

## 米巴采购条款与条件

### 1. 概述

订单委托方（可能根据订单不同有所变化）为米巴集团（Miba AG）或与米巴集团（Miba AG）关联企业（无论股权比例），以下简称：委托方。订单接收方（供货商）指在本采购条款使用范围内与订单委托方签订供货合同的公司，以下简称：接收方。无论是否事先明确表明本采购条款的约束性，本采购条款适用于委托方作为订单委托人、采购者或类似身份与接收方缔结的所有交易，包括但不限于货品的生产和供应、对半成品的精加工及履行服务（以下统称“货品/服务”）。可到 <http://www.miba.com/de/agb/> 查看本采购条款的多语言版本。以合同中规定的语言版本为准（其他语言版本仅为参考信息），如有任何歧义，则以德语版本为准。接收方最迟向委托方发出订单确认函时或开始执行订单时表示同意本采购条款。除非在个别情况下有明确表示与其不符的书面协定，委托方和接收方之间的法律关系仅参照本采购条款的规定，即使接收方提到自己的销售或商业条款并且委托方甚至未明确拒绝遵守接收方的标准条款。此外，即使委托方在了解接收方标准条款与本采购条款不符的情况下仍然无保留地接受订货合同所规定的货品/服务，则同样以本采购条款为准。

## Miba General Terms & Conditions of Purchase

### 1. General Information

The Purchaser (hereinafter: the Purchaser) is Miba AG or an affiliate of Miba AG (regardless of the percentage shareholding), depending on what is indicated in the order. The Vendor (supplier) (hereinafter: the Vendor) is the company which draws up a contract with the Purchaser in the area of application to which these T&Cs of Purchase apply. Regardless of whether explicit reference is made to them, these T&Cs of Purchase apply to all legal transactions between the Purchaser as customer, buyer, ordering party or similar and the Vendor, including but not limited to the production and supply of goods, processing of semifinished goods and provision of goods and services (hereinafter also referred to jointly as goods & services). These T&Cs of Purchase are available at <http://www.miba.com/de/agb/> in several languages; the language version in the language in which the contract document for which these T&Cs of Purchase form the basis was drawn up shall be deemed the authoritative version (the other language versions shall be deemed non-binding and are provided for informational purposes only); in cases of doubt, the German version shall be deemed the authoritative version. The Vendor shall accept these T&Cs of Purchase at the latest on the date of confirmation or start of implementation of the Purchaser's order. The legal relations between the Purchaser and the Vendor shall in all instances be governed by these T&Cs of Purchase, unless other written provisions are explicitly set forth in a given individual case. This shall apply regardless of any reference made by the Vendor to its own terms & conditions of sale or other terms and conditions, including if the Purchaser has not explicitly objected to the inclusion thereof. Furthermore, this shall also apply in cases where the Purchaser, in full awareness that the Vendor's terms & conditions contradict or differ from its own, accepts the contractual goods & services without reservation.

## 2. 报价

接收方的报价就供货/服务的数量和性质必须完全符合询价的内容，如有偏差须立即明确向委托方指出。接收方的所有报价和任何价格或成本估算均为免费。如果接收方的报价中未指明接受期限，则委托方有权，在收到报价之日起的两周内接受接收方的报价。

## 3. 订购及订单

只有委托方的书面或电子形式发送的订单有法律效力。口头或电话下的订单仅在委托方的明确书面确认下才生效。接收方须在接到委托方的订单之日起的三个工作日内（周一至周五，排除委托方所在国的法定假日）对订单进行书面形式的确认。如超出三日（以委托方收到日期为准），则委托方有权撤销该订单（接收方无权进行任何申诉）。如果接收方无法在上述三日内进行订单确认，接收方须在三日之内向委托方以书面形式明确确认具有约束力的订单确认日期（以委托方收到为准）。委托方可根据情况有权自由决定，是否接受该新日期或撤销订单（接收方无任何申诉权）。如接收方的某一订单确认与委托方的订单有任何微小偏差，接收方均须向委托方明确指出并为此获取委托方明确的书面确认许可。若没有获得该许可，则委托方有权随时拒绝与订单有任何微小偏差的货品/服务（接收方无任何申诉权）。

## 2. Offer

With regard to the volume and specifications of the goods & services, the Vendor's offer shall adhere precisely to the Purchaser's request, and in the event of any deviations the Vendor shall send explicit notification. All offers and any cost estimates made by the Vendor shall be provided at no cost. If the Vendor's offer does not indicate an acceptance deadline, the Purchaser is in all instances entitled to accept an offer from the Vendor within the two-week period following receipt of the offer.

## 3. Orders and Purchase Orders

Orders placed by the Purchaser are only legally binding if they are set forth in writing or sent electronically. In order to be valid, orders which are placed orally or by telephone shall be explicitly confirmed in writing by the Purchaser. The Vendor shall confirm the Purchaser's orders and purchase orders in writing within 3 (three) working days (i.e., Monday to Friday, not including statutory public holidays in the Purchaser's country of domicile) of receiving the Purchaser's order. If that deadline has passed (definitive date: date received at the Purchaser's premises), the Purchaser is entitled to cancel its order (without thereby establishing grounds for any claims by the Vendor). If it is not feasible for the Vendor to issue an order confirmation within the aforementioned three-day deadline, the Vendor shall proactively and within the aforementioned deadline send the Purchaser written notification indicating a binding date on which the Purchaser will receive the order confirmation at its premises. The Purchaser, at its own discretion, is then entitled to either accept the new date or to cancel the order (without thereby establishing grounds for any claims by the Vendor). If an order confirmation from the Vendor differs – including minor deviations – from the Purchaser's order,

#### 4. 分包商，供应商，第三方

仅限在获得委托方事先书面许可下，接收方才有权委托分包商、供应商或第三方，而若委托方拒绝接收方的委托权限，则无须对此决定进行阐释。接收方有义务确保所委托的分包商、供应商或第三方在技术可靠性和供货准时性。尽管如此，接收方的义务也不会因获得了上述允许而发生任何改变。因此，如接收方以任何形式委托分包商、接收方或第三方履行合同或使用其产品或服务，则接收方须为该产品或服务承担示如自己产品/服务等同程度的责任（同样包括每家分包商、供应商或第三方的过错方面）。

委托方及其客户有权，在必要时审查接收方以及其为完成订单委托的分包商、供应商或任何形式的第三方，且接收方须确保委托方及其客户要求时，顺利进入相关的业务区域。接收方同样须确保委托方对于其委托的分包商、供应商或任何形式的第三方拥有同样审查权利，并确保委托方可顺利进入要审查的业务区域。

#### 5. 价格

the Vendor shall alert the Purchaser and shall obtain the Purchaser's explicit written approval for the deviation. At any time (and without thereby establishing grounds for any claims by the Vendor), without requiring approval the Purchaser is entitled to reject goods & services which are not in accordance with the order, even if the deviations are only minor.

#### 4. Subcontractors; Suppliers; Third Parties

The Vendor requires the Purchaser's prior written approval if it intends to use subcontractors, suppliers or third parties, and the Purchaser does not need to provide grounds if it refuses to grant that approval. The Vendor shall only use subcontractors, suppliers or third parties who provide adequate warranty for technologically satisfactory and timely contractual performance. Regardless thereof, the Vendor shall continue to fulfill all its existing obligations even if approval has been granted. Insofar as it uses subcontractors, suppliers or third parties of any kind to fulfill the contract or makes use of their products or services, the Vendor is liable to the same extent as if it had rendered performance itself.

