

# GENERAL TERMS AND CONDITIONS OF PURCHASE bavius technologie gmbh

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Version: October 2018

## I. General, Scope

1. These General Terms and Conditions of Purchase (the “**General Purchase Conditions**”) apply to all offers, orders, and contracts concluded concerning goods and services of all kinds (collectively referred to as “**Services**”) by bavius technologie gmbh, its subsidiaries and parent companies, as well as their legal successors (in each case the “**Purchaser**”) in business dealings with entrepreneurs as defined in Section 14 German Civil Code (*Bürgerliches Gesetzbuch*, BGB), legal entities under public law or public law special funds (in each case the “**Contractor**”).
2. Contracts between the Purchaser and the Contractor as well as individual offers and orders are governed exclusively by the current applicable version of the General Purchase Conditions. The current version of the General Purchase Conditions can be accessed at [www.bavius-technologie.com/en/about-us/downloads/](http://www.bavius-technologie.com/en/about-us/downloads/). Alternatively, the Contractor can request a copy of the current version of the Purchaser’s General Purchase Conditions via e-mail from the Purchaser at sales@bavius-technologie.com.
3. With the first fulfilment of a delivery or Service governed by the General Purchase Conditions, the Contractor acknowledges their exclusive application for all further offers, orders and contracts, even if this is not explicitly agreed again.
4. The application of general terms and conditions of the Contractor that contradict or deviate from the General Purchase Conditions is hereby explicitly excluded, unless the Purchaser explicitly agreed, in textform, to their application. The General Purchase Conditions also apply exclusively if, in full knowledge of general terms and conditions of the Contractor that contradict or deviate from these General Purchase Conditions, the Purchaser without reservation accepts a Service or makes payment for such Service.
5. Agreements made orally or by telephone, as well as agreements with employees of the Purchaser, are legally binding for the Purchaser only once the Purchaser has explicitly acknowledged them, in textform.

## II. Conclusion of Contract

1. In its declaration of will issued in response to a request by the Purchaser with the aim of concluding a contract (the “**Offer**”), the Contractor must follow the request precisely with respect to the information provided and, in the event of any deviation, explicitly point this out, in textform. Offers shall be issued without delay following the request by the Purchaser and are at all times free of charge for the Purchaser.
2. The Purchaser has the right, at no extra cost, to revoke its binding declaration of will intended to conclude a contract (the “**Order**”) if it is not confirmed unamended by the Contractor within two weeks of receipt (the “**Confirmation**”).
3. Offers, Confirmations and deviations from the Order made by the Contractor and Orders of the Purchaser, as well as any amendments or additions made to the Order by the Purchaser, must be made in textform.

## III. Scope, Documentation, Deviations

1. The Order placed by the Purchaser is authoritative with respect to the scope of the contract (including any annexes thereto) even if this has not been confirmed by the Contractor.
2. Any deviations from the Order set forth in the Confirmation issued by the Contractor must be clearly marked, notified to the Purchaser in textform and are subject to the Purchaser’s approval in textform. If the Contractor fails to provide such notification, neither the Purchaser’s silence in response to the Contractor’s declaration of will, nor the acceptance of the goods or Service by the Purchaser shall be deemed to constitute acceptance. Any Confirmation by the Contractor that amends the Order is deemed to constitute a new offer, to which the Contractor is bound for a period of two weeks from receipt by the Purchaser. Purchaser’s acceptance must be made in textform.
3. All documentation and information concerning the relevant Service provided by the Contractor to the Purchaser and by the Purchaser to the Contractor or otherwise made available (e.g. service specifications, descriptions, logistic schedules) is deemed to constitute contractually agreed conditions.
4. Even after the conclusion of the contract, the Purchaser may demand technical amendments and additions to the construction and version of the goods, provided this is reasonable for the Contractor. Any resulting consequences are to be given due consideration by both sides, in particular as regards additional or lower costs, as well as delivery dates.
5. The Contractor is not entitled to make changes to the Services without the Purchaser’s prior consent, such consent to be provided in textform.

