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General Terms and Conditions

(Updated: July 2018)

A. Applicability of the General Terms and Conditions of HOCHSTÄDTER

B. Purchasing and Contract Terms

C. General Terms of Delivery and Service



A. Applicability of the General Terms and Conditions of HOCHSTÄDTER

A.1

These Terms and Conditions shall apply to all business relationships between **HOCHSTÄDTER** and contracting parties, even if no specific reference to the Terms and Conditions is made in individual transactions, provided that the contracting party is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law, or a special fund under public law.

In these Terms and Conditions, the term "contracting parties" refers to parties that conduct business with **HOCHSTÄDTER** as service providers and/or customers.

A.2

The Terms and Conditions shall apply exclusively and in all cases. Deviating, conflicting or supplementary General Terms and Conditions of the contracting party shall become part of the contract only if and insofar as **HOCHSTÄDTER** has expressly approved their applicability in writing.

Individual agreements concluded with the contracting party in individual cases (including collateral agreements, supplements and amendments) shall always have priority over these Terms and Conditions. In the absence of evidence to the contrary, a written contract or the written confirmation of **HOCHSTÄDTER** shall be authoritative as far as the content of such agreements is concerned.

A.3

References to the applicability of statutory regulations are for clarification purposes only. Statutory regulations thus apply even without such clarification, provided they are not directly modified or expressly excluded in these Terms and Conditions.

A.4

The same words can have different meanings in different legal systems. The German legal meaning of the respective words shall be decisive in foreign-language, i.e. non-German, versions of these Terms and Conditions.



B. Purchasing and Contract Terms

B.1

The contracts awarded and purchase orders placed by **HOCHSTÄDTER** shall be governed exclusively by the Purchasing and Contract Terms of **HOCHSTÄDTER**.

B.2

Unless otherwise specified in these Terms and Conditions, all contracts awarded and purchase orders placed by **HOCHSTÄDTER** shall be settled **exclusively** on the basis of the statutory regulations.

B.3

Subject to the condition that the invoice will be reviewed later on, **HOCHSTÄDTER** shall pay

- within 14 days of the receipt of the invoice less 3 % cash discount
- or within 30 days without a discount.

B.4

If goods arrive prematurely, the invoice shall be valued as of the delivery date contractually requested by **HOCHSTÄDTER**. The value date will be deemed to be the date of receipt of the invoice.

B.5

In the case of defective goods or performance or partial delivery in breach of contract, the invoice shall be valued as of the date of flawless or complete delivery. The value date will be deemed to be the date of receipt of the invoice.

B.6

The contractual partner of **HOCHSTÄDTER** shall provide a warranty and liability for damages to the statutory extent and for the statutory period.

B.7

B.7.01

In addition to claims for defects, **TEXTUM** is entitled without limitation to the right of recourse within a supply chain as provided by law (supplier recourse pursuant to Sections 445a, 445b, 478 German Civil Code (BGB)). In particular, **TEXTUM** is entitled to demand exactly the same

type of subsequent performance (repair or replacement) from the supplier that **TEXTUM** owes its customers in individual cases. **TEXTUM's** statutory right of choice (Section 439 (1) German Civil Code (BGB)) is not restricted thereby.

B.7.02

Before **TEXTUM** recognises or fulfils a claim for damages asserted by its customers (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and 3 German Civil Code (BGB)), **TEXTUM** will notify the supplier, providing a brief statement of the facts, and ask for a written statement. If no substantiated statement is provided within a reasonable period of time and an amicable solution cannot be found, the warranty actually provided by **TEXTUM** shall be deemed to be owed to its customer. In this case, the supplier bears the burden of proving otherwise.

B.7.03

The claims of **TEXTUM** arising from supplier recourse shall apply even if the defective goods have been further processed by **TEXTUM** or another contractor, e.g. by incorporation into another product.

In particular, the contracting party is liable to **HOCHSTÄDTER**, regardless of fault, for expenses incurred due to the removal and installation or mounting of the (defective) property, according to the statutory provisions (in particular Sections 439 (3), 445a BGB).

B.8

The place of performance for all goods and services shall be the destination designated by **HOCHSTÄDTER**.

B.9

The courts of Bielefeld, Germany, shall have jurisdiction over all disputes from or in connection with the contractual relationship between the contracting partner and **HOCHSTÄDTER**.

