General Terms and Conditions of Sale (GTCS) of
Kubota (Deutschland) GmbH
(last amended on: 1 March 2023)

§ 1
Scope of application, exclusion clause

(1) These GTCS apply to all business relationships with our customers if the customer is an entrepreneur (§ 14 German Civil Code, *BGB*), a merchant within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a public law special fund. These GTCS apply in particular to contracts for the sale and/or supply of moveable goods irrespective of whether we have manufactured them or purchased them from distributors/suppliers.

(2) Our GTCS apply exclusively. Any terms and conditions of the customer which conflict with, differ from or supplement these terms and conditions are hereby rejected and do not become an integral part of the contract, unless we have expressly consented in writing to their application. For example, consent is not deemed to be given even if with knowledge of the customer's terms and conditions, we, – without any reservation – accept orders, make deliveries, perform other services or directly or indirectly refer to letters, etc., which contain the customer's or third-party terms and conditions.

(3) Unless otherwise agreed, our GTCS in the version which is current at the time of the customer's order will also apply as a framework agreement (§ 305 (3) German Civil Code) to any subsequent contracts within the meaning of para. (1) with the same customer without us having to refer to our GTCS again.

§ 2
Conclusion of contract, content of contract and proof; written form; representation; no guarantees, assumption of risk, vicarious agents; product modifications

(1) Our offers are non-binding and subject to change unless they are expressly marked as binding or they indicate a specific deadline by which the offer must be accepted. The customer must notify us of any obvious errors (in particular, obvious arithmetical errors, incorrect product specifications or omissions) in our offers (and associated documents) so we can correct them before the contract is concluded, otherwise the contract will be deemed not to have been concluded.

(2) The customer's order is deemed to be a binding offer to conclude a contract (unless it is a case of retention pursuant to (para. (1)); in this case the customer's order is the binding acceptance of our offer). Unless otherwise indicated in the customer's order, we may accept the offer within 10 working days of receipt. Working days are Monday to Friday, except for national public holidays.

(3) We will confirm offers explicitly in writing (e.g. our order confirmation or not until we issue notice that goods are ready for collection/dispatch or or in an implied manner, for example by delivery of the goods to the customer, whereby the customer waives receipt of the declaration. The content of the contract is determined by the content of such statement. Any statements or information from the customer after the contract has been concluded which are of legal relevance (e.g. deadlines, reminders, notices of defects, statements concerning rescission or reductions) are only valid if they comply with written-form requirements.

(4) Telefax or email, in each case unsigned (text form) are also sufficient to fulfil the written form requirement. We reserve the right to demand evidence in the event of doubts about the legitimacy of the person making the declaration on the part of the customer or about the binding nature of such declaration. This does not affect statutory written form requirements.

(5) The written contract including these GTCS, which are an integral part of the written contract, contains all the agreements in full regarding the subject of the contract (subject to the following section). Any agreements entered into before the written contract was concluded or any commitments made by us are not binding and are superseded in full by the written contract unless the contract expressly states that they are to continue to apply and that they are binding.

(6) Any individually negotiated terms – including those made verbally – will always take precedence over these GTCS (§ 305b German Civil Code). If proof of their content is required, subject to proof to the contrary, any written arrangement, or, if there is no such written arrangement, any written confirmation by us will be authoritative.

(7) Apart from our directors, *Prokuristen* and any other employees expressly named to the customer as a contact – each acting according to the company rules on representation – our employees are not authorised to make offers, conclude contracts, enter into any individual written or oral agreements or make commitments. Any such statements (or receipts of statements) are insignificant and not binding on us.

(8) Apart from guarantees and/or procurement risks expressly assumed as such in the contract, there are no guarantees and no risks assumed. Our suppliers/subcontractors are not vicarious agents within the meaning of § 278 German Civil Code.

(9) Any modification of orders confirmed by us as well as their cancellation shall only be permitted with our prior written consent.

(10) We shall be entitled to request changes to the confirmed order. In doing so, we shall in particular point out the effects on the technical designs, the costs and the delivery date. The parties shall decide by mutual agreement whether and to what extent these changes shall be implemented.

§ 3
Reservation of rights; prohibition on reverse engineering; confidentiality

(1) We reserve all title, copyright and property rights in all documents, materials and other items (essentially, our offers, catalogues, price lists, estimates, plans, drawings, illustrations, calculations, product specifications, manuals, samples, models and other physical and/or electronic documents or information) which we provide to the customer. Reverse engineering is prohibited.

