

GENERAL TERMS AND CONDITIONS OF SALE

Firma
Rick's Motorcycles GmbH
in Baden-Baden

As of November 2004

1. Scope of Applicability

- 1.1. All business dealings shall be governed by the following **Terms and Conditions** exclusively; Customer's terms to the contrary to or deviating from our **Terms and Conditions** shall not be valid unless expressly confirmed by us in writing. The same applies to Customer's provision that deviate from the statutory regulations to our detriment even if these **Terms and Conditions** do not explicitly refer to these statutory regulations.
These present **Terms and Conditions** shall also apply if we are aware of Customer's terms to the contrary to or deviating from these **Terms and Conditions** or from statutory regulations to our detriment, if we however unconditionally perform our obligations towards the Customer.
- 1.2. All agreements made between us and the Customer in connection with and with the purpose of the performance of this Contract shall be laid down in writing in this Contract.
- 1.3. These **General Terms and Conditions** shall also apply for future business with the Customer.
- 1.4. These **General Terms and Conditions** shall only apply with respect to entrepreneurs as defined by Article 310 clause 1 BGB (German Civil Code).

2. Offers and Cost Estimate, Subsequent Chances of Contract, Reservation of Availability

- 2.1. Our offers and cost estimates are subject to change without notice and non-binding, unless expressly declared as binding.
- 2.2. Unless otherwise explicitly agreed upon, we reserve all rights and title (especially property rights, copyrights and intellectual property rights) to any offer or contractual documents left to Customer under this Contract (especially drafts, drawings, brochures, catalogues, calculations etc.). Customer shall not make the above-mentioned documents available to third parties without our prior written consent and shall keep them confidential, unless the documents are already publicly known at the time of transfer to the Customer or unless they have become publicly known after such transfer without fault of Customer. Offer Documents shall be handed back to us immediately upon our request, if no order is placed with us. Customer shall have no right of retention insofar.
- 2.3. We shall be entitled to make available to third parties Customer's documents in our possession, if such third parties have been lawfully charged by us with performance under this Contract.
- 2.4. We reserve the following alterations to the quality of the Products at any time, even after conclusion of this Contract, provided that Customer can reasonably be expected to accept them:
 - modifications of the Products in the course of constant product development, respectively improvement
 - minor and insubstantial deviations in colour, form, design, measure, weight or quantity
 - other deviations customary in trade.

- 2.5. Customer shall notify us upon placing the order, if no alteration whatsoever is tolerable for him.
- 2.6. As far as reasonable and within our capacities, we endeavour to meet requests for modifications of the Products and/ or other performances which Customer may have after conclusion of this Contract.
As far as the review of such requests or their execution have an impact on the conditions of this Contract, in particular regarding remuneration, stipulated time limits etc., an adjustment of this Contract shall be made in writing immediately.
In case of an interruption of production due to the analysis of such requests or to the adjustment of this Contract, we are entitled to require additional adequate remuneration for as long as such interruption may last; such remuneration shall be defined in accordance with the hourly rates of such members of our staff, which, due to the interruption, can not be working for other projects.
We also may require additional remuneration for the performance of the analysis, whether or not and subject to which conditions the required modifications may be made, if we previously informed Customer about the need for such analysis and Customer asked for such analysis accordingly.
- 2.7. If, during Contract conclusion, errors occur which are not due to our fault, e.g. due to errors in communication, misunderstandings etc, any claims for damages pursuant to Article 122 BGB (German Civil Code) against us shall be excluded.
- 2.8. The conclusion of this Contract is subject to the reservation, that we have timely been provided with the correct products by our suppliers. This, however, shall only apply, if any failure of delivery to us is not within our responsibility, especially in case that we conclude another contract for the delivery of products at stake (Contract for Congruent Coverage = kongruentes Deckungsgeschäft) with our supplier. Customer will be informed of the non-availability of performance immediately. Any payments already made by Customer shall be paid back immediately. We shall submit to Customer the Contract for congruent coverage immediately and assign to him any and all of our rights resulting therefrom, as far as necessary.

