

## 1 General

1.1 In the following, the term "Seller" shall mean the respective supplier company MM Graphia Bielefeld GmbH as a member of the Mayr-Melnhof Karton AG Group, and the term "Buyer" shall mean the person or legal entity with whom the Seller enters into a business relationship. The Buyer warrants that it is an entrepreneur. These General Terms of Trade shall apply to any contract for the sale and purchase of goods concluded between the Seller and the Buyer (hereinafter referred to as "Contract") as well as to any subsequent orders in the case of ongoing business relations, and the applicability of any general terms and conditions of the Buyer and of the ECMA Terms of Sale shall be excluded. By ordering goods from the Seller, the Buyer is deemed to have accepted these General Terms of Trade. INCOTERMS in the current version as issued by the ICC (International Chamber of Commerce) from time to time (currently INCOTERMS 2010) shall apply only upon and to the extent of any explicit written agreement by the Seller.

1.2 Any offers issued by the Seller shall not be binding.

1.3 Orders as well as modifications to confirmed orders by the Buyer or any oral agreements shall be deemed accepted and binding only upon written confirmation by the Seller through its authorised representatives. Failure to reply by the Seller shall not be deemed tacit approval. In the event that the terms contained in a confirmation of order by the Seller differ from those contained in the Buyer's order, the terms set out in the Seller's confirmation shall be deemed accepted by the Buyer unless the Buyer objects to such terms within 24 hours. The Seller shall not accept liability for, or be subject to any duty of inspection in respect of, any errors in the confirmation of order, unless notified thereof forthwith by the Buyer on receipt of the confirmation of order or at the latest within six hours from such receipt.

1.4 If the Buyer has been made aware of this circumstance beforehand, the Buyer shall reimburse the Seller for any costs incurred in connection with preparing the relevant exceptional offer (e.g. for specimens, designs) in the event the offer does not result in an order.

1.5 If the Buyer wishes to unilaterally cancel or modify the Contract after the order confirmation has been issued but prior to production the Buyer shall be required to obtain the Seller's approval and shall be liable to pay the costs incurred in connection with the order, including purchase of any raw materials procured for the Buyer, e.g. cardboard or printing ink, and an expense charge equalling 10% of the cancelled contract value, which the parties acknowledge is a genuine pre-estimate of the Seller's loss, or the additional costs resulting from the modification of the Contract. The aforesaid shall not affect any further damage claims of Seller.

1.6 Any and all proofs, die cutting tools, negatives, plates, printing rollers, formers, digital data and other tools and/or materials produced by the Seller in connection with the performance of the Contract shall be owned by the Seller. The Buyer shall not be entitled to demand delivery of any such materials even if the Buyer had any part in the production respectively contributed to the cost of production.

1.7 Any proofs, die cutting tools, negatives, plates, printing rollers, formers, digital data supplied by the Buyer and other tools supplied by the Buyer and/or materials of the Buyer shall be stored by the Seller at the Buyer's risk.

1.8 The Seller shall not be subject to any duty to warn, to inspect or to protect in respect of the proofs, die cutting tools, negatives, plates, printing rollers, formers, digital data, etc. produced or used in accordance with the Contract.

1.9 The languages in which Contracts, orders and complaints shall be prepared shall be German, English and the national language applicable to the Seller.

## 2 Delivery and Passing of Risk

2.1 The terms of delivery or delivery dates indicated by the Seller shall be ex works and shall only become binding after the confirmation of order has been issued, but shall not be binding prior to the receipt of any agreed advance payments, letters of credit or bank guarantees. Goods shall be delivered exclusively for use in accordance with the specified purpose.

2.2 In the case of call off orders the ordered goods shall be ready for despatch on the confirmed delivery date (date communicated to the Buyer on the order confirmation). Any failure by the Buyer to call forward the ordered goods by the confirmed delivery date shall constitute a delay in acceptance. In this event the Seller shall have the right, in addition to its rights under section 6, to demand acceptance of the ordered and manufactured goods 30 days after the expiry of the delivery date.

