligations relating to Work already delivered.

## **6 Prices and Payment Terms, Invoicing**

- 6.1** The price indicated in the purchase order shall be binding. All prices are inclusive of sales tax at the prevailing rate unless this is itemized separately.
- 6.2** Unless otherwise agreed in the individual case, the price includes all Work and incidental Work of the Seller (e.g. assembly, installation) as well as all incidental costs (e.g. due packaging, transport costs including any transport and liability insurance, and assembly insurance).
- 6.3** Should the Seller, during the term of a contract for the delivery of products, supply the contractual or similar products in comparable quantities to a third party on more favorable terms, particularly with regard to price, discounts, technology, quality, payment terms, delivery periods or other conditions ("**Terms**"), the Seller shall notify the Buyer of this without undue delay and automatically grant the Buyer these more favorable Terms. The new Terms shall apply retroactively from the date on which the Seller granted these favorable Terms to the third party.

- 6.4** The agreed price shall be due for payment by the Buyer within thirty (30) calendar days from complete delivery and performance (including any acceptance procedure that may be agreed) in accordance with the terms of the purchase order and receipt of a due invoice pursuant to section 6.5. For the case that the Seller delivers early pursuant to section 4.8, the due date for the payment of the Buyer that is to be calculated in accordance with sentence 1 of section 6.4 shall continue to apply. The Buyer and the Seller shall each bear the fees charged by their respective banks. If the Buyer makes payment within fourteen (14) calendar days, the Seller shall grant the Buyer a discount of three (3) percent on the net invoice amount.
- 6.5** To enable the speedy and efficient processing of invoices, invoices must be issued solely in PDF form and sent to the email address indicated in the purchase order. A due invoice must meet the following requirements:
- (a) All information required under statutory provisions, in particular paragraph 11 of the Austrian VAT Act (UStG), which is of relevance for the invoice must be shown in a general and electronically readable form.
  - (b) The Buyer's purchase order number must be indicated on invoices relating to specific purchase orders.
  - (c) The name of the Buyer's contact person and - if stated - the cost center must be indicated.
  - (d) A separate invoice must be issued for each Buyer's purchase order number.
  - (e) The invoice must conform to the corresponding purchase order, and in particular must use the same material numbers and order units and, where possible, the same order texts.
  - (f) The Buyer's company that issued the purchase order must be clearly identified on the invoice as the recipient of the Work
- 6.6** The Buyer shall not owe any interest after the due date.
- 6.7** The Buyer shall have rights of set-off and retention and the defense of non-performance to the statutory extent. The Buyer shall in particular have the right to withhold due payments for as long as it still has claims against the Seller arising from incomplete or deficient Work.
- 6.8** The Seller shall only have a right of set-off or retention on account of counterclaims that have been declared final in a court of law or are undisputed.

