

## General terms and conditions of delivery and payment of Freudenberg Performance Materials

### 1. Scope, general

**1.1** These General Terms and Conditions of Delivery and Payment (hereinafter referred to as "**GTC**") shall apply to all deliveries, services, contracts and offers as well as related ancillary services (hereinafter jointly referred to as "**deliveries**") of Freudenberg Performance Materials Holding GmbH and its European affiliated companies of the sub-group Freudenberg Performance Materials with registered seats in the European Union, United Kingdom and Turkey (hereinafter referred to as "**we**", "**us**") to or vis-à-vis entrepreneurs, legal entities under public law or special funds under public law (hereinafter jointly referred to as "**Customers**").

**1.2** Our GTC shall apply exclusively. We hereby expressly object to any deviating, conflicting or supplementary general terms and conditions of the Customer; such terms and conditions shall only become an integral part of the contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Customer without reservation in the knowledge of the Customer's general terms and conditions. In the event of participation in electronic platforms or other electronic/automated procedures of the Customer, the activation of selection fields to be activated by the system shall not constitute a legally binding consent to the respective terms of use or other general terms and conditions.

**1.3** Legally relevant declarations and notifications to be made to us by the Customer in connection with deliveries (e.g., setting of deadlines, notifications of defects, declaration of withdrawal or reduction) shall be made in writing (i.e. within the meaning of these GTC in written or text form, e.g. e-mail, letter, fax).

**1.4** The invalidity of individual provisions of these GTC shall not affect the validity of the remaining provisions.

### 2. Offer, conclusion of contract and documents

**2.1** Our offers are subject to change and non-binding; in particular, we reserve the right to change products, prices and other conditions. The order or commissioning of the delivery by the Customer (hereinafter: "**Order**") shall be deemed a binding offer of contract. A contract shall only come into existence when we accept the Customer's offer to enter into a contract.

**2.2** We point out that our employees or representatives entrusted with the performance of deliveries are not authorized to make verbal subsidiary agreements or to give verbal assurances which go beyond the content of agreements already made. Accordingly, such statements made by telephone or verbally by our employees and representatives require our express written confirmation in order to be legally effective.

**2.3** Documents and information provided in connection with offers in price lists, brochures and other documents, such as product descriptions, drawings, illustrations, descriptions of operating data and installation space, dimensions and weights are values determined to the best of our knowledge, which, however, only become binding through the specifications in the concluded contract. If operating, assembly and maintenance instructions are referred to in the offer, these shall also apply.

**2.4** We reserve the right of ownership and copyright to cost estimates, concepts, designs, drafts, drawings and other documents; they may not be changed and may only be made accessible to third parties in agreement with us. These documents must be returned to us on request at any time, even without a separate request, if we are not awarded the contract.

**2.5** Any changes requested by the Customer can no longer be considered after the Order has been placed, unless this has been expressly agreed.

**2.6** If the supplies are made under a continuing obligation whose term and periods of notice have not been expressly agreed in writing, we shall be entitled to terminate the continuing obligation subject to a reasonable period of notice which shall generally not exceed six (6) months, unless statutory provisions state otherwise. Such termination shall be made in writing.

**2.7** To the extent necessary for manufacturing or planning related reasons, our deliveries may exceed or fall short of the agreed quantity by up to 10%.

### 3. Description of services; Inadmissible applications

**3.1** The requirements for the object of a delivery shall be conclusively described by express performance characteristics agreed in writing (e.g., specifications, markings, release, other information). The fulfillment of further requirements is not owed even if samples had been provided by us and tested and approved by the Customer. The Customer is obliged to explicitly inform us in advance of an Order about all essential subjective and objective requirements for the delivery item. In all other respects, the risk of suitability and use shall be borne exclusively by the Customer. We reserve the right to minor or technically unavoidable deviations in physical and chemical parameters, including colors, formulations, processes and the use of raw materials, unless these are unreasonable for the Customer in the individual case. This also applies to other insignificant deviations from the agreed requirements or impairments of usability.

