

**Purchasing General Terms & Conditions**  
**for**  
**HOERBIGER companies registered in THE UNITED**  
**STATES OF AMERICA ("Buyer")**  
**for goods and services with the exception of direct**  
**production material for the automotive industry**

**1. Scope, Form**

**1.1** Subject to the second sentence of section 1.2, these General Purchasing Terms & Conditions ("**GTC**") shall apply for all contractual agreements made by the Buyer with business partners and suppliers ("**Seller(s)**"). Each purchase order that the Buyer issues (each, an "**Order**") is the Buyer's offer to purchase products or services from the Seller. When the Seller accepts an Order, either by acknowledgement, commencement of performance, or by delivery of the products and services ordered, the Order will become a binding contract together with these Purchasing General Terms and Conditions ("**GTC**") and any other documents specifically incorporated into the GTC or Order or separately agreed to in a Signed Writing (collectively, the "**Contract**")

**1.2** The GTC shall in particular apply for contracts for the purchase of movable items ("**Goods**") – regardless of whether the Seller manufactures the Goods itself or buys them from suppliers – and for contracts for services ("**Services**") (Goods and Services, including tangible deliverables provided through Services, hereinafter collectively referred to as "**Deliverables**"). However, the GTC does not cover contracts for the purchase of direct production material for the automotive industry. Such contracts are subject to particular purchase terms of the Buyer, which are located on the Buyer's purchasing department service portal ([procurement.hoerbiger.com](http://procurement.hoerbiger.com)). Unless otherwise agreed, the then-current version of the GTC at the time of the Seller's acceptance of the Buyer's Order shall also cover similar and future transactions without the Buyer having to refer to the GTC in every case. The most recent version of the GTC is located on the Buyer's purchasing department service portal ([procurement.hoerbiger.com](http://procurement.hoerbiger.com)).

**1.3** This Contract constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. Any differing, conflicting or supplementary terms of business set out by the Seller shall only constitute part of the Contract if and insofar as the Buyer has expressly consented to their validity in writing. This requirement for consent shall apply in all cases regardless of the Buyer's knowledge of the Seller's general terms and conditions.

**1.4** Special agreements made with the Seller in a Signed Writing in individual cases (including subsidiary agreements, additions and amendments) shall always take precedence over these GTC.

**1.5** Any notice or other communication of legal relevance to the Contract (e.g., time or place of delivery or shipment, reminder, cancellation) must be given in writing in order to be legally effective, subject to requirements on form and other documentary evidence under Applicable Law, particularly if there is doubt about the authority of the person giving notice.

**1.6** The Seller shall promptly inform the Buyer of changes to its trading name, changes to its legal structure and changes in its participation, shareholder or ownership structure that have a material effect on the supply relationship between the Buyer and the Seller. A change having a material effect on the supply relationship exists in the case of a transfer of all or essentially all

of the assets of the Seller, a merger or demerger of the Seller with or to another legal entity, the conclusion of a controlling or profit and loss transfer agreement by the Seller as the controlled company or the acquisition of at least twenty-five (25) percent of the voting rights in the Seller's company by one or more purchasers acting in common in one or more transactions.

**1.7** Definition of terms, unless used only for individual sections:

- (a) "Acceptance": see section 4.3
- (b) "Applicable Law": any federal, state, international or local law, regulation ordinance, court order or other legal process.
- (c) "Background Intellectual Property Rights": see section 11.3
- (d) "Business Days": days with the exception of Saturdays, Sundays, public holidays and shutdowns at the Buyer's location.
- (e) "Buyer": see the header of the GTC.
- (f) "Contract": see Section 1.1
- (g) "Deliverables": see section 1.2
- (h) "Force Majeure": see section 5.1
- (i) "Further Processing": see section 10.7
- (j) "Goods": see section 1.2
- (k) "GTC": see section 1.1
- (l) "Intellectual Property Rights": see section 11.1.
- (m) "In writing": includes any writing, e.g. by email or electronic data exchange, unless a Signed Writing is expressly required.
- (n) "New Intellectual Property Rights": see section 11.2
- (o) "Non-conforming Deliverable": see section 7.11
- (p) "Order": see section 1.1
- (q) "Proprietary Materials": see section 10.2
- (r) "Seller": see section 1.1
- (s) "Services": see section 1.2
- (t) "Signed Writing": A writing executed with a handwritten signature (in the original) by the authorized representative, unless otherwise permitted by the Buyer (e.g., an electronic signature) or required by Applicable Law.
- (u) "Third Party Contractors": see section 4.1
- (v) "Transition Period": see section 20.5

**2. Offer and Acceptance, Reservation of Changes**

**2.1** The Buyer will in principle make binding Orders electronically, in which case the Order does not need to be in a writing executed with a handwritten signature. The Seller shall advise the Buyer of obvious errors (e.g., misspellings and errors in calculation) and incompleteness in the Order and related Order documents so that the Order can be corrected or completed prior to acceptance, failing which the Contract shall be deemed invalid.

**2.2** The Seller is required to either confirm Orders of the Buyer in writing within a period of three (3) Business Days or by sending the Goods without reservation.

**2.3** Late acceptance of the Order or a conditional confirmation of the Order by the Seller will be deemed a new offer and shall require express acceptance by the Buyer.

**2.4** The Buyer shall have the right to demand reasonable changes with regard to the Deliverables even after the Contract has been concluded, particularly with respect to specifications, drawings, design, construction, the time and place of delivery, packaging, quality, quantity and means of transport. The Seller must propose changes to the Buyer that it deems necessary or expedient to comply with Applicable Law and must promptly advise the Buyer if a change entails an increase or decrease in the costs for the Seller or potentially delays the time of delivery.

The parties shall then negotiate an equitable adjustment of fees due under the Order and the Buyer will amend the Order accordingly. The amended Order will be deemed accepted by the Seller if the Seller does not object to the amended Order in writing within five (5) Business Days of receipt. The Seller shall execute the change in accordance with the Buyer's demand regardless of any fee adjustment.

### 3. Delivery Period and Delay in Delivery

**3.1** The delivery period indicated by the Buyer in the Order shall be binding. If the delivery period is not indicated in the Order and has not been agreed elsewhere, it shall be two (2) weeks from the Seller's acceptance of the Order. The Seller shall promptly notify the Buyer in writing if it expects to be unable to meet agreed delivery periods, for whatever reasons.

**3.2** If the Seller does not provide Deliverables within the agreed delivery period or is otherwise in breach, the Buyer's rights (in particular the right to cancellation and refund) shall be governed by Applicable Law and shall be without prejudice to the provisions of sections 3.3 and 3.4.

**3.3** In the case of Orders that include multiple deliveries (i.e., a "series" Order), if the Seller is in default even with a partial Order the Buyer shall have the right, after a reasonable cure period has expired without result, to cancel the Order affected by the default or optionally from all still outstanding partial Orders in accordance with Applicable Law. However, the Buyer may also independently provide or procure from third parties some or all of the Deliverables owed by the Seller in order to maintain series production, and cancel the affected Deliverables by reducing both the forecast delivery requirements and the affected Orders, without payment obligation or other liability or penalty, regardless of the legal grounds. The Buyer shall also have the right to demand that the Seller surrenders all tools, documents, materials, etc. that are necessary for rendering the Deliverables and provide expert and technical assistance and support for as long as the Seller is unable to deliver.