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### IV. Prices and Payment Terms

1. Unless otherwise agreed by the parties, in textform, the prices stated by the Purchaser in the Order are fixed prices, for delivery free of charge to the specified destination, including packaging and other ancillary costs. All prices are net and are subject to VAT at the applicable statutory rate. All dispatch papers, copies and invoices will state the order details and other details of the Purchaser.
2. Unless otherwise agreed in textform, the Purchaser will pay with a 3% discount within 14 days, calculated from delivery or collection of the goods, acceptance of the Service or other provision of Service and receipt of invoice; or without deduction within 30 days, calculated from delivery or collection of the goods, acceptance of the Service or other provision of Service.
3. If payment is not made on time due to incorrect or incomplete delivery documentation or incomplete invoice details, payment and discount periods will commence only once such issues have been resolved. Payments shall not be deemed to constitute acknowledgement that the Service complies with what was contractually agreed.
4. In the event of the acceptance of Services rendered early, the payment deadline is based on the agreed performance date.

### V. Place of performance/place of subsequent performance, performance date and default, performance, delivery and collection

1. Unless explicitly otherwise agreed in textform, the place of performance is the destination stipulated in the Order. The place of subsequent performance is the original destination.
2. The delivery, performance and execution dates stated in the Purchaser's Order are binding. The provision of the Service and/or receipt of the goods at the place of performance is decisive for compliance with the delivery, performance and execution dates.
3. The Contractor must immediately notify the Purchaser of any delays to deliveries or Services or other postponements, in textform, as soon as such delays are identified. The Contractor must state in textform the reason for and the expected duration of the delay to delivery or performance. Such notices do not, however, constitute any acknowledgement of new dates by the Purchaser.
4. Additional costs of expedited delivery or performance that become necessary to comply with delivery, performance and execution dates must be borne by the Contractor, unless it is able to demonstrate that the Purchaser is responsible for the need for expedited delivery or performance.
5. If the goods are delivered before the delivery date or the Service is offered before the performance date without the Purchaser's consent, the Purchaser is not under any obligation to accept or render payment until the agreed delivery and/or performance date. The Purchaser is entitled to have goods delivered prior to the delivery date returned or stored with third-party providers at the cost and at the risk of the Contractor.
6. In the event of delayed delivery or performance of Services, the Purchaser is entitled to demand a lump sum damage caused by delay in the amount of 0.30 percent of the value of the delivery or Service per working day, but no more than 5% of the value of the delivery or Service. This is without prejudice to further statutory claims. The Contractor has the right to furnish evidence to the Purchaser that no damage was incurred as a result of the delay or that such damage was considerably less. The lump sum will then be reduced accordingly. If the Purchaser can prove that it incurred higher damage, it can, in addition to the rights set for in section V. 6. sentence 1 of the General Purchase Conditions, demand compensation for any such higher loss. The claim to the lump sum damage for delay remains even if it is not explicitly claimed upon delivery or any acceptance of the Service. It can be withheld or asserted for no longer than until the time of final payment.
7. A contractual penalty will be deducted from any lump sum compensation or other claim to compensation for damage caused by delay; in the same way, the lump sum compensation will be deducted from any specifically calculated damage caused by delay. The Purchaser reserves any right to assert the agreed contractual penalty for improper performance (Section 341 German Civil Code (*BGB*)) until the time of final payment. This is without prejudice to the assertion of compensation claims going beyond a contractual penalty and the lump sum for damage.
8. Partial delivery or partial performance of Service are permissible only with the explicit consent of the Purchaser in textform. The same applies to over- or under-delivery or performance of Services.
9. In the event of default by the Contractor, after granting a reasonable grace period and the fruitless expiry of the additional grace period, the Purchaser can at the Contractor's cost have the delivery or Service that was not

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rendered performed by a third party or withdraw from the contract and/or demand compensation. If the Purchaser demands compensation, the Contractor has the right to furnish evidence that it was not responsible for the breach.

10. The acceptance of delayed deliveries and Services does not exclude the right to assert claims to compensation based on delays.

11. Unless otherwise agreed in textform, the delivery and shipment are subject to DDP Incoterms to the agreed destination at the cost and at the risk of the Contractor. If, in individual cases, it has been agreed otherwise, in textform e.g. price calculation ex works or sales depot of the Contractor, the consignments are to be shipped at the lowest cost in each case, unless the Purchaser explicitly stipulates a specific type of shipping.

12. Order number, EDV-number as well as, if known, the commission number must be stated on all dispatch documentation, invoices and correspondence. Failure to do so will result in the Contractor being liable for any consequences, including delays in processing, unless it is able to demonstrate that it was not responsible for such consequences.

