TROX® TECHNIK
The art of handling air

GENERAL TERMS AND CONDITIONS OF SUPPLY AND PAYMENT TROX AUSTRIA GMBH

I. Formation of contract

1. These General Terms and Conditions of Supply and Payment shall apply to all present and future contracts for goods and others services to be furnished and rendered by us (hereinafter also: “Seller”). General terms and conditions of business of our counterparty (hereinafter also: “Purchaser”) shall be deemed rejected by us to the extent they conflict with these terms and conditions. The foregoing applies even when we do not expressly object to them.

2. Statements made by us shall only be deemed legally binding on us if they have been expressly confirmed in writing by persons holding agency authority from our Company.

3. As a basic rule, the Seller’s offers shall be deemed subject to change. Absent any special agreement to the contrary, no contract shall be deemed to be formed until such time as we have issued a written, express order confirmation pursuant to sub-section 2 hereof.

4. All details with respect to the Items of Supply, which are presented to the Purchaser in the course of contract negotiations, appear from catalogues forwarded by the Seller to the Purchaser in advance of contract formation or are made available in some other way shall merely be deemed declarations made to the best of our knowledge and do not constitute legally-binding undertakings in the legal sense with respect to characteristics and qualities of the Items of Supply. Any statements with respect to characteristics and qualities of the Items of Supply shall only and exclusively, be legally-binding on us if we have expressly confirmed them in writing pursuant to subsection 2 hereof.

5. The Seller reserves the entirety of all ownership and intellectual property rights with respect to samples, cost estimates, drawings and similar corporeal and incorporeal forms of information (including information disclosed in electronic form); they may not be disclosed to third parties. In addition, the Purchaser undertakes not to disclose any information and documents the Seller has designated as confidential to third parties except with the Seller’s consent.

6. Data protection advice: The Seller hereby advises the Purchaser that it may process and disclose to others the Purchaser’s personal and corporate data through the use of information technology in accordance with the provisions of the Austrian Data Protection Act (German acronym: DSG). In this context, certain data (names, addresses, invoice data and non-timely payments by the Purchaser) may be forwarded to credit agencies and/or credit protection associations.

II. Prices

1. Absent an express agreement to the contrary, our prices are quoted ex works, and include loading of the goods at our works. Quoted prices do not include VAT at the rates prescribed from time to time by law or any further costs such as, in particular, the costs of packaging and unloading.

2. Prices quoted for individual items of an offer shall only be valid where the Purchaser issues a confirmed order for the entirety of that offer. Confirmed prices shall only apply where the agreed quantities are accepted by the Purchaser.

3. If taxes and duties under public law and other costs (“External Costs”) change after the contract has been formed, where such External Costs were covered by the agreed price/formed the basis for our cost calculations (irrespective of whether this was express or implicit) and where we have no ability to influence such External Costs, or if new External Costs arise, then we shall be entitled to amend our prices to a corresponding extent. The Seller shall furnish the Purchaser with evidence of the increase in its costs upon written request of the Purchaser.

4. In the event that the above-referenced taxes and duties/External Costs change to the advantage of the Purchaser after the contract is formed as per the first sentence of sub-section 3, the Seller is willing to pass on any reduction in cost which has actually occurred on the side of the Seller (relative to the specific contractual relationship) to the Purchaser upon the Purchaser’s express, written request.

III. Terms of payment

1. Absent an express, written agreement to the contrary, payments are to be settled net upon conclusion of the contract.

2. The Purchaser effect payment in such a way that we are able to freely dispose over the funds on the date payment is due. The Purchaser shall bear any bank fees.

3. In the event of default, we shall charge at least 8% interest over the base interest rate of the Austrian National Bank, from the date the invoice was due. The foregoing is without prejudice to our right to claim damages exceeding the foregoing suffered by us in consequence of the default.

