



# PABST & RICHARZ

## General Terms and Conditions of Sale and Delivery

### 1. General information and conclusion of contract

- 1.1 These General Terms and Conditions of Sale and Delivery (“Sale & Delivery T&C”) of Pabst & Richarz Vertriebs GmbH (“we/us/ourselves”) shall apply exclusively to traders within the meaning of Section 14 of the German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal capacity acting in the exercise of their commercial or independent professional activity when concluding the legal transaction (“Buyer”).
- 1.2 All deliveries, services and offers shall be made exclusively on the basis of these Sale & Delivery T&C, as amended. If our Sale & Delivery T&C have been introduced into the transaction with the Buyer, they shall also apply to all further business relations between the Buyer and ourselves unless expressly agreed otherwise in writing. Provisions or other General Purchasing Terms and Conditions of the Buyer’s (including general purchasing terms and conditions) shall not apply unless we expressly agree to them and consent to their applicability in writing, even if we do not expressly object to them. Our Sale & Delivery T&C shall apply even if we carry out the delivery to the Buyer without reservation in the knowledge that the Buyer’s terms and conditions conflict with or deviate from our Sale & Delivery T&C.
- 1.3 We reserve all property rights and copyright to all illustrations, drawings, calculations and other documents.
- 1.4 Our offers are non-binding and subject to change unless they are expressly identified as binding or contain expressly binding commitments. They are merely solicitations for orders from the Buyer. The Buyer shall be bound to its order as a contract application for at least 14 calendar days (at least 5 business days in the case of electronic orders) after our receipt of the order. Binding offers on our part shall be valid for a maximum of 2 weeks unless stated otherwise.
- 1.5 A contract is not made until we confirm the Buyer’s order in writing with an order confirmation, even for ongoing transactions. In case of delivery within the binding period for the Buyer’s offers in accordance with item 1.4, our delivery under the contract can take the place of our order confirmation.
- 1.6 If the agreed shipment is delayed at the Buyer’s request or for reasons for which the Buyer is responsible, we will be entitled to store the contractual goods at the Buyer’s expense and risk of loss and deterioration of the goods, starting at the end of the reasonable period set in writing in our notification of readiness for shipment (“Ready-to-Ship Notice”). The stored goods shall be insured only at the special written request of the Buyer, with costs to be paid by the Buyer. Further rights such as rescission of the contract shall remain unaffected thereby.
- 1.7 We reserve the right to change the specifications of the goods at any time insofar as legal constraints make this absolutely necessary, provided such change does not result in a deterioration in quality and usability for the usual purpose or, if suitability for a specific purpose was agreed, for that purpose.



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- 1.8 Any documents, drawings, weight specifications, samples etc. that may be enclosed with our offer shall not constitute a guarantee nor shall any procurement risk be assumed thereby unless this is expressly identified in writing as “legally guaranteed” or “assumption of procurement risk”.
- 1.9 Unless otherwise agreed in writing, our deliveries shall comply with the legal requirements applicable to the respective product at the location of our registered office. Compliance and compatibility with any different laws and official requirements applicable at the place of delivery or at the location of the Buyer’s registered office (if different) shall not be required unless this has been expressly agreed in writing between the parties. The same shall apply to legal and official requirements in territories where the product is resold or delivered by the Buyer.
- 1.10 Insofar as written form is specified in these Sale & Delivery T&C, this shall also be satisfied by electronic statements, e.g. E-mail, digital/electronic signatures (e.g. Docu-Sign) and statements sent through a shared EDP/EDI system.

## 2. Prices and terms of payment

- 2.1 Prices are set in euros and unless otherwise agreed are ex works (ExW Incoterms 2020) plus statutory VAT and any surcharges in accordance with the applicable VAT regulations (including for transport containers). VAT shall be shown separately on the invoice at the applicable legal rate on the billing date.