In the aforesaid case, **HOCHSTÄDTER** may also bring action against the contracting party at the contracting party's domicile.



B.10

The laws of the Federal Republic of Germany shall apply, to the exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods (CISG).

C. General Terms of Delivery and Service

C.1. Contract Conclusion / Contract Contents **C.1.01**

The following regulations shall apply where **HOCHSTÄDTER** delivers goods and/or performs services.

C.1.02

The offers of **HOCHSTÄDTER** are subject to change and non-binding. No contract shall come into being as the result of the customer placing an order, even if the order refers specifically to an offer. A contract only arises upon written order confirmation by **HOCHSTÄDTER** or delivery of the goods to the customer.

C.1.03

HOCHSTÄDTER may accept orders or assignments within 14 days of receipt.

C.1.04

Only the written order confirmation of **HOCHSTÄDTER** – where applicable in conjunction with the specifications and/or design drawings – are authoritative with regard to the content of the respective contract. Verbal agreements made in connection with the conclusion of contracts with employees of **HOCHSTÄDTER** who are not authorised to represent the company also require the written confirmation of **HOCHSTÄDTER** in order to be valid.

C.1.05

The customer must provide **HOCHSTÄDTER** with all information and documents required or useful for the provision of the contractually agreed services. If specifications are prepared and presented to the customer for examination and approval, these specifications shall bindingly establish the scope of services for both sides.

In addition, the customer shall render all acts of cooperation which are required for installation or other services by **HOCHSTÄDTER** (e.g. provision of the agreed number of professional personnel for bending; provision of electric power



for the bending machine; provision of tractors or other machinery, etc.).

Any costs incurred by the customer as a result of acts pursuant to this Section C.1.05 shall be borne by the customer.

C.1.06

The customer is responsible for the employees or third parties used by the customer for assembly or other works of **HOCHSTÄDTER**. In particular, the personnel thus employed are not vicarious agents of **HOCHSTÄDTER**.

C.1.07

Specifications by **HOCHSTÄDTER** regarding the subject of the delivery or service (e.g. weights, measurements, utility values, loading capacity, tolerances and technical data) and representations of the same (e.g. drawings and images) are only broadly representative, unless usability for the contractually agreed purpose requires exact correspondence. They do not constitute guaranteed quality features but descriptions or designations of the delivery or service. Customary deviations or deviations made due to statutory regulations or which constitute technical improvements, and the replacement of components with parts of equal quality, are permitted provided they do not compromise usability for the contractually agreed purpose.

C.1.08

Information about the properties of the products and services of **HOCHSTÄDTER** shall be attributed to **HOCHSTÄDTER** only if this information

- originates from **HOCHSTÄDTER** or is provided at the express order of **HOCHSTÄDTER** or
- is expressly authorised by **HOCHSTÄDTER** or
- is a public statement and **HOCHSTÄDTER** knew or should have

known of this statement and did not distance itself from it within a reasonable period.

Members of the contractual chain within the meaning of Section 434 (3) clause 1, No. 2 b) of the German Civil Code (BGB) do not include authorised dealers and customers of **HOCHSTÄDTER**. Adequate correction of information on properties in terms of Section 434 (3) clause 3 BGB may in any case be made on the website of **HOCHSTÄDTER** at the URL www.hochstaedter.de.

HOCHSTÄDTER is not bound by public statements which could not influence the Contractual Partner's purchasing decision.

C.1.09

Where **HOCHSTÄDTER** provides technical information or advice and this information or advice is not included in the scope of services due under the contractual agreement this shall be free of charge and any liability in this regard shall be excluded.

C.1.10

The customer is not entitled to assign claims – with the exception of outstanding debts – arising from the business relationship without the consent of **HOCHSTÄDTER**.

C.2. Permanent rights / Trademarks/ Indemnity

C.2.01

The drafts, models, installation plans, disposition and other drawings, calculations, prospectuses, catalogues, text templates, etc., drawn up by **HOCHSTÄDTER** remain the intellectual property of **HOCHSTÄDTER**, even if the customer has paid compensation for the work. The right to utilise these goods and the intellectual properties they embody are exclusively reserved to **HOCHSTÄDTER**.

