

Standard Terms and Conditions of Sale for – Business Abroad of NOBLEX GmbH based in Eisfeld

1. General

- 1.1 Our Terms and Conditions of Sale shall apply to all our deliveries and services, as well as to information and advice provided, and to repairs.
- 1.2 Our Terms and Conditions of Sale shall apply exclusively; we will not recognize general terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Sale, unless we have given express written consent to their effectiveness. Our Terms and Conditions of Sale shall apply even in the event that we perform deliveries without reservation although we are aware of customer conditions that conflict with or deviate from our Terms and Conditions of Sale.
- 1.3 All the agreements made between us and the customer for the performance of this contract have been set forth in writing in this contract.
- 1.4 Our Terms and Conditions of Sale shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) if the Contract forms part of the business operation, as well as to legal persons under public law and to separate estates under public law within the meaning of BGB Section 310 (1).
- 1.5 Our Terms and Conditions shall also apply to any future business with the customer.

2. Offer, Records

- 2.1 Our offer shall be non-binding until the order has been finally confirmed by us. Our silence in regard to any customer offer sent to us on the basis of a non-binding offer from us shall not be construed as acceptance of the customer's offer.
- 2.2 Any information and advice provided in regard to our products are based on the experience we have made so far. The values furnished in this context, particularly performance data, are experience values obtained under specially optimized conditions. It cannot be inferred therefrom that the observance of operating and handling instructions, etc. may be dispensed with.
- 2.3 We reserve absolute property rights and copyrights with respect to the exploitation of cost estimates, drawings and other records. Such records shall only be made accessible to third parties if we have given our prior consent. Although due care has been used in the development of the technical data contained therein (including weights and dimensions), such data are subject to error. The same shall apply to information provided in our marketing documents. Such information shall, however, not be construed as a warranty assurance; for any warranty assurance to be applicable, our explicit confirmation shall be required.
- 2.4 The customer's order shall be a binding offer. We shall be entitled to accept such offer within two weeks by sending an order confirmation note or to ship the ordered item to the customer within such period.
- 2.5 We shall only be required to check our incoming e-mails once a workday. Any e-mail received by us between 9 a.m. and 5 p.m. shall be deemed received at 5 p.m., unless it can be demonstrated that we received it earlier. Any e-mail received outside of these hours shall be deemed received at 5 p.m. on the following workday, unless earlier receipt can be demonstrated. The obligations under BGB Section 312 e (1) Nos. 1 to 3 shall be deemed eliminated by agreement.
- 2.6 Any samples and specimens shall be non-binding samples for inspection. Any purchase based on samples and/or specimens shall be subject to standard industry or normal production deviations. No guarantee as to properties and durability shall be implied as a result of the delivery of samples and/or specimens, unless such guarantee is expressly specified in the order confirmation note.
- 2.7 Samples and specimens shall be returned in perfect condition within four weeks at the latest. If they are not returned within such period, we shall be entitled to charge for the sample the purchase price specified in our current price list. Price lists can be requested from us at any time.
- 2.8 Unless otherwise expressly agreed upon, the details published by us in catalogs, brochures and other publications in any form whatsoever conclusively characterize the properties of the products delivered by us and their possible uses. Any other manufacturer's information relating to products not made by us shall not be binding. The data provided by us do not constitute any guarantee as to quality or durability and reflect our current state of knowledge.
- 2.9 Even after confirmation of order, we reserve the right to make any change necessary to accommodate technical progress.

3. Prices and Terms of Payment

- 3.1 Unless otherwise provided for in the order confirmation note, our prices shall be ex works and include loading in the factory, but exclude packing, freight, conveyance, insurance, customs duty, costs that may be incurred for any authentication, legalization of trade documents, official permits, as well as any other impost, fee and tax levied outside the Federal Republic of Germany. Furthermore, prices shall be exclusive of the value-added tax or sales tax applicable at the time of invoicing, which the customer shall pay to us additionally.
- 3.2 Unless otherwise stipulated in the order confirmation note, the purchase price shall be payable immediately without any deduction. For any settlement discount to be deducted, specific written agreement shall be required.
- 3.3 Unless any other term of payment has been agreed, payment shall be deemed defaulted if no payment has been made within 30 days of invoicing. Default interest shall be calculated on a per annum basis at 8 percentage points above the relevant base interest rate, as specified in BGB Section 247. This shall not preclude the claiming of a higher legal interest rate or of any further damage.
- 3.4 Payments shall be made in euros (€), free of postage and charges. Payments shall be made by bank transfer only; payment by bill of exchange or by check shall not be recognized as performance of the obligation to pay. The timeliness of payment shall be judged on the basis of the date on which the money is credited to our bank account. You have fulfilled your obligation to pay if we can use, without any restriction, the amount invoiced and if there are no more restitution reservations.