13. If it has been agreed, in textform, that the Purchaser will collect the goods, the Contractor must make said goods available to the Purchaser on time, taking account of the customary time for loading and dispatch of the goods, and notify the Purchaser of this on time and in textform.

### VI. Invoices, Right to Set-Off and Retention as well as Assignment

1. Invoices are not permitted to cover several Orders and must state the Order details, in particular the Order number and article numbers. The Contractor is solely responsible for delays and other consequences attributable to non-compliance with the stipulations on invoicing, unless it can demonstrate that it is not responsible for the same.

2. The Purchaser is entitled to set-off and retention rights within the scope of the statutory provisions.

3. The Contractor is not permitted to assign claims against the Purchaser without the Purchaser's prior consent in textform.

### VII. Compliance with Regulations, Evidence and Indemnification

1. Deliveries and Services of the Contractor must comply with all applicable statutory provisions, in particular safety and environmental regulations, including the Hazardous Substances Ordinance (*Verordnung über gefährliche Stoffe*), the Electronic Equipment Act (*ElektroG*) and the safety recommendations of the competent German expert committees and professional associations e.g. VDE, VDI, DIN. Relevant certifications, test reports and evidence must be supplied free of charge.

2. The Contractor is required to ascertain and comply with the current standard of the directives and laws applicable to its goods as regards substance restrictions. It may not use prohibited substances. Substances to be avoided and hazardous substances pursuant to the applicable laws and directives must be stated in the specifications issued by the Contractor.

3. In the case of deliveries and when rendering Services, in particular when carrying out assembly and installation work, the Contractor is solely responsible for compliance with accident prevention regulations and other German occupational safety provisions. Any protective equipment required under the aforementioned laws must be supplied or provided free of charge.

4. The Contractor will in good time inform itself as to the existing internal company guidelines in place at the Purchaser's premises, in particular safety regulations, and will at all times observe such rules when carrying out assembly and installation work.

5. The Contractor must ensure that the Contractor and all direct and indirect subcontractors, including temporary employment agencies commissioned by the Contractor, observe the statutory provisions on combatting illegal employment (*Schwarzarbeitsbekämpfungsgesetz*), the Employee Secondment Act (*Arbeitnehmerentsendegesetz*), the Law on Temporary Employment (*Arbeitnehmerüberlassungsgesetz*) and the Minimum Wage Act (*Mindestlohnengesetz*). The Contractor will take appropriate measures in respect of any subcontractors commissioned by it in order to ensure and verify compliance by direct and indirect subcontractors and temporary employment agencies with the statutory requirements set forth in this Section VII. 5. of the General Purchase Conditions. In this context, the Purchaser reserves the right to carry out monitoring activities. If claims are brought against the Purchaser by employees of the Contractors or any subcontractors or any temporary employment agencies and/or social funds under Section 14 Employee Secondment Act (*Arbeitnehmerentsendegesetz*), Section 13 Minimum Wage Act (*Mindestlohnengesetz*) or other statutory provisions establishing equivalent liability, the Contractor will

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indemnify the Purchaser in full against such claims and any costs and expenses relating thereto, provided the Contractor is responsible for the claim being brought against the Purchaser.

### VIII. Relevant Documentation and Records

Deliveries are to be carried out in accordance with the “*Delivery Guidelines for Suppliers*”. The current version of the “*Delivery Guidelines for Suppliers*” can be accessed at [www.bavius-technologie.com/en/about-us/downloads/](http://www.bavius-technologie.com/en/about-us/downloads/). Alternatively, the Contractor can request a copy of these guidelines from the Purchaser via e-mail from the Purchaser at [sales@bavius-technologie.com](mailto:sales@bavius-technologie.com).

### IX. Passage of Risk and Transfer of Ownership

1. Unless otherwise agreed in textform, deliveries are to be made in accordance with DDP Incoterms to the agreed destination at the cost and at the risk of the Contractor. If the goods are to be collected or Services are to be accepted, this shall be decisive for the passage of risk.

2. Ownership in the goods must be transferred to the Purchaser unconditionally. However, if in individual cases the Purchaser accepts an Offer in textform of the Contractor pursuant to Section II of the General Purchase Conditions that is conditional on the payment of the purchase price, a prolonged retention of title (*verlängerter Eigentumsvorbehalt*) is deemed to have been agreed. This excludes all other forms of retention of title, in particular extended, assigned retention of title and extension of reservation of title to include processing.