If necessary, the Purchaser and its customers are entitled to perform inspections of the Vendor and its subcontractors, suppliers or third parties of any kind who are used by the Vendor to fulfill the contract, and to facilitate that the Vendor shall allow the Purchaser and its customers access to the relevant business premises if asked to do so. The Vendor shall ensure that the Purchaser's right to perform inspections, and the duty to allow access to the relevant business premises, also applies to its subcontractors, suppliers and third parties.

#### 5. Prices

协定价格（包括劳务服务费）指就合同规定供货/服务范围而有保证的固定价格，并且此价格涵盖与完成供货/服务有关的所有的费用。接收方也对提供过的成本估算做保证。明确禁止无论出于何种原因调涨价格。如无任何其他明确书面协定，订单价格是指DDP到订单指定目的地的价格（Incoterms 2010/2010年国际贸易术语解释通则），且包括包装服务。如在订单中未规定价格，则须在相应的订单确认中标明对应价格，然而，委托方有权无条件拒绝接收方指定的价格并且拒绝签订合同（接收方无任何申诉权）。

支付该价格也包括所有权利转让或授予的权利，特别是根据本采购条款第15条及第16条的规定，无论委托方使用范围和方法。

## 6. 废弃

接收方谨此声明确认，如在委托方委托情况下，接收方愿意回收接受曾供应给委托方的货品进行专业及合规的废弃处置。委托方有义务，在合法废弃处置完成后凭借市场标准与相关账单证明，向接收方支付相应费用。

## 7. 交货日期，交货延迟

The agreed prices (wages also fall into this category) are guaranteed fixed prices for the contractual goods & services and include all of the Vendor's costs associated with provision of the goods & services. The Vendor shall provide warranty for cost estimates. It is hereby explicitly stated that prices shall not be raised, regardless of the grounds. Unless agreed otherwise in writing, the prices are Delivered Duty Paid (DDP, per Incoterms 2010) to the Purchaser's location indicated on the order/order form. If no prices are shown on the order, they must be indicated in the relevant confirmation; the Purchaser reserves the right to reject the price set by the Vendor (without thereby establishing grounds for any claims by the Vendor) and to refrain from signing the contract.

Payment in full of the amount due shall fully satisfy all transfer/granting of rights to the Purchaser, in particular the rights set forth in Sections 15 and 16 herein, regardless of the type and scope of use and exploitation by the Purchaser.

## 6. Waste Disposal

The Vendor hereby states its willingness to and makes an offer to the Purchaser to take back the goods supplied by the Vendor if instructed to do so by the Purchaser, in order to allow expert waste disposal in compliance with the relevant regulations. The Purchaser shall reimburse the Vendor at market rates for the resulting costs, once the items have been disposed of in compliance with the relevant regulations and suitable proof has been provided.

## 7. Delivery Deadlines; Delayed Delivery

协定的供货日期及期限具有法律约束力。如未做其他书面协定，则委托方订单上的日期为供货期限。需要保证的交货日期或期限以货物/服务到达订单规定交货地点的时间为准。

在协定日期前所提供的供货/服务仅在协定的供货日期当天才视为完成供货。当出现供货延迟，哪怕仅涉及部分供货/服务，委托方仍有权要求：

(i) 继续履行合同或 (ii) 设定14天期限，如果在此期限内未完成交货/服务，可自行选择声明撤销整个合同或仅撤销合同中规定的未及时完成的部分供货。(iii) 除以上两点外，要求赔偿由此而产生的损失。但无论如何，当接收方一旦意识到无法按时完成全部或部分供货/服务时，须立即将全部情况以书面形式告知委托方，并给出解释原因、预计供货时间等。

告知后，委托方有权自行决定：是否立即撤销整个合同或合同中规定的未及时完成的部分，并追究因未完成供货而造成损失的赔偿。如果订单交货期限为具体某一天的情况下出现延迟，则没有14天的延长期限而委托方有权立即撤销合同追究损失赔偿。接收方不得对委托方的撤销合同行为提出任何申诉。

## 8. 受托加工物资

委托方向接收方所提供物资的所有权永久属于委托方，且须由接收方免费保存在与自己物品不同的仓库区域并且针对所有权进行明确的标记和管理。接收方使用该物资仅限于完成委托方订单供货/服务的目的。当物资出现贬值或丢失时，接收方须保证委托方不受控诉且不需承担损失，并根据法规提供补偿。当第三方对提供物料提出控诉，则接收方须立即

The agreed delivery deadlines and delivery periods are binding. Unless agreed otherwise in writing, the delivery deadline is the date shown on the Purchaser's order. The delivery deadline/delivery period shall be deemed to have been fulfilled once the goods & services have been delivered to/rendered at the delivery address shown on the order. Goods & services which are provided before the agreed delivery deadline shall be deemed to have been provided on the agreed delivery deadline date. In the event of delayed delivery – including if that only applies to certain parts of the goods & services – the Purchaser is entitled to either (i) insist that the contract be upheld or (ii) at its own discretion, and after having set a 14-day follow-up deadline, withdraw from the entirety of or the affected part of the contract if the contractual items are not provided within the follow-up deadline, and (iii) in addition to (i) or (ii) demand payment of resulting damages. Regardless of the above, as soon as it becomes aware that timely delivery of all or part of the goods & services will not be feasible, the Vendor shall immediately send the Purchaser written notification stating the reasons and the anticipated length of the delay. Once notification has been sent, the Purchaser, at its own discretion, is entitled to immediately withdraw from the entirety of or affected part of the contract and to demand payment of damages on grounds of non-performance. If there are explicit provisions stating that the goods & services shall be provided on a specified date (fixed-date transaction), in the event of delay the Purchaser is entitled to withdraw from the contract without setting a follow-up deadline and to claim damages. If the Purchaser withdraws, this does not entitle the Vendor to assert any claims against the Purchaser.

## 8. Materials Made Available

Materials which the Purchaser makes available to the Vendor shall remain the Purchaser's property and shall be stored by the Vendor separately from its own goods at no charge and clearly labelled and managed as property of the Purchaser. The Vendor may only use the materials for the purposes of providing goods & services to the



以书面形式通知委托方并为保护委托方所有权以自费的方式采取相应措施。

## 9. 保险

委托方统一购买的运输险承保所有货物运输。只有委托方在个别情况下以书面形式要求时，接收方方须为货品签订相应的运输保险。然而，接收方须以自费方式与知名并有偿付能力的保险公司签订包括如下范围的保险：涵盖全部情况下的财产损失和人身伤害的产品责任险、因侵犯第三方权利和车辆召回责任引起的索赔保险。根据合同规定货品/服务的价值和使用，保险的最高保险金额须至少为每年五百万欧元。若委托方要求，接收方须出示保险公司的相应保险证明。委托方是否检查或要求接收方出示保险证明不作为为接收方免除保险义务的行为。此外，拥有有效保险合同并不对接收方在相应合同关系中所规定的义务与责任有所限定。如果同规定货品/服务出现保险理赔事件，则委托方与接收方有义务相互告知与保险理赔有关的全部情况与信息。在理赔过程中，接收方事先便已将保险合同中所规定的相应理赔权利全部转让给委托方。接收方须向保险公司表明该权益转让，并在必要时向保险公司索取权益转让许可。委托方基于保险合同的权益转让所获得的理赔款，将从对接收方就保险理赔事件提出的索赔进行相应扣除。

Purchaser. If the value of the materials falls or they are lost, the Vendor shall indemnify the Purchaser against damages or claims and pay compensation as stipulated in the relevant legislation. If a third party asserts claims with regard to the materials, the Vendor shall immediately notify the Purchaser in writing and, at its own cost, shall take all necessary action to defend the Purchaser's property rights.