There shall be no charge for packaging if it is of glass or simple cardboard; otherwise a separate amount shall be charged in accordance with our general price list applicable on the contract date, which we will provide to the Buyer on request.

The quantities determined by us shall be controlling for the pricing of the goods.

- 2.2 Payments must be remitted directly to us and, absent other agreed arrangements, immediately after delivery and receipt of invoice, net cash and without deductions. We reserve the right to refuse cheques. Cheques shall be accepted only for the sake of performance; all associated costs shall be paid by the Buyer. If SEPA direct debit was agreed, we will notify the Buyer in advance (pre-notification) no later than three bank business days before the due date of the particular amount.

Payments shall be deemed timely only if we can freely access the funds in our bank accounts as of the value date.

- 2.3 The Buyer shall be able to perform set-off or assert a right of retention only if its claim has been adjudicated finally and without possibility of appeal or is undisputed.
- 2.4 If we learn of facts casting serious doubt on the Buyer’s creditworthiness, we will be entitled to declare all amounts owed to be due and payable. In particular, there shall be serious doubts about the Buyer’s creditworthiness if it is in arrears with at least 1/6 of the invoiced amounts for 6 weeks, if charges made on the basis of SEPA direct-debit authorisations are cancelled (unless we did not satisfy our pre-notification obligation or did not fully or timely do so [see item 2.2]), if cheques are not honoured or if we learn of unsuccessful enforcement measures, including by third parties.



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In addition, we will be entitled to demand advance payment or the provision of full security for outstanding deliveries, or to withhold performance until the consideration has been paid or security has been provided for it. At the same time, all discounts and other price reductions or rewards that were granted or promised shall be cancelled so that the gross prices invoiced shall be due for immediate payment. If the Buyer does not settle all amounts owed or provide security concurrently in exchange for delivery within a reasonable grace period set by us, we will be entitled to rescind the contract in accordance with the legal and contractual provisions, including these delivery and payment terms, and to claim damages in lieu of performance and to prohibit the Buyer from reselling the goods in accordance with item 5.3. The same shall apply if a reasonable grace period is unnecessary due to provisions of law.

### **3. Delivery and delivery periods, condition of adequate upstream supply, force majeure**

- 3.1 Binding delivery and pick-up dates and periods must be agreed expressly and in writing; stated delivery periods shall be non-binding otherwise. For non-binding or approximate delivery and pick-up dates and periods (approx., about, etc.), we will endeavour to honour these to the best of our ability. If an agreed binding delivery and pick-up period is exceeded due to reasons for which we are responsible, we will not be in default unless and until the Buyer sets us a reasonable grace period in writing and such grace period expires, unless the contract is for delivery by a fixed date in accordance with item 3.2. Any agreed binding delivery and pick-up period shall commence only when the Buyer has provided us with all the necessary information and documents. If delivery or pick-up occurs outside normal business hours at the Buyer's request, the Buyer must pay the additional costs incurred. For deliveries with increased demand (e.g. promotional orders), a lead time of at least 4 weeks from the date of order to delivery shall regularly be required unless a shorter lead time is possible and has been so agreed in the specific case.
- 3.2 A contract for delivery by a fixed date shall exist only if we expressly confirmed it as such in writing or if the legal conditions of contracts for delivery by a fixed date are met. The Buyer's mere unilateral designation of an order as a contract for delivery by a fixed date shall not suffice.
- 3.3 If, due to reasons for which we are not responsible, we do not receive goods or services from our suppliers needed for providing the contractual goods required of us, despite proper and adequate contractual coverage at the time the contract was made, or if we do not receive the correct ones or do not receive them in a timely manner, we will promptly so notify the Buyer in writing or in text form. In this case we will be entitled, at our election, to postpone the delivery for the duration of the hindrance or to rescind all or part of the contract on account of the still-unfulfilled portion, provided we have fulfilled the above notification requirement and have not assumed the procurement risk in accordance with these Sale & Delivery T&C.



