

# **General Terms and Conditions (GTC) of Business of A.G. Thorwarth Metallwarenfabrik**

**GmbH Version: I/03/2016**

## **General:**

1. Our General Terms and Conditions (GTC) apply exclusively vis-à-vis traders/entrepreneurs, legal persons under public law or special funds under public law within the meaning of Section 310 para. 1 of the German Civil Code (BGB) (Customer). Also Customer within the meaning of these GTC is the purchaser in the case of purchase agreements, the orderer in the case of service contracts and the principal in the case of contracts.

2. These GTC also apply for all future business between the contracting parties. We do not recognise any general terms and conditions of the Customer, including its conditions of purchase, even if we do not expressly contradict them in the individual case, unless we have explicitly agreed to their application in writing. Otherwise, they do not become content of the contract passively nor on the basis of our delivery/performance. Our GTC also apply when we render delivery/performance to the Customer without reservation while knowing of terms and conditions of the customer that contrast with or deviate from our own.

3. Our previous General Terms and Conditions are hereby rendered void.

## **I. Contractual content and General terms and Conditions**

1. With a legally non-binding enquiry, the potential Customer contacts us and requests an offer (1st stage). We send the Customer a non-binding – especially in terms of price and delivery date – but concrete offer (2nd stage). On the basis of this, the Customer places an order and, in doing so, makes us a binding offer on its part in accordance with Section 145 BGB (3rd stage). On that basis, we produce samples of the moveable objects we are to manufacture, in the agreed or customary volume of 10 to 20 pieces. It is through this sample production process that the circumstances of the actual production and the time required can be calculated. We send the samples produced by us to the Customer to establish the content of the purchase contract and for purposes of confirmation (4th stage). Only after confirmation of the samples by the Customer do we confirm the order on our part with a binding price and binding delivery date (5th stage). If the Customer fails to respond within one week by way of an objection, the purchase contract comes into being under the conditions that are content of our order confirmation. It is irrelevant which means of communication is used between the contracting

parties for this multi-stage conclusion of contract.

2. Letters of confirmation signed and returned by the Customer are deemed confirmation only when the name and address of the Customer and the name of the signatory are clearly stated; we are not obligated to check the signatory's powers of representation.

3. The qualities and performances specified in offers and order confirmations determine the properties of the delivery items and the scope of performance comprehensively and conclusively (description of performance). In particular, public statements by us, the upstream suppliers, their assistants or third parties (e.g. representations of product characteristics in the public domain) do not contain any descriptions of the delivery item or scope of delivery that supplement or modify this description of performance.

4. If construction plans, drawings, instructions, etc., which the Customer has sent in electronic form or at any other time, differ from those that the Customer has transmitted to us in another form and/or at any other time, the Customer must inform us as to which version is valid without being prompted to do so.

5. Unless otherwise stipulated in the individual contract, any cash expenses, fees for official approvals or costs incurred for third-party services shall be charged separately to the Customer and shall be due for payment immediately and without deduction also in the event of complaints about our deliveries or performance.

6. We reserve the right of title and copyright to illustrations, drawings, calculations and other documentation. This also applies to such written documents that are designated "confidential". The Customer may not pass these on to third parties without our prior, express consent in writing.

7. The costs of tools are due in advance and must be paid by the Customer immediately after confirmation of the samples. Unless otherwise expressly agreed in writing with the Customer, moulds, templates, equipment and tools remain our property even if the Customer has been charged costs for their production.

8. If partial deliveries are unavoidable due to a circumstance for which the Customer is responsible or if they are made at the Customer's request, the costs incurred as a result shall be borne by the Customer.

9. Deviations in deliveries from the order quantities are possible within the framework of customary quantity tolerances, both with regard to the entire final quantity and to individual partial deliveries. In the case of call-off supply contracts, unless otherwise agreed, we must be notified of binding quantities at least 14 days before the delivery date. Additional costs caused by a late notification or subsequent change in time or quantity by the Customer will be borne by the Customer.

