

## GENERAL TERMS AND CONDITIONS OF SALE OF SCHNEIDER KUNSTSTOFFTECHNIK GMBH

### 1

#### SCOPE OF THE GENERAL TERMS AND CONDITIONS OF SALE

- 1 Our terms and conditions of sale shall apply exclusively. They shall apply even if we perform delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or differ from our terms and conditions of sale. Deviating general terms and conditions of the customer are expressly rejected. They shall only become a constituent part of the contract if we expressly confirm their validity in writing for each separate contract. Any silence on our part in response to letters of confirmation of a customer who wishes to make its terms and conditions a constituent part of the contract shall not lead to the inclusion of the customer's terms and conditions, but shall instead be deemed rejection.

The conclusion of a contract shall not fail on conflicting general terms and conditions. Each provision of these terms and conditions shall be valid on its own.

Our terms and conditions of sale apply only in respect of businesses within the meaning of section 14 (1) of the German Civil Code (BGB), legal persons under public law or special funds under public law.

- 2 To the extent that conflicting general terms and conditions agree, those provisions that are in conformity with each other shall apply. Those parts of our terms and conditions of sale that are not opposed by any conflicting provisions of the customer's general terms and conditions shall also be deemed agreed. On the other hand, those provisions of the customer's general terms and conditions that do not conform entirely to the regulatory content of our General Terms and Conditions shall not become a constituent part of the contract. In all other cases suppletive law shall apply.
- 3 These terms and conditions of sale shall also apply as amended for all future contracts for the delivery or subsequent delivery of goods between the parties in a current business relationship without the need for a further inclusion of or reference to the terms and conditions of sale after the first agreement.
- 4 We will inform the customer in writing of every revision and amendment of the General Terms and Conditions and will send a copy of the amended general terms and conditions on request.
- 5 In the case of documents for which a translation in a foreign language is attached and that refer to a contract for which the negotiation language is German, the translation shall be deemed for information only. The German wording alone shall prevail for the content of the contract.
- 6 All agreements reached between us and the customer for the purpose of execution of this contract must be laid down in writing in this contract. Secondary agreements, subsequent contractual amendments and the assumption of a guarantee, in particular warranties of characteristics, or the assumption of a procurement risk by persons not authorised to conclude contracts, must be made in writing.

### 2

#### OFFERS

- 1 Our offers are given on a non-binding basis. They constitute a request to the customer to make a binding offer for the conclusion of a contract (purchase order) and therefore are not yet binding on us.

We may accept purchase orders within a period of 4 weeks. During this period the customer shall be bound by its offer.

- 2 Contracts will only become binding on us when we accept the purchase order in the form of a written confirmation of order. We shall not be bound to reject an order of a potential customer that refers to such an offer if the contract is not to come about.
- 3 Insofar as they are not part of our offer, descriptions and photocopies of our goods and products on the internet (website) and in catalogues, brochures, circulars, advertisements and price lists are always only intended to be approximate and shall only become part of the contract if this is expressly stated and defined in writing in the contract.
- 4 We reserve the right to make changes necessitated by technical progress or rationalisation or design changes to the subject of the contract at any time insofar as such changes are within the bounds of customary commercial practice and are conscionable to the customer. Customary commercial tolerances in colour, weight, etc. are always reserved.
- 5 Only for the case that the modification of the subject matter extends beyond customary commercial practice and is also unconscionable for the customer shall the customer have a right to withdraw from the contract, which right may be exercised in writing within 2 weeks of receipt of a corresponding notification from us. Later withdrawal on the basis of the corresponding contract modification that is then made is excluded.

### 3

#### OFFER COSTS, OFFER DOCUMENTS AND PROPERTY RIGHTS

- 1 The first offer will generally be prepared free of charge. Further offers and design work will only be free of charge to the extent that the supply contract becomes and remains valid.
- 2 We reserve title and copyright to illustrations, drawings, designs, sketches, calculations and other documents; they may not be made available to third parties without our written consent. They may be neither copied nor otherwise reproduced without our consent and must be returned to us unsolicited following completion of the purchase order.



