

EagleBurgmann Industries UK LP General Delivery and Payment Terms and Conditions Last updated in October 2022

1. Scope, general, notices, waiver, severance, interpretation, third party rights

1.1 The following delivery and payment terms and conditions ("DPTC") apply exclusively to all deliveries, deliverables, products, services, contracts and offers as well as associated auxiliary services (jointly "Deliverables") provided or performed by EagleBurgmann Industries UK LP ("EB", "We", "Us") and only in relation to all non-consumer Customers ("Customer") (together jointly the "Parties" and each separately a "Party").

1.2 These DPTC apply in the version as amended by Us from time to time as a framework agreement for future contracts concerning Deliverables even if they are not expressly re-agreed; We shall promptly inform the Customer of any changes to our DPTC where such occur.

1.3 These DPTC apply to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these DPTC or the relevant contract. Any variation, deviation or waiver from or addition to these DPTC are only valid and incorporated in the contract if and to the extent We have expressly agreed thereto in writing. This requirement for agreement applies without exception; for example also in the event that We, being aware of the Customer's general terms and conditions, carry out a delivery to the Customer. In the event of participation in electronic platforms or other electronic/automated systems of the Customer and the activation of check boxes (or the like) to be activated for the use of such system, this shall not constitute a legally binding acceptance of the respective terms of use or other general terms and conditions.

1.4 Any notice the Customer is required to give Us under or in connection with these DPTC or a contract (e.g. the setting of deadlines, notifications of defects, withdrawal from contract or payment reduction notices) shall be in writing and shall be (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at our registered office; or (ii) sent by email to the address specified in writing by Us. We reserve the right to demand further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration. Any notice by a Party to the other Party shall be deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other on the second business day (a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business) after posting; or (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. This Clause 1.4 does not apply to the service of any proceedings or other documents in any legal action.

1.5 These DPTC or any contract do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term thereof.

1.6 A waiver of any right or remedy of a Party is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy of a Party, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

1.7 If any provision or part-provision of these DPTC or the contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the remaining provisions. If any such provision is deemed deleted under this Clause 1.7, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

1.8 Regarding the interpretation of these DPTC, the following applies:

a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision;

b) any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

c) a reference to "writing" or "written" includes email, unless the context explicitly requires otherwise;

d) the headings are inserted for convenience only and shall not affect the construction or interpretation.

2. Offer, entry into a contract and supporting documentation, intellectual property rights, entire agreement

2.1 Unless otherwise indicated, our offers or quotations are subject to confirmation and non-binding and shall not constitute a binding offer; in particular, We reserve the right to change products, prices and other conditions. The placing of an Order by the Customer ("Order") constitutes a binding offer by the customer in accordance with these DPTC. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate (see also Clause 4.2). Unless otherwise provided in the Order, We are entitled to accept or reject this contractual offer and We would normally do this within 21 days following its receipt. A contract shall only be deemed to come into existence upon our written acceptance of the Order or, if the Order was not accepted by Us in writing, at the latest upon fulfilment of the Order.

2.2 For the purpose of clarification, We point out that our employees or other representatives entrusted with the execution and performance of Deliverables are not authorised to enter into verbal side agreements or to give verbal undertakings that vary from the content of agreements already concluded. Such telephone or other verbal expressions are therefore not legally binding unless We have confirmed them expressly in writing.

2.3 The information submitted by Us in connection with an offer or quotation such as, for example, sealing description, drawings, illustrations, descriptions of operating data and installation space or other descriptive matter, measurements and weights in price lists, brochures or other advertising material are produced for the sole purpose of giving an approximate idea of the delivery item referred to in them. They shall not form part of the contract nor have any contractual force unless otherwise agreed by the Parties in writing.

2.4 Nothing in these DPTC has the effect of granting expressly or impliedly any rights in respect of any patent, copyright or other intellectual property right in force and belonging to the disclosing Party except to the extent expressly agreed by the Parties in writing. We reserve all proprietary rights and copyrights to cost estimates, concepts, designs, drafts, drawings and other documents; these may be modified or made available to third parties only with our explicit approval. These materials must be returned to Us upon request at any time and in any event if the Order is not placed with Us.

2.5 In the event that the customer placed an Order with multiple delivery dates over a period of time ("Call-Off Order"), We are entitled to acquire materials for the entire Order and to manufacture the entire amount of the Order immediately. Any amendments to a Call-Off Order requested by the customer can therefore no longer be taken into account once such a Call-Off Order has been placed, unless this has been expressly agreed otherwise in writing.

