

## INNIO Jenbacher GmbH & Co OG Terms of Purchase

### **1. ACCEPTANCE OF TERMS.**

#### **1.1 Incorporation.**

Seller agrees to be bound by and to comply with all terms set forth herein, and in the purchase order, to which these terms are attached and are expressly incorporated by reference (collectively, the "Order"), including any amendments, supplements, specifications and other documents referred to in this Order. Acknowledgement of the Order, including without limitation, by beginning performance of the work called for by this Order, shall be deemed acceptance of this Order.

#### **1.2 Rule of Precedence.**

The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are:

(a) part of a written supply and/or service agreement, which has been negotiated between the parties and which the parties have expressly agreed may override these terms in the event of a conflict; and/or

(b) set forth on the face of the Order to which these terms are attached.

#### **1.3 Significations.**

In the event these terms are part of a written supply and/or service agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the supply and/or service agreement. This Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Order.

#### **1.4 Application.**

The terms in this Order shall also apply if the Buyer receives and accepts Seller's goods and/or services even if delivered under Seller's contradictory terms. **Sellers general terms shall not apply even if not objected by Buyer.**

### **2. PRICES AND PAYMENTS**

#### **2.1 Prices.**

All prices are firm and shall not be subject to change, value added tax is not included.

#### **2.2 Payments.**

2.2.1 Unless otherwise stated on the face of this Order, payment terms are 120 days from the Payment Start Date (the "Due Date"), plus the number of days between the Due Date and Buyer's next scheduled "Normal Payment Date". For the purposes of this section, the Payment Start Date is the latest of the receipt of the invoice or of the receipt of all goods in the final destination (including documents or certificates in case they form part of the scope of performance) by Buyer and/or Seller's completion of the services without defects, and Buyer's "Normal Payment Date" is the regularly scheduled business day of the week on which Buyer makes payments pursuant to this Section.

2.2.2 Buyer shall be entitled to take an early payment reduction of 0.0333% of the gross invoice price for each day before the Due Date that payment is initiated. Payments are initiated within the 5 business days preceding the weekly Normal Payment Date.

2.2.3 Seller's invoice shall in all cases bear Buyer's Order number and shall be issued no later than thirty (30) days after receipt of the goods by Buyer and/or Seller's completion of the services. Buyer shall be entitled to reject Seller's invoice if it fails to include Buyer's Order number, is issued after the time set forth above or is otherwise inaccurate, and any resulting: (i) delay in Buyer's payment; or (ii) nonpayment by Buyer shall be Seller's responsibility.

### **3. DELIVERY, RISK AND TITLE PASSAGE.**

#### **3.1 Delivery.**

3.1.1 Seller is legally bound by all delivery times set forth in the Order. Unless otherwise agreed in writing, part-, over-, early- or short-deliveries are not allowed.

3.1.2 Seller is obliged to immediately inform Buyer as soon as it is reasonably foreseeable for Seller that the delivery time cannot be adhered to. If Seller delivers the goods or completes the services later than scheduled, Buyer is entitled to all claims under the applicable laws including the right to withdraw from the contract and the claim for damages in lieu of performance if the Buyer has without result set a reasonable period for the Seller for performance or cure.

3.1.3 If Seller delivers the goods or completes the services later than scheduled, Buyer may assess liquidated damages of 3% (at least EUR 500) of the total amount of the Order per each commencing week for the delay period. Notwithstanding the foregoing, the amount of liquidated damages

shall not exceed 15% (at least EUR 2500) of the total amount of the Order. Buyer is entitled to claim liquidated damages in addition to Buyer's claim for performance under the Order. Buyer's resort to liquidated damages for the delay period does not preclude Buyer's right to other remedies and claims.

3.1.4 All delivery designations are INCOTERMS 2010. The respective delivery designation is also the place where Seller's delivery obligations are fulfilled (place of fulfillment). Unless otherwise stated, all goods provided under this Order shall be delivered FCA Seller's facility. However, goods that are to be shipped directly to Buyer's customer or a location designated by Buyer's customer that are: (a) not to be exported; or (b) exported from the United States of America ("U.S."), shall be delivered EXW Seller's facility. The term EXW used herein is modified from the INCOTERMS 2010 definition to mean "EXW with Seller responsible for loading the goods at Seller's risk and expense". Buyer may specify contract of carriage in all cases. Failure of Seller to comply with any such Buyer specification shall cause all resulting transportation charges to be for the account of Seller and give rise to any other legal remedies available.

