

# General Terms and Conditions of TechnoTeam Bildverarbeitung GmbH

## § 1

### **Validity; Subject Matter of the Contract; Form**

(1) These General Terms and Conditions of Business of TechnoTeam Bildverarbeitung GmbH (hereinafter referred to as "TTBV") shall apply exclusively and to all business relations of TTBV with its customers ("Customers"). These General Terms and Conditions shall only apply if the Customer is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a special fund under public law. Deviating or conflicting terms and conditions shall not be recognized by TTBV unless TTBV has expressly agreed to them in writing. This consent requirement shall apply in any case, for example, even if the Customer refers to his General Terms and Conditions within the scope of the order and TTBV does not expressly object to this. These General Terms and Conditions shall also apply if TTBV carries out the delivery to the Customer without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from its own.

(2) These General Terms and Conditions shall apply in particular to contracts for the sale and/or delivery of movable items, including standard software ("goods") as well as to all legal relationships and services connected therewith, irrespective of whether TTBV manufactures the goods itself or purchases them from suppliers (Sections 433, 650 of the German Civil Code). In the case of the delivery of software as well as for deliveries and services of other kinds (e.g. software maintenance, installation and parameterization of the software, training) further supplementary contracts may have to be concluded.

Unless otherwise agreed, the General Terms and Conditions in the version valid at the time of the Customer's order or in any case in the version last notified to him in text form shall also apply as a framework agreement for similar future contracts without TTBV having to refer to them again in each individual case.

(3) Legally relevant declarations and notifications by the Customer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form in the sense of these General Terms and Conditions includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(4) References to the applicability of statutory provisions shall only have a clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these General Terms and Conditions.

## **§ 2**

### **Contract conclusion, technical changes**

(1) Offers made by TTBV are subject to modification and are non-binding. This shall also apply if TTBV has provided the Customer with catalogs, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents including documents in electronic form.

(2) The order of the goods by the Customer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, TTBV shall be entitled to accept this contractual offer within two weeks of its receipt by TTBV.

(3) The contract for the delivery of goods shall be concluded either by written declaration by TTBV (e.g., by order confirmation) or, in the case of immediate order execution, by delivery of the goods to the Customer; in the latter case the delivery bill or the invoice for the goods shall replace the written declaration. Subsidiary agreements, amendments and supplements to a contract concluded with TTBV shall only be valid if TTBV confirms this in writing or in text form, unless a stricter form is mandatory by law.

(4) TTBV reserves the right to make technical changes, design changes as well as other changes to technical data and performance features, insofar as they serve technical progress in each case.

(5) Product descriptions, representations, test programs etc. are descriptions of performance, but not guarantees. A guarantee shall require a written declaration by TTBV.

(6) TTBV reserves the ownership and/or copyright of all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Customer. The Customer may not make these items accessible to third parties as such or in terms of content, disclose them, use them themselves or through third parties or reproduce them without the express consent of TTBV. At the request of TTBV they shall return these items in full to TTBV and destroy any copies made if they are no longer required by them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Exempt from this is the storage of electronically provided data for the purpose of usual data backup.

(7) Except in the cases permitted by law (e.g. § 69 e) Copyright Act), the Customer shall not be entitled to modify, disassemble or decompile software supplied by TTBV.

### **§ 3**

#### **Delivery periods, delivery delay, force majeure**

(1) The expected delivery period shall be agreed individually or stated on the order confirmation by TTBV. The periods and dates for deliveries and services promised by TTBV are only ever approximate unless a fixed period or a fixed date has been expressly promised or agreed. Insofar as dispatch has been agreed, the anticipated delivery periods and delivery dates stated refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport, unless expressly stated otherwise by TTBV.

(2) Compliance with delivery periods shall be subject to the timely and proper fulfillment of the Customer's obligations, the timely provision of any required documents by the Customer, the payment of any agreed advance payment and the clarification of all technical and other details of the order. The deadlines shall be extended by the period in which the Customer is in arrears with its contractual obligations. The objection of non-performance of the contract shall remain reserved.

