

General Terms for the International Sale of Goods

I. Scope of Application.

(1) These General Terms for the International Sale of Goods (General Terms) apply to all sales contracts between Solibro Hi-Tech GmbH (seller) and the buyer if:

- a) the buyer has his place of business in another country than the Federal Republic of Germany and
- b) subject of the contract is sales contracts of goods.

(2) Software, technical knowledge and other intangible assets shall be deemed to be goods in the meaning of subsection 1 lit. b) regardless whether or not they are embodied on a data medium.

(3) A contract for the sales of goods to be manufactured or produced by the seller shall be considered a sales contract of goods. This shall not apply if the buyer undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(4) Any terms and conditions of the buyer shall not apply. An inclusion of terms and conditions of the buyer by means of a commercial letter of confirmation or in a similar way is excluded.

(5) Any agreements differing from these General Terms shall be only effective if the seller confirms them in writing.

(6) These General Terms shall also apply for subsequent sales contracts between the seller and the buyer according to subsection 1 to 3 even if the seller does not expressly refer to them.

II. Offers and Conclusion of Contract.

(1) A pro forma invoice of the seller shall not be deemed an offer but rather an invitation to bid.

(2) The seller may revoke or amend his offer any time until he reaches an acceptance from the buyer. This shall also apply if the offer of the seller states a fixed period of time for acceptance. However, an offer that states a fixed period of time for acceptance cannot be revoked by the seller until the expiry of this period if the seller expressly stated in writing that the offer is not irrevocable.

(3) The buyer may not revoke his offer unless he expressly stated in writing that it is revocable. The seller may accept the offer of the buyer either by submitting an order confirmation or by delivery of the ordered goods.

(4) If an offer does not state a period for acceptance, it can be accepted within two weeks after receipt by the other party. A reply of the buyer to an offer of the seller that purports to be an acceptance but contains different terms shall be deemed a rejection of the offer and constitutes a counter-offer even if it does not materially alter the terms of the offer of the seller.

(5) If the seller and the buyer agree on a sales contract orally or by phone, each party may confirm the terms of this sales contract in writing (confirmation letter). The terms set out in this confirmation letter become binding to both parties unless the other party rejects it without delay, however within five days after receipt of the confirmation letter by the latest.

III. Purchase Price and Payments.

(1) Unless otherwise agreed, the purchase prices are ex works according to the Incoterms of the International Chamber of Commerce as amended at the time of the conclusion of the contract and do not include costs for packaging, taxes, customs and excise duties or any other supplementary expenses. To the extent the purchase price is subject to VAT, the buyer shall pay this amount in addition to the agreed purchase price. Except otherwise agreed all payments have to be effected in Euro.

(2) The purchase price shall be paid in advance and without any deduction. In particular, the buyer shall bear any remittance charges. Place of payment shall be the place of business of the seller.

(3) Unless otherwise agreed, the payment is due after the expiry of one week after receipt of the invoice. In case of a delayed payment, the seller may demand interest on arrears at nine hundred basic points above the main refinancing operations of the European Central Bank. The seller is entitled to assert any further damage. A payment shall be deemed delayed if the buyer fails to effect the payment in due time without the necessity of a reminder.

(4) In the event the parties agreed on a documentary letter of credit, the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (USP 600) shall apply as amended at the time of the conclusion of the contract.

(5) Even if the parties agreed to another Incoterm of the International Chamber of Commerce than ex works, the buyer shall not defer any payments by reason of not having the opportunity to examine the goods.

IV. Terms of Delivery.

(1) The Incoterms of the International Chamber of Commerce as amended at the time of the conclusion of the contract shall apply unless stated otherwise in these General Terms or unless otherwise agreed in the contract.

(2) Except otherwise agreed, the seller has to deliver the goods ex works Thalheim (Bitterfeld-Wolfen, Germany).

(3) Unless otherwise agreed upon, the goods to be supplied shall be packed in a manner customary in trade and proper. On request of the buyer, the seller shall pack the goods to be delivered according to the instructions of the buyer. The buyer shall bear the additional costs even if the parties agreed that the seller has to pack at his own expenses.