- 3** Moulds, models or tools produced by us for the purpose of fulfilment of the contract shall remain our property. Subject to any express contractual agreement to the contrary, we shall not be bound to surrender them to the customer even if the price for them is itemized separately in the contract or invoice.

We shall retain copyright to the specified moulds, models and tools.

In the case that goods were produced according to drawings, models or other information provided by the customer, the customer shall assume liability in the event of infringements of patent or other property rights of third parties. The customer shall indemnify us against such claims.

## 4

### PRICES

- 1** Unless otherwise agreed, all prices are "ex works" and exclusive of statutory value-added tax at the time of invoicing. Ancillary costs such as packaging, freight, shipping costs, customs duties, assembly, insurance and bank charges will be charged separately.

The price for moulds/tools also includes the costs of supplying samples, but not the costs for test and machining equipment or for modifications requested by the customer or maintenance costs.

Maintenance costs will be incurred if a tool or mould is not used for production for more than 2 years.

- 2** Subject to agreement to the contrary, we will be bound by the agreed price for a period of 12 weeks. If the costs then change (particularly on the basis of collective agreements or changes in material prices) after the binding period has expired and before delivery, we may modify the agreed prices accordingly. We will provide evidence of the changes in costs to the customer on request.
- 3** New prices will be agreed in the case of subsequent orders. In the absence of any such agreement, we shall have the right to determine the prices unilaterally as we see fit.

If value-added tax is not included on our invoice, in particular because we assume an "intra-Community supply" within the meaning of section 4 no. 1b in conjunction with section 6a of the German VAT Act (UStG) on the basis of information provided by the customer, and we are subsequently charged with paying value-added tax (section 6a [4] UStG), the customer shall be bound to pay us the amount we are charged.

This duty shall exist irrespective of whether we subsequently have to pay value-added tax, import sales tax or comparable taxes in Germany or abroad.

## 5

### DELIVERY DATES, DELIVERY PERIODS, DEFAULT, BREACH OF DUTY AND FORCE MAJEURE

- 1** Subject to any agreement to the contrary, an agreed delivery date is observed if the delivery item has left the works or been delivered to the transporter in our works or the customer has been notified of readiness for dispatch before the deadline passes.
- 2** If execution of the order depends on documents, approvals or the clarification of questions material to execution of the order that the customer must provide, a delivery date promised or agreed by us shall only be binding if the customer has clarified the question or provided the documents or approvals by the start of the 8th week before the delivery date.  
Which documents and clarifications within the meaning of this provision must be provided will be governed by the separate determinations of both parties in the contract or will arise from the nature of the contract.
- 3** Unless otherwise agreed, delivery periods shall commence upon the sending of the confirmation of order.
- 4** However, delivery periods shall not begin until the customer has provided the documents and approvals to be procured and the questions material to execution of the order have been clarified. Which documents and approvals are to be provided and which questions have to be clarified by the customer will be governed by the individual contractual agreement between the parties or will arise from the nature of the contract.
- 5** Observance of the delivery period presupposes that the customer has fulfilled its agreed duties of payment in advance. The delivery period shall likewise commence only after the customer has fulfilled those contractual duties that are laid down separately in individual contracts referring to these provisions or that arise from the nature of the contract.  
The delivery period shall further commence only after the customer has fulfilled perfectly and in full all those contractual duties that are material and necessary for our service.
- 6** If we accept a request for modification of the contractual performance from the customer after conclusion of the contract, the agreed delivery dates and periods shall become non-binding. We will strive to give the customer new dates for the delivery, commissioning and acceptance of the order item as quickly as possible. However, we shall have the right to give priority to other obligations when rescheduling.
- 7** In the event of a delay pursuant to the above provisions, a new date for delivery and/or assembly shall only be binding if it has been promised in writing by us or by one of our employees authorised to represent us.  
The same shall apply for cases in which the date has become non-binding on the basis of statutory provisions.
- 8** The delivery period shall be extended reasonably or the delivery date shall be postponed by a reasonable period of time in the event of action under labour disputes, in particular strike or lock-out, or if unforeseen obstacles occur that are beyond our control, e.g. interruptions to production, lack of energy or raw materials, disruptions to traffic, energy supply difficulties, official measures, sovereign intervention or orders insofar as such obstacles demonstrably



have a considerable bearing on the completion or delivery of the item. This shall also apply if the circumstances occur with suppliers. The same shall apply for hindrances caused by force majeure.