## 9. Insurance

All shipments are covered by shipping insurance under the Purchaser's general insurance policy. The Vendor only needs to obtain and provide coverage via appropriate shipping insurance if the Purchaser has demanded it in writing in a given instance. However, the Vendor shall, at its own cost, obtain insurance coverage from reputable, solvent insurance companies, which shall include coverage against any claims arising from product liability for property damage and personal injury, claims arising from infringement of third-party rights, and vehicle recall liability. The insurance coverage shall provide appropriate cover based on the value and use of the contractual goods & services, with a maximum insured amount of at least EUR 5 million per year. Upon demand, the Vendor shall present to the Purchaser proof of insurance issued by the insurer. If the Purchaser inspects the proof of insurance or refrains from demanding that proof of insurance be presented, this does not under any circumstances mean that the Vendor can forego its aforementioned duty to obtain insurance. Furthermore, the fact that an insurance policy is in place does not in any way limit the Vendor's obligations or liability arising from the contractual relationship in question. If an insured event relating to the contractual goods & services occurs, the Purchaser and the Vendor shall provide each other with all necessary information regarding the circumstances and incidents surrounding the insured event. The Vendor hereby transfers to the Purchaser in advance all entitlements from the insurance policy in connection with an insured event of this kind. The Vendor shall notify the

## 10. 担保

接收方保证，所提供的货品/服务完全符合使用目的、最新的技术水平、相应标准及相关官方机构及行业协会的要求。而且，接收方还保证货品/服务的采购、生产和销售的过程是不牵涉第三方权利，不侵犯保密义务、工业产权及其他知识产权、以及不违反竞争法规。此外，接收方保证，货品/服务的使用也不会整体或部分、直接或间接侵犯损害第三方的工业产权及其他知识产权。使用货品/服务同样不会在未得到授权的情况下，泄露第三方经营机密或其他机密信息。接收方保证委托方就以上申诉（同样包括与此相关的成本，特别是法律费用等）不会受损失及不受控诉。对于可移动物的保证期限为自接收货品/服务之日起的48个月。对于已进行担保申诉的货品/服务，其担保期限重新发货时将归零重计。委托方没有检查或提出索赔的义务，因此，法定检查义务或提出索赔义务不适用于合同规定货品/服务（参照奥地利公司法§§ 377）。与法律要求提出索赔必须走司法途径不同（参照奥地利民法典§ 933），双方协定，为保证担保义务在担保期内不仅可通过司法途径也可以书面形式提出有效索赔。如此，担保期限和账期暂停并顺延到完全排除缺陷并重新交付给委托方后继续计算。如果货品/服务存在缺陷，接收方则须在委托方限定的合理时限内按照委托方意愿，对缺陷货品/服务进行改善或更换。

insurer regarding this transfer and, insofar as necessary, obtain its approval for the transfer. Payments which the Purchaser receives based on the entitlements under the insurance policy which have been transferred to it shall be offset against the claims against the Vendor relating to the insured event and shall reduce them accordingly.

## 10. Warranty

The Vendor guarantees that the contractual goods & services can be used for their intended purpose, are state-of-the-art, and comply with the relevant standards, official specifications and trade association provisions. Furthermore, the Vendor guarantees that the goods & services are not encumbered by third-party rights and were manufactured, acquired and marketed without infringing any confidentiality requirements, industrial property or other protective rights or fair competition provisions. Moreover, the Vendor guarantees that use of the contractual goods & services will not wholly or partly, or directly or indirectly, infringe industrial property rights or intellectual property rights of third parties, and the use thereof will not result in unauthorized disclosure of commercial or business secrets or other confidential information of third parties. The Vendor shall indemnify the Purchaser against any damages and claims which are asserted in connection therewith (including all associated costs, in particular the costs of legal action). The warranty period for movable items is 48 months following acceptance of the goods & services. For goods & services supplied under warranty provisions, the warranty period shall start anew. The Purchaser is not obligated to perform inspections or send defect reports. Thus, the statutory duty to perform inspections and send defect reports (§§ 377 f, Austrian Commercial Code [UGB]) regarding contractual goods & services is not applicable. By way of derogation from the non-mandatory provision stating that warranty claims shall in all instances be asserted judicially (§ 933, Austrian Civil Code [ABGB]), it is hereby agreed that warranties which are asserted under warranty obligations may be asserted not only judicially but also in writing, provided the

如（例如委托方自由进行的抽检中）确定货品/服务的个别部件存在缺陷，则委托方有权退回整批供货/服务，接收方须自行承担相关全部费用。接收方须独自承担从货品/服务中鉴别甄选出缺陷产品或完好产品的责任。如改善和更换（i）均无法实现时，（ii）为委托方造成极大不便或不合理情况或（iii）未进行改善或更换或改善及更换不完全，委托方有权选择退出合同或要求降价。当退出合同时，接收方须自费运回已经供应的货品，并自行承担相关全部风险。委托方在紧急情况下，有权自己或委托第三方进行改善或修复，与此带来的全部费用及风险均由接收方承担。担保义务同样包括在所在地进行缺陷与故障排除的费用和拆装费用。此外，法律规定的担保规定也同样适用，且不得以协议排除委托方享受该担保规定的权利。

如第三方就使用货品/服务控诉委托方侵权，例如要求损失赔偿或者要求委托方放弃使用该货品/服务，接收方须通过签订许可使用合同确保委托方有权使用货品/服务。如未在合理期限内完成，委托方有权选择退出合同或基于缺陷要求降低价格并要求赔偿损失。

appropriate deadline is met. If a defect is reported in writing in this manner, the warranty period and ongoing payment deadlines shall be interrupted, and shall start to run again once the defect has been fully rectified and the item has been handed over to the Purchaser. If delivered goods & services are defective, at the Purchaser's discretion, the Vendor shall either rectify the defect within an appropriate deadline set by the Purchaser or replace the goods & services.

If it is determined (e.g., via voluntary random sampling by the Purchaser) that certain parts of the goods & services are defective, the Purchaser is entitled to reject the goods & services in their entirety and return them to the Vendor at the latter's expense. The Vendor has sole responsibility for separating defective items from non-defective items. If both rectification of the defect and replacement are (i) not feasible or (ii) unreasonable for or unacceptable to the Purchaser or (iii) if no rectification or replacement is performed or is only partially performed, the Purchaser, at its own discretion, is entitled to either withdraw from the contract or demand a price reduction. In the event of withdrawal from the contract, goods which have already been delivered shall be returned to the Vendor at its expense and risk. In urgent cases, the Purchaser is entitled to itself perform the necessary rectification or follow-up work at the Vendor's expense and risk, or to arrange for a third party to do so. The obligation to provide warranty also includes the duty to bear the costs of on-site defect rectification and removal and reinstallation. Aside from this, the relevant statutory warranty provisions apply. Contractual provisions which waive the applicability of the statutory warranty provisions in a manner detrimental to the Purchaser are not permitted.