## **II. Prices, payment terms**

1. The deliveries and performance provided will be invoices on the basis of the prices communicated in the offer or order confirmation (see Section I. 1. 5th stage) plus the applicable VAT. Statutory VAT is not included in our prices; it is shown separately in the invoice at the statutory rate as on the day of invoicing. Unless free delivery has been expressly agreed, all ex-works prices are exclusive of packaging and freight or shipping costs; these will be invoiced separately.

2. We are bound by our prices for a maximum period of 3 months after conclusion of the contract for individual orders, and for a maximum of 4 weeks from the conclusion of the contract in the case of continuing obligations, in particular framework agreements in accordance with Section III. After this period, we shall be entitled to make a corresponding price adjustment in the event of an increase in production costs after the conclusion of the contract and to charge the price valid on the day of delivery/performance. The same shall apply in the event that the delivery/performance is delayed over a period of 3 months in the case of individual orders and of 4 weeks in the case of continuing obligations from the conclusion of the contract for reasons for which the Customer alone is responsible or which fall solely within its area of risk. In the case of continuing obligations, in particular framework agreements, we must be notified of binding quantities in writing at least 8 weeks before the delivery date, unless otherwise agreed. If, in the case of individual orders, the price increase is more than 5% of the originally agreed total price, the Customer is entitled to withdraw from the contract. This right of withdrawal shall not apply if the Customer fails to exercise it within a period of two weeks from the date of notification of the new price. The termination of continuing obligations due to price increases is only possible in accordance with relevant statutory provisions or other arrangements of the parties supplementing or permissibly waiving these.

3. If we are required to store ordered goods due to the Customer defaulting on acceptance, we reserve the right to charge an appropriate separate fee for this.

4. The purchase price for the delivered goods / remuneration for performance is due for payment immediately after delivery/performance, unless otherwise expressly agreed in writing in individual cases. The granting of a payment term requires agreement. Without further declarations on our part, the Customer is in default 10 days after the due date if it has not paid. In the event of defects, the Customer is not entitled to a right of retention, unless the delivery is obviously defective or the Customer obviously has a right to refuse acceptance of the work; in such a case, the Customer is only entitled to retention if the amount retained is in reasonable proportion to the defects and the expected costs of subsequent performance (in particular the rectification of defects). The Customer is not entitled to assert claims and rights due to defects if the Customer has not made due payments and the amount due is in reasonable proportion to the value of the delivery or performance that is affected by defects. No discount is granted on bills of exchange or accepted finance bills. Bills of exchange and cheques are only accepted on account of performance, but not in lieu of performance. The claim shall be deemed to have been fulfilled only after the payment has been finally honoured or credited. Exchange charges are at the expense of the Customer. In the event of protest of a bill of exchange or cheque, we may return the bill of exchange or cheque and demand immediate cash payment, even for papers due later. If payment is made by bank or postal transfer, the payment is considered to have been made upon crediting to our account.

5. We reserve the right to require an advance payment or security from the customer.

6. If, after the conclusion of the contract, we become aware of a significant deterioration in the Customer's financial situation that jeopardises the claim to the consideration, e.g. the Customer ceases to make payments, is over-indebted, insolvency proceedings are opened against its assets or the opening of such proceedings is rejected due to a lack of assets, our claims shall become due immediately. We are then entitled to refuse our further performance, to demand the return of goods that have already been delivered, to make further performance dependent on advance payments or security deposits, to return received cheques or bills of exchange before expiry and to demand immediate cash payment, or to withdraw from the contract without damages.

7. Section 6 shall apply mutatis mutandis in the event that claims against the Customer arise from the business relationship with us.

8. In the event of default, we shall charge default interest in the amount of 8 percentage points above the respective base interest rate in accordance with Section 247 I BGB. The right to assert further compensation for default is reserved.