4. Where the Purchaser is in default, the Seller shall, in addition, be entitled to resile from the contract and to demand compensatory damage, as well. Furthermore, the Seller may prohibit the Purchaser in the event of default (even without separately resiling from the contract) from selling the Items of Supply to a third party or from installing it. In the event of default of payment, the Seller shall, furthermore, be entitled to demand return of the Items of Supply at the Purchaser's cost and expense. The Purchaser hereby authorises the Seller for this purpose now and in advance to access the premises of the Purchaser and to recover the Items of Supply. Recovery of/any demand made for return of the Items of Supply shall not be deemed a rescission of the contract.

5. In the case described in sub-sections 3 and 4 hereof, the Seller may demand that the Purchaser make prepayments for goods and services still outstanding in such amount as the Seller may determine. In the event that an irrevocable direct debit authority has been given, that debit authority may also be revoked.

6. The legal consequences referenced in sub-sections 3 to 5 hereof may be avoided by the Purchaser if it furnishes collateral in the amount of our claim for payment which is deemed at risk.

IV. Execution of deliveries, delivery periods and deadlines

1. Our obligation to supply goods and services is subject to correct and timely deliveries to us by any of our upstream suppliers. The Seller shall inform the Purchaser as soon as possible of any potential delays which become apparent.

2. The delivery period shall be governed by the express, written agreement made by the parties. If that agree ment does not address the delivery period, then the delivery period shall begin to run on the date we have confirmed the order and, for standard Items of Supply, shall be 45 business days. In the event that the Item of Supply is a custom-made product, then the delivery period shall be 90 business days. An item shall, in any event, be deemed to be a 'custom-made product' within the meaning of the foregoing if it was necessary to individually adapt or modify the standard Item of Supply to perform the contract ("specifications"). The foregoing shall also apply where only minor modifications/adaptations are to be made to a standard Item of Supply.

3. However, the commencement of the delivery period shall in any event be subject to the condition precedent that all of the commercial and technical questions existing between the parties have been resolved and the Purchaser has satisfied all obligations incumbent upon it, such as, in particular, any certificates or approvals from authorities which may be necessary, any down-payment which may have been agreed, the furnishing of LOCs or guarantees. However, if the Purchaser is delayed in doing so (i.e. has encountered "obstacles"), then the delivery period shall begin to run within a reasonable time after all obstacles have been eliminated.

4. In the event of any subsequent modification of the order for the Item of Supply, the Seller shall be entitled to extend the delivery period unilaterally by a reasonable time. To the extent only portions of the order are subsequently modified, the Seller's rights to extend the delivery period shall, in cases of doubt, be deemed to extend to the entire order.

5. The delivery period shall be deemed to have been complied with if the Item of Supply was dispatched from the Seller's works/warehouse prior to the expiry of the delivery period. If a formal acceptance procedure is required, then (with the exception of well-founded refusals to perform formal acceptance) the agreed formal acceptance date shall govern. In the absence of any party agreement as to such a date, the date the Seller notifies the Purchaser that it is ready to perform formal acceptance ("Readiness to Perform Formal Acceptance") shall be deemed controlling.

6. If dispatch/formal acceptance of the Item of Supply is delayed for reasons attributable to the Purchaser, then, beginning one month from the date on which dispatch of the goods/formal acceptance should have taken place (or the date on which the Purchaser received notification of the Seller's Readiness to Perform Formal Acceptance), the costs arising as a result of the Purchaser's delay shall be charged to the Purchaser. The Seller shall in any event be entitled, without furnishing evidence of damages or any actual expenditures, to demand a reasonable fee from the Purchaser for any storage of the Item of Supply which may have been rendered necessary by the delay.

7. Where the Seller's failure to comply with its delivery period is attributable to force majeure or other circumstances lying outside its control, then the delivery period shall not begin to run until such time as the obstacle has ceased or been eliminated, plus a reasonable lead-time. The foregoing shall also apply where such events occur during an ongoing delay. The following shall be deemed the equivalent of the cases covered by the first sentence hereof: Foreign exchange measures and other sovereign acts, strikes, lock-outs, disruptions to operations for which we do not bear culpability (e.g. fire, breakage of machines and cylinders, shortages of raw materials or energy), disruptions to transport routes, delays in importation/ customs clearance, and all other circumstances which substantially impede our ability to or make it impossible for us to render our supplies of goods and services. It is immaterial whether such circumstances arise within our sphere or that of an upstream supplier.