**3.4** If the Seller is in default under section 3.3, the Buyer – in addition to further statutory claims – is entitled to demand a lump sum compensation payment for the losses suffered by the delivery delay, at one (1) percent of the net price of the applicable Deliverable(s) per full calendar week of delay, capped at five (5) percent of the net price of the late Deliverable(s). The Buyer retains the right to demonstrate that a greater loss has been incurred, in which case this clause shall be without prejudice to the assertion of such claim. The Seller retains the right to demonstrate that no loss or a substantively lower loss has been incurred.

**3.5** The Seller may only appeal on the basis that the Buyer failed to provide the necessary documents, information, materials or packaging within a reasonable period of time after the Seller's request in writing.

**3.6** The Buyer reserves all rights accrued in the event of the Seller's delivery default, even if the Buyer subsequently consents to a change in the agreed delivery period.

### 4. Delivery, Passage of Risk, Delay in Acceptance

**4.1** The Seller may not use subcontractors of other third parties ("Third Party Contractors") to perform under the Contract without the Buyer's written consent. Any consent of the Buyer shall not release the Seller from its sole responsibility with regard to the selection and use of Third Party Contractors and their services. The Seller (a) shall enter into an agreement with the Third Party Contractor with terms no less restrictive than those in the Contract; (b) is jointly and severally liable to the Buyer for any breach or default by any such Third Party Contractor of any such

requirements; and (c) shall monitor and ensure compliance with the Contract by the Third Party Contractor, and remedy any breaches by the Third Party Contractor. The Seller shall bear the procurement risk for its performance under the Contract.

**4.2** The Seller may not deviate from the specifications or initial sample, or make process changes, including any transfer or relocation of production equipment (a "Deviation"), without the Buyer's prior written consent. The Seller shall perform a detailed examination of the effects of any requested Deviation, including but not limited to effects on continuous delivery, specifications, suitability, prices, costs, or customs and export requirements and treatment, and shall set out the reasons for their necessity. Any Deviation shall require the prior written consent of the Buyer. The Seller acknowledges that any Deviation can affect functionality and/or safety in the respective application by the Buyer and by the Buyer's customer. The Seller shall bear all costs and expenses incurred as a result of the change process and its implementation.

**4.3** Unless otherwise agreed with the Seller, title to the Deliverables and risk of loss shall transfer from the Seller to the Buyer in accordance with **DDP** -- Delivered Duty Paid (named place of destination) Incoterms 2020. In the absence of agreement with the Seller on the delivery location, Deliverables shall be delivered to Buyer's registered office. If the Deliverables are subject to inspection or other acceptance procedures (either required by Applicable Law or by agreement between the parties), the successful completion of such inspection or acceptance procedures, as determined by Buyer ("Acceptance") is required prior to transfer of title to the Deliverables and shall be without prejudice to the further provisions of section 4.5. Deliverables shall be deemed Accepted in the event the Buyer is late in providing or rejecting Acceptance pursuant to section 4.6 for reasons within Buyer's reasonable control.

**4.4** The delivery notes must contain all content pursuant to DIN 4991 or VDA 4912 or as specifically requested by the Buyer, in particular the Buyer's Order number and the Seller's supplier number. The Seller shall also make the delivery documents required by the Buyer in accordance with the Buyer's requirements available in digital form pursuant to VDA 4987 (ASN Advanced Shipment Notification). If the delivery note is missing or incomplete, the Buyer will not be subject to liability or penalty for the resulting delays in processing or payment. The Buyer must also be sent a corresponding shipping notification with the information specified in this section 4.4 separately from the delivery note. Goods consignments must always be identified with a label (Global Transport Label GTL pursuant to VDA 4994).

**4.5** If the Deliverables rendered by the Seller for the Buyer are performances of Services (e.g., design services, creation of prototypes, repairs, programming services), the Buyer will conduct an Acceptance process for Deliverables provided through the Services and prepare a written report with the results of the Acceptance process. The Seller shall promptly advise the Buyer in writing of any criteria the Seller believes might apply to such Acceptance process, such as suitable test methods for the Buyer. Payment of an invoice or the Buyer's reasonable use of the Deliverables on a trial basis shall not be considered Acceptance by the Buyer of the relevant Services. Until the Buyer accepts the applicable Deliverables resulting from the Services, the Buyer may cancel performance of the Services at any time.

**4.6** Buyer shall provide Acceptance or rejection of the applicable Deliverables after a reasonable period required for inspection in accordance with sections 4.3 and 4.5, or as otherwise required by Applicable Law. During such period, the

Seller must continue to perform in accordance with any agreed dates for a particular obligation (e.g., the provision of material).

**4.7** Unless particularly regulated in the Buyer's logistics and packaging requirements, the Seller shall pack the Deliverables properly in customary recyclable packaging. The Seller shall promptly advise the Buyer in writing of possible risks associated with the Buyer's logistics and packaging requirements. The Seller shall at the request of the Buyer take back packaging material at its own expense.

**4.8** In the case of delivery earlier than the delivery date originally agreed, the Buyer reserves the right to reject the applicable Deliverable and return the Deliverable at the cost and risk of the Seller or to store it temporarily until the delivery date originally agreed to. In the case of temporary storage, the Seller hereby consents to the originally agreed-to delivery date being the date the Deliverable is delivered, so that temporary storage will be at the risk of the Seller.

## 5. Force Majeure

**5.1** A delay or failure in the fulfillment of contractual obligations will be excused and will result in extension of the delivery period for the duration of the Force Majeure event in the event of a delay or failure for reasons outside of a party's control, including but not limited to acts of governmental, lawful labor disputes (including lockouts and strikes), pandemics and epidemics, floods, storms, explosions, uprisings, natural catastrophes, war and sabotage ("**Force Majeure**").

The party concerned may only invoke Force Majeure if it gives notice of the nonperformance (including the anticipated duration of the non-performance) to the other party promptly after becoming aware that it has occurred or will occur. The party concerned shall consult the other party on suitable remedial measures and perform these at its own expense as necessary to overcome or mitigate the event. Notwithstanding the foregoing, If the Seller is unable to perform for any reason, Buyer may purchase the applicable Deliverables from other sources and reduce its purchases from Seller accordingly without liability to the Seller, regardless of legal grounds. The Buyer shall also have the right to demand that the Seller provide, free of charge, all tools, documents, materials, information, etc. that are necessary for rendering the Deliverables and provide expert and technical assistance and support for the duration of the hindrance to delivery.

**5.2** If a Force Majeure event lasts longer than thirty (30) calendar days without interruption or sixty (60) calendar days within one hundred and eighty (180) consecutive calendar days, the Buyer may – without prejudice to its other rights – terminate the Contract in its entirety with thirty (30) days written notice, without liability or penalty to either party, with the exception of obligations relating to Deliverables already delivered.

