

## 一般销售及供货条款与条件

### 1. 概述

1.1 本一般销售及供货条款与条件（简称：“AGB”）适用于所有供货商业关系，即包括订购确认单中所使用的各种称谓方式，只要该订单中为米巴集团（Miba AG）或与米巴集团（Miba AG）的关联公司（以下统称“供货商”）与企业法人（以下统称“客户客户”，及与供货商的共同“协议方”）。特别注意：无论供货商是否具体提及本一般销售及供货条款，供货商均依照本一般销售及供货条款的基本规定向客户客户提供所有商品和服务（以下统称“货品/服务”）。本一般销售与供货条款有多种语言版本，请参阅：<http://www.miba.com/en/general-terms-conditions/>；以合同协议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，则始终参照德语版本的规定。

1.2 客户客户最迟以向供货方提交协议声明时同意本一般销售及供货条款。若合同各方之间无其他明确的书面协商，则各方间的法律关系应参照本一般销售及供货条款的规定。无论客户有任何规定或其他自定的商业规则条款，即使供货商未明确声明是否遵守上述客户的自定规则，均须参照本一般销售及供货条款。此外，当供货商知道客户的规定条款与供货商不符或冲突时，而供货商仍无条件向客户提供订购合同中所规定的服务，本一般销售及供货条款同样有效。

## General Terms & Conditions of Sale and Delivery

### 1. General Information

1.1. These General Terms & Conditions of Sale and Delivery (hereinafter "General T&Cs of Sale and Delivery") apply to all business relations between Supplier, i.e. – depending on the designation in the order confirmation – Miba AG or an affiliate of Miba AG (hereinafter "Supplier") and an enterprise (hereinafter "Customer"); hereinafter, Supplier and Customer are referred to as "the Parties". In particular, these General T&Cs of Sale and Delivery shall in all instances, regardless of whether in the actual concrete case Supplier explicitly makes reference to these General T&Cs of Sale and Delivery, apply to all goods and services (hereinafter referred to as Goods & Services) provided by Supplier to Customer. These General T&Cs of Sale and Delivery are available at <http://www.miba.com/en/general-terms-conditions/> in several languages; the language version in the language in which the contract document for which these General T&Cs of Sale and Delivery 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.

1.2. Customer shall accept these General T&Cs of Sale and Delivery at the latest when it gives its contract declaration to Supplier. The legal relations between the Parties shall in all instances be governed by these General T&Cs of Sale and Delivery, unless other written provisions are explicitly agreed in a given individual case. This shall apply regardless of any reference made by Customer to its own terms & conditions of purchase or other terms and conditions, including if Supplier has not explicitly objected to their inclusion. Furthermore, this shall also apply in cases where Supplier, in full awareness that Customer's terms & conditions contradict or differ from its own, provides the contractual goods & services without reservation.

## 2. 合同的订立

2.1 供货商有权随时更改报价且报价不具约束力。对于客户未规定具体时限的订单，其对客户至少有30天的约束力。

2.2 仅当供货商提交书面订单确认函或对订购的书面确认（“订单确认函”）后，与供货商之间的合同才成立。

2.3 对于订单确认函中或其此前提提交的相关文件资料中的偏差，如果客户在合适的时限内，然而最迟自收到含有该偏差的订单确认之日起的七日之内，仍未对偏差给出书面修正反馈，则该项偏差视为被认可核准。客户对本一般销售和供货条款的可适用性及有效性无权反对。

2.4 所有报价和报价内容，包括例如：对于流程描述、组件或技术、图纸或设计、以及模型及软件等在报价内的全部内容：（a）供货商对其拥有永久知识产权，客户在无明确授权时，对报价内容无任何权限。（b）仅限订购商个人使用且仅作为客户决定是否在本供货商处订购下单的参考信息（c）客户须对报价全部内容信息绝对保密，严禁提供给第三方或进行任何复制。（d）如客户决定不订购，则须在通知供货商该决定时，将全部报价资料一并退回给供货商。

2.5 供货商提供报价，但客户并未采纳，则供货商保留向客户索取劳务费和准备报价、成本估算、或准备相关文件（例如图纸）等费用的权利。

## 2. Conclusion of Contract

2.1. Offers made by Supplier are non-binding and subject to amendment. Orders placed by Customer which do not indicate an acceptance deadline shall be binding upon Customer for at least 30 days.

2.2. A contract with Supplier does not arise until a written order confirmation has been sent or Supplier has confirmed the order in writing.

2.3. Deviations between the order confirmation or accompanying documents and any statements made earlier by the Parties shall be deemed approved unless Customer explicitly objects to the deviations within an appropriate deadline, namely within 7 (seven) days of receiving the order confirmation. Customer does not have any right to object to the scope or applicability of these General T&Cs of Sale and Delivery.

2.4 All offers and the content thereof, e.g., descriptions of processes, components or technologies, drawings and designs, templates and/or software, which are provided as part of the offer (a) shall in all instances remain the intellectual property of Supplier, and Customer shall not acquire any associated rights or entitlements which have not been explicitly granted; (b) shall be made available to Customer for its personal use only, and only in order to allow assessment of whether to place an order with Supplier; (c) shall be kept confidential by Customer, and shall not be disclosed to third parties or duplicated in any way; and (d) if Customer decides not to place an order shall be returned to Supplier along with a suitable notification.

2.5 If Supplier provides an offer but no order is placed, Supplier reserves the right to charge Customer for labor and costs associated with preparing the offer, cost estimate and/or accompanying documents (e.g., plans).

### 3. 供货、工具及生产驻地

3.1 仅限通过订单确认函及其相关的资料文件确定供货物品（以下统称“合同规定物品”，“货物”或“产品”）。引用第三方数据编号为供货商相应产品的指向信息。对合同规定物的任何改动均须获得供货商的明确书面认可。无明确书面协定的情况下，知识产权并非合同规定物的组成部分，客户在未获明确书面授权时，无法获得与此相关的任何权限。

3.2 当基于生产流程工艺，供货商无法事前对产量定量时，供货商有权根据事实情况提高或降低供货量。同样，客户在采购单件或特型产品以及小批量产品时，必须采购合同规定物品为产品的实际产出。

3.3 如未与供货商另有约定，则供货商有权购置及准备为满足客户订购所需的机器设备、装备、工具、模板、模具、仪表、配件、铸具、模型和其他物品（“供货商的工具”），并维护上述工具的最佳状态，在必要时进行更换。为此，客户须承担因购置、维护及更换上述“工具”所产生的成本。供货商有权在向第三方生产和销售产品时，使用为客户生产合同规定物品时所用的工具设备。如无包括价格及维护费用规则的明确书面协定，则供货商的工具、零部件的供应均不在供货产品范围之内，供货商对其自有工具的所有权仍属供货商。

3.4 供货商始终有权，随时更换合同规定物的生产地，甚至包括交付供货商集团旗下其他分公司生产。

### 3. Delivery; Tools; Production Site

3.1. The Goods & Services to be supplied (hereinafter referred to as contractual items, contractual goods or products) shall in all instances be defined in the specifications in the order confirmation and accompanying documents. In cases where unspecified reference numbers are used, they shall be deemed to refer to products manufactured by Supplier. Any changes to the contractual items require explicit written approval from Supplier. In the absence of explicit written agreement, intellectual property rights shall not be deemed to be part of the contractual items; furthermore, no rights or entitlements that have not been explicitly set forth in writing shall be transferred to Customer.

3.2. If, due to the nature of the production process, it is not possible to specify a particular volume in advance, overshipments or short shipments by Supplier shall be permitted. Furthermore, in the case of made-to-order production, special production or low-volume production, Customer shall accept the actual volume produced as the contractual items.

3.3. Unless agreed otherwise with Supplier, Supplier shall provide the machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and other items (hereinafter referred to as Supplier's tools) that are required to provide Customer with the contractual items, and shall keep them in good condition and, if necessary, replace them; Customer shall bear the costs of providing, maintaining and replacing them. Supplier is entitled to use Supplier's tools which it employs in supplying the contractual items to Customer to manufacture products for sale by Supplier to third parties. In the absence of explicit written provisions, which must also contain clauses regarding price and maintenance, Supplier's tools and the delivery of spare parts are not included in the contractual Goods & Services and Supplier retains ownership of Supplier's tools.

