

RÖHRENWERK KUPFERDREH CARL HAMM GMBH

GENERAL TERMS AND CONDITIONS

A. General Terms and Conditions

1. Scope

- a) Any performances by Röhrenwerk Kupferdreh Carl Hamm GmbH, Gasstrasse 12, 45257 Essen, Germany, and its affiliated companies (CARL HAMM) shall be provided exclusively on the basis of the terms and conditions below (GTC) which are accepted and acknowledged by the business partner by signing the contract. The GTC shall only apply if the business partner is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- b) The terms and conditions below shall apply to all business transactions. They shall also apply to any future business transactions, even if they are not expressly agreed again. These GTC shall apply in particular to any contracts about the sale or purchase and/or the delivery of moveable objects ("Goods") irrespective of whether we/the business partner produce(s) the Goods ourselves/himself or purchase(s) them from suppliers (Sections 433, 650 BGB). Unless agreed otherwise, the GTC shall apply in their version valid at the time of the order placement by the business partner, or as notified to him in text form as a framework agreement, also to similar future contracts without us being required to refer to them in each individual case again.
- c) Other provisions, in particular the general terms and conditions of the business partner, shall not become part of the contract, even if they are not expressly contradicted. This shall also apply if we, with the knowledge of the general terms and conditions of the business partner, carry out the delivery without reservation.
- d) Individual agreements made with the business partner on a case-to-case basis (including ancillary agreements, supplements and modifications) shall always take precedence over these GTC. Subject to proof to the contrary, a written contract or our confirmation in writing shall be decisive for the content of such agreements.
- e) Any references to the application of statutory provisions shall be for the purposes of clarification only. Therefore, the statutory provisions shall apply even without such clarification to the extent they are modified directly or excluded expressly by these GTC.
- f) As a general rule, and in the case of any doubt, the German version of these General Terms and Conditions shall apply.
- g) In addition the sales, delivery and services conditions (B.) and purchase conditions (C.) shall apply in the cases concerned and have priority over the General Terms and Conditions (A.).

2. Form

Any legally significant declarations and notifications of the business partner regarding the contract (e.g. the setting of a deadline, notification of defects, declaration of withdrawal or reduction) shall be submitted in text form (e.g. letter, electronic mail, telefax). This shall not affect any statutory formal requirements and other proof, in particular in cases of any doubts with regard to the legitimation of the declarant.

3. Supplementary provisions

- a) In addition, the valid Incoterms®, as amended, shall apply to any export orders. They may additionally serve to construe trade terms.
- b) In the case of contradictions between the codes and rules, the following order shall apply: (1) the mandatory statutory provisions, (2) the contractual agreements between the parties, (3) the provisions of these GTC and (4) the Incoterms®, as amended from time to time.

4. Set-off; retention

The business partner shall only be entitled to set-off or assert retention rights against counterclaims that are in a legal connection with the claim of CARL HAMM and have become res judicata or have been expressly acknowledged by CARL HAMM in writing. The business partner shall only have a retention right if his claim is based on the same contractual relationship.

5. Data protection

The personal data of the business partner shall be stored and processed in compliance with the statutory provisions and for the specific purposes of the contractual relationship.

6. Applicable law; place of performance; place of jurisdiction

- a) Unless provided otherwise, these GTC as well as the contractual relationship between CARL HAMM and the business partner shall be subject to the law of the Federal Republic of Germany to the exclusion of the UN Sales Convention.
- b) The place of performance for our deliveries shall be our supplying plant in case of a delivery ex works and our warehouse for all other deliveries. The place of performance for all payment obligations of the business partner shall be the registered office of CARL HAMM in Essen, even if delivery is agreed to be made at a different location. In derogation from this provision, the place of destination indicated by CARL HAMM for supplies and performances of the business partner shall be the place of performance.
- c) The exclusive – also international – place of jurisdiction shall be the registered office of CARL HAMM in Essen. CARL HAMM shall be entitled to assert claims against the business partner at the courts competent for the registered office of the business partner. This shall not affect any statutory priority provisions, in particular regarding exclusive competencies.

7. Severability

- a) If any provision, or part thereof, of the specific individual contract is or subsequently becomes invalid, void or unenforceable, this shall not affect the validity of the remaining provisions.
- b) The same shall apply to any gap found in the specific contract. Any such invalid, void or unenforceable provision or gap shall be replaced by an appropriate provision coming closest - to the extent permitted by law - to what the contractual parties intended or would have intended according to the sense and purpose of the contract if they had considered this point at the time of concluding the contract or the subsequent inclusion of a provision.
- c) This shall also apply if the invalidity, voidness or unenforceability of a provision is based on a measure of performance or time (deadline or date) specified in the individual contract; then, a measure of performance or time shall be deemed agreed to the extent permitted by law, coming closest to that what was initially intended.

B. General Sales Conditions of CARL HAMM

8. Offers; cost estimates; custom-made products; scope of delivery

- a) All our offers shall be without engagement and non-binding. This shall also apply if we have provided the business partner with catalogues, technical documentation (e.g. drawings, plans, dimension diagrams, calculations, estimates, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights. They shall not be made accessible by the business partner to any third party.
- b) CARL HAMM shall not assume any liability for the correctness of any cost estimates. Verbal agreements, promises, representations and guarantees given or made by employees of CARL HAMM in connection with the conclusion of a contract shall only become binding upon the issuance of a written confirmation by us.
- c) Sample deliveries shall be deemed standard samples. They shall be non-binding. They only show the general appearance of the goods and, naturally, cannot contain all properties and differences in colour, look, texture and structure of the goods.
- d) If installation work is performed on request of the business partner, the technician shall perform such work exclusively for the account and risk of the business partner and CARL HAMM shall not assume any liability or warranty in this respect.

9. Conclusion of Contract

- a) The transaction shall be deemed materialised upon receipt of CARL HAMM's order confirmation by the business partner. Accordingly, the order placed by the business partner is a binding offer within the meaning of § 145 BGB, which CARL HAMM accepts by confirming the order. Complaints regarding any deviations found in the order confirmation from the contents of the

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quotation or in the confirmation of acceptance shall be made in writing by the business partner and submitted within three working days if the order confirmation is otherwise approved.

- b) Quotations of the business partner shall be expressly confirmed in writing by CARL HAMM before they are deemed to have been accepted.
- c) As long as the final clarification of technical details regarding the goods and performances of CARL HAMM and their use is still pending, a contract shall not be deemed to have been concluded.