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The above paragraph shall apply accordingly in cases of force majeure lasting a not insignificant length of time (i.e. more than one week). Cases of force majeure shall include but not be limited to serious disruptions in the health sector (e.g. pandemic, epidemic) including COVID-19, natural disasters (e.g. storm, flood, earthquake), labour disputes, operational disruptions, strikes, riots, armed conflicts or acts of terrorism, shortages of energy, transport or materials due to no fault of our own, intervention by public agencies and all other obstacles which from an objective point of view were not caused by us.

- 3.4 We will be entitled to make partial deliveries and render partial services if and insofar as this is reasonable for the Buyer.
- 3.5 Absent a written agreement to the contrary, we will select the route and means of transport at our reasonable discretion (Section 315 BGB). If the Buyer provides the means of transport, it shall be responsible for providing it punctually; we must be timely informed of any delays and the Buyer shall pay any costs resulting from the delay unless it results from circumstances caused by us.

### **4. Transfer of Risk / Storage costs**

- 4.1 The risk of accidental loss or deterioration of the goods shall transfer to the Buyer when the goods are handed over to the carrier or another person carrying out the transport (including own employees), regardless of whether additional services (such as shipping) are included. This also applies to partial deliveries in accordance with item 3.4. If shipping is delayed as a result of circumstances for which the Buyer is responsible, risk shall transfer to the Buyer at the end of the period indicated in the Ready-to-Ship Notice (see item 1.6). Item 1.7 of these Sale & Delivery T&C shall also apply.
- 4.2 The shipment shall be insured for transport or other damage only if the Buyer so requests in writing and assumes the associated costs.
- 4.3 In the event of default of acceptance or debtor's delay or other culpable violation of the Buyer's duties, the risk of accidental loss or deterioration of the merchandise shall transfer to the Buyer at the time of the default of acceptance or debtor's delay or violation of duties.
- 4.4 If the Buyer itself picks up dangerous goods within the meaning of the regulations on the transport of dangerous goods applicable at the relevant time ("Dangerous Goods Regulations") or has others pick them up, it must ensure that all relevant requirements of the applicable Dangerous Goods Regulations are observed, including but not limited to the features of the means of transport and the training of the driver. Otherwise we must refuse to hand over the goods. In the event that the Buyer is responsible for a culpable violation of Dangerous Goods Regulations, the Buyer shall indemnify us and hold us harmless internally from all losses, claims by third parties and expenses that we may incur as a result, including the costs of appropriate legal defence.



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### 5. Retention of title to the goods

- 5.1 The goods shall remain our property pending payment in full of all amounts owed in accordance with part 2 above (fully effective credit of the paid amount in our business account) arising from the business relationship with the Buyer, including future claims arising from contracts made at the same or a later time ("Goods with Reserved Title"). This shall also apply to any balance in our favour if individual or all amounts owed are added to a revolving account (current account) by us and the balance is drawn. Acknowledgment of the balance shall not affect the retention of title.
- 5.2 Therefore not only simple retention of title shall apply but also all extended forms in accordance with the provisions below: thus also extended, downstream and expanded retention of title including the processing clause (item 5.5), current account/balance clause (item 5.1, sentence 1 and 2) and advance-assignment clause (items 5.3, 5.4, 5.6).
- 5.3 The Buyer shall be authorised to resell the Goods with Reserved Title in the ordinary course of business provided it is not in default of payment to us. However, it shall not be permitted to make other dispositions, including but not limited to transferring such goods as security or pledging them as collateral. We must be notified immediately of any intervention or actions by third parties affecting the Goods with Reserved Title. The Buyer must take all steps necessary to preserve our rights, including urgent measures if necessary.

If the Goods with Reserved Title are not paid for by the Buyer's customer immediately upon resale, the Buyer must attach a condition of reserved title when reselling them.