(3) TTBV shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused in each case by force majeure or other events which cannot be influenced and/or foreseen by TTBV (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in obtaining necessary official permits, pandemics or epidemics such as e.g. the Corona pandemic and comparable pandemics and epidemics, official measures, prohibitions due to German, US-American as well as other applicable national, EU or international regulations of foreign trade law or the failure to deliver, incorrect delivery or late delivery by suppliers) for which TTBV is not responsible. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or postponed - even within a delay - by the period of the hindrance plus a reasonable start-up period. TTBV shall inform the Customer without delay of the existence of a case of force majeure and at the same time notify the Customer of the expected new delivery period.

(4) Insofar as events of force majeure considerably change the economic significance or the content of the delivery or have a considerable effect on the operation of TTBV beyond an extension of delivery deadlines, the contract shall be adjusted appropriately in good faith. Insofar as this is not economically justifiable, TTBV shall be entitled to withdraw from the contract. If TTBV intends to make use of this right of withdrawal, TTBV shall notify the

Customer thereof without delay, even if an extension of the delivery period initially applied on the basis of para. 3.

(5) The occurrence of default in delivery by TTBV shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Customer shall be required. If TTBV is in default of delivery, the Customer may demand lump-sum compensation for his damage caused by default, provided that he can credibly prove that he has actually suffered damage. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the delayed goods. TTBV reserves the right to prove that the Customer has not suffered any damage at all or that the damage is considerably less than the aforementioned lump sum. With regard to further liability for damages § 9 shall apply.

(6) Insofar as the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by written declaration to TTBV in accordance with this Section 6. The Customer shall, however, be obliged to declare within a reasonable period of time at the request of TTBV whether he will withdraw from the contract due to the delay in delivery or insist on delivery. The right of withdrawal shall expire if the withdrawal is not declared before the expiry of the reasonable period set by TTBV (§ 350 BGB analogously).

(7) The rights of the Customer pursuant to § 9 of these General Terms and Conditions and the statutory rights of TTBV, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## **§ 4**

### **Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Customer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, TTBV shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) itself. At the request of the Customer the delivery shall be insured by TTBV against the usual transport risks. The costs for this shall be borne by the Customer.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer at the latest upon handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall pass to the Customer as soon as the goods are handed over

to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment (the start of the loading process being decisive). If acceptance has been agreed, this shall be decisive for the transfer of risk in accordance with para. 3. Furthermore, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer as soon as he is in default of acceptance or otherwise violates his obligations to cooperate.

If the shipment of the goods is delayed at the request of or for reasons for which the Customer is responsible, the risk shall pass to the Customer at the time of notification of readiness for shipment.

(3) Insofar as acceptance is to take place, the goods shall be deemed to have been accepted when

- the delivery and, if TTBV also owes the installation, the installation has been completed,
- TTBV has notified the Customer of this with reference to the fiction of acceptance in accordance with this § 4 para. 3 and has requested the Customer to accept the goods,
- 12 working days have elapsed since the request for acceptance or the Customer has started using the object of purchase (e.g. has put the delivered goods into operation) and in this case 6 working days have elapsed since the request for acceptance and
- the Customer has not refused acceptance within this period, stating at least one defect.

(4) In the event of default in acceptance or if the shipment of the goods is delayed at the request of the Customer by more than two weeks after the agreed delivery date or, if no exact delivery date was agreed, after notification of readiness for shipment or in the event of any other culpable breach of duties to cooperate on the part of the Customer, TTBV shall be entitled to charge the Customer a lump sum for each month or part thereof in the amount of 0.5 % of the net price of the delivery, however, no more than a total of 5 %.

TTBV reserves the right to assert further claims.

(5) TTBV shall only be entitled to make partial deliveries or render partial services and to issue corresponding partial invoices if these are of interest to the Customer in accordance with the purpose of the contract and the Customer does not incur any considerable additional expense as a result.