We shall not be at fault for the above circumstances even if they occur during an existing delay. If the disruption lasts longer than 3 months, each party to the contract shall have the right to withdraw from the unfulfilled part of the contract in writing with a notice period of 2 weeks, precluding any claims for compensation. For the case of withdrawal, we must be refunded the costs of the work already performed, including materials. Each party to the contract shall at the request of the other party declare at the end of the 3-month delay period whether or not it wishes to abide by the contract.

We will be bound to inform the customer in writing as soon as possible of the occurrence of a delay. The same shall apply when the delay no longer prevails.

- 9 Our obligation to deliver shall always be subject to correct and punctual delivery by our own suppliers.
- 10 If we are responsible for the delivery date being missed or the delivery period not being observed, the customer may, after setting a time limit for performance of at least 2 weeks in writing, withdraw from the contract in accordance with statutory provisions if this time limit has expired without result. The customer may withdraw without setting a time limit if the requirement of section 323 (2) BGB is met. The declaration of withdrawal or rejection and the setting of the period of grace can only be given in writing.
- 11 In the event of breaches of duty on our part, we shall only be bound to pay compensation in the case of intent or gross negligence on our part or on the part of one of our vicarious agents. This shall not apply if the transaction is a commercial transaction to be performed at a fixed point in time. This shall be without prejudice to the statutory rules on the burden of proof.

## 6

### DELIVERIES ON CALL

- 1 We may fulfil purchase orders in part deliveries provided that this is within the bounds of customary commercial practice and is conscionable to the customer. These part deliveries must be paid for separately in accordance with our payment terms. Following a partial delivery by us, the customer will also have the right to assert its claims under section 5 paragraphs 10 and 11 of these General Terms and Conditions in respect of the contract as a whole should the requirements of these paragraphs be met and the customer have no interest in the partial delivery.
- 2 If delivery on call is agreed and the call is delayed by the customer, we shall have the right to withdraw from the contract and/or to demand compensation in lieu of performance after a reasonable period of time has been set and expired without result. The claim to compensation will be excluded if the customer was not responsible for the delay. This shall be without prejudice to our claim to compensation for delay under section 280 (1), (2) BGB in conjunction with section 286 BGB. In this case we shall have the right optionally to demand the agreed purchase price against performance of the complete delivery.
- 3 If no other period is agreed, the customer must have called goods that are ordered on call in full within not more than 3 months of the confirmation of order.

## 7

### PASSAGE OF RISK AND TRANSPORT

- 1 Unless otherwise specially agreed, delivery ex works D-87757 Kirchheim is agreed. This shall also apply for part deliveries.
- 2 If the goods are sent to the customer at its request or by agreement, then – to the extent allowed by law – the risk of accident loss and accidental deterioration shall pass to the customer as soon as the goods leave our works, even if part deliveries are made. This shall apply regardless of whether the goods are dispatched from the place of performance or from another place and regardless of who bears the costs of shipping or who has undertaken carriage to the customer or to a transporter.
- 3 If the goods that are to be dispatched to the customer or collected by the customer within the meaning of the above provision are handed over to the transporter or the customer in the works, the risk to the extent described above shall pass to the customer at that time.
- 4 Unless otherwise agreed, we will determine the means and route of transport but will not be responsible for selecting the fastest and cheapest option. If the customer so desires, we will insure the shipment against transport, storage and assembly damage on behalf and for the account of the customer. In these cases, we will assume the transport risk (in particular for breakages and for transport, fire and water damage) beyond the time of the passage of risk described above.  
If by express agreement the registered office of the customer is both the place of performance and the place where the damage arose, we shall have the right to insure the shipment against transport, storage and assembly damage on behalf and for the account of the customer.
- 5 If transport is provided by third parties and the goods remain uninsured, particularly at the express request of the customer, the goods will travel at the customer's risk.
- 6 Insofar as we bear the transport risk according to the above provisions, the customer shall be bound to facilitate to the best of its ability the settlement of our claim against the insurer. In particular, it shall satisfy itself of the condition of the shipment immediately after receipt, have any damage in transit assessed by the competent body (receiving station, receiving post office or carrier) without delay and send us this information without delay. Should insurance benefits be reduced due to the insufficient cooperation of the customer in the assessment of the loss and settlement of the claim, we shall have the right to charge the customer these reductions in the insurance benefits.
- 7 If the goods are ready for dispatch and their dispatch or acceptance is delayed for reasons beyond our control, the risk shall pass to the customer upon receipt of the notification of readiness for dispatch. In the case of call orders, the same shall apply if the customer does not call the goods in due time.



