

# Standard Commercial Terms and Conditions for Contracts of Sale and the Supply of Goods to be Manufactured

## 1. Scope of the Commercial Terms and Conditions

(1) These Commercial Terms & Conditions shall apply to contracts with business enterprises only.

(2) Any deliveries, sales and offers for deliveries or sales that Bernd Münstermann GmbH & Co. KG (hereinafter "Münstermann") submits shall be exclusively based on these Commercial Terms & Conditions. They shall be considered an integral part of all contracts which Münstermann enters into with its contractual partners (hereinafter the "Customer") for sales and deliveries by Münstermann. These Terms shall also apply to all future sales, deliveries or offers to the Customer even if these Terms are not expressly incorporated again.

(3) The Customer's or third party terms & conditions shall be excluded, even if Münstermann does not specifically reject their application. If Münstermann refers to a document containing or referring to Customer or third-party terms & conditions, it shall not be deemed consent to their application.

## 2. Subject Matter of the Contract

(1) The legal relationship between Münstermann and the Customer shall be exclusively based on the written contract for delivery, including these Commercial Terms & Conditions. The contract shall reflect the entire understanding between the parties with regard to the subject matter of the contract. Any verbal commitments by Münstermann made before the signing of the contract shall not be legally binding and like any other verbal understanding shall be replaced by the written contract, unless such verbal agreement clearly implies that it is intended to survive.

(2) Any information supplied by Münstermann regarding the delivery item or work/service (e.g. weights, dimensions, utility value, loading capacity, tolerances and technical data) as well as their representations (e.g. in drawings or illustrations) shall be deemed approximate only, unless exact conformance is crucial for item's usability for the intended and contractual purpose. Such information does not reflect guaranteed properties but only descriptions or characterisations of the deliveries or work/service. Variations or deviations customary in the trade that are due to statutory regulations or improvements in technology shall be permitted, as well as the substitution of equivalent components if usability for the intended and contractual purpose is not impaired by this.

## 3. Binding Period

Münstermann shall be bound by quotations it has issued for 1 month from the date of issue indicated.

## 4. Pricing

(1) Prices are stated as EURO prices, exclusive of

- the statutory sales tax (VAT) as valid at the time of invoicing;
- the cost of transport services which Münstermann is required to arrange for, although not to pay for, under the contract;
- any customs duties, fees and other charges that are levied by or on behalf of a public authority outside the Federal Republic of Germany.

(2) To the extent that Münstermann, in the performance of its contractual obligations, is charged customs duties, fees or other charges or costs for transportation which Münstermann, under the contract, is obliged to arrange for, but not to assume the costs for, the Customer shall release Münstermann from payment or refund such amounts.

## 5. Assembly Costs

Unless agreed otherwise, the costs of assembly shall be invoiced in accordance with the annexed "Assembly Prices".

## 6. Approvals

If approvals and consents of any kind, whether under public law or of a private nature, which are required for the performance of the contractual work or service, are to be effective and must be obtained in a country other than the Federal Republic of Germany, they shall be obtained and paid for by the Customer,

## 7. Place of Performance

The place of performance of all obligations shall be Telgte unless agreed otherwise and in particular the INCOTERMS 2000 are used. If Münstermann is obliged to carry out assembly and commissioning, the place of performance shall be the location at which the assembly and commissioning are to be carried out.

## 8. Application of Incoterms 2000 for Cross-Border Deliveries

In the case of contracts for cross-border deliveries - including items that are to be newly manufactured or produced - the Incoterms 2000 shall apply. Unless agreed otherwise, the term EXW Telgte shall apply.

## 9. Delivery Period

(1) Periods or dates suggested by Münstermann for deliveries or work/services shall be deemed approximate only unless a firm period or date has expressly been promised or agreed. If shipment has been agreed, the delivery periods or delivery dates shall relate to the time of handover to the forwarder, carrier or other third party commissioned to effect transportation.

(2) A precondition for meeting delivery times (periods or dates for deliveries or work/services) is the timely and proper performance of duties and obligations by the Customer (obligation to co-operate), in particular if such co-operation is necessary for the clarification of technical, organisational or financial issues. If the Customer fails to comply in this respect and is responsible for such failure, the delivery period shall be extended accordingly, plus a reasonable starting period. Münstermann shall reserve the defence of non-performance.

(3) Paragraph 2 sentence 2 shall also apply in the event that Münstermann fails to obtain an approval or permit in time and is not responsible for this failure.

(4) If the delivery item or work/service is extended or modified, the delivery period shall be extended in accordance with the additional time and effort required due to such extension or modification, and the delay in the execution of the original subject matter of the contract.