10. Quality, measures and weights

- a) The quality and measures shall be subject to the DIN/EN standards or technical data sheets or, if not available, to standard commercial practices. Deviations in terms of quality, measure and weight shall be permitted according to DIN/EN or standard practice. Any references to standards, technical data sheets or work test certificates as well as details regarding quality, measures, weights and usability shall not be deemed to be representations and guarantees, and the same applies to declarations of conformity, manufacturers' declarations and relevant quality marks such as CE and GS.
- b) As regards the weights, those weights shall be decisive which have been established by us or by our pre-suppliers. Evidence of the weight shall be provided by presenting the weight slip. To the extent permitted by law, weights may be determined without weighing in compliance with the relevant standards. The additions and deductions (commercial weights) customary in the steel industry in the Federal Republic of Germany shall remain unaffected. The number of units, bundles, etc. indicated on the despatch note shall not be binding for goods calculated by weight. Differences compared to the calculated individual weights shall be distributed amongst them proportionally.

11. Prices

- a) The agreed prices shall be understood to be net prices in EUR, net of customs duties, without packaging, without transport insurance, ex works and plus the legally owed value added tax. If the prices are not determined at the time when the contract is concluded, the prices of CARL HAMM valid at the time of rendering the performance shall be charged. To the extent taxes, customs duties or other charges are indicated, they reflect the legal situation prevailing at the time when the quotation is submitted.
- b) If the goods are shipped on request of the business partner, he shall bear the costs of transportation ex warehouse as well as the costs of a transport insurance desired by him, if applicable. Transportation costs actually incurred shall be invoiced on a case-to-case basis.
- c) If the performance by CARL HAMM is contractually required to be performed more than four months after the conclusion of the contract or the performance is provided as part of a continuing obligation, CARL HAMM shall be entitled to adjust the price if the procurement costs (in particular costs of material and labour) or public levies change to a material extent. The price adjustment shall be limited to the extent of the changes in the procurement costs and/or public levies. On request of the business partners, the underlying reasons shall be substantiated in writing. If the price adjustment leads to an increase by more than 5% of the total price, the business partner shall have the right to extraordinary termination.
- d) We reserve the right to increase the price of quantities not yet delivered if, due to a change in the raw material and/or economic situation, circumstances occur which considerably increase the price of production and/or the purchase of the respective product compared to the time at which the price agreements were initially made. In this case, the business partner may cancel his orders affected within two weeks following the notification of the price increase.
- e) For drop-shipping the conditions of the price lists of the supplying plant concerned shall apply in addition.
- f) If CARL HAMM has agreed to perform erection, installation or services, the business partner shall bear any ancillary costs incurred apart from the agreed remuneration. This shall include, in particular, travel, transport and accommodation costs as well as overtime and extra allowances, etc. of an amount corresponding to the rates applicable at CARL HAMM. To the extent, ancillary costs have been indicated, they reflect the legal situation prevailing at the time when the quotation is submitted. In the event of any subsequent changes in the legal situation,

CARL HAMM shall be entitled to adjust the remuneration accordingly.

- g) If invoicing is based on hours worked and/or materials used, determination of the quantities shall be made immediately after the work has been performed. If the business partner does not participate therein, he shall be deemed to have accepted the quantities determined by CARL HAMM.

12. Delivery (shipment and packaging); transfer of risk

- a) Delivery is made ex works / ex warehouse (EXW - Incoterms® 2020). On request and at the expense of the business partner, the goods may be shipped to another place of destination (sales shipment). Unless agreed otherwise, we shall be entitled to determine the type of shipment (in particular, the transport company, shipment route, packaging) ourselves.
- b) Any costs of the transport and unloading of the goods purchased from CARL HAMM shall be borne by the business partner. If the delivery is made free to construction site/warehouse, this shall mean delivery without unloading. The precondition for delivery shall be a negotiable access road. The business partner shall be responsible for providing the necessary conditions. If unloading has been agreed, unloading shall be effected at the truck.
- c) Unless expressly agreed otherwise, the goods of CARL HAMM are supplied unpacked and without corrosion protection. If packaging is customary, CARL HAMM shall deliver the goods packed. We shall be entitled to charge the business partner with these costs. Packaging materials may be returned to our warehouse. We shall not bear the costs incurred by the business partner for returning the packaging material or disposing of the same independently.
- d) The risk of accidental loss and accidental deterioration of the goods shall pass to the business partner at the latest when the goods are handed over to the same. However, in the case of sales shipment the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the carrier, the freight forwarder or any other person or institution determined to carry out the shipment. This shall also apply to freight-paid delivery and/or partial deliveries and even if shipment is carried out by CARL HAMM using own vehicles. Any delivery not accepted by the business partner shall be stored at his own cost. We shall only provide insurance cover upon instruction of the business partner and at his expense.
- e) If CARL HAMM has confirmed to provide for the transport of the goods, our liability shall be limited to the proper and careful selection of the forwarder or carrier. A transport insurance shall be taken out only upon instruction of the business partner and at his expense.
- f) The business partner shall inspect the delivered object at the time of acceptance of delivery and, otherwise to the exclusion of his relating claims, shall require the carrier to assess the damage occurred and notify CARL HAMM of the same immediately and in writing (text form sufficient). The business partner shall accept all delivered goods against receipt and store them in a dry and closed room on his premises until their assembly or installation. The business partner shall also assume liability for parts of the plant having been assembled or erected already.
- g) Minor damage, such as paint damage and scratches having no influence on the functionality of the supplied goods, shall be deemed to be transport damage; the business partner may not derive any legal claims against CARL HAMM from them.

13. Performance and delivery periods; acceptance, delayed delivery; partial deliveries

- a) The delivery periods indicated by CARL HAMM shall not be binding. Our obligation to deliver is subject to the proviso that we have received the required goods correctly and on time from our suppliers and, in the case of import transactions, it is additionally subject to the receipt of control documents and import licences, unless any incorrect or delayed supply is attributable to us. To the extent we are unable to comply with binding delivery periods for reasons not attributable to us (unavailability of goods or services), we shall notify the business partner hereof without delay together with the anticipated new delivery period. If the goods or services are not available even within this new delivery period, we shall be entitled to withdraw from the contract, or parts thereof; we shall reimburse any consideration having already been made by the business partner without de-