**3.2** Accessories, packaging, assembly and other instructions, specifications or recommendations for inspection, storage, installation, testing, processing, operation or maintenance (hereinafter collectively: "**Instructions**") shall only be part of the Deliverables and be handed over by us if they are (i) expressly agreed or customary in the industry or (ii) can usually be expected according to the nature of the deliverables. The Customer is obliged to install the supplies in accordance with the state of the art. If there are special requirements for processing, installation and assembly, the Customer shall inform us thereof before conclusion of the contract. If the Customer does not explicitly state any requirements in this respect, the installation risk shall be borne solely by the Customer. We are also entitled to transmit the Instructions with the delivery or to refer to them in delivery documents (e.g. by referring to corresponding websites). The Customer is obliged to follow the Instructions and to observe the relevant regulations such as DIN standards or other industry standards.

**3.3** Information on goods (e.g. in catalogs, product information, electronic media or on labels, such as "Best Before" information) is based on our general experience and knowledge and is merely indicative or labeling. Both these indications and expressly agreed performance characteristics/purposes of use do not release the Customer from checking and testing the suitability for the intended use of the goods.

### 4. Delivery, time of delivery, place of performance, transfer of risk, delay in delivery, acceptance and default in acceptance

**4.1** Unless otherwise agreed delivery of goods is made FCA FPM WAREHOUSE/FACTORY (INCOTERM 2020). Upon prior agreement and at the expense of the Customer, the goods will be shipped to another destination (mail order). If the export declaration is not completed by a carrier specified by the Customer or if any requested tax evidence is not provided, we will charge all related costs to the Customer.

**4.2** Packaging shall be charged at cost price. Unless statutory provisions state otherwise, we do not take back transport packaging and all other packaging in accordance with the packaging ordinance, they become the property of the Customer, with the exception of pallets.

**4.3** Delivery times are - even if a delivery date has been agreed with the Customer - only approximate and non-binding, unless the delivery date has been expressly agreed as fixed, i.e. it has been determined in writing that the Customer has no further interest in the delivery after the deadline has passed. The delivery period shall be deemed to have been complied with upon timely notification that the goods are ready for dispatch or collection.

**4.4** If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Customer of this immediately and at the same time notify the Customer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Customer. A case of non-availability of the service in this sense shall be deemed to be, in particular, the failure of our supplier to deliver to us on time to the required extent, if we have concluded a congruent hedging transaction in each case for the required preliminary products/raw materials to the extent customary in the industry, neither we nor our supplier are at fault and we have not assumed a special procurement risk in the individual case, as well as the case that suppliers or raw materials specified by the Customer are not available in sufficient quantities.

**4.5** An application for the opening of insolvency proceedings or comparable proceedings under foreign law, payment difficulties that arise or the discovery of a significant deterioration in the financial circumstances of the Customer shall entitle us to stop deliveries immediately and to refuse the performance of current contracts unless the Customer pays the consideration or provides appropriate security at our request.

### 5. Liability for defective goods

**5.1** The basis of our liability for defects is exclusively the agreement made on the requirements for the deliveries (see clause 4.1). If no explicit agreement has been made with the Customer regarding the requirements for the subject of a delivery, the delivery shall be free of defects if it complies with the specification valid at the time of conclusion of the contract. We shall not be liable for public statements made by third parties (e.g. advertising statements, test institutes, customers) in connection with the product supplied by us.

**5.2** The Customer has to comply with the statutory obligations for incoming goods inspection and give notice of defects. If a defect is discovered during the inspection or later, we must be notified of this in writing without delay. If the Customer fails to duly inspect the goods and/or notify us of the defect, our liability for the defect not notified or not notified in time shall be excluded.

**5.3** We do not provide any warranty for insignificant deviations as described in section 4.1 or for design defects based on drawings, plans or other documents provided by the Customer or insofar as the defect is due to the violation of instructions in a manual, use outside the defined limits of use, unsuitable or improper use or storage, faulty or negligent handling, assembly or commissioning, natural or normal wear and tear or tampering with the delivery item by the Customer or third parties. The same shall apply if the defect is due to unsuitable operating materials, replacement materials, defective construction work, unsuitable foundation soil, chemical, electrochemical, electrical or operational influences, insofar as we are not responsible for them.

