

# General terms and conditions of business

(Version 05/2010)



## 1 Field of application, scope, exclusivity, protective clause

- (1) The following terms and conditions only apply in business transactions with companies in terms of § 14 of the BGB (German Civil Code).
- (2) Our general terms and conditions of supply and payment form the basis of all transactions.
- (3) Our special terms and conditions of contract for die cutting technology (SFT) shall also apply to the supply of die cutting tools and their accessories.
- (4) Our special terms and conditions of contract for tool manufacture (WZB) shall also apply to the supply of thermoforming tools or their accessories.
- (5) Our special terms and conditions of contract for MARBACH moulds & automation (MMA) shall also apply to the configuration and supply of injection moulding tools, automation or complete systems and their accessories.
- (6) The terms and conditions of assembly and repair shall also apply to assembly, repairs and other works.
- (7) The terms and conditions form the exclusive basis of our offers and all agreements with us – even if no express reference has yet been made to them in individual cases.
- (8) They shall be considered as having been recognised on issue of an order or at the latest by acceptance of the supply or acceptance of the service.
- (9) Any other terms and conditions of the customer, which we hereby expressly and finally reject, shall not become a part of any contract where not expressly accepted by us in writing.
- (10) Our terms and conditions also apply to all future transactions.

## 2 Offer, formation of contract, order confirmation, ancillary agreements, cost estimates, specifications, power of representation

- (1) Our offers are not binding unless expressly stipulated to the contrary.
- (2) Formation of the sales contract or acceptance of an order is made by our written order confirmation or our actual performance of the supply or service.
- (3) Amendments and ancillary agreements require written form.
- (4) Cost quotations are not binding without any express declaration to the contrary. If, in the contract, no fix price is agreed, reductions or increases in the price of up to 10% may be made without prior notification. Higher differences in price shall be subject of immediate notification.
- (5) The information contained in or attached to a brochure, catalogue, cost quotation, offer or our website or attached information such as illustrations, drawings, measurements and weight specifications, are only binding where they are expressly marked as such. The same applies to specifications on suitability for use, in particular details on performance (cycle rates, etc.). Specifications that are provided by MARBACH regarding the supplied goods, the intended use etc. are for descriptive and identification purposes only and are not guarantees of quality in legal terms.
- (6) If a declaration of intent or knowledge is communicated by the customer by data transmission – in particular by e-mail including file attachments thereof, the data received or called up by MARBACH is binding.

## 3 Safeguarding obligations: drawings, certificates, models and samples

- (1) Design records that we issue in the form of written documents, drawings or samples remain our property and are protected by copyright. They shall not be passed on to third parties without prior approval and shall be returned to us on request at any time.
- (2) Drawings, models or samples that are developed by us in performance of the order or which are made available by us shall remain or become our property.
- (3) The customer expressly undertakes, without our prior written approval, neither to copy nor to pass on for inspection nor to make available to third parties nor to use for any purpose outside the order any information, documents and items developed by MARBACH and made available to him. Any unauthorised use shall entitle us to claim compensation for damages.
- (4) At our request and at his own cost, the customer is obliged to consign to us at any time all documents and items and copies of such made available together with cost estimates or offers. The same applies without any need for a special request if no order is issued. Any rights of retention whatsoever shall be excluded to this extent.