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- lay. The unavailability of goods or services shall mean here, in particular, any failure of our suppliers failing to deliver in good time for no fault of us or our supplier or if we are not under the obligation to procure in the individual case. Nevertheless, CARL HAMM endeavours to comply with performance deadlines.
- b) Details as to delivery periods are approximate. Delivery periods shall commence on the date of our order confirmation and apply under the condition that all details of the order are clarified in due course and all obligations of the business partner are fulfilled in time, e.g. obtaining all official certificates, issuing letters of credits and guarantees, meeting the necessary technical or building preconditions for the delivery and/or erection, or making down-payments.
- c) If a binding delivery deadline has been agreed and the delivery content is subsequently changed, a reasonable extension of the delivery deadline shall be deemed to have been agreed for the entire order from the date on which the change to the agreement comes into effect.
- d) Events of force majeure, e.g. war, labour dispute, unusual weather conditions, etc. shall entitle CARL HAMM to suspend the delivery for the period of such impediment and an appropriate lead time or withdraw from the contract, or parts thereof, with regard to the part not yet fulfilled. This shall also apply if such events occur during an existing delay. Force majeure shall include any monetary, trade and other governmental measures, lockouts, operational disruptions not attributable to us (e.g. fire, breakage of machines or rolls, shortage of raw materials and energy), obstruction of transport routes, delays in import/customs clearance, diseases (including epidemics and pandemics) as far as a risk level of at least "moderate" is defined by the Robert-Koch-Institute as well as any other circumstances not attributable to us which render deliveries and services difficult or impossible. In this context it is irrelevant whether the circumstances occur at the supplying plant or at the plant of a sub-supplier. If, as a consequence of the aforementioned events, the performance of the contract becomes unreasonable for one of the contract parties, such party may withdraw from the contract.
- e) If acceptance has been agreed, it can only take place at the supplying plant or in our warehouse immediately after notification of readiness for acceptance. The personal cost of acceptance shall be borne by the business partner, and the material acceptance cost shall be charged to him on the basis of our price list or the price list of the supplying plant. If the acceptance does not take place in good time or is incomplete without any fault on our part, we shall be entitled to ship the goods without acceptance, store them at the expense and risk of the business partner and charge him with the costs.
- f) To the extent an acceptance has been agreed, it is decisive for the transfer of risk. Also in all other respects the statutory provisions of the law on contracts for goods and services shall apply to an agreed acceptance accordingly. Any default of receiving the goods by the business partner shall have the same effect as delivery and/or acceptance.
- g) Determination of the occurrence of any default in delivery on our part shall be governed by the relevant legal regulations. However, in all cases a reminder is required to be issued by the business partner. If we default on delivery, the business partner may demand lump-sum compensation of his damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each calendar week of delay, or part thereof, however not more than 5% of the delivery value of the delayed goods. We shall reserve the right to proof that the business partner has suffered no damage or that such damage was significantly lower than the aforesaid lump sum.
- h) The rights of the business partners according to Section 4 of these GTC and our statutory rights, in particular in the case of an exclusion of the performance obligation (e.g. performance and/or subsequent performance becoming impossible or unreasonable) shall remain unaffected.
- i) CARL HAMM shall be entitled to make partial deliveries to a reasonable extent. Increases and reductions of the agreed quantity to the extent common in the industry shall be permissible. If an "approximate" quantity is indicated, we shall be entitled to exceed/fall short of the agreed volume by up to 10% and invoice accordingly. Under contracts about continuous delivery we shall be notified of calls for delivery and quantities of types for roughly identical monthly quantities; otherwise, we may determine them at our own discretion.
- j) If, taken together, individual call-off orders exceed the contractual volume, we shall be entitled, but not obliged, to supply the additional amounts. We may invoice the excess quantity at the prices prevailing on the date of the call-off order or delivery.
- ### 14. Delayed receipt
- a) If the business partner does not collect the goods from CARL HAMM at the time agreed or if the business partner refuses to accept the goods without any reason of legal relevance, the business partner shall be deemed in default of receipt.
- b) If the business partner defaults on receipt or fails to act in co-operation, or if our delivery is delayed for any other reasons to be attributable to the business partner, we shall be entitled to claim compensation for the loss arising as a result thereof, including any additional expenditure actually incurred (e.g. storage costs). In this case, we shall charge a lump-sum compensation amounting to 0.5 % of the net price (delivery value) per calendar week, however not more than 5% of the delivery value, starting from the delivery period or - if there is no delivery period - from the notification of shipment readiness of the goods. The proof of a higher damage and our legal claims (in particular, compensation of additional expenditures, appropriate compensation, termination) shall remain unaffected; however the lump sum shall be charged against further money claims. The business partner shall be entitled to prove that we suffered no damage at all or that the damage incurred is significantly lower than the aforementioned lump sum.
- c) From the time from which the business partner is in default of receipt, the liability for risk and coincidence shall pass to the business partner. In this case, CARL HAMM shall be entitled to store the goods in a warehouse at the expense of the business partner or have them sent by a carrier to the business partner at his expense.
- d) If the goods are stored on own premises, CARL HAMM shall have the right to charge reasonable storage costs.
- ### 15. Securities
- a) CARL HAMM shall be entitled to demand a reasonable advance payment or a reasonable security for its receivables from the business partner. This shall apply, in particular, if a significant deterioration in the financial circumstances of the business partner occurs upon conclusion of the contract.
- b) If the business partner fails to comply with the demand to provide a reasonable advance payment or a reasonable security within two weeks, CARL HAMM shall be entitled to withdraw from the contract.
- c) If the realisable value of the existing securities exceeds the secured receivables, including secondary receivables (interest, costs, etc.) by more than 10%, we shall be obliged on request of the business partners to release securities of our choice.
- ### 16. Retention of title
- a) CARL HAMM retains title to all goods supplied by us until full settlements of all claims, in particular also the respective balance accounts receivable which we have within the framework of the business relationship (overall retention of title), as well as the claims established by the liquidator by way of the choice of satisfaction in the case of an insolvency (cf. section 103 et seq. German Insolvency Code (InsO)) of the business partner. This shall also apply to claims arising in the future or contingent claims and even if payments are made to specially designated claims (current account reservation).
- b) The goods subject to retention of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The business partner shall inform us immediately when an application for the initiation of insolvency proceedings is filed or third parties access the goods (e.g. attachments) belonging to us. The business partner shall bear any costs incurred for cancellation of access to or return transport of the goods subject to retention of title, unless they are not reimbursed by third parties.
- c) If the business partner breaches the contract, in particular if he fails to pay the due purchase price, we shall be entitled to withdraw from the contract according to the legal regulations and/or demand that the goods be returned on the basis of the retention of title. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; in contrary, we shall be entitled to demand solely the return of the goods and reserve the right to withdraw from the contract. In the event

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that the business partner does not pay the due purchase price, we may only assert such rights if we have previously set him a reasonable period for payment without result or if the setting of such period is dispensable according to the statutory regulations.