2.3 In the event of non-compliance with the delivery date by the Seller, the Buyer shall expressly grant a reasonable period of grace dependent on the Seller's order situation at the time. If such a period of grace expires without the delivery being made or if the Seller notifies the Buyer that delivery cannot be made, the Buyer shall be entitled to terminate the order. Such termination must be declared in writing within one week after the expiry of the period of grace or after the Seller's notification. In the case of frame-work agreements or multi-delivery contracts the right to terminate shall only apply to the relevant individual delivery. The Seller shall not be liable for any damage, in particular not for lost profit or for any indirect damages resulting from non-compliance with the delivery date. In the event the Seller is unable to supply its customers for a period of more than three months due to a shutdown of production capacities the parties agree that for the duration of the shutdown this shall not constitute a delay due to fault.

2.4 Unless explicitly agreed otherwise in writing, the Seller shall be entitled to effect deliveries in one or more parts.

2.5 Unless explicitly agreed otherwise in writing, the Seller shall be entitled to assign any Contract to any other by the Buyer certified production site that is a member of the Mayr-Melnhof Karton AG Group without the Buyer's approval.

2.6 The detailed specifications relating to the Contract shall be agreed separately between the Seller and the Buyer. If detailed specifications regarding the contracted goods are not provided by the Buyer to the Seller or approval of such specifications is not granted within due time, the Seller shall not be obliged to comply with the indicated delivery date. The Seller reserves the right to terminate the Contract after granting a reasonable period of grace for the submission of such specifications, whereby the provisions in section 1.5 shall apply mutatis mutandis.

2.7 Unless explicitly agreed otherwise in writing (in particular by way of INCOTERMS), the Seller's plant or warehouse from which the goods are delivered shall be the place of performance. All risks and hazards shall pass to the Buyer at the place of performance as soon as the goods are ready for collection on the confirmed delivery date.

2.8 If the Seller, upon the Buyer's request, despatches the goods to any other place than the place of performance, all risks and hazards shall pass to the Buyer upon the Seller having handed over the goods to the shipping agent, the carrier or any other person or agency designated for such handling.

2.9 Unless explicitly agreed otherwise in writing, the Seller reserves the right to choose the shipping agent for free-door deliveries.

## 3 Prices

3.1 Any and all prices shall be in Euro as agreed and exclusive of VAT unless a different currency has been agreed with the Buyer. Payments may only be performed in the agreed currency.

3.2 The Seller and the Buyer agree that not all of the goods which are subject to this Contract are made to stock by the Seller. In the period between the conclusion of the Contract and the delivery of the goods circumstances may therefore arise which cause a significant increase in the manufacturing costs of the goods to be produced and could not be taken into account in the calculation of prices relevant at the time the Contract was concluded.

If, therefore, after the conclusion of the Contract but prior to the agreed delivery any significant change in the cost of raw materials or other direct costs should occur and such change exceeds 10% in any individual case or in the aggregate compared to the relevant calculation of prices, the price should be renegotiated.

The parties mutually agree that in the event any such change in the said cost factors exceeds 20% in any individual case or in the aggregate this shall constitute a change so substantial compared to the costs applicable to, or foreseeable for, the said cost factors at the time of the conclusion of the Contract that adherence to the present Contract shall be deemed unreasonable. In such a case either party shall have the right to terminate the present Contract as soon as the substantial change in respect of one or more of the said cost factors becomes known. The provisions in section 1.5 shall apply mutatis mutandis.

3.3 Unless agreed otherwise in writing by the Seller (in particular by way of INCOTERMS), the prices confirmed and stated on the price list shall be net prices exclusive of customs charges but shall include costs of standard packaging and transport. Any ancillary costs shall be borne by the Buyer.

3.4 In case prices are agreed with the Buyer in a currency other than Euro, and this currency devaluates by 5% or more versus the

Euro after the conclusion of the Contract compared to the date of conclusion of the Contract, the Seller shall be entitled to set a new price increased accordingly by such amount of devaluation and to invoice such higher price, provided that the Buyer is notified of such an increase at least 10 days in advance from the increase.