## 4 Price rules, dispatch clause, price changes, supplements, export rules

- (1) Unless fixed prices have been agreed in writing, the prices set out in our order confirmation shall apply plus VAT at the statutory rate from time to time, otherwise the prices according to our price list in effect from time to time shall apply.
- (2) Unless agreed upon to the contrary, our prices - including for deliveries abroad - are considered to be in EUROS exclusive of packaging, VAT, dispatch and insurance costs, ex works (EXW Incoterms 2000) and are only for the appropriate individual order. Moreover, they shall only apply to the services listed. Special services are to be paid for separately.
- (3) MARBACH undertakes for the customer proper and secure packaging of the goods in accordance with section 9 (2). The expenses will be invoiced and paid for by the customer as agreed. A refund will be made on return of "Marbox" system packaging (MARBACH returnable packaging system). We are also happy to undertake dispatch, customs clearance and insurance for customers. We will invoice the customer in accordance with actual expenses incurred.
- (4) Where nothing to the contrary is agreed (e.g. fixed prices), both contracting partners shall reserve the right to change the prices if, between the agreement on price and delivery, more than four months have elapsed and raw materials prices, subcontractor prices, wages, transport costs, rates of taxation or other cost factors have changed by more than 5%, and the specific change could not have been foreseen on conclusion of the contract.
- (5) If, during the course of the processing of the order, we experience production difficulties which could not have been foreseen on formation of the contract and which result in adherence to the forms or tolerances specified by the customer being possible only at considerable additional cost, we are entitled to increase the price appropriately after discussion or to terminate the contract if no new agreement on price can be reached within a reasonable period of time. The same applies for the benefit of the customer if considerable reductions in cost arise due to changes in the order.
- (6) If due to circumstances beyond the control of MARBACH, additional services prove necessary after formation of the contract or under the same conditions the agreed content of the services has to be modified or supplemented, the additional expense over and above the agreed price shall be payable in accordance with Clause 4. (7). If the addition or modifications to the service require additional time, Clause 6 (4) shall apply.
- (7) In all cases of application of clause 4. (6), both contracting parties shall have the right to claim adjustment of the price initially agreed. If a new price agreement is not reached and if the customer nevertheless requests the supply, MARBACH is entitled to charge for the modification offered. If a specific price offer has not been made, additional expenditure on materials, components or bought-in parts shall be charged for on the basis of the original contractual calculation and the additional expenditure on services to be charged at

the agreed hourly rate. If no hourly rate is agreed, MARBACH's general hourly rate at the time of the provision of the service shall be applied.

- (8) Where foreign currencies are defined in offers, the offers shall only apply to the time of provision. Should the EURO conversion rate change, we reserve the right to adjust the offer value accordingly.

## 5 Delivery period, part deliveries, on-call contracts and delayed acceptance,

- (1) Specifications of delivery periods in brochures, cost proposals and offers shall be made subject to the reservation that the works and subcontractors supplying us can meet the obligations they have entered into towards us, and we reserve the right to make changes to the delivery period should this not be the case.
- (2) Delivery periods or delivery deadlines or dates agreed in orders or order confirmation shall only become contractual delivery dates if they have been expressly agreed as binding.
- (3) Notification of readiness for dispatch is the sole decisive factor in determining compliance with the delivery deadline.
- (4) Appropriate part deliveries are permitted.
- (5) We are entitled to set a reasonable deadline for acceptance after the expiry of which we may dispose of the goods elsewhere and supply the customer within a reasonably extended deadline.

## 6 Collaboration by the customer, subsequent changes to requirements, effects on price and delivery period

- (1) Adherence by MARBACH to the delivery period or performance period is subject to the condition that all commercial and technical issues between the contracting parties have been resolved and all obligations of collaboration on the part of the customer have been met.
- (2) If the customer is obliged to collaborate or if the customer is under obligation to make significant collaborative contributions for performance of the contract, we may informally request so during the manufacturing of the goods to be supplied. The agreed delivery deadline shall be extended in accordance with clause (4) unless we are responsible for the delay.
  - The provision of plans or data (for the supplied goods or products to be manufactured or processed with them)
  - The contribution of material or accessories (for the supplied goods or products to be manufactured or processed with them)
  - The provision of machinery
  - The furnishing of the necessary official certificates or approvals or
  - The payment of an agreed advance payment or instalment.
- (3) Even without request, the agreed delivery period shall be extended if and to the extent that the customer has not met its contractual duties and obligations as agreed on formation of the contract. In particular this applies if the customer culpably delays in any of the following:
  - The provision of plans or data (for the supplied goods or products to be manufactured or processed with them)
  - The contribution of material or accessories (for the supplied goods or products to be manufactured or processed with them)
  - The provision of machinery
  - The furnishing of the necessary official certificates or approvals or
  - The payment of an agreed advance payment or instalment.
- (4) If the manufacturing or supply or our service, for reasons for which the customer is responsible, is temporarily prevented or delayed, the delivery period (or performance period) shall be extended accordingly by the justifiable duration of the hindrance. In the calculation of the extension of the delivery period, a suitable lead time for the resumption of the performance shall be taken into account. Claims for performance by the customer or claims in lieu of performance during the period of the hindrance shall be excluded. If the customer expresses his wish to subsequent changes or amendments to the order, then the delivery period shall be extended as reasonable and appropriate.
- (5) If manufacturing or supply or our performance is delayed due to such circumstances or at the request of the customer, any additional costs arising due to such circumstances shall immediately be charged by MARBACH and shall be payable by the customer.
- (6) If we have procured bought-in parts on the orders of the customer, the delivery period is extended by the period required for the procurement unless we are responsible for the delay in the provision.