## 6. Prices and Payment Terms, Invoicing

**6.1** The price indicated in the Order shall be binding. The Order price includes all applicable federal, state, provincial, and local sales and other taxes and any duties applicable to provision of the Deliverables, unless required by law to be paid by or collected from the Buyer, in which case any such taxes must be itemized separately on the applicable invoice.

**6.2** Unless otherwise agreed for the applicable Deliverable, the price of a Deliverable includes both the Deliverable and related incidental services required in the delivery of the Deliverable (e.g., assembly, installation) as well as expenses (e.g., packaging, transport costs including any transport and liability insurance, and assembly insurance).

**6.3** Should the Seller, during the term of a Contract for the delivery of products, supply the contractual or similar products in comparable quantities to a third party on more favorable terms, particularly with regard to price, discounts, technology, quality, payment terms, delivery periods or other conditions ("**Terms**"), the Seller shall promptly notify the Buyer and automatically grant the Buyer these more favorable Terms. The new Terms shall apply retroactively from the date on which the Seller granted these favorable Terms to the third party.

**6.4** The Buyer shall pay the agreed price within sixty (60) calendar days following Acceptance of the applicable Deliverables in accordance with the terms of the Order and receipt of an invoice pursuant to section 6.5. In the event of early delivery pursuant to section 4.8, the original due date for the payment pursuant to this section 6.4 shall continue to apply. The Buyer and the Seller shall each bear the fees charged by their respective banks. If the Buyer makes payment within fourteen (14) calendar days of the due date, the Seller shall grant the Buyer a discount of three (3) percent on the net invoice amount. In the case of a bank transfer, payment will be considered timely if the Buyer's instruction to transfer reaches the Buyer's bank before the due date expires. The Buyer shall not be responsible for delays caused by the banks involved in the payment process.

**6.5** To enable the speedy and efficient processing of invoices, invoices must be issued solely in PDF form and sent to the email address indicated in the Order. Invoices must meet the following requirements:

- (a) The Buyer Order number must be indicated on invoices relating to specific Orders.
- (b) The name of the Buyer's contact person and – if stated – the cost center must be indicated.
- (c) A separate invoice must be issued for each Buyer Order number.
- (d) The invoice must conform to the corresponding Order, and in particular must use the same material numbers and order units and, where possible, the same Order text.
- (e) If the Buyer represents an entity, the entity that issued the Order must be clearly identified on the invoice as the recipient of the Deliverables.

**6.6** The Buyer shall not owe any interest after the due date unless required under Applicable Law. Late payment shall be governed by Applicable Law.

**6.7** In addition to any right of setoff or withholding of payment provided by Applicable Law, all amounts due the Seller will be considered net of amounts owed by the Seller to the Buyer. The Buyer may set off against or withhold from any payment owed to the Seller any amounts due to the Buyer from the Seller, or in the event that the Buyer has claims against the Seller arising from failure or delay in performance.

**6.8** The Seller shall only have a right of set-off or to withhold payment on account of counterclaims that have been declared final in a court of law or are undisputed.

**6.9** Each party shall bear the costs of their own banking and payment operations, in particular their foreign bank transfers.

## 7. Deficient Performance, Notifications of Defects, Processing of Complaints, Deactivation

**7.1** Unless otherwise determined below, Buyer's rights in the event of deficiencies with respect to the Deliverables (including incorrect and short deliveries, inexpert assembly, deficient assembly, operator or user instructions) and other breaches by the Seller shall be governed by Applicable Law.

**7.2** A Deliverable is considered free from defects if, at the time of transfer of risk and transfer of title to the Buyer of the Deliverable, the Deliverable:

- (a) conforms one hundred (100) percent to the specifications, statements of work, samples, descriptions, performance standards, performance requirements, and product characteristics specified in the Contract or otherwise agreed or required by Applicable Law;
- (b) is of good quality in terms of material and workmanship and is free of defects and suitable for the Buyer's customary use known to the Seller or recognizably intended by the Buyer;
- (c) complies with all Applicable Laws of the jurisdictions in which the Deliverable is to be sold;
- (d) does not infringe any third-party rights, in particular Intellectual Property Rights, and are transferred to the Buyer with good title, free of all liens, encumbrances, and rights of third parties and free of any other restriction with regard to use, manufacture, modification and/or sale, including import and export;
- (e) does not infringe any third-party ownership or Intellectual Property Rights with regard to their manufacturing process and technology when used in accordance with the Contract; and
- (f) reaches the Buyer's place of delivery on the delivery date, in the agreed quantity and packed in accordance with the Contract.

**7.3** If the Seller's Services result in the production of a Deliverable, the Deliverable will be deemed non-conforming if:

- (a) an agreed assembly is performed deficiently or inexpertly; or
- (b) suitable operating and user instructions in English or the language required by the Buyer are missing or incomplete.

**7.4** The Seller shall indemnify the Buyer against all claims by third parties against the Buyer that a Deliverable or its use infringes or is alleged to infringe a third party Intellectual Property Right. The Seller shall reimburse the Buyer for all applicable expenses in connection with legal action by third parties, unless the Seller is neither responsible for the infringement of the Intellectual Property Right nor, using commercially reasonable efforts, could have known of the infringement of the Intellectual Property Right at the time of delivery.

**7.5** The parties shall promptly inform each other of infringement and alleged infringements of third-party rights (in particular Intellectual Property Rights) of which they become aware.

**7.6** Those Deliverables descriptions such as drawings, specifications, initial samples, manufacturing processes and materials referenced in the Contract shall be considered agreement on quality regardless of whether the description comes from the Buyer, the Seller or the manufacturer.

**7.7** The Seller shall promptly notify the Buyer if it becomes aware of circumstances indicating that the Deliverables are not or may not be suitable for the Buyer's customary use known to the Seller or reasonably intended by the Buyer. This duty of notification shall also exist in the event that the Buyer has specified to the Seller the intended use of the applicable Deliverable.

**7.8** The Buyer shall not be under any obligation to inspect the Deliverables or make special inquiries about any defects when executing the Contract. The Buyer shall therefore also have unrestricted defect claims if, as a result of the Seller's negligence, the Buyer remained unaware of the defect when executing the Contract.

**7.9** The Buyer's duties to inspect and notify the Seller of defects shall be governed by Applicable Law, with the proviso that the Buyer's duty to inspect shall be limited to defects discovered in

the course of inspection of the Deliverables upon receipt against the applicable shipping documents (e.g., damage in transit, incorrect and short deliveries), or defects identifiable from sampling procedures during the Buyer's quality control. If the parties have agreed to an Acceptance procedure, no initial duty to inspect and notify of defects shall exist. The duty to inspect in all other respects shall be as reasonable and feasible in the ordinary course of business, subject to the circumstances of the individual case, and shall be without prejudice to the Buyer's duty to give notification of hidden defects later discovered. Notwithstanding a duty to inspect and notify of defects, a notification of defects given by the Buyer shall always be considered timely provided if sent within ten (10) Business Days of discovery or, in the case of obvious defects, of delivery.

**7.10** Buyer's remedies include the removal of a Non-conforming Deliverable (as defined in section 7.11 below) and re-installation if the Deliverable had been installed in or attached to another item, depending on the nature and intended purpose of the Deliverable, and shall be without prejudice to the Buyer's claim for reimbursement of related expenses.