3.5 Unless agreed otherwise the respectively valid price list as well as the upcharges and discounts mentioned on it shall apply.

3.6 The Buyer shall be obliged to accept deviations of the invoiced price compared to the price on the order confirmation due to service charges under the Contract such as e.g. storage fees or upcharges or discounts on delivered quantity.

3.7 Call off orders shall be subject to the existence of a valid stock agreement.

#### **4 Terms of Payment**

4.1 The Buyer shall have a right to set-off only in respect of counterclaims that are undisputed or have been upheld and declared unappealable. In all other cases, and unless agreed otherwise in writing, payments shall be made without deductions within 30 days of the invoice date. Notwithstanding the provisions in section 2.7 the place of performance for payments shall be the Seller's corporate location. Payments by bill of exchange or cheque as well as discounts and rebates shall be accepted by the Seller only if explicitly agreed in the invoice. Money orders, bills of exchange or cheques are not accepted in lieu of performance of the payment but only subject to being honoured. If a payment is made by money order, bill of exchange or cheque the payment shall be deemed to have been performed only as per the value date applicable to the relevant credit entry. Any bank charges shall be payable by the Buyer. The Seller shall not be liable for presentation to be made in due time.

4.2 Default interest shall be payable on overdue amounts at the rate of 10% (p.a.) above the 3-months-EURIBOR rate for the invoiced currency. The Seller shall further be entitled to the reimbursement of any costs incurred in connection with reminders, collection, inquiries and investigations as well as legal counsel.

4.3 If payments are outstanding for deliveries where no retention of title was agreed or where such retention of title has already expired, any payments received shall be appropriated first to such outstanding claims and only after full settlement thereof to claims regarding deliveries still subject to retention of title. Any partial payment by the Buyer shall be appropriated first to accrued costs and other incidental charges (e.g. default interest, reminder charges) and only after settlement thereof to outstanding claims out of deliveries. Any other designation of payment indicated by the Buyer shall be invalid.

4.4 If the Buyer's financial situation has significantly deteriorated or the credit insurance company either cancels or reduces the limit granted in respect to the Buyer, the Seller shall have the right notwithstanding any respite granted or bills of exchange or cheques accepted, to request either full or partial payment of the price or the provision of further reasonable security for payment by the Buyer in a form reasonably acceptable to the Seller prior to delivery. If the Buyer fails to comply with such a request for concurrent performance the Seller shall have the right to terminate the Contract after granting a reasonable period of grace; in such a case the provisions in section 1.5 shall apply mutatis mutandis.

4.5 If permissible by law, the Seller shall be entitled to terminate the Contract and to request that the Buyer settles any outstanding payments as set out in section 6.2. if the Buyer becomes insolvent, or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the Buyer's assets, or if the Buyer makes any arrangement with its creditors or ceases to carry on business or does or suffers any similar or analogous act existing under the laws of any country.

#### **5 RETENTION OF TITLE**

**5.1 UNTIL THE PURCHASE PRICE PLUS ANY DEFAULT INTEREST AND EX-PENSES INCURRED IN CONNECTION WITH REMINDERS AND COLLECTING OF MONIES AS WELL AS OTHER COSTS HAVE BEEN PAID IN FULL, THE DELIVERED GOODS SHALL REMAIN THE PROPERTY OF THE SELLER. THE BUYER SHALL BE OBLIGED TO PROVIDE FOR ADEQUATE INSURANCE COVERAGE FOR THE GOODS SUBJECT TO RETENTION OF TITLE.**

**5.2 THE BUYER SHALL BE ENTITLED TO PROCESS AND RESELL GOODS SUBJECT TO RETENTION OF TITLE IN THE ORDINARY COURSE OF ITS BUSINESS. IF GOODS SUBJECT TO RETENTION OF TITLE ARE PROCESSED TO A NEW PRODUCT TOGETHER WITH GOODS NOT OWNED BY THE BUYER, THE SELLER SHALL ACQUIRE JOINT OWNERSHIP IN SUCH NEW PRODUCTS IN PROPORTION TO THE VALUE OF**