## **§ 5**

### **Prices, Terms of Payment**

(1) Price lists and other general price quotations are subject to change. Subject to any price changes pursuant to para. 3, the prices of TTBV valid at the time of the conclusion of the contract shall apply unless TTBV has submitted another fixed price offer in writing or unless

otherwise expressly agreed. The prices quoted shall only apply to the respective individual order. Confirmed fixed prices shall only apply upon acceptance of the confirmed quantity.

(2) TTBV's prices are ex works, plus the respective statutory value added tax and excluding the costs for packaging, loading, transport and insurance, unless expressly agreed otherwise.

(3) If there are more than 4 months between the conclusion of the contract and the agreed delivery date, TTBV shall furthermore adjust the prices to be paid on the basis of the respective contract at its reasonable discretion to the development of wage, material and distribution costs during this period which are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if, for example, the costs for the procurement of raw materials increase or decrease or other changes in the legal framework conditions lead to a changed cost situation. Increases in one type of cost, e.g. raw material procurement costs, may only be used to increase prices to the extent that they are not offset by any decreases in other areas, such as personnel and distribution costs. In the event of cost reductions, e.g. in raw material procurement costs, TTBV shall reduce prices to the extent that these cost reductions are not fully or partially offset by increases in other areas. In exercising its reasonable discretion TTBV shall select the respective points in time of a price change in such a way that cost reductions are not taken into account according to standards which are less favorable for the Customer than cost increases, i.e. cost reductions shall have at least the same effect on prices as cost increases.

(4) All payments shall be made to the accounts of TTBV specified in the invoices. Subject to other agreements between TTBV and the Customer, payments shall be due 14 calendar days after invoicing and delivery or acceptance of the goods without any deductions, unless another due date has been expressly agreed with the Customer. The deduction of a discount is only permissible with a special written agreement. After the due date, interest on arrears shall be charged at a rate of 9 percentage points above the respective prime rate per annum. TTBV reserves the right to assert further damage caused by default.

(6) TTBV shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and as a result of which payment of TTBV's outstanding claims by the Customer from the respective contractual relationship (including from other individual orders to which the same framework contract applies) is jeopardized.

## **§ 6**

### **Software**

The Customer shall have the non-exclusive right to use the standard software with the agreed performance features in unchanged form with regard to the ordered goods in accordance with

the End User License Agreement (EULA) to be concluded with the Customer. The Customer may create a backup copy of the standard software.

## **§ 7**

### **Warranty rights, defect claims**

(1) The statutory provisions shall apply to the Customer's warranty rights in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. Warranty rights in this sense mean the claims/rights arising from § 437 BGB (German Civil Code) (subsequent performance, reduction/rescission, reimbursement of expenses and damages). In all cases, the special statutory provisions on recourse, reimbursement of expenses and damages in the case of final delivery of the newly manufactured goods to a consumer (supplier's recourse pursuant to §§ 478, 445a, 445b or §§ 445c, 327 para. 5, 327u BGB) shall remain unaffected, unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement. The rights arising from any additional guarantee given by TTBV shall remain unaffected.

(2) TTBV shall provide all deliveries and services in accordance with the state of the art. In this respect TTBV shall not assume any liability for public statements made by the manufacturer and other third parties.

(3) In the case of goods with digital elements or other digital contents TTBV shall only owe provision and, if necessary, updating of the digital contents insofar as this results expressly from a quality agreement.

(4) TTBV shall not be liable for defects of which the Customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Customer's claims for defects presuppose that he has complied with his statutory duties of examination and notification (§§ 377, 381 HGB).

In the case of goods intended for installation or other further processing, an inspection must in any case take place immediately before processing/installation. If a defect becomes apparent upon delivery, inspection or at any later point in time, TTBV shall be notified thereof in text form without delay. A notice of defect which does not comply with the text form shall be invalid and not suitable to meet the deadline. In any case, obvious (obvious) defects must be notified in text form within 3 working days (whereby Saturday is a working day) from delivery and defects which cannot be detected during the inspection must be notified within the same period from discovery, whereby the timely dispatch of the notification shall suffice to meet the deadline. In the case of sale by delivery to a place other than the place of performance, delivery in the above sense shall be deemed to have taken place at the latest when the forwarding agent or

carrier delivers the goods to the Customer or to the third party indicated by the Customer to TTBV as being authorized to receive the goods.