## 7 Force majeure, hindrances to performance for which neither party is responsible

- (1) If we are prevented by force majeure from supplying, the delivery period shall be automatically extended by its duration plus an appropriate lead time. Force majeure is equivalent to circumstances unforeseen at the time of agreement on delivery schedules and which are beyond our control and which impede delivery to an unreasonable extent or make it temporarily impossible. Examples are industrial action, official measures, unavoidable shortages in raw materials or energy, significant breakdowns in operation due to damage to the factory as a whole or to important sections thereof or due to the failure of essential production systems or absence of essential staff due to pandemic, serious transport disruptions etc., e.g. road blockages, industrial dispute affecting the transport industry, general prohibitions on travel. This also applies if such circumstances affect subcontractors. The designated circumstances exempt MARBACH even if they occur during a period of existing default. We will notify the customer of such circumstances as soon as possible. Notification may not be given if the customer is already aware of the circumstances. Should such circumstances last more than 3 months, we also have the right to withdraw from the contract. At the customer's request we must declare whether we are to withdraw or deliver within an appropriate period of time to be specified by us. Claims by the customer for compensation shall be ruled out under such circumstances. Both contracting parties may withdraw from the contract without obligation to pay compensation if it is established that performance of the contract has become impossible due to such circumstances.
- (2) If production or supply or our services are temporarily hindered or delayed for reasons beyond our control, the delivery period (or period of performance) shall be extended as appropriate by the verifiable duration of the hindrance. In calculating the extension of delivery period, an appropriate lead time shall be taken into account for the resumption of performance. Any claims for performance by the customer or claims in lieu of performance during the period of the hindrance shall be excluded.

## 8 Default, restriction of liability

- (1) Unless a fixed delivery date has been expressly agreed, default in delivery or performance is only considered to exist after warning. The customer may terminate the contract only after a reasonable time has elapsed. Even after such time has elapsed, the customer is obliged to accept the service unless the declaration of termination is received by us before the supplied goods are dispatched or before a notification of readiness to deliver is posted.
- (2) If we, our legal representatives or our performance assistants are responsible for wilful misconduct or gross negligence with regard to any delay, or had guaranteed a fixed delivery date or if the customer has lost interest in the service verifiably due to the delay, we shall be liable in accordance with the relevant statutory provisions. In the event the delay is caused by culpable breach of an essential contractual obligation non-compliance of which places the purpose of the contract at risk, liability shall be restricted to foreseeable, typically occurring damages. Any other liability shall be excluded.
- (3) Damages due to production failure, downtime, loss of profits or contract penalties promised to third parties arising or brought about due to delayed delivery to the customer or its customers shall only be compensated if a binding delivery date was agreed and provided always that the customer had, at the time the delivery date was agreed, given notice in writing that, in the event the delivery deadline is missed, such damages and costs may arise.

## 9 Dispatch clause, delivery, transport, transfer of risk

- (1) Unless another dispatch clause has been agreed, the delivery shall be understood to be delivery from one of our production works located in the Federal Republic of Germany ex that works; in all other cases ex works D - Heilbronn (EXW Incoterms 2000). In the event of delivery by a third party company commissioned by us

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to manufacture the goods, delivery shall be made under the same dispatch clause as its appropriate works, which is either named in our order confirmation or stipulated on formation of the contract by both contracting parties as the place of dispatch.