**THE GOODS SUBJECT TO RETENTION OF TITLE. THE BUYER'S CLAIMS FOR PAYMENT OF THE PURCHASE PRICE FROM THE RESALE OF GOODS SUBJECT TO RETENTION OF TITLE SHALL BE DEEMED ASSIGNED TO THE SELLER AS SECURITY (EXTENDED RETENTION OF TITLE).**

**5.3 UPON THE BUYER'S REQUEST THE SELLER SHALL RELEASE THE CLAIMS ASSIGNED AS SECURITY TO THE EXTENT THE SELLER'S INTEREST IN THE PROVISION OF SECURITY CEASES TO APPLY. SUCH INTEREST SHALL CEASE TO APPLY INSOFAR AS THE REALISABLE VALUE OF THE CLAIMS EXCEEDS THE COVER LIMIT OF 110% OF THE SECURED CLAIMS NOT ONLY TEMPORARILY. THE COVER LIMIT IS ASSUMED TO HAVE BEEN MET IF AT THE TIME A REQUEST FOR RELEASE IS MADE, THE ESTIMATED VALUE OF THE CLAIMS AS DETERMINED BY AN APPRAISER CORRESPONDS TO 150% OF THE SECURED CLAIMS. IT SHALL STILL BE PERMITTED TO PROVIDE EVIDENCE THAT THE CLAIMS ASSIGNED AS SECURITY HAVE A DIFFERENT REALISABLE VALUE.**

**5.4 THE BUYER SHALL BE OBLIGED TO MAKE BOOK ENTRIES STATING THE RETENTION OF TITLE AND TO IMMEDIATELY NOTIFY THE SELLER OF ANY THIRD-PARTY SEIZURES (IN PARTICULAR ATTACHMENTS) OF GOODS TO WHICH TITLE HAS BEEN RETAINED OR OF ASSIGNED CLAIMS. LIKEWISE ANY ASSIGNMENT OF CLAIMS OF THE BUYER TO THE SELLER SHALL BE DOCUMENTED IN AN APPROPRIATE FORM (E.G. BOOK ENTRIES) AND SHALL UPON THE SELLER'S REQUEST BE DISCLOSED TO THE BUYER'S CONTRACTING PARTY NOT LATER THAN IN THE COURSE OF INVOICING TO THE SAME.**

#### **6 Default by the Buyer**

6.1 In the event of a delay in, or refusal of, acceptance of delivery by more than 14 days, the Seller shall in addition to its other rights (such as termination and free sale at the Buyer's expense) be entitled to store the respective goods at the expense and at the risk of the Buyer, and to invoice such goods as duly delivered and accepted. In this case, the purchase price shall become due for payment immediately.

6.2 Should the Buyer be in default in making any payment due under the Contract the Seller shall have the right upon giving 14 days' prior written notice to the Buyer to withhold any further deliveries until such payment has been received by the Seller. In the event of a default in payment by the Buyer under the Contract the Seller shall further be entitled, after having granted a reasonable period of grace, to terminate the Contract and to request that the Buyer settle any outstanding payments, even if they are not yet due or if a respite has been granted. In such a case, agreed discounts shall become void, and the Seller shall be entitled to claim the full invoiced amount without deductions.

6.3 The exercise of any of the above rights in an event of default shall in no case trigger any liabilities and/or obligations of the Seller to the Buyer, such as, in particular, an obligation to pay damages.

#### **7 Force Majeure**

7.1 Upon the occurrence of an event of force majeure, the Seller shall be entitled to extend the term of delivery by the duration of the respective event plus a reasonable period for re-commencement of operations, or to terminate the Contract in part or in full, whereby any claims of the Buyer (in particular damage claims) shall be excluded.