If the Customer fails to duly inspect the goods and/or to give notice of defects, TTBV's liability for the defect not notified or not notified in due time or not notified in due form shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation, mounting or assembly, this shall also apply if the defect as a result of the violation of one of these obligations only became apparent after the corresponding processing/installation; in this case, the Customer shall in particular have no claims for reimbursement of corresponding costs ("**removal and installation costs**"). Costs for testing and inspecting the goods shall be deemed to be costs of acceptance of the item within the meaning of Section 448 (1) of the German Civil Code (BGB) and shall therefore be borne by the Customer.

(5) If the delivered item is defective, TTBV may choose whether TTBV shall provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement delivery). If the type of subsequent performance chosen by TTBV is unreasonable for the Customer in the individual case, he may reject it. TTBV's right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(6) TTBV is entitled to make the subsequent performance owed dependent on the Customer paying the purchase price. The Customer shall, however, be entitled to retain an appropriate part of the purchase price in relation to the defect. § Section 12 on the exclusion of the right of retention in other respects shall remain unaffected.

(7) Claims for defects shall not exist in the event of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive use or as a result of special external influences not assumed under the contract, as well as in the event of non-reproducible software errors (in software technology, only errors that occur again as soon as the specified processes that led to a software error are produced again shall be regarded as reproducible). If improper modifications or repair work are carried out by the Customer or by third parties, no claims for defects shall exist for these and the consequences resulting therefrom, nor in the case of operating errors on the part of the Customer.

(8) The Customer shall give TTBV the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery the Customer shall return the defective item to TTBV at TTBV's request in accordance with the statutory provisions; however, the Customer shall not have a claim for return. The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as dismantling and installation costs, if any, shall be borne or reimbursed by TTBV in accordance with the statutory provisions and these General Terms and Conditions if a defect is actually present. Otherwise TTBV may demand reimbursement from the Customer of the costs



incurred as a result of the unjustified request to remedy the defect if the Customer knew or was negligent in not knowing that there was actually no defect.

(9) The claim for reimbursement of transport, travel, labor and material costs within the scope of subsequent performance, including any dismantling and installation costs, is excluded insofar as the expenses increase because the object of the delivery has subsequently been taken to a place other than the Customer's place of business, unless the transfer corresponds to its intended use.

(10) If a reasonable period to be set by the Customer for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the Customer may withdraw from the contract or reduce the purchase price/remuneration in accordance with the statutory provisions. In the event of an insignificant defect, however, there shall be no right of withdrawal.

(11) Claims of the Customer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 9 and shall otherwise be excluded.

(12) The Customer's right of recourse against TTBV pursuant to § 445a of the German Civil Code (BGB) shall only exist insofar as the Customer has not entered into an agreement with his Customer which goes beyond the statutory mandatory claims for defects. Furthermore, para. 8 and para. 9 shall apply accordingly to the scope of the Customer's right of recourse against TTBV.

## **§ 8**

### **Industrial Property Rights and Copyrights; Defects of Title**

(1) Standard software, all additional programs, the symbols used, the "TechnoTeam" logo, written documents and documentation are protected by law. Copyrights, patent rights, trademark rights and all other performance and industrial property rights to standard software as well as to other items named above, which TTBV provides or makes accessible to the Customer within the scope of the contract initiation and implementation, shall be the exclusive property of TTBV in the relationship between the contractual partners. Insofar as third parties are entitled to the rights, TTBV shall have corresponding rights of exploitation. TTBV guarantees that no rights of third parties oppose the contractual use of the software by the Customer. Further details regarding sold/licensed software result from the End User License Agreement (EULA) to be concluded with the Customer.