8. If the performance of the contract becomes unreasonable for one of the parties due to the above-referenced events, that party may rescind the contract.

9. The Purchaser may resile from the contract without observing any notice period if there has been a conclusive frustration of the Seller's entire performance of the contract prior to such time as the risk passes to the Purchaser. In addition, the Purchaser may rescind the entire agreement if performance of a portion of the deliveries of goods and services becomes impossible and the Purchaser has a justified interest (of which the Purchaser is or should be aware) in refusing the remaining partial performance the Seller is able to complete. If the Purchaser does not have any such justified interest in refusing such partial performance, then the Purchaser shall be deemed entitled to resile from the contract with respect to that portion, but the Purchaser's obligation to pay a share of the purchase price relating to that partial performance shall remain in any case unaffected by the Purchaser's partial rescission.

10. If the impossibility arises during a delay in carrying out formal acceptance, or if the Purchaser is solely or predominately responsible for the circumstances giving rise to the impossibility, then the Purchaser shall in any event remain obliged to perform its side of the contract.

11. If the Seller is in default and if the Purchaser suffers losses as a consequence thereof, then the Purchaser shall be entitled from the 2nd week to demand liquidated damages for delay. Such damages shall be 0.5 % for each full week of delay, but to a maximum total of 5 % of the value of the portion of the overall goods and services to be supplied which, as a result of the delay, could not be timely used or used in accordance with the contract. If the Purchaser sets the Seller a reasonable grace period and the Seller fails to perform within such grace period, then, within the scope of what is prescribed by law, the Purchaser shall be entitled to rescind the contract. Further and other claims on the basis of delays in delivery shall be governed by clause VIII hereof.

V. Reservation of title

1. All goods supplied by us shall remain our property (Reservation of Title Goods), irrespective of the fact that the goods have been delivered and that the risk may have passed to the Purchaser or of any other provisions of these Terms and Conditions of Supply, until such time as the Purchaser has settled all of our claims, including, in particular, any payment balance demands to which we may be entitled within the scope of our business relations. The foregoing shall also apply to receivables arising in future and contingent claims, e.g. from accepter's bills of exchange and shall apply even where payments are made in respect of specially designated claims.

2. In the event of a breach by the Purchaser, in particular in the event of default of payment, the Seller shall be entitled to recover the Item of Supply after a reasonable grace period it has set has elapsed to no avail and the Purchaser shall, in such case, be obliged to surrender such Items of Supply. A claim for surrender of any such reservation of title property shall not be deemed to be a rescission of the contract.

3. In any event, the Seller shall be entitled to resile from the contract with immediate effect where good cause to do so exists. "Good cause" shall, in particular, be presumed where the Purchaser has failed to perform its material contractual obligations or where circumstances are present that cause the Purchaser's proper performance under the contract to appear to be in jeopardy or if the Purchaser ceases business operations or if insolvency proceedings are opened over its assets or if the opening of such proceedings has been dismissed due to a lack of assets in the estate.

4. For so long as our claims pursuant to V.1 hereof have not been fully settled, the Purchaser must hold the goods in trust for the Seller and must keep the goods separate from its property and that of third parties, and must properly store, secure and insure the Reservation of Title Goods and label them as the Seller's property.

5. Where the Reservation of Title Goods are combined, processed and commingled with other goods by the Purchaser, we shall acquire a right co-ownership pro rata to the new item of property in the same proportion as the invoiced value of our Reservation of Title Goods bears to the invoice value of the other goods used.