C.2.02

HOCHSTÄDTER is entitled to affix its own logos and trademarks. The customer is prohibited from removing such marks affixed by **HOCHSTÄDTER**.



C.2.03

The customer is liable for ensuring that any templates, designs, plans, texts, trademarks, etc. provided by him may be legally utilised.

C.2.04

The customer shall release and indemnify **HOCHSTÄDTER** against any and all third-party claims due to the breach of such intangible property rights arising from templates, designs, plans, texts, trademarks, etc. provided by the customer. The indemnity also includes the costs of the necessary legal defence.

C.3. Place of performance / Shipment / Risk / Acceptance

C.3.01

The place of performance for the services to be rendered by **HOCHSTÄDTER** is the premises of **HOCHSTÄDTER**, unless agreed otherwise.

Where **HOCHSTÄDTER** is to provide installation services, the place of performance for the installation services and any subsequent performance on site is the place in which installation is to take place according to the contract.

C.3.02

Delivery is ex works. At the customer's request and expense, the goods shall be sent to a different destination ("**Versendungskauf**"). Unless otherwise agreed, **HOCHSTÄDTER** is entitled to choose the type of shipment (in particular, the forwarder, shipping method, and packaging).

Insurance will only be taken out on the delivery at the request and at the expense of the customer.

The place of performance for deliveries and any subsequent performance is the premises of **HOCHSTÄDTER**.

C.3.03

The risk of accidental loss and accidental deterioration of goods shall pass to the customer at the latest upon delivery of the goods to the customer, or in the case of "**Versendungskauf**"

upon handover of the goods to the forwarder or other person charged with performing the shipment. This also applies where partial deliveries are made or **HOCHSTÄDTER** has also undertaken to provide other services (e.g. shipping or installation).

C.3.04

Where acceptance has been agreed, this shall be decisive for the transfer of risk.

The customer must confirm the performance of the service to **HOCHSTÄDTER** in writing following completion.

C.3.05

The contractual item or the partial delivery is in any case deemed accepted if

- the delivery and, where **HOCHSTÄDTER** is also to perform installation, the installation are complete and **HOCHSTÄDTER** has informed the customer of this fact, referring to the assumption of acceptance pursuant to this Section C.3.05 and having requested the customer to perform acceptance, and
 - ten working days have passed since the delivery or installation, or
 - the customer has started to use the contractual item and, in this case, five working days have passed since delivery or installation,

and the customer has failed to perform acceptance within this period for a reason other than a defect notified to **HOCHSTÄDTER** which renders use of the contractual item impossible or significantly impairs such use; or

- the customer or third parties independently interfere with the contractual item.



C.3.06

Default of acceptance is equivalent to handover/acceptance.

C.4. Delivery time / Fixed-date purchases / Default in delivery

C.4.01

Periods and dates for deliveries and services specified by **HOCHSTÄDTER** are only ever approximate, unless a fixed time period or date has been expressly promised or agreed. Where shipping has been agreed, the delivery periods and delivery dates refer to the time of handover to the shipping company, carrier or other third party instructed to carry out transport.

C.4.02

All agreed delivery and performance periods are subject to the proviso that the service is available on the part of **HOCHSTÄDTER**. If the service is not available (“**Nichtverfügbarkeit der Leistung**”), **HOCHSTÄDTER** will immediately inform the customer of this, simultaneously notifying the customer of the anticipated new delivery or performance time. If the service is not available within the new delivery time either, **HOCHSTÄDTER** shall be entitled to rescind the contract in whole or in part; any consideration already paid by the customer will be refunded immediately.

Cases of “Nichtverfügbarkeit der Leistung” of this provision include in particular any late supply of **HOCHSTÄDTER** by its suppliers where **HOCHSTÄDTER** has agreed a congruent covering transaction, neither **HOCHSTÄDTER** nor its supplier is at fault or **HOCHSTÄDTER** is, in the individual case, not under obligation to procure.

C.4.03

Such delivery periods commence at the earliest once the documents, permits, call-offs and shipping addresses to be provided by the customer have been received, all details of the order have been clarified and the customer has made any agreed down-payments or furnished any agreed collateral.