## **7 Deficient Performance, Notifications of Defects, Processing of Complaints, Deactivation**

- 7.1** Unless otherwise determined below, the rights of the Buyer in the case of deficiencies in title and material defects (*Sach- und Rechtsmängel*) in the Goods (including incorrect and short deliveries, inexpert assembly, deficient assembly, operator or user instructions) and in the case of other breaches of duty by the Seller shall be governed by statutory provisions.
- 7.2** The Work of the Seller is free of defects if, at the time of the passage of risk (*Gefahrenübergang*), the Goods supplied by the Seller, the Service performed by the Seller or the product processed with the Seller's Service
- (a) conform one hundred (100) percent to the agreed quality (*vereinbarte Beschaffenheit*), the approved initial sample and the other contractual bases or statutory requirements worldwide;
  - (b) are of good quality in terms of material and workmanship and are free of defects and suitable for the Buyer's customary use known to the Seller or recognizably intended by the Buyer;
  - (c) do not infringe any third-party rights, in particular property rights (as defined in section 11), and are not subject to any other restriction with regard to use, manufacture, modification and/or sale, including import and export;
  - (d) do not infringe any third-party ownership or property rights with regard to their manufacturing process and technology when used in accordance with the contract; and
  - (e) reach the Buyer's place of delivery on the delivery date, in the agreed quantity and packed in accordance with the contract.
- 7.3** If the Seller's performance consists in the production of a work (section 4.5), the performance will in particular be deemed defective if
- (a) an agreed assembly is performed deficiently or inexpertly; or
  - (b) suitable operating and user instructions in the national language of the Buyer and/or the language required by the Buyer are missing or incomplete.
- 7.4** The Seller shall indemnify the Buyer against all claims which third parties bring against the Buyer because the Work or its use infringes or is alleged to infringe property rights (see section 7.2). The Seller shall reimburse the Buyer for all necessary expenses incurred to that end in connection with legal action by third parties. This shall not apply if the Seller is neither responsible for the infringement of property rights nor, exercising due entrepreneurial care, could have known of the infringement of property rights at the time of delivery.
- 7.5** The parties shall inform each other without undue delay of all risks of infringement and alleged infringements of third-party rights (in particular property rights as defined in section 11) of which they become aware.
- 7.6** Those service descriptions such as drawings, specifications, initial samples, manufacturing processes and materials used which are part of the respective contract – in particular through designation or reference in the purchase order- or were included in the contract in similar manner, such as these GTC, shall always be considered an agreement on quality (*Vereinbarung über die Beschaffenheit*). It shall make no difference whether the service description comes from the Buyer, the Seller or the manufacturer within the meaning of applicable product liability legislation (*Produkthaftungsrecht*).
- 7.7** The Seller shall notify the Buyer without undue delay if it becomes aware of circumstances indicating that the Work or a product created with the Services of the Seller is not or may not be suitable for the Buyer's customary use known to the Seller or recognizably intended by the Buyer. This duty of notification shall also exist for the case that the Buyer has specified to the Seller the intended use of the Work or of the product created with the Services of the Seller.

- 7.8 The Buyer shall not be under any obligation to inspect the Work or make special inquiries about any defects when concluding the contract. The Buyer shall therefore also have unrestricted warranty claims (*Mängelansprüche*) if the Buyer remained unaware of the defect due to gross negligence (*grobe Fahrlässigkeit*) when concluding the contract.
- 7.9 The Buyer's duties to inspect and notify defects (*Mangelrügepflicht*) shall be governed by statutory provisions, with the provision that the Buyer's duty to inspect shall be limited to defects which come to light in the course of a receiving inspection with external examination, including of the shipping documents (e.g. damage in transit, incorrect and short deliveries), or are identifiable from sampling procedures during the Buyer's quality control. If an acceptance procedure is agreed, no duty to inspect and notify defects shall exist. In other respects the extent to which an inspection is feasible in the ordinary course of business, having due regard for the circumstances of the individual case, shall prevail. This shall be without prejudice to the Buyer's duty to give notification of hidden defects that are not discovered until later because they could not be discovered in the course of a duly performed inspection or because no duty to inspect existed. Notwithstanding the fundamental requirements for the existence of a duty on the Buyer under these GTC to inspect and notify defects, a notification of defects given by the Buyer shall always be considered given timely and without undue delay if it is sent within ten (10) working days of delivery or acceptance (in the case of obvious defects) or of discovery ().
- 7.10 Subsequent performance (*Austausch*) shall also include the removal of the defective Goods and renewed installation if the Goods had been installed in or attached to another item, depending on their nature and intended purpose; this shall be without prejudice to the Buyer's statutory claim to reimbursement of the corresponding expenses.
- 7.11 As part of its quality support for its Work, the Seller shall conduct an examination of complaints from the Buyer in accordance with DIN ISO 10002 and deliver a duly completed 8D report to the Buyer within the reasonable period of time set by the Buyer. The Seller shall make the analysis details and examination results available to the Buyer and take suitable corrective actions, having due regard for the provisions of these GTC. If the Buyer does not receive a duly completed and transparent 8D report and/or analysis details and examination results from the Seller, and if no alternative amicable agreement on corrective actions is reached between the parties, it will be assumed that the performance which was the subject of the complaint was actually already deficient at the time of the passage of risk (*Gefahrenübergang*). In this case it will be incumbent upon the Seller to prove otherwise. The Seller shall finally bear the costs incurred for the purposes of inspection and subsequent performance (*Austausch*) if, after the inspection has been performed, a defect exists or there is an irrefutable presumption of a defect in accordance with the above provisions. This shall be without prejudice to the Buyer's liability in the case of unjustified complaints, but to that extent the Buyer shall only be liable if it recognized or through gross negligence failed to recognize that no defect existed.