(2) The customer may not make the aforementioned items or their content available or disclose them to third parties or their own employees who are not involved, nor may it exploit, reproduce or modify them. It must treat them as confidential and use them solely for the contractual purposes and must return them to us in full at our request and destroy/erase any copies (including electronic copies), provided it no longer needs them to comply with statutory retention obligations or to execute the contract. At our request, confirmation must be provided stating that the items have been returned in full or destroyed/deleted and, where such confirmation is not provided, a written statement must be provided stating which items are still required and for what reasons.

§ 4
"FCA Incoterms (2020)" and other modalities of delivery; passage of risk; default with acceptance, cooperation; acceptance

(1) Unless otherwise agreed, all of our deliveries are "FCA Incoterms (2020)" (based on dispatch from the warehouse/plant from which we ship).

(2) We will only insure the goods after it has expressly been agreed with the customer, and at customer's cost, against theft, breakage, transport, fire or water damage or other insurable risks.

(3) Notwithstanding para. (1) and only if expressly agreed, we will ship the goods at the customer's cost to the place of destination stipulated by the customer (sale to destination), We are entitled to specify the type of delivery (in particular, the transport company, shipping route and packaging) at our due discretion. If the customer would like to take out insurance it must expressly say so. The risk of accidental loss and accidental deterioration of the goods passes to the customer in the event of sale to destination upon receipt by the customer of our notice of readiness for dispatch or, at the latest, upon handover of the goods to the forwarding agent, carrier or other person designated to carry out the shipment. This also applies to part shipments.

(4) If the customer is in default with acceptance, if it fails to cooperate as required or if our performance is delayed for other reasons for which the customer is responsible, we may demand compensation for any ensuing damage including additional expenditure (e.g. storage costs) which we incur. For this purpose, we shall charge a lump-sum compensation of 0.5% of the net invoice amount of the delayed performance per full calendar week elapsed. This shall only apply from 2 weeks after the date agreed for our performance, i.e. after receipt by the customer of our notice of readiness for dispatch/collection or - if agreed - after the date scheduled for handover to the transport person. The proof of a higher damage and our legal rights and claims remain unaffected. Any lump-sum compensation paid shall be credited against our claims. The customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the lump-sum compensation.

(5) Where acceptance is expressly agreed (analogous to the meaning in contracts for work and services) § 640 (1), (2) sentence 1 and (3) German Civil Code apply accordingly. The goods are deemed to have been accepted if

a) delivery and, if we are also required to assemble or provide a similar service (e.g. mounting, fitting, installation, commissioning, set-up, adjustment), such service has also been completed,
b) we have notified the customer of completion without undue delay and requested acceptance,
c) (aa) 10 working days have passed since such request or (bb) the customer has commenced use of the goods and 5 working days have passed since the request, and
d) the customer has not (expressly or implicitly) declared acceptance within the relevant period either, unless this is due to a defect which has been reported to us which makes it impossible to use the goods or significantly impairs their use.

§ 5
Prices; due date; payment; right of retention and set-off; default with payment; interest after due date

(1) Our current net prices at the time the contract in question was concluded apply plus statutory VAT and any other fees or charges under public law. These prices are quoted "FCA Incoterms (2020)" (see § 4(1)).

(2) If the agreed price is based on our list price, expressly not agreed as a fixed price (i.e. not subject to change) and our delivery is agreed for a date more than 3 months after conclusion of the contract, our current list price at the time of delivery applies automatically. Any agreed percentage or set discounts will be deducted without change from the new list price. In all other respects para. (1) applies.

(3) (a) (Unless otherwise agreed and if sentence 3 or para. (b) does not apply and unless) our invoices are to be paid within 30 calendar days after the goods have been delivered and the invoice has been received. Delivery also means receipt by the customer of our notice that goods are ready for collection (we can send the invoice along with such notice) or – if delivery of the goods has been agreed – handover of the goods to the party responsible for transport. If and to the extent that it has been agreed that the goods must undergo acceptance or if we are required to assemble or provide a similar service (e.g. mounting, fitting, installation, commissioning, set-up, adjustment), the payment deadline pursuant to sentence 1 does not apply until these steps have also been completed.
(b) We are entitled to make our performance wholly or partly dependent on concurrent payments or advance payments. We will exercise this right no later than in our declaration of acceptance (see § 2(3)). If it has been agreed that the goods must undergo acceptance and we are also required to assemble or provide a similar service, we are not entitled to this right insofar as the customer has a justified interest - as a rule to be assessed at 10% of the total price - in not having to pay the full remuneration before acceptance or completion of the assembly or similar service.
(c) All payments must be made without deductions and in euros (€) by bank transfer into the account specified in our invoice. The date on which the payment is credited to the bank account determines whether the payment deadline has been met.