(4) The seller is not obliged to perform any additional obligations that are not stated in the contract. In particular, he shall not be obliged to insure the goods, to procure certificates or documents not expressly agreed in the contract, to permit required licenses, permits, approvals or contents, to procure customs clearance and to bear levies, dues, taxes and other charges outside his place of business or to comply with measuring systems, packaging, labeling or marking requirements outside his place of business.

V. Passing of Risk.

(1) Loss of or damage of the goods after the risk has passed to the buyer does not discharge the buyer from his obligation to pay the purchase price, unless the loss or damage is culpably caused by the seller. The seller is not liable for any losses or damages caused by an instruction of the buyer. After the risk passed to the buyer, the seller is not obliged to perform the delivery of the goods again.

(2) The retention of title according to section VIII shall not affect the passing of risk in accordance with the provisions of this section.

(3) To the extent the Incoterms of the International Chamber of Commerce are not applicable, the subsequent provisions shall apply with regard to the passing of the risk.

(4) If the buyer has to collect the goods at the place of business of the seller, the risk passes to the buyer when he takes over the goods. In the event the buyer does not take over the goods in due time, the risk passes to him at the time when the goods are placed at the disposal of the buyer. In the event the buyer has to take over the goods at another place than a place of business of the seller, the risk passes to him when the delivery is due and the seller informed or the buyer is aware of the fact that the goods are placed at his disposal at that place.

(5) If the contract involves a carriage of the goods and the seller is not obliged to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract. In the event the seller has to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over at that place. However, if the buyer is in default with taking delivery of the goods, the risk passes to the buyer at the beginning of the default.

VI. Delivery Time.

(1) If the contract states a fixed date for the delivery, the seller shall deliver the goods at that date. If the seller delivers the goods at an earlier date, the buyer shall not refuse to take delivery.

(2) To the extent the contract specifies a period of time for the delivery, the seller shall deliver the goods within this period at his own discretion. However, the seller shall inform the buyer duly in advance about the individual date of delivery. Subsection 1 sentence 2 shall apply accordingly.

(3) In the event the buyer has – according to the contract – to specify the date of delivery to the seller, he shall give notice to the seller subject to a term of at least one week. If the buyer fails to specify the date of delivery, the seller may demand him to make up for the specification by fixing a reasonable period of time. After this period has expired, the right of specification passes to the seller unless the buyer has exercised the specification in due time.

(4) If the contract does not specify an individual date of delivery or a period of time for delivery, the seller shall deliver the goods within a reasonable time after the conclusion of the contract. The seller shall specify the individual date of delivery at his own discretion and inform the buyer duly in advance about the date of delivery.

(5) To the extent the buyer has to perform an action prior the delivery, in particular to pay the purchase price in whole or in part in advance or to specify the goods to be delivered, the delivery date or the period of time for the delivery defers for the duration in which the buyer fails to perform the required action.

(6) In the event the seller is prevented from the delivery of the goods in due time due to circumstances beyond his control, the time of delivery shall be deferred for the duration of these circumstances. The seller shall inform the buyer duly about the circumstances and the estimated duration of delay. A circumstance beyond the control of the seller shall be deemed the non-performance of a covering transaction.

VII. Specification of the Goods.

(1) If the goods to be delivered are subject to a specification with regard to form, measurement or other features, the seller has the right to exercise this specification except otherwise agreed in the contract. The same applies if the goods are subject to a choice from a range of different goods.

(2) If – according to the contract – the buyer has the right of specification or the right of choice, he shall exercise this right until the agreed date or within the agreed period of time or, where a date or period of time is not specified, within a reasonable time after the conclusion of the contract. In the event the buyer fails to exercise the right in due time, the seller may demand him to make up for the specification or choice by fixing a reasonable period of time. After this period has expired, the right of specification or the right of choice passes to the seller unless the buyer has exercised the right in due time. To the extent the right of specification or the right of choice passed to the seller, his specification or his choice is binding to the buyer. After passing of the right of specification or choice the buyer may not make a different specification or exercise a different choice.

VIII. Retention of Title.

(1) The seller retains the title to the goods until all accounts receivable and all other claims of the seller against the buyer, which have accrued under the respective contract, are settled.

(2) In the event the seller declares the contract avoided due to the failure by the buyer to perform his obligations under the contract or to pay the purchase price or to take delivery of the goods, the buyer has to hand over the all goods to which title is retained by the seller on first demand.

