

## **General Terms and Conditions of Sale of Thomas GmbH, Langenselbold - Valid from May 2020**

### **§ 1 General, Application**

<sup>(1)</sup> All supplies, services and offers of Thomas GmbH (hereinafter referred to as the “**Supplier**”) as well as the acceptance of orders by the Supplier are subject exclusively to the following “**General Terms and Conditions of Sale**”. These terms form an integral part of all contracts concluded by the Supplier with his contractual partners (hereinafter referred to as the “**Customer**”) with regard to the supplies and services offered by the Supplier and they shall also apply to all future transactions for the sale and/or supply of goods to the Customer, without requiring a further reference to these General Terms and Conditions of Sale.

<sup>(2)</sup> Terms contrary to these General Terms and Conditions as well as deviating conditions of the Customer or any third party shall not apply unless the Supplier has expressly agreed to such terms and/or conditions in writing. The same applies if conditions of the Customer have a normative content, which go beyond the regulatory content of these General Terms and Conditions of Sale. These General Terms and Conditions of Sale shall apply even if the Supplier is aware of conflicting or deviating terms and conditions of the Customer or of conditions of the Customer, which have a normative content, which go beyond the regulatory content of these General Terms and Conditions, and delivers goods or performs services without reservation or refers to a written statement containing the terms and conditions of the Customer or any third party or to a written statement that refers to such.

<sup>(3)</sup> These General Terms and Conditions of Sale apply only to businesspeople within the meaning of Section 14 of the German Civil Code (§ 14 BGB).

### **§ 2 Offer and Conclusion of Agreements, Performance**

<sup>(1)</sup> The Suppliers offers are not binding and are subject to the condition of written order confirmation, unless expressly agreed otherwise in writing. In particular, the offers made by the Supplier are subject to availability and are subject to typing errors, miscalculation or other mistakes.

<sup>(2)</sup> Orders or commissions by the Customer are considered binding offers. The acceptance of the offer takes place at the discretion of the Supplier within a period of five working days after receipt of the offer by sending an order confirmation or by unconditional delivery of the ordered goods or services.

<sup>(3)</sup> The signed written agreement including these General Terms and Conditions of Sale exclusively govern the legal relationship between the Supplier and the Customer. It reflects all agreements between the parties with regard to the subject matter of contract. Oral agreements require written confirmation from the Supplier in order to be valid. The same applies to amendments and modifications to the contract, including any amendments and modifications to these General Terms and Conditions of Sale. In order to comply with the written form it is sufficient to use fax or email.

<sup>(4)</sup> Advertising claims as well as documents belonging to the offer, such as illustrations, drawings, specifications of weight and dimensions, performance data, technical specifications and data sheets as well as technical data and specifications in the respective product information or promotional materials shall not be legally binding in any way. They only form part of the agreement if they have been expressly incorporated by the parties. Unless expressly agreed otherwise, they do not constitute agreed qualities nor do they constitute a guarantee of any kind regarding the quality or durability of the items delivered by the Supplier. All guarantee liabilities assumed by the Supplier are subject to express written agreement with the Customer.

<sup>(5)</sup> Deviations which are customary in the trade as well as changes to the design, conception or form of the items delivered are deemed acceptable, and the Supplier reserves the right to modify the items supplied, their format and the scope of delivery during the delivery period, provided that such changes do not significantly change the items delivered or result in unreasonable consequences for the Customer. The Supplier expressly reserves the right to make reasonable changes as a result of advances in technology, as a result of changes in legislation and/or to improve the items delivered.

<sup>(6)</sup> The Supplier retains all property rights or copyrights with regard to his offers and cost estimates as well as to drawings, diagrams, calculations, brochures, catalogs, models, tools and other documents and auxiliary materials provided to the Customer. Without prior written express consent of the Supplier the Customer shall not make these items (and content) available to third parties, publish them, use or copy them himself or through others. At the request of the Supplier, he has to return these items completely to the Supplier and destroy any copies when they are no longer required by him in the ordinary course of business, or if negotiations do not result in the conclusion of a contract.

### § 3 Prices, Terms of payment

<sup>(1)</sup> The prices agreed on at the time of the conclusion of the contract shall apply, in particular the prices specified in the order confirmation. In case a price is not expressly determined, the applicable prices according to the Suppliers price list at the time of the conclusion of the contract shall apply.