### X. Subcontractor Clause

1. As a rule, the Contractor must itself fulfil its obligations under contracts with the Purchaser. The involvement of subcontractors, with the exception of companies from the same company group, is permissible only with the Purchaser’s prior consent, such consent to be provided in textform. This does not affect the Contractor’s sole responsibility for the due and proper provision of Services.

2. Even where consent has been provided pursuant to the foregoing provision, the Contractor may transfer Services only to expert, efficient and reliable subcontractors; this includes such subcontractors observing all statutory provisions, in particular those on combatting illegal employment (*Schwarzarbeitsbekämpfungsgesetz*), the Employee Secondment Act (*Arbeitnehmerentsendegesetz*), the Law on Temporary Employment (*Arbeitnehmerüberlassungsgesetz*), the Minimum Wage Act (*Mindestlohngesetz*) and the provisions on social insurance law, in particular on the payment of employer contributions. The Contractor is liable for subcontractors as for its own agents pursuant to Section 278 German Civil Code (*BGB*).

### XI. Confidentiality

1. The Contractor is required to maintain strict confidentiality and secrecy with respect to all not evident commercial and technical details that become known to it in the course of its business dealings with the Purchaser and not to disclose the same to third parties, nor to use the same for personal or third-party purposes in breach of contract (“**Confidentiality Duty**”). Unless otherwise agreed by the parties, in textform, the Confidentiality Duty extends beyond the termination of the contractual relationship. It lapses if and insofar as confidential information becomes generally known without this involving any breach of the confidentiality duty for which the Contractor is responsible.

2. Manufacturing for third parties and the making available to third parties of products specially manufactured for the Purchaser, in particular in accordance with plans, drawings or other special requirements of the Purchaser and/or publications concerning the Orders and Services as well as references to this Order made vis-à-vis third parties are subject to the Purchaser’s prior consent in textform.

3. For every culpable breach of this Confidentiality Duty, the Purchaser has the right to demand compensation from the Contractor for the resulting damage, which includes profits lost by the Purchaser as a result of the contractually prohibited use of commercial and technical details to be kept confidential by the Contractor.

### XII. Ownership of Technical Documentation, Tools, Items Provided

1. Samples, models, drawings, work documentation, tools and all items provided by the Purchaser to the Contractor or paid for by the Purchaser remain or become property of the Purchaser. Any transfer of possession necessary for the transfer of ownership is replaced by the Contractor storing the items on the Purchaser’s behalf, free of charge, with the care of a prudent businessman.

2. Any items provided by the Purchaser to the Contractor remain the property of the Purchaser. The Contractor must on receipt label such items as property of the Purchaser, keep these separately and use them only within the scope of the intended use stipulated by the Purchaser.

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3. Any processing or transformation by the Contractor of items provided by the Purchaser is carried out on behalf of the Purchaser. If items owned by the Purchaser are processed together with other items not belonging to the Purchaser, the Purchaser shall acquire co-ownership in the new item proportionate to the value of the Purchaser's item to the other processed items at the time of the processing. If the item provided by the Purchaser is inseparably amalgamated with other items that do not belong to the Purchaser, the Purchaser shall acquire co-ownership in the new item, proportionate to the value of the Purchaser's goods to the other mixed items at the time of amalgamation. If the amalgamation is carried out such that the Contractor's item is to be viewed as the main item, it is deemed agreed that the Contractor assigns proportionate co-ownership to the Purchaser. Any transfer of possession necessary for the accrual of ownership of the Purchaser is replaced by the Contractor storing the item concerned on the Purchaser's behalf, free of charge and with the care of a prudent businessman.

4. The Contractor is at its own cost required to take out adequate insurance for all samples, models, drawings, work documentation, tools and items provided by the Purchaser against all customary risks, in particular against fire and theft, and on request by the Purchaser to furnish evidence of the conclusion of such insurance. The Contractor is liable for the damage or loss thereof while these items are within the possession of the Contractor, its downstream suppliers or during carriage arranged by the Contractor.

5. The Contractor is required to notify the Purchaser immediately of any imminent or existing seizure of its items, as well as any other impairment of the rights of the Purchasers.

6. The items provided are to be returned at the cost and at the risk of the Contractor.

### **XIII. Intellectual Property, Infringement of Proprietary Rights**

1. The Contractor shall ensure that all Services are free from third-party rights, in particular patents, licenses, applications for intellectual property rights and other third-party intellectual property rights as well as, in particular, that the provision and use of the Services does not involve any breach of such third-party intellectual property rights and that this will not violate any law. The Purchaser is not under any obligation to review whether there are any third-party IP-rights in the Service.