3. Prices, Terms of Payment, Our right to correct our performance

- 3.1. We reserve the right to reasonably change our prices, if cost reductions or increases occur after the conclusion of this Contract, which are beyond our responsibility, especially due to changes of raw material prices or due to mandatory increases of wages of our staff, e.g. after mandatory trade union wage agreements. We shall prove such occurrences to Customer upon his request.
- 3.2. Unless otherwise agreed upon, prices are net **ex works** (our facilities) and do not include postage, freight, packaging, insurance, costs for installation and mounting and other ancillary costs. In addition to this, the legally prescribed VAT shall be charged separately.
- 3.3. Unless otherwise agreed upon, payment shall be made immediately and without any deductions. Any price deductions, cash discounts or bonuses are subject to special written agreement between the parties. If Customer fails to pay in time, he shall be deemed to be in delay in payment under the statutory rules of Delay in Payment of the German Civil Code after 10 (ten) days following the due date of payment without any further notices from us. As for the legal consequences of such Delay in Payment, the respective statutory rules apply.
- 3.4. If we grant deferment of payment, we are entitled to claim an interest rate in accordance with the statutory interest rate for delay in payment for as long as the deferment may last.
- 3.5. **We are entitled to require reasonable up-front payments from Customer, including VAT.**

- 3.6. Bills of exchange and cheques shall only be regarded as received in lieu of payment; bills of exchange shall only be accepted subject to prior written agreement. Any discount charges, fees as well as any and all costs relating to collection of the amount payable by either cheque or bill of exchange shall be borne by the Customer and be due for payment immediately. Cheques or bills of exchange shall only be regarded as received when the funds have been credited to our account and we have been released from any liability under the bill of exchange.
- 3.7. The Customer may set off only such claims as are undisputed, acknowledged or unappealable. Customer may plead the right of retention to fulfil an obligation under the Contract only if his claim against us is resulting from the same legal relationship as his obligation.
- 3.8. In case of warranty defects of the Product, Customer shall have no right of retention to fulfil his obligations under the Contract unless the Product bears any obvious defect resp. Customer obviously is entitled to refuse to take delivery of our Product; in such case, however, Customer shall be entitled to retain fulfilment of his obligations only as far as the amount retained is in appropriate proportion to the warranty defect and the prospective costs of the correction of our performance (especially repair). Customer shall not be entitled to claim any rights in connection with defects, if he has failed to make payments at their due date and if such due payment is in appropriate proportion to the value of our defective Product/performance.

4. Date of Delivery or Performance, Non- Performance beyond our Responsibility, Delay in Delivery or Performance, Impossibility of Performance, Packaging

- 4.1. Dates of Delivery or Performance indicated by us are not binding unless expressly stipulated to be binding.
- 4.2. Dates of Delivery or Performance shall only be complied with on condition of
 - the Customer, correctly and in due time, observing all and any of his obligations to co-operate, especially with respect to the submission of documents and the transfer of necessary information
 - the clarification of all technical details with Customer;
 - the receipt of down payments resp. the opening of a Letter of Credit which may have been agreed upon;
 - the submission of administrative approvals or licences that may be necessary.We reserve the right to plea non-performance of the Contract by Customer.

4.3. Obstacles to our Performance beyond our responsibility- Force Majeure:

- 4.3.1. Delays in Delivery or Performance due to the following causes shall not be within our responsibility unless we exceptionally assumed the risk or granted a guarantee specifically with regard to the date of delivery/ performance or any other delay- the same shall apply if such circumstances occur at our suppliers or their sub-suppliers: circumstances of 'Force Majeure' as well as any other obstacles
 - which occur after conclusion of the Contract and we learn only after the conclusion of the Contract for no fault attributable to us, and
 - with regard to which we prove that they could not have been foreseen and avoided by us even with the application of the utmost, reasonable care, and that we have no obligation to bear the risk of the occurrence of such obstacles or to actively or passively avoid them.

Provided that the above conditions are fulfilled – occurrence or faultless learning of such circumstances only after conclusion of the Contract, unforeseen and unavoidable occurrence to be proven by us - the above exclusion of responsibility especially, but without limitation includes: legal measures of labour struggle (strikes and legal lock-outs); operating trouble and breakdowns; shortage or lack of raw material; shortage or lack of manufacturing supplies; lack of personnel.

4.3.2. In the event of delays in delivery or performance under no. 4.3.1 above, any claims for damage of the Customer are excluded.

4.3.3. In the event of a definitive obstacle to delivery or performance within the meaning of no. 4.3.1. above, either party is entitled to immediately rescind from the Contract.