#### **3.2 Transfer of Risk.**

Unless otherwise agreed in writing the risk of accidental perishing and of accidental deterioration will be transferred to Buyer by handover at the place of fulfillment. If Buyer and Seller agreed that Buyer needs to accept the work produced, the transfer of risk takes place with acceptance. Beyond that, the legal rules for contracts to produce a work are applicable.

#### **3.3 Title Passage.**

Unless otherwise agreed in writing:

(a) title to goods shipped from one country in the European Union ("EU") for delivery to another country within the EU, shall pass: (i) when the goods leave the territorial land, air or sea space of the EU source country for goods shipped directly to a non-Buyer's EU facility; and (ii) at Buyer's dock for goods shipped to Buyer's EU facility;

(b) title to goods shipped from the source country for delivery within the source country (excluding shipments within the U.S., which are governed by subsection (e) below) shall pass at: (i) Seller's dock for goods shipped directly to a non-Buyer's facility; and (ii) Buyer's dock for goods shipped to Buyer's facility;

(c) title to goods shipped from outside the U.S. for delivery to a different country outside the U.S. (excluding shipments within the EU, which are governed by subsection (a) above) shall pass at: (i) the port of export after customs clearance for goods shipped directly to a non-Buyer's facility; and (ii) port of import if shipped to Buyer's facility;

(d) title to goods shipped from outside the U.S. for delivery within the U.S. shall pass at: (i) the port of export after customs clearance for goods shipped directly to a non-Buyer's facility; and (ii) Buyer's dock if shipped to Buyer's facility; and

(e) title to goods shipped from the U.S. for delivery to all locations shall pass at: (i) Seller's dock for goods shipped directly to a non-Buyer's facility; (ii) port of import for goods shipped to Buyer's non-U.S. facility; and (iii) Buyer's dock for goods shipped to Buyer's U.S. facility.

### **4. BUYER'S PROPERTY.**

#### **4.1 Property Rights.**

Unless otherwise agreed in writing, all tangible and intangible property, including, but not limited to, information or data of any description, tools, materials, drawings, computer software, know-how, documents, trademarks, copyrights, equipment or material furnished to Seller by Buyer or specifically paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain Buyer's property. Such property furnished by Buyer shall be accepted by Seller "AS IS" with all faults and without any warranty whatsoever, express or implied.

#### **4.2 Use of Property.**

Seller shall use such property at its own risk, and Buyer makes no warranty or representation concerning the condition of such property. Such property and, whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as Buyer's property, safely stored separate and apart from Seller's property and properly maintained by Seller. Seller further agrees to comply with any handling and storage requirements provided by Buyer for such property. Seller shall not substitute any other property for Buyer's property. Seller will inspect Buyer's property prior to use and will train and supervise its employees and other authorized users of such property in its proper and safe operation. Seller shall use Buyer's property only to meet Buyer's orders, and shall not use it, disclose it to others or reproduce it for any other purpose.

#### **4.3 Protection and Insurance of property.**

Such property, while in Seller's care, custody or control, shall be held at Seller's risk, shall be kept free of encumbrances and insured by Seller at Seller's expense in an amount equal to the replacement cost thereof with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. All such property shall be clearly marked as Buyer's property either by mark on any such property or, if a number of goods are held in a consignment storage, by identifying that all goods in that consignment storage are at Buyer's property.

#### **4.4 Invoice.**

Any consigned material, tooling or technology used in production of the goods which is not included in the purchase price of the goods and/or services delivered by Seller, shall be separately identified on the commercial or pro forma invoice used for international shipments. Each invoice shall also include the applicable Order number or other reference information for any consigned goods and shall identify any discounts or rebates from the base price used in determining the invoice value.