<sup>(2)</sup> Unless otherwise specified, the Supplier is bound by the prices in its offers for 30 days from the date thereof. All prices are in EURO. In addition, the Customer shall pay the VAT applicable at the respective delivery day at the statutory rate, the necessary costs for proper packaging for shipment, transportation costs ex works or warehouse of the Supplier, costs of carriage and – if agreed – costs of transport insurance. Customs duties or other country-specific taxes, which are levied for exports, will also be charged to the Customer.

<sup>(3)</sup> The prices apply for the scope specified in the order confirmation. Additional or special services, performances or other deviations from the scope specified in the order confirmation will also be charged separately.

<sup>(4)</sup> Unless otherwise agreed in writing the invoices of the Supplier are payable immediately without deduction by the Customer. Discounts require a separate written agreement. In case of default of payment, the statutory rules shall apply.

<sup>(5)</sup> Discountable bills of exchange and checks shall only be accepted on account of performance by special arrangement. There is no obligation of the Supplier of timely presentation and protest. Discount fees, etc. – at least in the amount of fees charged by private banks – will be charged to the Customer.

<sup>(6)</sup> The Customer shall only be entitled to a right to set-off or to a right to retention if his counterclaims are undisputed or have been finally established and are non-appealable.

<sup>(7)</sup> The Supplier shall be entitled to request prepayment or the provision of security for outstanding deliveries and services under modification of the existing agreements and the remaining debt of the Customer shall be immediately due if the Customer is in default with the fulfillment of due obligations, the Customer exceeds a granted payment period or the Supplier becomes aware of other circumstances which might cause a significant reduction of the creditworthiness of the Customer and by which the payment of outstanding debts from the specific contractual relationship is at risk. This applies in particular, if the Customer stops making payments, the checks issued by the Customer are not cashed, the bills of exchange issued by the Customer are not paid by the Customer, insolvency proceedings are initiated or the

opening of insolvency proceedings is rejected due to the insufficiency of assets.

### § 4 Time of Delivery and Performance, Default

<sup>(1)</sup> Agreed dates and times of delivery and performance shall only be considered as an approximate estimate unless it was expressly agreed on a sale with an absolutely fixed date in writing. If shipment has been agreed, the dates and times of delivery refer to the moment of handover to the carrier, haulage contractor or any other third party charged with the transport.

<sup>(2)</sup> The Supplier may – without prejudice to his rights arising from default of the Customer – demand an extension of delivery and performance times, or a postponement of delivery and performance appointments at least for the period in which the Customer's contractual obligations to the Supplier are not performed. The Supplier reserves the right to raise the defence of unperformed contract.

<sup>(3)</sup> The Supplier is in default only after a reasonable period of grace is set by the Customer. In the event of force majeure or other extraordinary circumstances unforeseeable at the time of the conclusion of the contract and not attributable to the Supplier (such as downtime due to fire, flood or similar factors, malfunctioning of production equipment or machines, failure on the part of the Supplier's suppliers to fulfil delivery dates or to deliver at all, or interruptions in production due to lack of raw materials, adequate power supply or available staff, strike, lockout, difficulties in ensuring transportation, traffic congestion, or action by official bodies) the Supplier shall be entitled to delay delivery or fulfilment of the agreement for the duration of such circumstances and an adequate recovery period if such circumstances prevent the Supplier, through no fault of his own, from fulfilling his obligations. If the delivery or performance is thereby delayed by more than four weeks, both the Customer and the Supplier shall be entitled to withdraw from the contract with regard to the delivery quantities or performances affected by the delay under exclusion of any claims for compensation of damages.

<sup>(4)</sup> The Supplier is entitled to carry out partial deliveries and partial performances within the agreed delivery and performance times, if this is acceptable to the Customer.

<sup>(5)</sup> If the Supplier is in delay of delivery or performance or the delivery or performance is, for whatever reason, impossible, then the Suppliers liability is limited to compensation pursuant to § 7 of these General Terms and Conditions of Sale.