7.2 Any and all events the cause of which is beyond the reasonable control of the Seller shall be deemed events of force majeure, including but not limited to:

a. industrial disputes of any kind, unavailability of material or means of transport, closed borders, decrees by the authorities, export embargoes or other circumstances affecting the operations of the Seller, or

b. forces of nature, acts of war, riots, revolts, revolution, terrorism, sabotage, arson, fire, natural disasters, failure to obtain required official permits; or

c. late delivery or non-delivery by the Seller's suppliers, in particular as a consequence of energy crises or raw material supply crises, or if the procurement of raw materials in respect of prices and/or quantities is not possible on economically reasonable terms and this situation was not foreseeable for the Seller at the time the Contract was concluded, or for any other reason not attributable to the Seller.

#### **8 Intellectual Property, Third-party Rights, Legal Requirements, Confidentiality**

8.1 The Buyer shall indemnify and hold harmless the Seller, upon the Seller's first demand, from and against any damage resulting

from alleged or actual claims by third parties in connection with the fulfilment of the Buyer's orders if the fulfilment of such orders pursuant to the specifications, texts, illustrations, graphical representations, bar codes, labels, etc. given or supplied by the Buyer to the Seller infringes rights of third parties, such as e.g. industrial property rights. The Seller shall not be liable in the event any details supplied by the Buyer violate any requirements imposed by the law or the authorities.

8.2 The Buyer expressly agrees that the Seller shall have the right to use the Buyer's industrial property rights free of charge to the extent this is necessary or appropriate for performing the Contract.

8.3 Documents are made available to the Buyer exclusively for the purpose as set out in the Contract and are therefore confidential and may not be disclosed to any third party without the Seller's written consent.

8.4 The conclusion of a Contract shall not affect the intellectual property rights and industrial property rights in respect of folding carton designs, patterns, sketches, specimens, die cutting tools, cutting dies, negatives, plates, printing rollers, printing plates, digital data and other tools or devices of the Seller. The Buyer shall not acquire any rights whatsoever in the Seller's intellectual property or industrial property rights as a result of the conclusion of the Contract. The Buyer undertakes to observe any intellectual property rights and industrial property rights to which the Seller or the Seller's suppliers may be entitled, and shall be liable for any damage resulting from non-compliance with such obligation. Any use by the Buyer of the Seller's intellectual property or industrial property rights shall be subject to the prior written approval by the Seller and to the payment of a reasonable fee by the Buyer.

8.5 The Seller shall have the right to put its company name or a logo on the produced goods, provided this does not impair the design of the goods.

## **9 Warranty**

9.1 Subject to the following provisions, the Seller solely warrants that goods delivered pursuant to a Contract shall at the time when risk passes to the Buyer comply with all properties and characteristics expressly agreed in writing or to be expected pursuant to applicable law. The Seller does not undertake any warranty in respect of defects caused by improper handling, wear and tear, storage or other acts or omissions of the Buyer or of third parties; nor any warranty concerning the fitness of the product for a particular purpose or intended use by Buyer unless expressly agreed in writing.

9.2 A delivery shall be deemed to have been effected in compliance with contractual agreements if any quantity deviations of the goods delivered by the Seller to the Buyer do not exceed the tolerances of +/-10% and correspond to the agreed specifications or to international folding carton industry standards. Irrespective of the above provisions, any deviations which are common in the trade, negligible or technically unavoidable shall not be deemed defects.

9.3 It is expressly acknowledged that the Seller warrants only those properties, characteristics and specifications as properties, characteristics and specifications explicitly agreed in writing which have been agreed upon within the Contract itself (and not within any possible informal correspondence between the parties prior to or after execution of the Contract).

9.4 Any galley proofs, illustrations, texts and bar codes that have been approved by the Buyer or its agent shall be binding. The production of goods in accordance with these specifications shall not constitute a reason for rejection.

9.5 The Seller does not undertake any warranty in respect of the quality of raw materials, e.g. cardboard, printing ink or glue used for producing the goods if the suppliers of these raw materials have been selected or approved by the Buyer.