3.4. At any time, Supplier is entitled to shift the production site for the products to a different location, which may be operated by another Supplier group company.

3.5 客户有义务对每样货品的使用进行跟踪和记录，尤其是对每样货品的来源及批号进行记录，并且自交货起，将此记录保存至少15年。

#### 4. 知识产权

4.1 供货商保留合同规定物及与其相关的物品的知识产权，此外，也保留对合同规定物的生产工艺流程、应用、及/或与此相关的工艺及对组件和部件、软件（全部相应的源代码和目标代码以及用户文档、演算法、用户界面等）、对工艺流程、计划、草图、说明、图纸、手册、装配说明、计算、成本核算、报价和其他技术文件的知识产权，同样保留对样品、原型、产品目录、图册、插图及类似全部商业用途的保护权和知识产权，特别是对专利、品牌、示例、版权或其他设计权，及/或对专有技术与商业、技术与流程技术信息的全部权限。供货商永久专享上述权限。如破例在符合合同规定物品规定用途的授权前提下，客户自行以在组成与组成均与供货商一致的形式使用时，客户仍不拥有任何权利，特别是特许权及使用权。

该合规使用权仅限客户，且不得转移或进行次级许可授权。仅供货方有权使用、利用上述权限或申请专利保护权限，及/或以其他方式保留上述权利。客户无权以任何方式改动合同规定物外观，特别是其品牌或移除及改动供货商的其他标识。

4.2 如客户获得操作手册、终端用户资料、其他类似说明书或信息，则仅限将其用于合同规定物的合规运行或使用。如供货物品包含软件，则使用权仅限于为该合同规定物指定的软件或与软件一同配送的合同规定物，使用仅限合同规定物的有效使用期及客户使用合同规定物的时长。

3.5. Customer agrees to trace and document the use of each Good, in particular to maintain records regarding the source and lot number of each Good, and to keep such records for at least fifteen years from delivery.

#### 4. Intellectual Property

4.1. Supplier retains all industrial property rights and intellectual property rights to and associated with the contractual items, their application and/or processes carried out with them, and their production methods, and to components, software (along with the source code, object code, user documentation, algorithms, user interface etc.), and to processes, plans, sketches, descriptions, drawings, manuals, assembly instructions, calculations, offers, cost estimates, other technical documents, templates, prototypes, catalogues, brochures, illustrations etc., including but not limited to all patent rights, trademark rights, design rights, copyright and other design rights, and/or rights to know-how and commercial, technical and process engineering information. Supplier alone is the holder of these rights, and they shall continue to be held by Supplier. Aside from the simple right for Customer to use the contractual items for their intended purpose – in their concrete form and configuration as received from Supplier – Customer shall not be granted any rights, and in particular shall not be granted licensing or utilization rights.

This right to use the contractual items for their intended purpose shall be held by Customer only, and is not transferable or sublicensable. Only Supplier is entitled to use or exploit those rights or to apply for protective rights and/or to uphold the rights in other ways. Customer is not entitled to modify the appearance of the contractual items in any way; in particular, it shall refrain from removing or modifying Supplier's brand name or other identifying marks.

4.2 Insofar as Customer is provided with manuals, end user documentation, similar instructions or other information, they shall be used solely to facilitate proper operation and use of the contractual items. Insofar as the contractual items include software, usage rights shall apply only to the contractual items for which the software was acquired or along with which the software was supplied, in order to facilitate operation of and solely for the duration of active use of the contractual items, and solely for the period of use of the contractual items by Customer.

4.3 供货商在履行供货合同时所提供的全部成果、技术认知、发明、研发成果等所有权限，无论供货或产品是否基于客户规格，或是否客户对此是否参与并有所贡献，以上全部事项的一切权限均全部仅属于供货商所有。对客户本身可能产生的成果、技术认知、发明或研发成果的权限均自动转移至供货商，供货商成为专属且唯一的权限所有人及使用授权方。此外，其开发使用权也仅归供货商所有。

4.4 仅供货商有权申请注册保护权并在任何情况下均享有可能存在的优先权。全部保护权申请均由供货商自行裁决进行申请和维护。

4.5 谨此，客户准许供货商就产权保护结果享有专享权利，允许供货商不受时间、空间及客观情况限制无条件拥有并使用现有已知或未来可能出现的全部开发利用可能性的所有权，特别是在复制、推广、租赁或借用方面，以及以有线或无线方式传播或发送、播放、演示、展示及表演，或完全拥有使用受保护成果赚取或不赚取报酬、将其销售予第三方或发放次级许可的权利，届时，第三方允许以相同程度与范围使用。此外，供货商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对加工成果进行开发利用或转让予第三方。

4.6 如供货商事先无书面认可，则严禁将文件资料与信息交付第三方，并严禁用于超出具体协定用途之外的目的。尤其客户无权拥有对文件资料、信息或供货商的知识财产、生产设施、供货商的工具的任何许可权及/或所有权，即使供货商出现供货失误、延迟或缺失的情况。

4.3 Supplier shall exclusively and comprehensively retain all rights to outcomes, findings, developments, inventions etc. which arise in connection with Supplier's performance and which relate to the contractual items, including if Goods or Services are supplied on the basis of Customer's specifications or if Customer makes any other contribution thereto. Any rights which arise on Customer side shall be automatically transferred to Supplier when the outcomes, findings, developments, inventions etc. arise and shall automatically pass to Supplier, so that Supplier becomes the sole and exclusive rights-holder and beneficial owner. Furthermore, exploitation rights shall be comprehensively and exclusively assigned to Supplier.

4.4 Only Supplier is entitled to submit applications for protective rights or invoke priority rights (if applicable). All applications for protective rights shall be made and maintained at Supplier's discretion.

4.5 In the case of copyright-protected outcomes, Customer hereby grants Supplier the exclusive right to utilize the 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, transmit or send them via wireless or wired connection, or present, show or display them and make them available, and to grant all rights to the outcomes to third parties gratis or against payment or to grant sublicenses, and in doing so permit the third parties to utilize the outcomes to the same extent. Furthermore, Supplier is entitled to adapt the outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or hand them over to third parties.

4.6 Documents and information shall not be forwarded to third parties without Supplier's explicit written permission, and any use beyond what has concretely been agreed is prohibited. In particular, Customer shall not be granted any licensing rights and/or ownership rights to Supplier's documents, information, intellectual property, production systems or tools, including in the event of inadequate or late performance or complete lack of performance.

4.7 供货商仅在事先有明确书面说明规则并无阐述歧义的情况下，授予客户非专属权限，且该权限不包括授予客户转让权及加工处理权限。在申请保护权限方面，客户无任何申诉权，特别是无预先使用权。

4.8 客户无权更改供货商品牌名称及其他任何标识，亦无权移除或缺失使用合同规定物、包装或其附带的文件资料的品牌和任何其他标识。如客户出售合同规定物，严禁更改或移除其原有标识。

4.9 如为供应合同规定物时需要使用客户现有受商业保护权及/或技术认知，则客户有义务另免费授予供应商全球范围、非独家使用、非移转性且仅针对次级订单接收方的次级授权使用权限，以使其完成为客户或向在正当业务关系中客户已知第三方供应合同规定物之目的。

## 5. 审计

客户仅限凭供货商出具的明确书面许可，对供货商及其供应商进行审计活动。

## 6. 付款和付款条款

6.1 供货商提供的全部价格均为不包含法律规定的企业营业增值税的价格。价格表仅作为不具法律约束力的参考信息。

6.2 供货商价格基于其在发出订单确认函时的成本结构（包括原材料、研发、生产和劳动力成本、税收、关税和其他费用）。如该成本结构在（部分）供货时以至少提升了10%，则相应价格应成本涨幅进行相应调整。协定价格不包含任何权限授权或权限转移，相应价格则须另行单独标明。

4.7 If Supplier is to grant rights to Customer, an explicit written provision shall first be drawn up, and unless explicitly stipulated otherwise, shall only include non-exclusive rights without the right to the transfer or granting of sublicenses and without the right to adapt. Customer shall not assert any rights relating to protective rights applications, and in particular shall not assert rights based on prior use.