9. The customer is entitled to rights of set-off only if its counterclaims have been legally established, undisputed or acknowledged by us. This does not apply to claims for rectification of defects and/or completion costs. In addition, the Customer is entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

### **III. Framework agreement**

1. Where a framework agreement has been concluded, we undertake to deliver a certain number of units to the Customer at the agreed or customary call-off by the Customer. Call-off can only be within the 12 months following the conclusion of the framework agreement.

2. If, after the expiry of this 12-month period, the Customer has failed to accept the ordered items, we are entitled, regardless of the statutory rights, to cancel the unclaimed quantities in whole or in part, to assert a claim for damages in the amount of 20% of the proportionate price and to charge for the quantity already produced but not purchased. In the event that we assert damages, the Customer is entitled to provide proof that the damage incurred is less than the agreed lump sum.

3. We are also entitled to charge to the Customer the usual storage costs of a freight forwarder for unclaimed quantities. The same shall apply if the Customer does not accept the called-off items after call-off and a reasonable grace period set by us expires without success.

4. In these cases, the invoice date for the number of items called-off in each case shall apply as delivery date.

5. As of the date of invoice, the risk of accidental loss of the sold items passes to the Customer.

6. Call-offs above the order quantity agreed in the framework agreement entitled us to cancel the surplus or to charge at the daily price applicable as at the day of delivery.

### **IV. Retention of title**

1. The delivery item shall remain our property until all claims against the Customer to which we are entitled and that arise from the business relationship have been satisfied.

2. The Customer is permitted to process or transform the delivery item ("processing"). The processing is carried out on our behalf; however, if the value of the delivery item belonging to us is less than the value of the goods not belonging to us and/or the processing, we acquire co-ownership of the new goods in the ratio of the value (gross invoice value) of the processed delivery item to the value of the other processed goods and/or processing at the time of processing. Insofar as we do not acquire ownership of the new goods in accordance with the above, A.G. Thorwarth Metallwarenfabrik GmbH and the Customer agree that the Customer grants us co-ownership of the new goods in proportion to the value (gross invoice value) of the delivery item belonging to us to that of the other processed goods at the time of processing. The preceding sentence shall apply mutatis mutandis in the event of inseparable mixing or connection of the delivery item with goods that do not belong to us. Insofar as we acquire ownership or co-ownership in accordance with this Section III (retention of title), the Customer shall keep the item for us with the care of a prudent businessman.

3. In the event of the sale of the delivery item or the new goods, the Customer hereby assigns to us as security its claim from the resale against its customer with all ancillary rights, without the need for further special declarations. The assignment shall apply as including any balance claims. However, the assignment only applies in the amount corresponding to the price of the delivery item as invoiced by us. The satisfaction of the share of the claim assigned to us must be given priority.

4. If the Customer combines the delivery item or the new goods with real estate, it also assigns the claim to which it is entitled as remuneration for the combination, in the amount corresponding to the price of the delivery item as invoiced by us, without the need for further special declarations.

5. Until such authorisation is revoked, the Customer is authorised to collect the claims assigned to us in accordance with this Section III (retention of title). The Customer shall immediately forward to us any payments made on the assigned claims up to the amount of the secured claim. In the event of legitimate interests, in particular in the event of default of payment, suspension of payments, opening of

insolvency proceedings or the refusal to open such due to a lack of assets, protest to a bill of exchange or reasonable indications of over-indebtedness or imminent insolvency of the Customer, we are entitled to revoke the Customer's authorisation to collect. In addition, we may, upon prior notice and within a reasonable period of time, disclose the assignment of security, recover the assigned claims and demand the disclosure of the assignment of security by the Customer to its buyers.

6. If a legitimate interest is substantiated, the Customer must provide us with the information necessary to assert our rights against its customers and surrender the necessary documentation.