- d) If, in connection with the payment of the purchase price by the business partner, a claim under a bill of exchange arises, the retention of title shall not lapse prior to collection of the bill of exchange by the drawee.
- e) The business partner shall be entitled to further process the goods subject to retention of title in the ordinary course of business. In this case, they are processed for CARL HAMM as a manufacturer within the meaning of Section 950 BGB. CARL HAMM shall acquire ownership to the new item. If the goods are processed together with other materials or if the goods subject to retention of title are combined, mixed or blended with other items not belonging to business partner, CARL HAMM shall acquire co-ownership of the new article in the ratio of the net invoiced value of the goods subject to retention of title to the net invoiced value of the other materials used. This shall also apply if the other item is deemed to be the main item.
- f) If CARL HAMM'S ownership expires as a result of combining or mixing, the business partner shall transfer ownership rights even now to the new item or product to the level of the invoice value of the goods subject to retention of title and shall hold them in custody on behalf of CARL HAMM at no charge.
- g) Moreover, the business partner shall be entitled to sell the goods subject to retention of title in his ordinary course of business, provided that he is not in default of payment of a sum resulting from the business relation with CARL HAMM. The authorisation to resell shall not apply if a prohibition of assignment has been agreed within the relationship of the business partner with his customer.

17. Assignment

- a) As a precaution, the business partner shall assign even now to CARL HAMM any claims or rights arising for the business partner from further processing as well as resale or any other legal grounds regarding the goods subject to retention of title, in total or to the amount of our co-ownership share, if any. We hereby accept this assignment. If this is a claim to be placed in a current account, the assignment shall refer to the final balance under due consideration of the claim.
- b) In the case of processing, combining or mixing of the goods subject to retention of title with third-party items, the assignment shall be limited accordingly to the amount of the payment claim for the delivered goods subject to retention of title on the part of CARL HAMM in relation of the rights of CARL HAMM to the rights of involved third parties. If the business partner installs the goods subject to retention of title into premises belonging a third party as an integral part, the business partner shall assign to CARL HAMM the claim for payment to which he is entitled against the third party or against the person concerned of the amount that corresponds to the value of the goods subject to retention of title with all ancillary rights – including the right to the granting of a debt-securing mortgage. Moreover, the business partner shall assign to CARL HAMM the claims arising from the commercial sale of the real property or from real property rights of an amount corresponding to the value of the goods subject to retention of title with all ancillary rights. CARL HAMM hereby accepts the above security assignments.
- c) A retention of title agreed with any third party shall be deemed to have been agreed in favour of CARL HAMM until all claims by CARL HAMM secured by such retention of title are fully paid, including until all cheques and accepted bills of exchange, if any, have been cashed. The business partner shall inform such a third party in writing about the retention of title existing in favour of CARL HAMM and demonstrably notify us.
- d) Otherwise, any assignment of claims from a resale shall be impermissible, unless the assignment is made by way of the so-called genuine factoring which we are notified of and the factoring proceeds exceed the value of our secured claim. Our receivable shall fall due immediately upon crediting of the factoring proceeds.
- e) The business partner shall be entitled to collect receivables from the resale. This collection authorisation shall lapse in the event of our revocation, however not later than upon late payment or filing an application for insolvency proceedings. We shall only make use of our right of revocation if, after the con-

clusion of the contract, it becomes apparent that our payment claim from this or any other contracts with the business partner is jeopardised due to the lack of solvency of the same. Upon our request, the business partner shall be obliged to inform his customers immediately about the assignment to us and submit to us any documents required for collection.

- f) The business partner shall be obliged to reimburse any costs incurred by CARL HAMM in connection with the defence against executive encroachments by third parties to its goods subject to retention of title, in particular any costs of prosecution.
- g) We shall be entitled to assign the payment claims we are entitled to against the business partner. If the business partner does not fulfil his payment obligations and, in particular, is in default of payment, CARL HAMM shall be entitled to collect the claim already assigned or withdraw from the contract and demand the surrender of the goods subject to retention of title.

18. Terms of payment; default of payment

- a) All payments shall be made free of any charges for CARL HAMM and without deductions. If not agreed otherwise or indicated on our invoices, the consideration shall be due two weeks upon the delivery or acceptance of the goods and paid in a manner that CARL HAMM can dispose of the amount at latest on the due date. However, we shall be entitled at any time also under an ongoing business relationship to make a delivery, or part thereof, against prepayment only. We shall declare a reservation to this end not later than upon the confirmation of the order. Our business partner shall bear the costs of the payment transactions.
- b) Upon expiry of the above payment period, the business partner shall be in default. If the term of payment is exceeded or in the event of default of payment, we shall charge interest amounting to 9 percentage points above the base interest rate, unless higher interest rates have been agreed. The assertion of additional claims for compensation for damage caused by default shall remain reserved. Our entitlement to the commercial maturity interest (Section 353 of the German Commercial Code (HGB)) against merchants shall remain unaffected.
- c) Moreover, CARL HAMM shall be entitled according to Section 288 Para. 5 BGB to demand a lump sum amounting to EUR 40.00 from the business partner in the event of any default.
- d) In the event of any default of payment on the part of the business partner or if circumstances exist giving rise to doubts as to the solvency of the business partner, CARL HAMM shall be entitled to demand immediate payment of all claims against the business partner or to withdraw from the contract, or parts thereof. To the extent that the object of the contract was the delivery of custom-made products, CARL HAMM shall be alternatively entitled to make available to the business partner the services commenced and demand compensation for its expenses to date.
- e) If partial payment has been agreed, CARL HAMM shall be entitled to demand immediately the entire price even if payment of only one instalment is in default.
- f) Bills of exchange shall not be accepted as a matter of principle. If, in exceptional cases, the acceptance of cheques has been agreed, they shall only be accepted on account of payment. The business partner shall bear any costs of discounting and collection. CARL HAMM shall not be held liable for the timely submission.

19. Defence of uncertainty

If, after the conclusion of a contract, it becomes evident (e.g. due to an application for opening insolvency proceedings) that our claim for payment is jeopardised due to the business partner's lack of solvency, we shall have the right to withdraw from the contract according to the statutory provisions regarding the refusal of performance and after having set a deadline, if appropriate (Section 321 BGB). In the case of contracts for the manufacture of single items (custom-made products), we may withdraw from the contract immediately; the statutory provisions concerning the dispensability of deadlines shall remain unaffected. Otherwise, the defence of uncertainty shall extend to any other outstanding deliveries and obligations from the business relationship with the other party.

20. Repair and test services

- a) If repair orders or orders regarding the modification or alteration of old or third-party plants are accepted, CARL HAMM shall not accept any warranty or liability.