## 8

### ACCEPTANCE

- 1 The customer must take delivery of items, even if they are defective. If it refuses to do so on the basis of alleged defects, it may not derive any claims to compensation from being unable to use them. To that extent it shall also bear the risk of further deterioration. This shall be without prejudice to its rights in the event of defects. In this case delivery shall be taken regardless of whether or not the goods are defective in the legal sense (section 434 BGB).
- 2 If delivered items are taken into operation without reservation, this shall be deemed acceptance regardless of whether we have still to provide supplies or perform other services, in particular assembly work.

## 9

### PAYMENT TERMS

- 1 Unless otherwise agreed, 1/3 of the pure net contractual price for moulds/tools shall be due after the purchase order, a further 1/3 upon presentation of the selection sample and a further 1/3 upon performance according to contract or after acceptance under section 8 of these General Terms and Conditions. Unless otherwise agreed, our invoices shall be payable with a 2% discount on the net value of the goods if paid within 10 days of the invoice date or at the net value of the goods if paid within 30 days of the invoice date.
- 2 Unless otherwise agreed, we will only accept means of payment other than cash or bank transfers to the accounts indicated in the invoices on account of performance; this shall apply in particular for cheques or bills of exchange. All payments shall be made free of charges for us. Bank, discounting and collection charges shall be borne by the customer. Payment by bill of exchange must be agreed in advance. No cash discount will be granted for payments by bill of exchange. The provision of cheques and bills of exchange as such shall not be deemed settlement of due claims.
- 3 In the event of culpable non-payment by the due date, we may without warning demand interest from the customer at 8 percentage points above the respective base rate as a contract penalty. If we are able to demonstrate a greater insurance loss, we shall have the right to assert this loss. As soon as the requirements for a claim to compensation for delay are met, our provisions under section 11 of these General Terms and Conditions shall apply.
- 4 The customer may neither withhold payments nor set off payment obligations on account of a counterclaim that is not undisputed or is not recognised by us or has not been declared final in a court of law.
- 5 If the customer is more than 10 days in default of a payment, if cheques or bills of exchange are not redeemed punctually or if we become aware of a substantive deterioration in the financial situation of the customer after conclusion of the contract, regardless of whether or not the deterioration in its financial situation occurs before or after conclusion of the contract, we may at our option demand either payment in advance in respect of the prices of all supplies not yet delivered by us including notes receivable or the furnishing of security for these claims. We shall not be bound to make further deliveries under current contracts until these demands have been met.
- 6 Each part delivery shall be a separate transaction.
- 7 Part payments shall require separate written agreement.