2.6 In case of doubt, the agreed Incoterms, shall govern the interpretation of the commercial terms of an Order.

2.7 The contract, including these DPTC, constitutes the entire agreement between the Parties and supersede any and all prior agreements, arrangements, statements, representations and understandings regarding the subject matter of the contract. Each Party acknowledges that in entering into the contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract.

3. Samples, test parts, tools, costs and title

3.1 We reserve the right to charge for the samples and test parts and the tools required for their manufacturing. In case of doubt payment falls due following acceptance of the initial sample, test part or tool, unless otherwise agreed in writing (see Clause 2.1). Unless otherwise agreed in writing and upon informing the Customer, We reserve the right to add the costs of procuring or manufacturing the tools required for series production to the invoice.

3.2 Unless otherwise agreed in writing, We retain title to all tools and appliances manufactured or procured by Us even where the customer has borne the procurement or manufacturing costs either in whole or in part. We are not obliged to surrender the tools and appliances.

4. Quality and agreed specification

4.1 We warrant that the Deliverables shall be free from material defects in design, material and workmanship and shall be of satisfactory quality and that any services forming part of the Deliverables will be performed with reasonable care and skill. To the fullest extent permissible by law all implied terms, conditions, warranties and representations

howsoever arising are excluded from the contract. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded.

4.2 The quality of the Deliverables is conclusively determined by performance indicators expressly agreed (e.g. product descriptions, specifications, drawings, markings, release instructions and other information). No warranty or guarantee for a specific application or a specific suitability for use, usage period, durability, functionality, compatibility, other subjective or objective requirements or conformity with sample or model is provided except where and to the extent expressly agreed in writing. Before placing of an Order, the customer must explicitly inform Us regarding any specific subjective and objective requirements of the delivery item or its installation relevant for the customer. For the rest, the risk relating to the delivery item's suitability for purpose and application is the exclusive responsibility of the customer.

Notwithstanding this, our Deliverables are not intended for installation in any kind of nuclear applications (e.g. nuclear power plants); this use is only permitted if expressly confirmed by Us in writing prior to the formation of the contract; the customer is obliged to communicate this restriction to any subsequent owners and users of the Deliverables.

Nothing contained in this Clause 4.2 releases the Customer from its obligation to assess and test whether the delivery item is suitable for the intended purpose (see also Clause 4.8).

4.3 We accept no liability for public statements by third Parties (e.g. advertising messages, test institutes,) in connection with the quality of the delivery item supplied by Us.

4.5 We reserve the right to make minor or technically unavoidable physical or chemical variations to the delivery items including colours, formulae, methods and the application of raw materials or other insignificant alternations, to the extent that We consider it reasonable to do so in the context of the agreement with the Customer.

4.6 The occurrence of a technically unavoidable leakage in the mechanical seal (*Gleitringdichtung*) and the gland pack (*Stopfbuchspackung*) shall not be considered as a product defect. Only after detailed examination of the actual operational conditions, the actual product version (e.g. production tolerances) and the actual installation conditions and based on our experience and the state of the art it can be determined, whether a leakage is unacceptably high and as such does not meet the requirements.

4.7 Accessories, packaging, assembly and other instructions, specifications or recommendations for inspection, storage, installation, testing, operation or maintenance (jointly: "Manuals") shall only be included in the Deliverables if expressly agreed or customary in the industry. The Customer is obliged to install the delivery items in accordance with the state of the art. If there are any special requirements for installation and assembly, the Customer shall inform Us thereof prior to the formation of the contract. Unless explicitly otherwise agreed, the installation risk shall be borne solely by the Customer. Manuals can be delivered in hard copies or referred to in the delivery documents (e.g. by referring to a relevant website). The Customer is obliged to follow the Manuals and to observe the relevant regulations or other industry standards.

4.8 The Customer may reject any delivery item delivered to it that do not comply with quality requirements in Clause 4, provided that a notice of rejection is given to EB within 5 days of delivery. Such notice shall be accompanied by evidence of the defects. If the Customer fails to give notice of rejection in accordance with this Clause 4.8 it shall be deemed to have accepted these Deliverables.