- 3.5 The Parties may agree that the customer shall open an irrevocable documentary credit through his bank or any other bank acceptable to us. In such a particular case, the credit shall be opened in accordance with the General Customs and Practice for Documentary Credits, as applicable, which currently is the 2007 Revision of ICC Publication No. 600.
- 3.6 The customer shall only be entitled to offset claims against counterclaims if his counterclaims are final and absolute, are undisputed or have been recognized by us. Moreover, the customer shall be entitled to exercise a right of retention only in so far as his counterclaim is based on the same contractual relationship. The customer shall have no right of retention under BGB Section 320 (2) on grounds of partial performance.
- 3.7 If a delivery or service qualifies for exemption from value-added tax or sales tax, the customer shall have the duty to provide the required proof and/or assist in obtaining it. When it comes to intra-Community deliveries of goods under Section 6 a of the German Turnover Tax Law (UStG), the customer shall communicate his VAT ID no., prove his status as an entrepreneur and help submit book-based and document-based evidence of export shipments. Should the local tax authority refuse to grant exemption from sales tax, the customer shall hold us harmless from and/or indemnify us against sales tax, interest, delayed payment surcharges and any other incidental costs, unless we are responsible for such refusal to grant exemption. We shall only be obligated to lodge a legal remedy at the customer's request if the latter pays an adequate advance on the costs of the legal remedy procedure, in addition to the indemnification provided for the preceding paragraph.
- 3.8 If we learn of facts, after accepting the order, which cast reasonable doubt on the customer's solvency, we shall have the right to demand that full payment be effected or relevant security be deposited before delivery will be made and/or to withdraw from the contract after a time limit set has produced no result. In addition to an existing delay in payment, relevant information, which is obtained with the diligence of a prudent businessman from a bank, credit bureau or a company transacting with the customer, shall be deemed proof of reasonable doubt about the customer's solvency. If delivery has already been effected, the invoiced amounts concerned shall be payable immediately, irrespective of the terms of payment agreed, with bills of acceptance to be returned, as appropriate.

4. Delivery Time and Delay in Delivery

- 4.1 Delivery periods shall start at the order confirmation date, but not before the customer's obligations have been fulfilled in a timely and proper manner, notably not until the records, permits and releases to be furnished by the customer have been provided and the agreed initial payment has been received.
- 4.2 Delivery periods and deadlines shall be deemed met if the delivery item has left the plant or distribution warehouse or its readiness for delivery has been communicated prior to their expiry. This shall not apply if acceptance is required under the contract or if an installation obligation has been agreed.
- 4.3 Whenever time limits and deadlines not expressly designated as „invariable“ in the order confirmation note are exceeded, the customer may accord us a reasonable grace period for delivery/performance. Only when this additional period of time has elapsed can we be regarded as having fallen into arrears.
- 4.4 We reserve the right of correct and timely self-supply.
- 4.5 In the event of force majeure or other unforeseeable extraordinary and non-culpable circumstances, such as operational breakdowns, strike, lockout, interference by authorities, power supply difficulties, etc., hindering us from performing our obligation in a timely fashion, the delivery period shall be extended by the length of such hindrance plus a reasonable start-up time. This shall also apply if such circumstances occur at sub-suppliers. In important cases, we will notify the customer of the beginning and end of such circumstances as early as possible. If the above circumstances render delivery or performance impossible or unacceptable, we shall be relieved from the obligation to deliver. Specifically, the contract shall expire if official permission is required for the export of our deliveries and services and if a permit requested is not granted. If the delivery period is extended due to the circumstances referred to above or if we are relieved from the obligation to deliver, the customer shall not be entitled to derive any claims for damages therefrom. In so far as we are relieved from the obligation to deliver, we shall restitute any advance payments or deliveries that may have been made by the customer.
- 4.6 Should the performance of any delivery or service be delayed through a fault of ours, the customer shall be entitled to demand lump-sum damages for any completed week of delay, provided he can prove that he has suffered a loss from such delayed performance. During each of the first four weeks, lump-sum damages shall be 0.5% and for each week following thereafter 1% of the value of the part of delivery or service not performed within the time limit set. The total amount of lump-sum damages incurred shall be limited to 5% of the value of the delivery or service not performed within the time limit set. Any further claims by the customer for damages and for compensation of expenses on grounds of delay in delivery shall be excluded. This shall not apply if liability is mandatory, as in the event of willful intent or gross negligence and/or for injury to life, body or health. No change of the burden of proof to the customer's disadvantage shall be associated with that.
- 4.7 This shall not affect the customer's legal right of rescission, but presupposes that we are responsible for the delay incurred.
- 4.8 Once a delay has occurred, we shall be entitled to notify the customer of a new presumed date of delivery. In connection with such notification, we can furthermore demand, while setting a deadline, that the customer state whether he will withdraw from the contract on grounds of delay and/or he will claim damages or compensation of expenses instead of performance or whether he will insist on delivery. Should the customer then fail, within the time limit set, to make a statement, an unambiguous statement or a statement to the effect that he insists on delivery, his rights of rescission and to claim damages and/or compensation of expenses instead of performance