## **§ 5 Transfer of Risks, Shipment and Packaging, Default of Acceptance**

<sup>(1)</sup> Unless otherwise agreed in writing, deliveries are made ex-works or warehouse of the Supplier and the delivery items have to be collected by the Customer at his own risk and expense. Having been made available for dispatch, the risk of accidental loss or deterioration of the items supplied shall pass to the Customer once the Customer has been notified of the availability for collection or shipment, apart from that, the risk of accidental loss or deterioration of the items supplied shall pass to the Customer at the moment of handover (where the beginning of the loading operation is the relevant moment at which the risk passes over to the Customer) to the carrier, haulage contractor or any other third party commissioned with the transport. The risk of accidental loss or deterioration of the items supplied shall also pass to the Customer according to the preceding provisions if the Supplier makes partial deliveries, or if he has, as an exception, agreed to assume further obligations, e.g., if he has assumed the costs for shipment or transport to the Customer, except when the items are delivered by use of own vehicles or haulage means of the Supplier. If shipment or handover is delayed for reasons attributable to the Customer, the risk shall pass to the Customer once the Supplier has made the delivery items available for dispatch and has notified the Customer accordingly.

<sup>(2)</sup> Unless otherwise agreed in writing, shipment and packaging shall be carried out according to the discretion of the Supplier at the expense of the Customer.

<sup>(3)</sup> In case the shipment of the goods is delayed for reasons attributable to the Customer any costs arising in connection with the delay (such as storage costs) shall be borne by the Customer. If the goods are stored at the Supplier's place of delivery, the storage costs amount to € 12,00/pallet per each month. The right to demonstrate and claim higher or lower storage costs is reserved.

<sup>(4)</sup> The goods will be insured by the Supplier at the Customer's costs against theft, breakage, transport, fire and water damages as well as against other insurable risks only upon the express request of the Customer.

## **§ 6 Customer's Claims in Case of Defect**

<sup>(1)</sup> Obvious defects, wrong deliveries and quantity discrepancies shall be notified in writing by the Customer to the Supplier within a period of seven working days after receipt of the goods, stating the delivery date and order number. The Customer should check as part of his incoming inspection each item received with regard to any shortcomings in quality and/or quantity. For larger quantities of goods the examination of samples is sufficient. Hidden defects shall be notified in writing to the Supplier within a period of seven working days after their discovery. The

Customer has the duty, if necessary by processing a sample, to check whether the goods are free of defects and suitable for the intended use. According to the above rule, the Customer loses his warranty rights in case of late or incorrect notification of the Supplier of defects, unless the defect was fraudulently concealed by the Supplier.

<sup>(2)</sup> At the request of the Supplier, the rejected delivery item has to be returned freight prepaid to the Supplier. The Customer must not – under no circumstances – destroy these items or goods without prior written express approval by the Supplier. In case of justified notice of defects, the Supplier reimburses to the Customer the costs of the cheapest shipping method; this does not apply if the costs increase because the delivery item is in a different place than the place of intended use.

<sup>(3)</sup> In case of a justified notice of defects, the Supplier shall be, at his choice which is to be made within a reasonable period of time, entitled as well as obliged only to remedy the defect or to deliver conforming goods (supplementary performance). In case of remedy of the defect, any costs arising in connection with the supplementary performance, in particular costs of transport, tolls, labour and material, are borne by the Supplier, unless the costs increase due to the fact that the Customer has moved the purchased item to a different place than the place of performance. In connection with the supplementary performance replaced items or goods become the property of the Supplier.

<sup>(4)</sup> If the Supplier is unwilling or unable to carry out supplementary performance, in particular if the supplementary performance has been delayed beyond a reasonable period of time for reasons attributable to the Supplier or if the supplementary performance has failed in any other way or is unreasonable for the Customer, the Customer shall be entitled at his own discretion to withdraw from the contract or to reduce the price. Remedy of the defect is deemed to have failed after the third attempt, unless the nature of the goods or other circumstances indicates otherwise. In the event of withdrawal from the contract, the Customer shall return the delivered items to the Supplier at the place of performance pursuant to § 5 paragraph 1 of these General Terms and Conditions of Sale. If the delivered goods are in a different place than the place of performance, the Customer shall transport the goods from such place to the place of performance at his own expense and risk.

<sup>(5)</sup> The Customer's rights pursuant to § 6 paragraph 2 and 3 of these General Terms and Conditions of Sale are excluded in case of only insignificant deviations from the agreed quality, in case of only insignificant deviations

from the agreed quantity, in case of only insignificant impairment of usefulness, in case of natural wear and tear or in case of damages caused after the transfer of risk due to incorrect or negligent handling, excessive strain or particular external influences not assumed under the contract. These rights pursuant to § 6 paragraph 2 and 3 of the General Terms and Conditions of Sale are also excluded for any defects arising from documents submitted by the Customer (such as drawings, samples etc.). This applies particularly to the function of items that were produced according to the design of the Customer or design documents submitted by him.