**7.11** If a Deliverable fails to meet the requirements of the Contract (a "**Non-conforming Deliverable**"), without limiting or affecting the Buyer's other rights or remedies available under the Contract or Applicable Law, Buyer may, at its option and in its sole discretion: (a) reject the non-conforming Deliverable; or (b) at Seller's expense, repair, rework or replace the non-conforming Deliverable, or otherwise remedy any non-conformity. Additionally, the Buyer shall have the right to (i) receive a price reduction with respect to the Non-conforming Deliverable; (ii) cancel all or part of the applicable Contract in accordance with Applicable Law in a reasonable time and a manner acceptable to Buyer; or (iii) receive a refund of fees and reimbursement of expenses resulting from the Non-conforming Deliverable in accordance with Applicable Law. Notwithstanding the rights of the Buyer under Applicable Law and the provisions of this section 7.11, if the Seller fails at the Buyer's option to either repair, rework or replace the Non-conforming Deliverable(s), or to otherwise remedy any nonconformity in a reasonable amount of time and a manner acceptable to the Buyer, at the Seller's risk and expense (including applicable shipping costs), the Buyer may, without limiting or affecting the Buyer's other rights, rectify the defect itself and demand (1) reimbursement from the Seller for its necessary expenses; or (2) a corresponding credit. If subsequent performance by the Seller fails or is unreasonable to the Buyer (e.g., because of particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no time limit needs to be set; the Buyer will promptly inform the Seller of such circumstances. Warranties under the Contract will also apply to the repaired or replaced Deliverable(s).

**7.12** As part of its quality support for its Deliverables, the Seller shall conduct an examination of complaints from the Buyer in accordance with DIN ISO 10002 and deliver a duly completed 8D report to the Buyer within the reasonable period of time acceptable to Buyer. The Seller shall make the analysis details and examination results available to the Buyer and take suitable corrective actions, subject to provisions of these GTC. If the Buyer does not receive a duly completed and transparent 8D report and/or analysis details and examination results from the Seller, and if no alternative amicable agreement on corrective action is reached between the parties, it will be assumed that the Deliverable subject of the complaint was actually already deficient at the time of the passage of risk unless the Seller can demonstrate otherwise. The Seller shall bear the costs incurred for subsequent inspection and performance if, after the initial inspection has been performed, a defect exists or is irrefutably presumed to exist in accordance with the above provisions,

subject the Buyer's liability in the case of unjustified complaints due to Buyer's negligence in failing to recognize that no defect existed.

**7.13** Unless otherwise expressly regulated in these GTC, payment, inspection or receipt by the Buyer of the Deliverables shall constitute neither Acceptance of the Deliverables as conforming to the Contract nor a waiver of claims arising under warranty or breach of Contract.

**7.14** Non-conforming Deliverables will be permanently and appropriately marked as such, or deactivated at the Seller's expense after the Seller has allowed the Buyer to identify the Non-conforming Deliverables and determine the corresponding quantity of Non-conforming Deliverables. The Buyer shall have the right to determine the method of deactivation of the Non-conforming Deliverables to achieve the intended purpose while also giving reasonable consideration to the Seller's financial interests (particularly with regard to the costs of deactivation), and to require appropriate evidence.

**8. Recourse against Suppliers**

**8.1** Remedies that the Buyer may have against the Seller's suppliers under Applicable Law shall be without prejudice to any claims for defects hereunder, including but not limited to claims for performance or substitute delivery owed to the Buyer (or that the Buyer owes to its customer, as applicable), or the Buyer's choice of remedies under this Contract and Applicable Law.

**8.2** The Buyer shall not acknowledge or remedy its customer's claim for defects prior to notifying the Seller with a brief statement of the facts and request for Seller's written recommendation. If the Seller does not provide a substantiated recommendation within a reasonable period of time and the parties cannot reach an amicable solution, the Buyer's customer shall be deemed owed a remedy by the Seller, unless the Seller is able to demonstrate otherwise.

**8.3** The Buyer's remedies under this section 8 shall apply even if the defective Deliverables were processed by the Buyer or another entity, e.g., through installation in another product.

**9. Product Liability**

**9.1** The Seller shall indemnify and hold harmless the Buyer, its subsidiaries, affiliates, and their respective employees, officers, directors, agents or representatives, against third-party claims for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, and regardless of whether the Buyer contributed to the damages, if and to the extent caused by (a) the defective design or manufacture of Goods; (b) the Seller's provision of Services to the Buyer; (c) the Seller's breach of any representations or warranties; or (d) the Seller's breach of, or non-performance under, the Contract.

**9.2** Where the Seller has an obligation to indemnify pursuant to section 9.1, the Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from the Seller's failure to deliver conforming and non-defective Deliverables, even if the Seller has cured the failure. This includes but is not limited to compensating the Buyer for: (a) any amounts charged by Buyer's customer(s); (b) all costs of containment, sorting, repair, rework, replacement, cure, cover, or any other costs incurred by the Buyer, as reasonably determined by the Buyer; (c) all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which the Buyer or any customer is required to participate because of inclusion of Deliverables sold by the Buyer; and (d) all legal fees and related costs that the

Buyer incurs in having to enforce the Contract. No limitations on the Buyer's rights or remedies in any of the Seller's documents will operate to reduce or exclude the Seller's liability; provided, however, that the Buyer will exercise its reasonable discretion in taking into account the interests of the Seller. The Buyer will – where possible and reasonable – inform the Seller of the content and scope of any of the activities it takes to address the Seller's default pursuant to this section 9.2 and offer it the opportunity to comment. The Buyer's cooperation pursuant to this section shall be without prejudice to further and/or other rights of the Buyer under the Contract or Applicable Law.

**10. Buyer's Ownership Rights, Seller's Retention of Title**

**10.1** Proprietary Materials (as defined in section 10.2) are and shall remain the sole property of the Buyer and must be appropriately, clearly and permanently identified as such by the Seller. They may only be used for the Deliverables ordered by the Buyer and shall be returned to the Buyer, as applicable, upon fulfillment of the applicable Order, upon termination of the Contract, in the case of Force Majeure, or if the Buyer requests their return. The Seller must present to the Buyer on request at any time suitable evidence (e.g., confirmation, photographs) of the fulfillment of its obligations.

**10.2 "Proprietary Materials"** mean illustrations, design drawings, commercial and technical data, contractual and official documents, business data, operating procedures, know-how and inventions, as well as further information of a tangible or intangible nature; and specimens, prototypes, special resources, material for production or packaging, computer equipment, transport containers and measuring equipment, as well as other objects, and all associated derivatives, enhancements and modifications:

- (a) which the Buyer makes available to the Seller; or
- (b) for which the Buyer pays an amount stated and agreed by the Seller and/or for which it can be assumed that the amount will be amortized over the receipt of the benefit; or
- (c) which are based on indispensable technological knowledge, ideas or equipment of the Buyer and (i) are specifically used for the Deliverables or (ii) are created thereby or (iii) are manufactured in accordance with the Buyer's instructions.