C.4.04

Any agreed delivery or performance period shall be duly extended in the event of unforeseen hindrances which **HOCHSTÄDTER** cannot avert despite exercising the diligence that can reasonably be expected under the circumstances, e.g. pandemics, official orders, natural disasters, blockades, war, terrorist attacks, strike, lockout and other industrial unrest, confiscation, embargo, total or partial failure of subcontractors or other circumstances for which **HOCHSTÄDTER** is not responsible, if not explicitly the risk of procurement has been assumed or a guarantee of delivery has been provided by **HOCHSTÄDTER** exceptionally. **HOCHSTÄDTER** may also rescind the contract in above case, provided that it is not only a temporary service hindrance.

C.4.05

The postponement of delivery dates or the extension of delivery periods shall also take place if the preconditions for the services to be performed by **HOCHSTÄDTER**, which must be fulfilled directly by the customer or by third parties, are not fulfilled in due time.

C.4.06

If the customer requests changes to the order after its confirmation, the delivery or performance period only begins upon confirmation of the change by **HOCHSTÄDTER**.

C.4.07

Fixed-date purchases (“**Fixgeschäfte**”) must be expressly agreed as such in writing.

C.4.08

The time of occurrence of default of delivery by **HOCHSTÄDTER** is governed by the statutory provisions. However, a warning notice by the customer is required in any case.

C.4.09

If **HOCHSTÄDTER** is in default of delivery, the customer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay, however a maximum of 5% of the delivery value of the delayed goods.



HOCHSTÄDTER reserves the right to prove that the customer did not incur any damage at all or only considerably less damage than the above lump sum.

C.4.10

The rights of the customer pursuant to Section C.10.02 of these General Terms and Conditions of Service and the statutory rights of **HOCHSTÄDTER**, especially in the event of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

C.5. Partial deliveries and partial performance

C.5.01

Partial deliveries and partial performance are permissible to an extent which the customer can reasonably be expected to accept.

C.5.02

If **HOCHSTÄDTER** makes use of its right to partial delivery or partial performance, payments for goods which have already been delivered or services which have already been performed cannot be withheld on these grounds.

C.5.03

If **HOCHSTÄDTER** indisputably delivers partially defective goods, the customer is obliged to pay for the defect-free portion, unless the customer is able to demonstrate that the partial delivery or partial performance is useless.

C.6. Prices / Price adjustments

C.6.01

Unless agreed otherwise, prices are quoted ex works/warehouse, exclusive of packaging.

Any other costs (packaging, freight, duties, etc) shall be charged separately.

C.6.02

In the case of "Versendungskauf", the customer bears the transport costs ex works or warehouse and the costs of any transport insurance that may be required.

C.6.03

If packaging is required, **HOCHSTÄDTER** will package the goods according to the existing regulations and proceed according to Section 15 of the German Packaging Law (Verpackungsgesetz).

C.6.04

The prices and costs are subject to the applicable value-added tax.

C.6.05

Where the agreed prices are based on the list prices of **HOCHSTÄDTER** and the delivery and/or service performance is due to take place more than four months after the conclusion of contract, the list prices of **HOCHSTÄDTER** which apply at the time of delivery/performance apply (in each case minus any agreed percentage or fixed discount).

C.6.06

If, after conclusion of the order, the cost factors for **HOCHSTÄDTER** increase by more than 20 percent due to unforeseen events beyond its control, such as, in particular, pandemics, official orders, natural disasters, blockades, war, terrorist attacks, strike, lockout and other industrial unrest, confiscation, embargo, total or partial failure of subcontractors, **HOCHSTÄDTER** has the right to adjust the prices accordingly, irrespective of Clause C.6.05.

C.7. Payment terms / Offsetting / Deterioration of financial circumstances

C.7.01

Down-payments are subject to the provisions of the German Value-Added Tax Act (UStG).

C.7.02

Unless otherwise agreed, payments shall be due immediately upon receipt of invoice and without deduction.

C.7.03

However, **HOCHSTÄDTER** is also entitled at any time, even within the framework of an ongoing business relationship, to only carry out delivery, in whole or in part, against advance payment. **HOCHSTÄDTER** shall issue a



corresponding reservation at the latest with the order confirmation.

C.7.04

In the event that the customer fails to pay on time, the outstanding amounts shall attract interest at the applicable statutory default interest rate commencing on the due date for payment; the assertion of higher interest payments and further damages in case of default is reserved.

C.7.05

The place of performance for payments is the registered office of **HOCHSTÄDTER**.