<sup>(6)</sup> If the defect is based on any fault of the Supplier, the Customer can only demand compensation under the conditions specified in § 7 of these General Terms and Conditions of Sale.

<sup>(7)</sup> In case of defects of components or parts of other manufacturers the Supplier cannot remove for licensing or factual reasons, the Supplier will, at his own choice, enforce his claims against the manufacturers and suppliers at the Customer's expense or assign his claims to the Customer. The Customer shall only have claims against the Supplier for such defects pursuant to the conditions of and in accordance with these General Terms and Conditions of Sale only if judicial enforcement of the aforementioned claims against the manufacturers and suppliers has been unsuccessful or, for example due to insolvency, is hopeless. During the duration of the dispute the expiry of the period within which the claims of the Customer against the Supplier become time-barred shall be suspended.

<sup>(8)</sup> Deliveries of used items agreed with the Customer in individual cases shall be made without any warranty by the Supplier.

## **§ 7 Liability**

**(1)** The Supplier shall only be liable for damages or unnecessary expenses – for whatever legal reason – if the damages or the unnecessary expenses

<sup>a)</sup> were caused by the Supplier or one of his vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the carrying out of the contract and which the Customer would ordinarily be entitled to depend upon (material contractual obligation), or

<sup>b)</sup> can be attributed to gross negligence or wilful infringement of a contractual obligation on the part of the Supplier or one of his vicarious agents.

Notwithstanding of § 7 paragraph 1 a) of these Terms and Conditions of Sale the Supplier shall be liable for damages or unnecessary expenses that arise from providing consultation services and/or information that is

not to be billed separately only in the event of wilful or grossly negligent infringement of a contractual obligation, provided that such an infringement does not constitute a defect as to quality with respect to the delivered goods according to Section 434 of the German Civil Code (§ 434 BGB).

<sup>(2)</sup> If the Supplier is liable according to § 7 paragraph 1 a) of these General Terms and Conditions of Sale for the infringement of a material contractual obligation without acting with gross negligence or wilfully, the liability of the Supplier shall be limited to the foreseeable damage typical in such situations. The above limitation of liability according to sentence 1 shall apply mutatis mutandis to claims arising from gross negligent or wilful conduct of the Supplier's employees or authorized representatives, unless such persons are members of the Supplier's board of directors or management staff. The Supplier shall not be liable for consequential damages to the Customer, which he incurs because of the enforcement of penalty claims by third parties.

<sup>(3)</sup> If the Supplier is liable pursuant to § 7 paragraph 1 a) of these General Terms and Conditions of Sale for breach of a material contractual obligation, without evidence of gross negligence or willful misconduct, the liability of the Supplier is limited to max. 1,500,000.00 per occurrence.

<sup>(4)</sup> The above limitations of liability (§ 7 paragraph 1 to 3) shall not apply if the liability in question is arising under the provisions of the Product Liability Act or if claims are brought against the Supplier for the injury of life, limb or health. In the event of goods delivered by the Supplier not possessing a guaranteed characteristic or feature, the Supplier shall only be liable for losses directly resulting from the failure to supply this specific characteristic or feature.

<sup>(5)</sup> Any liability in excess of the liability stipulated in the aforementioned provisions of § 7 paragraph 1 to 4 of these General Terms and Conditions of Sale is hereby expressly excluded, irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages from negligence in connection with the conclusion of the contract pursuant to Section 311 paragraph 2 of the German Civil Code (§ 311 Abs. 2 BGB), breach of contract pursuant to Section 280 of the German Civil Code (§ 280 BGB) or tort claims pursuant to Section 823 of the German Civil Code (§ 823 BGB).

<sup>(6)</sup> As far as the Supplier's liability is excluded or limited according to § 7 paragraph 1 to 5 of these General Terms and Conditions of Sale, this limitation of liability shall also apply with regard to the personal liability of the Supplier's employees, labourers, co-workers, representatives and vicarious agents.

## § 8 Limitation of Actions

<sup>(1)</sup> Claims of the Customer relating to defects of delivered goods or to a breach of obligations of the Supplier including claims for damages and unnecessary expenses, are subject to a limitation period of one year as of the beginning of the statutory limitation period unless otherwise stipulated in the following paragraphs.