4.3.4. In the event of a temporary obstacle to delivery or performance within the meaning of no. 4.3.1., we shall be entitled to postpone delivery/ performance for as long as the disturbance may last, plus a reasonable start-up time. If, in this respect, we can prove an intolerable impediment to delivery/ performance within the meaning of Article 275 clause 2 and 3 BGB (German Civil Code), we shall have the right to rescind from this Contract.

Customer, however, in such circumstances shall have the right to rescission only under the conditions set out in no. 4.7. below.

Article 323 clause 4 BGB (German Civil Code) analogously applies to our right to rescind from the Contract. With regard to the Customers right to rescind from the Contract, Article 323 clauses 4 to 6 BGB (German Civil Code) apply.

As for the legal consequences of a valid rescission, Article 326 BGB including its referrals apply analogously; Customer may, in accordance with Articles 346-348 BGB (German Civil Code), request annulment of performances he may already have made before their being due.

4.4. For the observance of the due date of delivery, the time of delivery **ex works** taking place or, as the case may be, the time of giving notice of readiness for dispatch to Customer shall be decisive.

4.5. Delays in Performance within our responsibility:

4.5.1. In case of **delay in performance** without purpose or gross negligence attributable to us, our legal representatives or agents, our **liability for damage subject to Articles 280 clause 2 and 286 BGB (German Civil Code)** shall be limited as follows:

For each full week of delay a lump sum of 0, 5 % of the net invoice amount of the service/ delivery at stake , but in no event more than 5 % of such amount, shall be due as compensation for any damage that may be caused by the delay in delivery.

This limitation does not apply

- as far as the Customer contractually has declared that his continuing interest in our performance is linked to and depending on timely delivery / performance by us (transaction where time is of the essence – Fixgeschäft) and/ or,
- if we have assumed the risk of timely delivery or granted a guarantee specifically with regard to the date of delivery/ performance.

4.5.2. Our **liability for damage instead of performance subject to Article 281 BGB (German Civil Code)** is limited to the foreseeable damage specific for the type of Contract, unless our delay in delivery is caused by a wilful or grossly negligent breach of Contract by us, our legal representatives or agents, or unless we exceptionally have assumed the risk of timely delivery or granted a guarantee specifically with regard to the date of delivery/ performance.

4.6. **With regard to our liability for delay in performance, the provisions of no. 10 and no. 8 below additionally apply.**

4.7. If we prove that the delay is beyond our contractual responsibility, the Customer shall be entitled to rescind from the Contract only

- if the Customer contractually has declared that his continuing interest in our performance is linked to and depending on timely delivery / performance by us (transaction where time is of the essence – Fixgeschäft) or
- if the Customer proves that, as a consequence of the delay, his interest in our performance of the Contract has ceased to exist or that the maintenance of the contractual relationship cannot reasonably be expected from him.

Article 323 clauses 4 to 6 BGB (German Civil Code) apply. As for the legal consequences of the rescission the statutory provisions (Articles 346 et seq. BGB – German Civil Code) apply.

- 4.8. In case of impossibility of our performance without purpose or gross negligence attributable to us, our legal representatives or agents, our liability for damage and costs shall be limited to 20% of the net invoice amount of our performance. This limitation shall not apply, if we have assumed the risk of providing the product in any event. In addition, with regard to our liability for the impossibility of our performance, the provisions of no. 10 and no. 8 below additionally apply. The Customer's statutory right to rescind from the Contract in case of impossibility of our performance remains unaffected.**
- 4.9. Unless otherwise agreed upon, delivery shall be made **ex works**, unpacked. If we provide for packaging of the Products, we will, with the exception of palettes and multi-use packaging, not take back any transport or packaging material after delivery; Customer shall provide for the disposal of packaging material at his own expense.
- 4.10. We are entitled to partial delivery or partial performance, if and as far as Customer reasonably can be expected to accept this.

5. Risk of Loss, Insurance

- 5.1. The risk of an accidental loss or of an accidental deterioration of the Products shall pass to Customer as soon as the Products have been delivered to the person or institution designed to pick up or execute the delivery, no later however, than the Products leave our premises. **This shall also apply if, in accordance with specific agreements to this effect, we deliver with our own vehicles, or if freight or carriage paid and packaging included has been agreed upon, and also if we agreed to perform installation, mounting or other services at the Customer's premises.**
- 5.2. In case of default in taking delivery or default in delivery for reasons attributable to Customer, the risk of an accidental loss or of an accidental deterioration of the Products shall pass to Customer at the moment the same is in default in taking delivery, or at the moment when the picking up or the delivery could have taken place if the conduct of the Customer had been in accordance with his duty under the Contract.
- 5.3. Upon request of Customer and at his expense, the Products will be insured by us against theft, damage by breakage, by reason of fire, by water or in transit as well as against other insurable risk.