If a third party alleges to the Purchaser that its rights have been infringed due to use of the goods & services and asserts a claim (e.g., a cease & desist claim or a damages claim), the Vendor shall obtain the necessary usage rights for the Purchaser by drawing up a license agreement. If this is not done within a reasonable deadline, the Purchaser, at its own



## 11. 赔偿，产品责任

接收方须对接收方及其委托或合作履行合同的分包商、供应商或其他人士造成的所有损失负责，并且接收方须保证委托方不受任何指控（包括所有与相关成本和支出，特别是法律费用）且无任何损失。委托方得到赔偿的范围涵盖全部损失，包括利润损失以及委托方、其合同伙伴及终端客户所有间接损失，而委托方的合同伙伴及终端客户也有权就上述损失直接要求赔偿（合同有利于第三方）。当发生委托方或其客户发生召回事件时（即为防止因缺陷造成人员和物品损坏，由委托方自行裁决通过更换和维修等方式排出缺陷），接收方须完全承担与此相关的全部费用（无论所供货物/服务的缺陷是否接收方造成的）除非存在证据表明其供应的货品/服务与召回事件无关。接收方担保其所供应的产品根据奥地利产品责任法（BGBl99/1988相关适用条款）及其他适用产品责任法规的定义在设计构造、生产及指示方面完全合格。接收方特此保证所供应的产品按照当今适用的最高学术及技术标准未查到质量缺陷。接收方须书面告知委托方所供货品/服务的任何有关物料、生产工艺、外购部件及其他与履行供应合同相关的改动信息。若无委托方的明确书面许可（没有实质性理由，不得拒绝），严禁接收方进行上述方面的任何改动。接收方有义务提供给委托方与根据产品责任法及其它适用产品责任法规的定义属于不合格品相关的全部数据（例如，操作说明书、警告信息、许可条例）。如接收方意识到产品有可能根据产品责任法及其他适用法规定义的缺陷错误后，有义务立即以书面形式告知委托方，接收方须承担产品召回有可能造成的相关的全部损失。协定限制以下义务和权利的条款均无效：接收方根据奥地利产品责任法及其他适用法规所具有的义务以及委托方根据奥地利产品责任法及其他适用法规得到赔偿的权利。当出现第三方对委托方提出控告时，接收方有义务保证委托方不受控诉且无

discretion, is entitled to withdraw from the contract or to demand a price reduction commensurate with the problem and to demand appropriate damages.

## 11. Damages; Product Liability

The Vendor shall be liable for all damages which are caused by the Vendor or its subcontractors, suppliers or other parties used by the Vendor for contractual performance, and shall indemnify the Purchaser against all such damages or claims (including all associated costs and expenses, in particular the costs of legal action). The Purchaser's claim to compensation shall cover the entirety of the damages, including lost earnings and all consequential damages suffered by the Purchaser, its contractual partners and/or end customers, and its contractual partners and/or end customers shall be entitled to assert such damages claims directly against the Vendor (contract in favor of third parties). In the event of a product recall carried out by the Purchaser or its customers (i.e., whereby goods & services that have been provided to the end customer undergo checking for defects, with a view to avoiding property damage or personal injury, and at the Purchaser's discretion the defect is rectified, if necessary, via replacement or repair), the Vendor shall bear the cost thereof regardless of its culpability, unless it can prove that the goods & services supplied by it were not the cause of the product recall. The Vendor guarantees that in terms of design, production and instructions the delivered products are free of defects as defined in Austria's Product Liability Act (Federal Law Gazette for the Republic of Austria [BGBl] No. 99/1988 (as amended)) and other applicable product liability provisions. The Vendor guarantees in particular that based on the prevailing state of the art of science and technology at the time the items were marketed, no defects could be found in the delivered products. The Vendor shall send the Purchaser written notification concerning any planned changes in the materials, production processes, supplied parts or other changes relating to the provision or

任何损失。接收方有义务在委托方要求下，随时提供缺陷产品的制造商/供应商。

composition of the goods & services. The Vendor shall refrain from making any such changes unless it has the Purchaser's explicit written consent, which shall not be withheld unless there are appropriate legal grounds. The Vendor shall provide the Purchaser with all information (e.g., operating instructions, warning labels, approval regulations) necessary for ensuring the delivery of defect-free products as defined in the Product Liability Act or other applicable product liability provisions. If the Vendor becomes aware of subsequent circumstances which could cause a product defect as defined in the Product Liability Act or other applicable product liability provisions, it shall immediately send the Purchaser written notification and reimburse all costs and expenses associated with the recall of defective products (if applicable). Limitations of any kind on the Vendor's obligations under the Product Liability Act or other applicable product liability provisions, or limitations of any kind on the Purchaser's entitlement to assert damages under the Product Liability Act or other applicable product liability provisions, shall be deemed invalid. If claims are asserted against the Purchaser by a third party, the Vendor shall indemnify the Purchaser against such damages and claims. The Vendor shall provide the names of the manufacturer or upstream supplier of the defective product if at any time asked to do so by the Purchaser.

## 12. 第三方知识产权

接收方均有责任保证他所提供货品/服务及其使用不会以任何形式直接或间接侵犯第三方专利、实用新型专利、品牌、商标、外观设计、版权或其他知识产权，包括但不限于商业及经营机密、技术信息等（无论是因接收方原因还是接收方以外的第三原因，接受方同样需要负责）。接收方有义务保证委托方不受第三方控诉并由此产生损失（包括与此相关的全部费用，特别是法律费用），接收方须承担委托方与此相关而产生的所有损失、成本、费用及不利以及/或者不良结果，该原则尤为适用于间接专利侵犯。

## 12. Protective Rights of Third Parties

Regardless of culpability, the Vendor shall be liable for ensuring that the goods & services or the use thereof do not directly or indirectly infringe patents, utility models, brands, trademarks, trade names, registered design/designs, copyright or other protective rights of third parties of any kind, including but not limited to commercial and/or business secrets and know-how. The Vendor shall indemnify the Purchaser against damages, claims or execution asserted by third parties (including all associated costs and expenses, in particular the costs of legal action), and shall reimburse the Purchaser for all associated and resulting damages,

### 13. 发票、付款、抵销和退出禁令

完成货品/服务交接后，接收方通过邮寄方式将发票送给委托方，严禁将其随附在货品/服务中。发票须清晰标明完整的订单号及订单日期。发票须清晰标注发货地址以及是否已付清运费。劳务服务发票须包括劳务清单或服务清单的编号和日期。如存在定期货品/服务，则须在对应月份的月末开票、至迟在次月3日的将发票寄予委托方。只有符合增值税法规的发票才被视为合规发票。含有物品或数字错误或缺失的发票视为无效账单。出现上述情况，支付期限将被归零，直至出具正确发票到达后重新开始支付期限。支付时间点并不影响接收方的担保服务。支付并不代表承认接收方的供货/服务完整无误、或并不代表委托方放弃担保或损失赔偿请求。预付款的价值保持稳定，等分于总订单价值。委托方保留使用往来结算方式的权利，如无任何其他书面协定，付款方式如下：14天/5%现金折扣、30天/3%现金折扣及60天/净额，从收到合规的账单起计算。

委托方有权抵消或保留自身或与米巴利益关联公司的对于接收方及其利益关联公司的待付款项。若无委托方的书面许可，接收方无权将其对

costs, expenses and disadvantages and/or other consequences; this applies in particular to matters relating to or arising from indirect patent infringement.

### 13. Invoices; Payment; Offsetting and Assignment Prohibited

Invoices shall be sent to the Purchaser by regular mail after the goods & services have been delivered/rendered; invoices shall not be enclosed along with the goods. Invoices shall show the complete order number and the order date. The invoices shall clearly show the shipping address and indicate whether the shipment was free of all charges or freight collect. Invoices for work performed shall show the number and date of the relevant wage statements and installation statements. If goods & services are supplied on a regular basis, invoices shall be generated at the end of the month and sent to the Purchaser no later than the 3<sup>rd</sup> of the month following provision of the goods & services. Invoices shall only be deemed proper if they comply with Austria's Value-Added Tax Act [US<sup>t</sup>G]. Invoices which contain material or arithmetic defects or errors shall not be payable. In such instances, the payment period shall not start to run until a corrected invoice has been received. The date of payment shall have no effect on the Vendor's warranty obligations. Payment shall not constitute acknowledgement that the goods & services are defect-free, and shall not waive warranty claims or damages claims. Advance payments shall remain stable in value, and shall be deemed aliquots of the total order value. The Purchaser reserves the right to perform current account netting. Unless agreed otherwise in writing, at the Purchaser's discretion, the following payment conditions apply: 14 days with 5% discount; 30 days with 3% discount; 60 days net, in all cases calculated based on the date on which a proper invoice was received.