**5.4** If a delivered good is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free good (replacement).

If the Customer's request to remedy the defect turns out to be unjustified, we shall be entitled to demand reimbursement from the Customer for the costs incurred as a result (in particular inspection and transport costs).

**5.5** The warranty and all resulting rights of the Customer are conclusively regulated herein. There are no further warranty rights, neither explicit nor implicit, neither based on advertising statements, implied actions nor commercial practice. All further warranty rights are excluded, in particular those relating to a subjectively or objectively expected quality, suitability for a particular purpose, a particular type of use or freedom from third-party rights. Excluded from this are legal rights of withdrawal due to a defect of the delivery item.

### 6. Liability (claims for damages)

**6.1** Unless otherwise stipulated in these GTC (in particular clauses 5, 6 and 7, and ANNEX 6.1), we shall be liable for damages, including claims for breach of pre-contractual obligations, breach of contractual obligations, or unlawful acts only if and to the extent we or our employees acted intentionally or grossly negligently.

We shall not be liable to compensate claims for loss of profit or damages resulting from interruption of business or any other indirect or consequential cost, damages or losses. Furthermore, our liability for damages under or in connection with the Order shall be limited to an amount equal to the value of the affected Products sold under the relevant Order.

The limitations of our liability set out above shall not apply in case of injury to body, life, or health; or mandatory applicable product liability.

**6.2** Unless otherwise set forth in Annex "Rules for specific jurisdictions", we shall be liable for infringements of property rights in connection with the sale or use of the delivery item in accordance with the aforementioned provisions in this Section 6, insofar as and to the extent that such property rights are infringed when the delivery item is used in accordance with the contract, which property rights are valid and published in the country of production at the time of delivery. This shall not apply insofar as we have manufactured the goods in accordance with drawings, models, samples or other descriptions or information provided by the Customer and did not know or did not have to know that the property rights of third parties would be infringed thereby. The Customer shall be obliged to inform us immediately of any possible or alleged infringements of industrial property rights of which he becomes aware and to indemnify us against all claims of third parties in connection with the documents provided by him and against all necessary costs and expenses. If third parties prohibit us from manufacturing and supplying products manufactured according to Customer documents within the meaning of the above sentence 2, in particular by invoking property rights, we shall be entitled - without being obliged to examine the legal situation - to cease any further activity in this respect and to claim damages in accordance with the statutory provisions (see also clause 11).

**6.3** The Customer shall only have a right of recourse against us to the extent that the Customer has not entered into any agreements with its customer that go beyond the legally regulated claims for defects and liability standards. Unless otherwise agreed in writing, the provisions of Clauses 5 and 6 shall apply *mutatis mutandis* to the scope of any potential right of recourse the Customer may have against us.

## 7. Force Majeure

**7.1 "Force Majeure"** shall mean the occurrence of an event or circumstance that prevents a party ("**Affected Party**") from performing one or more of its contractual obligations under the relevant contract, including this GTC, if and to the extent that the Affected Party demonstrates, that (i) such impediment to performance is beyond its reasonable control, and (ii) such impediment to performance was not reasonably foreseeable at the time of entering into the relevant contract, and (iii) the effects of such impediment to performance could not reasonably have been avoided or overcome by the Affected Party (e.g. natural disasters, war, terror, sabotage, epidemics, government measures, embargoes, sanctions, strikes and lockouts, business interruptions; unavailability of raw materials or production materials). For the avoidance of doubt, the existence of an event of force majeure shall not be excluded merely because it directly affects one of our upstream suppliers.

**7.2** To the extent and for the duration of Force Majeure, the Affected Party shall be released from its obligations and from any liability in connection with deliveries (e.g. due to delayed performance) from the time of the occurrence of the event of Force Majeure, whereby the unaffected party shall be informed thereof. In this case, we reserve the right in particular to reduce quantities at our sole discretion and considering any provisions of the applicable law or case law in the case of deliveries of goods if there is a loss of production due to Force Majeure or if we ourselves are not supplied (on time).