6. Retention of Ownership

- 6.1. We retain ownership to all Products delivered by us until we receive full payment of all sums owed to us - herein included future payments - originating in the business relation with the Customer. The retained ownership shall be deemed collateral for the total account payable to us (current account retention) until all current liabilities have been discharged. All Products subject to retention of ownership shall hereinafter be referred to as **'reserved or privileged goods'**. If such reserved goods are paid by way of a bill of exchange from which follows a liability on our part the retention of ownership shall only become extinct if and when our liability under a bill of exchange becomes extinct as well; if payment by way of cheque / bill procedure has been agreed upon with the Customer the retention of title shall also include the honouring of the bill of exchange accepted by us by the Customer and shall not be forfeited once the cheque received has been credited to our account.
- 6.2. The Customer shall have the right to resell the reserved goods in the ordinary course of business; however, as early as today he shall assign to us all claims that he may have against his Customers or against third parties on account of the resale to the amount of

the invoice total (including VAT) of our claims. If the Customer includes the claims from a resale of the reserved goods in a current account business relation existing with his Customer, this current account claim shall be assigned to us to the amount of the balance; the same shall apply for the balance if the Customer becomes insolvent. The Customer shall remain entitled to collect the claims even after assignment to us.

Subject to the rules and regulations under the insolvency law, our right to collect claims ourselves shall remain unaffected; however, we bind ourselves not to collect claims as long as the Customer duly meets his contractual obligations and especially so if he is not in default of payment, no insolvency is filed or no general stop of payment occurs. Under the right of resale, the Customer shall not be entitled to pledge or in any way charge by way of security any of the reserved goods.

- 6.3. If our obligation under no. 6.2. above, not to collect claims ourselves, ceases to exist, we shall have the right - subject to the rules and regulations under the insolvency law - to withdraw the right of resale and to require the Customer to assign to us the right to recovery he may have against third parties resp. to take back the reserved goods after expiry of a delay of time to be granted by us; the Customer shall be bound to surrender the reserved goods; no right of retention may be asserted by the Customer against this right to recovery. Our recovery of reserved goods constitutes a rescission from the Contract.

After having threatened to do so and after setting a deadline, reserved goods which have been taken back by us for before-mentioned reasons may - subject to the rules and regulations under the insolvency law - be reasonably exploited and used by us; the proceeds thereof shall be credited against the liabilities of the Customer - less reasonable exploitation costs.

Under the conditions stated entitling us to withdraw the Customer's right of resale, we may also revoke the authorisation to collect claims and may require the Customer to disclose to us the claims assigned as well as the debtors of such claims; furthermore, we may require the Customer to disclose to us all information necessary for collection, to submit the relevant documentation and to notify the debtors (third parties) of the assignment.

- 6.4. In case of damage or loss of the reserved goods as well as in case of a change of domicile or of property, the Customer shall immediately notify us hereof in writing; the same applies for pledges or other interventions of third parties so that we are in a position to bring an action under Article 771 ZPO (German Code of Civil Procedure). If the third party is in no position to reimburse the judicial and extra-judicial costs incurred by us under Article 771 ZPO, the Customer shall be liable for the loss incurred by us. If the release of the reserved goods is achieved without legal proceedings, costs hereby incurred may also be charged to the Customer, herein included costs of regaining pledged reserved goods.

- 6.5. Any processing or transformation of the goods purchased by the Customer shall always be deemed to be on our behalf. If the reserved goods are processed with other goods, the property of any person other than us, the product thereof shall be deemed to be owned in common with that other person, our share in the common property depending on the ratio of the total value of the reserved goods (invoice total plus VAT) to the value of the other goods processed.

Furthermore, the provisions applicable for the reserved goods shall also apply for the product of such processing. With respect to the product of such processing, the Customer shall acquire expectant rights corresponding to the expectant rights to the reserved goods.