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- b) Repair and test services shall be paid for without deductions upon completion of such work. CARL HAMM reserves the right to return to the business partner parts sent to it only after the invoice has been paid. The duty of safekeeping of CARL HAMM shall lapse three months upon notification of work completion. Thereafter, CARL HAMM shall be entitled to freely sell the item sent for repair and use the proceeds to satisfy any claims against the business partner.

21. Claims for defects of the business partner

- a) Unless agreed otherwise below, the statutory provisions shall apply to any rights of the business partner in the case of defects as to quality and defects in title (including wrong delivery and short delivery, as well as incorrect assembly and installation or inadequate assembly instructions). In any case, the special statutory provisions on final delivery of the goods to a consumer (supplier recourse according to Sections 445a, 445b, 478 BGB) shall remain unaffected.
- b) The basis of our liability for defects is that the goods meet the subjective requirements at the time of transfer of risk (§ 434 Para. 1 in conjunction with 2 BGB). Liability for objective requirements (§ 434 Para. 1 in conjunction with 3 BGB), in particular "customary use" (§ 434 Para. 3 no. 1 BGB) and "customary quality" (§ 434 Para. 3 no. 2 BGB) is excluded. The contents of the agreed specifications and any explicitly agreed intended use shall not constitute a guarantee; the granting of a guarantee shall require a written agreement.
- c) Any guarantee accepted by CARL HAMM shall only inure to the benefit of the business partner. Any guarantee claims of the business partner shall be rendered void if the business partner modifies the goods or has the goods modified by third parties.
- d) In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the statutory provisions (Section 434 Para. 1 Sentences 2 and 3 BGB). We shall not accept any liability for the deterioration, loss or improper treatment of the goods after the transfer of risk. We shall not be held liable for any public statements by the manufacturer or other third parties (e.g. advertising messages).
- e) The claims of the business partner for defects shall require that he has fulfilled his obligations to inspect and to give notice of defects (Sections 377, 381 BGB). If a defect becomes apparent upon delivery, during this inspection or at any later time, we shall be notified of the same in writing without delay. If the business partner fails to properly inspect the goods and/or to give notice of defects, our liability shall be excluded according to the statutory provisions for the defect not notified, not notified in due course or not properly notified.
- f) Once the agreed acceptance by the business partner has taken place, it shall not be possible to claim for defects that could have been established during the agreed type of acceptance.
- g) If the delivered is defective, we may initially choose whether we shall provide subsequent performance by remedying the defect (rectification of defects) or by delivery of a non-defective item (replacement). Our right to refuse subsequent performance as provided by law shall remain unaffected.
- h) We shall be entitled to make owed subsequent performance conditional upon the business partner paying the purchase price due. However, he shall have the right to retain an appropriate part of the purchase price in proportion to the defect.
- i) The business partner shall allow us the necessary time and opportunity for the owed subsequent performance and shall, in particular, submit the goods concerned for inspection. In the case of any replacement delivery, the customer shall return the defective goods to us in accordance with the statutory provisions. Subsequent performance shall neither include the removal nor the reinstallation of the defective item if we were initially not obliged to install it.
- j) Any expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, road, labour and material costs (no removal or reinstallation costs) shall be borne by us if there is, in fact, a defect and the warranty rights are not excluded pursuant to Section 442 BGB (if applicable in conjunction with Section 439 para. 3 sentence 2 BGB). Otherwise, we may demand from the business partner to reimburse any costs incurred as a result of an unjustified demand for rectification, unless the absence of defectiveness was not recognisable by the business partner.
- k) If the subsequent performance has failed or a reasonable deadline to be set by the business partner for the subsequent per-

formance has expired unsuccessfully or is dispensable according to the statutory provisions, the business partner shall have the right to withdraw from the contract or reduce the purchase price. However, this right of withdrawal shall not exist in the case of an insignificant defect.

- l) In the event of a delay, we shall be liable in accordance with statutory provisions for the damage caused by the delay as proven by the business partner. We shall inform the business partner immediately about the duration of the delay in delivery. As soon as the duration of the delivery delay is known, the business partner shall notify us immediately as to the amount of the anticipated damage caused by the delay. If the anticipated damage due to the delay exceeds the value of the quantity affected by the delay in delivery by 20%, the business partner shall be obliged to promptly arrange to buy appropriate goods in replacement and, if necessary, make use of options for purchasing goods in replacement proposed by us, whilst withdrawing from the contract for the quantity affected by the delay in delivery; in such a case, the documented extra costs of goods bought in replacement and for substantiated damage due to the delay for the intermediate period shall be reimbursed by us.
- m) In the event that the business partner does not meet his obligations to minimise losses according to the previous paragraph, our liability for verified damage due to delay shall be limited to 50% of the value of the quantity affected.
- n) Claims of the business partner for damages or reimbursement of fruitless expenses shall, even in the case of defects, only exist according to Section 22 and shall be incidentally excluded.
- o) If the contractual goods are to be manufactured according to specifications and wishes of the customer (custom-made products), the right of the customer to withdrawal or termination as well as the consideration owed by him as a result thereof shall be subject to the statutory provisions.
- p) If the goods are sold as lower-grade material, the business partner shall not have any rights from defects of quality with respect to the stated reasons for which the material was degraded and such defects he could reasonably expect to encounter.

22. Other liability

- a) Unless provided otherwise by these GTC, including the provisions below, we shall be liable according to the relevant statutory regulations in the case of any breach of contractual and non-contractual duties.
- b) We shall only be liable for damages – irrespective of the legal grounds – under fault-based liability if the damage was caused by wilful intent and gross negligence. In cases of slight negligence, we shall be held liable subject to a milder standard of liability according to the statutory provisions (e.g. care for own affairs) only
– for damage from injury to life, body or health;
– for damage from the not inconsiderable violation of a material contractual obligation (obligation the proper fulfilment of which constitutes a condition sine qua non and the fulfilment of which the business partner regularly relies and may rely on); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damage.
- c) The limitations resulting from paragraph b) of section 22 shall also apply to violations of duties by or in favour of persons for the fault of which we are held liable. They shall not apply to the extent we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods as well as to claims of the business partner according to the Product Liability Act.
- d) The business partner may only withdraw or terminate the contract in the case of a breach of duty which is no defect, if we may be held responsible for any such breach of duty. A free right of termination of the business partner (according to Sections 650, 648 BGB) shall be excluded. Otherwise, the statutory requirements and legal consequences shall apply.