- (2) If the customer should request delivery by us, packaging, loading and dispatch shall be at our discretion and always at the expense and risk of the customer. If no express agreement is made concerning packaging, dispatch route and means of transport, we shall make the choice for the customer with due professional diligence. Where our employees or sub-contractors assist with packaging, loading and unloading or with the transport, they act at the risk of the customer as its performance assistants.
- (3) Deliveries "free to domicile" (deliveries for which we assume freight and any ancillary costs) shall not otherwise affect the EXW Incoterms 2000 dispatch clause and the provisions of this clause based on them.
- (4) Whether or not to take out transport insurance or similar insurances is at the sole discretion of the customer. We will dispatch without insurance, unless we have been instructed to the contrary.
- (5) Delivery goods which the customer has agreed to collect may be kept at the cost and risk of the customer should the customer delay collecting the goods. Our rights resulting from clause 5 (5) shall remain unaffected. This also applies to permitted part deliveries and even in case we should have to provide further services other than the provision of the delivery goods (e.g. assistance in commissioning, optimisation, consultancy etc.).
- (6) The customer shall ensure that deliveries can be unloaded immediately. We reserve the right to pass on costs of waiting hours and returned freight charged for by the carrier.
- (7) Dispatch shall always be at the customer's risk, even in the case of FOB and CIF transactions.
- (8) Claims for compensation on account of non-compliance with a dispatch instruction or on account of defective packaging of the supplied goods shall be excluded unless we, our legal representatives or performance assistants are guilty of wilful misconduct or gross negligence.
- (9) In the event of damage or loss of the delivery goods during transport, the customer shall obtain a statement of facts from the carrier without delay.

## 10 Terms of payment, authority to collect, discount, settlement, deterioration of financial circumstances, default in payment, set-off

- (1) If no other due date for payment is stated in the order confirmation or the special terms and conditions of contract (BVB), the purchase price is due to be paid net (without deduction) immediately upon receipt of the invoice by the customer.
- (2) A discount can only be deducted if expressly agreed. If in individual cases the deduction of a discount was agreed, the right to discount is forfeited if the customer is already in default of payment with another invoice. In such case payments are first credited against any interest due and then against the oldest receivables. Invoices for services or works and work paid by the hour are not subject to discount.
- (3) Incoming part payments or payments without payment reference are first credited against any interest due and then against the oldest receivables.
- (4) Part deliveries shall always be paid for separately in accordance with our terms of payment.
- (5) If the customer falls into default with due payments or if circumstances become known to us which justify substantiated doubts regarding the ability to pay or creditworthiness of the customer, we shall be entitled, regardless of any payment terms previously agreed, at our own discretion, either to request reasonable advance payments or the provision of security. In case of doubt, such payments are deemed to be reasonable which are accepted as cash transactions in insolvency proceedings or which are considered to be unavoidable. If this requirement is not met, we furthermore have the right, after a reasonable period of time, to refuse performance of the contract and to claim compensation in lieu of counter-performance.
- (6) If the net payment due date has been exceeded, we shall be entitled, without prejudice to any of our other claims and rights, to charge interest at 8% above base rate of the European Central Bank (ECB). In the event of a default in payments we have the right, from such time, to charge interest at 8% above the base rate of the ECB from time to time, but no less than 12%. Evidence may be furnished of lower or higher losses due to default.
- (7) The customer may set-off against counterclaims only if these are undisputed or established by a final Court order or if a pending legal dispute is not delayed by the set-off. The same applies to the assertion of the customer's right of retention. The customer shall, however, be entitled to exert a right of retention only if it is based on the same contractual relationship.