- 6.6. If the reserved goods are inseparably mixed or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned in common with that other person, our share in the common property depending

on the ratio of the total value of the reserved goods (invoice total plus VAT) to the value of the other goods which have been mixed or combined, such value being assessed at the time of their mixing or combining. If the mixing or combination of the goods has been done in such a way that the product of the Customer is to be considered to be the main product it is agreed that the Customer assigns to us co-ownership of such product on a pro rata basis. The Customer shall keep such property owned either exclusively by us or owned in common with another person properly stored for us.

- 6.7. If our reserved goods are resold after having been processed or transformed in any way, as early as today, the Customer shall assign to us as security his claims resulting from the resale of such goods up to the invoice total (including VAT) of our claims.

If, on account of the processing or transformation of or of the mixing or combination of the reserved goods with other goods which are the property of any person other than us, we have only acquired co-ownership pursuant to the above clauses 6.5 or 6.6, the claim to the purchase price of the Customer shall only be assigned to us in advance depending on the ratio of the total amount charged by us for the reserved goods plus VAT to the invoice totals of the other goods which are not our property.

Furthermore, provisions as laid down in clauses 6.2. - 6.4. above shall apply correspondingly for claims assigned to us in advance.

- 6.8. If under the laws of a foreign country within the borders of which the reserved goods are located, a reservation of ownership or an assignment is not legally effective, the security provision corresponding to reservation of ownership or assignment in this legal sphere shall be deemed to have been stipulated.

If co-operation of the Customer is required in order to create such rights, the Customer shall be bound at our request to take all measures necessary in order to constitute and maintain such rights.

- 6.9. The Customer shall treat the reserved goods properly and keep them in good repair; in particular, the Customer shall at his expense sufficiently insure the reserved goods against theft, robbery, burglary, fire and water damage. As early as today, the Customer shall assign to us all rights resulting from such insurance and relating to the reserved goods. We accept such assignment.

Furthermore, we reserve all rights to assert our claims for performance or claims for damages.

- 6.10. As a collateral for our claims against him, Customer assigns to us any and all claims that he may have against third parties as a consequence of the installation of reserved goods on real estate property in a way that the reserved goods under the applicable statutory rules have to be considered as part of the real estate property.

- 6.11. Upon request of the Customer, we undertake to release the securities we are entitled to if the value of such securities exceeds the value of our claims to be secured by more than 10 %. We shall have the right to select the securities to be released at our discretion.

7. Assignment by Customer

Customer shall assign claims against us in connection with our performances only with our prior written consent.

8. Description of Product and Performance, Warranty

- 8.1. **The specifications contained in our description of Product and performances exhaustively and ultimately define the quality of our Products and performances. The specifications constitute an agreement on the quality, subject to warranty, but not a guarantee within the meaning of the German Civil Code. None of the declarations made by us in connection with this Contract constitutes a guarantee within the meaning of the German Civil Code and with the effect of an increase of liability or the assumption of a special obligation of essence. Only explicit declarations to this effect made in writing may constitute a guarantee within the meaning of the Germany Civil Code.**
- 8.2. We assume no warranty for any defects due to the following reasons: inappropriate use or running, faulty installation by Customer or third Parties, common wear and tear, faulty or negligent handling, use of inappropriate material, faulty construction works, inappropriate building grounds, disposable material, chemical, electro-chemical or electric influences (unless attributable to us), inappropriate alterations or repair work made by Customer or third parties without our prior consent.
- 8.3. Customer shall not have any warranty claims in case of only insubstantial deviations from the quality agreed upon or in case of only insubstantial impediments to the use of the Product or performance.
- 8.4. Customer may only assert warranty claims if he has duly observed his duties to examine the Products and to give notice of defects in accordance with Article 377 HGB (German Commercial Code).
- 8.5. In case of a defect of the Product, we are entitled to correct the performance, at our option, either by remedy of the defect or delivery of a substitute Product without defects. If one of these two means of correction of the performance is impossible or unreasonable, we are entitled to refuse such correction.
We may also refuse correction of the performance, as long as the Customer fails to fulfil his payment obligations for the non-defective part of our performance.
In case of remedy of the defect by us, we are obliged to bear all necessary expenses, especially costs for transportation of man and material, working and material costs, unless they are increased due to the fact that the defective Product was transported to a location other than the place of performance or the place of use of the Product.
- 8.6. In case of impossibility or failure of the correction of performance – **failure hereunder requires at least two failing attempts** - , faulty delay of the correction or final and serious refusal to correct on our part or in case that correction can not reasonably expected to be tolerated by the Customer, Customer shall have the option to either reduce the purchase price or to rescind from the Contract.
- 8.7. Unless otherwise provided for in no. 8.8. and 8.9. below, any other claims of Customer in connection with defects of our Products or performances, no matter on what legal grounds (especially claims for damage due to breach of obligations, claims of tort for damage to things as well as claims for compensation of costs) shall be excluded; this especially applies to claims for damage to other things than the Products as well as to claims for loss of profit.
- 8.8. The limitation/ exclusion of liability contained in no. 8.7. above does not apply:
 - 8.8.1. in case of damage to life, body or health of a person resulting from a faulty breach of obligation by us, our legal representatives or agents;
 - 8.8.2. in case of mandatory liability in accordance with the Produkthaftungsgesetz (Product Liability Code);
 - 8.8.3 in case of faulty breach of a fundamental contractual obligation or an obligation to be qualified by German courts as „Kardinalpflicht“ (crucial obligation) on our side or by our legal representatives or agents; unless the breach is due to purpose or gross negligence, the liability for damage is limited to the foreseeable damage typical for the type of Contract;