(4) The customer is automatically in default when the deadline for payment expires. During default, interest will accrue on the purchase price at the statutory default interest rate. The statutory flat-rate default fee will be added. We reserve the right to assert further default damage and - in relation to merchants - statutory interest on arrears (§§ 352, 353 German Commercial Code).

(5) The customer is only entitled (a) to offset if its counterclaim is either (aa) undisputed by us or (bb) has been ruled final and absolute by a court of law or (cc) where such claim is synallagmatic to our claim against which the customer offsets;(b) to assert a right of retention if its counterclaim is either (aa) undisputed by us or (bb) has been ruled final and absolute by court of law or (cc) if such claim is based on the same contractual relationship as our claim against which the customer asserts its right. This has no effect on para. (3) lit. (b) sentence 3 and § 8(9) below.

(6) We are entitled to refuse to perform any outstanding obligations under a contractual relationship if it becomes apparent after the contract has been concluded (e.g. an application for insolvency filed by or against the customer) that our claim for payment under the respective contractual relationship is at risk owing to the customer's inability to pay. Our right to refuse performance will lapse if payment is made or security has been provided for it. We are entitled to set the customer a reasonable deadline by which it must choose either to pay or to provide security concurrently in return for performance by us. We may rescind the contract if this deadline fruitlessly expires. In the case of contracts for the production of non-fungible items (custom-made items), we can rescind the contract immediately. A deadline does not have to be set if a statutory exemption applies; § 321 German Civil Code and the remaining provisions of this § 5 remain unaffected.

§ 6
Delivery dates; force majeure and default by our suppliers; part performance; our statutory rights, liability in the event of default or impossibility; no transactions at fixed point in time

(1) The delivery times/dates for our deliveries and services (delivery periods) are agreed individually or stated in our declaration of acceptance (above § 2(3)). If this is not the case, the delivery period shall be approx. 9 months from conclusion of the contract.A delivery date for the supply of goods is deemed to have been met if the customer has received our notice that goods are ready for collection by that date or – if delivery is agreed – we have handed over the goods to the transporting entity or could have handed them over in the event the transporting entity does not appear at all or not in due time.

(2) (a) Where performance is impossible or delayed we are not liable to the extent that this is attributable in each case to force majeure or another occurrence that was unforeseeable when the contract was concluded and for which we are not responsible (e.g. including without limitation any disruption to operations, fire, natural disasters, epidemics, pandemics, weather, flooding, war, insurgency, terrorism, transport delays, strikes, lawful lockouts, shortage of staff, energy or raw materials, delays concerning necessary official permits, official/sovereign measures).
(b) Failure of our suppliers to supply us correctly or in time also constitutes an occurrence of this type unless responsibility for it lies with us and if, at the time the contract with the customer was concluded, we had entered into congruent substitute transactions with our respective supplier. This also applies if we enter into such congruent substitute transactions without delay after concluding the contract with the customer.
(c) If we become aware of an occurrence within the meaning of lit. (a) or lit. (b), we will inform the customer without undue delay. Our delivery periods are extended/adjusted automatically by the duration of the occurrence, plus reasonable start-up time. If such occurrences make it substantially more difficult or impossible for us to render performance and are not only of temporary duration, we may rescind the contract.

(3) Delivery periods are extended automatically to a reasonable extent if the customer does not fulfil its contractual duties (including unwritten duties to cooperate) or obligations in good time. In particular, it must provide us with any documents, information and objects to be provided by it in good time and in the correct format and fulfil any technical, structural, personnel and organisational requirements for the installation of the goods or similar services.