## 11 Retention of title, (extended, expanded), obligations of safekeeping, factoring, utilisation

- (1) Until complete payment of all our receivables arising from the supplies and services due to be paid to us by the customer either now or in the future, the following securities are granted to us which we will release on request at our discretion provided that their value effectively exceeds our total receivables by more than 10 %:
- (2) The supplied goods remain our property.
- (3) We shall retain right of ownership even if individual receivables are included in a running account and the balance has been drawn or recognised (current account reservation). In the event of several transactions, the right of retention remains intact even if a delivery has been paid for but a balance remains to be paid from other deliveries (expanded right of retention).
- (4) Processing or transformation is always carried out for us as manufacturer but without any obligation against us. If the supplied goods are processed together with items, substances or other third-party stocks not belonging to us, even for a third party as manufacturer, we obtain joint ownership in the new object in the proportion of the value of our supplied goods to the third-party stocks at the time of the processing.
- (5) The customer is entitled to process or to transform the retained goods in the course of normal business, provided that he is not in default of payment.
- (6) If the supplied goods are mixed or combined with items, substances or other third-party stocks, we shall acquire joint ownership in the new item in the proportion of the value of our supplied goods to the third-party stocks at the time of mixing or combining.
- (7) Should our (joint) ownership be ended by mixing, combining or processing, it is hereby agreed that the (joint) ownership of the customer in the integrative item shall be transferred to us proportionate to its value (invoiced value). The customer shall safeguard the (jointly) owned goods free of charge. The customer is obliged, in particular as the keeper, to properly safeguard the supplied goods and to maintain them and to ensure that no risk to people or property is can arise. Any and all potential risks shall be reasonably covered by insurance policies.
- (8) Supplied goods, in which we have (joint) ownership will be hereinafter referred to as "Retained Goods".
- (9) The customer is entitled to sell Retained Goods in its normal course of business provided always that he is not in default of payment. Pledging or assignment as security is not permitted.
- (10) The customer hereby assigns to us, by way of security, any receivables relating to Retained Goods, arising from onward sale or other legal basis (eg balance from current account, installation, insurance, unauthorised action) due to supplies and services or compensation. Whether the installation is carried out by us, the customers or performance assistants of one or the other of the parties to the contract shall not affect the assignment. The customer is irrevocably authorised to collect the receivables assigned to us for his account in his own name. Such authorisation to collect may be revoked by us at any time if the customer does not meet his payment obligations in due time. It shall be dispensed with, without the need for a declaration of revocation, if default in payment of an invoice has occurred or if an application for

insolvency has been made by the customer (own application) or against the customer (third-party application).

- (11) Upon obtaining prior approval of MARBACH, the customer shall be entitled to sell to a factor by old-line factoring the receivables against his customer arising from his ordinary course of business. The receivable arising from the sale of receivables is herewith assigned to us. On payment of the purchase price for the receivables by the factor, our claim deriving from the relevant contractual relationship against the customer shall immediately become due.
- (12) If third parties have or get access to Retained Goods, the customer shall notify them of our ownership and inform us immediately. Costs and damages arising due to such access shall be borne by the customer where they cannot be collected by third parties.
- (13) In the event of customer's conduct contrary to contract – in particular default in payment – we are entitled to take back the Retained Goods. Should the Retained Goods be at the premises of a third party, the customer hereby assigns any and all of his claims for restitution against the third party to us. If the third party is entitled to justified claims to the Retained Goods, these shall be taken into account. As the direct owner of the Retained Goods, we have the right to access the customer's premises.
- (14) Taking back and the pledging of the retained goods by us, or the disclosure of the assignment of title, shall not represent termination of the contract.
- (15) The customer is obliged, at our request, to provide information on all assigned receivables, and in particular to submit a list of debtors with name, address, amount of the receivables, date and number of the invoices and, on request, to make available the information and documents necessary for the assertion of the claims.
- (16) We are entitled to claim as security assets of the customer that are subject to our actual control, and to utilise them at our sole discretion after unsuccessful offer of an appropriate transfer fee.
- (17) For the evaluation of all securities, their realisable value (security value) shall be the determining factor. If this cannot be determined in a reasonable manner within a reasonable time, MARBACH may use for the evaluation of securities on goods the respective price of supply without taking into account additional services, VAT, discounts, rebates, freight and other ancillary costs. For the evaluation of receivables, the nominal value shall be the determining factor.

## 12 Intellectual property rights of third parties, confidentiality

- (1) If we are to supply in accordance with CAD data, drawings, models, samples or other specifications made available to us by the customer, the customer shall have the sole responsibility for any and all consequences of his specifications. In particular he shall provide us with a guarantee that no intellectual property rights belonging to third parties are infringed through manufacturing and supplying of the delivery goods. We are under no obligation to the customer to verify whether any intellectual property rights of third parties are infringed by our processing of the specifications.
- (2) If, due to intellectual property rights, we are prohibited by a third party from manufacturing and delivering the supplied goods to be produced in accordance with the customer's specifications, we are entitled, without verifying the legal situation, to cease production and to withdraw from the supply, to the exclusion of any liability towards claims whatsoever by the customer. The costs already incurred by us due to implementation of the order must be refunded by the customer. In all cases described above, the customer undertakes to indemnify us against any and all claims by the restitution of costs and compensation for damages and to compensate us for any costs and damages that are incurred by us on account of infringement or assertion of any property rights held by third parties.
- (3) The customer shall maintain absolute confidentiality regarding any and all matters regarding us not generally known vis-à-vis external parties and third parties not involved. This particularly applies to all received data, results of work from the business relationship and the legal and economic objectives of the results of the work where these are not matters that have already been disclosed to the public domain. The agreed confidentiality obligation also particularly applies to know-how transferred by us in the context of the business relationship. The customer is obliged to place all bodies which require to know about our business secrets, employees, assistants and other third parties under a similar confidentiality obligation and to ensure that our business secrets are treated in accordance with this or any other agreement, and to supervise compliance to the duties of confidentiality.