- 8.8.4. in case of fraudulent non-disclosure of a defect known to us, and in case of a guarantee within the meaning of the BGB (German Civil Code) with respect to the quality of the Product if a defect within this guarantee gives rise to our liability;
- 8.8.5. in case the Customer has a claim for damage instead of the performance which we, our legal representatives or agents are responsible for;
- 8.8.6. in case of other damage resulting from a breach of Contract due to our purpose or gross negligence or of our legal representatives or agents; unless the breach is made on purpose, the liability for damage is limited to the foreseeable damage typical for the type of Contract.
- 8.9. As for the compensation of costs no. 8.8. applies accordingly.
- 8.10. **No. 8 above does not affect the statutory provisions with regard to the burden of proof.**
- 8.11. Customer's recourse against us according to Article 478 BGB (recourse of the Entrepreneur) exists only insofar as the Customer has not entered into agreements with his Customer which exceed the statutory warranty claims. This is without prejudice to other rules on the Recourse of the Entrepreneur.

9. Liability for Ancillary Obligations

If, due to our fault or the fault of our legal representatives or agents, the Product can not be used as contractually intended as a consequence of a lack of advice or information prior to or after the conclusion of this Contract or as a consequence of wrongful advice or information or other wrongful performance of ancillary obligations (especially instructions for use and maintenance of the Product) prior to or after the conclusion of this Contract, the provisions of no. 8 above apply, with the exclusion of any other claims of the Customer.

10. General Liability, Rescission from Contract by Customer

- 10.1. The following provisions apply to the Customer's claims other than claims in connection with defective Products. However, these provisions shall not constitute a limitation or waiver of our statutory or contractual rights and claims.
- 10.2. Any further liability, including extra-contractual liability – for damage other than or exceeding the one provided for in no. 8 above, shall be excluded. This applies without regard to the legal nature of the claim. This applies especially to claims for damage beside the performance and instead of the performance on the basis of breach of obligations, impossibility – without prejudice to the provisions in no. 4.8. above – and delay in deliver – without prejudice to the provisions in no. 4.5. above – as well as claims of tort for compensation of damage to things under Article 823 BGB (German Civil Code).
- 10.3. The limitation contained in no. 10.2. above does also apply if Customer claims compensation of costs incurred.
- 10.4. Any fault of our legal representatives and agents may be attributed to us.
- 10.5. The statutory rules on the burden of proof remain unaffected.
- 10.6. As far as our liability is excluded or limited, such exclusion or limitation does also apply to the personal liability of our staff, employees, legal representatives and agents.
- 10.7. If we breach an obligation of this Contract, Customer shall only be entitled to rescind from this Contract, subject to the applicable statutory provisions, if fault for such breach is attributable to us. In the cases provided for in no. 8.6. above (failure of correction etc) and in cases of impossibility, however, the statutory provisions unlimitedly apply; as for a rescission of the Customer because of delay in delivery or performance, the provisions contained in no. 4.3.3., 4.3.4. and 4.7 above apply. Upon our request, Customer shall declare within a reasonable delay of time, whether he will rescind from this Contract or insist on our performance under this Contract.