shall be excluded if we fulfill our obligation within the new time limit notified pursuant to Sentence 1. When making the request provided for in Sentence 2, we will specifically point out to the customer what effect his conduct will have pursuant to Sentence 4.9

If dispatch is delayed at the customer's request, we shall be entitled to demand payment and issue the relevant invoice at the original delivery deadline. This shall apply even if the original agreements of the contract do not obligate the customer to make any advance payment. Starting one month after notification of readiness for dispatch, we may bill the customer, for the storage costs incurred, 0.5% of the order value for each commenced week of delay. The customer shall be allowed to provide proof to the effect that no damage or decrease in value has been caused at all or that such damage or decrease in value is considerably lower than the lump sum. After a reasonable time limit set by us has elapsed and after we have given appropriate advance notice, we shall also be entitled to use the delivery item concerned in other ways and to effect delivery to the customer within a reasonably extended period of time. The provisions of this clause shall also apply if the customer is in delay of taking delivery.

5. Delivery, Passing of Risk and Dispatch

- 5.1 Partial delivery on a reasonable scale shall be permissible.
- 5.2 The risk shall pass to the customer when the item is transferred to the forwarder or carrier, at the latest when it leaves the plant or the distribution warehouse. This shall also apply if carriage-paid delivery has been agreed. The dispatch shall be effected on the customer's behalf.
- 5.3 If the dispatch is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer at the date at which the item is ready for dispatch. At the customer's request and expense, we shall, however, be obligated to effect the insurance cover he demands.
- 5.4 We shall insure the shipment against theft, breakage, transport, fire and water damage, as well as other insurable risks at the customer's request and expense.

6. Reservation of Title

- 6.1 We shall retain title to the delivery item until all the payments from the business relationship with the customer have been received. If the customer acts in breach of contract, notably when he is in payment arrears, we shall be entitled to repossess the delivery item. Repossession or the assertion of the reservation of title shall not require any withdrawal by us. Such acts or seizure of the delivery item by us shall not constitute withdrawal from the contract, unless we expressly declare so in writing. Following repossession of the delivery item, we shall be entitled to utilize such item. The proceeds from such utilization shall be credited against the customer's liabilities, less reasonable utilization costs.
- 6.2 The customer shall treat the delivery item with care and, if so requested by us, sufficiently insure it against damage while the reservation of titles is in effect. The customer shall already now assign to us any claim he may have against the insurer.
- 6.3 In the event of seizure or any third-party interference, the customer shall immediately notify us thereof in writing, so that we can lodge a suit pursuant to Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the court and out-of-court costs incurred in connection with a suit under ZPO Section 771, the customer shall be liable for any loss we sustain.
- 6.4 The customer shall be entitled to resell the delivery item in the ordinary course of business. However, he shall already now assign to us any claim to the value of the final amount invoiced (including value-added tax/sales tax) which he may accrue against buyers or third parties from such resale, irrespective of whether the delivery item was sold without or after processing. Even after assignment, the customer shall be entitled to collect such claims. This shall not affect our right to collect the claim ourselves. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in payment arrears and, most of all, no application for insolvency proceedings has been filed or payments have stopped. If the obligation of non-collection does not apply, we may demand that the customer reveal to us the assigned claims and the debtors thereof, provide any information that may be required for collection, surrender to us corresponding records and advise the debtors of the assignment.
- 6.5 The processing or transformation of the delivery item by the customer shall always be effected on our behalf. Should the delivery item be processed together with other objects not owned by us, we shall acquire co-ownership of the new object in the proportion of the value of the delivery item to the other processed objects at the time of processing. Moreover, the same shall apply both to the object created by such processing and to the item delivered under reservation.
- 6.6 Should the delivery item be inseparably mixed with other objects not owned by us, we shall acquire co-ownership of the new object in the proportion of the value of the delivery item to the other mixed objects at the time of mixing. If the mixing is carried out in such a way that the customer's object is to be regarded as the principal object, it shall be deemed agreed that the customer shall assign proportionate co-ownership to us. The customer shall safeguard on our behalf the sole ownership or co-ownership thus created.
- 6.7 For the purpose of securing our claim, the customer shall assign also any and all claims, including any ancillary rights, he may be entitled to against any third party as a result of the delivery item being connected to a plot of land.
- 6.8 At the customer's request, we shall release the securities we are entitled to if the realizable value of our securities exceeds the claims to be secured by more than 10 %. We shall be responsible for the selection of the securities to be released.
- 6.9 If the law governing the territory where the delivery item is located does not allow any reservation of title to be made, we shall be entitled to exercise any right that we are allowed to reserve in respect to the delivery item. The customer shall have the duty to cooperate in any measure that we wish to take in order to protect our ownership right to the delivery item or, instead of such ownership right, any other security right. Spe-