## 8 'Recourse against Suppliers

- 8.1 The recourse claims within a supply chain ("*Rückgriff in der Lieferkette*") that are allowed by law shall accrue to the Buyer without restriction in addition to the claims for defects (*Mängelansprüche*). In particular, the Buyer shall be entitled to demand from the Seller exactly the type of subsequent performance of contract (repair or replacement delivery) that the Buyer owes to its customer in the individual case. This shall not limit the Buyer's statutory right of choice within the scope of subsequent performance.
- 8.2 Before the Buyer may acknowledge or fulfil a claim for defects asserted by its customer, including reimbursement of expenses, the Buyer shall notify the Seller and request a written statement, briefly stating the facts. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by the buyer shall be deemed to be owed to the buyer's customer. In this case, the seller shall have the burden of proof to the contrary.
- 8.3 The buyer's claims from supplier recourse shall also apply if the defective goods have been further processed by the buyer or another entrepreneur, e.g. by incorporation into another product.

## 9 Product Liability

- 9.1 If the Buyer is successfully pursued by a third party on account of the deficiency of a product manufactured by the Seller even though the product defect (*Produktfehler*) concerned was caused neither by the Buyer nor by one of its people, the Seller shall on first request make restitution to the Buyer and indemnify the Buyer in full against the respective claims. This will only apply to the extent that the Seller as manufacturer of the defective product could also have been pursued directly by the injured party under the pertinent provisions of product liability legislation.
- 9.2 In the case that the Seller has an obligation to indemnify pursuant to section 9.1, the Seller shall also reimburse all the expenses incurred by the Buyer from or in connection with legal action by a third party, including field activities such as recalls or service campaigns conducted by the Buyer. In deciding on the conduct of a field activity, the Buyer will exercise its due discretion and take reasonable account of the interests of the Seller. The Buyer will - where possible and reasonable - inform the Seller of the content and scope of a field activity and offer it the opportunity to comment. This shall be without prejudice to further and/or other statutory rights of the Buyer, in particular to compensation and reimbursement of expenses (*Schaden- und Aufwandsatz*), the filing of suits for performance (*Leistungsklagen*) and the claiming of provisional legal protection (*vorläufiger Rechtsschutz*).

## 10 Buyer's Ownership Rights to Information and Objects, Seller's Retention of Title

- 10.1 Information and objects (as defined in sections 10.2 and 10.3, in each case in conjunction with section 10.4) are and shall remain the sole property of the Buyer and must be appropriately, clearly and permanently identified as such by the Seller. They may only be used for the Work ordered by the Buyer and shall be returned to the Buyer upon fulfilment of the agreed Work, upon termination, in the case of Force Majeure and if the Buyer has a legitimate need for them. The Seller shall be bound to present to the Buyer on request at any time suitable evidence (e.g. confirmation, photographs) of the fulfilment of its obligations.