(4) (a) We are entitled to render part-performance, if (aa) part-performance is suitable for the customer's contractually intended use, (bb) rendering of the remaining performance is secured and (cc) the customer does not face significant additional costs or we confirm that we will bear such costs.
(b) If our delivery capacities are not sufficient for the timely, complete fulfilment of all open, equal-ranking orders from our customers and we are not obliged to take responsibility, we are entitled to allocate our delivery capacities proportionally among these orders.

(5) This does not affect our statutory rights, particularly rights concerning exclusion of our duty to perform (e.g. because performance and/or subsequent fulfilment is ultimately or temporarily impossible or cannot reasonably be expected of us) or rights regarding default on the part of the customer in respect of acceptance or performance.

(6) If we fall into default with a delivery or service or if it becomes, for whatever reason, impossible for us to provide such delivery/service, any liability for compensation is limited as stated in § 10 below. There will be no transactions by a fixed date in absolute or relative terms, unless expressly agreed otherwise in writing.

§ 7
Reservation of title

(1) The reservation of title agreed upon here serves as security for our receivables against the customer under the respective contractual relationship and additionally for all of our other trade receivables against the customer existing at the time the respective contract is concluded, including outstanding balance receivables from current account (together the **"Secured Receivables"**).

(2) Any goods which we have delivered to the customer remain our property until all Secured Receivables have been paid in full. These goods and/or the items by which they will be replaced in accordance with the provisions below, which are also covered by reservation of title are referred to in the following as "**Reserved Goods**".

(3) If the customer intends to transfer Reserved Goods to a location outside of Germany, it must (a) inform us of this intention immediately, (b) and without undue delay at its own expense determine and fulfil all local (including legal) requirements for the creation and retention of title and (c) also inform us without undue delay in each case.

(4) The customer will keep the Reserved Goods on our behalf free of charge. It will handle them carefully and insure them at its own cost against fire damage, water damage, theft and other loss or damage at reinstatement value. If maintenance, servicing, inspection or similar work is required on the goods (this does not include any performance or supplementary performance to be rendered by us), the customer must carry this out or have it carried out in a timely and professional manner at its own expense.

(5) The customer may not pledge Reserved Goods or transfer title in them as security or use them for sale-and-lease-back transactions. If an application is filed to open insolvency proceedings against the customer's assets and/or if third parties attempt to access the Reserved Goods (in particular by way of seizure), the customer must clearly point out without undue delay on every suitable occasion that we own the goods (e.g. in correspondence with creditors or bailiffs and upon their respective access to the customer's premises). The customer must inform us of any such application or attempt to access without undue delay. If third parties do not reimburse us for the court and/or out-of-court costs incurred by us in asserting our ownership rights, the customer will be liable for these costs.

(6) The customer has the right to use, process, alter, combine, mix and/or sell the Reserved Goods in the proper course of business as long as the requirements mentioned in para. (8) (b) sentence 3 are met and realisation (para. (10)) has not occurred.

(7) (a) If the Reserved Goods are processed or altered (§ 950 German Civil Code) by the customer, such processing or altering will be deemed as carried out for us as manufacturers in our name and for our account. We will directly acquire sole ownership in the newly created item or – if processing or altering makes use of materials belonging to two or more owners – pro rata co-ownership in it commensurate with the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other processed/altered materials at the time of processing/altering. The customer herewith transfers its future ownership or its co-ownership in the ratio set out above in the newly created item as security to cover the eventuality that we do not for some reason acquire ownership or co-ownership. We hereby accept such transfer.
(b) If the Reserved Goods are combined (§ 947 German Civil Code) or mixed or mingled (§ 948 German Civil Code) with items which do not belong to us we directly acquire pro rata co-ownership in the newly created item commensurate with the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other combined, mixed or mingled items at the time of such combining, mixing or mingling. If the Reserved Goods constitute the principal item, then we directly acquire sole ownership (§ 947 (2) German Civil Code). If one of the other items must be regarded as the principal item, to the extent that the principal item belongs to the customer, the customer herewith transfers to us pro rata co-ownership in the complete item in the ratio stated in sentence 1 of this lit. (b). We hereby accept such transfer. The last two sentences of lit. (a) apply accordingly to the circumstances in this lit. (b).
(c) The customer will keep our sole ownership or co-ownership which has arisen as described in the previous provisions for us free of charge.