## 10

### RESERVATION OF TITLE

- 1 We reserve title to the delivery item until such time as the customer has paid all claims arising from the business relationship with us (extended reservation of title). Both the reserved title to the delivery item and claims against the customer under contract not relating to the delivery item are protected thereby. The customer shall preserve the collateral property for us.
- 2 Should the extended reservation of title not have become part of the contract due to conflicting general terms and conditions of the customer, delivery will alternatively be made under simple reservation of title.
- 3 Unless otherwise agreed, we shall remain owners of the moulds produced for the customer either by us or by a third party commissioned by us. For as long as the customer meets its payment and acceptance obligations these will only be used for orders of the customer. We shall only be bound to replace these moulds free of charge if they are required in order to fulfil an output quantity agreed with the customer. Our obligation to retain the moulds shall expire two years after the last delivery of parts from the mould and prior notification of the customer.

If the customer is to become owner of the moulds by agreement, title shall pass to it upon payment of the contractual price for the moulds. Delivery of the moulds to the customer may be substituted by our duty of retention. We shall have the right to sole possession of the moulds regardless of any statutory right of the customer to surrender and the life of the moulds until the acceptance of a minimum quantity to be agreed and/or until a certain period of time has elapsed. In this case we will label the moulds as third-party property and at the customer's request will insure them at the customer's expense.

- 4 The customer may only sell the delivery item in the ordinary course of business, provided that it is not in default of payment or has suspended payments. In these cases, resale is not permitted.
- 5 The customer assigns to us in full by way of security upon conclusion of the purchase contract between it and us the claims it accrues from the sale or on any other legal grounds against its purchaser in respect of the subject of the contract together with all ancillary rights. The customer shall remain entitled to collect the claim for as long as it is not in default of payment to us or has not suspended its payments overall.
- 6 The customer shall inform us in writing without delay of attachments, seizures or other dispositions by third parties of the reserved item, enclosing all do-

cuments (records of attachment, etc.). If the third party is unable to recompense us for the in-court and out-of-court expenses of an action pursuant to section 771 of the German Code of Civil Procedure (ZPO), the customer will be liable to us for the resulting shortfall.

- 7** We may demand that the customer inform its purchaser of the assignment and give us all information and documents that are required for the collection of the assigned claims.
- 8** If claims of the customer from the resale of our reserved goods or the goods to which we have joint title are included in a current account, the customer hereby assigns its payment claim to us in the amount of the respective recognised balance and in the amount of our claims against the customer.
- 9** The customer shall be bound to treat the goods carefully and keep them in their proper condition for the duration of the reservation of title. Any necessary repairs must be performed by us immediately – except in the case of emergencies – and at the customer's expense. We will assume the costs of these repairs to the extent that we are bound to make substitute deliveries or improvements within the scope of the warranty provisions of these General Terms and Conditions.
- 10** We shall have the right to insure the reserved goods sufficiently against theft and damage of any kind, in particular due to fire or water, at the replacement value at the customer's expense, unless the customer demonstrates that it has taken out such insurance.
- 11** If the realisable value of the securities due to us exceeds the claims to be secured under the business relationship by more than 15%, we will be bound to release the securities to that extent at the customer's request. We shall have the right to choose the securities to be released.
- 12** The processing or alteration of the supplied item by the customer shall always be carried out on our behalf. If the supplied item is processed with other items not belonging to us, we shall acquire joint title to the new item in the proportion of the value of the delivered item to the other processed items at the time of processing. Otherwise the same shall apply for the item created by processing as for items delivered under reservation.
- 13** If the supplied item is inseparably mixed with other items not belonging to us, we shall acquire title to the new item in the proportion of the value of the delivered item to the other mixed items at the time of mixing. If the mixing is performed in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer assigns joint title to us pro rata. The customer shall preserve the title or joint title thereby created for us.
- 14** If by combination with land the reserved goods become a substantive part of the land, the customer shall be bound to allow us to access and inspect the land, to assign its claims against the landowner to us or, if it itself is the landowner, to grant us equivalent security interests.

If the customer suffers a substantive deterioration in its financial situation, we shall have the right in agreement with the landowner or lessor to enter into the legal position of the customer vis-à-vis the landowner or lessor.

- 15** The assertion of our rights under the equitable lien shall not constitute withdrawal from the contract.