cifically, we shall be entitled to request that the customer furnish other equivalent security (e.g., a guarantee).

7. Rights to Software

- 7.1 Any and all software shall remain our property. Software, documentation and updates shall not be made accessible to any third party without our prior written approval and shall neither be copied – not even for internal purposes – nor duplicated in any other form whatsoever. This shall not affect the right to make a back-up copy and the rights specified in Section 69 d (3) and Section 69 e of the German Copyright Act (UrhG).
- 7.2 A non-exclusive and non-transferable right to use software, associated documentation and updates for the internal operation of the products for which programs are supplied shall be granted hereby.
- 7.3 Source programs shall not generally be made available. They shall be provided on the basis of a separate written agreement only.

8. Defects in Material and Title

- 8.1 We shall provide the promised services in a manner that will reflect the state of the art at the time when the order is placed, meet the relevant provisions of law and take the standards of the industry into account.
- 8.2 If our performance exhibits any defect in material or title (hereinafter referred to as „defect“), whose cause already existed at the passage of risk, the customer shall be entitled to subsequent performance, which, at our option, may take the form of rectification or replacement, with the proviso that we shall always be entitled to two rectification attempts. This shall not apply in the event of a recourse pursuant to BGB Section 478. We shall bear the expenses required for subsequent performance – such as wage, material, transport and travel costs – only if they do not increase as a result of any delivery item being subsequently transferred to a location other than the customer's registered office, unless such transfer constitutes a case of delivery recourse under BGB Sections 478 and 479 or such transfer is in line with the intended use. Replaced parts shall become our property and shall be returned to us.
- 8.3 If subsequent performance fails, the customer shall be entitled, at his option and without prejudice to any claims for damages and for compensation of expenses that may exist pursuant to Clause 9, to reduce payment or – if our breach of contract is substantial – to withdraw from the contract.
- 8.4 Whatever the case, prerequisites for any liability on our part for defects shall be that
 - a) caused by improper use, incorrect installation and/or start-up, faulty or negligent handling, notably by insufficiently trained personnel, or by the customer or third parties using inappropriate equipment and/or replacement material, by natural wear and tear, deficient construction work, chemical, electrochemical or electrical influences, in so far as such circumstances are not attributable to any fault of ours. If our order confirmation note expressly points out that proper equipment and/or replacement material shall be obtained from us, any equipment and material obtained and used from third parties without our explicit consent shall be deemed improper in this context. Whenever this is the case, the customer shall have the duty to prove that such equipment and/or replacement material cannot have any effect on the function and wear of the product. Without any explicit reference in the order confirmation note being required, the same shall apply to parts and/or assemblies of the product which are exchanged by the customer or third parties;
 - b) the customer, while accepting a defective product even though he is aware of the defect, has, at the time of acceptance, reserved the rights available on grounds of defects;
 - c) the customer has carefully inspected the products delivered for completeness and propriety immediately after their arrival at his location, even if samples or specimens had been sent previously. Defects shall be reported in writing within eight days after receipt of the delivery item at the destination, or – if such defects were not detectable through proper inspection – within eight workdays following their detection. What is more, any defect detectable upon delivery shall be reported to the carrier, and the latter shall cause such defects to be recorded. If defects in quantity and weight had already been detectable upon delivery following the above inspection obligations, the customer shall, upon receipt of the products, raise complaints to the carrier about such defects and get written acknowledgment of the complaint raised. In the event that damage is detected after delivery, we shall assume liability only if the customer reports the complaint in writing to the carrier immediately after detecting the damage – but not later than 14 days after taking delivery – and advises us of such complaint in writing without delay. If damaged products arrive late, we shall be liable if the carrier is notified within 21 days after such products have been made available to the customer. In such a case, too, we shall be notified in writing of the complaint without delay. Complaints shall contain a description of the defects, which shall be as detailed as possible,
 - d) the customer is not in payment arrears, taking into account retention of a reasonable guarantee, as specified in Clause 8.8.
- 8.5 The customer shall afford us the time and opportunity required for performing any rectification and replacement delivery that we deem necessary at our reasonable discretion. Otherwise, we shall be released from any liability for consequential damage occurring because the customer failed to give us the time and opportunity required for effecting the necessary remedial measures and/or replacement deliveries. Only in urgent cases endangering operational safety and for the purpose of averting damage of disproportionate dimensions – of which we shall be informed immediately – or if we have run into a delay in remedying the defect shall the customer be entitled to correct the defect himself or have it corrected by a third party and to claim compensation from us for the costs incurred.
- 8.6 Claims arising from defects shall elapse after 12 months. This shall not apply in so far as claims are based on any intentional conduct attributable to us or in so far as BGB Section 438 (1) No. 2 (structures, objects for structures), Section 479 (1) (claims un-

- der a right of recourse), Section 634 a (1) No. 2 (construction defects) are applicable and longer time limits are prescribed, therefore. We shall be liable for replacement parts and/or rectification until the period of limitation applicable to the original delivery item elapses.
- 8.7 In so far as the customer accrues any claim against us under a right of recourse pursuant to BGB Section 478, we shall be liable only if the customer has not made any agreement with his buyer which goes beyond the statutory claims arising from defects and has not exempted the buyer from statutory inspection and complaint obligations. Sentence 3 of Clause 8.2 shall apply accordingly. If the customer is held liable for any defect of the newly produced delivery item, he shall notify us thereof immediately. He shall make his buyers undertake relevant commitments if they are entrepreneurs. We reserve the right to meet any claim asserted by the buyer against the customer by way of entering into contract with the buyer. In such a case, the meeting of the buyer's claims shall be regarded as fulfillment of the claims which the customer may have.
- 8.8 In the event of complaints, the customer may withhold payments only to an extent that is in reasonable proportion to the expected defect removal costs. Again, such retention shall be permissible only if the customer's claims are undisputed or final and absolute. Whenever such complaint is unjustified, we shall be entitled to ask the customer to reimburse us for the expenses incurred.
- 8.9 The preceding provisions do not involve a change of the burden of proof to the customer's disadvantage.
- 9. Claims for Damages and Compensation of Expenses**
- 9.1 We shall be liable under applicable law if the customer claims damages or compensation of expenses (hereinafter referred to as „claims for damages“) based on willful intent or gross negligence, including willful intent and gross negligence committed by our representatives or vicarious agents. Also, we shall be liable under applicable law if we have culpably violated a material contractual obligation, as well as in cases of injury to life, body or health. Material contractual obligations are those obligations that must be fulfilled to make proper execution of the contract possible and on whose fulfillment the contracting parties can regularly rely. Furthermore, we shall be liable under applicable law if and when we have assumed guarantees, unless such guarantees give the customer rights which do not pertain to statutory liability for defects and whose restricted content was pointed out upon the assumption of the guarantee in question.
- 9.2 Damages for breach of a material contractual obligation shall be limited to the foreseeable, typical damage in so far as no willful intent or gross negligence and no liability for injury to life, body or health or from any assumed guarantee are involved. Such claims for damages shall elapse after 12 months.
- 9.3 Except as provided above, any liability for damages shall be excluded, irrespective of the legal nature of the claim asserted. Specifically, we shall not assume liability for damage not caused to the delivery item itself, such as loss of profit and other property damage sustained by the customer.
- 9.4 The mandatory provisions of the Product Liability Act shall remain unaffected.
- 9.5 The customer's claims for compensation of expenses shall be limited to the amount of the interest he holds in the performance of the contract.
- 9.6 In so far as our liability is excluded or limited, such limitation shall also apply with respect to the personal liability of our employees, workforce, staff, representatives and vicarious agents.
- 9.7 The preceding provisions do not involve a change of the burden of proof to the customer's disadvantage.
- 10. Manufacture to Customer's Instructions**
- 10.1 As far as manufacture to clients' drawings, samples and other instructions given by the customer is concerned, we shall not assume any guarantee and liability for the functionality of the product and for other defects in so far as they are rooted in the customer's instructions.
- 10.2 The customer shall indemnify us against any third-party claims, including those arising from product liability, for damage caused by the product, unless we caused such damage in a willful or grossly negligent manner.
- 10.3 The customer shall give us the guarantee that the manufacture and delivery of the product made to his instructions does not infringe upon any third-party property rights. If any property right is asserted against us, we shall be entitled, without legal examination of any third-party claim that may exist, to withdraw from the contract after hearing the customer, unless the third party in question abandons the assertion of such property rights through a written statement to be made to us within eight days. The customer shall compensate us for any damage sustained as a result of such property rights being asserted. In the event of any withdrawal, we shall be compensated for the work performed so far. This shall not affect any claims for damages or any further rights which may be available under applicable law.
- 10.4 The molds, tools and design records produced for the execution of the order shall be our exclusive property. The customer shall not have any right to them, even if he shares the costs incurred in producing molds, tools and design records, unless any other agreement has been explicitly made.
- 11. Taking Equipment Back and Disposal**
- 11.1 Unless otherwise agreed with us, the customer shall properly dispose of the product at his own expense and in conformity with applicable law, when the use of the product delivered ceases.
- 11.2 The customer shall release us, as the manufacturer, from any obligation to take old electrical equipment back – e.g., under Section 10 (2) of the German Electrical and Electronic Equipment Law (ElektroG) („manufacturer's obligation to accept returned goods“) and/or his country's standard for the implementation of the RoHS Directive (Directive 2002/95/EC) and/or regulations pertaining to this directive – as well as from any third-party right associated with it.
- 11.3 The customer shall ensure that any third party, to which he transfers the product delivered and which does not use the product in a private household, undertake the commitment provided for in Clause 11.1. Any claim resulting from non-compliance with these stipulations shall be at the customer's expense.
- 11.4 Our right to acceptance/release by the customer under Clauses 11.1 and 11.2, as well as to insist on his imposition of relevant obligations upon his buyers, and/or our right to disposal and acceptance by the customer at his own expense under Clause 11.3 shall not elapse until after two years after actual use of the equipment has definitively ended.
- 12. Place of Performance, Place of Jurisdiction and Governing Law**
- 12.1 The place of performance for delivery shall be the manufacturing plant and our distribution warehouse, respectively. The place of performance for payment shall be our place of business.
- 12.2 The contract shall exclusively be governed by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) and the rules of private international law shall not apply.
- 12.3 In the event of any dispute arising out of or in connection with the present contract, we shall be entitled to choose between recourse to general courts of law and to arbitral tribunals. Should any claim be asserted against us as a result of any dispute arising out of or in connection with the present contract, we shall be obligated to exercise our option within a reasonable period of time prior to the start of legal proceedings if the other Party so requests in due course. Only in the event of a refusal to choose or a late choice do we waive the defense of arbitral jurisdiction already now.
- 12.4 If recourse to arbitration proceedings is chosen, the following shall apply:
Any disputes arising out of or in connection with this contract or its validity shall be finally decided pursuant to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) in force on the date when the contract is concluded and without recourse to the ordinary courts of law.
The arbitral tribunal shall be composed of three arbitrators.
The place of arbitration shall be our place of business.
The procedural law of this place shall be applied if the Rules of DIS do not provide for any relevant regulations.
The language of the arbitral procedure shall be German.
The substantive law of the Federal Republic of Germany shall apply without reference to any other law. The application of the United Nations Convention on the International Sale of Goods – U.N. Sales Convention (CISG) – and the reference regulations of the private international law shall be excluded.
The reasons for the arbitration award shall be given in writing. The court of arbitration shall also decide on the costs of the proceedings and Parties necessarily incurred expenses.
- 12.5 If recourse to general courts of law is chosen, the following shall apply:
The place of jurisdiction shall be our place of business. However, we shall also be entitled to sue the customer at any other legal venue.
- 12.6 If individual provisions of the contract are or become invalid, the validity of the remaining terms of the contract shall not be affected. The eliminated provision shall be replaced by a term that comes the closest to the purpose of the provision that has been eliminated.