IX. Conformity of the Goods.

(1) The seller shall deliver the goods that are of the quantity, quality and description of the contract at the time when the risk passes to the buyer.

(2) To the extent a description in the contract refers to technical standards or sets of rules, those standards and sets of rules are part of the contract, which are applicable at the place of business of the seller at the time of conclusion of the contract. Standards and sets of rules that are applicable at the place of business of the buyer and that differ from standards and sets of rules at the place of business of the seller shall be a part of the contract only if the seller expressly agrees to them in writing and if the buyer provides the seller with the respective information at the time of conclusion of the contract.

(3) To the extent the parties have not agreed a specific quality, the goods conform to the contract if they are fit for the common use at the place of business of the seller. The fitness for a particular purpose shall be only a part of the contract if it was expressly assured by the seller in the contract. The possibility of use of the goods with regard to any applicable laws, regulations, rules and practices at another place than the place of business of the seller shall be considered as particular purpose as stated in sentence 2. Furthermore, the buyer may only rely on skills and the judgement of the seller that arise from the contract.

(4) Goods that are subject to a continuous technical development conform to the contract if they have in relation to the technical specifications in the contract technical enhancements and comply with state of the art techniques at the time when the risk passes to the buyer. This shall not apply if the parties expressly exclude the right of the seller to deliver technically enhanced goods.

(5) To the extent the seller provided the buyer with a model or a sample of the goods before the conclusion of the contract, the goods conform to the contract if they possess the quality of the model or the sample.

(6) With regard to the packaging, the goods conform to the contract if the package meets the requirements set forth in section IV subsection 3. The seller shall not be liable for any instructions of the buyer according to section IV subsection 3 sentence 2. A damaged package conforms to the contract if the goods are not damaged unless the goods are designated for resale and are not suitable for sale by reason of the damaged package.

(7) The seller is not liable for any lack of conformity according to subsection 1 to 6 if at the time of conclusion of the contract the buyer knew or ought to have known of the lack of conformity.

X. Guarantees.

(1) The buyer shall have any rights arising from a guarantee only if the guarantee is expressly agreed in the contract or in a guarantee certificate.

(2) Except otherwise stated in the contract or in the guarantee certificate, the guarantee implies that the goods to which the guarantee relates will maintain the quality features set forth in the contract or in the guarantee certificate for the duration of the guarantee period. The guarantee period begins with the shipment of the goods. To the extent the contract or the guarantee certificate does not state a certain guarantee period, it is one year. A guarantee that relates to specific quality features shall not be construed as shelf life guarantee.

(3) To the extent the contract or the guarantee certificate states not otherwise, the rights of the buyer under the guarantee are limited to a repair or a replacement by the seller at his own discretion. All other rights under the guarantee are excluded. The rights of the buyer due to a lack of conformity remain unaffected.

XI. Examination of the Goods and Notification of a Lack of Conformity.

(1) The buyer shall examine the goods, or cause them to be examined, without any delay after arrival at the place of delivery. The beginning of the duty to examine the goods shall not be deferred if the goods are redirected in transit or re-dispatched by the buyer. The duty of the buyer to examine the goods shall not be deferred in case of a premature delivery. As far as it conforms to the proper course of business, the buyer shall examine the goods on a random basis.

(2) The period for examination is usually one week. In case of complex goods or where the consultancy of an expert is essential, the period is extended by this time that is necessary for a prudent businessman to examine the goods as soon as possible considering the individual circumstances.

(3) The buyer loses the right to rely on a lack of conformity of the goods and, if a lack of conformity is covered by a guarantee of the seller, any claims under the guarantee if he does not give notice to the seller specifying the nature of the lack of conformity within one week after he has discovered or ought to have discovered it. In the event the lack of conformity was not apparent at the time when the examination was due, the buyer shall give the notice within one week after he discovered it. The notice shall be made in writing to be effective. In any event, the buyer loses the right to rely on a lack of conformity if he does not give the seller notice at the latest within a period of one year from the date when the goods were handed over to the buyer. Furthermore, the buyer loses in any event the rights arising from a guarantee, if he does not give notice at the time of the expiry of the guarantee period at the latest.

(4) The loss of rights according to subsection 4 shall not apply if the lack of conformity relates to facts of which the seller knew and which he did not disclose to the buyer.