C.7.06

The hourly rates, premiums etc. of **HOCHSTÄDTER** apply to every normal hour of waiting and work on the basis of the respective standard weekly working hours according to the collective labour agreement. The applicable remuneration and travel expenses list of **HOCHSTÄDTER** applies as amended. Travel time is likewise charged in accordance with the applicable remuneration and travel expenses list of **HOCHSTÄDTER** as amended. **HOCHSTÄDTER** will bill accommodation costs (food and lodging in Germany) for every day of travel and work. If the installation or other customer service continues from one week into the next, accommodation costs or travel costs shall be paid at the discretion of **HOCHSTÄDTER**, unless expressly agreed otherwise. Holiday premiums and accommodation costs will apply on local (i.e. applicable at the place of assignment) public holidays.

C.7.07

The travel time and expenses for the return trip can and will only be entered on the work certificates or time reports upon its completion.

C.7.08

The aforementioned billing rates of **HOCHSTÄDTER** are based on the applicable salary, wage and working hour rates. In case the latter are changed, **HOCHSTÄDTER** reserves the right to adjust the billing rates accordingly. On

request, the billing rates applicable at the time will be communicated to the customer.

C.7.09

If an installation or other service to be performed by **HOCHSTÄDTER** is delayed for reasons beyond the control of **HOCHSTÄDTER**, the customer shall bear all resulting costs, including but not limited to waiting times and further travel costs and expenses of the staff and other vicarious agents deployed by **HOCHSTÄDTER**, which are incurred due to the delay.

C.7.10

The customer may only offset undisputed or legally established claims. This restriction shall not apply, however, if the counterclaim submitted by the customer for set-off is in a synallagmatic (=mutual) relationship with **HOCHSTÄDTER's** claim.

C.7.11

Except in cases under **C.7.10**, the customer does not have any right of retention.

Rights of the customer under Section 320 BGB shall be maintained so long as and to the extent that **HOCHSTÄDTER** fails to fulfil its warranty obligations to the customer.

C.7.12

In the event of a significant deterioration of the customer's financial circumstances which occurs after contract conclusion – or, where a declaration of intent by the customer is required for contract conclusion to take place, following the last declaration of intent by **HOCHSTÄDTER** regarding the contract conclusion – **HOCHSTÄDTER** may demand, at the option of **HOCHSTÄDTER**, advance payment or the provision of collateral for all services and deliveries yet to be performed from contracts from the same legal relationship (Section 273 BGB). If the customer fails to meet this demand, **HOCHSTÄDTER** may withdraw from said contracts or, after setting a period of grace, demand damages in place of performance, specifically, without special evidence, 25% of the non-performed order value, unless the customer proves lesser damage.



HOCHSTÄDTER is only entitled to claim compensation for damages exceeding the lump sum only if exceptionally high damage is incurred in the respective individual case, in which case the above lump sum is to be deducted from this claim.

C.8. Inspection and reporting obligation

C.8.01

The customer may only assert claims for defects if it has duly complied with statutory inspection and reporting obligations (Sections 377, 381 of the German Commercial Code, HGB) and Section C.8. of these provisions.

C.8.02

The goods and services of **HOCHSTÄDTER**, including drawings, implementation plans, etc., must be inspected by the customer for their usability and correctness immediately following delivery.

C.8.03

If a defect is discovered at the time of delivery, inspection or at any subsequent time, **HOCHSTÄDTER** must be notified immediately in writing of the exact objections. In all instances, obvious defects must be reported in writing at the latest within 10 calendar days from the date of delivery or, where acceptance is required, from acceptance, and, in the case of defects that were not evident at the time of inspection, within the same period from the date of discovery, specifying the exact complaints.

C.9. Claims of the customer for defects (Warranty)

Warranty (“**Gewährleistung**”) in the context of these Terms and Conditions means: Claims for defective performance due to delivery of defective goods or manufacture of a defective product.

C.9.01

Unless stated otherwise below, the statutory provisions shall apply to the rights of the customer with respect to material defects and defects in title (including incorrect and short deliveries, faulty assembly or incorrect assembly instructions). The special statutory provisions governing deliveries of unprocessed goods to

end-customers remain unaffected in all cases (supplier recourse pursuant to Section 478 German Civil Code (BGB)), even if they have further processed them. Supplier recourse claims are excluded if the defective goods were further processed by the customer or another company, e.g. by incorporation into another product.