**10.3** The Seller shall, in accordance with Applicable Law and this Contract, safeguard the Proprietary Materials from access by third parties, loss, damage and deterioration, and maintain the Proprietary Materials separately from other items.

**10.4** The Seller shall insure the Proprietary Materials appropriately against theft, damage and loss at their reinstatement/production cost and include them in an all-risks insurance policy at their reinstatement/production cost.

**10.5** Proprietary Materials may not be disposed of, relocated, consumed, scrapped or transferred as security without the prior written consent of the Buyer.

**10.6** In the case that Proprietary Materials are returned, they must be returned properly and – if applicable – in the maintained condition and appropriate transport packaging, at the Seller's expense. The Seller may only keep copies of proprietary information included in the Proprietary Materials to the extent required by law or for the purposes of proving the fulfillment of its obligations, and subject to the confidentiality provisions of this Contract.

**10.7** The processing, mixing or combination ("**Further Processing**") by the Seller of Proprietary Materials with each other and/or with items of the Seller shall in each case be performed solely for the Buyer, so that ownership of the new item created by Further Processing shall accrue solely to the Buyer

and shall be effectively assigned to it. No joint creation of Intellectual Property Rights in favor of the Seller may occur under this Contract. The same shall apply in the case of Buyer's Further Processing of Deliverables with other items, such that the Buyer shall be regarded as the manufacturer of the item created thereby and acquires sole title both to the Seller's Deliverables and to the newly created item upon Further Processing; the Seller expressly agrees that the Buyer solely owns the delivered Deliverables and the newly created item – notwithstanding any earlier transfer of title – upon Further Processing.

**10.8** Transfer of title to Deliverables shall be unconditional and without regards to payment. If, however, the Buyer agrees in writing that transfer of title to Buyer in the individual case is conditional upon payment, the Seller's retention of title shall expire immediately upon payment for the Deliverable supplied. Notwithstanding the foregoing, the Buyer may resell the Deliverables in the ordinary course of business prior to payment, with a presumption of ownership and right to Further Processing in the ordinary course of business (which Buyer has the right to extend to customers upon resale). Without prejudice to section 10.8, all other forms of retention of title by Seller are expressly excluded, in particular with respect to activities through Further Processing.

**11. Intellectual Property Rights**

**11.1 "Intellectual Property Rights"** within the meaning of these GTC mean (a) patents, patented articles, patent applications, designs, industrial designs, test protocols, trademarks, utility models, semiconductor products which have been requested, granted or registered, moral rights, inventions whether or not capable of protection by patent or registration, techniques, and technical data; (b) know-how, trade secrets, and (c) copyright and related proprietary rights, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. The Buyer alone is entitled to the Intellectual Property Rights in or to the Proprietary Materials. To the extent that the Seller requires the use of Proprietary Materials to render the Deliverables under an Order, the Buyer grants the Seller a simple, non-transferable and non-sublicensable right to use the Proprietary Materials during the term and solely for the purposes of this Contract.

**11.2** The Buyer alone is entitled to the Intellectual Property Rights created in the manufacture of Deliverables of the Seller or its employees and third parties engaged by it ("**New Intellectual Property Rights**") and – except in the case of section 11.3 – the Seller shall assign these Intellectual Property Rights to the Buyer in full. The Seller shall be bound to ensure that the rights pursuant to sections 11.3 through 11.5 can be granted to the Buyer in full and that the authors acting for it irrevocably waive their right to be named as authors under copyright law.

**11.3** Insofar as the Seller already has Intellectual Property Rights (as owner or under license) in connection with the Deliverables under these GTC ("**Background Intellectual Property Rights**") and uses these for this manufacture, the Seller shall notify the Buyer of these in writing in the applicable Order or otherwise in writing in prior to execution of the Contract.

**11.4** Insofar as the Buyer or third parties authorized by it require the Background Intellectual Property Rights of the Seller in order to use the Deliverables, the Seller grants them an unlimited, fully-paid, royalty-free, non-exclusive, perpetual, irrevocable, transferable, sublicensable without limitation, worldwide (unless the parties have agreed to a specific territory) right and license to use the Background Intellectual Property Rights for this

purpose, including the right of modification, reproduction and distribution and the right of assignment in whole or in part. If the use recognizable to the Seller is intended to be permanent, the right of use shall be unlimited in time.

**11.5** Insofar as the scope of performance includes software, and unless expressly agreed otherwise, the provisions of sections 11.1 through 11.5 shall also apply for the software, including its documentation and source code, which shall be considered Intellectual Property Rights. Insofar as the software consists of software and software components that the Seller programs specifically for the Buyer, the Seller shall promptly transfer the source code to the Buyer as necessary for its functionality, interoperability and need for adaptation by the Buyer. The rights of use and exploitation shall extend to the object code, the documentation and, if transferred, the source code also. In other respects the provisions in section 11.3 to 11.5 shall apply analogously.

**12. Spare Parts**

**12.1** The Seller shall be bound to keep spare parts for the Deliverables supplied to the Buyer in stock for a period of at least fifteen (15) years after delivery.

**12.2** If the Seller decides to cease the production of spare parts for the Deliverables delivered to the Buyer, it shall promptly notify the Buyer. Subject to section 12.1, such notice must be given at least twelve (12) months before the cessation of production.

**13. Conformity**

**13.1** Buyer's quality assurance requirements referenced herein, and located on Buyer's purchasing department service portal ([procurement.hoerbiger.com](http://procurement.hoerbiger.com)), are a material part of the Contract.

**13.2** In addition to the requirements under section 13.1, with respect to the Deliverables the Seller is required to observe all globally applicable provisions, directives, standards, laws and relevant requirements of Buyer's customers of which reflect all applicable state of the art and technology and safety and environmental requirements, including, as applicable, ISO TS 16949 IATF 16949 / ISO 9001, U.S. Occupational Safety and Health Act of 1970 (OSHA), the Canadian Hazardous Products Act, AIAG documents (APQP, PPAP, MSA and SPC) and VDA 6.1 ("Verband der Automobilindustrie"), Directive (EC) 2000/53 ("ELV Directive"), Regulation (EC) 1907/2006 ("REACH Regulation"), Directive (EC) 2002/95 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, the Global Automotive Declarable Substance List ([www.gadsl.org](http://www.gadsl.org)), the Conflict Minerals Regulation pursuant to section 1502 of the Dodd Frank Act and Regulation (EU) 2017/821 and the associated OECD Guidelines Annex II, all in the version applicable at the time of performance.

**13.3** The Deliverables may not contain and may not release (a) any substances which are classed as or suspected of being carcinogenic, mutagenic or toxic to reproduction; or (b) any artificially radioactive substances.

**13.4** In the event that provisions of the above requirements overlap in content or deviate from each other, the stricter requirement shall always prevail.

**13.5** Should a manufacturer's declaration or a declaration of conformity (CE) within the meaning of Directive (EC) 2006/42/EC ("**Machinery Directive**") be required for the Deliverables, the Seller must promptly make this available upon request, at Seller's expense. If a safety data sheet or substance safety report is required for the Deliverables, the Seller shall make the corresponding documents available to the Buyer at Seller's expense.

**13.6** The Seller is aware that the Buyer will transport the Deliverables worldwide by truck, rail and/or air or water.