(5) If the Customer is in default of acceptance or culpably breaches other obligations to co-operate, Münstermann shall be entitled to claim compensation for the loss or damage arising as a consequence, including any additional expenses.

(6) If the delivery item is stored by Münstermann after the risk has passed to the Customer or the Customer is in default of acceptance, warehousing costs shall be charged at a blanket rate of 0.25% of the invoice amount for the delivery items to be stored, for each complete week of storage; lower warehousing costs shall have to be claimed and proved by the Customer. Münstermann reserves the right to assert further claims or rights.

(7) If Münstermann is delayed in the delivery or work/service, or if delivery or performance becomes impossible for any reason, Münstermann's liability shall be limited to damages in accordance with section I clause 14 of these Commercial Terms & Conditions.

## 10. Passing of Risk, Acceptance

(1) The risk of accidental loss or accidental impairment shall pass to the Customer no later than at the time the delivery item is delivered to the forwarder, carrier or other party commissioned to effect transportation (the start of the loading process being the decisive point in time). This shall also apply to part deliveries or if Münstermann has agreed to perform other work/services (e. g. shipment, assembly or commissioning). If shipment or handover is delayed due to a circumstance for which the Customer is responsible, risk shall pass to the Customer from the date on which the delivery item is ready for shipment and Münstermann has informed the Customer accordingly.

(2) If an acceptance procedure is required, the delivery item shall be deemed accepted when

- the delivery and – if Münstermann is obliged to carry out assembly or commissioning – assembly and commissioning have been completed, and
- Münstermann has notified the Customer of this, pointing out the assumption of acceptance in accordance with this clause, and has asked the Customer to accept the items, and
- more than 12 working days have passed since the delivery and assembly and/or commissioning (if Münstermann is obliged to carry out assembly or commissioning); or if the Customer has started to use the delivery item (e. g. has put the plant supplied into operation) and in this case 6 working days have passed since the delivery, and (if Münstermann is obliged to carry out assembly or commissioning) since the assembly and commissioning, and
- the Customer has failed to accept the item during this period for reasons other than a defect of which Münstermann has been notified, which render impossible or seriously affect the use of the sales item.

(3) If Münstermann is obliged to carry out the assembly or commissioning in addition to the supply of the delivery item, and if the wholly or partially completed work/service - after delivery was effected - is damaged or destroyed before acceptance by force majeure, war or riots or other inevitable circumstances beyond Münstermann's control, or in case no acceptance procedure is required, before the completion of the assembly or commissioning, the Customer shall pay to Münstermann that part of the remuneration which covers the work performed and also compensation for any expenses not included in the remuneration

(4) If the sales item is shipped, at the Customer's request, to a place other than the place of performance, the Customer shall be obliged to take out insurance cover for theft, breakage, transport or water damage and other insurable risks.

(5) If EXW delivery has been agreed, the foregoing paragraphs with the exception of par. 2 shall not apply.

## 11. Liability for Unforeseeable Events

Münstermann shall not be liable in the event of impossibility or delay in delivery if this is caused by force majeure or other events that were unforeseeable at the time the contract was concluded (such as disruptions of operations of any kind; difficulty in obtaining materials or energy; delay in transportation; strikes, lawful lock-outs; shortage of labour, energy or raw materials; difficulty in obtaining the requisite government approvals; measures by government agencies or lacking, incorrect or late delivery by suppliers) and which are beyond Münstermann's control. Münstermann shall inform the Customer forthwith if delivery is delayed or impossible, stating the pertinent event named in the foregoing sentence 1. If such event considerably impedes delivery or make it impossible and if the existence of such impediment is more than temporary, Münstermann shall be entitled to rescind the contract. If the impediment is only temporary, the periods of delivery or performance shall be extended or postponed by a period equal to the duration of the impediment, plus a reasonable starting period. If the delay makes it unreasonable for the Customer to accept the delivery or performance, the Customer can immediately rescind the contract by issuing a written notification to Münstermann.

## 12. Part Performance

Münstermann shall only be entitled to render part performance if

- part performance is acceptable to the Customer, in view of the intended use as stated in the contract,
- performance of the remaining obligations is guaranteed, and
- this will cause no substantial additional expenses or extra costs for the Customer.

## 13. Obligation to Co-operate in Assembly

(1) The Customer shall inform Münstermann in time before the start of work about the safety regulations for the assembly and shall provide the means required to meet such safety regulations.