<sup>(2)</sup> If the Customer is a business person and he or another buyer in the supply chain as a business person has due to defects in newly produced goods by the Supplier, which also were delivered to a consumer as newly produced goods, complied with requirements of the consumer, limitation of claims by the Customer against the Supplier occurs at the earliest two months after the date on which the Customer has or the other buyers in the supply chain as business people have fulfilled the demands of the consumer, unless the Customer could have argued against its own customers/contractors on the statute of limitations. Claims of the Customer against the Supplier in connection with defects of delivered goods shall become time-barred in any case when the claims of the Customer's/client's contractors against the Customer due to defects of the goods delivered by the Supplier are time-barred, but in no case later than 5 years after the date on which the Supplier has delivered the goods to the Customer.

<sup>(3)</sup> If the Supplier has provided consulting services and/or information that is not billed separately without delivering goods in connection with the information or consulting services and he is in breach of duty with regard to such services/information or the consulting services or information in breach of duty do not give rise to a defect as to quality of goods delivered by the Supplier according to Section 434 of the German Civil Code (§ 434 BGB), any claims of the Customer against the Supplier shall be subject to a limitation period of one year as of the beginning of the statutory limitation period. Claims of the Customer against the Supplier arising from breach of contract, breach of pre-contractual or statutory obligations which do not constitute a defect as to quality of the delivered goods or the goods to be delivered, shall be subject to a limitation period of one year as of the beginning of the statutory limitation period. As far as the afore-mentioned breaches of contract constitute a defect as to quality according to Section 434 of the German Civil Code (§ 434 BGB) of the goods delivered in connection with the provision of consulting services or information, the respective claims shall be subject to a limitation period according to § 8 paragraph 1, 2 and 4 of these General Terms and Conditions of Sale.

<sup>(4)</sup> The provisions of § 8 paragraph 1 to 3 of these General Terms and Conditions of Sale do not apply to limitation periods of claims arising from injury to life, limb

or health, nor do they apply to claims brought under the German Product Liability Act nor to claims arising from defects of title of the goods delivered by the Supplier, which invoke a third parties right in rem and would result in that third party's claim to have the delivered goods handed over to him. They furthermore do not apply to the limitation period of the Customer's claims relating to a fraudulent concealment of defects in the delivered products or the wilful or grossly negligent breach of an obligation. In the cases listed in this § 8 paragraph 4 the statutory limitation period shall apply.

## § 9 Retention of Title

<sup>(1)</sup> The Supplier retains full title in any delivered goods until the Customer has paid the purchase price in full and has satisfied all other current and future claims of the Supplier arising from the business relationship with the Customer. This applies even if the purchase price is paid for certain specified deliveries of goods, since the retention of title serves as security to the Supplier's outstanding balance claim.

<sup>(2)</sup> Goods which are under retention of ownership are to be treated carefully and have to be maintained by the Customer. In particular, the Customer is obliged to adequately insure the goods which are under retention of ownership at his own cost and expense against loss, damage and destruction, for example against damage through fire, water and theft. The insurance must cover the replacement value and upon Supplier's request must be proven by the Customer to the Supplier. The Customer hereby already assigns to the Supplier all claims to which he may be entitled under the insurance policies taken out by him. The Supplier accepts this assignment.

<sup>(3)</sup> The Customer shall neither pledge goods which are under retention of ownership of the Supplier nor transfer them as security to any third party. However, he shall be entitled to resell the delivered goods in the ordinary course of business. The previous entitlement shall not exist insofar as the Customer assigns the claim arising from the resale of the secured goods against his contracting partner – where effective – to a third party in advance or pledges it as security or has agreed on a prohibition of assignments with him.

<sup>(4)</sup> In the case of seizures or other interference by third parties with the delivered goods, the Customer is obliged to immediately notify the Supplier in writing. The Supplier is entitled to demand reimbursement by the Customer of any costs arising from interventions against assignment of the Suppliers claims to reimbursement of costs against the third party.