9.6 Any prolonged storage of the goods may affect the goods in respect of further processing (e.g. changes in colour, reduced runnability or bondability). If due to the Buyer the further processing of the goods is effected more than six months after the delivery or call-off date or the goods are stored for more than six months before the further processing, any such impairment affecting the goods shall be deemed to have been accepted pursuant to the Contract.

9.7 The Buyer is obliged to inspect the delivered goods forthwith upon receipt, however, in any case prior to processing the goods, as to any defects. The use of defective goods (with such defect notified to the seller) shall only be permissible upon the prior written approval of the Seller. For claims in connection with defects, the following provisions shall apply:

a. in case of deviations in quantity (i.e. delivered quantity is larger or smaller than contracted quantity) the defects are to be notified by the Buyer to the Seller forthwith, however, in any event within seven days

after receipt of documents showing weight or quantity of the delivered goods and/or after delivery;

b. in case of defects in quality which can be ascertained by visual inspection of the goods or the packaging or by sampling, the defects must be notified by the Buyer to the Seller forthwith, however, in any case within seven days after delivery;

c. in case of defects in quality which cannot be determined by visual inspection or by sampling, the defects are to be notified by the Buyer to the Seller forthwith on detection, however, in any event within three months of delivery. Later notifications of defects/complaints cannot be accepted.

d. In case of packaging applications for organoleptically sensitive products, the Buyer is obliged to check the suitability of the goods before processing and forthwith notify the Seller in case of defects.

9.8 When notifying a defect, the Buyer shall identify the goods clearly and include a list giving details of each defect claimed and provide the Seller with any documents to support such claim. Any such notification shall be in writing and shall be addressed exclusively to the Seller (and not to any third party, e.g. the forwarding agent). If such notification is not effected in compliance with the above provisions (in particular also section 9.7 above), any and all warranty, damage and other claims of the Buyer shall be excluded.

9.9 Until the facts of the case have been ascertained, the Buyer shall duly store the goods and, in the interest of both contracting parties, keep them insured to cover the purchase price. If it is suspected that the damage occurred during transport, the Buyer is further obliged to notify the forwarding agent (carrier) forthwith, however, in any case within the deadline provided in the forwarding contract.

9.10 Defects in the delivered goods shall be remedied, in the Seller's discretion, by repair or replacement of the item free of charge. In the event that repair or replacement is either impossible or would involve unreasonably high expenses for the Seller, the Buyer shall be entitled to a reduction of the price. Any claims in addition thereto, such as in particular claims for cancellation of the Contract, claims for damages including lost profits or claims for substitute performance shall be excluded to the extent permitted by law. Any legal presumption to the effect that the goods were defective upon delivery if a defect is detected within the first six months from delivery, shall be excluded.

9.11 Notwithstanding any possible exclusion of warranty claims under section 9.6 above, the Seller shall have no liability for any warranty claims of the Buyer not made within six months after the passing of risk. If this warranty period of six months is not valid under the applicable law, then such warranty period shall be deemed prolonged to the minimum warranty period permissible under such applicable laws. The duration of a delay in acceptance, if any, shall be counted against, and therefore reduce, the said period.

9.12 The fulfilment of any warranty obligations of the Seller shall be subject to the Buyer fulfilling any and all of its contractual obligations, in particular its payment obligations as agreed.

## **10 Liability**

10.1 Any claims against the Seller which are not explicitly permitted pursuant to the Contract or to these General Terms of Trade shall be expressly excluded to the extent this is legally admissible.

10.2 The Seller shall have no liability for any damage claims of the Buyer that are not asserted within six months of the Buyer becoming aware of the damage. If this period for liability claims of 6 months is not valid under the applicable law, then such period shall be deemed prolonged to the minimum period for liability claims permissible under such applicable laws.

10.3 Any liability of the Seller for slight negligence shall be excluded, except for cases of personal injury and mandatory legal provisions.

10.4 The amount of any damage claims justified on the merits pursuant to the Contract and these General Terms of Trade shall be limited to the purchase price of the respective delivery, except for cases of intent and gross negligence. Any liability for lost profits, indirect damage or consequential damage caused by a defect shall be excluded, except for cases of intent and gross negligence. Any liability for unforeseeable damages shall be excluded to the extent permissible under the laws applicable to the Contract.