- 10.2 The Seller shall keep the information and objects properly and in a safe place, complying with all applicable statutory provisions, protected from access by third parties, loss, damage and deterioration, and separately from other items.
- 10.3 The Seller shall insure the information and objects appropriately against theft, damage and loss at their reinstatement/production cost and include them in an all-risks insurance policy at their reinstatement/production cost.
- 10.4 Information and objects may not be disposed of, relocated, consumed, scrapped or transferred as security without the prior written consent of the Buyer.
- 10.5 WorkThe processing, mixing or combination (*Verarbeitung, Vermengung, Verbindung*) ("Further Processing") by the Seller of information and objects with each other and/or with items of the Seller shall in each case be performed for the Buyer, so that ownership of the new item created by Further Processing shall accrue solely to the Buyer and is to be effectively transferred to it. The creation of co-ownership (*Miteigentum*) in favor of the Seller is excluded. The same shall apply in the case of the Further Processing by the Buyer of the Goods supplied by the Seller with other items, so that the Buyer is regarded as the manufacturer of the item created thereby and acquires sole title both to the Seller's Goods and to the newly created item not later than with the Further Processing; the Seller expressly agrees that the Buyer will have and hold the delivered Goods and the newly created item as owner - notwithstanding any earlier transfer of title - not later than from the Further Processing.
- 10.6 Transfer (*Eigentumsübergang*) of the Goods to the Buyer shall be unconditional and without regard to payment of the price.

## 11 Property Rights

- 11.1 Property rights (*Schutzrechte*) within the meaning of these GTC mean (i) patents, trade marks, utility models, designs and semiconductor products which have been requested, granted or registered, (ii) know-how (knowledge acquired through tests and experience and which is secret, material and described), and (iii) copyright and related property rights
- 11.2 The Buyer alone is entitled to the property rights in or to the information and/or objects of the Buyer (as defined in section 10). To the extent that the Seller uses information or objects of the Buyer in order to render the performance owed, the Buyer grants it a simple, non-transferable and non-sublicensable right to use the information and objects during the term and solely for the purposes of this contract.
- 11.3 The Buyer alone is entitled to the property rights created in the Buyer-specific manufacture of the Goods or rendering of the performance of the Seller or its employees and third parties engaged by it ("New Property Rights") and - except in the case of section 11.4 - the Seller shall transfer these to the Buyer in full. In the case of non-Buyer-specific manufacture, the Buyer will only receive non-exclusive rights to use the property rights to the otherwise same extent as for exclusive rights of use.
- 11.4 To the extent that the New Property Rights arise from works protected by copyright, the Seller hereby transfers the exclusive, transferable and sublicensable right to use them without limit in territory, content and time (with the exception of moral rights) to the Buyer. This right of use shall in particular include the reproduction, distribution, communication to the public and making available to the public of the New Property Rights in all types of use which are known or become known in the future, including the right to adapt and develop the New Property Rights and to use the results thereby created to the above extent. The clause in the 2nd sentence of section 11.3 shall apply in the case of non-Buyer-specific manufacture.
- 11.5 The Seller shall be bound to ensure that the rights pursuant to sections 11.3 and 11.4 can be granted to the Buyer in full and that the authors acting for it irrevocably waive their right to be named as authors under copyright law.
- 11.6 Insofar as the Seller already has property rights (as owner or under license) in connection with the Goods or the rendering of the performance under these GTC ("**Previous Property Rights**") and uses these for this manufacture, the Seller shall notify the Buyer of these in writing when concluding the contract.
- 11.7 Insofar as the Buyer or third parties authorized by it imperatively require the Previous Property Rights of the Seller in order to use the Goods or the Service to be performed by the Seller, the Seller grants them a non-exclusive and irrevocable right, unlimited in territory and covered by the agreed purchase price, to use these Previous Property Rights for this purpose, including the right of modification, reproduction and distribution and the right to transfer them in whole or in part to the above extent. If the use recognizable to the seller is intended to be permanent, the right of use shall be unlimited in time.
- 11.8 Insofar as the scope of performance includes software, and unless expressly agreed otherwise, the provisions of sections to and including 11.7 shall also apply for the software, including its documentation. Insofar as the software consists of software and software components that the Seller programs specifically for the Buyer, the Seller shall transfer the source code to the Buyer without undue delay if this is necessary for its functionality, interoperability and need for adaptation by the Buyer. The rights of use and exploitation shall extend to the object code, the documentation and, if transferred, the source code also. In other respects the provisions in section 11.5 to 11.7 shall apply analogously.