2. The Contractor shall indemnify the Purchaser and its clients against third-party claims based on infringements of IP rights if the Contractor is responsible for such infringement. The Contractor's indemnification duty covers all necessary costs and expenses incurred by the Purchaser and its clients as a result of, or in connection with, the third-party claim.

3. The Purchaser is entitled under the involvement of the Contractor and at the latter's cost, to procure consent to the use of the Services concerned from the rightsholder.

4. The parties will without undue delay notify one another of all risks of infringement and alleged infringements that come to their attention.

5. The Purchaser reserves all ownership, copyright and other intellectual property rights in samples, models, drawings, work documentation, tools, production materials, construction plans and all other documents and other items provided to the Contractor for the purposes of performing the contract, as well as in the know-how embodied therein.

6. The items defined in Section XIII. 5. of the General Purchase Conditions are permitted to be made available to third parties only for the purposes of performing the contract and only with the Purchaser's prior consent in textform. They are permitted to be used by the Contractor only for the performance of the contract and, on instruction by the Purchaser, are to be returned immediately, but no later than after performance of the contract.

7. The Contractor is permitted to use its business dealings with the Purchaser for advertising purposes only with the Purchaser's prior consent in textform.

### **XIV. Quality Assurance**

1. The Contractor must perform quality assurance suitable in terms of type and scope and in line with the latest technical standards concerning its Services and, on request by the Purchaser, furnish evidence of the same. If necessary, in addition a detailed quality assurance agreement should be concluded.

2. The Purchaser is entitled at any time during standard business hours of the Contractor to inspect the production status at the Contractor or third parties engaged by the Contractor in fulfilment of its obligations, as well as at the shipping agent or in warehouses, including during the production process, and to request information as to the production status.

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3. If the Contractor has difficulties in the production or supply of the agreed quality or material characteristics of the goods, it is under an obligation to notify the Purchaser of this without undue delay.

4. The Contractor shall ensure that its goods do not exceed the EU limits for radioactive contamination.

### XV. Inspection of Goods and Complaints

1. The Purchaser will inspect the received goods to establish any deviations in quality or quantity within a reasonable period, as is feasible within the course of ordinary business. The inspection will be based on the Purchaser's quality criteria. The Purchaser fulfils its inspection obligation if it carries out an incoming goods inspection by externally examining the goods and the delivery documentation as well as inspecting representative random samples.

2. The Purchaser must notify the Contractor of obvious defects such that the notice of defects is received by the Contractor within four working days. The Purchaser must notify the Contractor of all other defects as soon as these are ascertained in the course of ordinary business. Within the scope of the foregoing Section XV. 2. sentence 1 and 2 of the General Purchase Conditions, the Contractor waives the objection of late notification of defects.

### XVI. Warranty

1. In the event of a defect in the Service provided by the Contractor, the Purchaser is entitled without restriction to all statutory rights and claims, in particular statutory warranty rights and claims.

2. In the case of wearing parts, the Contractor shall ensure that these can be used without defect for the duration of the customary number of hours of operation. The Contractor shall furthermore ensure that its Service corresponds to the state of the art, the regulations issued by the German legislator, supervisory authorities and trade associations and the German Electrotechnology Association (VDE) as well as the applicable EU-Directives and Regulations concerning performance, accident prevention and environmental protection and that it has successfully completed all stipulated environmental impact assessments for this category of product.

3. Defects in the Services of the Contractor must be remedied within an appropriate period at the discretion of the Purchaser by rectification of the defect or the supply of a defect-free item, irrespective of whether a contract of sale or contract for work was concluded, unless the Contractor demonstrates that the selected type of subsequent performance would result in unreasonable costs for the Contractor.

4. All necessary costs incurred as a result of the subsequent performance, in particular inspection costs, costs of labour and materials, installation and disassembly costs, transport and removal costs, as well as additional start-up costs, must be borne by the Contractor. In addition, the Purchaser is entitled to the statutory claims to withdrawal, reduction and compensation provided the statutory conditions are met.