7. For as long as retention of title exists, the Customer is prohibited from pledging or transferring title by way of security. In the event of attachments, seizure or other dispositions or interventions by third parties, the Customer must notify us immediately. The resale of the delivery item or the new goods is only permitted to resellers in the ordinary course of business and only under the conditions that the payment of the equivalent value of the delivery item is made to the Customer. The Customer must also agree with its buyer that the buyer only acquires ownership with this payment.

8. If the realisable value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 10%, we will release a corresponding part of the security rights at the Customer's request. It is presumed that the prerequisites of the preceding sentence are fulfilled if the estimated value of the securities to which we are entitled equals or exceeds 150% of the value of the secured claims. We are entitled to choose between different security interests when releasing them.

9. In the event of breaches of duty by the Customer, in particular in the event of default of payment, we are entitled to demand the surrender of the delivery item or the new goods and/or – if necessary after setting a deadline – to withdraw from the contract; the Customer is obliged to surrender. The demand for the surrender of the delivery item/new goods does not constitute a declaration of withdrawal on our part, unless this is expressly declared.

10. If our liability on a bill of exchange is established in connection with the payment of the purchase price by the Customer, the reservation of title and the claim on which it is based shall not lapse prior to collection of the bill by the subscriber.

## **V. Force majeure, unavailability**

1. If the non-compliance with deadlines is due to force majeure, e.g. mobilisation, war, riot, or similar events for which the seller is not responsible, e.g. strike or lockout, the deadlines shall be extended by the period during which the aforementioned event or its effects continue. We will inform the Customer about this immediately.

2. Transport obstructions, operational disruptions and other circumstances which, even if we exercised the care incumbent upon us in our own affairs, we would be unable to avert are also deemed the equivalent of force majeure.

3. If a delivery is owed by us, correct and timely delivery to us is reserved. We will inform the Customer immediately of the unavailability of the delivery item and, in the event of withdrawal, refund the corresponding consideration to the Customer immediately.

## **VI. Acceptance and warranty, entrepreneurial recourse**

1. The point in time at which risk is transferred must be taken into account for the conformity of the delivery item with the contract.

2. Except in the case of justified refusal of acceptance, the Customer is obliged to take and accept the goods as soon as we notify it of the availability of the goods. If the Customer is in default of acceptance, we are entitled to demand compensation for the resulting damage and any additional expenses. The same applies if the Customer culpably violates obligations to cooperate. The risk of accidental deterioration and accidental loss passes to the Customer upon the occurrence of default in acceptance or debtor's default. In the event of a justified withdrawal after default in acceptance, the order item will be sold by us at short notice at market prices. If a sale is not possible, the order item will be disposed of or recycled. The costs of production, storage and sale/recycling are deducted from the sales proceeds/recycling value. The costs of any disposal that may become necessary must be borne by the Customer.

3. If the goods are shipped to the Customer at the Customer's request, the risk of accidental loss or accidental deterioration of the goods passes to the Customer upon dispatch to the recipient, at the latest from the time they leave the plant. If shipment to the Customer is via a freight forwarder, the risk passes to the Customer upon handover of the goods

to the commissioned forwarder. This applies regardless of whether the goods are shipped from the place of performance or who bears the freight costs.

4. If the transaction is based on a purchase contract, the Customer must comply with the duties of inspection and complaint pursuant to Section 377 of the German Commercial Code (HGB). In all other cases, the Customer must inspect performance immediately after delivery, insofar as this is feasible in the proper course of business. In particular, obvious defects must be reported immediately, hidden defects immediately after discovery.

5. The Customer's warranty rights require that the Customer has duly complied with its duties of inspection and complaint in accordance with Section 4. This does not apply if we have fraudulently concealed the defect or, by way of exception, have given a guarantee of quality.

6. We provide warranty for defects by subsequent performance at our discretion by remedy of defects or new delivery/service; however, we are in no case obliged to re-deliver or re-manufacture or to provide the performance again within the scope of subsequent performance. The Customer must request subsequent performance in writing. Contrary to sentence 1, the right of choice pursuant to sentence 1 is available to the Customer within the framework of entrepreneurial recourse pursuant to Section 478 BGB. If defects are to be rectified, rectification is deemed to have failed only after the unsuccessful second attempt at rectification. If subsequent performance fails, the Customer has the right to reduce the price or – if the construction work is not the subject of liability for defects – to withdraw from the contract at its discretion. The statutory provisions relating to the dispensability of a deadline shall remain unaffected. Our liability is limited in accordance with Section

VI. Entrepreneurial recourse is limited in accordance with Section 12. The limitation period for claims for defects is based on Section X.

7. Claims for defects do not exist in the event of only insignificant deviation from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear and tear, as well as in the case of damage that occurs after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable equipment, defective construction work, unsuitable building ground or due to special external influences that are not covered by the contract.

If repair work or modifications are undertaken improperly by the Customer or third parties, no claims for defects shall exist for these and the resulting consequences. Claims for defects shall not exist

if tolerances of a production technical nature are observed.

8. Where specific dimensions are agreed, compliance with internal dimensions with tolerances is deemed fulfilment of the contract. Drawn parts are usually approx. 0.05mm conical.

9. In the event of fraudulent concealment of a defect or in the event of the express written assumption of a guarantee for the quality of the goods at the time of the transfer of risk within the meaning of Section 444 BGB or Section 639 BGB (declaration by the seller/entrepreneur that the object of purchase / the work has a certain characteristic at the time of transfer of risk and that the seller/entrepreneur intends to assume responsibility for all consequences of its absence regardless of fault), the rights of the customer are based exclusively on the statutory provisions.

10. We do not provide the Customer with any guarantees in the legal sense. Third-party guarantees remain unaffected.

11. In the event of defective partial deliveries, the Customer cannot derive any rights with regard to the remaining defect-free partial quantities. This also applies to deliveries of goods other than those in accordance with the contract.

12. Claims of the Customer due to expenses necessary for the fulfilment of subsequent performance – in particular, the costs of transport, travel, labour and material – are excluded insofar as the expenses increase because the goods delivered by us have subsequently been taken to a location other than the Customer's subsidiary, unless this relocation corresponds with their intended use.

12. Recourse claims by the Customer against us exist only insofar as the Customer has not made any agreements with its buyers that go beyond the mandatory statutory claims for defects.

## **VII. Liability limitations, requirements for withdrawal**

1. The provisions of Section VII 1-5 shall apply to all claims for damages (in particular for damages in addition to performance and damages in lieu of performance), regardless of the legal grounds, in particular due to defects, the breach of obligations arising from the contractual relationship or from tort, and they shall also apply to the claim for reimbursement of futile expenses; however, **liability for default** shall be determined in accordance with **Section VIII**, and **liability for impossibility** in accordance with **Section IX** of these GTC.

## 2. We are liable

- A) in cases of intent on our part or on the part of a representative or vicarious agent,
- B) in cases of gross negligence on our part or on the part of a representative or vicarious agent (nevertheless limited in accordance with sentence 3),
- C) in the event of culpable injury to life, limb or health, in accordance with the statutory<sup>1</sup> provisions.

In all other respects, we are only liable

- a) under the Product Liability Act or
- b) if we have fraudulently concealed the defect, or
- c) we, by way of exception, have given a guarantee for the quality of the delivery item or the work, or
- d) due to the culpable breach of material contractual obligations, but limited in accordance with sentence 4; the breach of a material contractual obligation exists if the breach of duty relates to an obligation, the fulfilment of which is essential for the proper performance of the contract in the first place and on the fulfilment of which the Customer may regularly rely.

Unless one of the cases listed in sentence 1 C) or sentence 2 exists at the same time, our liability in cases of gross negligence (sentence 1 B)) is limited to the foreseeable damage typical of the contract, but this limitation does not apply in the event of gross negligence on the part of the owner, the executive bodies or senior employees of A.G. Thorwarth Metallwarenfabrik GmbH; liability for the culpable breach of material contractual obligations shall be governed by sentence 4.

Unless one of the cases listed in sentence 1 A) and/or C) or sentence 2 a) to c) exist at the same time, the claim for damages in cases of the culpable breach of material contractual obligations (sentence 2 d)) is limited to the foreseeable damage typical of the contract; this limitation does not apply in the event of a grossly negligent breach of material contractual obligations on the part of the owner, the executive bodies or senior employees of A.G. Thorwarth Metallwarenfabrik GmbH.

3. A change in the burden of proof to the detriment of the Customer is not associated with the above provisions.

4. Insofar as our liability is excluded or limited, this also applies for the personal liability of our employees, staff, representatives and vicarious agents.

5. If the Customer has a right of withdrawal, it may exercise this right only if we are responsible for the breach of duty. In the case of defects, however, the statutory requirements for withdrawal shall apply instead of the preceding sentence. In the event of a breach of duty, the Customer must declare, upon

our request and within a reasonable period of time, whether it is withdrawing from the contract due to the breach of duty or insists on the delivery/performance.

## **VIII. Delivery period and liability for default of performance/delivery**

1. The start of the delivery/performance period specified by us presupposes the clarification of all technical questions. The delivery period begins at the earliest upon our written order confirmation in accordance with section I.1 of the multi-stage contract conclusion procedure described therein.

2. Compliance with our performance obligation also presupposes the timely and proper fulfilment of the Customer's obligations. The defence of non-performance remains reserved.

3. If the Customer is in default of acceptance or culpably breaches other obligations to cooperate, we are entitled to demand compensation for the damage we incur as a result and any additional expenses. Further claims or rights remain reserved.

4. Insofar as the requirements of Section 3 are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the Customer at the time when the Customer is in default of acceptance or debt.

## 5. We are liable for default of delivery/performance

- A) in cases of intent on our part or on the part of a representative or vicarious agent,
- B) in cases of gross negligence on our part or on the part of a representative or vicarious agent (nevertheless limited in accordance with sentence 2),
- C) in the event of culpable injury to life, limb or health, in accordance with the statutory provisions.

Unless one of the cases listed in sentence 1 C) or sentence 5 exists at the same time, our liability in cases of gross negligence (sentence 1 B)) is limited to the foreseeable damage typical of the contract, but this limitation does not apply in the event of gross negligence on the part of the owner, the executive bodies or senior employees of A.G. Thorwarth Metallwarenfabrik GmbH; liability for the culpable breach of material contractual obligations shall be governed by sentence 5 and sentence 6.

Except in the cases of sentence 1 and sentence 2, our liability due to default for damages in addition to performance is limited to a total of 5% of the value of the delivery/performance and our liability due to default for damages instead of performance (including reimbursement of futile expenses) is limited to a total of 10% of the value of the delivery/performance.

Further claims of the Customer are excluded – even after the expiry of any deadline set for us for performance; this does not apply in the case of culpable breach of material contractual obligations, in which case, however, the claim for damages is limited in accordance with sentences 5 and 6.

The breach of a material contractual obligation exists if the breach of duty relates to an obligation, the fulfilment of which is essential for the proper performance of the contract in the first place and on the fulfilment of which the Customer may regularly rely. Unless one of the cases listed in sentence 1 A) and/or C) exist at the same time, the claim for damages in cases of the culpable breach of material contractual obligations is limited to the foreseeable damage typical of the contract; this limitation does not apply in the event of a grossly negligent breach of material contractual obligations on the part of the owner, the executive bodies or senior employees of A.G. Thorwarth Metallwarenfabrik GmbH.

6. The right of the Customer to withdraw from the contract in accordance with Section VII 5 remains unaffected. A change in the burden of proof to the detriment of the Customer is not associated with the above provisions.

7. If, at the request of the Customer, shipping, collection or delivery is delayed by more than one month after notification of readiness for shipment, the Customer may be charged storage fees in the amount of 0.5% of the price of the delivery items, but not more than 5% in total, for each month or part thereof. The contracting parties are free to provide evidence of higher or lower storage costs.