(2) If a third party raises justified claims against the Customer on account of the infringement of property rights by deliveries made by TTBV and used in accordance with the contract, TTBV shall be liable to the Customer within the periods specified in § 10 as follows:

a) TTBV shall, at its discretion and at its expense, either obtain a right of use for the deliveries concerned, modify them in such a way that the property right is not infringed or replace them. If this is not possible for TTBV under reasonable conditions, the Customer shall be entitled to the statutory rights of withdrawal or reduction.

b) The obligation of TTBV to pay damages is governed by § 9.

c) The aforementioned obligations of TTBV shall only exist insofar as the Customer immediately notifies TTBV in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations are reserved for TTBV. If the Customer discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not imply any acknowledgement of an infringement of property rights.

(2) Claims of the Customer shall be excluded insofar as the Customer is responsible for the infringement of the property right.

(3) Claims of the Customer shall also be excluded insofar as the infringement of property rights is caused by special specifications of the Customer, by an application not foreseeable by TTBV or by the fact that the delivery is modified by the Customer or used together with products not supplied by TTBV.

(4) If, during the manufacture of a product, industrial property rights (e.g. trademark rights, patent rights and/or copyrights) of third parties are infringed due to specifications of the Customer, the Customer shall be obliged to indemnify and hold TTBV harmless with regard to all claims of third parties in this respect.

(5) In the event of other defects of title, the provisions of § 7 shall apply accordingly.

## **§ 9**

### **Liability; Right of Rescission and Termination in the Event of non-defect-related Breaches of Duty**

(1) TTBV's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay in performance, default, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with the provisions of this § 9, insofar as fault is involved in each case.

(2) TTBV shall not be liable in the event of simple negligence.

(3) The Customer's claim for damages in the event of impossibility of delivery shall be limited to 10% of the value of the part of the delivery which has become impossible. A claim for damages due to delay in performance and/or default is excluded insofar as the limits of § 3 para. 5 are exceeded.

(4) The exclusions and limitations of liability of this § 9 shall apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents (hereinafter jointly referred to as "**vicarious agents**") of TTBV.

(5) Insofar as TTBV provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by TTBV, this shall be done free of charge and to the exclusion of any liability.

(6) The restrictions of this § 9 shall not apply to the liability of TTBV and its vicarious agents due to intentional or grossly negligent conduct, due to injury to life, body or health, according to the Product Liability Act, due to breach of essential contractual obligations, for guaranteed characteristics or if and insofar as TTBV has given an additional guarantee promise (in this respect the details of the liability result from the guarantee conditions). In the event of a breach of material contractual obligations, however, this liability shall be limited to damages which TTBV foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which TTBV should have foreseen by exercising due care. Material contractual obligations are obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the Customer may regularly rely, in particular the obligation to deliver and install the delivery item in good time, to ensure that it is free from defects of title and material defects which impair its functionality or suitability for use to a more than insignificant extent, as well as obligations to provide advice, protection and care which are intended to enable the Customer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Customer's personnel or to protect the Customer's property from considerable damage.

Indirect damage and consequential damage resulting from defects in the delivery item shall also only be eligible for compensation insofar as such damage is typically to be expected when the goods are used as intended. The provisions of the above sentences 2 and 4 shall not apply in the event of intentional or grossly negligent conduct on the part of TTBV and its vicarious agents.

(7) Due to a breach of duty which does not consist in a defect, the Customer may only withdraw from or terminate the contract if TTBV is responsible for the breach of duty or a case of § 3 para. 6 exists. A free right of termination of the Customer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects the statutory prerequisites and legal consequences shall apply.

## **§ 10**

### **Statute of Limitation**

(1) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims under warranty for material defects and defects of title shall be one year from delivery; insofar as acceptance has been agreed, the limitation period shall commence with acceptance. Insofar as TTBV gives the Customer a warranty promise, the details shall result from the warranty conditions, in particular with regard to the scope, the warranty period and the period of limitation.