(8) (a) The customer assigns its claims against its customers from remuneration from resale of Reserved Goods and those claims of the customer in respect of the Reserved Goods arising for any other legal reason against its customers or third parties (in particular claims from tortious acts and to insurance payments) in each case including any outstanding balance receivables from current account to us in full here and now as security; in the event that we have co-ownership of Reserved Goods assignment refers to our pro rata co-ownership share. We hereby accept these assignments.
(b) We hereby irrevocably authorise the customer to collect the claims assigned to us in its name and for its account on our behalf. This has no effect on our right to collect such claims ourselves. However, we will not collect such claims ourselves and will not revoke the customer's authorisation to collect as long as the customer duly meets its payment obligations to us (in particular does not fall into default with payment), an application has not been filed for insolvency proceedings in respect of the customer's assets and the customer is not unable to perform (§ 321 (1) sentence 1 German Civil Code). If any of the three scenarios described above occurs, we may revoke the authorisation to collect and demand that the customer inform us of the claims assigned and the respective debtors, that it inform the debtors of the assignment (which we may also do at our discretion) and provide us with all documents and information/data needed or expedient

to collect the claims.
(c) The prohibitions in para. (5) apply accordingly to the claims assigned to us.

(9) If the customer so requests, we will release the Reserved Goods (or the items and claims by which they have been replaced) to the extent that their estimated value exceeds the amount of the secured claims by more than 50%. We are free to select which items to release.

(10) If we rescind the contract because the customer has acted contrary to the contract – in particular default with payment – under statute (realisation) we have the right to demand that the customer release the reserved goods. Such request for release automatically also constitutes our declaration of rescission, if it has not already been declared; if we pledge Reserved Goods this also constitutes declaration of rescission from the contract. All transport costs which arise in connection with our taking back the Reserved Goods will be borne by the customer. We may realise Reserved Goods taken back by us. The proceeds from such realisation less a reasonable amount for the costs of realisation will be set off against the amounts owed to us by the customer.

§ 8
Warranty for defects etc.

(1) The statutory provisions apply to the customer's rights in the event of material defects and defects of title (including incorrect delivery/insufficient quantities, faulty assembly or similar services or faulty instructions), subject to deviating or supplementary provisions in these GTCS. This does not affect the special statutory provisions in the event of delivery of unprocessed goods to a consumer (§ 13 German Civil Code), even if the consumer has processed them further (§ 478 German Civil Code). Such recourse claims are excluded insofar as the defective goods have been further processed by the customer or a third party, e.g. incorporated into another product.

(2) We have no warranty obligation if the customer modifies the goods or has them modified without our consent and rectification becomes impossible or unreasonably difficult as a result; in any case, the customer must bear the additional costs for rectification based on the modification.

(3) Our goods and services must only comply with the statutory requirements applicable in Germany. We exclusively warrant that the goods have the quality expressly agreed upon conclusion of the contract and are suitable for the use expressly agreed upon in the contract (e.g. in the product specifications or in the product description). This shall also apply with regard to the suitability of the ordered goods and services for its technical, structural and organizational conditions. Insofar as requirements with regard to a specific feature of the goods have been agreed, this shall exclude other requirements with regard to the feature, even if these would correspond to the objective requirements for the subject matter of the contract. Public statements, recommendations or advertising by us shall not constitute a contractual quality of the goods. We do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) (a) Unless it has been expressly agreed that the goods must undergo acceptance, the customer must inspect the goods delivered in accordance with §§ 377, 381 (3) German Commercial Code without undue delay after delivery to it or to a third-party designated by it and report any defects to us without undue delay. The provisions in this (4) also apply. § 442 German Civil Code remains unaffected.
(b) Such notification must be in text form (see § 2(4)) and must be made via the warranty application in our online portal in its respective current version, currently under the name "Kubota.Net" (https://www.v3.kubota-net.eu/), in the interest of time. Notification is deemed to have been made without undue delay if it is sent within (aa) 5 working days after delivery (§ 377 (1) German Commercial Code) or (bb) – if the defect was not apparent during inspection after delivery (§ 377 (2) and (3) German Commercial Code) – 3 working days after the defect has been detected.
(c) Inspection after delivery may not be limited to outward appearance and delivery documents. It must also adequately cover the quality and functionality, unless otherwise agreed. For goods intended for assembly, installation or other processing, the inspection must precede these steps; the customer is responsible for refraining from these steps if defects are found.
(d) If the customer does not carry out a proper inspection or issue proper notice of defects, this will exclude any warranty obligation or liability which we may have in respect of the defect concerned. None of our statements, acts or omissions is to be deemed a waiver of the requirements and legal consequences under §§ 377, 381 (2) German Commercial Code and/or this para. (4).