4.8 Customer is not entitled to modify Supplier's brand name or other identifying marks, and is not entitled to remove them from the contractual items, packaging and/or accompanying documents, and/or is not entitled to use them without the aforementioned marks. If Customer resells the contractual items, it shall refrain from modifying or removing the items' identifying marks.

4.9 If, in order to provide the contractual items, it is necessary to use existing intellectual property rights and/or know-how belonging to Customer, Customer shall grant Supplier the necessary usage rights, which shall be global, non-exclusive, gratis, non-transferable, and sublicensable to subcontractors only (if appropriate), in order to ensure that the contractual items can be provided and delivered to Customer or a third party specified by Customer during the life of the business relationship.

## 5. Audits

Customer is only entitled to conduct audits of Supplier or its vendors if it has explicit written permission of Supplier.

## 6. Payment; Payment Terms

6.1. All of Supplier's prices are subject to statutory value-added tax. Price lists shall be considered non-binding and for informational purposes only.

6.2. The basis for Supplier's prices is the cost structure (consisting of the costs of raw materials, development, production and wages, taxes, customs duties and other charges) as of the date on which Supplier issues the order confirmation. If, in the period leading up to the respective (partial) delivery, this cost structure increases by at least 10%, the relevant price shall be modified

6.3 账单支付：须在供货商账单开具之日起的**30**天内全额支付供货商所开具的账单，付款方负担可能产生的手续费等其他各类费用。

6.4 客户对供货商无权要求保留付款。

6.5 仅在既判案件或经供货商明确书面认可的条件下，客户才对供货商有权提出抵消要求。

6.6 供货商有权抵消或不予支付其自身或米巴集团（**Miba AG**）相关联的分公司指向客户及与客户相关联的分公司所有的款项。

## 7. 供货、海关及出口管制

7.1 供货商以货交承运人的方式交货，包括包装（**FCA**，在自有工厂或在符合国际贸易术语**Incoterms 2010**标准的第三方承运人运输仓库将货物交承运人）。

7.2 如合同中有明确书面协定，则供货商合同仅为最终截止日期（§ 919 **ABGB**）。此外，仅在供货商对客户就交货日期与期限有明确书面保证的条件下，交货日期与期限才对供货商具有约束力。

7.3 供货商有权进行部分供货。客户拒绝接收合同规定物的行为并不能摆脱其付款义务。

7.4 交货日期最早以供货商发出订单确认函开始。只要供货商未获得履行合同所需的资料与信息或客户未完全尽到其配合义务时，交货期限便无效且可视情况延期。

7.5 如因供货商不可控原因导致供货延迟，包括但不限于以下情况如不可抗力、政府官方措施、扣押、自然力量、骚乱或战争、运输中断、故

based on the change in the cost structure. The agreed prices do not include any payment for granting or transfer of rights (if applicable). Such compensation shall always be shown separately.

6.3. Supplier's invoices are payable in full without charges or deductions of any kind within 30 (thirty) days of the invoice date.

6.4. Customer is not entitled to withhold payment from Supplier.

6.5. Customer is only entitled to offset against Supplier if the claims are res judicata or have been explicitly acknowledged in writing by Supplier.

6.6. Supplier is entitled to offset or withhold amounts to be paid by Supplier or other companies affiliated with Miba AG against Customer and companies affiliated with Customer.

## 7. Delivery, Customs and Export Controls

7.1. Supplier shall deliver Free Carrier (FCA own plant or freight warehouse of Supplier, per Incoterms 2010) including packaging.

7.2. A Supplier contract shall only be deemed a fixed-date transaction (§ 919, Austrian Civil Code [ABGB]) if that has been explicitly agreed in writing. Aside from that, a delivery deadline or delivery date shall only be binding upon Supplier if it has explicitly provided Customer with a written guarantee to that effect.

7.3. Supplier is entitled to make partial deliveries. Refusal to accept the contractual items shall not release Customer from its payment obligation.

7.4. Delivery periods shall start at the earliest when Supplier sends its order confirmation. If Supplier has not received all necessary documents and information to allow fulfillment of the contract, or if Customer has not completely fulfilled its duty to cooperate, the delivery period shall be suspended.

7.5. If delivery is delayed due to events beyond Supplier's control, including but not limited to force majeure, official actions, seizure, natural disasters, civil

障、劳资纠纷或使供货商因其供应商未供货或违约供货而无法按时收货，则供货期限须相应延迟（或推迟），且须考量包括适当的再启动时间。如果此类事件所造成的供货延期超过原有的交货期限（或订单确认函与交货日期之间的时间段），则各方有权在相关延长期间结束后14天内经明确书面声明将交货延迟牵涉到的供货部分取消撤回。

7.6 如法律规定就供货商延期供货客户有权取消撤回订单，则该权限仅针对部分供货中的延迟部分。然而，客户仅在事先以书面形式明确为供货商确定合适的后续供货期限为前提，才能享受撤销订单权限。

7.7 客户对货品在目的地国家的正规进口承担责任，并缴纳与此相关的应交税费。供货商对货品从其所属关税区的出口承担责任，并须遵循与此相关的所有法定义务。

7.8 如所在国法律或国际法律存在进出口禁令（例如：禁运，美国（再）出口管制条款或其他制裁条款等），则供货商有权拒绝供货或完成合同订单。当有义务申请批准时，供货商有权待官方颁发批准指令后再开始加工合同订单或供货。如果官方机关或供货商本身为了进行出口管制检查而需要得到特定信息，客户便将应要求立即提供所有相关信息，即有关应提供货品和/或服务最终收货方、最终目的地及用途的信息。这尤其是涉及到向联合国、欧盟及美国所指定的禁运国供货以及向其他因供货商所在出口国有效制裁规定而存在限制的国家供货。

7.9 如果根据客户的绘图及规格生产货品，并且应提供的货品（包括所提供的软件及技术）根据欧盟或美国出口管制法以及出口国的本国出口管制法被列入出口管制清单（例如，欧盟一般军用货品清单、欧盟关于两用物品出口管制的《第428/2009号欧盟理事会规章》附录1、美国军需品名录、美国商业管制清单），客户则有义务对此另作书面通知。如果因技术或法律变更或因官方确证对应提供货品的审批发生任何变化，客户便将立即通知供货商。

unrest or war, transport disruptions, interruption of operations, labor disputes, or if a vendor fails to deliver to Supplier or delivers in violation of contract, the delivery deadline shall be extended accordingly (and the delivery date shall be moved), including an appropriate restart period. If, due to such events, a delivery is delayed by more than the length of the original delivery period (or the period between the order confirmation and the delivery deadline), either Party is entitled to withdraw from the part of the shipment affected by the delay, provided it sends an explicit written notification within the 14-day period that follows the end of the aforementioned extension period.

7.6. If, pursuant to relevant legislation, Customer is entitled to withdraw due to delay on the part of Supplier, in the case of partial deliveries the right to withdraw shall only apply to the delayed part of the shipment. Customer can only invoke a right to withdraw if it has first set Supplier an appropriate grace period for delivery by sending a written notification.

7.7 Customer bears the responsibility for correct import customs clearance in the country of destination and pays relevant import duties and taxes. Supplier is responsible for the correct exportation of Goods & Services from its customs territory and shall comply with all associated legal obligations.

7.8 Supplier is entitled to refrain from making a delivery or rendering performance if it is prohibited under national or international law (e.g., embargoes, US (re)-export control regulations, other sanctions). If license requirements apply, Supplier is entitled to refrain from making the delivery or rendering performance until the relevant authority has granted the necessary license. If necessary for export control checks by authorities or by Supplier, Customer shall, upon request, immediately provide all information about the end user, the final destination and the intended end use of the goods to be delivered



**7.10** 客户有义务遵循所有联合国、欧盟及美国制裁法规，并检查其商业伙伴是否在当前联合国、欧盟及美国制裁清单之列。任何违背上述出口管制法规的行为使得供货商有权基于重要原因将所有与客户的现有合同立即终止。此外，若客户被列入联合国、欧盟及美国制裁清单，供货商则保留终止任何业务关系、现金流及供货的权利，且立即生效。客户有义务保证供货商完全不会面临指控且无利益损失。

## **8. 质保**

**8.1** 质保期限为自交货日起的12个月内。

**8.2** 供货商确保在订立合同及使用合同规定物之时，未损害供货商所在国的第三方所有权且合同规定物的出口符合供货商所在国家相应的进出口管制法规。供货商不负责为客户供应整体系统，而仅限零部件。因此，供货商仅担保合同规定物在交货时符合其中双方以书面形式明确协定的技术特征。供货商不做出除此之外的其他任何担保。如果基于客户指定的技术规格进行订单生产和供应，则供货商仅保证按照客户规定的技术规格进行生产及供应，不对组成、结构及设计等其他方面提供任何担保。

or the services to be rendered. In particular, this applies for deliveries to countries subject to UN-, EU- and US- embargoes and deliveries to other countries where restrictions due to sanctions regulations of Supplier's exporting country apply.

**7.9** If goods are manufactured on the basis of drawings and specifications provided by Customer, Customer undertakes to indicate separately and in writing if the goods to be delivered (including provided software and technology) are covered by export control lists in accordance with EU- or US- export control regulations as well as the national export control laws of the exporting country of the goods (e.g. common list of military/defence related products of the EU, Annex I to EC Dual Use Regulation No. 428/2009, US-Munitions List, US-Commerce Control List). Customer shall inform Supplier immediately in case of any changes regarding licensing requirements of provided Goods or Services based on technical or legal changes, or based on official decisions.

**7.10** Customer undertakes to comply with all UN- EU- and US- sanctions regulations and to check its business partners and suppliers against current UN-, EU- and US- sanctions lists. Any violation of these export control provisions shall entitle Supplier to immediately terminate all existing contracts with Customer due to significant grounds. Moreover, if Customer is listed on an UN- EU- or US-sanctions list, Supplier 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, Customer shall comprehensively hold harmless, defend and indemnify Supplier from and against any and all resulting damages and claims.

## **8. Warranty**

**8.1.** The warranty period is 12 (twelve) months following receipt of the goods.

**8.2.** Supplier hereby provides warranty that as of the contract date the purchase and use of the contractual items do not infringe any ownership rights of third parties in Supplier's country of domicile, and that the export of the contractual items complies with the export regulations in Supplier's country of domicile. Supplier does not owe Customer an overall system, but rather merely individual components. Accordingly, Supplier only provides warranty that the contractual items meet the concrete technical specifications explicitly agreed in writing as of the date of delivery. Supplier does not provide any further warranty. If performance is rendered/completed based on Customer's specifications and

合同规定物的特定属性、特征及使用可能性仅以书面协商规定为准，供货商尤其对任何未书面协定的特征或使用可能性提供任何担保。并且供货商对合同规定物的市场适销性或合同规定物用于某一特定用途的适用性不给予任何显性或隐形保证，不对合同规定物被安装置入的整体系统提供任何担保。此外，担保范围不包括因客户为制造合同规定物向供货商提供的材料或因其向供货商发布的指令信息所造成的故障及缺陷，担保范围同样不包括因不可预料的环境条件所引发的功能性故障、其他设计相关的问题。

对于以下情况，供货商不负任何责任：（i）客户或第三方对产品的改动，（ii）供货商基于客户的要求对产品进行的改动，（iii）客户或第三方将合同规定物与其他产品配合使用或连接，（iv）按照客户或第三方的技术规格所生产的合同规定物。

如无其他书面明确协定，则供货商的解释及允诺，特别是品质属性方面的承诺不作为法律意义上的担保承诺。

**8.3** 如供货商提供担保，则其在合理的时间内有权选择进行改善或提供更换。所替换的物件所有权转至供货商所有并须及时送至供货商处。如供货商在合理的时间内未进行改善或提供更换，拒绝更换或整改和更换不可行，则客户可选择降价或当存在严重缺陷的情况时，可要求撤销合同。客户撤销合同的权限仅针对允许部分交货订单且其尚未正常完成部分供货。客户在获知合同规定物存在缺陷后，如对其进行出售、修改或加工处理等行为，则无权要求撤销合同。供货商的担保不包括除此以外的任何其他事宜。

requirements, Supplier only provides warranty that performance was rendered in accordance with Customer's requirements and does not provide warranty for the appropriateness of the resulting structure, composition, design etc.

Specific characteristics, features and usage options of the contractual items shall only be deemed to have been promised if explicitly agreed in writing. In particular, Supplier does not provide warranty of suitability or possible uses which have not been explicitly promised in writing; and it is hereby explicitly stated that there is no implicit or explicit warranty of merchantability or fitness of the contractual items for a particular purpose, nor any warranty regarding the system in which the contractual items are installed. Furthermore, Supplier provides no warranty with respect to defects which are caused by the materials supplied by Customer in order to manufacture the contractual items or by the instructions issued by Customer, nor for functional defects resulting from unanticipated environmental conditions, design defects or other design-related problems.

Under no circumstances shall Supplier be held liable for (i) changes to the product which were carried out by Customer or a third party (ii) changes which Supplier has carried out based on a request from Customer (iii) use of or connection of the contractual items or the combination of the contractual items with other products by Customer or a third party (iv) contractual items which were manufactured in accordance with the specifications by Customer or a third party.

Declarations and promises by Supplier, in particular assurances of quality, shall not be deemed guarantees in the legal sense [Garantien] unless explicitly agreed otherwise in writing.

**8.3.** If Supplier has to provide warranty, it is entitled, at its own discretion, to first rectify or exchange the Goods within an appropriate period. Replaced items shall become the property of Supplier and shall be returned to it. If Supplier does not rectify or exchange the Goods within an appropriate period, or if it refuses to do so, or if rectification or exchange are not feasible, Customer is entitled, at its own discretion, to demand a price reduction or, insofar as the defect is not merely a minor defect, to demand cancellation of the contract [Wandlung]. In the case of contracts where partial delivery is permitted, the right to cancel is limited to partial deliveries which have not been properly fulfilled. If Customer sells, modifies or adapts the Goods in full awareness that they are defective, it shall forego its right to cancellation. No further warranty shall apply.

8.4 供货商确认合同规定物的研发人员已向供货商授予相关知识产权。此外，供货商同样确认在确认订单之时，无第三方对合同规定物提起侵权申诉，或据供货商所知，不存在向第三方就合同规定物的具体组成和构成侵权申诉。供货商不提供除此之外的任何担保。

8.5 在软件方面，供货商保证所提供的软件符合其给出且确认的软件描述，并且软件在供货之时不存在恶意软件或病毒。供货商不保证及允诺除此之外的任何特征。

在此明确：不能保证软件无及/误或无间断运行。软件编程仅针对相应设备或相应产品在符合要求及软件资料规定的系统环境。除此之外的任何担保均须客户提出可证且可重复的缺陷证明。

如客户改变系统环境及/或以任何方式自行侵入软件，则无权对软件提出任何保修要求。同样，如存在上级系统或程序调用软件出现故障，且客户无法证明该上级系统或程序未引发该故障，则须推断该故障由上级系统或程序引发，供货商对此不提供任何担保。此外，出现使用不当、使用不当数据存储介质及/或系统组件、使用不合规的系统环境参数、缺少适合的病毒防护体系或未使用符合当前技术水平的安全防护措施或操作人员资质不合格等情况，均不在质保范围。

客户始终有责任证明缺陷是否符合质保规定。如在质保期限内出现故障，则客户须立即以书面形式、以可理解的方式详尽告知用于故障分析的全部信息。特别须提交有关导致出现故障的工作步骤、表现形式和故障影响等信息。

8.4. Supplier hereby confirms that the contractual items were developed by persons with regard to whom Supplier has secured the relevant intellectual property rights. Furthermore, Supplier confirms that as of the order confirmation date no third parties have asserted claims against Supplier with respect to infringement of their rights by the contractual products, and Supplier is not aware of any rights of third parties which would be infringed by the contractual products per se, in their actual concrete composition and design as delivered by Supplier. Supplier does not provide any further warranty.

8.5 With regard to software, Supplier hereby provides warranty that the software meets the software specifications which were supplied and confirmed by Supplier, and that as of the delivery date the software is free of malware and/or computer viruses. No further properties shall be assumed, nor are they promised.

It is hereby explicitly stated that the software does not run in a completely error-free manner and/or without crashes. With regard to the relevant systems or product/field, the software is merely programmed for the specified system environment which is indicated in the software documentation. Moreover, any warranty is limited to defects which can be demonstrated and reproduced by Customer.

If Customer modifies the system environment and/or knowingly performs interventions of any kind in the software, all other warranty for the software is hereby explicitly excluded. Furthermore, if the software interfaces with a superordinate system/program and the alleged error originates from that superordinate system/program – and that will be presumed if Customer cannot prove otherwise – warranty is hereby explicitly excluded. Warranty is explicitly excluded in cases of improper use, use of unsuitable storage media and/or system components, other failure to comply with defined system environment parameters, lack of suitable anti-virus or security measures which are not state-of-the-art, or use of unsuitable personnel.

In all cases it is Customer's responsibility to demonstrate that a defect to which warranty applies is present. If a defect arises within the warranty period, Customer shall immediately send a clear and detailed written notification containing all necessary information to allow analysis of the defect. In particular,

对于软件故障，供货商有权在立即排除故障、提供全新程序软件或采取其他适当解决方案之间做出选择。不重要且不影响软件功能性的故障并不在质保范围以内。

8.6 交货之后的6个月内（§ 924 ABGB），无权对供货物提出故障怀疑。

8.7 如客户自身须提供质保（§ 933 ABGB），则客户无权向供货商提出追索。

8.8 客户提出质保要求须证明在交接时便存在相应缺陷。

## 9. 缺陷申诉

9.1 客户须在合理的时限内，对于明显缺陷最晚在收货后七天之内，隐性缺陷至少在发现之日起七天之内，以书面形式明确向供货商提出申诉。对于部分供货及连续供货订单，须分别单独提交各批次的缺陷。如供货商无法核查现有货品的缺陷情况，则缺陷申诉延误。断定缺陷之日起，对相关商品进行出售、加工或处理均须获得供货商明确的书面许可，否则客户失去了申诉权。

the notification must describe the work steps which led to the occurrence of the defect, the manner in which the defect manifests itself and its impact.

At its own discretion, Supplier may rectify a software defect by immediately eliminating it, supplying a new program, or providing an adequate workaround. No warranty is provided for minor software defects that do not impair functionality.

8.6. The presumption of defects in the Goods in the first six months following handover, as defined in § 924 Austrian Civil Code, shall not apply.

8.7. Customer's right of recourse against Supplier, insofar as Customer itself had to provide warranty (§ 933b Austrian Civil Code), shall not apply.

8.8. If warranty claims are asserted, it is Customer's responsibility to demonstrate that the defect was present on the date of handover.

## 9. Reporting of Defects

9.1. Customer shall send Supplier explicit written notification of defects in the contractual items within an appropriate deadline, at the latest within 7 (seven) days of receiving the Goods in the case of obvious defects, and at the latest within 7 (seven) days of discovery in the case of hidden defects. In the case of partial and successive deliveries, a separate defects report shall be sent separately for each individual delivery. In all instances the defects report shall be deemed late if it is no longer feasible for Supplier to perform a follow-up check of the Goods for which defects have been reported. Once the defect has been determined, Supplier's explicit written permission is required for any sale, processing or further processing of the Goods in question, otherwise claims shall be forfeited.

9.2 客户有责任确保供货方确实收到缺陷申诉并有责任为此举证。仅将货品送回至供货商处不构成缺陷申诉。

9.3 如未及时进行缺陷申诉，客户则无权提出质保、因缺陷或误认为货品无缺陷造成的损失赔偿，以及其他替换件、撤销或取消合同等权限。

9.4 提出缺陷申诉时，根据供货商判断，客户须自身承担风险及费用将涉事货品寄回供货商处或让供货商在现场检查。即使供货商对该项货品进行检查或无条件接受寄回的货品，则供货商仍不放弃提出缺陷申诉延误或为进行的异议。在检查及排除所申诉的缺陷时，客户在合理范围之内有义务配合，尤其是提供询问信息方面。检查后，供货商若无法认定申诉缺陷，则客户须承担供货商因检查所产生的一切成本（包括差旅时间在內）。

## 10. 责任

10.1 供货商仅对蓄意或严重疏忽负责，客户则对该蓄意或严重疏忽负有举证责任。

10.2 对于间接损失、附随损失、后续损失、拆装费用、召回费用、流水线停工成本、使用损失、缺陷检测费用（包括额外的测试运行、进货检验的材料成本超出通常范围）、额外处理成本（包括运输及差旅费用）、财产损失、营收损失、资本成本及第三方对客户提出的损失诉求，供货商对以上各类损失概不负责。无论何种情况，供货商对于每个损失案例最高赔偿金额限于5百万欧元。

10.3 以上所述的赔偿限额适用于客户的所有合同和侵权索赔，亦适用于任何侵犯财产权和/或产品责任索赔的行为。然而并不适用于以下情况的强制

9.2. Customer shall ensure that Supplier actually receives the defects report and shall bear the burden of proof for that the receipt. Merely sending back the Goods shall not be deemed reporting of defects.

9.3. Claims pursuant to warranty, damages claims based on the defect itself or on errors regarding the item's freedom from defects, or claims relating to other forms of compensation, cancellation or termination of contract cannot be asserted unless a defect report is sent in a timely manner.

9.4. If a defect report is sent, Customer shall, at Supplier's sole discretion, either return the parts in question to Supplier at Customer's cost and risk or arrange for Supplier to perform an on-site assessment. Performing an assessment of the Goods or accepting the returned Goods without reservation does not imply that Supplier has waived its right to object in the event that a defect report is sent late or not sent at all. When a reported defect undergoes assessment and rectification, Customer shall provide reasonable assistance and in particular information. If, following assessment, Supplier does not acknowledge the reported defects, Customer shall reimburse Supplier for all costs (including travel time) associated with the assessment.

## 10. Liability

10.1. Supplier shall only be held liable in cases of willful intent or gross negligence. Customer shall bear the burden of proof for demonstrating willful intent or gross negligence.

10.2. Supplier shall not be liable for indirect, incidental damages or consequential damages, removal or installation costs, recall costs, assembly-line stoppage costs, downtime, defect assessment (including additional test runs, material costs, and costs of additional incoming goods checks), additional handling expenses (including shipping costs and travel costs), financial losses, lost earnings and capital costs, or damages arising from third-party claims against Customer. In all cases, in terms of amount Supplier's liability is limited to EUR 5 million per claim.

10.3. The aforementioned limits on liability apply to all of Customer's claims under contract law and tort law, and also in particular to any infringements under intellectual property law and/or product liability claims. However, the aforementioned limits do not apply insofar as mandatory liability applies (i) under

性责任：(i) 参照产品责任法规定，(ii) 出于蓄意或严重疏忽或 (iii) 出于危害生命、身体或健康安全。

10.4 所有损害赔偿要求在损害发生三年后无权进行申诉。无论法律依据如何，所有其他要求最迟在交付后三年后无权申诉（本条目10.4不适用于质保要求;质保要求参照条目8.1）。

10.5 如客户采取预防损失的措施（例如召回行动），则供货商（参照条目10.1至10.4，且仅在此处规定的赔偿限额或免责声明不被允许的情况下）仅对以下情况负责：(i) 当客户或其接收方基于法律强制规定有义务防止人身损害，(ii) 当客户与供货商就潜在材料缺陷或产品责任索赔达成一致意见和/或政府官方规定进行损失防护。客户须在排除其他任何索赔立即并全面向供货商告知情况并咨询供货商意见。协议方须就将采取的手段，特别是召回行动或和解谈判达成一致意见，无正当理由不得拒绝采用合理的措施。客户对于有及时介入并与供货商达成一致意见的合理措施的每个损失案例最高负担总计5百万欧元的责任（参照条目10.1至10.4，且仅在此处规定的赔偿限额或免责声明不被允许的情况下）。

10.6 如客户要求按照其技术规格、某一具体方案或具体参数制造或提供合同规定物，或客户要求使用其指定的技术或解决方案，则客户在此情况下须确保使用以上行为不会损害第三方权益，且客户须确保供货商与此相关且特别就生产方面，完全无第三方对供货商提出侵犯权益、申诉、执行等情况。

the Austrian Product Liability Act [PHG] (ii) due to willful intent or blatant gross negligence [krass grober Fahrlässigkeit] (iii) due to loss of life, personal injury or damage to health.