## 12 Spare Parts

- 12.1 The Seller shall be bound to keep spare parts for the Goods supplied to the Buyer in stock for a period of at least fifteen (15) years after delivery.
- 12.2 If the Seller intends to cease the production of spare parts for the products delivered to the Buyer, it shall notify the Buyer of this without undue delay after the decision on cessation. Subject to section 12.1, this decision must be made at least twelve (12) months before the cessation of production.

## 13 Conformity

- 13.1 Buyer's quality assurance requirements in the prevailing version are a material part of the contract ([procurement.hoerbiger.com](http://procurement.hoerbiger.com) (go to Download)).
- 13.2 In addition to the requirements under section 13.1, for its performance the Seller is required to observe all globally applicable pertinent provisions, directives, standards, laws and relevant requirements of the customers of the Buyer which reflect both the state of the art and technology and safety and environmental requirements.
- 13.3 The performance of the Seller may not contain any substances which are classed as or suspected of being carcinogenic, mutagenic or toxic to reproduction or any artificially radioactive substances or release any such substances.
- 13.4 In the event that provisions of the above requirements overlap in content or deviate from each other, the stricter requirement (e.g. prohibition before declaration) shall always prevail.
- 13.5 Should a manufacturer's declaration or a declaration of conformity (CE) within the meaning of Directive (EC) 2006/42/EC ("Machinery Directive") be required for the Work, the Seller must create this and make it available at its expense without undue delay on request. For the case that a safety data sheet or substance safety report is required for the proper performance of Work, the Seller shall likewise make the corresponding documents available to the Buyer at its expense.
- 13.6 With the offer the Seller shall send to the Buyer a fully completed safety data sheet for materials (substances, preparations) and objects (e.g. products, services, parts, technical equipment, uncleaned empties) which by their nature, properties or condition may present risks to the life and health of humans, to the environment and to property and which are therefore subject to regulations requiring special treatment with regard to packaging, transport, storage, handling or waste disposal. In the event of changes in the materials, objects or legal situation, the Seller shall send updated data sheets immediately.
- 13.7 The Seller shall be bound to send information and documents that are required in connection with section 13 to the Buyer promptly upon first request and enable their review.

#### 14 Labelling of the Goods, Advertising

Neither the Seller nor the Buyer may use copyrighted names, logos, trade names, trademarks or service marks of the other party without the prior written consent of the party holding or controlling these copyrights as owner.

#### 15 Confidentiality and Data Security

- 15.1 The Seller shall be bound to treat the terms of a purchase order from the Buyer and all information and objects (as defined in section 10) which are made available to it for this purpose as well as other information in strict confidence, to protect them from access by unauthorized third parties, and to only use them in order to execute the relevant purchase order. It shall return these to the Buyer immediately on demand after enquiries have been dealt with or purchase orders executed, unless doing so conflicts with statutory duties of retention.
- 15.2 The duties of confidentiality pursuant to section 15 shall not exist if and to the extent that information
- (a) is in or enters the public domain without any breach of these duties;
  - (b) was lawfully acquired from a third party;
  - (c) was already known to the Seller;
  - (d) must be disclosed on the basis of mandatory legal provisions or orders of a court or authority; or
  - (e) was independently developed by the Seller without the use of or reference to the information of the Buyer.
- The burden of proof that one or more of the above exceptions apply shall rest with the Seller.
- 15.3 The Seller shall, to the extent allowed by law, make all reasonable efforts to notify the Buyer without undue delay of any such reason for disclosure, give the Buyer the possibility, to the extent allowed by law, to object to or restrict such disclosure, and offer the Buyer reasonable cooperation in the Buyer's attempts to prevent or restrict any such disclosure.
- 15.4 The Seller shall bind the subcontractors approved by the Buyer in accordance with section 4.1 to the same obligations under section 15.
- 15.5 The Seller's duties of confidentiality pursuant to section 15 shall continue to apply for a period of another five (5) years beyond the end of the respective last purchase order.
- 15.6 In the case of electronic information, the Seller shall ensure the confidentiality, availability and integrity of such information by installing appropriate protective mechanisms for data processing and data storage systems.
- 15.7 Insofar as Buyer and Seller have concluded an individual confidentiality agreement, such an agreement shall take precedence.