**13.7** With the offer, the Seller shall send to the Buyer a fully completed safety data sheet for materials (substances, preparations) and objects (e.g., products, services, parts, technical equipment, uncleaned empties) if the Goods purchased herein are considered toxic or hazardous as defined in the applicable regulations and are therefore subject to regulations requiring special treatment with regard to packaging, transport, storage, handling or waste disposal. In the event of changes in the materials, Goods or legal situation, the Seller shall send updated data sheets immediately. The Seller must promptly provide all information and documents required in connection with section 13 to the Buyer promptly for review. The Seller shall permit the Buyer and its representatives to inspect all production and test records, and other documents and data – regardless of how stored – in connection with the rendering of the Deliverables, including after the end of post-series delivery. The Seller shall to that end store the documentation in a suitable, organized manner.

#### 14. Labelling of the Goods, Advertising

**14.1** The Seller shall label the Goods in accordance with the Buyer's instructions.

**14.2** Neither the Seller nor the Buyer may use the other party's logos, tradenames, trademarks or service marks, or copyrighted materials without the prior written consent of the owning party.

**14.3** Without the prior written consent of the Buyer, the Seller may not disclose the fact that it is a contract partner or supplier of the Buyer, including but not limited to in marketing measures (e.g., when exhibiting the Goods) or in any other manner unless such disclosure is required by law, in which case, to the extent permitted by Applicable Law, Seller shall promptly, and prior to such disclosure, notify Buyer in writing of such disclosure.

#### 15. Confidentiality and Data Security

**15.1** The Seller shall be bound to treat the terms of an Order from the Buyer, and the Proprietary Materials which are made available to Seller hereunder, in strict confidence, to protect them from access by unauthorized third parties, and to only use them in order to execute the relevant Order. The Seller shall return the Proprietary Materials to the Buyer immediately on demand after enquiries have been dealt with or Orders executed, unless doing so conflicts with duties of retention under Applicable Law.

**15.2** The duties of confidentiality pursuant to this section 15 shall not apply to the extent that any Proprietary Material:

- (a) is in or enters the public domain without any breach of these duties;
- (b) was lawfully acquired from a third party;
- (c) was already known to the Seller without breach of the Contract or other non-disclosure obligation;
- (d) must be disclosed on the basis of mandatory legal provisions or orders of a court or legal authority (subject to section 15.3 below); or
- (e) was independently developed by the Seller without the use of or reference to the information of the Buyer.

The burden of proof that one or more of the above exceptions apply shall rest with the Seller.

**15.3** In the event of disclosure required under mandatory legal provisions or orders of a court or legal authority, the Seller shall, to the extent allowed by Applicable Law, make all reasonable efforts to promptly, and prior to such disclosure (a) notify Buyer in writing of such requirement so that Buyer can seek a protective order or other remedy; or (b) offer the Buyer reasonable

cooperation in the Buyer's attempts to prevent or restrict any such disclosure. No such compelled disclosure by the Seller will otherwise affect its obligations hereunder with respect to the information so disclosed.

**15.4** The Seller shall bind any Third Party Contractors approved by the Buyer in accordance with section 4.1 to the same obligations under this section 15.

**15.5** The Seller's duties of confidentiality pursuant to section 15 shall continue to apply for a period of another five (5) years beyond the end of the last Order between the parties.

**15.6** In the case of electronic information, the Seller shall ensure the confidentiality, availability and integrity of such information by installing appropriate protective mechanisms for data processing and data storage systems.

#### 16. Customs, Origin, International Supply Chain, Export Control

**16.1** The Seller shall inform itself of the requirements of customs procedures and shall promptly make all necessary documents and information available to the Buyer, such as the statistical goods number (HS code / harmonized code), the names of preferential goods, certificates of origin and all other necessary information for import and export procedures. The Seller shall enclose a commercial invoice in English in duplicate with the accompanying documents for customs purposes. Any deviation will only be permitted with the prior written consent of the Buyer.

**16.2** Subject to other or further requirements required by law, prior to its first shipment of Deliverables under an Order and again before the applicable validity period of the declaration expires, the Seller must send to the Buyer a long-term supplier's declaration for products with preferential origin. The Seller must promptly notify Buyer in writing of any changes to the origin.

**16.3** With regard to goods within the meaning of foreign trade legislation, including all component parts, the Seller shall promptly inform the Buyer in writing of:

- (a) export restrictions and issued export approvals which exist in the country of manufacture and/or in the country of dispatch of the Deliverables;
- (b) duties to obtain approval which exist under US export and re-export law, including what are known as EAR99 goods; and
- (c) duties to obtain approval for dual-use goods, armaments and other goods listed as "restricted" which exist under US law, Community law of the European Union or other national provisions of foreign trade legislation.

To the extent that the Seller supplies merchandise, services and/or technologies which are subject to export controls, the Seller must provide the following information and corresponding documents to the Buyer, as applicable:

- (a) in the case of US merchandise, services and/or technologies,
  - (i) whether these are subject to US re-export provisions (Export administration Regulations EAR and International Traffic in Arms Regulations ITAR);
  - (ii) the ECCN no. (Export Control Classification Number) pursuant to US Export Administration Regulations (EAR, USML (U.S. Munitions List) according to ITAR);
  - (iii) an export license; and
  - (iv) the US original quantity and where necessary the amount of the portions subject to approval;
- (b) information on transport through the USA and/or manufacture and/or storage in the USA and/or production with the aid of US technology or parts;
- (c) dual-use list number (goods list annexes to the Dual-Use Regulation (EC) 428/2009 as respectively amended);

- (d) other goods-related information material for the purposes of requesting official approvals; and
- (e) a contact person of the Seller for the clarification of any queries.

**16.4** This duty of information shall exist for the Seller even after termination of the Contract and for as long as these duties of information vis-à-vis the competent government agencies are incumbent upon the Seller and/or the Buyer.

**16.5** The Seller undertakes to produce, store, process and load Deliverables which are produced, stored, conveyed or supplied to or received by the Buyer at safe establishments and at safe trans-shipment locations and to protect them from unauthorized access during their production, storage, modification, processing, loading and conveyance. The personnel used must be reliable. Business partners acting on behalf of the Seller must be informed that they are likewise required to take measures to safeguard the above supply chain. The Seller shall also ensure that it and its business partners comply with the pertinent laws and regulations, in particular those relating to foreign trade legislation (including import and export provisions) and anti-terror lists. A safety declaration or the AEO (Authorized Economic Operator) / C-TPAT certificate number must be provided on request.

**16.6** The Seller must promptly deliver the information and documents required in connection with sections 16.3 through 16.5 to permit their examination by the customs authorities and obtain any official confirmations that may be required. The Seller shall assist the Buyer in reducing or minimizing customs duties.

**16.7** If the Seller fails to fulfill its obligations pursuant to section 16, the Buyer shall not be responsible for any resulting delays in processing and payment of Orders for the duration of the resulting delay, and the Seller shall indemnify the Buyer against resulting losses, claims of third parties and other consequences.