## **11 Product Liability**

11.1 The Buyer shall be obliged to use the goods manufactured, imported or brought into commercial use by the Seller in accordance with their specifications, and to ensure that these goods (also as raw materials or components) shall only be made available to

persons who are acquainted with the hazards and risks attaching to these products for use pursuant to the specifications and/or shall only be brought into commercial use by such persons.

11.2 Any specific properties of the Seller's products shall be deemed agreed only if explicitly confirmed in writing. The Seller shall not be liable for damages due to the faulty construction of a product of which goods delivered by the Seller constitute a component or caused by the instructions for use of the manufacturer of such products.

11.3 Furthermore, if the Buyer uses the goods delivered by the Seller as raw material or components for its own products, the Buyer shall be obliged when putting such products into commercial use to extend the obligatory information to consumers under product liability law also to the goods delivered by the Seller.

11.4 The Buyer is obliged to observe the products brought into commercial use by it also after having brought them into commercial use as to any detrimental properties or hazards in connection with their use as well as to pay attention to the scientific and technical developments relating to such products and to inform the Seller forthwith of any defects of the goods delivered by the Seller detected thereby.

11.5 The Buyer shall indemnify the Seller for any liabilities, losses, damages, costs and expenses incurred to the Seller owing to a failure by the Buyer to comply with the above provisions.

11.6 Where the Buyer or the Seller has indemnified a third party due to a defective product under mandatory provisions of product liability law the Buyer shall have to prove, if recourse is sought, that the defect in the end product was caused or partly caused by a defect in the goods delivered by the Seller. Such claims shall furthermore be deemed excluded, except for cases of intent and gross negligence.

## **12 Waiver**

12.1 Any failure by the Seller to exercise or enforce its rights hereunder shall not be deemed to be a waiver of any such right; therefore, the right to exercise or enforce such a right at a later time is explicitly reserved.

## **13 GOVERNING LAW, JURISDICTION**

**13.1 THE CONTRACT AS WELL AS THESE GENERAL TERMS OF TRADE SHALL BE GOVERNED BY SUBSTANTIVE NATIONAL LAW OF THE COUNTRY WHERE THE SELLER HAS ITS CORPORATE LOCATION AS AMENDED AT THE TIME OF THE CONCLUSION OF THE CONTRACT.**

**13.2 THE APPLICABILITY OF THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXPLICITLY EXCLUDED PURSUANT TO ARTICLE 6 THEREOF.**

**13.3 ANY AND ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH ANY CONTRACT OR WITH THESE GENERAL TERMS OF TRADE, OR ANY INFRINGEMENT, TERMINATION OR NULLITY THEREOF, SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURT AT THE SELLER'S CORPORATE LOCATION.**

## **14 Miscellaneous**

14.1 Any notices made on behalf of the Seller shall be legally binding only if issued by the required number of authorised representatives (e.g. managing directors, authorised signatories, proxies).

14.2 Any agreements between the Seller and the Buyer must be made in writing. Verbal agreements shall be void. Changes and amendments to these General Terms of Trade shall only be effective if made in writing. This requirement shall also be deemed to be met in the case of facsimile or e-mail transmissions.

14.3 If any provision of a Contract or of these General Terms of Trade should be unenforceable in whole or in part, the remaining provisions shall remain unprejudiced. In the case of such partial unenforceability, the contracting parties undertake to replace the unenforceable provisions with enforceable provisions that reflect the intention of the unenforceable provisions as closely as possible.

## **15 Electronic Mailing of Documents**

15.1 Provided that the Buyer agrees separately and in writing, documents relevant to his order (e.g. confirmation of order, delivery note, invoice) shall be sent to him via e-mail or in another suitable electronic form. All transmissions to the e-mail address or any other electronic address advised by the Buyer shall be deemed delivered to the Buyer upon mailing.