5. Delivery, Delivery Period, place of fulfilment, transfer of risk, default in delivery, acceptance and default in acceptance

5.1 The contractual agreements made with respect to the Order (see Clause 2.1) shall be decisive for the delivery date, method and volume of the delivery.

5.2 Delivery term of Deliverables is FCA WAREHOUSE/FACTORY (Incoterms® 2020) ("Standard Delivery"), unless otherwise agreed in writing. We are only responsible for loading the goods at the named place of delivery and the risk passes to the Customer on completion of loading onto the delivery/transit vehicle. Obligations of the Customer include but are not limited to nominating a carrier or another person at the named place of delivery, covering all shipping related charges and insurance, covering the costs of unloading at destination. The named place of delivery is also the location of the place of performance (and applies to any repair or replacement). If the contract so provides, the named place of delivery may be specified by the Customer and ("Sale by Dispatch") at the Customer's expense. For the avoidance of doubt, Sale by Dispatch will be subject to the same rules as Standard Delivery, including, but not limited to the applicable Incoterms. If our export declaration won't be closed at customs by the forwarder specified by the Customer, We will charge the local VAT to the Customer.

5.3 Unless otherwise agreed in writing, in the event of a Sale by Dispatch, We are entitled to specify how delivery items are dispatched (in particular with regard to transport company, dispatch route, packaging). Packaging materials are invoiced to the Customer at cost price. We will not collect them after delivery with the exception of pallets and crates if this is clearly stated on the delivery note. The Customer shall make any such pallets or crates available for collection at such times as We shall reasonably request. In this case, returns shall be at our expense. Dispatched delivery items may be insured upon the Customer's request and on his expense.

5.4 The risk of accidental loss or accidental damage regarding the delivery item shall pass to the Customer on completion of delivery pursuant to the agreed Incoterm (see Clause 5.2). However, in case of a Sale by Dispatch, the risk of accidental loss and of accidental damage, as well as the risk of delay, shall pass to the Customer once the dispatcher, the carrier or other person or institution designated responsible for shipping receives delivery items. In the event that an acceptance is required for Deliverables, such acceptance shall be decisive for the transfer of risk. If the Customer is in default of accepting the delivery item, the latter is equally deemed to be delivered or accepted two weeks after the date of delivery.

5.5 Any dates quoted ("Delivery Period") for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the delivery item, also in case of binding delivery dates, that is caused by a Force Majeure event or the Customer's failure to provide EB with adequate delivery instructions or any other instructions or cooperation that are relevant to the supply of the delivery item. In such case, We will inform the Customer about the anticipated new delivery time. Where the delivery is unavailable also within such new Delivery Period, We are entitled to withdraw from the contract in whole or in part at our sole discretion. The same applies to cases in which the Customer specified the suppliers or raw materials to be used and they are not available.

5.6 For the avoidance of doubt, the Delivery Period for delivery items does not commence before the required technical data, supporting documentation, approvals and releases to be obtained by the Customer have been provided or before receipt of an agreed advance payment, if applicable. The Delivery Period is deemed complied with the timely notification of the Customer of readiness for dispatch or collection.

5.7 In case the Customer is in default of acceptance or breach of any of its obligations regarding delivery, the Customer shall be liable for any damages caused and any additional costs (e.g. storage expenses) related thereto. Further claims and rights shall remain unaffected. In particular, if the Customer fails to collect the delivery item within three business days of EB notifying the Customer that it is ready, then, except where such failure or delay is caused by a Force Majeure event or EB's failure to comply with its obligations under the contract in respect of the delivery item:

a) Delivery of the delivery item shall be deemed to have been completed at 9.00 am on the third business day after the day on which EB notified the Customer that the delivery item was ready; and

b) We shall store the delivery item until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

5.8 In case the Customer becomes subject to insolvency proceedings, or comparable proceedings under foreign law, experiences payment difficulties or if there is a significant deterioration of the customer's financial situation, We are entitled to suspend deliveries immediately and to refuse the fulfilment of contracts, unless the Customer provides the respective consideration or, upon our request, provides appropriate securities.

5.9 We may deliver the delivery items by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. Warranty (claims for defects)

6.1 The Customer is obliged to carefully inspect Deliverables after delivery and before first use, but in any case, such inspection shall be conducted no later than within two weeks after delivery, to avoid any additional damage to the products.