6. Where our right of ownership lapses as a result of combining, processing or commingling the goods, you hereby agree that any such combination, processing or commingling shall be deemed to be effected on our behalf, such that we shall become the owners of the new item of property. In the event that we – irrespective of the legal grounds thereof – should fail to become the owners of the new item of goods despite this agreement, you hereby agree that we shall be entitled to ownership of the new item of property, without the need for any separate agreement to such effect. Transfer of physical possession shall be deemed to occur by way of anticipated possession. In the event that – irrespective of the legal grounds thereof – it should be impossible for ownership to the new item of property to pass completely to us, you hereby agree that we shall be equitable co-owners of the new item of property to the extent of the invoiced value of our reservation of title property without the need for any separate agreement on this point. With respect to the form by which possession is surrendered, the foregoing shall apply mutatis mutandis. Both the property itself and the equitable co-ownership shares to items of property shall be deemed 'Reservation of Title Goods' within the meaning of clause V.1.

7. Until such time as the Purchaser has made payment in full, the Purchaser may only use the Reservation of Title Goods and sell the Reservation of Title Goods on to third parties upon its standard terms and conditions of business, subject to clause V.8 hereof, and only for so long as the Purchaser is not in default. However, the

Purchaser must keep any and all compensation therefor (including any insurance payments) for the Seller, and must segregate these funds from its other assets and those of their parties. The Purchaser is not entitled to make any other dispositions over the Reservation of Title Goods, even if only by way of collateral.

8. The Purchaser may in addition only sell the Reservation of Title Goods if it, in turn, agrees with its purchaser to the imposition of a reservation of title and if its own claims from the re-sale are assigned to us. By entering into the present agreement, the Purchaser hereby offers us, now and in advance, assignment of its receivables from any resale by it of Reservation of Title Goods. We hereby accept the assignment. Such claims shall serve as collateral to the same extent as the Reservation of Title Goods themselves.

9. The supplier hereby undertakes to take all such acts as are necessary to transfer and assign its receivables. In particular, the Purchaser hereby undertakes to note the passage of title in its business records and/or open items list.

10. If the Reservation of Title Goods are sold by the Purchaser together with other goods which we have not sold to it, the Purchaser is deemed to assign its receivables from its re-sale thereof pro rata in proportion of the invoiced value to the other goods sold by way of collateral. Clause V.8 hereof shall apply mutatis mutandis.

11. Where goods are sold to which we have a co-ownership share pursuant to clause V.4 or 5, the Purchaser hereby assigns the portion thereof corresponding to our co-ownership share by way of collateral. Clause V.8 hereof shall apply mutatis mutandis.

12. The Purchaser is entitled, until such time as we revoke its authority to undertake collections (which we may do at any time without stating any reason), to collect receivables from its re-sale of Reservation of Title Good for us. Upon our request, the Purchaser shall immediately inform its end customer of the assignment to us. The Seller reserves the right to perform any such notification itself. In such a case, the Purchaser hereby undertakes to forward to us without delay upon our request such information and documents as are necessary for this purpose. Any and all costs arising in this context shall be borne by the Purchaser.

13. The Purchaser is not entitled to make any further assignment of receivables or claims. The Purchaser is also prohibited from reselling the receivables or claims to third parties, for example to factoring companies.

14. In the event of attachment or other interference by third parties with the Reservation of Title Goods, the Purchaser shall inform us without delay thereof so that the Seller is able to file an action pursuant to sec. 37 of the Austrian Judicial Execution Act. Where the Purchaser fails to perform this obligation, it shall bear liability for the losses incurred as a result.

15. The Purchaser hereby undertakes to release the collateral to which it is entitled upon request of the Purchaser to the extent that the liquid value of the collateral exceeds the security to which the Seller is entitled by a total of more than 20 per cent. The Seller shall have discretion to select the collateral to be released. 16. Where under the applicable substantive law of the country, in question the above-referenced collateral cannot be validly created or, irrespective of the legal grounds thereof, where such collateral has lapsed in the interim, then the parties shall be deemed to have agreed to such collateral as is equivalent to the Reservation of Title Goods or the assignment under the substantive law which is applicable in the specific case. If the cooperation of the Purchaser is required in order to create such collateral, then the Purchaser shall at its own cost and expense take all such steps as are necessary to create and preserve such rights.