- 5.4 The Buyer's claims against its customer arising from resale of the Goods with Reserved Title are now hereby assigned to us with all ancillary rights (including VAT), including but not limited to forms of security, and we now hereby accept such assignment. If the assigned claim against the purchaser of the Goods with Reserved Title is added to a revolving account, the assignment shall also apply to the claims from the current account in the amount corresponding to the total amount of the claim from the resale of our Goods with Reserved Title that is added to the current account relationship. We will be authorised to assert the assigned claim in our own name. In the event that Goods with Reserved Title are sold together with other items, the claim against the Buyer's customer shall be deemed assigned in the amount of the delivery price agreed between the Buyer and ourselves insofar as the amounts attributable to the individual goods cannot be determined from the invoice.

Irrespective of this, the Buyer shall be entitled to collect claims as long as it fulfils its obligations to us unless the Buyer is in default of payment or files a petition to initiate insolvency proceedings over its assets, insolvency proceedings have been initiated over its assets or the initiation of such proceedings has been rejected for lack of assets or other circumstances (including but not limited to those set forth in item 2.4) indicate that the Buyer cannot fulfil its payment obligations. In this case the Buyer must disclose the assignment to its customer and provide us with all information, documents etc. that we require in order to assert the claims from the assigned right ourselves.

- 5.5 Modification, processing (including mixing, combining etc.) or transforming of the Goods with Reserved Title by the Buyer shall in all cases be carried out in our name and on our behalf; we are the manufacturer of the item. In this case, the Buyer's remainder to the Goods with Reserved Title



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shall continue in the transformed item but the item shall remain subject to reservation of title. If the purchased item is modified or processed with other items not belonging to us, we will acquire co-ownership of the new item in the ratio of the invoice value of the Goods with Reserved Title to the invoice values of the other processed items at the time of processing. The same shall apply in case of mixing, combining or transforming. If the mixing, combining or transforming is carried out in such a way that the Buyer's item must be regarded as the main item, it shall be deemed agreed that the Buyer shall transfer co-ownership to us in the same proportion and shall keep custody of the resulting individually owned or co-owned item for us free of charge. The resulting co-ownership rights shall be deemed to be Goods with Reserved Title. At our request at any time, the Buyer must provide us with the information needed to enforce our ownership or co-ownership rights.

- 5.6 The Buyer shall also be entitled to resell the goods produced in accordance with item 5.5 in the ordinary course of business. It assigns to us the claims arising from this in accordance with item 5.4. If we have only acquired co-ownership of the processed or new goods, the Buyer only assigns to us that part of the claim corresponding to the proportional invoice value of the Goods with Reserved Title to the invoice value of the new item sold by the Buyer. In all other respects the above provisions set forth in items 5.3, 5.4 and 5.5 shall apply accordingly to the partial claims assigned to us and to our co-ownership rights.
- 5.7 At the Buyer's request we must release the forms of security to which we are entitled if and insofar as the realisable value of our security exceeds the secured claims by more than 10 percent, including default interest and costs; the choice of security to be released shall be ours.
- 5.8 If cheque liability on the Buyer's part is established in connection with the Buyer paying for the purchased item, the reserved title and the underlying claim from the delivery of goods shall not expire before we have effectively encashed the cheque and have unconditional power of control over the funds as drawee.
- 5.9 If we rescind the contract as provided for in contractual provisions including these delivery and payment terms and conditions and/or provisions of law and demand the return of the Goods with Reserved Title, the Buyer must return the Goods with Reserved Title to us at its own expense and risk. Reference is made to item 15.1. The Buyer must send us a detailed list of the remaining Goods with Reserved Title and of the third-party debtors of the claims assigned to us. In the event of serious doubts as to the accuracy of the list we will be entitled to make our own pertinent determinations at the Buyer's premises in order to preserve our rights, for instance by entering storage and shop premises during normal business hours and inspecting all necessary documents and books.
- 5.10 Prior to the complete transfer of ownership to the Buyer, the Buyer must store the Goods with Reserved Title for us free of charge, mark them clearly as our property and store them with sufficient separation from other goods, including other goods from us, in particular goods already paid for, and to treat them with care. It must also adequately insure the Goods with Reserved Title at its own expense, in particular for water damage, fire and theft. Claims against the insurance company arising from any loss relating to the Goods with Reserved Title are now hereby assigned to us in the amount of the value of the Goods with Reserved Title. We now accept such assignment. In addition, the Buyer must notify us in writing if the Goods with Reserved Title are seized or exposed