(5) Acceptance without reservation despite the customer having knowledge of defects also results in loss of the claims for compensation referred to in §§ 634 no. 4, 437 no. 3 German Civil Code. This does not apply if we warrant that the goods have specific attributes or maliciously fail to disclose a defect.

(6) The customer must allow us the time required and give us the opportunity to review the complaints and remedy the defects. Goods which are the subject of a complaint must be made available to us for inspection purposes or we must be given access to them.

(7) We will bear or reimburse the expenses required for inspection and subsequent fulfilment (in particular transport, travel, labour and material costs and, if applicable, removal and installation costs) in accordance with the statutory provisions if there is actually a defect. Inspection and subsequent fulfilment do not however include removal of the defective item or installation of the defect-free item if our original obligations did not include installation. If a customer complaint proves to be unjustified, we can demand reimbursement of our costs incurred due to the complaint (in particular, for inspection and transport) unless the customer was not able to recognise the lack of justification.

(8) In the event of a defect, we are entitled and obliged, at our discretion and within a reasonable period of time, to remedy the defect (rectification) or deliver a defect-free item (replacement delivery). The customer must return items which have been replaced in accordance with statutory provisions.

(9) We have the right to make subsequent fulfilment dependent on the customer paying the due purchase price or part thereof, if applicable. The customer has the right, however, to withhold a part of the payment commensurate with the alleged defect until completion of the subsequent fulfilment measure.

(10) If subsequent fulfilment is impossible or has failed or if the customer has set a reasonable deadline for subsequent fulfilment and such deadline has expired without success or if there is no statutory obligation to set a subsequent deadline, the customer may decide either to rescind the contract or reduce the purchase price. However, there is no right of rescission if the defect is insignificant.

(11) The customer shall inform us immediately and in full about a successfully executed rectification of a defect via the warranty claim in our online portal in its respective current version, currently under the name "Kubota.Net" (https://www.v3.kubota-net.eu/).

(12) The customer can only rescind or terminate the contract owing to a breach of duty which is not attributable to a defect if responsibility for the breach of duty lies with us; in all other respects statutory provisions apply. The customer does not have a free right to terminate the contract, (particularly not in accordance with §§ 650, 648 German Civil Code).

(13) Claims for compensation are only possible subject to § 10 below.

§ 9
Warranty specifically for freedom from industrial property rights and copyrights of third parties

(1) In accordance with this § 9, we warrant that the goods are free from industrial property rights and copyrights of third parties in the countries of the European Union and in countries where we manufacture the goods or have them manufactured. Each party will inform the other without undue delay in writing if claims are brought against it owing to the infringement of such rights.

(2) Claims arising from infringement of third-party property rights or copyright are excluded if the infringement is attributable to an instruction issued by the customer, a modification initiated by the customer or use of the goods by the customer in a manner which is inconsistent with the contract.

(3) If the goods infringe an industrial property right or copyright of a third party we will, at our discretion and at our cost, modify or replace the goods so that the third-party rights are no longer infringed, but the goods continue to satisfy the contractually agreed functions, or procure the right of use for the customer by concluding a licence agreement. If we do not manage to do this within a reasonable period the customer may rescind the contract or reduce the purchase price by a reasonable amount.

(4) Claims for compensation are only possible in accordance with § 10 below.

§ 10
Liability for compensation

(1) Unless otherwise set out in these GTCS (including this § 10), we are liable for a breach of contractual and non-contractual duties as provided for by statutory law.

(2) We have unlimited liability – regardless of the legal reason – for compensation for losses based on wilful (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty on our part or by any of our legal representatives or vicarious agents.

(3) In the event of a merely simple or slightly negligent (*einfach oder leicht fahrlässig*) breach of duty by us or one of our legal representatives or vicarious agents (subject to a milder level of liability pursuant to statutory law, e.g. for diligence in our own matters or for insignificant breaches of duty) we are only
a) – fully liable – for resultant losses arising from injury to life, limb or health;
b) for losses arising from a breach of material contractual obligations. Material contractual obligations are those obligations which are essential for proper performance of the contract and on the fulfilment of which the customer regularly relies and is entitled to rely. In such cases, however, our liability is limited in amount to losses which are typical of this type of agreement and which were foreseeable at the time the contract was concluded.