**16.8** The Seller shall make all reasonable efforts to ensure that its third parties (e.g., suppliers) approved in accordance with section 4.1 also comply with the obligations on the Seller that are set out in this section 16.

## 17. Insurance

**17.1** The Seller shall maintain, as long as any Order is in effect and for a period of two (2) years after the termination or expiration of all Orders, the following minimum insurance coverage and limits:

- (a) With respect to Orders for Services, Workers' Compensation with Occupational Disease coverage with benefits afforded under the laws of the state in which the Services are performed. Within the United States the Seller's Workers' Compensation insurance policy shall be endorsed to include a waiver of subrogation in favor of Buyer or its agent;
- (b) With respect to Orders for Services, Employer's Liability Insurance of US\$1,000,000 or equivalent for bodily injury per accident, US\$1,000,000 or equivalent for bodily injury by disease per employee, and US\$1,000,000 or equivalent bodily injury by disease policy limit;
- (c) With respect to Orders for design or professional Services, Professional Liability Insurance of US\$5,000,000 or equivalent per incident, and US\$5,000,000 in the aggregate;
- (d) With respect to Sellers doing environmental work, Environmental Liability Insurance of US\$5,000,000 or equivalent per incident, and US\$5,000,000 in the aggregate;
- (e) With respect to Orders for Services, Automobile Liability Insurance with Owned, Hired and non-Owned coverage with a minimum combined single limit of US\$2,000,000 or equivalent per accident for bodily injury and property damage. This insurance shall include uninsured/underinsured motorist coverage and PIP Coverage;

- (f) Commercial General Liability Insurance (including blanket contractual liability and broad form property damage) with Products Liability & Completed Operations coverage of US\$5,000,000 or equivalent per incident, and US\$10,000,000 in the aggregate (with Fire Legal Liability sublimit (if applicable)). The Seller shall have said Commercial General Liability Insurance policy endorsed to name the Buyer or its agent as an additional insured.

**17.2** Seller shall have all policies, except Workers' Compensation, Employer's Liability and Automobile Liability Insurance, endorsed to name Buyer or its agent as an Additional Insured with respect to Services to be performed by Seller. A copy of the Additional Insured endorsement must accompany the Certificate of Insurance.

**17.3** Seller represents that its deductibles and self-insured retention limits, if any, under the insurance policies required to be obtained under this section 17, are not greater than US\$25,000 in the aggregate.

**17.4** The above insurance coverage shall be primary and non-contributory to any other valid and collectible insurance, regardless of any insurance which may be carried by the Buyer or its parent company and shall be procured from companies of recognized financial responsibility with an "A VII" rating or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, and authorized to do business in the state where Services are being performed. Additionally, the Seller shall maintain outside of the United States as applicable, as long as any applicable Order is in effect and for a period of two (2) years after the termination or expiration of all applicable Orders, valid insurance coverage with sufficient coverage commensurate with the obligations in this section 17 (e.g., general and extended product liability insurance and recall insurance for Goods delivered pursuant to this Contract), under insurance policies procured according to the best local standard. All insurance policies required under this section 17 shall also cover costs and expenses for all in- and out-of-court legal disputes, in particular Buyer's legal fees and payment of settlement and judgment awards.

**17.5** On or before the first delivery of Goods or Services, and annually thereafter, the Seller shall provide the Buyer or its agent with a certificate of insurance stating the above coverage and limits. If the Seller fails to provide such certificates, the Buyer may procure insurance at the Seller's cost until the Seller provides such certificates (provided, however, that the Buyer's independent procurement of insurance does not absolve the Seller from procuring and maintaining its own insurance in compliance with this section 17. The certificates of insurance shall provide that the applicable insurance policy shall not be canceled or amended without thirty (30) days' prior written notice to the Buyer or its agent.

**17.6** The Seller's failure to provide the certificate of insurance required under this section 17 or failure to provide adequate insurance protection within fifteen (15) days of receiving a written notice of the inadequacy of insurance coverage shall be deemed a breach of the Contract.

**17.7** The approval of the Seller's insurance policies by the Buyer or its agent shall not relieve the Seller of any obligations contained herein, including the Seller's indemnification and defense obligations set forth in this Contract.

**17.8** Unless otherwise specified by the Incoterms applicable to an Order, the Seller shall obligate every carrier engaged by it under the Order to take out insurance for its own transport liability. The Seller shall provide a waiver of subrogation in favor of Buyer indicating that each carrier waives all of its rights of recovery, under subrogation or otherwise, against the Buyer, and anyone engaged by the Buyer.

**17.9** Where the use of a subcontractor is required, the Seller shall be responsible for ensuring that each subcontractor maintains insurance in conformance with the requirements set forth in this section 17.

**17.10** If the Seller uses and/or store products, packaging material, transport package (e.g., small load carriers, skeleton containers, pallets) and/or special tooling from Buyer, the Seller shall maintain an adequate and sufficient "All-Risk" insurance (property insurance) in order to be able to replace the aforementioned to the replacement value.

**17.11** Any recovery available under Seller's insurance policies shall take precedence over any other recovery which the Buyer receives or is entitled to receive.

**18. Protection of Personal Data**

The Buyer processes personal data electronically and non-electronically in conformity with all Applicable Law in the United States and EU relating to the use, collection, retention, storage, security, disclosure, transfer, sale or other processing of personal data, for the purposes of and for as long as necessary for fulfilling its rights and obligations under the Contract. Personal data may be transmitted to companies of the HOERBIGER Group and business partners registered in the EU and in non-EU countries.

**19. Limitation Period**

**19.1** Unless otherwise determined below, the mutual claims of the Buyer and the Seller shall become time-barred in accordance with Applicable Law.

**19.2** The limitation periods under Applicable Law governing the sale of goods including any permitted extension shall apply to the statutory extent for all contractual claims based on defects. To the extent that the Buyer is entitled to non-contractual claims for compensation due to a defect, the regular statutory limitation period shall apply unless application of the limitation periods of the law governing the sale of goods results in a longer limitation period in the individual case.

**20. Termination / Cancellation of Contracts, Transition Period, Survival**

**20.1** Notwithstanding other rights of the Buyer, the Buyer may terminate contracts in whole or in part at any time and will be released from the associated duty of counter-performance, in particular

- (a) if twenty-five (25) percent or more of the voting shares in the Seller are acquired or directly or indirectly controlled by a third party;
- (b) if the Seller is persistently unable to maintain its competitiveness in terms of technology, quality, service and price;
- (c) if the Buyer's supply contracts with customers in which the Deliverables are used are terminated;
- (d) if the Seller is prevented from rendering performance under the Contract beyond the permitted delays in the event of Force Majeure; or
- (e) in the event of a breach of section 13.2 and/or section 22.

**20.2** Unless expressly agreed in writing, neither party may bring claims against the other party on the basis of termination of the Contract pursuant to section 20.1.