Subject to Clause 6.2, EB shall, at its option, repair or replace a defective delivery item, or refund the price thereof, if

a) the Customer gives notice in writing to EB within a reasonable time (with a maximum of two weeks) of discovery that the delivery item does not comply with the warranty set out in Clause 4;

b) EB is given reasonable time and opportunity of examining the (potentially) defective delivery item;

c) the Customer (if asked to do so by EB) returns the delivery item to EB's place of business at the Customer's cost; and

d) the Customer has paid the price of the delivery item in full.

6.2 EB shall not be liable for any failure of the delivery item to comply with the warranty set out in Clause 4, if

- a) the Customer makes any further use of the delivery item after giving notice in accordance with Clause 6.1 a);
- b) the defect arises because the Customer failed to follow the EB's oral or written instructions as to the storage, commissioning, installation, use and maintenance, the Manuals, relevant regulations or (if there are none) industry standards and good trade practice regarding the same;
- c) the defect arises as a result of EB following any drawing, design or specification supplied by the Customer;
- d) the Customer or a third Party alters or repairs a delivery item without the written consent of EB;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions (including, but not limited to, unsuitable or defective equipment, replacement materials, construction work, ground for building or chemical, electro-chemical, electrical or operational factors); or
- f) the delivery item differs from its description or the relevant specification as a result of changes made to ensure it complies with applicable statutory or regulatory requirements.

6.3 Except as provided in this Clause 6, EB shall have no liability to the Customer in respect of the delivery item's failure to comply with the warranty set out in Clause 4. For the avoidance of doubt, a repair or replacement of the delivery item covers neither the de-installation of the defective good nor its re-installation nor the reimbursement of costs thereof, unless We were originally obliged to carry out such installation.

6.4 The provisions of this Clause 6 shall also apply to any repaired or replaced delivery item supplied by EB as well as for wrong delivery, short delivery, defects of title, improper assembly/installation and errors in the Manuals.

6.5 Claims under this Clause 6 are excluded for any delivery item, which, according to the agreement, is not delivered as new.

6.6 The Customer's claims for damages or reimbursement of costs in connection with defects, if any, are subject to Clause 7. We may claim reimbursement from the Customer of the costs (especially inspection and transport costs) incurred if it turns out that the Customer's defect claim was unjustified.

7. Liability (claims for damages)

7.1. The restrictions on liability in this Clause 7 apply to every liability arising under or in connection with the contractual relationship between EB and the Customer including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2 Nothing in this Clause 7 limits any liability which cannot legally be limited, including liability for

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentation; or
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

7.3 Subject to Clause 7.2, EB's total liability to the customer shall not exceed the contract price unless the contract provides otherwise.

7.4 Subject to Clause 7.2, our liability is wholly excluded for (i) loss of profits, (ii) loss of sales or business, (iii) loss of agreements or contracts, (iv) loss of anticipated savings, (v) loss of use or corruption of software, data or information, (vi) loss of damage to goodwill, and (vii) indirect or consequential loss.

7.6 This Clause 7 shall survive termination of the contract.

8. Force Majeure

8.1 Neither Party shall have any liability for any hindrance or delay in performance of its obligations under a contract which is caused by an Force Majeure event (as defined below), regardless of whether the circumstances in question could have been foreseen if the effects of such hindrance or delay to perform could not reasonably have been avoided or overcome by the affected Party. An event of "**Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third Parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, crop and/or harvest failure, crop disease, crop shortage, famine, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third Party computers or third Party hardware or vehicles, failure or problems with public utility supplies (including electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation. For the avoidance of doubt, the existence of an event of Force Majeure shall not be excluded merely because it directly affects one of our sub-suppliers.

8.2 Each of the Parties agrees to inform the other Party upon becoming aware of an event of Force Majeure, such information to contain details of the circumstances giving rise to the event of Force Majeure.

8.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist, and such Party shall be granted an extension of time for performance equal to the period of the delay. If the performance of any obligations is delayed under this Clause 8, each Party shall nevertheless accept performance as and when the other shall be able to perform. In this case, inter alia, We reserve the right to reduce quantities in the case of deliveries of goods.

8.4 Each Party shall bear its own costs incurred by the event of Force Majeure.

8.5 If the hindrance or delay caused by the event of Force Majeure continues without a break for more than 120 days, either Party may terminate the affected contract immediately by written notice to the other Party, in which event neither Party shall have any liability to the other Party by reason of such termination.