(2) The Customer shall see to clearance of the site for the assembly and shall provide support. This involves, but is not limited to

- provision of a sufficient number of suitable auxiliary staff (bricklayers, joiners, plumbers, other skilled workers and helpers),
- provision of compressed air, heating and operating power, the necessary power and water connections as well as the required feed lines to the assembly site and lighting gear,
- provision of the scaffolding required,
- performance of the required cleaning, earthwork, bedding and construction work, in particular the necessary work on the foundation and breaking work, opening and closing of roof apertures,
- accessibility of assembly site for fitters, vehicles and assembly equipment,
- provision of the necessary tools and devices, in particular lifting gear, compressors, the necessary utensils and materials, such as scaffolding poles, wedges, bases, cement, plaster and sealing/ packing materials, lubricants, fuels, driving rope and driving belts
- obtaining the necessary government approvals/permits for the assembly,
- provision of suitable working space including washing facility, sanitary facilities, lockable rooms for the storing of tools.

(3) The auxiliary staff to be provided by the Customer shall obey the instructions of the Münstermann employee in charge of the assembly (technical supervisor). Münstermann shall not be liable for defects or faults caused by the auxiliary staff unless the defect or fault was due to the instructions given by the technical supervisor. In that case, Münstermann's liability shall be limited to damages in accordance with section I, clause 14 of these Commercial Terms & Conditions.

## 14. Terms of Payment

(1) Unless agreed otherwise, the price shall be paid as follows:

**a. If the works in Telgte have been agreed as the place of performance or if delivery EXW Telgte has been agreed, payment shall be made as follows:**

- 30% on receipt of the confirmation of order,
- the rest upon delivery, and no later than 2 weeks after notification of readiness for collection

with the due date 30 calendar days from the respective invoice date.

**b. If delivery by Münstermann to a place other than the works in Telgte has been agreed, payment shall be made as follows:**

- 30% on receipt of the confirmation of order,
- the rest upon delivery or at the time the Customer declares that it will not accept delivery or refuses to accept delivery, in each case for reasons for which Münstermann is not responsible,

with the due date 30 calendar days from the respective invoice date.

**c. If delivery and assembly by Münstermann have been agreed, payment shall be made as follows:**

- 30% on receipt of the confirmation of order,
- another 60% upon delivery or at the time the Customer declares that it will not accept delivery or refuses to accept delivery, in each case for reasons for which Münstermann is not responsible,
- another 10% upon completion of the assembly or at the time the Customer declares that it will not accept the assembly or refuses to accept the assembly, in each case for reasons for which Münstermann is not responsible,

with the due date 30 calendar days from the respective invoice date.

If commissioning by Münstermann has been agreed, the foregoing provisions on assembly shall equally apply to commissioning.

(2) The provision in paragraph 1 shall not apply if the Customer detects and reports a bona fide defect in the period before the due date or for that reason rejects the article of sale. Until the defect has been remedied, the Customer shall have the defence of non-performance of contract. Upon rectification of the defect, the terms of payment stated in paragraph 1 shall apply again.

(3) If the Customer has not effected payment by the due date, any outstanding amounts shall be subject to interest at the rate of 5% p.a. from the due date; the foregoing shall not affect Münstermann's right to claim interest at a higher rate or further damages in case of default

(4) Münstermann shall be entitled to perform outstanding deliveries or work/services only against (further) advance payments or (additional) security if circumstances come to its knowledge after signing the contract which are apt to reduce the Customer's creditworthiness substantially and which jeopardize the payment of Münstermann's outstanding claim against the Customer under the respective contract

(5) Münstermann's claims shall not be offset against Customer's counterclaims nor shall payment be withheld because of such claims unless the counterclaims are undisputed or have become res judicata.

### 15. Warranty Rights, Defects

(1) The items supplied shall be carefully examined forthwith after delivery to the Customer or to a third party designated by the Customer. They shall be deemed accepted if Münstermann does not receive a written complaint for obvious defects or other defects detectable by an immediate careful examination within seven working days from the delivery of the delivery item, or otherwise within seven working days from the detection of the defect, or at any earlier time at which the defect could have been found by the customer in the conventional use of the delivery item without close examination.

(2) In the case of defects in the items supplied, Münstermann shall be obliged and entitled to effect, at its own choice to be taken within in reasonable period of time, to rectify the defect or supply a replacement item. In the event of failure, i.e. if rectification or replacement proves impossible or unreasonable or is refused or unacceptably late, the Customer can rescind the contract in accordance with statutory provisions or can reduce the price accordingly.