23. Limitation

- a) Subject to an individual agreement and in derogation from Section 438 Para. 1 No. 3 BGB, the general limitation period for claims from defects of quality and in title shall be one year and begin upon delivery or completion of assembly or installation by CARL HAMM, upon completion of work services, or if the goods are not called upon 14 days following the notification of the readiness for shipment of the goods by CARL HAMM. If ac-

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ceptance has been agreed, the limitation period shall begin upon acceptance.

- b) In case the delivered good is a building or an item having been used for a structure according to its typical intended use and caused its defectiveness (building material), the limitation period shall be five years from delivery according to the statutory provisions (Section 438 Para. 1 No. 2 BGB). Also other special statutory limitation provisions (in particular, Section 438 Para. 1 No 1, Para. 3, Sections 444, 445b BGB) shall remain unaffected.
- c) The above limitation periods of the law on the sale of goods and services shall also apply to the business partner's contractual and extra-contractual claims for damages based on a defect of the goods, unless the application of the standard statutory limitation period (Sections 195, 199 BGB) would result in a shorter limitation period in the individual case. However, claims under the product liability law shall become statute-barred exclusively according to the statutory limitation periods.
- d) If CARL HAMM to assume warranty or liability for a defect, this shall not suspend or interrupt the limitation of the period for warranty claims or claims for damages, nor shall any such period be deemed to begin again.

24. Export certificate, value added tax

- a) If a business partner based outside of the Federal Republic of Germany (foreign customer) or his representative collects goods and transports or dispatches them to a third country, the business partner shall provide us with the export certificate necessary for tax purposes. If such certificate is not provided, the business partner shall pay the value added tax valid in the Federal Republic of Germany for the invoice amount of the exported goods, insofar as we can claim tax exemption for export deliveries.
- b) For shipments from the Federal Republic of Germany to other EU member states, the business partner shall notify us prior to shipment of his value added tax identification number under which his profit and income tax is handled within the EU. Otherwise, he shall pay the legally required value added tax amount in addition to the purchase price for our deliveries.

C. General Purchase Conditions of CARL HAMM

25. Purchase order; conclusion of contract; scope of performance

- a) Any purchase order issued by CARL HAMM shall be deemed legally binding only if it contains a price and conditions. Before accepting the purchase order, the purchase partner shall inform us about any obvious errors (e.g. misspellings or calculation errors) and any incompleteness in the purchase order for the purpose of correcting correction and/or completion; otherwise, the contract shall not be deemed concluded.
- b) In the case of any inconsistencies between the documents underlying the purchase order, the following order of priority shall apply: (1) the order letter (mail, fax or electronic transmission), (2) the annexes and integral parts of order indicated in the purchase order, (3) the framework and/or special agreements underlying the purchase order, and (4) the GTC of CARL HAMM.
- c) The ordered quantities shall be binding. We shall be entitled to reject any excess deliveries at the cost of the business partner.
- d) The business partner shall confirm in writing our purchase order within a period of two weeks or, in particular, perform it by sending the goods without reservation (acceptance). Delayed acceptance shall be deemed a new offer and shall require our confirmation.
- e) All documents regarding the purchase order shall contain the order number and any other remarks and notes marked by CARL HAMM to be compulsory. Any failure to comply with this requirement, shall result in CARL HAMM not accepting such document and returning it without processing.
- f) The transfer of purchase orders of CARL HAMM to any third party shall not be permitted without the consent of CARL HAMM and entitle CARL HAMM in the case of non-compliance to withdraw from the contract and claim damages.
- g) The scope of performance shall include, without limitation, that – the business partner transfers ownership to us to any technical documents (including those of subcontractors) and to other documents required for the manufacture of new articles, for

maintenance and operation. These technical documents shall be in the German language and be prepared in accordance with the international SI system of units;

- the business partner transfers all rights to use which are required for the use of the goods and services by us or third parties under due consideration of any patents, additional protective certificates, trademarks and registered designs.
- h) The business partner shall implement and maintain a documented quality assurance system of an adequate type and scope and complying with the latest state of the art. He shall prepare records, in particular with respect to his quality checks, and make them available to us on demand. The business partner herewith consents to quality audits by us or one of our authorised representatives to assess the effectiveness of his quality assurance system.

26. Prices

- a) The price indicated on the purchase order shall be binding. All prices shall be understood to include the legal value added tax, unless it indicated separately.
- b) Unless agreed otherwise in an individual case, the price shall include any services and ancillary services of the business partner (e.g. assembly, installation) as well as any ancillary costs (e.g. proper packaging, costs of transport, including any transport and third-party liability insurance).

27. Delivery (shipment and packaging); transfer of risk; partial deliveries

- a) Without our prior written consent, the seller shall not be entitled to have the service owed by him performed by any third party (e.g. subcontractor). The business partner shall bear the risk of procurement for his services, unless agreed otherwise in an individual case (e.g. limitation to stock).
- b) Delivery shall be made "carriage paid" within Germany to the place stated in the purchase order. If the place of destination is not indicated or unless agreed otherwise, delivery shall be made to our place of office in Essen. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (debt to be discharged at the customer's domicile).
- c) A delivery note stating the date (issue and dispatch), content of the delivery (item number and number of items) as well as our purchase order identifiers (date and number) shall be enclosed with the delivered items. If a delivery note is lacking or incomplete, we shall not be responsible for resulting delays regarding processing and payment. We shall be sent a corresponding notification of shipment with the same content separately from the delivery note.
- d) The risk of accidental loss and accidental deterioration of the item shall pass to us upon handing over at the place of performance. To the extent an acceptance has been agreed, this is exclusively decisive for the transfer of risk. Also in all other respects, the statutory provisions of the law on contracts for goods and services shall accordingly apply to an agreed acceptance. Default of receiving the goods by us shall have the same effect as delivery and/or acceptance.
- f) The shipping addresses indicated shall be observed. Delivery to an address other than the receiving address specified by us shall not signify the transfer of risk for the business partner even if the delivery is accepted at said address. The business partner shall bear our additional costs resulting from the delivery being made to an address differing from the agreed place of receipt.
- g) Partial shipments shall require our permission and shall be designated as such.
- h) Unless agreed otherwise, the business partner shall bear the packaging costs. If we bear the costs of packaging in a specific case, they shall be charged to us at the lowest costs possible.
- i) The statutory provisions shall apply to any delay of us taking the delivery. The business partner shall expressly offer us his performance, even if a defined or definable calendar period is agreed for an act or contribution on our part (e.g. provision of material). If we are in default of receipt, the business partner shall be entitled to claim compensation for his additional expenditure (Section 304 BGB). If the contract relates to a non-fungible item to be manufactured by the business partner (individual product), the business partner shall only be entitled to further-reaching rights if we have undertaken to provide assis-

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tance and are responsible for any failure to provide such assistance.