#### **4.5 Intellectual Property Rights; Licenses.**

4.5.1 Buyer hereby grants a non-exclusive, non-assignable license, which is revocable with or without cause at any time, to Seller to use any information, drawings, specifications, computer software, know-how and other data furnished or paid for by Buyer hereunder for the sole purpose of performing this Order for Buyer.

4.5.2 Buyer shall own exclusively all rights in ideas, inventions, works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. All such intellectual property that is protectable by copyright will be considered: (a) work(s) made for hire for Buyer; (b) Seller will give Buyer "first owner" status related to the work(s) under local copyright law where the work(s) was created; or (c) if the Governing Law (defined in Section 17) does not allow Buyer to gain ownership of such intellectual property, Seller hereby grants to Buyer an exclusive, transferable, irrevocable, perpetual and worldwide license for such intellectual property. Any royalty fees for the grant to Buyer are covered by the consideration as per the Order.

4.5.3 If by operation of law any such intellectual property is not owned in its entirety by Buyer automatically upon creation, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, exclusively the entire right, title and interest throughout the world to such intellectual property. Seller further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such intellectual property to Buyer.

#### **4.6 Compliance.**

Should Seller, without Buyer's prior written consent and authorization, design or manufacture for sale to any person or entity other than Buyer any goods substantially similar to, or which reasonably can substitute or repair, a Buyer good, Buyer, in any adjudication or otherwise, may require Seller to establish by clear and convincing evidence that neither Seller nor any of its employees, contractors or agents used in whole or in part, directly or indirectly, any of Buyer's property, as set forth herein, in such design or manufacture of such goods. Further, Buyer shall have the right to audit all pertinent records of Seller, and to make reasonable inspections of Seller facilities, to verify compliance with this Section.

#### **5. DRAWINGS.**

Any review or approval of drawings by Buyer will be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order.

#### **6. CHANGES.**

##### **6.1 Change Request of Buyer.**

Buyer may at any time make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications where the goods to be furnished are to be specially manufactured for Buyer; (b) method of shipment or packing; (c) place and time of delivery; (d) amount of Buyer's furnished property; (e) quality; (f) quantity; or (g) scope or schedule of goods and/or services. Buyer shall document such change request in writing, and Seller shall not proceed to implement any change unless and until such change is provided in writing by Buyer. Seller shall have the right to object to change in case the change has unreasonable consequences for Seller that cannot be eliminated by any adjustments as set out hereinafter.

##### **6.2 Adjustment.**

If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any Seller claim for adjustment under this clause will be deemed waived unless asserted within thirty (30) days from Seller's receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.

##### **6.3 Change Request Seller.**

Seller shall notify Buyer in writing in advance of any and all:

(a) changes to the goods and/or services, their specifications and/or composition;

(b) process changes;

(c) plant and/or equipment/tooling changes or moves;

(d) transfer of any work hereunder to another site; and/or

(e) sub-supplier changes, and no such change shall occur until Buyer has had the opportunity to conduct such audits, surveys and/or testing necessary to determine the impact of such change on the goods and/or services and has approved such change in writing. Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Buyer.

#### **7. PLANT ACCESS/INSPECTION AND QUALITY.**

Buyer shall have the right to enter Seller's production facilities upon reasonable notice at usual business hours in order to assess Seller's work quality, conformance with Buyer's specifications and compliance with this Order, including but not limited to Seller's representations, warranties, certifications and covenants, upon reasonable notice by Buyer. In the event that Buyer can't go to the Seller's production facilities, Seller agrees to conduct a virtual inspection by the Buyer, based on a video call, or any other technology that could be appropriate for such purposes. Seller shall assign a contact person to assist with specific inquiries related to execution. Seller is obliged to obtain consent from its own suppliers to ensure that Buyer may also exercise this right at their premises.

#### **8. WARRANTIES.**

##### **8.1 Subject of the warranty.**

Seller shall deliver goods and/or services without material and legal defects and with the agreed qualities/characteristics. The goods or works shall conform to the latest state of the art as well as to the relevant regulations as issued by authorities and professional associations. Seller and Buyer agree that all product, performance and process specifications and documentation referenced by the Order or the Order Confirmation shall be agreed quality/characteristics and workmanship standards for the Order. Buyer shall also be entitled to claims for defects if due to gross negligence Buyer has no knowledge of the defect.