(3) To the extent that additional expense accrues for Münstermann's supplementary performance due to the fact that the delivery item is located at a place other than the location of its intended use, such expense shall be borne by the Customer.

(4) At the request of Münstermann, the delivery item complained about shall be returned to Münster carriage paid. If the complaint is justified, Münstermann shall refund the cost for the lowest-priced dispatch route.

(5) In the event of defects at components supplied by other manufacturers, which Münstermann cannot remedy for licensing reasons or factual reasons, Münstermann can at its own option assert warranty claims against the manufacturer and supplier for the account of the Customer or can assign the claims to the Customer. There shall be no warranty claims against Münstermann for such defects under the circumstances and in accordance with these Commercial Terms & Conditions unless the aforementioned claims against the manufacturer and supplier cannot be enforced in court or are futile because of insolvency. For the time of any litigation, the limitation period for the Customer's relevant warranty claims shall be suspended.

(6) There shall be no warranty claim in the case of slight deviations from the agreed properties or if usability is insignificantly affected.

(7) Münstermann's warranty shall be nil and void if the Customer modifies the delivery item or causes it to be modified by any third party without Münstermann's consent and if this makes the rectification of defects impossible or unacceptably difficult. In any case, the Customer shall bear any additional costs arising for rectification on account of such modifications.

(8) The warranty shall also be nil and void if the Customer does not operate and handle the delivery item in accordance with the technical pa-

rameters, and in particular if the Customer operates the delivery item beyond the stated rating/capacity or fails to maintain it properly, and has thus caused the defect.

(9) If in individual cases the supply of second-hand items has been agreed with the Customer, there shall be no warranty at all for defects.

(10) If Münstermann is responsible for a defect, the Customer, notwithstanding the foregoing paragraphs, can claim damages under the conditions stated in clause 17.

### 16. Industrial Property Rights

(1) Münstermann shall guarantee that the delivery item is free of third-party industrial property rights or copyrights, in accordance with this clause 13. Each party to the contract shall inform the other party forthwith in writing of any claims made against it for the infringement of such rights.

(2) If a third-party industrial property right or copyright is infringed by the delivery item, Münstermann shall at its discretion and at its own expense either modify the delivery item in such a way or make such replacements that third-party rights are no longer infringed and the delivery item still fulfils the agreed functions, or Münstermann shall enter into a licence agreement and obtain the right of utilisation for the Customer. If it fails to achieve this within a reasonable period of time, the Customer shall be entitled to rescind the contract or claim an appropriate price reduction. Any claim for damages by the Customer shall be subject to the limitations of clause 17 of these Commercial Terms & Conditions.

(3) If rights are infringed by products from other manufacturers which Münstermann has supplied, Münstermann shall at its option assert its claims against the manufacturer and Münstermann's supplier at the Customer's expense or assign the claims to the Customer. In these cases there shall be no claims against Münstermann under this clause 16 unless the claims against the manufacturer and Münstermann's supplier could not be enforced in court or are futile because of insolvency.

### 17. Liability to Pay Damages for Negligence

(1) Münstermann's liability, irrespective of legal grounds, in particular for impossible, deficient or false delivery, breach of contract, breach of obligations during contract negotiations and tortious act, insofar as negligence is at issue, shall be limited as provided under this clause.

(2) Münstermann shall assume no liability in the event of ordinary negligence of its organs, legal representatives, employees or other vicarious agents except in the case of a breach of essential contractual obligations. Essential contractual obligations comprise the obligation to deliver the items punctually – and if agreed including assembly and/or commissioning – and free of major defects, and also obligations to advise, protect and take care, which are to enable the Customer to use the delivery item as contracted or which aim to protect life, limb and health or protect the Customer's property from material damage.

(3) Insofar as Münstermann is in principle liable for damages in acc. with par. 2, this liability shall be limited to damage that Münstermann, at the time of the conclusion of the contract, could foresee as a possible consequence of a breach of contract, or which Münstermann should have foreseen with due diligence. Indirect damage or consequential damage resulting from defects of the delivery item can only be compensated for if such damage can typically be expected in the conventional use of the delivery item.

(4) In the event of liability for ordinary negligence, Münstermann's liability to pay damages - notwithstanding par. 3 - shall be limited

in the case of the consequences of planning

- to the amount of EUR 1,000,000.00 (one million Euros) per damage event for property damage or pecuniary loss

in all other cases

- to the amount of EUR 10,000,000.00 (ten million Euros) per damage event for property damage, and
- for pecuniary loss to the amount of EUR 500,000.00 (five hundred thousand Euros)

(in accordance with the current amount of the insured sum for commercial third-party/product liability insurance) even in the case of violation of an essential contract obligation.