VI. Passage of risk, formal acceptance

1. Unless otherwise agreed, the Seller shall determine the transit route and the means of transport as well as the forwarder/carrier. With respect to the costs, clause 8 hereof shall govern. Where the Purchaser demands shipping other than the shipping selected by the Seller (means of transport and/or transit route), the Purchaser shall, in addition, bear such additional costs as are associated with this.

2. In the case of shipment by heavy goods vehicle, the delivery shall be made at the recipient’s loading dock/curb edge, without unloading. The unloading site must be accessible for all commercially standard heavy goods vehicles and located on a road which is passable in any weather circumstances.

3. At such time as custody of the goods is surrendered to a forwarder/carrier, the risk of loss shall pass to the full extent to the Purchaser, irrespective of whether the Seller has assumed obligations to perform further services, such as, for example to assume the cost of shipping or delivery or erection of the Item of Supply at its destination. This passage of risk at the time custody thereof is surrendered to the forwarder/ carrier shall also apply with respect to each individual partial delivery.

4. To the extent formal acceptance is to be performed, such formal acceptance shall control with respect to the date on which the risk passes to the Purchaser. In the alternative, the date on which the Seller notifies the Purchaser of its willingness to perform final acceptance shall control. Final acceptance may not be refused due to minor defects.

5. Where shipping/formal acceptance is delayed or fails to be performed for reasons not attributable to the Seller, then the risk of loss is deemed to have passed to the Purchaser at the end of day on which the Purchaser was informed of the Seller’s readiness to transfer custody/to perform formal acceptance.

6. The Seller hereby undertakes to insure the item of delivery upon the Purchaser’s request and at the Purchaser’s cost and expense.

7. Where, without any fault of the Seller, shipping on the intended transit route or to the intended location within the intended time proves impossible, the Seller shall be entitled to ship the goods by another route or to another location; the Purchaser shall bear any additional costs arising. The Purchaser shall be afforded a prior opportunity to comment thereon.

8. As a basic rule, the goods may be delivered in unpackaged condition and without any protection against rust. To the extent the parties have expressly so agreed or if and to the extent it is customary in the trade to do so, the Purchaser shall effect its supplies on a packaged basis. The Seller shall arrange for packaging, protective measures and/or transport equipment in accordance with its own experience and its own customary standard, at the cost and expense of the Purchaser.

9. The Purchaser is subject to an obligation to enquire with the Seller with respect to the customary packaging standard with respect to the goods to be delivered. The Seller hereby agrees, now and in advance, in such case to provide the Purchaser with the relevant information and, where appropriate, to undertake a different type of packaging at the Purchaser’s request. The Purchaser shall bear such additional costs as are occasioned by this.

10. The Seller shall not recover any transport packaging or any other types of packaging.

11. The Seller is entitled to effect partial deliveries to such extent as is reasonable vis-à-vis the Purchaser. Overdeliveries or under-deliveries relative to the quantity contracted for are permissible.

12. Without prejudice to the Purchaser’s rights under clauses VII and VIII, the Purchaser is not entitled to refuse to accept the Item of Supply where it is subject to minor defects.

VII. Claims for defects

We hereby warrant Items of Supply against defects (including the lack of warranted characteristics or qualities) in accordance with the following terms: The warranty period shall be maxium 24 months as from delivery.