(2) If the goods are a building or an object which has been used for a building in accordance with its usual manner of use and has caused its defectiveness (building material), the period of limitation shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 no. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall also remain unaffected.

(3) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by TTBV or its vicarious agents, from the breach of material contractual duties and under the Product Liability Act as well as claims under § 445b BGB shall become statute-barred exclusively in accordance with the statutory limitation periods.

## **§ 11**

### **Retention of Title**

(1) Until full payment of all present and future claims of TTBV arising from the purchase/delivery contract and an ongoing business relationship (secured claims), the goods shall remain the property of TTBV. In the event of a breach of contract by the Customer, in particular in the event of non-payment of the purchase price due, TTBV shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; TTBV is rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Customer does not pay the purchase price due, TTBV may only assert these rights if TTBV has previously set the Customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(2) The Customer must treat the reserved goods with care. He must sufficiently insure them at his own expense against fire, water and theft at replacement value. If maintenance and inspection work becomes necessary, the Customer must carry it out in good time at its own expense.

(3) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The Customer shall notify TTBV in writing without delay if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) have access to the goods belonging to TTBV.

(4) Until revoked in accordance with c) below, the Customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

- a) The retention of title extends to the products created by processing, mixing or combining the goods of TTBV at their full value, whereby TTBV shall be deemed to be the manufacturer. If in case of processing, mixing or combining with goods of third parties their right of ownership remains, TTBV shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects the same shall apply to the resulting product as to the goods delivered under reservation of title.
- b) The claims against third parties arising from the resale of the goods or the product as well as those claims of the Customer with regard to the goods subject to retention of title which arise for any other legal reason against his purchasers or third parties (in particular claims from tort and claims for insurance benefits) and namely including all balance claims from current account are already now assigned by the Customer to TTBV in total or in the amount of a possible co-ownership share of TTBV in accordance with the preceding paragraph as security. TTBV accepts the assignment. The obligations of the Customer stated in para. 3 shall also apply in view of the assigned claims.
- c) The Customer remains authorized to collect the claim in addition to TTBV. TTBV undertakes not to collect the claim as long as the Customer meets his payment obligations towards TTBV, there is no deficiency in his ability to pay and TTBV does not assert the retention of title by exercising a right according to para. 1. If this is the case, however, TTBV may demand that the Customer discloses to TTBV the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case TTBV is entitled to revoke the Customer's authority to further sell and process the goods subject to retention of title.
- d) If the Customer so requests, TTBV is obliged to release the securities to which TTBV is entitled to the extent that their realizable value exceeds the value of the outstanding

claims of TTBV against the Customer by more than 10%. TTBV may, however, select the securities to be released.

## **§ 12**

### **Offsetting, Retention**

Offsetting against counterclaims of the Customer or the retention of payments due to such claims shall only be permissible insofar as the counterclaims are undisputed or have become res judicata or arise from the same contractual relationship under which the delivery/service in question was made. In the event of defects in the delivery, the Customer's counter rights pursuant to § 7 para. 6 shall remain unaffected.

## **§ 13**

### **Applicable Law, Jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these General Business Relations and the contractual relationship between TTBV and the Customer (excluding the UN Convention on Contracts for the International Sale of Goods).

(2) The place of performance as well as the exclusive place of jurisdiction for all disputes arising from the business relationship between TTBV and the Customer shall be the registered office of TTBV.

(3) Should any provision of these General Terms and Conditions be or become void in whole or in part or should a loophole in these General Terms and Conditions become apparent, this shall not affect the validity of the remaining provisions. In place of the invalid provision or in order to close the loophole, the valid and practicable provision (including, where applicable, a waiver of a claim by a party to the contract) shall apply which comes closest in economic purpose to the invalid or void provision. If the invalidity of a provision is the consequence of a measure of performance or time (period or deadline) specified in that provision, such a provision that comes closest to the original measure shall apply. § Section 139 of the German Civil Code shall not apply.