##### **8.2 No obligation to inspect.**

Buyer is under no obligation to inspect the goods upon their delivery. Buyer will serve notices of defects of goods within a reasonable period of time (which shall take into account the specific circumstances of the case) after their discovery.

##### **8.3 Right to Reject**

Notwithstanding Buyer's rights pursuant to Sec. 8.5 and save other rights pursuant to this Order, Buyer may reject any goods within 2 months from the delivery if they are materially defective and in Buyer's reasonable assessment do not allow a commercially reasonable use. In that case, no payments for these goods are due.

##### **8.4 Period of limitation for warranty claims.**

The foregoing warranties shall apply for a period of: (a) forty-eight (48) months from the Date of Commercial Operation (defined below) or (b) fifty-four (54) months from the date of delivery of all goods from Seller to destination/performance of the services, whichever occurs first. "Date of Commercial Operation" means the date on which the plant is commercially operated by the Buyer, the Buyer's customer or a third party.

##### **8.5 Scope of the warranty**

In case of a warranty claim, Seller shall at the sole discretion of Buyer (i) repair the defective goods and/or services at Seller's own costs, (ii) replace the defective goods and/or services or parts thereof at Seller's own costs or (iii) reimburse to Buyer the costs of a repair or replacement of defective goods or parts thereof in the case that Buyer chooses to conduct the repair and/or replacement by himself or by a third party authorized by Buyer. The parties agree that in the event where the return of the defective goods is not feasible, Buyer shall promptly submit evidence of the defective goods to Seller. The acceptance of the evidence provided by Buyer shall suffice to accept the warranty claim and from Seller shall entail recognition of liability for the defect. In the case of a repair or replacement of defective goods and/or services by the Seller, the Seller shall directly bear all related costs, including but not limited to travel, transport, taxes, fees and charges. In the case of a repair or replacement by the Buyer or a third party authorized by the Buyer, the Seller shall reimburse Buyer all direct and indirect costs incurred thereby, including but not limited to time and material spent, third party charges, travel, transport, taxes, fees and other charges required to replace or repair the defective product or parts thereof.

#### **9. SUSPENSION.**

Buyer may at any time, by notice to Seller, suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and/or services for the work and take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the

suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by suspension shall be pursued pursuant to, and consistent with, Section 6.

## **10. TERMINATION.**

### **10.1 Termination for Convenience.**

Buyer may terminate all or any part of an Order at any time by written notice to Seller. Upon termination (other than due to Seller's insolvency or default including failure to comply with this Order), Buyer and Seller shall negotiate reasonable termination costs consistent with costs allowable under Section 6 and identified by Seller within thirty (30) days of Buyer's termination notice to Seller, unless the parties have agreed to a termination schedule in writing.

### **10.2 Termination for Default.**

10.2.1 Except for delay due to causes beyond the control and without the fault of Seller and all of its suppliers (lasting not more than sixty (60) days), Buyer, without liability, may by written notice of default, terminate the whole or any part of an Order if Seller:

- (a) fails to perform within the time specified or in any written extension granted by Buyer;
- (b) fails to make progress which, in Buyer's reasonable judgment, endangers performance of an Order in accordance with its terms; or
- (c) fails to comply with any of the material terms of an Order.

Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default.

10.2.2 Upon termination, Buyer may procure at Seller's expense and upon terms it deems appropriate, goods or services similar to those so terminated. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods or services.

10.2.3 As an alternate remedy and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance.

10.2.4 If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by Seller.

10.2.5 Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by law or equity or under an Order.

### **10.3 Termination for Insolvency/Prolonged Delay.**

If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made or an excused delay (or the aggregate time of multiple excused delays) lasts more than sixty (60) days, Buyer may immediately terminate this Order without liability to the fullest extent permitted by the governing law, except for goods or services completed, delivered and accepted within a reasonable period after termination (which will be paid for at the Order price).