8.6 For the avoidance of doubt, the provisions in this Clause 8 do not prevent the affected Party from invoking other applicable legal instruments or defences in connection with default (e.g. impossibility, unreasonableness, frustration of contract).

9. Prices and payment

9.1 Unless otherwise agreed in writing, our prices are quoted in EUR or GBP and FCA WAREHOUSE/FACTORY (Incoterms® 2020) from which the good is delivered. The price excludes (i) amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to EB at the prevailing rate, subject to the receipt of a valid VAT invoice and (ii) the costs and charges of packaging, insurance and transport, which shall be invoiced to the customer separately. All invoiced amounts due shall be paid in full without any set-off, counterclaim, discount, deduction or withholding (other than deduction or withholding of tax as required by law), unless otherwise agreed in writing and in advance. We may invoice the Customer on or at any time after the completion of the deliveries. We retain the right to transmit invoices electronically. We are not obliged to accept cheques or other promises of payment. We do not accept payment by bill of exchange.

9.2 We may, by giving notice to the Customer at any time before delivery, increase the price of the Deliverables to reflect any increase in the cost of the Deliverables that is due to (i) any factor beyond EB's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), (ii) any request by the Customer to change the delivery date(s), quantities or types of the Deliverables or the specification, or (iii) any delay caused by any instructions of the Customer or failure of the Customer to give EB adequate or accurate information or instructions.

9.3 In case of partial deliveries each delivery may be separately invoiced.

9.4 The Customer shall pay each invoice submitted by EB within 14 days from the invoice date, unless other credit terms were agreed in writing, in full and in cleared funds to a bank account nominated in writing by EB, and time for payment shall be of the essence for the contract.

9.5 Payment is deemed received on the date on which the amount becomes available to Us or is credited to our bank account. If the customer fails to make a payment due to EB under the contract by the due date, then, without limiting any other remedies available for EB, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.5 will accrue each day at 8% per annum above the Bank of England's base rate from time to time, but at 8% per annum for any period when that base rate is below 0%. EB is also entitled to demand a fixed sum in addition to the interest on the debt and the reasonable costs of recovering the debt, less the fixed sum payable in accordance with Late Payment of Commercial Debts (Interest) Act 1998.

9.6 We do not pay interest on advance payments.

10. Assignment and right of retention; set-off

10.1 The Customer shall not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner any right, benefit or interest under these DPTC or a contract between Us and the Customer, nor transfer,

novate or sub-contract any of its obligations under it, without the prior written consent of EB (such consent not to be unreasonably withheld or delayed).

10.2 The Customer does not have a right to retention of payments or set-off due to any counterclaim by the Customer unless such counterclaim is undisputed by Us or determined by a final court judgement.

11. Retention of title

11.1 Subject to Clause 11.3, title to the delivery item shall not pass to the Customer until EB receives payment in full (in cash or clear funds) for the delivery item and any other goods supplied to the Customer, in which case title shall pass at the time of payment. Should the retention of title need to be entered in a public register or the effectiveness of the retention of title otherwise requires the Customer's cooperation, the Customer is obliged to undertake the necessary acts of cooperation at its own expense.

11.2 Until title to the delivery item has passed to the Customer pursuant to Clause 11.1, the Customer shall:

- a) store the delivery item separately from all other goods held by the Customer so that they remain readily identifiable as ED's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the delivery item;
- c) maintain the delivery item in satisfactory condition, treat it with the care of a prudent businessman and keep it insured against all risks (but in particular fire and theft) for their full price from the date of delivery; this includes to carry out maintenance and inspection work in due time at its own expense, if required;
- d) neither pledge nor transfer by way of security the delivery item to third Parties;
- e) notify EB immediately if the delivery item becomes subject to any of the following events: (i) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by Order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (ii) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; (iii) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the contract is in jeopardy; or (iv) if and to the extent that third parties obtain access to the delivery item and

e) give EB such information as may reasonably be required from time to time relating to (i) the delivery item; and (ii) the ongoing financial position of the Customer.

11.3 Subject to Clause 11.4, the Customer may resell, use or process the delivery item or combine it with other materials in the ordinary course of its business (but not otherwise) before EB receives payment for the delivery item.