XII. Claims of Third Parties.

(1) The seller shall deliver goods that are free from any rights of a third party unless otherwise agreed in the contract. However, the seller is not liable for the assertion of an unfounded claim by a third party.

(2) The seller shall deliver goods that are free from any right of a third party based on industrial or other intellectual property, of which at the time of conclusion of the contract

the seller knew, provided that the right is based on industrial property or other intellectual property:

- a) under the law of the state where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that state; or
- b) in any case, under the law of the state where the buyer has his place of business.

(3) The obligation of the seller according to subsection 2 shall not extend to cases where:

- a) at the time of the conclusion of the contract the buyer knew or ought to have known of the right; or
- b) the right results from the compliance of the seller with technical drawings, designs, formulae or other such specifications furnished by the buyer.

(4) The seller is not liable for the assertion of an unfounded claim with regard to industrial or other intellectual property rights by a third party.

(5) The buyer loses the right to rely on the preceding provisions according to subsection 1 to 3 if he does not give notice to the seller specifying the right of the third party within two weeks after he has become aware or ought to have become aware of the right.

XIII. Non-Performance.

(1) If a party fails to perform any of his obligations under the contract, the other party may demand the party to render performance by fixing a reasonable period of time. The demand shall be made in writing to be effective.

(2) Either party may exercise any right by reason of non-performance only if the other party failed to render performance within the period fixed by other party according to subsection 1. The requirement to fix a reasonable time for performance shall not apply if the other party seriously and definitively refuses to perform its obligations. Either party may exercise a right by reason of non-performance already during the fixed period for performance if it received a notice from the other party that it will not perform its obligations within this period. The right to demand damages for delay of performance remains unaffected.

(3) If the seller fails to deliver the goods within the period set out in the demand according to subsection 1, the buyer may declare the contract avoided. This shall not apply if the seller delivers the goods before the buyer declared the contract avoided or refused to accept performance.

(4) The seller may declare the contract avoided if the buyer fails to perform his obligation to pay the purchase price or to take delivery of the goods or to perform another fundamental obligation under the contract.

(5) If the seller has to refund the purchase price to the buyer, he shall pay interest on it only upon the receipt of a reminder from the expiry of the reasonable period of time to effect the refund fixed in the reminder. The interest amount to three hundred basic points above the main refinancing operations of the European Central Bank. If the buyer has to reconstitute the goods, he shall account to the seller for all benefits, which he has derived from the goods or part of them or has been able to derive from them. The buyer shall not deduct any expenses in conjunction with the derivation of the benefits.

(6) In case of a lack of conformity, the provisions pursuant to section XVI shall prevail the provisions of this section.

XIV. Delivery of Goods by Instalments.

(1) If the parties agreed on a contract for delivery of goods by instalments, either party may, where the conditions set forth in section XIII subsection 3 or 4 are met, declare the contract avoided for the future to the extent the contract was not completely performed by both parties. This shall apply even if the non-performance or breach of contract by a party refers to a single instalment. However, the party entitled to declare the contract avoided may limit this remedy to the affected instalment only.

(2) Neither party may declare the contract avoided with respect to deliveries that were already made in the past and that have been paid by the buyer.

XV. Lack of Conformity.

(1) If the goods do not conform to the contract, the seller may at his own discretion either repair the defect goods at his expenses or deliver substitute goods. The right of the seller pursuant to sentence 1 does not depend on a notice of the seller that he will perform his obligations within a specified period. The buyer may not demand a repair or a delivery of substitute goods.

(2) In the event the seller delivers substitute goods, the buyer shall reconstitute the delivered goods to the seller.

(3) The buyer shall not repair defect goods or have them repaired without prior written consent of the seller.

(4) In the cases referred to in subsection 1 sentence 1, the buyer may demand the seller in writing either to repair the defect goods or to deliver substitute goods by fixing a reasonable period of time. If the seller fails to repair or to deliver within this period or refuses to do so, the buyer may reduce the purchase price whether or not it has already been paid in the same proportion as the value that the goods actually delivered had at the time of delivery bears to the value that conforming goods would have had at that time. Instead of reducing the purchase price, the buyer may declare the contract avoided if the failure by the seller with regard to the lack of conformity amounts to a fundamental breach of contract. The buyer loses the right to reduce the purchase price according to sentence 2 if the seller declares the contract avoided within two weeks after he received the notice of the buyer. The same applies if the seller repairs the defect goods or delivers substitute goods before the buyer declared the contract avoided or to reduce the purchase price or refused to accept performance. In any case, the buyer shall not exercise the remedy to reduce the purchase price or to declare the contract avoided where the conditions pursuant to sentence 2 are not met.