## 11

### DEFAULT OF THE CUSTOMER

- 1** If the customer does not take delivery of the goods on the agreed delivery date or by the end of the agreed delivery period for reasons within its control, we may demand reimbursement of the additional expenses we incur thereby.
- 2** In the case that the customer defaults, we shall have the right, notwithstanding the possibility of asserting a greater actual loss, to demand interest at 8 percentage points above the respective base rate on the sum with which the customer is in default.
- 3** If we are entitled to demand compensation in lieu of performance, we may, notwithstanding the possibility of asserting a greater actual loss, demand 15% of our price as compensation unless the customer demonstrates that no loss at all occurred or that the loss is substantially lower than the lump sum.

## 12

### CLAIMS BASED ON DEFECTS

- 1** If the goods have a defect for which we are responsible, we shall at our option have the right to rectify the defect or deliver again. Replaced parts shall become our property.
- 2** The assertion by a commercial customer of claims based on defects presupposes that the customer has duly fulfilled its obligations of inspection and notification under section 377 of the German Commercial Code (HGB). Other entrepreneurs must notify us of obvious defects within 14 days of receipt of the goods, failing which the customer's right to bring a claim based on defects shall lapse. Any notifications of complaint must specify the defect in writing.
- 3** We may refuse to rectify defects for as long as the customer has not fulfilled all its payment obligations, with the exception of an amount corresponding to the reduction in value in respect of the defective goods. In this case the customer will only be bound to pay in advance if we confirm our liability for the defect within the scope of these General Terms and Conditions to it in writing.
- 4** We must be given an opportunity to inspect the defect that is the object of the complaint in situ. We must perform this inspection without delay if the customer sets forth an interest in an immediate solution.  
Claims based on defects shall not exist in the case of only minor deviations in quality or only a minor impairment in usability.

- 5** We may charge the customer the additional costs for the expenses incurred for the purpose of renewed performance, in particular costs of transport, tolls, labour and materials, to the extent that the expenses increase because the delivered goods were transferred to a location other than the delivery address, unless the transfer took place duly in accordance with the use assumed in the contract.
- 6** In respect of agreements of the customer with its purchasers that extend beyond the purchasers' statutory claims based on defects, the customer's recourse claims in the case that consumer goods are purchased (section 478 BGB) shall be excluded to that extent. The customer shall inform us of its purchasers' claims based on defects in sufficient good time that we are able at our option to fulfil the claims of the purchaser instead of those of the customer.
- 7** Substitute performances and improvements shall be governed by the same warranty terms as for the item originally delivered.
- 8** Claims based on defects will become time-barred 1 year after the passage of risk unless we had caused the defects intentionally or through gross negligence or had maliciously failed to disclose them. Unless otherwise agreed, this shall also apply for any guarantees given by or binding on us. This shall be without prejudice to the statutory time limits for recourse claims pursuant to section 478 BGB. The same shall apply for longer statutory limitation periods, such as for construction work or the delivery of goods that have been used for construction work in accordance with their usual use and have caused its deficiency. These limitation periods shall also apply for consequential losses to the extent that these cannot be asserted on the basis of tort law. If a deficient delivery necessitates renewed performance, the limitation period shall only be suspended until the renewed performance and shall not start to run again.
- 9** Before the customer can assert further claims or rights (withdrawal, reduction in price, compensation or reimbursement of expenses), we must be given an opportunity to perform again within a reasonable period of time unless we have offered any other guarantee. If the renewed performance fails despite at least two attempts at renewed performance, we refuse to perform again or the renewed performance is not possible or is unconscionable for the customer, the customer may withdraw from the contract or reduce the consideration (reduction in price). The assertion of claims for compensation and reimbursement of expenses shall be governed by section 13 of these terms and conditions.
- 10** In other respects, the following shall also apply for claims based on deficiencies in title:

Unless otherwise agreed, we shall only be bound to perform delivery free of third-party rights in the country of the delivery address.