C.9.02

If the customer does not comply with the inspection and reporting obligations according to section **C.8.**, **HOCHSTÄDTER** shall not be liable for any defects not reported. Section 377 (5) HGB remains unaffected.

C.9.03

The general limitation period for claims due to defects in quality and title is **12 months** from the delivery or, if an acceptance has been agreed, from the acceptance. The special statute of limitation remains unaffected (in particular, Section 438 (1) no. 1 and no. 2, (3), Sections 444 and 445b or Section 634a (1) nos. 2 and 3, (3) BGB.

C.9.04

The general limitation period of 12 months shall also apply to contractual and extra-contractual claims for damages based on a defect of the goods or work product.

However, this shortened period of limitation does not apply

- if the damage was caused by intent or gross negligence of **HOCHSTÄDTER** or its representatives or vicarious agents (“**Erfüllungsgehilfen**”);
- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing



in the meaning of Section 276 BGB has been assumed by **HOCHSTÄDTER**;

- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz; ProdHaftG).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.9.05

If the warranty period is suspended or interrupted due to work performed or replacement deliveries by **HOCHSTÄDTER**, such a suspension or interruption shall only apply to the functional unit affected by the replacement delivery or rectification.

C.9.06

HOCHSTÄDTER provides no warranty for components provided by the customer. Unless expressly agreed otherwise, the customer alone shall be responsible for the suitability and properties of such components.

C.9.07

In the event of the customer's non-compliance with the operating and maintenance instructions, it shall be assumed that any damage incurred is the result of this. In this case, the burden of establishing the facts and the burden of proof to the contrary shall be on the customer.

C.9.08

In case the customer has a right to supplementary performance, **HOCHSTÄDTER** will first decide whether the supplementary performance is to take place through elimination of the defect (rectification) or through delivery of flawless goods or manufacture of flawless goods (replacement delivery/ manufacture).

HOCHSTÄDTER's right to refuse supplementary performance under the statutory conditions remains unaffected.

C.9.09

HOCHSTÄDTER may make the supplementary performance conditional upon the payment of the due remuneration (purchase price/remuneration

for work) by the customer. However, the customer may withhold a portion of the remuneration that is reasonable in proportion to the defect.

C.9.10

Work on goods delivered by **HOCHSTÄDTER** or other services performed by **HOCHSTÄDTER** shall only be considered defect elimination or rectification work,

- insofar as the deficiency has been explicitly acknowledged by **HOCHSTÄDTER** or
- insofar as claims for defects have been demonstrated and these demonstrated claims for defects are justified.

If these conditions are not met, such work shall be considered always as special performance by **HOCHSTÄDTER**.

C.9.11

Any other rectification of defects or replacement deliveries/manufacture by **HOCHSTÄDTER** shall be considered special performance if they do not take place explicitly in recognition of a legal obligation.

C.9.12

Provided an actual defect has occurred, **HOCHSTÄDTER** bears the expenses associated with inspection and supplementary performance, in particular the costs of transport, travel, work and materials (cf. Section 439 (2) BGB). Otherwise, **HOCHSTÄDTER** may demand reimbursement of the costs incurred from the unjustified defect elimination request (including but not limited to inspection and transport costs), unless the non-existence of the defect was not obvious to the customer.

C.9.13

The liability for reimbursement of expenses of **HOCHSTÄDTER** is in principle governed by the statutory provisions (in particular, Section 439 (3) BGB) for the costs of removal, installation or mounting of the defective item.



C.9.14

The customer shall give **HOCHSTÄDTER** the required time and opportunity to perform the rectification and replacement deliveries owed under the warranty. The customer may only eliminate the defect directly or through third parties and demand reimbursement of the incurred costs from **HOCHSTÄDTER** in urgent cases that threaten operational safety, to avert disproportionately high damage or if **HOCHSTÄDTER** is in default of the elimination of a defect; in this case, **HOCHSTÄDTER** shall be informed immediately (if possible in advance).