**7.3** If the duration of the Force Majeure results in a party being deprived of what it had a right to expect as performance under the affected delivery, or if the effects of Force Majeure last for more than 60 days without interruption, the affected party shall have the right to withdraw from the affected delivery by giving written notice to the other party with debt-discharging effect.

**7.4** The provisions in this Clause 7 shall not prevent the Affected Party from invoking other applicable legal instruments or defenses in connection with default.

## 8. Prices and payment

**8.1** Unless otherwise agreed in writing, our prices are in EURO and FCA WAREHOUSE/FACTORY plus statutory VAT or sales tax and packaging costs. Prices quoted do not include taxes, tariffs, or any similar charges, or freight, transportation, or storage charges. The Customer shall pay any such applicable taxes and charges in addition to the prices for deliveries, whether quoted or not. Our invoices are due for payment immediately and must be paid in full, i.e. without deduction. Any banking charges or exchange rate fluctuations shall be borne by the Customer. Notwithstanding any applicable law, we reserve the right to send invoices electronically. Unless otherwise agreed, we only accept payment by bank transfer.

**8.2** Significant (more than 5%) changes in raw materials, wages, energy and other costs for which we are not responsible, including, without limitation, increases related to any extra costs resulting from changes in laws, statutes, regulations, tariffs, and/or other regulatory compliance matters impacting the production costs or pricing, shall entitle us to make corresponding price adjustments. The Customer will be notified of the respective change in writing. At the same time, the Customer will be expressly informed that the respective change will become a part of the contract existing between the contracting parties if the Customer does not object to this change in writing within a period of three weeks from the announcement of the change. If the Customer objects, either party shall have the right to terminate the contract by giving ten working days' written notice.

**8.3** In the event of partial deliveries, each delivery may be invoiced separately. If no prices have been agreed upon conclusion of the contract, our prices valid on the day of conclusion of the contract (see clause 2.1) shall apply.

**8.4** The date of receipt of payment shall be the date on which the amount is received by us or credited to our bank account. In addition to any rights and remedies under statutory law, during the Customer's default in payment, we shall be entitled to charge interest at the lower of (i) the statutory rate and (ii) 5% p.a. above the applicable central bank's base interest rate.

**8.5** We do not pay interest on pre-payments or payments on account.

**8.6** Upon request, the Customer shall immediately provide us with tax (voucher) evidence (including confirmation of receipt) which is required under the applicable statutory provisions to prove the VAT or sales tax exemption for cross-border deliveries. If the Customer does not comply with a corresponding request without undue delay, he shall be obliged to reimburse us for the amount of VAT or sales tax, interest and any related costs and expenses assessed against us against delivery of a corrected invoice with VAT or sales tax. The Customer shall inform us immediately of any change in its VAT identification number.

**8.7** If the local VAT law allows that the recipient of a service/supply issues the invoice for the corresponding transaction (so-called self-billing) and both parties agree on this the Customer is obliged to make sure that the issued self-billing invoice matches the corresponding local VAT law requirements. If any fees, penalties, other financial or legal obligations arose for a Freudenberg Performance Materials entity based on an incorrect treatment of the self-billing process by the Customer, the Customer has to offset the incurred costs.

## 9. Assignment and right of retention; set-off

**9.1** The Customer shall only be entitled to assign its claims arising from the contractual relationship with us with our prior written consent.

**9.2** Offsetting (including invoice reductions) on account of any counterclaims of the Customer which are disputed by us or which have not been finally determined by a court of law shall not be permitted.

## 10. Retention of title

**10.1** To the extent legally possible we retain title to the goods sold to the Customer (reserved goods) until full payment of all our claims arising from the contract for the supplies and an ongoing business relationship (secured claims).

**10.2** The Customer shall handle the reserved goods with the care of a prudent businessman and is obliged to insure them adequately against fire, burglary and other usual risks at its own expense.

**10.3** In case of breach of contract by the Customer, in particular in case of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions.