In the case that we are responsible for an infringement of the property rights of a third party, we may at our option either acquire at our expense a right of use sufficient for the agreed or assumed use and assign this to the customer, or modify the delivered goods in such a way that the property right is not infringed, or replace the delivered goods provided that this does not impair the agreed and assumed use of the delivered goods. If we are unable to do so or refuse to perform again or the renewed performance fails, the customer shall have the statutory claims and rights. Claims for compensation and the reimbursement of expenses shall be governed by section 13 of these terms and conditions.

- 11** If the customer chooses to withdraw from the contract on account of a deficiency in title or material defect after renewed performance has failed, it shall have no claim to compensation on account of the defect.  
  
If the customer chooses compensation after renewed performance has failed, the goods shall remain on the customer's premises if this is conscionable for it. The compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if we have maliciously caused the breach of contract.
- 12** If selection samples are sent to the customer for inspection, we shall only be liable for executing delivery in accordance with the selection sample, having due consideration for any adjustments.
- 13** If the customer receives a deficient assembly manual, we shall only be bound to deliver a conforming assembly manual, and only if the defect in the assembly manual prevents proper assembly.

## **13** COMPENSATION/REIMBURSEMENT OF EXPENSES

- 1** The assertion of compensation or the reimbursement of expenses (hereinafter "compensation") on account of defects in the supplied goods (claims based on defects) shall be excluded to the extent that we are unable to perform again for reasons beyond our control. Unless otherwise agreed, the assertion of compensation for defects and consequential losses that are founded on the delivery of defective goods shall in principle presuppose that we are at fault for the defect through intent, gross negligence or the negligent breach of a cardinal duty. The same shall apply for the assertion of compensation for breach of a guarantee of durability (section 443 (2) BGB) given by or for us.
- 2** Otherwise claims of the customer for compensation and claims for the reimbursement of expenses ("claims for compensation"), regardless of their legal grounds, in particular on account of a breach of duties arising from and in connection with the obligation, from fault before or at the time of conclusion of the contract and from tort, shall be excluded. This shall not apply for claims pursuant to sections 1, 4 of the German Product Liability Act, in cases of intent or gross negligence, in the event of a loss of life, physical injury or damage to health on account of the assumption of a guarantee for the existence of a quality (guarantee of quality) or in the event of our negligent breach of a cardinal duty. Under no circumstances will we be liable beyond the statutory claims. In the case of our ordinary negligence, our liability shall be limited to the typical and foreseeable loss. These clauses in paragraphs 1 and 2 do not imply changes in the burden of proof.
- 3** Insofar as our liability is excluded or limited, this shall also apply for the personal liability of our staff, workers, employees, representatives and vicarious agents.
- 4** The limitation period for claims between supplier and customer shall be governed by section 12 paragraph 8 unless claims under producer liability pursuant to section 823 et seq. BGB or the Product Liability Act are affected. This limitation period shall apply in particular also for consequential losses.

- 5 We will not accept any liability for losses founded on unsuitable or inexpert use, deficient independent assembly or commissioning, natural wear and tear, deficient or negligent treatment – in particular excessive strain – unsuitable operating resources, substitute materials, defective construction work, unsuitable substrate, chemical, electrochemical or electrical influences or modifications or repairs that are carried out inexpertly or without our approval.
- 6 We will not be liable for the issuance of any approvals under public law that may be required or for compliance with immissions regulations. This will not apply if compliance with these provisions or the obtaining of approval under public law has been agreed by us in the individual contract.

# 14

## VENUE AND PLACE OF PERFORMANCE

- 1 The place of performance for all contractual obligations is D-87757 Kirchheim.
- 2 If the customer is a merchant, legal person under public law or special fund under public law, the venue for all disputes arising from the contractual relationship shall at our option be Memmingen or the registered office of the customer or – in the case of delivery abroad – the capital city of the country in which the customer has its registered office. The same shall apply if the customer relocates its domicile or habitual place of abode out of the territory of the Federal Republic of Germany after conclusion of the contract or its domicile or habitual place of abode is not known at the time the action is brought. The same shall apply for disputes arising from cheques and bills of exchange.
- 3 Legal relations between the customer and us shall be governed solely by the laws of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods.