

**Purchasing General Terms & Conditions**  
for  
**HOERBIGER companies registered in AUSTRIA ("Buyer")**  
for goods and services with the exception of direct  
production material for the automotive industry

**1. Scope, Form**

**1.1** Subject to the second sentence of section 1.2, these General Purchasing Terms & Conditions ("**GTC**") shall apply for all contractual agreements made by the Buyer with business partners and suppliers ("**Seller(s)**"). The GTC shall only apply if the Seller is an entrepreneur (i.e. a natural or legal person, a partnership with legal personality or any other independent legal entity with legal capacity who or which is classed as an entrepreneur within the meaning of sections 1 et seq. of the Austrian Commercial Code (UGB) (*Unternehmer*) and for the business of whom or which the transaction to be concluded belongs) 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 "**Performances**"). **However, the GTC shall not apply for contracts for the purchase of direct production material for the automotive industry; such contracts are subject to particular purchase terms of the Buyer, which can be retrieved from the service portal of the Buyer's purchase department ([procurement.hoerbiger.com](http://procurement.hoerbiger.com) (go to Download)). Unless otherwise agreed, the GTC shall apply in the version applicable at the time of the Buyer's purchase order or at any rate 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 Download)).**

**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** References to sections refer to the corresponding clauses in these GTC.

**1.5** Special agreements made with the Seller in individual cases (including subsidiary agreements, additions and amendments) shall always take precedence over these GTC. Subject to evidence to the contrary, a written contract or the written confirmation of the Buyer shall prevail for the content of such agreements.

**1.6** 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.

**1.7** References to the validity of statutory provisions are for the purposes of clarification only. The statutory regulations shall therefore still apply, even without any such clarification, unless

they are immediately amended or explicitly excluded in these GTC.

**1.8** The Seller shall inform the Buyer in full and without undue delay of changes to its trading name, changes of legal form and changes in its participation, shareholder or ownership structure that have a material effect on the supply relationship between the Buyer and the Seller. A change having a material effect on the supply relationship exists in the case of a transfer of all or essentially all of the assets of the Seller, a merger or demerger of the Seller with or to another legal entity, the conclusion of a controlling or profit and loss transfer agreement by the Seller as the controlled company or the acquisition of at least twenty-five (25) percent of the voting rights in the Seller's company by one or more purchasers acting in common in one or more transactions.

**1.9** Definition of terms, unless used only for individual sections:

- (a) "Acceptance": see section 2.2
- (b) "Buyer": see section 1.1
- (c) "Force Majeure": see section 5.1
- (d) „Further Processing“: see Section 10.9
- (e) "Goods": see section 1.2
- (f) "GTC": see section 1.1
- (g) "In writing": includes text form (*Textform*), e.g. by email or electronic data exchange, unless Written Form is expressly required
- (h) "New Property Rights": see section 11.3
- (i) "Performances": see section 1.2
- (j) "Previous Property Rights": see section 11.6
- (k) "Seller": see section 1.1
- (l) "Services": see section 1.2
- (m) "Working Days": days with the exception of Saturdays, Sundays, public holidays and shutdowns at the Buyer's location
- (n) "Written Form": handwritten signature (in the original) by the authorized representative, unless otherwise required by law

**2. Conclusion of Contract, Reservation of Changes**

**2.1** The Buyer will in principle make binding purchase orders electronically, in which case the purchase order does not need to be signed, or in writing. The Seller shall advise the Buyer of obvious errors (e.g. misspellings and errors in calculation) and incompleteness in the purchase order including order documents so that the purchase order can be corrected or completed prior to acceptance, failing which the purchase order shall be deemed null and void and the contract not concluded.

**2.2** The Seller is required to confirm purchase orders of the Buyer in writing within a period of three (3) working days or in particular to execute such purchase orders by sending the Goods without reservation ("**Acceptance**").

**2.3** Late Acceptance or a deviating confirmation of order by the Seller will be deemed a new offer and shall require express acceptance by the Buyer.

**2.4** The Buyer shall have the right to demand changes with regard to the Performances 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 consideration in any such demands for changes, i.e. the changes must be conscionable for the Seller, which shall in particular be the case if the change is minor and/or objectively justified. The Seller shall be bound to propose changes to the Buyer which it considers necessary or expedient having regard for changes in legislation or other

mandatory provisions or on other grounds. 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. The Seller shall execute the change on and in accordance with the Buyer's demand regardless of any agreement on an adjustment of the remuneration.

### 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. The Seller shall be bound to notify the Buyer in writing without undue delay if it expects to be unable to meet agreed delivery periods, for whatever reasons.

**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 the case of series orders, if the Seller is in default (*Schuldnerverzug*) even with a partial supply or service the Buyer shall have the right, after a reasonable period of grace (*Nachfrist*) set for subsequent performance 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 provisions (section 918 (2) of the Austrian General Civil Code (ABGB)). However, the Buyer shall also have the right to choose to render itself or to obtain from third parties some or all of the Performances 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 Performance 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 by the delay (*Vertragsstrafe*) at one (1) percent of the net price per full 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, in which case this clause shall be without prejudice to the assertion of such claim. 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.

**3.6** Rights of the Buyer already accrued in the case of default by the Seller shall continue to exist even if the Buyer subsequently consents to a change in the agreed delivery period.

### 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 some or all of the Performance it owes rendered by third parties (e.g. subcontractors). Any consent of the Buyer shall not release the Seller from its sole responsibility with regard to the selection and use of the third parties (e.g. subcontractors) and their services (section 1313a ABGB). In this case the Seller shall in particular be bound to agree the requirements applicable between the Buyer and the Seller with the third party in writing, to monitor and ensure compliance by the third party, and to remedy deviations. The Seller shall bear the procurement risk for its Performances.

**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. If the Buyer is late in acceptance pursuant to section 4.7, this will be regarded as equivalent to delivery or an acceptance procedure.

**4.4** The delivery notes must contain all content pursuant to DIN 4991 or VDA 4912 or as specifically requested by the Buyer, in particular the Buyer's purchase order number and the Seller's supplier number. The Seller shall also make the delivery documents required by the Buyer in accordance with the Buyer's requirements available in digital form pursuant to VDA 4987 (ASN Advanced Shipment Notification). If the delivery note is missing or incomplete, the Buyer will not be responsible for the resulting delays in processing or payment and default in payment (*Zahlungsverzug*) by the Buyer is excluded to that extent. The Buyer must also be sent a corresponding shipping notification having the same content separately from the delivery note. Goods consignments must always be identified with a label (Global Transport Label GTL pursuant to VDA 4994).

**4.5** If the Performances rendered by the Seller for the Buyer are performances of a work (*Werkleistungen*) (e.g. design services, prototypes, resources, repairs, programming services), the Buyer will conduct an acceptance process for these Performances 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 eligible 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 with the legal consequence set out in section 1168 ABGB.**

**4.6** Unless particularly regulated in the Buyer's logistics and packaging requirements, the Seller shall pack the Performance 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.**

**4.7** The statutory provisions shall apply for the occurrence of delay in acceptance (*Gläubigerverzug*) by the Buyer. However, even then the Seller must expressly offer its Performance to the Buyer if a particular or determinable calendar period has been agreed for an action or cooperation by the Buyer (e.g. the provision of material). If the Buyer delays acceptance, the Seller may demand compensation for its additional expenses in accordance with statutory provisions. If the contract concerns a non-fungible item to be manufactured by the Seller (customization), the Seller shall only accrue further rights if the Buyer undertook to cooperate and is at fault for the lack of cooperation.

**4.8** 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 in the fulfilment of contractual obligations will be excused and can lead to a corresponding extension of the delivery period if and for as long as the cause lies in an event or incident over which the party not performing or not performing properly has no influence, this party is not in default and the party is not culpable. These include in particular official measures and orders, lawful labor disputes (including lockouts and strikes), pandemics and epidemics, floods, storms, explosions, uprisings, natural catastrophes, war and sabotage ("**Force Majeure**").

**5.2** The party concerned may only invoke Force Majeure (*Höhere 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 Performance 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 Performance 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 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 Performances 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 Performances and incidental performances 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 of 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.** In the case of a bank transfer, payment will be considered timely if the Buyer's instruction to transfer reaches the Buyer's bank before the payment period expires; the Buyer shall not be responsible for delays caused by the banks involved in the payment process.

**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 section 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 Performance.



**6.6** The Buyer shall not owe any interest after the due date. Late payment shall be governed by statutory provisions.

**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 Performances.

**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.

**6.9** Each party shall bear the costs of their own banking and payment operations, in particular their foreign bank transfers.

## **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 Performance 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 deficient 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 Performance 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 Performance 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 Performance or of the product created with the Services of the Seller.

**7.8** The Buyer shall not be under any obligation to inspect the Performance or make special inquiries about any defects when concluding the contract. The Buyer shall therefore also have unrestricted claims based on defects (*Mängelansprüche*) if, as a result of gross negligence (*grobe Fahrlässigkeit*), the Buyer remained unaware of the defect when concluding the contract. An exclusion of liability pursuant to section 928 ABGB for defects that were conspicuous at the time the contract was concluded is therefore excluded.

**7.9** The Buyer's duties to inspect and notify defects (*Mängelrügepflicht*) 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 except in the case of obvious defects. 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 in the case of defects discoverable in the sampling procedure or on the basis of an advisable inspection in the ordinary course of business) or of discovery (in the case of defects actually discovered later).

**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** If a material defect (*Sachmangel*) or deficiency in title (*Rechtsmangel*) exists, the Buyer shall have the right to reduce the price (*Preisminderung*) or withdraw from the contract (*Wandlung*) in accordance with statutory provisions. The Buyer shall also be entitled to claim compensation (*Schadenersatz*) and reimbursement of expenses in accordance with statutory provisions. Notwithstanding the statutory rights of the Buyer and the clauses in section 7.10, if the Seller fails to meet its obligation to subsequently perform – at the Buyer's option by rectifying the defect (*Verbesserung*) or supplying an item free of defects

(substitute delivery) (*Austausch*) – within a reasonable period of time set by the Buyer, the Buyer may rectify the defect itself and demand reimbursement from the Seller for its necessary expenses or a corresponding advance. The crediting of saved expenses in favor of the Seller within the meaning of case law on premature self-cure (analogous to section 1168 (1) ABGB) is excluded. If the subsequent performance by the Seller fails or is unconscionable (*untunlich*) for the Buyer (e.g. because of particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no time limit needs to be set; the Buyer will inform the Seller of such circumstances without undue delay, where possible in advance.

**7.12** As part of its quality support for its Performance, 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.

**7.13** Unless otherwise expressly regulated in these GTC, payments, checks or the receiving by the Buyer of the Performance shall constitute neither acceptance of the Performance as conforming to contract nor a waiver of claims arising from warranty (*Gewährleistung*) or other breaches of contract.

**7.14** Segregated or deficient Goods or a segregated or deficient product created with the Services of the Seller will be permanently and appropriately marked as such or deactivated at the Seller's expense after the Seller has allowed the Buyer to do so or after the cause and the quantity of the Goods which were the subject of the complaint have been clarified. The Buyer shall have the right to determine the method of deactivation, ensuring that the purpose intended thereby can be achieved while also giving reasonable consideration to the financial interests of the Seller (particularly with regard to the costs of deactivation), and to require appropriate evidence.

## 8. Recourse against Suppliers

**8.1** The recourse claims within a supply chain (recourse against suppliers, cf. section 933b ABGB: "*Rückgriff in der Lieferkette*") that are allowed by law shall accrue to the Buyer without restriction in addition to the claims for defects (*Mängelansprüche*). This shall not limit the Buyer's statutory right of choice within the scope of subsequent performance.

**8.2** If the Buyer – regardless of the provisions of section 933b ABGB – has provided a guarantee to a customer (entrepreneur or consumer) within the supply chain in the form of secondary warranty remedies or compensation pursuant to section 933a ABGB, it will not be required to

observe the priority of primary warranty remedies vis-à-vis the Seller when exercising its own warranty rights and may likewise demand an immediate reduction in price or rescission or compensation in accordance with these GTCs.

**8.3** The Buyer's claims from recourse against suppliers shall apply even if the defective Goods were processed by the Buyer or another entrepreneur, e.g. through installation in 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 (section 12 of the Austrian Product Liability Act (PHG)). 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 Performance ordered by the Buyer and shall be returned to the Buyer upon fulfillment of the agreed Performance, 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 fulfillment of its obligations.

**10.2** Information within the meaning of section 10 means illustrations, design drawings, commercial and technical data, contractual and official documents, business data, operating procedures, know-how and inventions, as well as further information of a tangible or intangible nature.

**10.3** Objects within the meaning of section 10 mean specimens, prototypes, special resources, material for production or packaging, computer equipment, transport containers and measuring equipment, as well as other objects.

**10.4** Information and objects within the meaning of section 10 are those

- (a) which the Buyer makes available to the Seller;
- (b) for which the Buyer pays an amount stated and agreed by the Seller and/or for which it can be assumed that the amount will be amortized over the receipt of the benefit; or

(c) which are based on indispensable technological knowledge, ideas or equipment of the Buyer and (i) are specifically used for the Performance or (ii) are created thereby or (iii) are manufactured in accordance with the Buyer's instructions.

**10.5** 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.

**10.6** 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.

**10.7** Information and objects may not be disposed of, relocated, consumed, scrapped or transferred as security without the prior written consent of the Buyer.

**10.8** In the case that information and objects are returned, they must be returned properly and – if applicable – in the maintained condition and appropriate transport packaging at the Seller's expense. The Seller may only keep copies of information if this is required by law or for the purposes of proving the fulfilment of performances within the meaning of German product liability legislation and they are kept safe from access by third parties.

**10.9 The 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.**

**10.10** Transfer (*Eigentumsübergang*) of the Goods to the Buyer shall be unconditional and without regard to payment of the price. If, however, the Buyer accepts an offer to transfer made the Seller in the individual case that is conditional upon payment, the Seller's retention of title (*Eigentumsvorbehalt*) shall expire not later than upon payment for the Goods supplied. The Buyer shall retain the right even before payment to resell the Goods in the ordinary course of business with assignment in advance of the claim arising thereby (alternatively with the validity of the simple retention of title (*Eigentumsvorbehalt*) being extended to the resale) and shall further have the right to process, mix or combine them (Further Processing) within the ordinary course of business. All other forms of retention of title (*Eigentumsvorbehalt*) are thereby excluded, in particular retention of title (*Eigentumsvorbehalt*) that are expanded, forwarded or extended to the further processing. This shall be without prejudice to section 10.9.

## 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 11.1 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, including ISO TS 16949 IATF 16949 / ISO 9001, AIAG documents (APQP, PPAP, MSA and SPC) and VDA 6.1 ("Verband der Automobilindustrie"), Directive (EC) 2000/53 ("ELV Directive"), Regulation (EC) 1907/2006 ("REACH Regulation"), Directive (EC) 2002/95 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, the Global Automotive Declarable Substance List ([www.gadsl.org](http://www.gadsl.org)), the Conflict Minerals Regulation pursuant to section 1502 of the Dodd Frank Act and Regulation (EU) 2017/821 and the associated OECD Guidelines Annex II, all in the version applicable at the time of performance.

**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 Performance, 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 Performance, the Seller shall likewise make the corresponding documents available to the Buyer at its expense.

**13.6** The Seller is aware that the Buyer will transport the Performance worldwide by truck, rail and/or air or water.

**13.7** 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.

**13.8** The Seller shall be bound to send information and documents that are required in connection with section 13 to the Buyer promptly and enable their review. The Seller shall ensure that production and the test records and other documents and data – regardless of how they are stored – in connection with the rendering of the Performance can be inspected even after the end of post-series delivery. The Seller shall to that end store the documentation in a suitable, structured manner.

### 14. Labelling of the Goods, Advertising

**14.1** The Seller shall label the Goods in accordance with the Buyer's instructions.

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

**14.3** Without the prior written consent of the Buyer, the Seller may not disclose the fact that it is a contract partner or supplier of the Buyer either in its marketing measures (e.g. when exhibiting the Goods) or in any other manner unless such publication is required by mandatory provisions of law. Even in this case the Seller shall inform the Buyer in good time before any such disclosure.

### 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.

### 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, such as the statistical article number (HS code / harmonized code), the names of preferential goods, certificates of origin and all other necessary information for import and export procedures. 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 Performance;
- (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.

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.

**16.4 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-à-vis the competent government agencies are incumbent upon the Seller and/or the Buyer.**

**16.5** The Seller undertakes to produce, store, process and load Performances 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 personnel used must be reliable. Business partners acting on behalf of the Seller must be informed that they are likewise required take measures to safeguard the above supply chain. 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.

**16.6** The Seller shall be bound to deliver the information and documents required in connection with sections 16.3 to 16.5 in good time, enable their examination by the customs authorities

and obtain any official confirmations that may be required. The Seller shall assist the Buyer in reducing or minimizing the customs duties.

**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.

**16.8** The Seller shall make all reasonable efforts to ensure that its third parties (e.g. suppliers) approved in accordance with section 4.1 also comply with the obligations on the Seller that are set out in section 16.

## 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

The Buyer processes personal data electronically and non-electronically in conformity with the pertinent data protection regulations for the purposes of fulfilling obligations arising from the business relationship, law and business practice and keeps such data for a corresponding period of time. To that extent the personal data may be transmitted to companies of the HOERBIGER Group and business partners registered in the EU and in non-EU countries.

## 19. Limitation Period

**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 performances 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*). This shall be without prejudice to the statutory limitation period for claims in rem of third parties for the restitution of property; the warranty period for deficiencies in title shall likewise be three (3) years and shall begin to run when the Buyer first learns of the deficiency. Subject to the following sentence, however, it cannot end before the expiry of twelve (12) months from the date on which the third party can last effectively assert the right arising from the deficiency in title against the Buyer and enforce it in court. However, the warranty period for deficiencies in title shall end not later than thirty (30) years from the passage of risk.

**19.3** The limitation periods under civil law, including these modifications, shall apply for all contractual claims based on defects. To the extent that the Buyer is entitled to non-contractual



claims for compensation due to a defect, the statutory limitation period shall apply unless expressly otherwise provided for herein.

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

**20.1** Notwithstanding other rights of the Buyer, the Buyer may terminate contracts in whole or in part at any time and will be released from the associated duty of counter-performance, in particular

- (a) if twenty-five (25) percent or more of the voting shares in the Seller are acquired or directly or indirectly controlled by a third party;
- (b) if the Seller is persistently unable to maintain its competitiveness in terms of technology, quality, service and price;
- (c) if supply contracts with customers of the Buyer in which the Performance is used are terminated;
- (d) if the Seller is prevented from being able to render its Performances according to the contract beyond the respective periods of time due to an event of Force Majeure; or
- (e) in the event of an infringement of a provision in section 13.2 and/or section 22.

**20.2** Unless expressly agreed in writing, neither party may bring claims against the other party on the basis of termination of the contract pursuant to section 20.1.

**20.3** In addition, a party can cancel a contract in whole or in part for good cause lying within the control of the other party. Good cause shall in particular exist if

- (a) a material deterioration or considerable risk to the financial circumstances of the other party hereto occurs or threatens to occur and the fulfilment of obligations towards the other party is thereby endangered;
- (b) a material part of the business equipment of a party that is essential for the performance of the respective agreement becomes the object of confiscation, expropriation or a boycott;
- (c) the Seller repeatedly renders deficient Performances despite notice from the Buyer;
- (d) one of the parties hereto breaches material contractual obligations (e.g. suspension/loss of certification, breach of the duty of confidentiality, breach of the code of conduct) despite a warning notice from the other party, if and insofar as these grounds for termination are not already regulated in a previous paragraph; or
- (e) there is a gross breach of trust, e.g. false statements are made about Performances or there is a change in the series process without the prior written consent of the Buyer.

**20.4** To ensure continuous supply, the Seller shall be bound to inform the Buyer in writing without undue delay of events which could indicate that the Buyer has a right of termination within the meaning of section 20.1 or section 20.3.

**20.5** 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 Performance 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 Performance 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.

**20.6** Unless otherwise agreed in writing, following the termination of a contract 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.

**20.7** 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 Performances of the Seller.

## 21. Transfer, Assignment

**21.1** Except in the case of section 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.

**21.2** The Seller shall not have the right to assign (*zedieren*) monetary claims (*Geldforderungen*) and shall in that regard inform the Buyer in writing in good time, but at least 14 (fourteen) working days in advance, so that the Buyer can change the payment recipient, failing which the Buyer may make payment to the Seller with discharging effect.

## 22. Safety Requirements for the Seller at Buyer's Sites

The Seller shall inform its employees prior to entering Buyer's sites of the duty to comply with safety requirements. The safety instructions for external companies are available to download from [procurement.hoerbiger.com](http://procurement.hoerbiger.com) (go to Download).

## 23. Code of Conduct, Minimum Wage

**23.1** 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
- (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

**23.2** 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).

**23.3** 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.

**23.4** The Seller shall implement compliance provisions pursuant to section 22 and shall verify compliance by itself and its suppliers to a reasonable extent.

**23.5** 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.

**23.6** The Seller shall indemnify the Buyer against claims brought by third parties under section 13 of the German Minimum Wage Act (MiLoG), section 14 of the German Posting of Workers Act (AEntG) and section 28e of Book IV of the German Social Code (SGB IV) (and such regulations governing liability and minimum wages in the supply chain in other jurisdictions as are comparable with these German legal standards). If Performances are 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.

#### 24. General Provisions

**24.1** No addition, amendment, cancellation or waiver in respect of any provision contained in these GTC or a purchase order and no consent of a party to a deviation therefrom shall be effective under any circumstances unless it is made in writing and signed by both parties. Even if these requirements are met, this waiver or consent shall only apply for the particular situation and purpose for which it was given. Any communication or request directed at the Seller under particular circumstances or on a particular occasion shall not entitle the Seller to receive a further communication or request under similar or different circumstances.

**24.2** The headings of the provisions contained in these GTC are for convenience only and may not be used to interpret them. Where the GTC contain English terms followed by a German legal term set in parenthesis and in italics, the German legal term shall prevail over the English term in the interpretation of the GTC.

**24.3** 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.

**24.4** No recurring practice between the Seller and the Buyer and no delay or omission by the Seller or Buyer in exercising a right granted under these GTC or a legal remedy shall be deemed a waiver of these rights. Each right granted in these GTC and each legal remedy of the Buyer is cumulative and shall exist simultaneously alongside other rights and legal remedies granted in law or applicable concepts of fairness, depending on the legal regime.

#### 25. Choice of Law and Venue / Arbitration

**25.1** 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 Republic of Austria, expressly excluding the conflicts-of-laws provisions of international private law and international uniform law, in particular the UN Sales Convention (CISG). Until such time as the retention of title is effectively established for the first time, the requirements for and effects of such retention of title (*Eigentumsvorbehalt*) shall be subject to the law of the place where the Goods are stored if the choice in favor of Austrian law is inadmissible or ineffective under that law.

**25.2** If the Seller is an entrepreneur within the meaning of the Austrian Commercial Code (UGB), a legal person under public law or a special fund under public law and

- (a) the Seller 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) **the Seller 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 Munich, Germany. The law applicable in the matter shall be that defined in section 25.1.**

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