(5) The buyer loses the right to declare the contract avoided if it is impossible for him to reconstitute the goods substantially in the condition in which he received them. This shall also apply if the impossibility of making restitution of the goods is not due to an act or omission of the buyer or if the goods have been sold or have been consumed before the buyer discovered or ought to have discovered the lack of conformity. However, the buyer

does not lose this right if the impossibility of making restitution of the goods was exclusively or predominantly caused by the seller. The provisions set forth in section XIII subsection 5 shall apply accordingly.

(6) If the seller delivered a lower quantity than agreed, he shall deliver the missing quantity. The buyer shall not declare the contract avoided by reason of a delivery of a lower quantity.

(7) If the seller delivered a greater quantity than agreed, the buyer shall make the decision whether to refuse the additional quantity or to take delivery of it within the period set forth in section XI subsection 3. If the buyer fails to refuse the additional quantity in due time, it shall be considered as taking delivery.

XVI. Preservation of the Goods.

(1) If the buyer is in delay with taking delivery of the goods or, where payment of the purchase price and delivery of the goods are to be made concurrently, if he fails to pay the purchase price, and the seller is in possession of the goods or otherwise able to control their disposition, the seller shall take such steps as are reasonable in the circumstances to preserve them. The seller is entitled to retain the goods until he has been reimbursed his reasonable expenses by the buyer.

(2) The seller may deposit the goods in a warehouse of a third person at the expense of the buyer.

(3) In the cases of subsection 1 and 2, the seller is only liable for intent and gross negligence.

(4) The seller may demand the buyer to take delivery of the goods or to pay the purchase price by fixing a reasonable period of time and by giving notice of the intention to sell them. After the unsuccessful expiry of this period, the seller may sell the goods by any appropriate means to a third party on behalf of the buyer.

XVII. Damages.

(1) If a party breaches the contract, the other party may demand damages in accordance with the subsequent provisions.

(2) In the event the seller declares the contract avoided by reason of non-performance of the buyer, he may demand an amount of fifteen per cent of the purchase price. The seller may instead demand the buyer to pay the difference between the purchase price agreed in the contract and the purchase price gained from a resale to a third party or the market price. The seller may demand the difference between the purchase price agreed in the contract and the market price even if he resold the goods to a third party.

(3) In the event the buyer declares the contract avoided by reason of non-performance of the seller, he may demand the seller to pay the difference between the expenses of the buyer to acquire similar goods from a third party and the purchase price agreed in the contract, but not exceeding fifteen per cent of the purchase price. To the extent the buyer is liable to a third party due to the fundamental breach of contract by the seller, the buyer may demand the seller to reimburse the expenses caused by the breach of contract, but not exceeding ten per cent of the purchase price.

(4) Except stated otherwise in the preceding provisions, neither party shall be liable for indirect damages or consequential damages. In any case, the damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

(5) If the seller commits a breach of contract, which is not fundamental, he shall pay damages only in case of a deliberate or grossly negligent breach of his obligations.

XVIII. Avoidance of the Contract.

(1) Either party may declare the contract avoided without giving notice if the other party adjudicated bankrupt or a trustee is appointed to the affairs of the other party.

(2) The seller may declare the contract avoided if any required export licenses, permits, approvals or consents are not granted by the competent authorities. In this event, the buyer may not demand damages.

XIX. Force majeure.

(1) With exception of the obligation to effect payments, neither party shall be considered in breach of the contract to the extent that performance of their respective obligations is prevented by an event of force majeure that arises after the conclusion of the contract.

(2) Force majeure means an event beyond the control of the a party, which prevents it from complying with any of its obligations under the contract, including but not limited to:

- a) act of God, such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods;
- b) war, hostilities, invasion, act of foreign enemies, mobilization, requisition, or embargo;
- c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Supplier or of his Subcontractors; or
- f) acts or threats of terrorism.