**20.3** In addition, a party can terminate a Contract for cause, including but not limited to in the event of

- (a) a material deterioration or considerable risk to the financial circumstances of the other party hereto occurs or threatens

to occur and the fulfillment of obligations towards the other party is thereby endangered;

- (b) a material part of the business equipment of a party that is essential for the performance of the respective agreement becomes the object of confiscation, expropriation or a boycott;
- (c) the Seller repeatedly renders deficient performance despite notice from the Buyer;
- (d) one of the parties hereto breaches material contractual obligations (e.g., suspension/loss of certification, breach of the duty of confidentiality, breach of the code of conduct) despite a warning notice from the other party, if and insofar as these grounds for termination are not already regulated in a previous paragraph; or
- (e) there is a change in the manufacturing process without the prior written consent of the Buyer.

**20.4** To ensure continuous supply, the Seller must promptly inform the Buyer in writing of events that could give rise to the Buyer's right of termination within the meaning of section 20.1 or section 20.3.

**20.5** In the event of the termination of a Contract not founded on a material breach of Contract by the Buyer or other cause, the Buyer is entitled to a transition period of up to twelve (12) months from the effective date of the termination (a "Transition Period") if and for as long as the Deliverables and the spare parts cannot be obtained from another supplier on comparable terms to those of the Contract, evidence of which must be provided by the Seller. During the Transition Period, the Seller must supply the Deliverables and spare parts to the Buyer under the terms and conditions of this Contract together with agreed-to delivery schedules and Orders. Upon the Seller's request, the Buyer will provide the Seller its good faith estimation of the necessary Transition Period.

**20.6** Unless otherwise agreed in writing, following the termination of a Contract, these GTC shall continue to apply for spare parts and post-series deliveries. Furthermore, sections of this Contract governing confidentiality, warranties, liability, Intellectual Property Rights and Proprietary Materials, post-series and spare parts deliveries, the Transition Period, customs and export provisions, ownership rights and rights of use shall survive any expiration or termination of the Contract.

**20.7** Seller shall promptly inform the Buyer in writing in advance of all corporate or structural changes in the Seller, including full details regarding any impact on rendering of Seller's performance hereunder.

**21. Transfer, Assignment**

**21.1** Except pursuant to this section 21, the Seller may not transfer or assign the Contract or any rights and obligations arising from it to third parties without the written consent of the Buyer. Any transfer or assignment by Buyer however shall not require the consent of the Seller.

**21.2** The Seller may not assign right of payment without informing the Buyer of the new recipient at least fourteen (14) Business Days in advance, to enable the Buyer to change the payment recipient, or Buyer may make payment to the Seller without liability.

**22. Safety Requirements for the Seller at Buyer's Sites**

The Seller shall inform its employees prior to entering Buyer's sites of the duty to comply with safety requirements. The safety instructions for external companies are located on Buyer's purchasing department service portal ([procurement.hoerbiger.com](http://procurement.hoerbiger.com)).

**23. Code of Conduct; Compliance with Employment Laws**

**23.1** It is essential to Buyer that the following principles are observed in the business relationship between the parties and with intermediaries, commercial agents, contract dealers and upstream suppliers. Buyer's Code of Conduct is available at [www.hoerbiger.com](http://www.hoerbiger.com). The Seller represents and warrants that the following principles and practices are observed in its supply chain:

- (a) Compliance with laws and regulations, including but not limited to minimum wage laws;
- (b) Respect for human dignity, personal freedom rights, equal treatment (prohibition of discrimination); prohibition of child, forced and illegal labor; freedom of association and collective bargaining; compliance with minimum wage and working hours regulations; provision of safe working conditions;
- (c) Compliance with various anti-bribery statutes in the United States and around the globe (e.g., the US Foreign Corrupt Practices Act and the UK Bribery Act), including prohibition of soliciting direct or indirect benefits personally or for third parties and prohibition of offering or procuring direct or indirect advantages;
- (d) Compliance with provisions of foreign trade legislation and anti-money-laundering legislation;
- (e) Abstention from anti-competitive practices;
- (f) Compliance with social and environment laws and provisions;
- (g) Compliance with conflict material provisions (i.e. goods and materials are only to be obtained from legal and ethically responsible sources);
- (h) Correct and complete recording of all transactions in the business records and documents;
- (i) Compliance with laws and regulations governing information security and data protection.

**23.2** If the Seller becomes aware that an executive, managing director or partner of it, the Buyer, or a third party involved in the business relationship with the Buyer is or may be in breach of the Code of Conduct, the Seller shall promptly inform the Buyer of the alleged breach in writing to the following email address: [compliance@hoerbiger.com](mailto:compliance@hoerbiger.com).

**23.3** The Seller shall take corrective action to protect itself and the Buyer from harmful consequences, including fines, contract penalties, the termination of business with the Buyer's customers and reputational damage.

**23.4** The Seller shall implement compliance provisions pursuant to section 22 and shall verify its material compliance and that of its suppliers.

**23.5** The Buyer may review compliance with the Code of Conduct at any time. The Seller shall cooperate with the Buyer in this review, including by presenting supporting evidence of and certifications of compliance.

**24. General Provisions**

**24.1** No addition, amendment, cancellation or waiver in respect of any provision contained in these GTC or an Order and no consent of a party to a deviation therefrom shall be effective under any circumstances unless it is made in writing and signed by both parties. Even if these requirements are met, this waiver or consent shall only apply to the particular situation and purpose for which it was given. Any communication or request directed at the Seller under particular circumstances or on a particular occasion shall not entitle the Seller to receive a further communication or request under similar or different circumstances.

**24.2** The headings of the provisions contained in these GTC are for convenience only and may not be used to interpret them.

**24.3** Should a provision or a part of a provision of these GTC be or become ineffective or unenforceable, it shall be disregarded and shall be without prejudice to the validity of the rest of these GTC. If necessary, the Buyer and the Seller shall replace the ineffective or unenforceable provision with an effective and enforceable provision equivalent to it in economic result provided that this does not result in a material change to the content of these GTC.

**24.4** This Contract does not create a partnership, agency relationship, or joint venture between the parties. The Buyer and the Seller are independent contractors and have no power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other for any purpose. The Seller acknowledges that the Seller and its personnel are solely responsible for withholding and paying income taxes related to the performance of Services under this Contract. The Seller and the Seller's personnel are not entitled to receive any benefits that the Buyer offers to its employees. In the event that (a) the Seller or any of the Seller's personnel assert that they are an employee of the Buyer; or (b) a federal, state or local governmental agency or court determines that the Seller or any of its personnel are the Buyer's employees, then Seller shall defend, indemnify and hold the Buyer, its affiliates, and their respective officers and directors harmless from all liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) associated with such claim or determination.

**24.5** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**25. Choice of Law and Venue / Arbitration**

**25.1** These GTC, the contractual relationship between the Buyer and the Seller and every agreement established in accordance with these GTC on the basis of an Order shall be governed by the laws of Delaware and the United States, expressly excluding the conflicts-of-laws provisions of Delaware or of any international private law and international uniform law, in particular the United Nation Convention on Contracts for the Sale of International Goods, 1980, and any successor thereto.

**25.2** Any dispute related to or arising from this Agreement shall be subject to the sole and exclusive jurisdiction of the courts in Delaware, USA and both parties hereby consent to such jurisdiction and venue. Notwithstanding the foregoing, either party at any time may seek an injunction or other equitable remedies against the other party for misappropriation of trade secrets or breach of confidentiality obligations.

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