(4) The liability limitations pursuant to para. (3) do not apply if we have fraudulently concealed a defect, provided a guarantee on condition or quality or assumed a procurement risk. This has no effect on any mandatory statutory liability, including without limitation under the German Product Liability Act (*Produkthaftungsgesetz*).

(5) If our liability is excluded or limited, this also applies to any personal liability of our bodies, statutory representatives, employees, staff and vicarious agents.

(6) Subject to all further requirements concerning the customer's liability and our liability, the customer may only assert contractual penalties or liquidated damages owed by the customer to third parties in connection with goods delivered by us if it has been expressly agreed with us or if the customer pointed this risk out to us in writing before we entered into the contract with it.

§ 11
Limitation period

(1) Notwithstanding § 438 (1) no. 3 German Civil Code the limitation period for all claims – including non-contractual claims is one (1) year from delivery. This does not apply to wilful or grossly negligent breaches of duty (see § 10(2)), loss arising from injury to life, limb or health (see § 10(3)a)), malicious failure to disclose a defect and/or mandatory statutory liability (see § 10(4) sentence 1 option 1 and sentence 2); in these cases and those in para. (2) below, the respective statutory limitation periods applies.

(2) If the goods consist of a building or an object which, in being used for its usual purpose, has been incorporated in a building and has caused the building to be defective (building material), the statutory limitation period pursuant to § 438 (1) no. 2 German Civil Code will continue to apply. This does not affect further statutory special provisions regarding limitation (in particular § 438 (1) no. 1, (3), § 444, and § 478 (2) as read with § 445b German Civil Code).

§ 12
Duty to inform of product safety measures

If official measures are taken at or against the customer which affect goods delivered by us (in particular measures under product safety law, such as an order for a recall or preliminary measures), or if the customer is considering such measures of its own (in particular a report to a market surveillance authority, or a recall), it must inform us in writing without undue delay in each case. This also applies if the customer learns of such measures at or against its purchaser(s) which concern the goods delivered by us.

§ 13
Place of performance

The place of performance is the warehouse/plant from which we ship. Insofar as we are contractually obliged to carry out assembly, mounting/installation or similar work at another location, the place of performance and subsequent fulfilment will be such location.

§ 14
Choice of law and place of jurisdiction

(1) These GTCS and the contractual relationship between us and the customer are governed exclusively by the law of the Federal Republic of Germany ("**FRG**"). The UN Convention on the International Sale of Goods (CISG) and other international uniform laws do not apply. Any claims of a non-contractual nature in connection with these GTCS or the contractual relationship are governed exclusively by the law of the FRG.

(2) If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, a special public law fund or has no general place of jurisdiction in the FRG, the sole place of jurisdiction for all disputes arising directly or indirectly from these GTCS or the contractual relationship between us and the customer or in connection with it will be our registered office in Rodgau, Germany; this also applies internationally. The same applies if the customer is an entrepreneur (§ 14 German Civil Code). In all cases, we are entitled, at our discretion, to bring an action instead before the courts at the general (possibly foreign) place of jurisdiction of the customer or at the place of performance (§ 13).

(3) Mandatory statutory provisions, in particular concerning exclusive places of jurisdiction remain unaffected.

§ 15
Severability

(1) If contractual provisions, including these GTCS have not in whole or in part become an integral part of the contract, or are void, invalid or unenforceable this will not affect the validity of the other provisions.

(2) If any provisions in these GTCS have not become an integral part of the contract, are void or invalid, the content of the contract will be based on statutory provisions (§ 306 (2) German Civil Code). However, if there are no suitable statutory provisions for this purpose, the parties agree - subject to the possibility and priority of a supplementary interpretation of the contract - on valid provisions which come as close as possible in economic terms and in terms of their meaning and purpose to the provisions which have not become part of the contract, or those that are void or invalid. The legal consequence of sentence 2 applies accordingly to contractual provisions which prove to be unenforceable.

(3) If the contract, including these GTCS, proves to be incomplete for reasons other than those mentioned in para. (1) (in particular due to the absence of provisions, e.g. if points that need to be regulated are overlooked), the parties will agree - subject to the possibility and priority of a supplementary interpretation of the contract - on valid provisions which come as close as possible to the economic objectives of the contract.

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