**10.4** The Customer shall be entitled to sell and/or process or mix the reserved goods in the ordinary course of its business. In this case, the following provisions shall apply in addition:

**10.4.1** The retention of title shall extend to the products resulting from the processing, mixing or combining of the goods subject to retention of title at their full value.

**10.4.2** The Customer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods subject to retention of title or the product manufactured therewith in the amount of our co-ownership share, if any, pursuant to Section 10.4.1 above. We accept the assignment. The obligations of the Customer stated in clause 10.2 shall also apply in respect of the assigned claims.

**10.4.3** The Customer shall remain authorized to collect the claim.

**10.5** If the realizable value of the existing securities exceeds our claims against the Customer by more than 10%, we shall release securities of our choice at the Customer's request.

## 11. Statute of limitation

Notwithstanding any conflicting mandatory statutory provisions, the general limitation period for claims arising from defects of material and defects of title pursuant to Clause 6 shall be one year from delivery at the place of performance.

## 12. Third party property rights

**12.1** If we have been commissioned according to drawings, samples or plans submitted by the Customer, the Customer shall be liable for the non-existence of related industrial property rights, copyrights or other rights of third parties or for the fact that no intellectual property of third parties is infringed by their use and furthermore that no statutory or regulatory prohibitions are violated.

**12.2** To the extent of its liability pursuant to Section 12.1, the Customer shall be obliged to indemnify us against all claims asserted against us by third parties on the grounds of or in connection with the deliveries. This indemnification obligation shall also extend to all necessary expenses incurred by us from or in connection with the claim by a third party.

## 13. Confidentiality

**13.1 "Confidential Information"** shall mean all information, recipes, drawings, models, tools, technical records, process methods, presentations, software and other technical and commercial know-how made available by us - in whatever form (in writing, orally, electronically, etc.) - or obtained by the Customer through us, as well as work results achieved in connection therewith, insofar as these are marked as confidential or their confidentiality results from the circumstances of the disclosure or the nature of the information. However, information shall not be deemed to be confidential in this sense if (i) the Customer has developed such information itself and independently of the receipt of Confidential Information from us, (ii) such information was public knowledge at the time of its disclosure or later becomes public knowledge through no fault of the Customer, (iii) such information was already known to the Customer or later becomes public knowledge without any breach of law recognizable to the Customer, (iv) there is an official or judicial duty of disclosure or a legally mandatory right of disclosure for such information. The customer shall be obliged to inform us without undue delay, enclosing any evidence required for this purpose, if it wishes to invoke one of the aforementioned exceptional circumstances vis-à-vis us.

**13.2** The Customer shall be obligated to keep all Confidential Information secret, even beyond the duration of the business relationship, not to disclose it to third parties and not to use it in its own business for purposes that go beyond the specific purpose of the contract concluded with us. Confidential Information may only be made available

directly or indirectly to persons who are not in a competitive relationship with us and who must have knowledge of the Confidential Information within the scope of the business relationship and who have been obligated to maintain secrecy to the extent permitted by law in accordance with the provisions of this Section 13. Beyond the purpose of the contract, Confidential Information (in particular cost estimates, drafts, design drawings, experience reports, business information, customer lists, contractual information, prices, product volumes, areas of application of the products, process descriptions and material analyses) may not be modified, reproduced or published without our prior consent, nor may it be used to register our own industrial property rights (e.g. patents or designs) or those of third parties.

**13.3** Furthermore, product samples, prototypes, etc. handed over by us may not be analyzed, decompiled, modified or disassembled with regard to their composition, either by ourselves or by third parties ("**reverse engineering**"), unless the latter is technically absolutely necessary for the realization of the project.

**13.4** We reserve all rights to the Confidential Information disclosed by us, in particular property rights and copyrights; any kind of license thereto shall require a separate agreement. All documents submitted by us in connection with offers shall be returned to us at our request at any time and without being requested, in any case if the order is not placed with us. The Customer shall not be entitled to a right of retention with regard to Confidential Information or corresponding documents or materials.

**13.5** The contractually agreed protection of Confidential Information under this Section 14 shall be independent of and in addition to the applicable statutory provisions on information protection.