10.4. All damages claims shall become statute-barred 3 (three) years after the occurrence of damage. All other claims, regardless of the legal grounds, shall become statute-barred 3 years after delivery (Section 10.4 herein does not apply to warranty claims, which are covered in Section 8.1).

10.5. In light of Sections 10.1–10.4, and in all cases only to the extent that a liability limit or liability exclusion as stipulated therein is deemed non-permissible, Supplier is only liable for Customer's damage containment (e.g., a product recall) insofar as (i) mandatory legislation obligates Customer or its buyer to avert personal injury and (ii) Customer and Supplier are in agreement concerning imminent material defect claims or product liability claims and/or a public authority has issued an order for damage containment. Customer shall immediately consult with Supplier and provide it with comprehensive information; otherwise, any claims shall be excluded. In particular in the case of a product recall or settlement negotiations, the Parties shall seek to reach agreement on an action agenda, and such an agreement that stipulates appropriate measures shall not be refused unless there are significant grounds. (In light of Sections 10.1–10.4, and in all cases only to the extent that a liability cap or liability exclusion as stipulated therein is deemed non-permissible), Supplier is only liable for appropriate measures, which shall be taken following the timely involvement of and in agreement with Supplier, up to a total of EUR 5 million per claim.

10.6 If Customer demands that the contractual items be supplied/implemented based on Customer's specifications or concrete design requirements, or if Customer demands the use of technologies or solutions specified by Customer, Customer shall ensure that they or the application/use thereof are unencumbered by third-party rights, and in such situations, Customer shall hold harmless, defend and indemnify Supplier from and against any and all damages, claims or execution asserted by third parties, in particular in the case of production.

## 11. 合同终止

受制于供货商撤回的法定权利和条目 13 所确定的法规，协议方仅限在出现重要原因及在事前以书面形式明确提出警示声明方可终止合同。此类特殊解约权不适用于一次性短期合同。

## 12. 所有权保留

12.1 在客户对合同中供货商的全部现有或未来的要求未付全款之前，供货商保留所售货物的所有权。

此外，供货商保留所售货物的所有权，直至供货商全额支付可能存在的协议方之间的其他商务关系内供货商现有或未来要求的款项。

为排除任何疑点，亦适用于以下情况：若协议明确规定供货商有供货义务，则该项原同样适用于机器设备、装备、工具、模板，模具，仪表，配件，模具，模板和/或设备的供货交货事项。

12.2 严禁在完成全额付款前，将受所有权保护的货品抵押给或作为保证物品转让给第三方。若第三方动用所有权归供货商的货品，客户有义务立即告知供货商。

12.3 当客户行为违反合同条款时，特别是出现拒绝支付到期应付款项时，供货商有权依法退出与客户的供货合同，并且由于所有权保留规定及撤销合同规定索取回货品。只有客户未支付到期应付款项，且供货商此前已向客户设定合理的付款期限或法律规定无需设定此种期限时，供货商方可实行上述权利。

12.4 客户有权以正规商业方式销售或加工所有权受保护的货品，但须遵循以下补充条款规定：

## 11. Cancellation

The Parties may only cancel the contract prematurely if there are significant grounds and after having sent a written warning, subject to Supplier's statutory withdrawal rights and the provisions in Section 13.

## 12. Retention of Title

12.1. Supplier retains ownership of the sold Goods until all its present and future claims arising from the contract have been paid in full.

Furthermore, Supplier also retains ownership of the sold Goods until all its present and future claims arising from any other business relations between the Parties have been paid in full.

For purposes of clarity, it is hereby stated that this also applies to the supply of machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and/or other devices, insofar as Supplier is contractually obligated to supply them.

12.2. Until the secured claims have been paid in full, the Goods supplied under retention of title shall not be pledged to third parties or assigned as security. Customer shall immediately notify Supplier in writing if and insofar as a third party seeks to take possession of the Goods which belong to Supplier.

12.3. If Customer infringes the contract, in particular if it fails to pay the due price, Supplier is entitled to withdraw from the contract as stipulated in the relevant legislation and to demand that the Goods be returned based on retention of title and withdrawal. If Customer does not pay the due purchase price, Supplier is only permitted to assert the aforementioned rights if Supplier has first unsuccessfully set Customer an appropriate payment deadline, or if setting such a deadline is unnecessary under the relevant legislation.

12.4. As part of its ordinary business operations, Customer is permitted to resell and/or process the Goods supplied under retention of title. In such cases, the following additional clauses apply:

a) 所有权保留涵盖使用供货商的货品经过加工、混合或连接后所产生的货品全额价值，此时，供货商仍为制造商身份。在加工、混合或连接第三方货品后若存在第三方所有权，则按照加工、混合或连接后的产品价值比例，供货商拥有共同所有权。此外，加工、混合或连接后产物的所有权保留等同于所供货品。

b) 对于货品或加工成果转售时第三方的权益要求，客户须依据以上条款规定，现已放弃全部或等同于供货商所拥有的所有权比例作为保证物，供货商接收该所有权。条目12中所提及的客户义务，特别是条目12.2所提及的义务也同样被视为放弃的权益要求。

c) 除供货商外，客户有权索取权益。只有客户对供货商尽付款义务、未欠款、未启动破产程序或不缺乏其他的盈利能力，供货商有责任不索取权益。相反情况下，供货商则有权要求客户放弃其权益并提供客户资债人信息、有权要求客户提供索取权益所需的全部信息，并提供与此相关的全部资料档案，并有权要求其通知债权人（第三方）客户放弃权益声明。

d) 如保证物的变现价值超出供货商权益10%，则供货商在客户要求下有权选择归还保证物。

### 13. 供货商撤销合同权限

13.1 供货商有权基于重要原因并设定合适时限，但最长14天的延期后撤销合同。上述重要原因尤其包括：(i) 如客户在履行基本的合同义务方面存在缺陷，特别是在履行合同中的支付价格或提供合作所需的义务方面，(ii) 如果客户申请破产、和解或针对资产的其他破产程序，(iii) 针对客户资产启动破产、补偿或其他破产程序，或因客户资产不足而无法启动上述程序。

a) The retention of title extends to the full value of the outcomes resulting from the processing, mixing or combining of Supplier's Goods, and Supplier shall be deemed the manufacturer. If, in the event of processing, mixing or combining with Goods of a third party, the third party continues to retain its ownership, Supplier shall acquire co-ownership based on the respective ratios of the invoice values of the processed, mixed or combined Goods. Aside from that, the resulting outcomes are subject to the same conditions as the Goods supplied under retention of title.

b) The claims against third parties which arise from the resale of the Goods or of the outcomes are now hereby assigned to Supplier by Customer either in total or in the amount of Supplier's co-ownership share (see paragraph above) as security. Supplier hereby accepts that assignment. Customer's obligations set forth herein in Section 12, in particular those described in Section 12.2, also apply to the assigned claims.

c) Along with Supplier, Customer is entitled to collect the claims. Supplier shall refrain from collecting the claims as long as Customer meets its payment obligations to Supplier, does not fall into payment arrears, no requests for the opening of insolvency proceedings are submitted, and there are no other defects in its ability to perform the contract. However, if any of the above does apply, Supplier is entitled to demand that Customer notifies Supplier regarding the assigned claims and the debtor in question, provide all necessary information to allow collection, surrender the accompanying documents and notify the debtors (third parties) regarding the assignment.

d) If the realizable value of the security exceeds Supplier's claims by more than 10%, Supplier shall release the security at Supplier's discretion if asked to do so by Customer.