#### 16 Customs, Origin, International Supply Chain, Export Control

- 16.1 The Seller shall inform itself of the requirements of customs procedures and shall make all necessary documents and information available to the Buyer in good time. The Seller shall enclose a commercial invoice in English in duplicate with the accompanying documents for customs purposes. Any deviation will only be permitted with the prior written consent of the Buyer.
- 16.2 Unless other or further requirements are laid down by law, the Seller shall send to the Buyer prior to first-time delivery with a corresponding validity period and thereafter unsolicited before the validity period expires a long-term supplier's declaration for products with preferential origin (e.g. for the EU form pursuant to Regulation (EU) no. 2015/2447). The Buyer must be notified of any changes to the origin in writing without undue delay.

- 16.3** With regard to its goods within the meaning of foreign trade legislation, including all component parts, the Seller shall inform the Buyer without undue delay of
- (a) export restrictions and issued export approvals which exist in the country of manufacture and/or in the country of dispatch of the Work;
  - (b) duties to obtain approval which exist under US export and re-export law, including what are known as EAR99 goods; and
  - (c) duties to obtain approval for dual-use goods, armaments and other goods listed as "restricted" which exist under Community law of the European Union or the national provisions of foreign trade legislation.
- 16.4** To the extent that the Seller supplies merchandise, services and/or technologies which are subject to export controls, the Seller shall forward the following information and corresponding documents to the Buyer unsolicited:
- (a) the dual-use list number (goods list annexes to the Dual-Use Regulation (EC) 428/2009 as respectively amended);
  - (b) in the case of US merchandise, services and/or technologies,
    - (i) whether these are subject to US re-export provisions (Export administration Regulations EAR and International Traffic in Arms Regulations ITAR);
    - (ii) the ECCN no. (Export Control Classification Number) pursuant to US Export Administration Regulations (EAR, USML (U.S. Munitions List) according to ITAR);
    - (iii) an export license; and
    - (iv) the US original quantity and where necessary the amount of the portions subject to approval;
  - (c) information on transport through the USA and/or manufacture and/or storage in the USA and/or production with the aid of US technology or parts;
  - (d) other goods-related information material for the purposes of requesting official approvals; and
  - (e) a contact person of the Seller for the clarification of any queries.
- 16.5** This duty of information shall exist for the Seller even after the end of business relations and for as long as these duties of information vis-a-vis the competent government agencies are incumbent upon the Seller and/or the Buyer.
- 16.6** The Seller undertakes to produce, store, process and load Work which are produced, stored, conveyed or supplied to or received by the Buyer at safe establishments and at safe transshipment locations and to protect them from unauthorized access during their production, storage, modification, processing, loading and conveyance. The Seller shall also ensure that it and its business partners comply with the pertinent laws and regulations, in particular those relating to foreign trade legislation (including import and export provisions) and anti-terror lists (e.g. Regulations (EC) 881/2002 and (EC) 2580/2001). A safety declaration or the AEO (Authorized Economic Operator) / C-TPAT certificate number must be provided on request.
- 16.7** If the Seller fails to fulfil its obligations pursuant to section 16, the Buyer shall not be responsible for any resulting delays in processing and payment of purchase orders (i.e. any default of the Buyer in that regard is expressly excluded for the duration of the resulting delay) and the Seller shall in that regard indemnify the Buyer against losses, claims of third parties and other consequences.