C.9.15

If the rectification has failed or if a reasonable period determined by the customer for the rectification has passed without success (Section 323 (1) or Section 281 (1) BGB) or is not necessary according to the statutory regulations (Section 323 (2) or Section 281 (2) BGB) or may be refused by **HOCHSTÄDTER** pursuant to Section 439 (4) or Section 635 (3) BGB) or is unacceptable to the customer, the customer may rescind the contract. However, no right of rescission applies in the case of a minor defect.

C.9.16

The customer shall only have a right to a reduced price (reduction) if **HOCHSTÄDTER** agrees to this.

C.9.17

Claims of the customer for damages or compensation of expenses made in vain are also excluded in the case of defects pursuant to Section C.10.01 and only exist in the cases which fall under Section C.10.02.

C.10. Other liability

C.10.01

Unless provided otherwise in these General Terms and Conditions and subject to Section C.10.02 below, any claims of the customer against HOCHSTÄDTER for damages and compensation of expenses are excluded, regardless of what the legal basis may be. In particular, this also applies to tort claims (e.g. section 823 BGB).

Insofar as liability is excluded or limited, this also applies to the personal liability of the employees, staff members, representatives and vicarious agents of HOCHSTÄDTER.

10.02

The limitation of liability according to Section 10.01 above shall not apply

- if the cause of damage is due to intent or gross negligence of **HOCHSTÄDTER** or its representatives or vicarious agents; in the case of culpable breach of material contractual obligations, in which case damage payments are limited to damage which is typical for the type of contract and foreseeable at the conclusion of the contract. Material contractual obligations are obligations that protect legal positions of the contracting party that are material to the contract, which the contract must grant the respective contracting party under consideration of its content and purpose, as well as contractual obligations whose fulfilment is essential to the due performance of the contract, compliance with which the customer has regularly relied on and may rely on;
- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 BGB has been assumed by **HOCHSTÄDTER**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz; ProdHaftG).



The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.10.03

In the case of a breach of duty that does not involve a defect, the customer can only rescind or terminate the contract if **HOCHSTÄDTER** is responsible for the breach of duty.

Any unlimited right of termination of the customer (especially pursuant to Sections 651, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

C.11. Call-off orders

C.11.01

If call-off orders are not called off within four weeks of the agreed call-off period, **HOCHSTÄDTER** may demand payment.

C.11.02

The same shall apply in the case of call-off orders without any specifically agreed call-off period, if four months pass without any call-off after the notice of readiness for shipment by **HOCHSTÄDTER**.

C.12. Default of acceptance / non-acceptance

C.12.01

If temporary storage of finished goods at **HOCHSTÄDTER** should be necessary due to a default of acceptance, this will not result in the formation of a storage contract.

HOCHSTÄDTER is likewise not obliged to insure stored goods.

C.12.02

In the case of a default of acceptance (“**Annahmeverzug**”), **HOCHSTÄDTER** is entitled to store the goods in a commercial warehouse at the customer’s risk and expense.

C.12.03

If goods are stored by **HOCHSTÄDTER**, **HOCHSTÄDTER** may charge a monthly fee of 0.5% of the invoice amount but at least € 30.00, --and a further € 25.00 per every other commenced cubic meter of goods per month.

The assertion and proof of higher or lower storage costs is reserved.

C.12.04

The two preceding Sections also apply if shipping, at the request of the customer, is delayed for more than two weeks beyond the notice of readiness for dispatch.

C.12.05

If the customer does not accept the ordered goods within a specified period, **HOCHSTÄDTER** may – without furnishing evidence of the actual damage – demand 25 % of the agreed price as lump-sum compensation, unless the customer furnishes evidence that no or less damage was incurred.

C.13. Retention of title

C.13.01

All deliveries of **HOCHSTÄDTER** are supplied subject to retention of title.

C.13.02

This reservation and the following extension shall apply until all claims from the business relationship with the customer are paid and until full release from any contingent liabilities that **HOCHSTÄDTER** has assumed on behalf of the customer in connection with the delivery.

C.13.03

Pledging of the delivered goods is not permitted.

C.13.04

HOCHSTÄDTER is entitled to demand the surrender of the goods which are subject to the retention of title for good cause, particularly in the event of default of payment, against crediting of the realisation proceeds. This request for surrender does not represent the rescission of the contract. This is subject to the condition precedent that **HOCHSTÄDTER** has threatened to reclaim possession and has set the customer a performance period of seven days. The setting of the period of grace may occur at the same time as the warning.

C.13.05

If and to the extent that the recovered goods may be sold as new by **HOCHSTÄDTER** to



another purchaser in the course of normal operations, the customer owes, without the need for detailed evidence, 10% of the invoice value of the goods as a return fee. If the goods cannot be sold as new in the course of the normal operations, the customer shall – without the need for detailed evidence – owe an additional 25% of the goods invoice value for the loss in value. In every case, the customer may furnish proof of a lower percentage. The customer shall not be liable for damages if the customer is not responsible for the circumstances leading to **HOCHSTÄDTER's** request for return of the goods.

C.13.06

HOCHSTÄDTER reserves the right to assert other, further damage.

C.13.07

The processing of goods supplied by **HOCHSTÄDTER** always takes place on behalf of **HOCHSTÄDTER**, so that goods remain the property of **HOCHSTÄDTER**, to the exclusion of the consequences of Section 950 BGB, in every processing state and also as finished goods. If the goods subject to retention of title are processed together with other items that are also supplied to the exclusion of the legal consequences of Section 950 BGB, **HOCHSTÄDTER** will at least become co-owner of the new goods in the ratio of the invoice value of the goods of **HOCHSTÄDTER** to the invoice value of the other processed goods.

C.13.08

The customer hereby assigns in advance all claims from the resale, processing, installation and other utilisation of the goods to **HOCHSTÄDTER**. If the products sold, processed or installed by the customer include items which are not the property of the customer and for which other suppliers have also agreed a retention of title with sales clause and advance assignment, the assignment takes place in the amount of the ownership percentage of **HOCHSTÄDTER** corresponding to the appropriate fraction of the claim, otherwise in the total amount.

C.13.09

The recovery authorisation which the customer retains despite the assignment expires in any case by cancellation, permissible at any time.

C.13.10

If the value of the collateral that **HOCHSTÄDTER** is entitled to exceeds the claim of **HOCHSTÄDTER** against the customer by more than 10 %, **HOCHSTÄDTER** shall, at the request of the customer, release collateral as selected by **HOCHSTÄDTER** to the respective extent.

C.14. Use of equipment

C.14.01

In connection with service performance, **HOCHSTÄDTER** may lend certain equipment for the screwing in of ground anchors to the customer. The customer has no claim to this service. Likewise, a provision of equipment does not oblige **HOCHSTÄDTER** to perform any other services. Liability for damage resulting from false or inappropriate operation of the equipment by the customer is excluded.

C.14.02

In the event of provision of equipment by **HOCHSTÄDTER**, the customer acknowledges and declares its consent that

- exclusively qualified personnel will be engaged to operate the equipment and
- the customer has read and understood the information provided by **HOCHSTÄDTER** regarding operation of the equipment, and will follow the same and
- the customer will immediately comply with any request by **HOCHSTÄDTER** for the return of the provided equipment.

C.15. Place of jurisdiction / Applicable law

C.15.01

Where the customer is a merchant in terms of the German Commercial Code (HGB), a corporate body under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly



or indirectly from the contractual relationship is the registered domicile of **HOCHSTÄDTER** in Bielefeld.

However, **HOCHSTÄDTER** is in any case also entitled to bring legal action at the place of performance of the delivery commitment pursuant to these General Terms of Service or an overriding individual agreement, or at the customer's general place of jurisdiction. This shall not affect overriding statutory provisions, in particular pertaining to exclusive competence.

C.15.02

The laws of the Federal Republic of Germany shall apply, to the exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods (CISG).

If the choice of German law is not permissible or invalid according to the law at the respective location of the goods the conditions and effects of the retention of title pursuant to **Section C.13.** shall be governed by same law.

C.16. Headings/Definitions

C.16.01

All headings in these General Terms and Conditions are solely intended for improved legibility and have no bearing on the meaning and interpretation of the individual provisions.

C.16.02

Written declarations of intent and knowledge in the sense of these General Terms and Conditions also include declarations transmitted by fax or e-mail.

C.17. Miscellaneous

Should any provision of these Terms and Conditions or a provision included in them later on be or become fully or partially invalid, void or unenforceable or should these Terms and Conditions or any amendments thereto turn out to have a gap, this shall not affect the validity of the other provisions. Sections 306 (2) and (3) BGB remain unaffected.