## 13 Duty of inspection and obligation to notify defects, complaints

- (1) Delivered goods shall be inspected immediately upon receipt at the place of destination. Defects not identifiable on delivery shall, once they are identified, immediately – but no later than within 6 months of receipt of the delivery goods – be notified in writing.
- (2) Complaints regarding apparent damage, incorrect supplies and other defects as well as incompleteness of the consignment shall be notified immediately on delivery in writing. At our request, the complaint shall be substantiated by submission of the supplied goods to which the complaint relates, or a sample part of them and/or a conclusive test report.

## 14 Guarantees, warranty claims, warranty period

- (1) Warranty declarations must be expressly indicated as such in the order confirmation or must have been subsequently agreed in writing.
- (2) Details of the characteristics of the supplied goods, their processing and use, specific dimensional accuracy as well as compliance with EN or DIN specifications will only become part of the contract if they have expressly been agreed in each individual case. In principle we undertake no guarantee of the fitness of the goods supplied for a particular purpose unless we have expressly guaranteed to do so.
- (3) In case of production in accordance with the customer's drawings, MARBACH – notwithstanding any other warranty and liability restrictions – shall only be responsible for execution in accordance with the drawing.
- (4) Not covered by guarantee are defects notification of which was only provided after the supplied goods were operated, processed or transformed, despite the defects being apparent.
- (5) No guarantee is undertaken for differences in quality, dimension, density, weight, die measurement, shrinkage etc. if such differences do not exceed the normal industry and material deviations and in particular if they are within the tolerance range of quality guidelines or standards. Special requirements for precise dimensional stability shall be expressly stipulated by the customer on ordering and confirmed by MARBACH.
- (6) If the supplied goods are production goods, we provide no guarantee of the performance, and in particular the production rate of the supplied goods unless this has expressly been agreed. Even where such express agreement has been reached, we do not provide guarantee of performance where this is not dependent on the capabilities of our supplied goods.
- (7) MARBACH undertakes no guarantee for defects or damages caused by the following:
  - Neglected or defective collaboration
  - Incorrect or negligent use or handling
  - Non-compliance with the operating instructions
  - Incorrect storage
  - Defective assembly or incorrect commissioning by the customer or third parties
  - Lack of Test Tool Trial
  - Natural wear and tear
  - Defective or lack of maintenance
  - Use of unsuitable operating equipment
  - Unsuitable environmental conditions
  - Use of unsuitable materials, influence of the material to be processed, chemical, electronic or electrical influences

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- Negligent or defective counterchecks in the case of marbabraille® embossing dies
  - In the case of characteristics, not identified on conclusion of the contract, of the materials processed by the customer using the supplied goods (films, cartons, etc.) if such causes cannot be attributed to our fault.
- (8) If we have developed the supplied goods for the customer, we shall only provide a guarantee of the fitness of the supplied goods if the contractual purpose and fitness of the supplied goods have been expressly guaranteed. MARBACH has the right, even in the case of development services undertaken with this warranty, to terminate the contract if during development facts emerge that were not foreseeable on formation of the contract with the result that the contractual purpose and fitness of the supplied goods cannot be achieved. If the customer modifies the result of development work as presented by us, we are no longer liable for its fitness for the stated contractual purpose, unless the change made by the customer does not determine fitness for the stated purpose.
- (9) In the event of justified claims asserted in good time, we guarantee to rework or supply replacements at our own discretion.
- (10) For replacement deliveries, we shall be allowed a reasonable period of time, in particular for the manufacture of replacement goods.
- (11) In the event of remedying of defects, we shall bear the necessary expense unless these have increased because the supplied goods are in a place other than at the place of performance. The customer shall pay any additional costs arising due to the fact that the claim for defects has to be met outside of the Federal Republic of Germany without us having been aware of this at the time of formation of the contract. We are entitled to demand a reasonable advance on additional costs expected to be incurred. Where expenditure on labour is to be refunded, only correction time determined by MARBACH for its own services will be accepted at the rates of salaries which are customary in such country.
- (12) If the defect does not affect fitness for use and if no major defect exists, we are entitled to grant a reduction in price instead of reworking.
- (13) The customer shall be entitled to further-reaching claims only under the conditions that major defects have not been eliminated by us within a reasonable period of time or that two attempts of remedying the same defect have failed, unless due to nature of the supplied goods further remedying attempts are reasonable and reasonable in view of the customer's interests.
- (14) Instead of withdrawal and compensation in lieu of performance, the customer may request the costs of substitute performance, provided these do not exceed the net order value of the defective part of the supply.
- (15) The warranty period for all supplies and services is 1 year from delivery of the supplied goods to the customer. If acceptance is agreed, the period shall start on the last day of acceptance or (in the event of a waiver of acceptance or acceptance due to conclusive conduct by the customer or after the period according to § 640 sentence 3 of the BGB – German Civil Code has elapsed) on the commencement of the effects of acceptance or on commencement of a delay in acceptance.
- (16) The limitation period shall neither be suspended nor discontinued by a complaint, subsequent correspondence or measures to correct and identify errors and reworking. Such effects shall be the subject of express agreement in each individual case.