(3) If an event of force majeure occurs and its effect continues for a period of more than three months, either party may declare the contract avoided.

(4) The party that is prevented from the performance of its obligations due to a fact set forth in subsection 2 shall give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable period of time after the party that fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from the non-receipt.

XX. Set-off and Assertion.

(1) The buyer may only set off a claim or assert a right of retention with regard to a claim that is uncontested or has been finally established by a competent court or by a competent arbitration panel.

(2) The buyer shall not retain payments or raise defenses except where the seller is in a fundamental breach of contract.

XXI. Applicable Law.

(1) The contract and these General Terms shall be governed by the law of the Republic of Singapore. To the extent the parties agree on rules of the International Chamber of Commerce, those rules as amended at the time of conclusion of the contract shall apply.

(2) If the parties agree in the contract that its provisions shall be governed by the law of another state, this law shall be also applicable to these General Terms.

XXII. Arbitration.

(1) Any dispute arising out of or in connection with the contract or these General Terms, including any questions regarding the existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause.

(2) The seat of the arbitration shall be in Singapore.

(3) The arbitration tribunal consists of one arbitrator. If the amount in dispute exceeds one million Euro or the equivalent amount in another currency, each party may request that the arbitration tribunal shall consist of three arbitrators. The plaintiff in arbitration can request the extension of the arbitration tribunal only in the petition to bring the matter before an arbitral tribunal. The respondent in arbitration can request the extension of the arbitration panel only within one month after he received this petition. All arbitrators shall be nominated by the chairman of the Singapore International Arbitration Centre unless otherwise agreed between the parties.

XXIII. Contractual Notices.

(1) Where the contract or these General Terms require a notice of a party in writing, the notice can be transmitted by telefax or by e-mail.

(2) In case of a transmission by telefax, the receipt of the notice shall be presumed if the sender has a transmission report representing the correct telefax number and the correct transmission. In case of a transmission by e-mail, the receipt of the notice shall be presumed if the sender has read confirmation of the recipient.

XXIV. Confidentiality.

(1) To the extent a party receives confidential information from the other party, it shall:

- a) keep this information strictly secret, in particular it shall not disclose it to a third party or to an employee or another staff member that is not authorized to access this information, publish it or utilize it to its own advantage or to the advantage of a third party;
- b) protect this information in an appropriate manner against any unauthorized access by third parties or by employees or other staff members that are not authorized to access this information; and
- c) use this information exclusively for the purposes of the contract.

(2) In the meaning of subsection 1, any fact deemed to be confidential that:

- a) relates to a party or an affiliated company of a party or to the business or the business operation of a party or to the business or the business operation of an affiliated company of a party;
- b) is not obvious to third parties; and
- c) according to the intention of the party holding the fact, shall be kept secret due to interests worth being protected.

It is not relevant whether the confidential fact is set down in written or in electronic form or if it may be transferred orally or via other means of communication or methods. A fact deemed not to be obvious if a third party can acquire the knowledge of this fact easily and in a normal way. The intention to keep a fact secret shall be assumed if either the other party, according to the circumstances, reasonably must believe that the party holding the fact does not intend to disclose this fact to a third party. This intention shall be assumed irrefutably if the party holding the fact expressly or impliedly identified the fact as confidential to the other party.

(3) Facts deemed to be confidential are in particular, but not limited to

- a) any practical knowledge with regard to technical processes (technical know-how) and with regard to business matters (commercial know-how);
- b) any internal information, documentations, development documents, drawings, model drawings, samples, formulas, models, designs, drafts or any other information or ideas referring to trading, to financial matters, to products or components thereof, specifications of products or components thereof, to processes, methods or systems;
- c) any tender documents, accounting records, procurement sources, business plans, calculation documents, customer lists and customer data, supplier lists and supplier data, approval documentation, recipes;
- d) any intellectual property regardless of whether it is protected by patents or any other protective rights.

XXV. Final Provisions.

If a clause in the contract or in these General Terms are invalid, the remaining parts of the contract and of these General Terms shall retain their validity without any restrictions. The invalid part shall be replaced by the agreement the parties would have arranged if they had known the invalidity. Where such a provision cannot be determined, the parties shall agree on a valid provision which reflects closely as possible their mutual interest at the time of the conclusion of the contract.