## **17 Insurance**

- 17.1** The Seller shall take out and maintain product liability insurance to the customary and reasonable extent in the industry with a flat-rate sum insured (*pauschale Deckungssumme*) of at least five (5) million euros per case of personal injury/material damage with a leading and solvent insurer which covers the Seller's liability towards the Buyer and third parties to the necessary extent. The Seller shall present evidence of the existence and coverage of these insurance policies to the Buyer on request at any time and without undue delay.
- 17.2** The existence of an insurance contract shall not lead to a limitation of the obligations on the Seller arising from these GTC.
- 17.3** Unless otherwise determined from the Incoterms applicable for the purchase order, the Seller shall obligate every carrier engaged by it to take out insurance for its own transport liability.

## **18 Protection of Personal Data**

- 18.1** The Buyer processes personal data of its customers and business partners. Further information on the use and handling of personal data can be found on our website at: <https://www.hoerbiger.com>.

## **19 Statute of Limitations**

- 19.1** Unless otherwise determined below, the mutual claims of the Buyer and Seller shall become time-barred (*verjähren*) in accordance with statutory provisions.



- 19.2** The general warranty period (*Gewährleistungsfrist*) for deficiencies in title shall be three (3) years from the passage of risk (*Gefahrenübergang*), in the case of Work of a work five (5) years from acceptance. If an acceptance procedure is agreed, the limitation period (*Verjährungsfrist*) shall always begin from the acceptance procedure (*Annahme*). The three-year limitation period does also apply to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for the restitution of property shall remain unaffected; claims arising from defects of title will furthermore not become statute-barred as long as the third party can still assert the right – in particular in the absence of a limitation period – against the Buyer.

## **20 Termination of/Withdrawal from Contracts, Phase-out Period, Continuation**

- 20.1** Notwithstanding other rights of the Buyer, the Buyer may terminate framework agreements including framework order in whole or in part at any Work.
- 20.2** The right to terminate a framework agreement including a framework order with the Seller without notice for good cause remains unaffected.
- 20.3** In the event of the termination of a contract that is not founded on a material breach of contract by the Buyer and for which there is no other good cause for the Seller, the Buyer shall have the option of a phase-out period of up to twelve months from the effective date of the termination if and for as long as the Work and the spare parts cannot be obtained from another supplier on comparable terms to those of the contract, evidence of which must be provided by the Seller. During the phase-out period the Seller shall be bound to supply the Work and spare parts to the Buyer under the terms and conditions of this contract together with delivery schedules and purchase orders. The Seller may ask the Buyer how long the phase-out period is expected to last.
- 20.4** Unless otherwise agreed in writing, following the termination of a framework agreement including framework order these GTC and the performance- specific provisions shall continue to apply for spare parts and post-series deliveries. Furthermore, any termination of a contract shall be without prejudice to the clauses governing confidentiality agreements, warranties (*Gewährleistungen*), liability, property rights, post-series and spare parts deliveries, the phase-out period, customs and export provisions, ownership rights and rights of use.
- 20.5** The Buyer shall be informed in writing and in good time in advance of all corporate or structural changes in the Seller, with full details of the effects on the rendering of Work of the Seller.

## **21 Transfer, Assignment**

- 21.1** The Seller shall not have the right to transfer this agreement and all rights and obligations arising from it to third parties without the written consent of the Buyer. Transfer by the Buyer shall not require the consent of the Seller.