The Purchaser is entitled to offset amounts which are payable by it or its affiliates against the Vendor or its affiliates, or to withhold said amounts.

委托方的应付款转移给第三方或由第三方获取该款项。接收方同样无权将自身应收款与委托方应收款抵销。

The Vendor shall refrain from assigning its claims against the Purchaser to third parties or arranging for them to be collected by third parties unless it has the Purchaser's written consent. Moreover, the Vendor is not entitled to offset its own claims against claims of the Purchaser.

#### 14. 不可抗力

#### 14. Force Majeure

若委托方或接收方或其为履行供货合同委托或合作的分包商、供应商或第三方，因不可抗力（如包括政治性罢工、停工、战争或自然灾害等类似情况）影响准时供货/服务或仅可供应部分订单供货/服务时，委托方有权全部或部分撤销订单或货品/服务，及签订的订单或仅要求在之后的某一日期提供部分订单，接收方对此无任何申诉权。

If, due to force majeure (e.g., strike (including political strike), lockout, war, natural disaster or similar), the Purchaser or the Vendor or a subcontractor, supplier or other third party used by the Vendor is unable to provide the goods & services or part of the due obligations in a timely manner, the Purchaser is entitled to fully or partially withdraw from the contract or to demand provision of the goods & services or placed order or part thereof at a later date, without thereby establishing grounds for any Vendor claims.

#### 15. 保密义务、图纸、样品

#### 15. Confidentiality; Drawings and Models

接收方有义务确保委托方就合同相关的全部技术和商业信息的保密性，尤其是“机密信息”。“机密信息”包括：无论该机密信息涉及是委托方，亦或与其关联企业、客户或合作伙伴，只要涉及上述各方信息的文件、图纸、数据、磁盘中存储的电子数据、工艺和流程步骤、成分、公式、模型、设备、机器、物体、市场信息、技术与商务信息、商业与运营机密、财务信息、商业模式和商业流程及其他应受保护的信息，无论在签订该采购条款之前或之后，由委托方将上述信息以书面、口头、图像、虚拟、电子形式有意或无意通过发送产品或产品样本、在企业拜访或以其它途径传递给订单方、或为满足接收方使用、或接收方获取的信息，以及任何副本及其他由此推断的信息均被视为机密信息。特别是无论由委托方、接收方或第三方（见第4条）创造的所有在完成供货/服务过程中所产生的信息和劳动成果均为机密信息。然而，签署该合同条款

The Vendor shall ensure that all technical and commercial information of the Purchaser of which it becomes aware as part of the contractual relationship is kept confidential. In particular, “confidential information” shall not be disclosed. The following in particular are deemed “confidential information,” regardless of whether they relate to the Purchaser, its affiliates or its customers/business partners: any information, documents, drawings, data, data on electronic storage media, processes and process steps, compositions, formulae, machinery, systems, templates, objects, market and marketing information, technical and commercial information, commercial and business secrets, financial information, business models and business processes or other information that merits protection which, before or after the drawing up of these T&Cs of Purchase, are knowingly or



后根据合同要求而提供的信息，如果当时已经属于被专业人群广泛了解的信息，则不被视为机密信息。任何机密信息的传递或用于自身或第三方，无论是全部或部分信息、经过改动或加工、或作为其它信息的组成部分，均须每次获得委托方的书面许可。此外，接收方有义务将机密信息只用于给委托方提供货物/服务方面并在完成交付后既不得将信息用于自身也严禁作为它用，并承诺信息管理须做到保证接收方在完成交付后能够将信息完整交还于委托方。接收方尤其不得试图从机密信息中解读获取任何资讯知识或技术诀窍，亦不得试图还原或研究基础信息，禁止其进行观察、研究、拆解或测试。该项原则同样适用于学术文件。订单及与其相关的全部工作同样被视为机密信息，须对其绝对保密。

unknowingly handed over to the Vendor by the Purchaser in written, graphical, oral, visual, or electronic form, or via the sending of a product or product sample, during a company visit or in any other way, or which pass into the Vendor's realm of control and/or of which it becomes aware, or any copies or other information derived therefrom. In particular, information or work outcomes which arise in connection with provision of the goods & services, regardless of whether they were created by the Purchaser, Vendor and/or a third party (Section 4), shall be deemed confidential information. The following is not deemed confidential information: information which in its totality and in the precise structure and composition of its components was, as of the date on which the information changed hands under this contract, demonstrably already generally known to or easily accessible by individuals in circles that customarily deal with such types of information. The Purchaser's prior written permission is required in each individual case for any forwarding of confidential information for use for own purposes or a third party's purposes, regardless of whether all or part of the information is used, whether it is modified or processed, or is part of other information. Furthermore, the Vendor shall only use the confidential information in connection with provision of the goods & services, and during and after the end of order fulfillment shall not use it for its own purposes or for other parties' purposes, and shall handle the information in a manner that allows the Vendor to return it after order fulfillment. In particular, the Vendor shall not attempt to obtain any findings or draw any conclusions from the confidential information, nor trace back to the information which underlies it, nor to analyze it through observation, assessment, dismantling or testing. This also applies to scientific publications. Orders and work relating to them shall also be deemed confidential information and therefore kept confidential.

委托方向接收方在订单谈判时或以用于完成订单而提供的所有参数、计划及其他技术资料以及询价单或订单的附件，以及受托加工物资（见第8条）和生产用工具，其所有权仍属于委托方所有并仅用于该订单的交付，也不得用于其他目的、制作副本或提供给第三方。同样，接收方按

All specifications, drawings and other technical documents or attachments to enquiries or orders (e.g., plans), including materials made available per Section 8 and any production resources (e.g., tools) which are handed over or made available to the Vendor by the

照委托方要求所制作的图纸、参数、图纸，计划，细节图，生产资料和其他技术资料 and 工具（以下统称“文件资料”）仅用于该订单的交付，也不得用于其他目的、制作副本或提供给第三方。在委托方要求情况下，该类文件资料及所有机密信息包括全部节选和衍生内容须立即交还给委托方，并保证作废全部副本，删除电子磁盘上的全部存储相关数据备份，对此提供书面确认。

接收方不得因获得了上述机密信息而在申请知识产权方面主张任何权利，尤其是基于先用权。。所有基于委托方机密信息加工或制作的工作成果和资料，特别是共同制作的任务说明书均遵照第16条，在生成之时即归委托方所有并须标记为委托方所有权。生产资料，特别是委托方提供给接收方的工具、样品、技术设备等，均须标记为委托方所有权并参照第15条中规定享受保密条款的保护并禁止使用。如委托方要求，须立即将该类资料及生产资料归还给委托方，并保证作废全部副本，删除电子磁盘上的全部存储相关数据备份及图纸，对此提供书面确认。

接收方有义务保证第三方无法获取可能含有委托方机密信息的所有文件和资

Purchaser in connection with the drawing up or fulfillment of the contract, shall remain the property of the Purchaser, and along with specifications, drawings, plans, detailed drawings, production materials and other technical documents and tools (hereinafter jointly referred to as “documents”) shall be used by the Vendor for the actual purpose of the contract with the Purchaser and not for any other purposes, and shall not be duplicated or made available to third parties. Upon request, these documents and the confidential information along with all excerpts and duplicates shall be immediately surrendered to the Purchaser, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

The Vendor shall refrain from using its knowledge of the confidential information to assert any rights relating to protective rights applications, and in particular shall refrain from asserting rights based on prior use. As stipulated in Section 16, all work outcomes and documents which are generated or produced based on confidential information of the Purchaser, including the jointly prepared specifications sheets, shall become the property of the Purchaser when created and shall be marked as the property of the Purchaser. Production materials, in particular tools, templates, technical devices etc. which the Purchaser has made available to the Vendor shall be marked as the property of the Purchaser and are subject to the confidentiality provisions and prohibitions on use set forth in Section 15. These documents and production materials shall be immediately surrendered to the Purchaser upon demand, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

The Vendor shall ensure that all documents and materials which might contain confidential information of the Purchaser are safeguarded and protected against access by third parties.