#### **14. Compliance**

**14.1** With regard to the existing business relationship with us, the Customer undertakes to comply with all laws applicable to it as well as the specifications in compliance codes notified to it by us, upon request, or other specifications, guidelines or codes pursuant to the laws on corporate due diligence in supply chains. This includes in particular the provisions set forth in Annex 14.1. As soon as deliveries have left our respective premises, the Customer shall be solely responsible for compliance with the above provisions and shall indemnify us against all claims and costs (including reasonable attorneys' and consultants' fees or administrative fees or fines resulting from said violations) incurred by us due to a violation of law by the Customer, its affiliates or employees, representatives and/or vicarious agents, unless the Customer is not responsible for such violation.

**14.2** Our offer or the Customer's order is subject to the granting of an export license by the authorities. A promised delivery date is also subject to the availability of the export license. Delivery times may be delayed beyond our control.

#### **14.3 Export Control**

The Customer undertakes not to resell the goods to other buyers without ensuring that the delivery complies with the relevant (DE, EU, GB and US) export control regulations. The Customer acknowledges that the provision of certain products, technologies or

services by us may require the acquisition of a license (or similar requirement) from the German Federal office of Export Control (BAFA) or other regulatory authority. The Customer agrees that any delay in providing or failure to provide such products, technology or services caused by our failure to obtain such license (or similar requirement) in a timely manner (or at all),

a. does not represent a breach or non-performance by FPM of any of the foregoing documents or any other express or implied obligation of FPM to the buyer, and  
 b. does not create under liability for or other obligation incumbent upon FPM.

The Customer undertakes to provide us with complete information on the intended use of the goods at the latest at the time of submission of the offer and in good time prior to deliveries to arms embargo countries. If no corresponding notification is made to us, we may assume that the goods are not intended for military end-uses, NBC weapons, associated carrier technology and installation in nuclear facilities.

In the case of deliveries requiring approval, the Customer undertakes to provide us with the licensees of the export or transfer permits requested by the authorities in the Customer's country at the latest at the time of delivery. In the event of incorrect export control classifications of the goods, undisclosed export permits and other inaccurate information, as well as any resulting fines and penalties, the Customer shall assume full responsibility under civil law.

The declaration contained in the previous sentence shall only be made to the extent that the contracting parties or the involved employees of the contracting parties are entitled to make such declarations pursuant to Section 6 of the Foreign Trade and Payments Ordinance (AWV), EU Regulation (EC) 2271/96 or a similar anti-boycott law.

#### **15. Place of performance, place of jurisdiction and applicable law**

**15.1** The place of performance for all rights and liabilities arising from the contractual relationship, in particular from our deliveries, shall be as agreed in the agreed Incoterm or if no Incoterm has been agreed it is the respective location from which the delivery is made.

**15.2** These GTC, the purchase and sale of goods hereunder, the entire legal relationship between us and the customer and any dispute or controversy relating thereto shall be governed and construed according to the laws of country where the selling entity has its official place of business, excluding its conflict of law principles. The application of the UN Convention on Contracts for the International Sale of Goods (C.I.S.G.), other bilateral or multilateral agreements serving the standardization of international sales as well as conflict of law rules are excluded. The jurisdiction for all disputes arising out of or in connection with these GTC and any transaction governed by these GTC shall vest in the courts of competent jurisdiction at the registered seat of the selling legal entity.

### **Rules for specific jurisdictions**

The following rules shall only apply to transactions governed by the laws of the following jurisdictions:

#### **Germany**

##### **Art. 6.1 shall be replaced by the following clause:**

We shall be liable without limitation for damages caused intentionally or by gross negligence by us, our legal representatives or our vicarious agents.

Under exclusion of liability in other respects, we shall only be liable in the case of simple negligence

- a) for damages resulting from injury to life, body or health for which we, our legal representatives or our vicarious agents are responsible;
- b) for damages resulting from breaches of a material contractual obligation (obligation whose fulfillment is a requirement for the proper performance of the contract and on whose fulfillment the contractual partner regularly relies and may rely, so-called cardinal obligation) by us, our legal representatives or our vicarious agents. In this case, however, our liability shall be limited in terms of reason and amount to such damages whose occurrence we could reasonably foresee at the time of conclusion of the contract based on the circumstances known to us at that time.