## 15 Liability

- (1) Statutory rules of mandatory product liability shall not be affected.
- (2) Under statutory provisions, we are liable in the event of non-fulfilment of a warranty, personal injury or if we, our legal representatives or our performance assistants are guilty of wilful or gross negligence.
- (3) If we have, due to negligence, failed to perform an essential contractual obligation, non-performance of which places at risk the contractual purpose, our obligation to provide compensation for damages is limited to the restitution of damages that could normally be expected to occur.
- (4) Purely financial losses, in particular losses due to interruption of operation and downtime, will not be compensated.
- (5) Further-reaching claims are excluded.
- (6) To the extent that our liability is ruled out or limited, this also applies to the personal liability of our employees, workers, temporary agency workers, representatives and performance assistants.

## 16 Technical modifications

We may make technical modifications that serve improvement of the supplied goods without the prior agreement of the customer, where the change is reasonable for the customer.

## 17 Data protection declaration

We draw your attention to the fact that data is processed concerning business transactions within our company, and we reserve the right to transfer such data necessary for the demand of credit security to the insurer. Please also refer to our data protection declaration for our internet presentation and e-mail correspondence.

## 18 Choice of law for international legal proceedings

The laws of the Federal Republic of Germany shall apply to these terms and conditions of business and the general legal relationship between us and the customer to the exclusion of the UN convention on the sale of goods and services.

## 19 Applicable language of contract, rules for interpretation

- (1) Unless agreed to the contrary, the language of the contract is German. If, in addition to the order confirmation in German, there should be another version in the language of the customer or another foreign language, only the German version shall be authoritative for the interpretation of the contract. If there is only a foreign language version of the order confirmation its translation into German shall be authoritative for the interpretation of the contract.
- (2) If the partners cannot agree on the wording of a translation in accordance with paragraph (1), a chartered sworn translator shall be jointly appointed at the costs of both parties, whose translation shall be solely decisive for the interpretation of the contract.
- (3) If the contracting parties are unable to agree on a translator in accordance with clause (2), such person shall be appointed by the President of the County Court (Landgericht) of Heilbronn or the director or the Chamber of Industry and Commerce in Heilbronn. Both contracting parties have the right to appeal against the appointment.
- (4) If the issue of interpretation of the contract or a valid version cannot be mutually agreed, the competent court shall determine the basis of interpretation independently.

## 20 Place of performance, place of jurisdiction

- (1) If the customer is a businessman in the context of the German Commercial Code (HGB), a legal entity under public law or a special fund, the place of performance for our ex works supply obligation is the appropriate manufacturing works and, in the event of supplies ex warehouse, it is the appropriate

warehouse. The place of performance for the customer's obligations is D 74080 Heilbronn or the appropriate manufacturing works established in the Federal Republic of Germany.

- (2) If the customer is a businessman in the context of the German Commercial Code (HGB), a legal entity under public law or a special fund, or if it has no headquarters in the Federal Republic of Germany, then Heilbronn/Neckar shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. We are also entitled in all circumstances to take action at the seat or residence of the customer.