5. In urgent cases (in particular in the case of threats to operating safety or to prevent significant damage), to resolve minor defects and in the case of delay in the rectification of defects, the Purchaser is entitled following prior information and on expiry of a brief additional grace period appropriate to the situation, at the cost of the Contractor itself to rectify the defect and any resulting damage or to have the same carried out by a third party at the Contractor's cost. This also applies subject to the same conditions if the Purchaser delivers or performs Services late or the Purchaser has to rectify the defect at short notice in order to avoid delays to delivery.

6. If the Contractor is responsible for a defect, the Purchaser is entitled at its discretion precisely to calculate the expense required to process the complaint or to demand lump sum compensation of EUR 100.00. The Contractor reserves the right to furnish evidence that the damage was not incurred or not in this amount.

7. The warranty period for the Purchaser's claims based on defects is 36 months from the passage of risk. This also applies to goods delivered subsequently and rectified parts of the goods, provided such rectification is significant and concerns a material defect. This does not apply if the Contractor declares that the subsequent delivery or rectification does not constitute acknowledgment of the obligation to rectify defects e.g. if it is carried out as a gesture of goodwill or to avoid a dispute.

### XVII. Replacement Parts

1. The Contractor shall ensure the availability of all replacement parts necessary for the functioning of the Service for a period of 15 years from initial delivery or collection of the goods or other provision of Service ("**Replacement Parts Delivery Period**"). The parties must mutually agree on the prices, quantities and delivery terms for replacement parts, based on availability and the necessary costs for materials, accessories and tradesmen, as well as additional costs for setting up the operating facilities, for packaging, shipping and processing.

2. If the Contractor fails to fulfil this obligation during the Replacement Parts Delivery Period, it shall notify the Purchaser of this without undue delay, in textform. In such case, the Purchaser has a claim against the Contractor to

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have the replacement parts that can no longer be delivered replicated at the Contractor's cost. The Contractor must in this case support the Purchaser in every way, for instance by making available production drawings and procuring any necessary proprietary rights.

### **XVIII. Product Liability**

1. In the event of the occurrence of a product defect attributable to the Contractor's Service, the Contractor is required to indemnify the Purchaser against third-party compensation claims insofar as the cause lies in the domain and organisational sphere of the Contractor and it would be liable vis-à-vis external third parties. The principles set forth in Section 254 German Civil Code (*BGB*) apply mutatis mutandis to any compensation settlement reached between the Purchaser and the Contractor.

2. For necessary measures by the Purchaser to prevent damage, e.g. product recalls, the Contractor is liable insofar as its Service caused these measures. The principles set forth in Section 254 BGB apply mutatis mutandis for a compensation settlement between the Purchaser and the Contractor.

3. The Contractor undertakes to take out product liability insurance with a sufficient coverage amount of at least EUR 10 million per loss event (personal injury/damage to property) – lump sum – for the duration of the business dealings and to maintain the same. If the Purchaser is entitled to further compensation claims, these shall remain unaffected.

### **XIX. Act on Foreign Trade, Incoterms**

1. If the goods ordered by the Purchaser are classified as commodities on the export list (EL) – Part IA and Part IB – of the Foreign Trade Regulation (*Außenwirtschaftsordnung*), the Contractor is required to clearly label the articles concerned in its (order) Confirmation in accordance with the commodity classification (customs tariff heading) for the foreign trade statistics.

2. When interpreting trade terms, Incoterms apply in the last version applicable upon conclusion of the contract.

### **XX. Applicable Law, Place of Jurisdiction, Severability Clause**

1. Unless otherwise agreed in textform, the legal relationship between the Purchaser and the Contractor is exclusively governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (*CISG*) and the conflict of laws provisions.

2. Unless otherwise agreed in textform, the courts with the local jurisdiction for Baienfurt have exclusive jurisdiction for all contractual and related non-contractual disputes between the parties. The Purchaser is also entitled to file suit at any other permissible legal venue.

3. Should any provision of these General Purchase Conditions or a provision in other agreements between the parties not have become a component part of the contract, in whole or in part, should such provision be or become invalid, unenforceable or void or should these General Purchase Conditions or other agreements between the parties prove to have an unintended omission, this shall not affect the validity of the remainder of the provisions of these General Purchase Conditions or other agreements. The provision that did not become a component part of the agreement, that is invalid, unenforceable or void is deemed replaced with the valid and enforceable provision that the parties would have agreed upon, had they considered the matter from the outset; the mutual commercial interests are to be given due consideration. The foregoing sentence applies mutatis mutandis in the event of unintended omissions.