## **IX. Liability in the event of impossibility**

1. We are liable for impossibility of delivery/performance

- A) in cases of intent on our part or on the part of a representative or vicarious agent,
- B) in cases of gross negligence on our part or on the part of a representative or vicarious agent (nevertheless limited in accordance with sentence 2),
- C) in the event of culpable injury to life, limb or health, in accordance with the statutory provisions.

Unless one of the cases listed in sentence 1C) exists at the same time, our liability in cases of gross negligence (sentence 1 B)) is limited to the foreseeable damage typical of the contract, but this limitation does not apply in the event of gross negligence on the part of the owner, the executive bodies or senior employees of A.G. Thorwarth Metallwarenfabrik GmbH.

Except in the cases of sentence 1 and 2, our liability due to impossibility for damages and reimbursement

of futile expenses is limited to a total of 10% of the value of the delivery/performance. Further claims of the Customer are excluded – even after the expiry of any deadline set for us for performance.

2. The right of the Customer to withdraw from the contract in accordance with Section VII 5 of these GTC remains unaffected. A change in the burden of proof to the detriment of the Customer is not associated with the above provisions.

## **X. Limitation period**

1. The limitation period for claims and rights due to defects in delivery/performance is one year, regardless of legal basis. However, this does not apply in the cases of Section 438 para. 1 no. 1 BGB (Defects of title in the case of immovable property), Section 438 para. 1 no. 2 BGB (Buildings, things used for buildings), Section 479 para. 1 BGB (Entrepreneurial recourse) or Section 634a para. 1 no. 2 BGB (Building or work the result of which consists of the rendering of planning or monitoring services for this purpose). The cases included in the preceding sentence 2 shall be subject to a limitation period of three years.

2. The limitation periods pursuant to No. 1 shall also apply to all claims for damages against the contractor in connection with the defect – regardless of the legal basis of the claim.

3. However, the limitation periods pursuant to Nos. 1 and 2 shall apply with the following proviso:

- a) The limitation periods generally do not apply in the case of intent or fraudulent concealment of a defect or insofar as the contractor has assumed a guarantee for the quality of the delivery item.
- b) In addition, the limitation periods do not apply to claims for damages in the event of a grossly negligent breach of duty, in the event of culpable breach of material contractual obligations that do not consist in the delivery of a defective item or the performance of a defective work (the breach of a material contractual obligation exists if the breach of duty relates to an obligation, the fulfilment of which is essential for the proper performance of the contract in the first place and on the fulfilment of which the Customer may regularly rely), in cases of culpably caused injury to life, limb or the limitation periods for claims for damages also apply to the reimbursement of futile expenses.

4. For all claims, the limitation period commences upon delivery or, for the performance of works, upon acceptance.

5. Unless expressly provided for otherwise, the statutory provisions on the start of the limitation period, the suspension of expiry, the suspension and the new start of time limits shall remain unaffected.

6. The above provisions apply mutatis mutandis to claims for damages that are not related to a defect; the limitation period shall be governed by no. 1 sentence 1.

7. A change in the burden of proof to the detriment of the principal is not associated with the above provisions.

## **XI. Place of fulfilment, place of jurisdiction, applicable law**

1. Schmalkalden is deemed place of fulfilment for performance and payments as well as exclusive place of jurisdiction, also for claims regarding bills of exchange and cheques. However, we are entitled to sue the Customer at its place of business.

2. The same place of jurisdiction applies if the Customer does not have a general place of jurisdiction in Germany or if its place of business or habitual residence is not known at the time the action is filed.

## **XII. Legal validity**

1. Should one of the above conditions be or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by the statutory provision if no individual contractual provision has been made in this regard.

2. The entire contractual relationship and all legal relationships related to it shall be governed exclusively by the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**Schmalkalden, March 2016**