<sup>(5)</sup> The processing, treatment or transformation of the delivered goods subject to retention of title by the Customer shall always be made for the Supplier, without this entailing any obligation or liability on the Suppliers

part. If the supplied goods subject to retention of title are processed or combined with objects that are the property of third parties the Supplier is entitled to co-ownership in the new product in the fractional share that equates to the value of the Supplier's goods (final invoice amount, incl. VAT) in proportion to the value of the other processed objects at the time of processing. The same provisions that apply to items delivered under retention of ownership shall also apply to the new product created by the aforesaid processing. If the delivered goods subject to retention of title are inseparably combined or compounded with objects that are the property of third parties the Supplier is entitled to co-ownership in the new product in the fractional share that equates to the value of the Supplier's goods (final invoice amount, incl. VAT – Fakturaendbetrag) in proportion to the value of the other combined or compounded objects at the time of combining or compounding. If the combination or compound is carried out in a way that the Customer's object is to be considered as the main object, the proportional transfer of the co-ownership to the Supplier by the Customer will be deemed as agreed. The Customer will hold the sole or joint ownership that has arisen in this way for the Supplier. Within the scope of the ordinary course of business the Customer is entitled to dispose of the new products generated by the processing, treatment or transformation or connection or combination or compound as long as he meets his obligations arising from the business connection with the Supplier in due time. Under no circumstances shall the Customer be entitled to resell or otherwise dispose of the new products by agreeing on a prohibition of assignment with his customer, by pledging or assigning these goods as a security. The Customer hereby assigns as security to the Supplier his claims from the sale of such new products in which the Supplier has co-ownership to the extent of the Supplier's share in ownership as security. If the Purchaser connects, combines or compounds the supplied goods with a main item, he hereby already assigns to the Supplier his claims against the third party to the extent of the value of the supplied goods. The Supplier accepts this assignment.

<sup>(6)</sup> The Customer hereby assigns to the Supplier with immediate effect all claims, also future and conditional claims, resulting from the resale of the goods delivered by the Supplier with all supplementary rights in the amount of the value of the delivered goods outranking the remaining parts of his claims in order to secure the fulfilment of all of the Supplier's claims referred to in § 9 paragraph 1 of these General Terms and Conditions of Sale. The Supplier accepts this assignment.

<sup>(7)</sup> The Customer shall be entitled to enforce the claims assigned to the Supplier against his customers in

the ordinary course of business as long as he meets his payment obligations towards the Supplier. However, he shall not be entitled to enter into a current account arrangement with regard to these claims, to agree to a non-assignment clause or to assign these claims to third parties or to pledge the claims. The Supplier agrees to release the securities due to him upon the Customer's request as far as the realisable value of the Supplier's securities exceeds his claims against the Customer by more than 10 %, while the Supplier shall have the right to choose the securities to be released. **(8)** If the Customer is in default of payment, the Supplier shall be entitled – after the unsuccessful expiry of a reasonable grace period set by the Supplier and without waiving other claims for damages – to label goods delivered under retention of ownership as property of the Supplier, prohibit further use as well as to withdraw from the contract and take back the delivered goods. Buyer shall be obligated to return aforesaid items. This shall not affect the statutory provisions concerning cases where it is not necessary to allow a period of grace. In case of other breaches of duty by the Customer, especially those which endanger the continued existence of the goods subject to retention of ownership, the Supplier shall be entitled to demand the return of the goods, even without withdrawal from the contract.

**(9)** After retrieval of the delivered goods, the Supplier shall be entitled to their utilization. The revenue from such utilization must be set off against the Customer's liabilities – minus any reasonable costs of utilization. The costs of utilization shall amount to 10 % of the revenue from the utilization unless the Supplier provides evidence of higher costs or the Customer provides evidence of lower costs.

## **§ 10 Final Provisions**

<sup>(1)</sup> These General Terms and Conditions of Sale as well as any and all legal relationships between the Supplier and the Customer shall be governed by substantive German law in the same way that it applies to the relationship between German merchants with regard to domestic business dealings. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and the provisions of international private law shall be excluded.

<sup>(2)</sup> Place of performance for all claims as well as the exclusive place of jurisdiction for all disputes arising, directly or indirectly, from the contractual relationship between the Supplier and the Customer shall be Hanau, Germany, provided the Customer is a merchant, legal entity under public law or special fund under public law and this is not contrary to any mandatory statutory provision. However, the Supplier shall be entitled to also file a claim against the Customer at the statutory place of jurisdiction of the Customer.

<sup>(3)</sup> Should any part of these General Terms and Conditions of Sale be or become invalid or unenforceable or contain regulatory gaps, the validity of the remaining provisions shall not be affected thereby. Any such invalid, unenforceable or incomplete provision shall be replaced by a provision that is complete and valid and most closely reflects what the parties would have agreed if they had recognized the invalidity, unenforceability, or incompleteness of the provision.