### 13. Supplier's Right to Withdraw

13.1. Supplier is entitled to withdraw from the contract if there are significant grounds, provided it sets an appropriate follow-up deadline of a maximum of 14 days. Significant grounds shall be deemed present in particular if (i) Customer is in arrears in fulfilling key contractual obligations, in particular the duty to pay the price or collaborative activities which are required to enable Supplier to fulfill contract, (ii) if a request to open bankruptcy, settlement or other insolvency proceedings for Customer's assets is submitted or, (iii) bankruptcy, settlement



**13.2** 如在签订合同后，供货商获悉客户营收状况、尤其是其资产状况影响其支付能力时，供货商有权拒绝为客户提供服务或货品，并为客户设定合理期限，使其可多次支付并获得相应分批供货，或者其须提供保证物。客户如拒绝或到期不付款，供货商则有权撤销合同并要求索赔。

**13.3** 如履行合同违反所在国法律或国际法律规定（例如：禁运，美国（再）出口管制条款或其他制裁条款等），则供货商有权撤销合同。该项原则亦适用合同签订后颁布生效的法律法规。

## 14. 合规

**14.1** 客户有义务遵守《米巴行为准则》并确保其员工、次级企业及供货商同样遵守《米巴行为准则》。在以下网址可参阅此准则：

<http://www.miba.com/de/coc/>

《米巴行为准则》的规定被纳入客户与供货商之间的合同。客户确认其对《米巴行为准则》规定的了解，并确认其员工有义务遵守此准则的规定。如果客户的员工做出任何违背此准则的行为，客户将立即通知供货商。客户将支持供货商获得与违背《米巴行为准则》有关的信息。此外，客户有义务遵守其他所有适用法规、规范及其他标准。

**14.2** 对于任何违反在条目7.8、7.9及7.10所提出的出口条例或《米巴行为准则》的行为，供货商有权基于重要原因立即撤销与客户的现有合同。

or other insolvency proceedings are opened for Customer's assets or are not opened due to lack of cost-covering assets.

13.2. If, after the contract has been concluded, it becomes evident that Supplier's payment claims are in jeopardy due to Customer's inability to perform, in particular if its assets position has deteriorated, Supplier is entitled to refuse to render performance and to set Customer an appropriate deadline within which it shall render performance in a step-by-step manner [Zug um Zug] against delivery or shall furnish security. If Customer refuses or the deadline passes fruitlessly, Supplier is entitled to withdraw from the contract and demand damages.

13.3 Supplier is entitled to withdraw from the contract if the fulfillment thereof is prohibited under national or international law (e.g., embargoes, US (re)-export control regulations, other sanction provisions). This also applies to legislation which does not enter into force until after the contract is entered into.

## 14. Compliance

14.1 Customer shall comply and ensure that Customer's employees, subcontractors and suppliers are required to comply with the Miba Code of Conduct, which is available on the Internet at:

<http://www.miba.com/en/coc/>

The Miba Code of Conduct is incorporated by reference into the contract between Customer and Supplier. Customer hereby declares that it is familiar with the Miba Code of Conduct and that it shall ensure that its employees comply with it. Customer shall immediately notify Supplier regarding any activities on the part of its employees which constitute an infringement of the Miba Code of Conduct. Customer shall help Supplier to obtain information relating to any infringement of the Miba Code of Conduct.

14.2 Any violation of the export provisions named in Section 7.8, 7.9 and 7.10 or of the Miba Code of Conduct shall entitle Supplier to immediately terminate all existing contracts with Customer due to significant grounds.

## 15. 保密义务、图纸和模型:

**15.1** 客户有义务对在用于签订合同时从供货商或与米巴集团 (Miba AG) 及其关联公司处获得的技术和商业信息保密, 尤其是对于“机密信息”。无论涉及米巴集团 (Miba AG) 或其利益相关的企业或客户/商业伙伴, “机密信息”包括: 所有信息、资料、图纸、数据、电子磁盘中的数据、流程及流程步骤、组成、公式、机器、设备、模型、物体、市场及市场营销信息、技术与商业信息、商业与经营机密、财务信息、商业模式及商业流程等全部受保护信息, 该信息无论出于蓄意或疏忽、与供货商签订合同之前或之后, 通过书面、图像、口述、可视、电子等形式将产品或产品模型在公司来访或其他形式下提供给客户的信息, 其同样也包括提供给客户使用及其获悉的信息、副本或其他引申而来的信息。尤其包括在完成订单/服务相关所产生的信息和成果, 无论该信息是由客户、供货商还是第三方生产, 均被视为机密信息。然而, 签署该合同条款后, 在传递信息时, 如果有证据在整体及明确分类和组成方面证明相关人士便已掌握的, 且通常为常识并没有权限保护便可取得的信息, 不作为机密信息处理。

**15.2** 任何机密信息的传递或用于达到自身或第三方目的, 无论是全部或部分信息、经过改动或加工、或作为其他信息的组成部分, 均须每次获得供货商的书面许可, 该原则亦适用于学术文献。此外, 客户有义务在签订合同后明确表示, 在合同有效期及合同终止后仅用于合同所允许的用途, 不得将信息用于自身也严禁作为他用, 并承诺信息管理须做到保证客户在合同终止后能够将信息完好交还于客户。客户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。

## 15. Confidentiality; Drawings and Models

**15.1** Customer shall ensure that all technical and commercial information of Supplier and affiliates of Miba AG 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 Supplier, affiliates of Miba AG 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 conclusion of the contract, are knowingly or unknowingly handed over to Customer 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 Customer’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 the provision of the Goods/Services, regardless of whether they were created by Supplier, Customer and/or a third party, 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.

**15.2** Supplier’s prior written permission is required in each individual case for any disclosure of Confidential Information or for use of the Confidential Information 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. This also applies to scientific publications. Furthermore, Customer shall only use the Confidential Information to the extent that is explicitly permitted under the relevant contract, and shall not use it for its own purposes or for other parties’ purposes during and after the end of the contract, and shall handle the information in a manner that allows Customer to return it after the contract has been fulfilled. In particular, Customer shall not attempt to obtain any findings or draw any conclusions from the Confidential Information,

**15.3** 供货商为客户就咨询或订购用途的所有机密信息，用于规划或履行合同用途交付或提供给客户，其所有权仍属于供货商所有。同样，供货商按照客户要求所制作的参数、图纸、规划图、细节图，生词资料和其他技术资料 and 工具（以下统称“文件资料”）仅用于订立合同时进行订单确认的规范概念自行使用，却不得用于其他目的，进行加工完善或透露给第三方。该类文件资料及所有机密信息包括全部节选和复制内容须直接交还给供货商，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。

**15.4** 客户基于已注册保护权无权申诉使用机密信息中的认知，尤其无权限预先使用。所有基于供货商机密信息加工或制作的成果和资料，特别是共同制作的技术参数等信息均遵照条目4的规定，在生成之时即归供货商所有并标记为供货商所有权，适用本一般商业条款第4条规定。生产资料，特别是供货商提供给供货商的工具、模型、技术设备等，均标记为供货商所有权并参照第15条中规定享受保密协议和禁止加工保护。如供货商要求，须立即将该类资料及生产资料归还给供货商，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，对此立即提供书面确认。

**15.5** 客户仅为直接负责履行相关合同的员工提供机密信息，其前提条件在于有关机密信息的知晓对相关员工履行合同是绝对必要的，并且他们提前已签署书面保密声明才可以获得相关信息。客户有义务保证第三方无法获取可能含有供货商机密信息的所有资料和物料。

nor trace back to the underlying information, nor to analyze it through observation, assessment, reverse engineering or testing.

**15.3 Confidential Information** which is handed over or made available to Customer in connection with Supplier's drawing up or fulfillment of the contract shall remain the property of Supplier, 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 Customer for the actual contractual purpose as defined in the order confirmation only 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 Supplier, any copies shall be destroyed, and any backup copies or recordings on electronic storage media shall be deleted, and written notification to that effect shall be sent immediately.

**15.4 Customer** 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 4, all work outcomes and documents which are generated or produced based on Confidential Information of Supplier, including jointly prepared specifications sheets (if any), shall become the property of Supplier when created and shall be marked as the property of Supplier (see Section 4 above). Production materials, in particular tools, templates, technical devices etc. which Supplier has made available to Customer shall be marked as the property of Supplier and are subject to the confidentiality provisions and limitations on use set forth herein in Section 15. These documents and production materials shall be immediately surrendered to Supplier 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.

**15.5 Customer** shall give access to the Confidential Information only to employees who are directly entrusted with the execution of the relevant contract and whose knowledge of the Confidential Information is essential for execution of the contract and who are bound by a prior written non-disclosure agreement.

Customer shall ensure that all Documents and materials which might contain Confidential Information of Supplier are safeguarded and protected against access by third parties.

15.6 客户仅在供货商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供货商的商业关系。

15.7 当出现违反当前保密义务的可论证怀疑时，客户有举证责任，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。面对由客户泄露机密至任何第三方或透露机密信息至客户的任何第三方，客户有责任维护供货商权益，并对任何侵犯本协议保密性的行为负责。

15.8 客户承认损害供货商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不足以抵消。如客户或某一因侵犯本协议将所涉机密信息泄露给第三方，则客户每次及每日须向供货商支付固定赔偿金50000欧元，并独立于供货商的其他申诉或法律补救措施。排除其他后续相关的异议。在法律允许的范围内，固定赔偿金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。

15.9 供货商对使用机密信息侵犯第三方商业保护权，版权及/或其他权限概不负责，同样也对于客户或第三方由此所产生的损失概不负责。供货商有权限自由使用和提供机密信息。

15.10 本条目（第15条）在合同终止或合同关系撤销后仍然适用，且只要相关法律允许，但至少相应合同关系结束后的五（5）年内仍有效。

15.6 Customer requires explicit written permission to indicate or draw attention to the business relationship with Supplier in advertising materials or publications of any kind.

15.7 If there are grounds for suspecting infringement of these confidentiality provisions, Customer 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 Supplier, Customer is jointly and severally liable along with any third party to whom Confidential Information was disclosed by Customer, or by whom Confidential Information was disclosed to Customer, for any infringement of the confidentiality provisions herein.

15.8 Customer hereby acknowledges that an infringement of these confidentiality provisions could cause Supplier immediate or irreparable damage, for which statutory damages might be inadequate. For each case and for each day of infringement of this contract by Customer and/or a person to whom Customer has disclosed the Confidential Information in question, Customer shall pay Supplier liquidated damages of EUR 50,000, regardless of further claims or legal remedies of Supplier. The defense that a series of infringements should be treated as one continuous infringement is barred. Insofar as legally permissible, the contractually agreed liquidated damages shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

15.9 Supplier 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 Customer or a third party. Supplier is completely at liberty to utilize and make use of the Confidential Information in any manner it wishes.

15.10 Section 15 herein continues to apply without limitation after the end of or cessation of the contractual relationship, for as long as is permitted under the relevant legislation, and in all instances for at least five (5) years after the end of the contractual relationship in question.

## 16. 数据保护

只要客户在履行合同时使用或受供货商委托处理个人数据，则客户有义务遵守现行有效的《数据保护法》以及《基本数据保护条例》（以下简称“DSGVO”）的规定。因此，客户须与供货商参照DSGVO第28条签订订单处理协议。只要此外还进行数据传送，无论向客户或其次级企业，只要该数据接收方位于欧盟境外第三国且为履行合同所必需，则客户有义务签订欧盟标准合同条款或与之同等效力且由欧盟委员会颁布的合同范本，作为符合DSGVO第46条第二款c及d项的合理保证。

## 17.履行地；管辖地

17.1 双方的履行地位于供应商在确认订单中指定的地点；若未指定，则为奥地利的拉基兴。

17.2 如果协议方的注册地均位于中华人民共和国境内，因本合同引起或与之相关的争议的唯一管辖地是供货商注册地址所在地对该标的事项具有管辖权的法院。所有其他情况下，因本合同引起或与之相关的争议的唯一管辖地是奥地利林茨（Linz）的对该标的事项具有管辖权的法院。然而，供货商也有权自行决定在客户注册地址所在地向对该标的事项具有管辖权的法院针对客户提出索赔。

## 16. Data Protection

If Customer processes personal data for and on behalf of Supplier in connection with the provision of Goods/Services, it shall comply with relevant legislation, in particular Austria's Data Protection Act [DSG] (as amended from time to time) and the EU General Data Protection Regulation. Accordingly, Customer shall enter into a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Furthermore, if data are transferred – to Customer or its subcontractors – to a recipient domiciled in a country outside the European Economic Area and this is absolutely necessary for the performance, Customer is obligated to conclude EU standard contract clauses or equivalent contract templates issued by the European Commission as appropriate safeguards as defined in Art. 46 Paragraph 2 lit. c and d of the General Data Protection Regulation.

## 17. Place of Fulfillment; Place of Jurisdiction

17.1 The place of fulfillment for both Parties is the location specified by Supplier in the order confirmation, otherwise Laakirchen, Austria.

17.2 If all Parties hereto have their registered office within the People's Republic of China, the sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction at Supplier's registered office. In all other cases, the sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, Supplier is also entitled, at its own discretion, to assert claims against Customer before the court with subject-matter jurisdiction for Customer's registered office.

## 18. 适用法律

如果协议方的注册地均位于中华人民共和国境内，则本合同，包括其是否具有法律效力和/或无效的问题，其事先及事后的效力及解释，均仅适用中华人民共和国法律，并且排除其冲突法条款和《联合国国际货物销售合同公约》（CISG）的适用。所有其他情况下，则本合同，包括其是否具有法律效力和/或无效的问题，其事先及事后的效力及解释，均仅适用奥地利法律，并且排除其冲突法条款和《联合国国际货物销售合同公约》（CISG）的适用。

## 19. 可分割条款

如本一般商业条款中的某一规定不生效、无效或无法实现，则其并不影响其余规定条款的生效性、有效性或可实现性。在此情况下，所涉条款将由在经济性方面有相似结果且生效、有效、可实现的近似条款所代替。本原则亦适用于合同可能存在的漏洞。

## 20. 权利和义务的转移

客户确认，供货商有权将合同关系作为整体转让至与米巴集团利益相关的企业（无论其所占的股权比例）。通过书面通知，供货商在该通知中指定的利益相关企业将承接本法律关系中的全部义务与诉求，并且有权在全部决定权及其他权限方面代表供货商。

## 21. 书面形式

本一般商业条款的变更和补充及供货商和客户之间其他任何合同协议均须使用书面形式，该原则亦适用于背离所需书面形式的情况。

## 18. Applicable Law

If all Parties hereto have their registered office within the Peoples Republic of China, this contract, including the questions of whether it is legally valid and/or void, its advance effects and aftermath and its interpretation, is subject to Chinese law only, to the exclusion of conflict of law provisions and UN Convention on the International Sale of Goods (CISG). In all other cases, this contract, including the questions of whether it is legally valid and/or void, its advance effects and aftermath and its interpretation, is subject to Austrian law only, to the exclusion of conflict of law provisions and UN Convention on the International Sale of Goods (CISG).

## 19. Severability

If a provision of these General T&Cs of Sale and Delivery is ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the other provisions. In such cases, the provision shall be replaced by one which in terms of commercial outcome approximates to it as closely as possible and is not ineffective, invalid or unenforceable. The same applies to contractual gaps.

## 20. Transfer of Rights and Obligations

Customer hereby agrees that Supplier 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 Supplier shall take over all obligations and claims arising from the legal relationship and shall assume all of Supplier's organizational and other rights.

## 21. Written Form

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