11.3.1 If the Customer resells the delivery item to a third Party before payment in full:

- a) It does so as principal and not as EB's agent; and
- b) title to the delivery item shall pass from EB to the Customer immediately before the time at which resale by the Customer occurs;
- c) the Customer shall assign to EB, and EB herewith accepts such assignment, all the rights to any payments due to it from the third Party regarding this resale for nominal consideration and notify the relevant third Party about this assignment.

11.3.2 If the Customer processes the delivery item or combines it with other materials before payment in full:

- a) The retention of title also extends to the full value of the products arising as a result of the processing, mixing or combining of the delivery item, whereby We are treated as the manufacturer;
- b) where the delivery items are processed, mixed or combined with goods belonging to third parties and the latter's title right continues to exist, We acquire joint ownership and title pro rata to the invoice values of the goods that have been processed, mixed or combined;
- c) the Customer shall assign to EB, and EB herewith accepts such assignment, all the rights to any payments due to it from the third Party regarding the resale of the good processed, mixed or combined with the delivery item for nominal consideration and notify the relevant third party about this assignment.

11.4 At any time before title to the delivery item passes to the Customer, EB may:

- a) By notice in writing, terminate the Customer's right under Clause 11.3 to resell the delivery item or to use it in the ordinary course of its business (in particular, but not limited to, if the Customer is in breach of contract due to non-payment); and
- b) require the Customer to deliver up all the delivery items in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third Party where the delivery item is stored in Order to recover them.

12. Limitation periods

12.1 Limitation period under the limitation act 1980 (as amended) does not apply to claims under the contract as well as for contractual and non-contractual claims for damages. The limitation period for all claims of the Customer under the contract shall be one year from delivery in accordance with Clause 6, respectively one year from notice that the item is ready for dispatch, if the Customer has to collect the delivery item; for the purpose of clarification, this limitation period shall also apply to reimbursement claims. Where an acceptance was explicitly agreed, the limitation period begins with the completion of acceptance, unless otherwise agreed.

12.2 However, if the delivery item is a building or an item which, in its normal application, is used in construction and a defect in a property is caused by a fault in design, materials or workmanship, that existed at the time the construction was completed but was not apparent at the time of completion, the limitation period is, in accordance with the Latent Damage Act 1986 (i) six years from the date of accrual of the cause of action being raised and (ii) three years from the earliest date on which the potential claimant knew, or reasonably ought to have known, material facts necessary to bring an action alleging negligence and (iii) subject to an overall limit of fifteen years from the accrual of the damage.

13. Intellectual property rights of third parties, indemnity

13.1 If We are commissioned on the basis of drawings and plans provided by the Customer, the Customer warrants that it has all the necessary rights and that any performance under the relevant contract will not infringe intellectual property rights, industrial property rights, copyrights or other third-party rights and that no statutory or official restrictions are breached. The Customer is obliged to inform Us immediately of any potential or claimed breach of intellectual property rights of which it becomes aware.

13.2 The Customer shall fully indemnify EB, its Affiliates (as defined under Clause 13.3) and their respective officers, employees, workers, contractors and representatives (together "**Indemnified Parties**") and keep the Indemnified Parties fully indemnified from and against any and all actions, claims, demands, costs (including reasonable legal costs), expenses, losses, damage or liability suffered or incurred by them to the extent that the same arise as the result of any breach by the Customer of its warranty under Clause 13.1.

13.3 "**Affiliate**" means, in relation to either Party, any legal entity controlling, controlled by or under common control with the Party in question, for which purpose "**control**" means direct or indirect possession of the power to direct or to cause the direction of the management or policies of such Party or entity, whether pursuant to the ownership of voting shares, by contract or otherwise.

14. Confidentiality

14.1 For the purpose of these DPTC, "**Confidential Information**" means any information made available by Us to the Customer or which otherwise came to the attention of the Customer as a result of or in connection with Orders or Deliverables, irrespective of its form (written, verbal, electronic, etc.); Confidential Information include in particular, but not limited to, formulations, drawings, models, tools, technical records, procedural methods, presentations, software or other technical or commercial know-how or deliverables. However, information shall not be deemed to be Confidential Information in this sense if (i) the Customer has developed it itself and independently of the receipt of Confidential Information from us, (ii) it was public knowledge at the time of its disclosure or becomes public knowledge later without any breach of confidentiality by the Customer, (iii) it was already known to the Customer or becomes known later without any breach of law recognisable to the Customer, (iv) there is an administrative or judicial order or other obligation of disclosure or a legally mandatory right of disclosure for it. The Customer is obliged to inform Us immediately and under enclosure of the necessary evidence if he wishes to invoke one of the above exceptions against Us.