### **10.4 Obligations on Termination.**

Unless otherwise directed by Buyer, upon completion of an Order or after receipt of a notice of termination of an Order for any reason, Seller shall immediately: (a) stop work as directed in the notice; (b) place no further subcontracts or purchase orders for materials, services or facilities hereunder, except as necessary to complete any continued portion of an Order; and (c) terminate all subcontracts to the extent they relate to work terminated. Promptly after termination of this Order and unless otherwise directed by Buyer, Seller shall deliver to Buyer all completed work, work in process, including all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all of Buyer's Confidential Information as defined in Section 15.

10.5 Save the above termination rights, neither party's right to terminate an order for cause shall be excluded. The foregoing provisions in this Sec. 10 prevail to the extent they are more specific, including but not limited to the reasons for termination and periods to be observed.

## **11. INDEMNITY AND INSURANCE.**

### **11.1 Indemnity.**

11.1.1 In connection with the Order, Seller shall defend, indemnify, release and hold harmless Buyer, its affiliates and its or their directors, officers, employees, agents representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities (including without limitation claims for personal injury or property or environmental damage, claims or damages payable to customers of Buyer, and breaches of Sections 14 and/or 15 below) arising from any negligent or willful act or omission of Seller, its agents, employees, or subcontractors, which constitute a breach of the Order, except to the extent attributable to the Buyer.

11.1.2 Seller agrees to include a clause substantially similar to the preceding clause in all subcontracts it enters into related to its fulfillment of this Order.

11.1.3 Seller further agrees to indemnify Buyer for any attorneys' fees or other costs that Buyer incurs in the event that Buyer has to file a lawsuit to enforce any indemnity or additional insured provision of this Order.

### **11.2 Insurance.**

Seller undertakes to insure itself adequately against all risks that entail Seller's liability. Seller shall provide proof of such insurance cover upon Buyer's request.

## **12. ASSIGNMENT AND SUBCONTRACTING.**

### **12.1 General Prohibition for Seller.**

Seller may not assign (including by change of ownership or control, by operation of law or otherwise) this Order or any interest herein including payment, without Buyer's prior written consent. Seller shall not subcontract or delegate performance of all or any substantial part of the work called for under this Order without Buyer's prior written consent.

### **12.2 Requirements for Assignment; Subcontracting.**

Should Buyer grant consent to Seller's assignment, Seller will ensure that such assignee shall be bound by the terms and conditions of this Order. Further, Seller shall advise Buyer of any subcontractor or supplier to Seller: (a) that will have at its facility any parts or components with Buyer's or any of its affiliates' name, logo or trademark (or that will be responsible to affix the same); and/or (b) fifty percent (50%) percent or more of whose output from a specific location is purchased directly or indirectly by Buyer. In addition, Seller will obtain for Buyer, unless advised to the contrary in writing, written acknowledgement by such assignee, subcontractor and/or supplier to Seller of its commitment to act in a manner consistent with Buyer's integrity policies, and to submit to, from time to time, on-site inspections or audits by Buyer or Buyer's third party designee as requested by Buyer. If Seller subcontracts any part of the work under this Order outside of the final destination country where the goods purchased hereunder will be shipped, Seller shall be responsible for complying with all customs requirements related to such sub-contracts, unless otherwise set forth in this Order.

### **12.3 Assignment by Buyer.**

Buyer may freely assign this Order to any third party or affiliate.

## **13. PROPER BUSINESS PRACTICES.**

Seller shall act in a manner consistent with Buyer's Integrity Guide for Suppliers, Contractors and Consultants, a copy of which has been provided to Seller, all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order. Further, in the execution of its obligations under this Order, Seller shall take the necessary precautions to prevent any injury to persons or to property.

## **14. COMPLIANCE WITH LAWS AND BUYER'S POLICIES.**

Seller is responsible that the Seller and his agents comply with all applicable provisions (both in the rank of a formal law and not having that formal rank), especially under environmental and safety law. This also applies for legally mandatory and/or contractually agreed safety marks, e.g., CE, VDI, TÜV, GS, FTS etc. Seller further agrees at Buyer's request to provide where possible certificates confirming fulfillment of any applicable statutory legal requirements. Buyer shall have the right to audit all pertinent records of Seller, and to make reasonable inspections of Seller facilities, to verify compliance with this Section 14 in connection with the Order.