11. Know How and Inventions

We reserve all rights and title to any valuable, new and confidential knowledge (know how) we dispose of or gain during the performance of any contracts made with us, as well as to inventions and any intellectual or industrial property rights that may exist insofar, unless otherwise agreed upon and as far as the Customer, according to the purpose of the respective contract, is not entitled to use the respective Products.

12. Tools

- 12.1. Unless otherwise agreed upon, any tools developed for the manufacture of our Products remain our property, even if Customer may have made a contribution to the costs of their development (or may have borne the cost thereof in total).
- 12.2. If, due to normal wear and tear as a consequence of the manufacture of Products for the Customer, a tool has to be repaired or partially or totally substituted, we are entitled to claim from Customer compensation of the costs of such repair or substitution in proportion of the Customer's original participation in the costs for the development and manufacture of such tool.
- 12.3. If an alteration or substitution of the tool is necessary due to altered requirements of Customer with regard to the Products to be manufactured by us, Customer shall bear any and all costs insofar.

13. Infringement of Third Party's Rights

We do not warrant that the use, installation or resale of any of our Product does not infringe third parties' industrial property rights. However, we confirm that at the we have no knowledge of any such third parties' rights.

14. Prescription

- 14.1. The term of prescription for rights and claims based on defects of the Products or performances – no matter of which legal nature – shall be one year. This however shall not apply to the cases provided for in Articles 438 cl. 1 no.1, 438 cl. 1 no. 2, 479 cl. 1 and 634 a.) cl. 1 no. 2 BGB (German Civil Code); for these cases a term of prescription of three years shall apply.
- 14.2. The terms of prescription laid down in no. 14.1. above shall also apply to any and all claims for damage against us in connection with defects to the Products – no matter what may be the legal nature of such claims. As for any claims for damage against us which are not in connection with defects to the Products, the term of prescription provided for in no. 14.1. sentence 1 above apply.
- 14.3. The terms of prescription provided for in no. 14.1. and 14.2. above shall not apply:
 - In case of breach of an obligation on purpose;
 - In case of fraudulent non-disclosure of a defect known to us or in case of a guarantee with regard to the quality of the Product or performance; in case of fraudulent non-disclosure those statutory terms of prescription apply instead of the ones provided for in no. 14. 1 above, which would apply in the absence of fraudulent non-disclosure with the exclusion of the prolongation of the term in case of fraudulent non-disclosure in accordance with Articles 438 cl. 3 respectively 634 a.) cl. 3 BGB (German Civil Code).
 - To claims for damage in case of damage to life, body, health or freedom of a person;
 - To claims under the Produkthaftungsgesetz (Product Liability Code);
 - In case of a grossly negligent breach of obligation or
 - In case of breach of a fundamental contractual obligation.In these cases the statutory terms of prescription shall apply.
- 14.4. Unless otherwise expressly provided for herein, the statutory provision on the beginning of the term of prescription, the interruption of their running, their suspension and the re-start shall remain unaffected.

14.5. The claims for reduction of the purchase price and the right to rescind from the Contract are excluded, if the claim for correction of the performance is prescribed. In such case the Customer may however refuse payment of the purchase price as far as he would be entitled to do so on the basis of his right to reduce the purchase price or his right to rescind from the Contract.

15. Place of Performance, Place of Jurisdiction, Applicable Law, Purchase within the EU, Safeguarding Clause

- 15.1. Unless otherwise agreed upon, place of performance shall be our place of business in 75249 Kieselbronn/ Germany exclusively.
- 15.2. If Customer is a merchant within the meaning of the HGB (German Commercial Code), legal entity under public law or public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship - herein included liabilities from cheques and bills of exchange - shall either be our principal place of business or, at our sole option, the location of the Customer. This agreement as to the place of jurisdiction shall also apply for Customers having their location in a foreign country.
- 15.3. To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and the Customer, German law, excluding the UN Sales Convention (CIS Convention on contracts for the international sale of goods of April 11, 1980), shall apply exclusively, without regard to German collision rules.
- 15.4. Should individual provisions of these **General Terms and Conditions** or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.
- 15.5. Customers from EU member states shall be bound to compensate for all and any damage which may be incurred by us due to:
- tax violations committed by the Customer himself or
 - false information given by the Customer or information which has been withheld from us by the Customer relating to his financial situation relevant for taxation.