1. The Purchaser must inspect the goods within the meaning of sec. 377 of the Austrian Entrepreneurial Code and must raise any claims for defects. Claims for defects must be received by the Seller in writing without delay (such claims otherwise to lapse) but under no circumstances may they be raised later than 14 days from the date of delivery. Defects which could not have been detected within such period even upon the most careful inspection must be communicated to the Seller in writing (such rights otherwise to lapse) likewise without delay, and any further handling or processing must immediately cease, but under no circumstances may they be communicated to the Seller later than 14 days following discovery. In both cases, any lapse of rights shall, in addition to what is provided under sec. 377 (2) of the Austrian Entrepreneurial Code (subject to the limitation on liability pursuant to clause 8 hereof), shall be deemed also to extend to tort claims for fault occurring at the time of or prior to conclusion of the contract (culpa in contrahendo) as well as to any damages for the consequences of such defects.

2. Where claims for defects are justified and timely made, the Seller shall have the option of either recovering the Item of Supply which has given rise to the complaint and replacing it with a non-defective item (“exchange”) or by eliminating the defect by way of remediation (“betterment”).

3. The Purchaser shall have the right to cancel the contract, i.e. to demand rescission, if the Seller has allowed a reasonable grace period set by the Purchaser for performing exchange or betterment to elapse to no avail, or if the betterment or the exchange was unsuccessful or was impossible. Where the defect is only minor, the Purchaser shall only have the right to abate the price; in such a case, the option of rescission is expressly excluded.

4. Where the Purchaser does not furnish the Seller with the opportunity within a reasonable time of inspecting the defect itself/of viewing the item for purposes of inspection or if it does not return the item which is the subject of the complaint to the Seller at the latter’s request for this purpose, although it would have been reasonable for the Purchaser to do so, then the Purchaser shall forfeit any warranty rights to which it would otherwise be entitled.

5. With respect to the immediate costs arising as a result of the betterment/exchange, the Seller shall bear the costs of the measures undertaken to provide betterment/the replacement item, including shipment if and to the extent the Purchaser’s complaint is revealed to be well-founded. The Seller shall also bear the costs of such mechanics and unskilled workers as are necessary in order to produce the betterment, including travel costs (“other direct costs”), provided this does not constitute an unreasonable burden for the Seller. In any event, an unreasonable burden shall be presumed to exist where the ‘other direct costs’ exceed the price of the item of supply. No reimbursement shall be paid for further costs of the Purchaser, in particular including costs, e.g. for assembly and disassembly, alterations, scaffolding, measures of protection and security measures as well as expenditures of the Purchaser which have been rendered useless/ constitute frustrated expenditures.

6. Only where operational safety is in jeopardy or it is necessary to avert disproportionately great damages

shall the Purchaser have the right to eliminate the defect itself or to have it eliminated by third parties ("Cover"). In such a case, the Seller shall bear the costs of the Cover (to such scope as is described in clause 1.5), provided that it was necessary and that the Seller was informed without delay and in writing of the intended Cover. Claims on the basis of Cover pursuant to sec. 1042 (by analogy)/secs. 1155, 1168 (by analogy) of the Austrian Civil Code are hereby excluded.

7. The Seller shall not honour any warranty, in particular, in the following cases: Inappropriate and improper usage, defective assembly/commissioning by the Purchaser or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable resources, defective construction works, chemical, electrochemical or electrical impact, provided the foregoing are not attributable to the Seller.

8. Further claims shall be deemed to be governed exclusively by clause VIII of these terms and conditions.

9. With respect to defects of title, by way of supplementation to the foregoing, the following shall apply:
9.1. If the use of the Item of Supply leads to an infringement of intellectual property rights or copyright within the Republic of Austria, the Seller shall, as a general rule, procure, at the Seller's own cost and expense, the right to make further use thereof for the Purchaser or shall modify the Item of Supply in a manner which is reasonable to the Purchaser such that the intellectual property infringement no longer exists. If this is not possible on commercially reasonable terms or within a reasonable time, the Purchaser shall be entitled to rescission of the contract. In the circumstances described, the Seller may likewise resile from the contract. In addition, the Seller shall indemnify and hold the Purchaser harmless against claims by the relevant intellectual property owners which have been ascertained by res judicata judgment or which are undisputed.