- j) The storage on our premises of objects required for the provision of performances shall only be permitted at the designated storage locations. The business partner shall bear full responsibility and risk for these objects until the transfer of risk.
- k) During transportation the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods directives including the respective annexes and appendices, shall be complied with.
- l) The declaration of the goods in the consignment notes for shipment by rail shall comply with the valid regulatory provisions of the railways. Any costs and damages incurred due to an incorrect declaration or failure to declare shall be at the expense of the business partner.
- m) The business partner shall obtain written confirmation of the receipt of shipments from the specified receiving address.

28. Declarations of origin

The following shall apply if the business partner makes declarations about the goods sold:

- a) The business partner undertakes to allow the verification of certificates of origin by the customs authorities and to provide any necessary information in this regard as well as any necessary confirmations.
- b) The business partner shall be obliged to reimburse any damage arising if the responsible authority does not recognise the declared origin as a result of an incorrect certificate or lack of verification options, unless such consequences are not attributable to him.

29. Delivery period; dispatch

- a) Any delivery periods, dates and cycles indicated in the purchase orders of CARL HAMM shall be binding (business on fixed terms). Unless agreed otherwise in writing, the delivery period shall commence on the date of the binding purchase order. If the delivery period is not specified in the purchase order and has not been agreed otherwise, it shall be two weeks from the date of conclusion of the contract. The business partner shall be obliged to inform us immediately in writing if it is probable that he will not be able to meet the agreed delivery periods – irrespective of the grounds. Only events of force majeure relieve the business partner from complying with the agreed delivery period, and only to the extent they have demonstrably occurred and CARL HAMM has been notified of them in writing within 24 hours.
- b) If the agreed fixed date is not complied with (except for force majeure) or the business partner is in default and CARL HAMM continues to insist on the fulfilment of the contract, we may demand – in addition to further statutory claims – lump sum compensation of our default damage amounting to 1% of the net price per complete calendar week, however together not more than 5% of the net price of the delayed goods. We reserve the right to prove any higher damage incurred. The business partner shall be entitled to prove that no damage was suffered at all or that the damage incurred is significantly lower.
- c) Unless provided for otherwise in writing, the date of receipt of the goods by us shall be decisive for compliance with the delivery date or the delivery period. This shall also apply to all shipment documents, operating instructions and other certificates necessary for the fulfilment of the business partner's obligation to deliver.
- d) Fire, acts of God, war, labour disputes, unrest, governmental actions and other unforeseeable, unavoidable and grave events (force majeure) shall release the business partner from his obligation to perform for the duration and extent of the disturbance. This shall also apply if these events occur at a time when the business partner affected is in default. The business parties shall be obliged to provide each other with the necessary information without delay and adjust their obligations in good faith to the changed circumstances.
- e) In the event that the business partner does not provide his performance, or does not provide his performance within the agreed delivery period, or is in default, our rights – in particular, regarding withdrawal and damages – shall be subject to the statutory provisions.
- f) The business partner can only claim that he has not received necessary documents to be submitted by us if he has not re-

ceived such documents even after having sent a written reminder.

- g) Deliveries ahead of schedule or delayed deliveries shall only be accepted upon a separate agreement in writing. Delivery shall be made with the specified shipping method. Failure to comply with this requirement shall entitle CARL HAMM to claim damages for the resulting loss. If the business partner has not been given express shipping instructions, the most cost-efficient shipping options shall be chosen for providing the performances. Additional expenses for the accelerated transportation in order to meet the delivery period shall be borne by the business partner.

30. Retention of title

- a) Any processing, mixing or combination (further processing) by the business partner of items provided by us shall be deemed to have been made for us as the manufacturer. The same shall apply to any further processing of the delivered goods by us such that we are then deemed to be the manufacturer and acquire the ownership of the product not later than upon its further processing in compliance with the statutory provisions.
- b) The business partner may claim the surrender of the goods on the basis of the retention of title only if he has first withdrawn from the contract.
- c) Title to the goods shall be transferred to us unconditionally and regardless of whether the purchase price has been paid. However, if we accept a conditional offer for the transfer of the title to the goods in an individual case, the retention of title of the business partner shall lapse not later than upon payment of the purchase price. In the ordinary course of business, we shall be entitled to resell the goods even before the payment of the purchase price under the condition of advance assignment of the resulting claim. In any case, all forms of retention of title shall be excluded, in particular any extended retention of title, transferred retention of title or retention of title to processed goods.

31. Confidentiality

- a) We shall reserve any property rights and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents. Documents of this kind shall be used exclusively for the contractual performance and shall be returned to us upon completion of the contract. The documents shall not be disclosed to any third parties, even after termination of the contract. The obligation of confidentiality shall expire only when and to the extent the knowledge contained in the documents made available has become generally known.
- b) The above provision shall apply *mutatis mutandis* to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, models, samples and other items which we supply to the business partner for production. Except where they are processed, any objects of this kind shall have to be kept separately at the expense of the business partner and must be insured to the customary extent against destruction and loss.

32. Assignment

- a) Without our prior consent, the business partner shall not be entitled to transfer the execution of the contract in whole or in part to third parties and/or to assign claims existing against us in whole or in part to third parties.
- b) The business partner hereby assigns to us – on account of performance – any claims to which it is entitled against his suppliers from and in connection with the delivery of defective goods or goods not having the guaranteed properties. He shall submit to us any documents necessary to assert such claims.

33. Termination

We shall also have the right to termination if, a.o., an application is made to open legal insolvency proceedings for against the assets of the business partner or the partner ceases to make any payments.

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34. Invoices; payment

- a) Unless provided for otherwise in the purchase order, invoices for each delivery shall be sent to CARL HAMM immediately upon dispatch of the goods. They shall contain any necessary details (company name, order number, cost centre number, VAT Reg. No., serial invoice number, registration number, etc.) and comply with the requirements of Sections 14, 14a German Law on Turnover Tax (UStG). Invoices with incomplete details shall not become due until their clarification by the business partner, and may be returned by CARL HAMM without having been processed.
- b) Payments shall be made after performance has been rendered at the place of performance within 30 days less 3% discount or within 45 days net upon receipt of the invoice, except in all cases subject to special agreements. Invoices sent early shall not fall due. Payment shall not be deemed acceptance that any delivery has been duly and properly made, and, therefore, shall not constitute a waiver with respect to claims from fulfilment of contract, damages, penalty, warranty or guarantee.
- c) Payment and cash discount periods shall commence from receipt of invoice, however not before receipt of the goods or, for performances, not before their acceptance and, to the extent documentation, inspection documents (e.g. factory certification) or similar documents are included in the scope of performances, not before they have been handed over to us according to the contract.
- d) If early deliveries are accepted, the due date shall depend on the agreed delivery date.
- e) We shall pay by bank transfer. Payment shall be deemed to be on time if the bank was ordered on the due date to effect the transfer.
- f) Any overdue payment interest shall be excluded. The default payment interest rate shall be 9 percentage points above the base interest rate according to Section 247 BGB. In any case we shall be entitled to prove that the damage caused by default is lower than the amount demanded by the business partner.