14.2 The customer is obliged to keep all Confidential Information secret, also after the termination of the business relationship and such information must not be used in the Customer's business except for purposes of performing its obligations or enforcing its rights under the contract entered into with Us. Confidential Information may only be made directly or indirectly accessible to such persons who must, in the context of the business relationship, have knowledge of the Confidential Information and are bound by an obligation of secrecy on terms at least equivalent to this Clause

14 to the extent permitted by law. Beyond the purpose of the contract, Confidential Information (in particular cost estimates, drafts, construction drawings, progress reports, process descriptions and analyses of materials made available) must not be amended, duplicated or published without our approval and must not be used to register own property rights (e.g. patents or designs) or those of third parties.

14.3 Furthermore, product samples, prototypes, etc. provided by Us must not be analysed, decompiled, modified or disassembled with regard to their composition ("**Reverse Engineering**"), either by the Customer itself or by third Parties, unless this is technically absolutely necessary for the realisation of the project.

14.4 We reserve all rights to the Confidential Information disclosed by Us, in particular intellectual property rights and copyrights, and We grant no right or license to use Confidential Information except as expressly provided in this Clause 14; any kind of licence thereto requires a separate agreement. All documents submitted by Us in connection with offers must be returned at our request at any time and in any case if the Order is not placed with Us. The Customer shall not be entitled to a right of retention with regard to Confidential Information or corresponding documents or materials.

14.5 The contractually agreed protection of Confidential Information pursuant to this Clause 14 is independent of and in addition to the applicable legal provisions protecting certain kind of information (e.g. trade secrets).

15. Compliance, export controls, anti-bribery

15.1 With regard to the existing business relationship with Us, the Customer undertakes to comply with all laws applicable to it as well as the specifications in compliance codes or other codes notified to it by Us. This includes, in particular, not to deal with or otherwise cooperate, neither directly nor indirectly, with any terrorist or terrorist organisations or any other criminal or anti-constitutional organisations and to establish appropriate organisational measures to implement applicable embargoes, the European regulations against terroristic and criminal acts and the respective requirements under US law and/or any other law applicable to the business relationship, in particular by implementing adequate software systems. Once the goods leave our relevant premises, the Customer is solely responsible to ensure compliance with the provisions cited above and will indemnify Us against claims and costs (including reasonable legal and consultancy fees or court fees or fines resulting from the said legal breaches) based on a legal breach in this respect on the part of the Customer, its affiliated company or employees, representatives and/or vicarious agents, unless the Customer is not responsible for it.

15.2 We point out that the validity of our offer or the Customer's Order is subject to the issuance of an export permit by the authorities. An agreed Delivery Period is also subject to the availability of an export permit. Therefore, when placing the Order the Customer should take into account that this could lead to postponements of delivery dates that are beyond our control. In case of any subsequent export the Customer is solely responsible to comply with the relevant export control provisions, e.g. the verification of the recipient or end user. For the export to embargo countries, the foreign trade law requirements must be observed, in particular with any applicable export control regulations under German, EU and US law.

15.3 Regarding anti-bribery obligations, the following applies in addition to Clause 15.1:

15.3.1 Each Party shall (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**"), (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK, (iii) comply with the other Party's bribery and anti-corruption policy as the other Party makes available from time to time, and such industry codes of practices as may be in place from time to time in respect of the same ("**Relevant Policies**") and (iv) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by the first Party in connection with the performance of contracts.

15.3.2 Each Party shall ensure that any person associated with that Party who is performing services or providing goods in connection with the contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that Party in this Clause 15 ("**Relevant Terms**"). Each Party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other Party for any breach by such persons of any of the Relevant Terms.

15.3.3 For the purposes of this Clause 15, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause 15, a person associated with a Party includes any agent, delegate or subcontractor of that Party.

16. Place of performance, jurisdiction and governing law

16.1 The courts resident at the place of business of EB shall have jurisdiction over all disputes or claims (including non-contractual disputes or claims) concerning rights and obligations arising from or in connection with these DPTC and the contractual relations between Us and the Customer ("**Disputes**")

16.2 These DPTC, the contract and the entire legal relationship between Us and the Customer and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral or multilateral treaties for the purpose of unifying international sales is excluded.

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