## **22 Code of Conduct, Minimum Wage**

- 22.1** It is particularly important for the Buyer that the following principles are observed in the business relationship and with intermediaries, commercial agents, contract dealers and upstream suppliers. The Code of Conduct is available to download from [www.hoerbiger.com](http://www.hoerbiger.com). The Seller confirms that the following principles and practices are observed in its supply chain:
- (a) Compliance with laws and regulations, in particular the supply chain sourcing obligations as per EU and national requirements as applicable;
  - (b) Respect for human dignity, personal freedom rights, equal treatment (prohibition of discrimination); prohibition of child, forced and illegal labor; freedom of association and collective bargaining; compliance with minimum wage and working hours regulations; provision of safe working conditions
  - (c) Prohibition of bribery, corruption and extortion; prohibition of soliciting direct or indirect benefits personally or for third parties; prohibition of offering or procuring direct or indirect advantages
  - (d) Compliance with provisions of foreign trade legislation and anti-money-laundering legislation
  - (e) Abstention from anti-competitive practices
  - (f) Compliance with social and environment laws and provisions; compliance with "Conflict Minerals" provisions (i.e. goods and materials are only to be obtained from legal and ethically responsible sources)
  - (g) Correct and complete recording of all transactions in the business records and documents
  - (h) Compliance with laws and regulations governing information security and data protection
- 22.2** If the Seller becomes aware that an executive, managing director or partner of it, the Buyer or a third party involved in the business relationship with the Buyer is (apparently) in breach of the Code of Conduct, the Seller shall inform the Buyer of the (apparent) breach in writing without undue delay. The report must be sent to the following email address: [compliance@hoerbiger.com](mailto:compliance@hoerbiger.com).
- 22.3** The Seller shall take corrective action to protect itself and the Buyer from harmful consequences, including fines, contract penalties, the termination of business with its customers and reputational damage.
- 22.4** The Seller shall implement compliance provisions pursuant to section 22 and shall verify compliance by itself and its suppliers to a reasonable extent.
- 22.5** The Buyer may review compliance with the Code of Conduct at any time. The Seller shall cooperate with the Buyer and assist this review, including by presenting documents and declarations.
- 22.6** The Seller shall indemnify the Buyer against claims brought by third parties due to non-compliance with this section 22. If Work is subcontracted, this duty of indemnification shall also extend to the subcontractors or other third parties engaged by the Seller and their employees and must be effectively imposed upon them by the Seller.

## **23 General Provisions**

- 23.1** Should a provision or a part of a provision of these GTC be or become ineffective or unenforceable, it shall be disregarded and shall be without prejudice to the validity of the rest of these GTC. If necessary, the Buyer and the Seller shall be bound to replace the ineffective or unenforceable provision with an effective and enforceable provision equivalent to it in economic result provided that this does not result in a material change to the content of these GTC.
- 23.2** These GTC, the contractual relationship between the Buyer and the Seller and every agreement established in accordance with these GTC on the basis of a purchase order shall be governed by the laws of the country in which the Buyer has its registered office, expressly excluding the conflicts-of-laws provisions of international private law and international uniform law, in particular the UN Sales Convention (CISG).
- 23.3** If the Seller
- (a) has its place of business in a Member State of the European Union, the exclusive - also international - venue for all disputes arising from the respective contractual relationship shall be the registered office of the Buyer. However, the Buyer shall in all cases also have the right to bring an action at the place of performance of the supply obligation pursuant to these GTC or a primary individual agreement or at the general venue of the Seller. This shall be without prejudice to primary statutory provisions, in particular those concerning sole jurisdiction.
  - (b) has its place of business outside a Member State of the European Union, all disputes arising from or in connection with these GTC, their contractual relationship or their validity shall be finally decided in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) by the arbitrators appointed in accordance with these Rules, excluding recourse to ordinary courts. The arbitral tribunal shall consist of three (3) arbitrators. The place of arbitration shall be Vienna, Austria.

#### **24 Translation**

This document is a translation of the German version. The German version shall prevail in case of any inconsistencies.

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