接收方仅在委托方明确书面许可的前提下，在广告材料或出版物等类似媒体暗示或表明与委托方的业务关系。

当委托方有理由怀疑有违反当前保密义务的行为时，接收方有举证责任，证明所涉机密信息已在合同签订时便具有社会公开性，或与其作为无关，或与其义务无关。

针对接收方透露机密信息给任何第三方或透漏机密信息给接收方的第三方，接收方有责任维护委托方权益，并对任何侵犯本协议保密性的行为负责。

接收方承认违反接收方保密义务的行为可造成即刻或不可挽回的损失，且该损失在法律所规定的赔偿并有可能不足以抵消。如接收方或从接收方获取相关信息的某一人侵犯本协议，则接收方每次及每日须向委托方支付赔偿金50000欧元，并独立于其它申诉或法律补救措施。排除将不同违反事件视为同一个案子。在法律允许的范围内，合同处罚不受任何司法审查或适当性评估，并且不取决于已发生的损害。

The Vendor requires explicit written permission if it wishes to indicate or draw attention to the business relationship with the Purchaser in advertising materials or publications of any kind.

If there are grounds for suspecting infringement of these confidentiality provisions, the Vendor shall bear the burden of proof for demonstrating that the confidential information was already known to the general public on the contract date or was disclosed without its involvement or responsibility.

Vis-a-vis the Purchaser the Vendor is jointly and severally liable along with any third party to whom confidential information was disclosed by the Vendor, or by whom confidential information was disclosed to the Vendor, for any infringement of the confidentiality provisions herein.

The Vendor hereby acknowledges that infringement of the Vendor's confidentiality obligations could cause major or irreparable damage, for which statutory damages might be inadequate. For each case and for each day of infringement of this contract by the Vendor and/or a person to whom the Vendor has disclosed the information in question, the Vendor shall pay the Purchaser a contractual penalty of EUR 50,000, regardless of further claims or legal remedies. The defense that a series of infringements should be treated as one continuous infringement is barred. Insofar as legally permissible, the contractual penalty shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

委托方对他人使用机密信息侵犯第三方工业产权、版权或其它权利概不负责，同样也对对于接收方或第三方由此所产生的损失概不负责。接收方有权限自由使用和提供机密信息。

The Purchaser shall not be liable for ensuring that the use of the confidential information does not infringe the intellectual property rights, copyright and/or other rights of third parties, and/or for damages caused to the Vendor or a third party. The Purchaser is completely at liberty to utilize and make use of the confidential information in any manner it wishes.

本条目（第15条）在合同终止或合同关系撤销后仍然适用。

Section 15 herein shall continue to apply after the contractual relationship has been ended or has ceased.

## 16. 工作成果及权利归属

## 16. Work Outcomes; Granting of Rights

基于本采购条款，接收方不得获取任何未明确授予的权利。委托方保留对提供给接收方用于完成供货/服务的全部物质及非物质事物的专属所有权及其它权利。接收方仅限与委托方保有商业关系且仅为完成向委托方供货/服务的前提下，使用以上权利，否则须参照第15条保密规定处理。

The Vendor shall not acquire any rights based on these T&Cs of Purchase unless they are granted explicitly. In particular, the Purchaser retains the sole rights to and exclusive ownership of all intangible and tangible items which are made available to the Vendor (if applicable) in connection with provision of the goods & services. They may only be used by the Vendor during the period in which it has a business relationship with the Purchaser and only in order to provide the goods & services to/for the Purchaser, and otherwise shall be subject to the confidentiality provisions in Section 15.

在合约框架内所产生的文件资料和工作成果（包括工具）（以下简称“工作成果”）及其开发或处理等全部权利均归委托方所有，且在其产生时，其全部权利便自动转归委托方所有。

Only the Purchaser is entitled to the documents and work outcomes (including tools) (hereinafter jointly referred to as “work outcomes”) which are created in connection with the contract and to exploit them, and as of the creation date they shall be transferred, passed and granted to the Purchaser.

所有工作成果在其生成之后便须立即告知委托方。在成果生成时，接收方以法律允许的最大程度将工作成果的所有权及版权全部转交给委托方，特别包括独有的专利申请权和优先权，以上所有权限仅归委托方所

The Purchaser shall be notified regarding any work outcomes immediately after their creation. As of the creation date, the Vendor shall transfer to the Purchaser sole ownership of and exclusive intellectual



有。此外，接收方让与委托方对于所有工作成果的独家使用权，允许委托方不受时间、空间及性质上的使用这些工作成果。这尤其包括复制、传播、收取其允许费或免费暂时转让、有线或无线传递、展示该工作成果。还包括免费或通过再许可的方式转让给第三方，并且第三方具有可使用工作成果的范围与委托方一样。此外，委托方有权自行或通过第三方对成果进行加工及处理，并可以同等程度与范围进行开发利用或转让予第三方。

此外，委托方有权自主决定提供、使用所产生的不受法律保护的机密信息及其使用方式，尤其是商业及运营机密。

接收方谨此确认，其自身不拥有上述权利，且无须向其单独支付额外相关费用。无论委托方以任何方式进行使用或加工，所有权的转让和/或转移除了供货/服务双方所商定的费用之外无需支付任何款项。此外，接收方确认，其自身对所产生的工作成果并不拥有先用权。基于已支付给接收方的费用，接收方须明确和不可撤销地放弃与工作成果和发明有关的知情权和任何其他所有权的要求。

property rights for the workout comes to the full legally permissible and transferable extent, in particular the sole right to apply for protective rights or invoke priority rights, and those rights shall pass to the Purchaser accordingly. In addition, the Vendor shall grant the Purchaser exclusive utilization rights to the work outcomes when they are created. In the case of copyright-protected outcomes, the Vendor hereby irrevocably grants the Purchaser the exclusive rights to utilize the work outcomes without chronological, material or geographic limitation based on all currently known or future types of exploitation, and in particular to duplicate, disseminate, lease and lend, transfer or send them via wireless or wired connection, or present, show, or display them and make them available, and to transfer all rights to the work outcomes to third parties gratis or against payment, or to grant sublicenses, and in doing so permit the third parties to utilize the work outcomes to the same extent. Furthermore, the Purchaser is entitled to adapt the work outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or to transfer them to third parties.

Moreover, only the Purchaser is entitled to exercise disposal over, utilize or decide on the use of created information which is ineligible for IP protection, including business and commercial secrets.

The Vendor therefore hereby confirms that the Vendor no longer holds those rights. No separate remuneration shall be due; all transfers and/or granting of rights shall be deemed fully satisfied by the agreed remuneration for the goods & services, regardless of the type and scope of use and exploitation by the Purchaser. Therefore, the Vendor hereby attests that in particular it does not have any prior use rights to the respective work outcomes. Based on and in return for the aforementioned remuneration, the Vendor conclusively and irrevocably waives all claims and information rights arising from inventions and all other protective rights relating to the work outcomes.