Furthermore, the Seller agrees to comply with all guidelines, specifications and processes provided by the Buyer or made known to the Seller by the Buyer.

## **15. CONFIDENTIAL OR PROPRIETARY INFORMATION AND PUBLICITY.**

### **15.1 General Obligation of Confidentiality.**

Seller shall keep confidential:

- (a) any other tangible or intangible property furnished by Buyer in connection with this Order, including any drawings, specifications, data, goods and/or information;
- (b) technical, process, proprietary or economic information derived from drawings or 3D or other models owned or provided by Buyer; and
- (c) any other tangible or intangible property furnished by Buyer in connection with this Order, including any drawings, specifications, data, goods and/or information (the "Confidential Information") and shall not divulge, directly or indirectly, the Confidential Information for the benefit of any other party without Buyer's prior written consent.

Confidential Information shall also include any notes, summaries, reports, analyses or other material derived by Seller in whole or in part from the Confidential Information in whatever form maintained (collectively, "Notes"). Except as required for the efficient performance of this Order, Seller shall not use or permit copies to be made of the Confidential Information without Buyer's prior written consent. If any such reproduction is made with prior written consent, notice referring to the foregoing requirements shall be provided thereon.

**15.2 Exceptions.**

The restrictions in this Section regarding the Confidential Information shall be inoperative as to particular portions of the Confidential Information disclosed by Buyer to Seller if such information: (i) is or becomes generally available to the public other than as a result of disclosure by Seller; (ii) was available on a non-confidential basis prior to its disclosure to Seller; (iii) is or becomes available to Seller on a non-confidential basis from a source other than Buyer when such source is not, to the best of Seller's knowledge, subject to a confidentiality obligation with Buyer, or (iv) was independently developed by Seller, without reference to the Confidential Information, and Seller can verify the development of such information by written documentation.

**15.3 Duties upon Termination.**

Upon completion or termination of this Order, Seller shall promptly return to Buyer all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Seller) all Notes and any copies thereof.

**15.4 Disclosed information of Seller.**

Any knowledge or information, which Seller shall have disclosed or may hereafter disclose to Buyer and which in any way relates to the goods or services purchased under this Order (except to the extent deemed to be Buyer's property as set forth in Section 4), shall not be deemed to be confidential or proprietary and shall be acquired by Buyer free from any restrictions (other than a claim for infringement) as part of the consideration for this Order, and notwithstanding any copyright or other notice thereon, Buyer shall have the right to use, copy, modify and disclose the same as it sees fit.

**15.5 Disclosure of Contractual Relationship.**

Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the goods), or release any information concerning this Order or any part thereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order without Buyer's prior written consent.

**16. INTELLECTUAL PROPERTY INDEMNIFICATION.**

**16.1 Indemnification.**

Seller shall indemnify, defend and hold Buyer harmless from all costs and expenses related to any suit, claim or proceeding brought against Buyer or its customers based on a claim that any article or apparatus, or any part thereof constituting goods or services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party.

**16.2 Information Duty.**

Buyer shall notify Seller promptly of any such suit, claim or proceeding and give Seller authority, information, and assistance (at Seller's expense) for the defense of same and Seller shall pay all damages and costs awarded therein. Notwithstanding the foregoing, any settlement of such suit, claim or proceeding shall be subject to Buyer's consent, such consent not to be unreasonably withheld.

**16.3 Restoring Right of Use.**

If use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace the same with a non-infringing equivalent.

**17. CHOICE OF LAW/FORUM.**

**17.1** This Order shall be governed solely and exclusively by the laws of the Federal Republic of Germany without reference to the conflict of law rules thereof, and excluding the United Nations Convention for the International Sale of Goods.

**17.2** In the event of any dispute arising out of or in connection with an Order, such dispute shall be finally settled by arbitration without recourse to common or commercial courts in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The place of arbitration shall be Munich (Germany). The language to be used in the arbitral proceedings shall be English.

**18. SEVERABILITY CLAUSE.**

If one or more provisions of this Order are or become invalid, then this shall not affect the validity of the remaining provisions. The parties hereby agree to replace any invalid provision by a valid provision coming as close as possible to the economic purpose of the invalid provision.