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to other intervention by third parties. The Buyer must pay any costs incurred by us in connection with the defence of our property against intervention by third parties, including but not limited to costs of legal proceedings including lawyers' fees, if such defence has become necessary due to a culpable breach of duty by the Buyer. The Buyer shall be released from this payment obligation if and insofar as costs are reimbursed by third parties.

- 5.11 If the value of the total existing forms of security exceeds the secured claims by more than 25 percent, we must release security of the Buyer's choice at the Buyer's request. The Buyer must inform us immediately of any seizure or other encroachment by third parties.
- 5.12 In the event of culpable breaches of duty by the Buyer, we will be entitled to the statutory claims against the Buyer unless otherwise specified herein.

### **6. Loss of decredere security**

- 6.1 If a claim is secured by us by way of del credere or a similar mechanism and this security ends (regardless of the legal reason) then in cases in which delivery has not yet been made by us, we will be entitled either to rescind the contract or to fulfil the order only after advance payment of the purchase price in full (prepayment). The Buyer shall not receive loss compensation in the event of rescission.

### **7. Empty containers, packaging and deposit (single-use and returnable deposit)**

- 7.1 The empty containers intended for recycling (returnable containers, reusable containers) as well as all crates, bottles, containers and pallets (loading materials) shall only be provided to the Buyer for the intended use for a limited period of time and shall remain the inalienable property of us or the beverage industry. The Buyer shall not acquire ownership of these even if a cash deposit is paid. The Buyer must return the empty containers and loading materials in proper condition to us within three months of delivery, sorted and with all closures, carriage paid; if the empty containers or loading materials are still needed after the three months, then at the latest immediately after their use is completed. We may refuse to accept unsorted empty containers or will only take them back in exchange for payment of the sorting costs incurred by us. Empty containers or loading materials that do not match what we delivered (including but not limited to items identified as the property of a third party by branding or embossing or that does not match what was delivered in shape, colour, size or bottle roundness or that is damaged or heavily soiled) shall be made ready for pick-up by the Buyer. If the Buyer does not pick up these empty containers within two weeks of receiving written notice that they are ready, we may dispose of them without replacement or compensation. We will explicitly point this out to the Buyer in the aforementioned notice. An account of empty containers and deposits shall be kept for the empty containers circulated and taken back by us, broken down by category of empty containers. If it is evident from this record that the number of empty containers returned in one category is higher than the number of deliveries, we can refuse to accept further empty containers in that category and to refund the deposit. Excess empty containers will be made available to the Buyer. If the Buyer does not pick up these empty containers within two weeks of receiving written notice that they are ready, we may dispose of them without replacement or compensation. We will explicitly point this out to the Buyer in the aforementioned notice. A final statement for the empty containers and loading materials shall be issued upon



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termination of the business relationship.

- 7.2 Deposits are paid on single-use containers in the single-use deposit system in accordance with legal provisions (particularly the German Packaging Law) and the requirements set by Deutsche Pfandsystem GmbH (DPG); we do not accept returns of such containers (except PET-cycle containers).
- 7.3 We collect a cash deposit at the market rate to secure our ownership of the empty containers and loading materials and our right to have them returned. The deposit shall be invoiced with the respective delivery and must be paid plus applicable VAT. If empty containers or loading materials are returned at the same time as a delivery, we can agree with the Buyer that the applicable VAT for the cash deposit shall be charged only for the difference between the newly delivered and the returned empty containers or loading materials, within the framework of the tax regulations. Consequently only the cash deposit value from the balance of the delivery and return of empty containers or loading materials need be paid. Any use of the empty containers or loading materials contrary to one intended, including but not limited to warehousing them or using them as collateral or for bottling operations by the Buyer or by third parties, shall not be permitted and shall entitle us to assert claims for damages, unless the Buyer is not responsible. We may charge the Buyer the applicable replacement value for empty containers or loading materials that have not been returned in the required quantity and in proper condition (including soiling) even after a reasonable grace period has been set, with credit for the deposit paid. The Buyer reserves the right to prove lesser damages.

## **8. Rights of the Buyer in case of defects**

- 8.1 Our obligation shall not go beyond delivering and performing from our own inventory, taking other delivery obligations into account (obligation to deliver from inventory). Assumption of a procurement risk shall not lie solely in our obligation to deliver an item specified only by its category. We will assume a procurement risk and/or provide a guarantee only by virtue of a separate written agreement using the wording “we assume the procurement risk” or “legally guaranteed”. Information in data sheets, service descriptions and brochures shall not constitute a contractual description of the goods unless this is expressly so indicated by the above wording. Product samples shall serve merely as an indication of product characteristics, neither expressing nor implying the assumption of any procurement risk or guarantee nor an assurance of any specific characteristic.
- 8.2 Where we have agreed express and binding provisions with the Buyer regarding quality, characteristics, specifications etc. and/or quantity of the ordered products (“agreed characteristics”), such provisions shall take precedence over the objective requirements of Section 434 (3) BGB. In other respects, unless the parties have expressly agreed otherwise, it shall be assumed that the products are suitable for the use stipulated in the contract provided they correspond to the agreed characteristics. Section 434 (2) No. 3 BGB shall remain unaffected thereby.
- 8.3 The Buyer must inspect the goods immediately after delivery, insofar as this is feasible in the ordinary course of business, and must notify us in writing without delay if a defect is found, within 2 weeks at the latest. By negotiating concerning any notice of defects we do not waive the defence



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that the complaint was not made in a timely manner, was factually unfounded or was otherwise insufficient. If the Buyer fails to give such notice the goods shall be deemed to have been approved unless the defect was not recognisable during the inspection. In other respects Section 377 of the German Commercial Code (HGB) shall apply.

- 8.4 The transport company must also be notified of any defects recognisable upon delivery (including transport damage) and a note must be entered in the freight documents.

Where deficiencies of quantity and weight were already recognisable upon delivery according to the above inspection obligations, the Buyer must also report them to the transport company upon receipt of the products and have the report certified.

- 8.5 In case of a justified report of defects we must provide subsequent performance either in the form of corrective action (removal of defects) or free replacement, at our election. Any claims for damages due to defects shall apply exclusively in accordance with items 9.1, 9.2, 9.3.
- 8.6 Unless expressly agreed otherwise in writing or in text form, we will provide a warranty for material defects for a period of one year from the date of the Transfer of Risk (see item 4.1). This shall not apply in the cases set forth in item 9.2 or if a longer period is mandated by law, for example in the case of Section 478 BGB (recourse in the supply chain).
- 8.7 No claims for defects shall apply in case of merely minor deviation from the contractual characteristics as set forth in item 8.2.
- 8.8 The acknowledgement of breaches of duty must always be made in writing, particularly when it comes to material defects.

### **9. General limitations of liability**

- 9.1 Subject to the following exceptions, we will not be liable in the event of any breach of duties arising from contractual or statutory obligations (no matter the cause in law), including but not limited to claims by the Buyer for damages or compensation.
- 9.2 The exclusion of liability in item 9.1 above shall not apply in the following exceptional cases:
- 9.2.1 Intentional or grossly negligent breach of duty by ourselves or our legal representatives, agents and employees;
  - 9.2.2 Breach of material contractual obligations. "Material contractual obligations" are those whose fulfilment characterises the contract and on which the Buyer may rely;
  - 9.2.3 Injury to life, limb and health, including by legal representatives, agents and employees;
  - 9.2.4 Where we have provided a guarantee for the characteristics of our goods or the existence of a performance result or have assumed a procurement risk within the meaning of Section 276 BGB;



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- 9.2.5 Liability under the German Product Liability Law or other mandatory statutory liability provisions.
- 9.3 In case a charge of only slight negligence is levelled against us or one of our agents or employees and none of the cases in items 9.2.3, 9.2.4, 9.2.5 above applies, we will also be liable in case of a breach of material contractual obligations, with damages limited to the amount typical for the contract and foreseeable at the time the contract was made.
- 9.4 The exclusions and limitations of liability set forth in items 9.1, 9.2, 9.3 above shall apply to the same extent in favour of our executive and non-executive employees and other agents and employees as well as our subcontractors.
- 9.5 Claims by the Buyer for damages arising from the contractual relationship with us can only be asserted within a cut-off period of one year from the start of the statutory limitation period. This shall not apply in cases set forth in item 9.2.
- 9.6 The provisions above shall not imply any reversal of the burden of proof.
- 10. Compliance/export control**
- 10.1 Prior to delivery, in case we become aware of facts within the Buyer's sphere of responsibility justifying an assumption of a possible existing or future violation of applicable export control regulations, sanctions lists, etc., for example in accordance with Regulation (EC) No. 881/2002 or (EC) No. 2580/2001 of the Council of the European Union or any relevant U.S. sanctions lists or an approval requirement in connection with the specific delivery of goods, we are hereby granted a reasonable period of time for further review including applying for any approvals. Any state of default of delivery shall be excluded for the length of this review period and any pending approval procedure.
- 10.2 Should the review reveal that a name is identical to a natural or legal person, group or organisation named in applicable sanctions lists, we will be entitled to withhold delivery and rescind the contract.
- 10.3 Furthermore we will be entitled to rescind the contract if we become aware of facts within the meaning of item 10.2 after delivery has been made.
- 10.4 The Buyer shall give us its assurance that it shall comply with all applicable national and international export control regulations with regard to the transport or export of the goods delivered by us. In case the Buyer is found responsible for a culpable violation of such regulations, it shall indemnify us internally and hold us harmless from all losses we may incur as a result including reasonable expenses, particularly the costs of appropriate legal defence.



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## 11. Special obligations of the Buyer

11.1 In order to ensure that the consumer receives products in flawless condition, the Buyer must ensure storage and transport under appropriate conditions, including but not limited to a frost-proof and cool environment protected from sunlight and other light, and rapid turnover taking into account the dates for minimum shelf life.

## 12. Non disclosure

12.1 The Buyer must keep confidential such facts, documents and knowledge which it learns in the course of the business relationship with us and which include technical, financial, business, product- or market-related information about our company, our product or our customers, provided we have designated the information in question as confidential or have an obvious interest in keeping it confidential (collectively "Confidential Information"). The Buyer shall use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with us in accordance with the contract.

12.2 The disclosure of confidential information by the Buyer to third parties shall require our express prior written consent.

12.3 The non-disclosure obligation pursuant to item 12.1 above shall not apply insofar as it can be proven that the Confidential Information at issue:

12.3.1 is the state of the art available to the general public or such information becomes the state of the art without any involvement on the part of the Buyer or

12.3.2 was already known to the Buyer or is made known to it by a third party authorised to disclose it or

12.3.3 is developed by the Buyer without our involvement and without utilising other information or knowledge obtained through the contractual relationship or

12.3.4 must be disclosed due to mandatory legal regulations or court or official orders.

12.4 The Buyer shall not analyse or exploit in any other way (including but not limited to reverse engineering) any samples, materials, products, components or knowledge made into other physical form that we make available to it or that come into its possession in any other way.

12.5 The parties shall remain at liberty to agree in writing on provisions deviating from and/or supplementing the above provisions as part of a separate non-disclosure agreement. In case of conflict, the non-disclosure agreement shall take precedence over these Sale & Delivery T&C.



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### **13. Third-party property rights**

- 13.1 We will only be obliged to deliver the goods or services free from rights or claims of third parties based on industrial property rights or other intellectual property which we knew about or which we did not know about due to gross negligence at the time the contract was made.
- 13.2 If a third party asserts justified claims due to the infringement of industrial property rights by products supplied by us to the Buyer, we will be liable to the Buyer as follows:
- 13.2.1 At our election we will first endeavour to either obtain a right of use at our expense for the products concerned or modify the product while maintaining the contractually agreed characteristics in such a way that the property right is not infringed, or replace it. If this is not possible for us or if we opt not to do it, the Buyer shall be entitled to its legal rights in accordance with these general terms and conditions.
  - 13.2.2 The Buyer shall have rights against us in case of an infringement of industrial property rights by our products only if it promptly notifies us in writing of the claims asserted by third parties, does not acknowledge an infringement and leaves all defence actions and settlement negotiations to us.
  - 13.2.3 If the Buyer ceases to use the products in order to minimise losses or for other important reasons, it must inform the third party that the cessation of use does not constitute any acknowledgement of an infringement of property rights.
  - 13.2.4 If, as a result of using the products supplied by us, the Buyer is attacked by third parties for infringement of property rights, the Buyer must promptly so inform us and to give us an opportunity to participate in a possible legal dispute. The Buyer must support us in every respect in the conduct of such a legal dispute. The Buyer must refrain from any actions that might harm our legal position.
  - 13.2.5 In other respects there shall be claims for damages only as provided for in part 9.

### **14. Product liability**

- 14.1 The Buyer shall promptly inform us of any product defects, complaints from customers or generally from the market as well as risks when using the contractual products that come to its attention. Any resulting warranty claims by customers against the Buyer shall remain unaffected thereby.
- 14.2 If any third-party claims due to product liability that are asserted directly against us are due to the fact that the Buyer modified the contractual products, their features or packaging or removed existing warning notices, the Buyer shall fully indemnify us and hold us harmless from such claims both internally and externally.



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- 14.3 Irrespective of the foregoing, the Buyer shall provide us with reasonable support in the event of any product recall that becomes necessary or other actions in this context and shall comply with the measures ordered by us to the extent it can reasonably be expected to do so.
- 14.4 If claims are asserted against the Buyer by customers as a result of a product defect, the Buyer must promptly so inform us and give us the opportunity to participate directly in any legal dispute or to coordinate with the Buyer on an ongoing basis in such a dispute. The Buyer must support us in every respect in the conduct of such a legal dispute or, if it conducts the legal dispute itself in agreement with us, it must timely inform us in advance of all cost-triggering measures and allow us to choose lawyers and engage them as needed. The Buyer must refrain from actions that might harm our legal position.

### **15. Other provisions**

- 15.1 The place of fulfilment for all obligations arising from the contract shall be Haselünne for deliveries from our facility in Haselünne, Minden for deliveries from our facility in Minden and Stadthagen for deliveries from our facility in Stadthagen.
- 15.2 If there are any disputes arising from the business relationship, then insofar as the local courts have subject-matter jurisdiction the Local Court of Meppen, Germany, shall have exclusive jurisdiction and venue and insofar as the regional courts have subject-matter jurisdiction the Regional Court of Osnabrück, Germany, shall have jurisdiction and venue. At our election we will also be entitled to bring action at the location of the Buyer's registered office.
- 15.3 All contracts made with us are governed by and shall be construed in accordance with the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 15.4 Changes and amendments to the contract, including these Sale & Delivery T&C, must be made in writing in order to be valid. This also applies to this written-form requirement. The precedence of individually agreed provisions pursuant to Section 305b BGB shall remain unaffected thereby.