委托方可自行决定办理保障性权利的保护申请或延期。

接收方确认，接收方拥有并保有所需权利，能够遵照该协议将工作成果的所有权及其它全部可转移权利，特别包括知识产权在内以完整且具有法律效力的方式最终转让给委托方，并保证委托方可获取对工作成果的独家使用权。该项原则亦适用于工作中的发明及工作关系中做成的工作成果的所有权。接收方有义务就该事宜，与接收方所有与供货/服务相关的所有人士在转达合同规定项目相关信息前及指派上述人员从事合同规定项目之前，与其签订权利转移声明书。

如接收方拥有的知识产权或其它权利，只要其可能会妨碍委托方或委托方的客户、商业伙伴根据本采购条款应使用该权利或相应供货/服务，接收方便须授予委托方在全球范围免费、无期限、不受限制的（特别是委托方在进一步研发及改善方面）的共同使用权，且该权限可包含接收方的客户和商业伙伴，并保证第三方须授予以上权利。

## 17. 发货

Applications for protective rights shall be made by the Purchaser at its own discretion and maintained by the Purchaser in its own interest.

The Vendor shall ensure that the Vendor has and holds all necessary rights to ensure that ownership and/or transferable rights, including intellectual property rights to the work outcomes as set forth herein, can be completely and conclusively transferred to the Purchaser with legal effect, and that exclusive utilization rights to the work outcomes can be granted. This applies in particular to rights arising from employee inventions and/or rights to outcomes arising from work and labor contracts. To accomplish that, before any information about a contractual project is handed over, and before the relevant individuals on the Vendor side who will perform work relating to the goods & services actually become involved in the contractual project, the Vendor shall draw up the necessary rights transfer declarations with those individuals.

Insofar as the Vendor holds existing protective or other rights which could prevent the Purchaser and/or its customers/business partners from exercising its rights under these T&Cs of Purchase or using the goods & services in question, the Vendor, at no charge, hereby grants the Purchaser the right of joint use, which shall be worldwide, perpetual, continuous, unlimited (and in particular shall be usable by the Purchaser in connection with further developments and/or improvements), and applicable to customers and business partners of the Vendor, and shall ensure that the right of joint use is also granted by third parties.

## 17. Shipping

货品将按运输要求进行包装并发货。如各方在事先未做其它明确书面协定，则发货遵照以下规定：

- a) 接收方须承担发货相关的全部费用及风险，并有义务将其无损地送至委托方指定地点。接收方也承担意外事故的风险。
- b) 发货时，务必须遵守符合运输要求的相关规定，并相应选择最有利于委托方的发货方式。
- c) 在信件、交货单、发货通知单、发票等类似文件中始终须表明部门、信件和订单日期。每份订单在整个函件中须进行单独处理；
- d) 接收方的交货单中须特别包含以下内容：
  - 委托方订单号和订单中的序号
  - 米巴物料编号（标注于订单上）
  - 制造商
  - 完整的型号标识
  - 订单数量和公制数量单位；
  - 属于货品的质量证明
  - 交货批号、生产批号、生产编码（date code）
  - 原产地及海关税号（HS编码）
- e) 运单或快递或邮寄地址单背页须注明部门、订单号或其他参考号码和订单日期。务必严格遵守委托方指定的运单地址。接收方有责任承担因错误声明或错误地址而造成的全部损失和费用以及支出。
- f) 将供货交付运输商后，接收方有责任在发货当日向委托方单独提供含有发货日期的发货通知。发票不视为发货通知。
- g) 如因接收方未遵守上述规定而产生的损失，费用和开支，例如滞期费、调车费用、移库费用等，接收方须对此承担全部责任。由此原因导致无法接受的货物，接收方须对其承担仓储有关所有风险和费用，直到委托方收到接收方合格的发货单据并能顺利进行交易。委托人有权立即确定运单的内容和状况，然而这不会产生任何检查义务或提出索赔义务；
- h) 务必严格遵守委托方可能提出的其他特别发货要求，由于不符合委托方要求而给委托方造成的损失须接收方全部承担。

The goods shall be packaged properly in a manner suitable for shipping and prepared for shipment. Unless agreed otherwise in writing in a given case, the following provisions apply to shipping:

- a) The goods shall be shipped solely at the Vendor's cost and risk, to the location specified by the Purchaser. The Vendor shall also bear the risk of accidental loss.
- b) During shipping, the applicable shipping regulations shall apply, and shipping methods which are most economical from the Purchaser's standpoint shall be taken into account.
- c) The department, reference number, order number and order date shall be shown on all letters, delivery notes, dispatch notes, invoices and similar documents. Each order shall be handled separately throughout written correspondence.
- d) The Vendor's delivery notes shall indicate in particular the following:
  - Purchaser's order number and order item
  - Miba material number (if shown on the order)
  - manufacturer
  - complete type designation
  - volume and metric sales unit
  - any quality assurance documents which accompany the goods
  - delivery lot, batch or date code (if applicable)
  - country of origin and customs tariff number
- e) The department, reference number, order number and order date shall be shown on the rear of the consignment note or detachable portion of the express delivery or postal address label. The exact consignment note address indicated by the Purchaser shall apply. The Vendor shall be liable for damages, costs and expenses incurred by the Purchaser as a result of an inaccurate declaration and/or address.
- f) If the goods are handed over to a freight forwarder, on the day of dispatch the Vendor shall send the Purchaser separate written notification indicating that handover has taken place and the handover date (dispatch note); invoices shall not be deemed dispatch notes.
- g) The Vendor shall be liable in full for damages, costs and expenses (demurrage costs, shunting costs, stock transfer costs etc.) incurred by the Purchaser due to the Vendor's failure to comply with the above

provisions. Any shipments which for such reasons cannot be accepted shall be stored at the Vendor's cost and risk until the Purchaser can facilitate handling by sending proper documents. The Purchaser is entitled to immediately check the contents and status of any such shipments, without thereby establishing grounds for an obligation to perform inspections or send defect reports.

h) Any separate shipping instructions issued by the Purchaser shall be followed in all instances; the costs of damages incurred by the Purchaser due to failure to comply with shipping regulations shall be borne by the Vendor.



## 18. 终止合同

委托方有权出于重大原因立即终止订购合同（这不影响按照本采购条款所提及的其他终止原因），重大原因包括以下情况：

- a) 接收方已进入破产程序，或者由于资产不足而破产申请被有关部门拒绝。
- b) 存在无法完成供货/服务的情况；
- c) 接收方本身或替其履行供货/服务的第三方违反了基本的合同条款或保密义务；
- d) 接收方变更（控制权变更）造成的直接或间接法律或经济影响。

终止所有或个别合同关系并不影响第10,11,12,15,16,21,22和23条的效力，以上条款在终止合同后仍继续有效。第16条所提及的转让权利或授予权利也同样适用于终止合同关系时已产生的全部现有工作成果。

## 19. 同意合同关系转移

接收方同意，委托方可以将整个合同关系转移给另一家与米巴集团关联企业（无论米巴股权比例）。通过书面通知，由委托方指定的该公司将具有此法律关系产生的所有义务和权利，并且享有委托方的所有组织权

## 18. Cancellation of Contract

Regardless of any other grounds for ending the contract set forth in these T&Cs of Purchase, the Purchaser is entitled to terminate all contractual relations with immediate effect if there are significant grounds. The following in particular shall be considered significant grounds:

- a) Bankruptcy proceedings are opened for the Vendor's assets, or opening of bankruptcy proceedings is rejected due to lack of assets;
- b) There are circumstances which make the proper provision of the goods & services impossible;
- c) The Vendor itself or a person used by it to provide the goods & services infringes major contractual provisions or confidentiality obligations;
- d) There is a change in the direct or indirect legal or commercial means for exercising control at the Vendor (change of control);

The ending of all or individual contractual relations shall not affect the validity of Sections 10, 11, 12, 15, 16, 21, 22 and 23, and those Sections shall continue to remain in effect after the ending of contractual relations. The transfer and granting of rights as described in Section 16 explicitly also apply to interim outcomes (if applicable) at the end of a contractual relationship.

## 19. Consent to Transfer of Contractual Relationship

The Vendor hereby agrees that the Purchaser may transfer the contractual relationship as a whole to an affiliate of Miba AG (independently of the percentage shareholding). In such instances, based on written notification the affiliate specified by the Purchaser shall

利和其他权利。然而，对于本合同关系中产生的义务，特别是支付款项等义务，委托方也始终承担共同责任。

## 20. 税金和费用

如无明确其它协定或法定强制性规定，供货产生的所有税金和费用须由接收方承担。该项原则同样适用于委托方在进口供货时须提交国际进口证（IIC）的相关费用。

## 21. 合规

接收方有义务遵守“米巴行为准则”及进出口国和目的地所在国的所有适用法规、政府机构的要求、规范及标准。接收方确保其次级供应商同样须满足该要求。

接收方特别声明，货品/服务不违反任何外贸限制。如果必要，接收方在委托方要求下，须提交相关货物信息。接受方向委托方保证，务必遵守适用于合同供货范围有关出口和再出口的所有法规，也包括欧盟和美国有关法律对于具有双重用途产品的规定（关于其出口、转移、分销和转运）。

take over all obligations and claims arising from the legal relationship and shall assume all of the Purchaser's organizational and other rights. However, the Purchaser shall continue to be jointly and severally liable to the Vendor for obligations arising from the contractual relationship, including payment of the remuneration.

## 20. Duties and Charges

Unless agreed otherwise in writing in a given case or stipulated otherwise in applicable legislation, all duties and charges which are payable based on the goods & services shall be borne by the Vendor. This also applies if the Purchaser has to obtain an international import certificate in order to import the goods in question.

## 21. Compliance

The Vendor shall comply with the Miba Code of Conduct and with all legislation, regulations and other standards of the export country, import country and destination country which are applicable as of the relevant date. The Vendor shall ensure that the aforementioned requirements are also forwarded to subsuppliers.

In particular, the Vendor hereby confirms that as a matter of principle the goods & services are not subject to any foreign trade constraints. If necessary, the Vendor shall provide relevant information regarding the goods if asked to do so by the Purchaser. The Vendor hereby assures the Purchaser that it will always fully comply with all export provisions currently applicable to the contractual goods and/or services and their export and/or re-export, in particular with Council Regulation (EC) No. 428/2009 regarding a Community regime for the control of exports,

对于任何违反该出口条例或米巴行为准则的行为，被视为委托方有权立即撤销与委托方的现有合同的重要原因。

此外，如接收方在欧美及美国制裁清单之列，则委托方有权终止所有业务关系、现金流和订单业务，且立即生效。此外，当接收方违反上述准则时，接收方有义务保证委托方完全不会面临指控且无利益损失。

此外，如果接收方为出口/再出口货物而需要官方的特别批准或对其存在特别限制（参考奥地利、欧盟、美国以及原产国的相关出口和外贸法规），接受方需要在订单的单据上做相应备注并首批发货前提供以下信息：

transfer, brokering and transit of dual-use items (as amended) and the US Export Administration Regulations (EAR), to the exclusion of any responsibility in this regard.

Any violation of these export provisions or the Miba Code of Conduct shall entitle the Purchaser to immediately terminate all existing contracts with the Vendor if there are significant grounds.

Moreover, if the Vendor is listed on an EU or US sanctions list, the Purchaser reserves the right to terminate all business relations, payment flows and performance with immediate effect. Furthermore, in the event of infringement of any of these compliance provisions, the Vendor shall comprehensively indemnify the Purchaser against resulting damages and claims.

The Vendor shall ensure that in its commercial documents it immediately provides the Purchaser with separate notification regarding any permit requirements or constraints on the (re-)export of its goods under Austrian, European or US export and foreign trade regulations and regarding the export and foreign trade regulations in the country of origin of its goods, and in the case of goods requiring permits shall provide the following information in a timely manner prior to initial delivery:

- 米巴物料编号
- 货品描述信息
- 所有适用出口品列表编号，包括美国专利商业管制清单（ECCN）中的出口管制分类编号
- 原产地
- 海关税号（HS编码）

- Miba material number
- description of goods
- all applicable export list numbers including the Export Control Classification Number (ECCN) per the U.S. Commerce Control List
- place of origin of the goods under trade policy
- customs tariff number (HS code)

供货方有义务即刻告知有关其所供应货品相关技术、法律、官方政策方面的审批义务变动。

The Vendor shall immediately notify us regarding any changes in permit requirements for goods supplied to us which are a consequence of technical or regulatory changes or official decisions.

## 22. 履行地点、法律管辖

## 22. Place of Fulfillment; Place of Jurisdiction

合同双方的合同履行地点为接收方在订单确认函中指定的地点。

The place of fulfillment for both parties is the location specified by the Vendor on the order confirmation.

任何源于或关于本合同的争议或索赔应当提交至上海国际仲裁中心(“**上海国际仲裁中心**”)根据其届时有效的仲裁规则进行仲裁，仲裁地点为上海。仲裁语言为英文。仲裁庭应当由三(3)名仲裁员组成。委托方和接收方应各自指定一(1)名仲裁员。第三名仲裁员应由前述仲裁员共同指定，并担任首席仲裁员，其不能由中国国籍或奥地利国籍的人员担任。如果一方在收到仲裁庭发出的仲裁通知书一(1)个月内未指定仲裁员，亦或仲裁员未能在其被指定后的一(1)个月内就首席仲裁员达成一致，则相关的仲裁员或首席仲裁员由上海国际仲裁中心主任指定。仲裁裁决是终局的，对委托方和接收方均有约束力。

Any dispute or claim arising out of or in connection with this contract shall be submitted to Shanghai International Arbitration Commission (“**SHIAC**”) for arbitration in Shanghai in accordance with the then effective arbitration rules of SHIAC. The arbitration language shall be English. The arbitration tribunal shall consist of three (3) arbitrators. Purchaser and Vendor shall each appoint one (1) arbitrator. The third arbitrator, who shall act as chairman and who shall neither be of Chinese or of Austrian nationality shall be jointly appointed by the above-mentioned arbitrators. If one Party fails to appoint its arbitrator within one (1) month after receipt of the notice of arbitration by the arbitration



### 23. 适用法律

本合同以及其法律效力和法律影响，仅适用中华人民共和国法律（排除其冲突法条款以及“联合国国际货物销售合同公约”的适用）。

### 24. 可分割条款

本采购条款和条件如有任何条款无效或不适用，亦不应影响本采购条款中其它条目的有效性或适用性。在此情况下，所涉条款将由在经济性方面有相似结果的近似条款所代替。本原则亦适用于合同可能存在的漏洞。

### 25. 书面形式

仅限以书面形式对本采购条款以及接收方和委托方之间的其他合同协议进行修改和补充，否则无效。该原则同样适用于偏离书面形式的要求。

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tribunal or in case the arbitrators fail to reach an agreement on the chairman within one (1) month after they have been appointed, the respective arbitrator or the chairman shall be appointed by the president of SHIAC. The award issued by SHIAC shall be final and binding on both Purchaser and Vendor.

### 23. Applicable Law

This contract, including the questions of whether it is legally valid and/or void and its advance effects and aftermath, are subject to the PRC law only, to the exclusion of conflict of law provisions and UN CISG.

### 24. Severability

If a provision of these T&Cs of Purchase is invalid or inapplicable, this shall not affect the validity or applicability of the other provisions. If a provision is invalid or inapplicable, it shall be replaced by one which in terms of commercial purpose approximates as closely as possible to the invalid or inapplicable provision. The same applies to contractual gaps.

### 25. Written Form

In order to be valid, any changes or amendments to these T&Cs of Purchase or other contractual agreements between the Purchaser and the Vendor shall be carried out in writing. The same applies to deviations from the requirement regarding written form.

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