The above limitations of liability shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. Other mandatory statutory liability provisions, in particular according to the provisions of the Product Liability Act, shall remain unaffected.

#### **USA**

##### **Art. 6.1 shall be replaced by the following clause:**

NO OTHER EXPRESS AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH ABOVE (WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES) SHALL APPLY TO THE PRODUCTS.

IN NO EVENT SHALL WE BE LIABLE (A) IN EXCESS OF THE PURCHASE PRICE OF THE NONCONFORMING PRODUCT, OR (B) FOR INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN THE PRODUCTS, ANY USE OF OR INABILITY TO USE THE PRODUCTS, OR OTHERWISE.

#### **China:**

##### **Art. 6.1 shall be replaced by the following clause:**

Costs regarding the subsequent performance, the withdrawal from the contract or damage-repair because of defective goods, in particular costs for de- and reinstallation, testing, validation, shipment, transportation, labor and material shall not exceed the total value of the respective order or the value of the specific release corresponding to the relevant goods if any blanket order is involved. We shall be liable for any damages, in particular resulting from culpa in contrahendo, breach of duty and unlawful acts, insofar as we, our employees are charged with intent or gross negligence.

For damages resulting from injury to life, body or health, guarantees or violation of material contractual duties, we shall also be liable for ordinary negligence. In case of a violation of contractually relevant duties our liability shall be limited to the direct average damage, predictable and typical according to the type of goods, and such total liability shall be capped no more than the total sales value of the goods or the value of the specific release corresponding to the relevant goods if any blanket order is involved. Aforementioned stipulation shall also apply to breach of duty by our employees.

We shall be liable for the infringement of third parties' industrial property rights in connection with the sale of the goods only if such third parties' industrial property rights are valid in the People's Republic of China and have been published at the time of delivery and only to the extent that such third parties' proprietary rights are infringed upon when using the goods as agreed. This shall not apply if we have manufactured the delivery items according to drawings, models, descriptions or other documents or data provided by the customer and if we thus do not or need not have knowledge of any infringement of industrial property rights in connection with products developed by us. In this case the customer undertakes to warrant that there has been and will be no infringement of third parties' industrial property rights, to inform us without delay of any potential and alleged cases of infringement of third parties' industrial property rights which may become known to it, to indemnify us from third parties' claims and, to bear all costs and expenses incurred.

Claims for defects of delivered goods shall lapse 1 year after delivery of the goods. This shall not apply to goods that, consistent with their usual application, are used in buildings and have caused the building's defectiveness; in that case claims shall become time-barred five (5) years after delivery. All other claims under these General Terms and Conditions shall become time-barred according to the statutory provisions.

Claims for price reduction and rights to rescind the contract shall be rejected so far as the claim for subsequent performance has lapsed.

Our liability pursuant to the provisions of the Product Liability Law of People's Republic of China shall remain unaffected by the aforementioned stipulations.

We shall only be liable for claims of recourse by the customer if and to the extent the customer has not accepted obligations towards his own customer beyond the mandatory statutory provisions on remedies for defects and liability. Unless agreed otherwise in writing, clauses 7 and 8 shall apply accordingly to any claims of recourse raised by the customer.

We shall be exempt from any other liability except for the liabilities explicitly agreed in these General Terms and Conditions. PARTICULARLY, IN NO EVENT SHALL WE BE LIABLE FOR INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN THE PRODUCTS, ANY USE OF OR INABILITY TO USE THE PRODUCTS, OR OTHERWISE.

#### **Italy**

Article 10 of these GT&Cs shall not apply to transactions based on Italian law. Pursuant to and for the purposes of Art. 1341 of Italian Civil Code, the Parties approve the following clauses of these GTC: articles 4.4, 4.5, 5, 6, 8.2, 8.4, 9.2, 14 and 15.2.