9.2. The obligations referenced in clause 9.1 hereof constitute the entirety of the Seller's warranty obligations, subject to clause VIII.2 and 3 in the event of an infringement of intellectual property rights or copyright. In addition, they shall only be deemed to exist where • the Purchaser informs the Seller without delay of intellectual property right or copyright infringements which have been asserted,

- the Purchaser supports the Seller to a reasonable extent in defending against such claims as have been made against it/permits the Seller to perform the modification measures described in clause 9.1 hereof,
- the Seller retains the right to undertake all defence measures, including extrajudicial settlements,
- the defect of title is not based on instructions by the Purchaser and
- the infringement of rights was not caused by the Purchaser's having independently modified the Item of Supply or having used it in a contractually non-compliant manner.

VIII.Liability

1. If the Purchaser is unable to use the Item of Supply due to the fault of the Seller as a result of a failure of or a defect in workmanship, as a result of recommendations and advice provided prior to or following formation of the contract, or as a result of a breach of other contractual ancillary obligations (in particular including instructions for operating and servicing the Item of Supply) then the terms of clauses VII and VIII.2 and 3 shall apply mutatis mutandis, and shall be deemed to exclude any and all other rights of the Purchaser.

2. The Purchaser shall bear liability for damage which has arisen on the Item of Supply itself (irrespective of the legal grounds thereof) only

- in the event of intentional acts or omissions,
- in the event of gross negligence by the owner/ constitutive bodies or executives,
- in the event of tortious injury to life, limb or health,
- in the case of defects the Seller has fraudulently failed to disclose or the absence of which the Seller has guaranteed,
- in the event of defects to the Item of Supply, to the extent that liability is imposed under the Austrian Product Liabilities Act for injury to persons or for damage to property with respect to items of property used in a private capacity.

3. Apart from the limitation pursuant to clause VIII.2 hereof, the Seller shall only bear liability for culpable breach of its contractual obligations where it is liable for gross negligence, and such liability shall be deemed limited to such losses as are typical for the contract and reasonably foreseeable.

4. The parties hereby expressly exclude any further claims against the Seller.

IX. Prescription

1. All of the Purchaser's claims, irrespective of the legal grounds thereof, shall be deemed prescribed at the end of a 12 month period.

2. The legal statute of limitations shall apply with respect to claims for compensatory damages under clauses VIII.2 and 3. The statute of limitations shall likewise apply to defects to buildings or Items of Supply which, pursuant to the customary manner of their use, are used for a building and caused the defectiveness thereof.

X. Use of software

1. To the extent the scope of our Supplies include software, the Seller hereby grants the Purchaser a non-exclusive right of use to the software (including the associated documentation) supplied by us. The software is provided to the Purchaser for its use on the Item of Supply on which it is intended to operate. The Purchaser is prohibited from using the software on more than one system.

2. The Purchaser may only copy, edit, or translate the software or convert it from object code to source code to the extent permitted by law. The Purchaser hereby undertakes not to remove manufacturer details (in particular including copyright notices) or to modify them without the Seller’s prior express consent.

3. All other rights to the software and the documentation, including as to copies, are deemed retained by the Seller/the software supplier. The Purchaser may not sub-licence the software or documentation. XI. Applicable law, jurisdiction and venue 1. Austrian substantive law (excluding any of its conflicts of law rules and excluding the CISG) shall apply exclusively to all legal relations between the Seller and the Purchaser. 2. In the event that doubts as to the construction of commercial terms arise, Incoterms 2020 shall be applied by way of subsidiary interpretation. 3. Unless otherwise agreed, the place of performance is deemed to be the place at which the goods in question were dispatched. In terms of geographical jurisdiction, venue shall lie with the courts of Vienna, in terms of subject-matter jurisdiction, jurisdiction shall lie with the courts with jurisdiction for commercial matters (Vienna Commercial Court, District Courts for Commercial Matters). The Seller shall be entitled to bring an action against the Purchaser in the courts with jurisdiction over its general registered office.