35. Defective delivery

- a) Unless agreed otherwise below, the statutory provisions shall apply to our rights in the case of any defects as to quality and defects in title of the goods (including wrong delivery and short delivery as well as improper assembly, inadequate assembly and operating instructions) and in the case of other breaches of duty by our business partner.
- b) In accordance with the statutory provisions, the business partner shall be liable in particular for ensuring that the goods comply with the subjective requirements at the time of transfer of risk to ourselves. In any event, agreed quality shall mean those product descriptions which are the subject matter of the contract – in particular, by way of description or reference in our purchase order – or which have been incorporated in the contract similarly to these GTC. In this respect, there shall be no difference whether the respective product description originates from the business partner or from us.
- c) In derogation from Section 442 Para. 1 Sentence 2 BGB, we shall be entitled to claims for defects without restriction, even if the defect remained unknown to us at the time of conclusion of the contract as a result of gross negligence.
- d) The statutory provisions (Sections 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial duty to inspect and to give notice of defects subject to the following conditions: Our obligation to inspect shall be limited to defects which are detected during the incoming goods inspection by external examination, including the delivery documentation (e.g. transport damage, wrong and short delivery) or during our quality control by way of random sample test procedures. The obligation to inspect shall not apply if acceptance is agreed for the delivery. Otherwise, it shall depend on the extent to which examination is expedient according to proper business procedures, taking into account the circumstances of the particular case. Our obligation to give notice of defects discovered at a later time shall remain unaffected. Notwithstanding our obligation to inspect, our complaint (notice of defect) shall be deemed to have been made without undue delay and in time if it is sent within eight calendar days from the time the defect was detected or from the time of delivery in the case of obvious defects.
- e) Subsequent performance shall also include the removal of the defective goods and their reinstallation to the extent the goods were installed in another item according to their intended purpose. The business partner shall always bear the costs incurred

by the business partner for the purpose of inspection and subsequent performance (including removal and reinstallation costs, if any) if it turns out that, in fact, there was a defect. Our liability to pay damages in the case of unjustified demands to remedy defects shall remain unaffected; however, we shall only be held liable if we were aware of the fact, or did not recognise due to gross negligence, that there was no defect.

- f) If the business partner fails to honour his obligation to subsequent performance – at our discretion, by removing the defect (rectification of defects) or delivering a non-defective item (replacement) – within a reasonable period of time set by us, we shall have the right to remedy the defect ourselves and claim compensation or an adequate advance payment from the business partner for the necessary costs. It shall not be necessary to set a deadline in the event that the subsequent performance by the business partner has failed or is unreasonable to us (e.g. due to special urgency, operating safety at risk or imminent occurrence of disproportionate damage); we shall inform the business partner immediately about such circumstances in advance, if possible.
- g) Otherwise, we shall be entitled in the case of a defect of quality or title to reduce the purchase price or withdraw from the contract according to the statutory provisions. In addition, we shall be entitled to damages and reimbursement of expenses.

36. Recourse against supplier

- a) We shall be entitled to the statutory rights of recourse within the supply chain (recourse against supplier according to Section 445a, 445b BGB) in addition to the claims for defects. We shall be entitled, in particular, to demand precisely that type of subsequent performance (rectification of defects or replacement) from the business partner which we owe to our customer in the individual case. This shall not restrict our statutory right to choose (Section 439 Para. 1 BGB).
- b) Before we acknowledge or fulfil a claim for defects asserted by one of our customers (including reimbursement of expenses pursuant to Sections 445a, 439 Para. 2 and 3 BGB), we shall notify the business partner with a brief description of the facts and ask him for a written comment. If such comments are not provided within a reasonable period of time and also no mutual resolution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our customer; in that case it shall be incumbent on the business partner to provide proof to the contrary.
- c) Our claims arising from the recourse against the supplier shall also apply if the goods have been processed by us or a customer of us, e.g. by incorporation in another product.

37. Manufacturer liability

- a) If the business partner is responsible for a product defect, he shall indemnify us and hold us harmless against any third-party claims (e.g. authorities) to the extent the cause originates from his range of control and organisation and he is liable himself in relation to third parties.
- b) Under his obligation to indemnify, the business partner shall reimburse any expenses pursuant to Sections 683, 670 BGB that arise out of or in connection with any recourse taken by third parties, including for recall campaigns carried out by us. We shall inform the business partner about the content and extent of recall campaigns to the extent possible and reasonable and give him the opportunity to comment. Any further legal claims shall remain unaffected.
- c) The business partner shall be required to take out, and maintain, a product liability insurance with a lump-sum amount insured of not less than EUR ten million per person/property damage.

39. Limitation

- a) Unless agreed otherwise, the mutual claims of the contract parties shall become statute-barred in accordance with the statutory provisions.
- b) In derogation from Section 438 Para. 1 No. 3 BGB the general limitation period for claims for defects shall be three years from the transfer of risk. If acceptance has been agreed, the limitation period shall begin upon acceptance. The limitation period of three years shall apply *mutatis mutandis* also to claims arising from defects in title, the statutory limitation period for claims in rem of third parties for the restitution of property (Section 438 Para. 1 No. 1 BGB) remaining unaffected; beyond that, claims arising from defects in title shall on no account become statute-

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barred as long as the third party can still assert the right against us - particularly if it has not yet become statute-barred.

- c) The limitation periods under the law governing the sale of goods or services, including the above extension, shall apply to any contractual claims for defects to the extent permitted by law. To the extent we are also entitled to non-contractual claims for damages because of a defect, the standard statutory limitation period (Sections 195, 199 BGB) shall apply, unless in the actual individual case concerned the application of the limitation periods under the law governing the sale of goods or services leads to a longer limitation period.

40. Provision of materials

Materials provided shall remain the property of CARL HAMM and shall be stored, marked and managed separately. Its use shall be permitted only for purchase orders placed by CARL HAMM. In the case of any deterioration, damage or loss, the business partner shall be obliged to replace such material.