(5) The above-mentioned exclusions and limitations of liability shall equally apply in favour of the organs, legal representatives, employees and other vicarious agents of Münstermann.

(6) If Münstermann furnishes technical information or advice which exceeds the scope of work/services agreed under the contract, this information or advice shall be furnished free of charge and with no liability.

(7) The limitations set forth in this clause shall not apply to any liability that Münstermann may have for wilful intent, for guaranteed properties or fraudulently concealed defects, for injury to life, limb or health or under the product liability law.

#### 18. Limitation Period

(1) Warranty claims shall become time-barred one year after delivery. If an acceptance procedure is required, the warranty period shall be one year from the date of acceptance.

(2) The above paragraph 1 shall not apply to claims for defects in a structure or for delivery items, which were used for a structure in the conventional manner and have caused its defectiveness. In that case, the statutory limitation period shall apply.

(3) Neither shall par. 1 apply to liability for injury to life, limb and health, for wilful or grossly negligent breach of duty on the part of the organs of Münstermann, its legal representatives, employees or other vicarious agents in the event of fraudulent concealment of a defect, and for guaranteed properties or liability under the law on product liability. In those cases again, statutory limitation periods shall apply.

#### 19. Reservation of Title

(1) Title to the delivery item shall remain with Münstermann until all claims against the Customer resulting from the business relationship have been settled.

(2) The Customer shall be permitted to process or transform the delivery item (processing). The processing shall be carried out on behalf of Münstermann. If, however, the value of the delivery item owned by Münstermann is lower than the value of the items not owned by Münstermann and/or the processing, Münstermann acquires co-ownership in the new item, at the ratio of the value (gross invoice value) of the processed delivery item to the value of the other processed items and/or the processing at the time the processing is carried out. If Münstermann does not acquire ownership of the new item in accordance with the foregoing sentence, Münstermann and the Customer agree that the Customer shall grant Münstermann co-ownership in the new item at the ratio of the value (gross invoice value) of the delivery item owned by Münstermann to the other processed items at the time of the processing. The foregoing sentence shall apply accordingly if the delivery item is inseparably mixed or combined with items not owned by Münstermann. If Münstermann acquires ownership or co-ownership in the items, the Customer shall keep them safe with the care of a prudent businessman.

(3) In case the delivery item or the new item is sold, the Customer hereby assigns to Münstermann, by way of security, the claim which the Customer has against its customer from the resale together with all secondary rights, and no further declarations shall be required for this. The assignment shall include any balance claims. The assignment shall only be made in the amount of the price invoiced by Münstermann for the delivery item. The share of the claim assigned to Münstermann shall be settled with priority.

(4) If the Customer connects the delivery item or the new item to premises, the Customer shall assign to Münstermann its claim to remuneration for executing this connection, in the amount of the price invoiced by Münstermann for the item supplied, and no further declaration shall be required for this.

(5) Subject to revocation, the Customer shall be entitled to collect the claim which it assigns to Münstermann under this clause 16 (Reservation of Title). The Customer shall immediately transfer to Münstermann any payments made towards the assigned claim, up to the secured amount. If a legitimate interest arises, in particular in the case of delay in payment, default, institution of insolvency proceedings, protesting of a bill or evidence of over-indebtedness and impending insolvency of the Customer,

Münstermann shall be entitled to revoke the Customer's right to collect. In addition, Münstermann shall be permitted to disclose such assignment by way security and after giving due warning and allowing a reasonable grace period may realize the assigned claim and may demand that the Customer disclose the assignment to its customers.

(6) If Münstermann can credibly show a legitimate interest, the Customer shall furnish the information Münstermann requires to be able to assert its claims against the Customer's customer and shall hand over the necessary documents.

(7) For the duration of the retention of title, the Customer may not pledge the items concerned or transfer ownership by way of security. In the event of levy of execution, seizure or other third-party dispositions or interventions, the Customer shall notify Münstermann forthwith. The resale of the delivery item or the new item shall only be permitted to resellers in the regular course of business and on condition that payment is effected to the Customer in the amount of the value of the delivery item. The Customer shall stipulate that its customer shall acquire title to the item only upon payment of such sum.

(8) If the total realizable value of Münstermann's security interests exceeds the amount of the secured claims by more than 10%, Münstermann shall, at the Customer's request, release an equivalent share of the security interests. The requirements of the preceding sentence shall be assumed fulfilled if the estimated value of the collaterals to which Münstermann is entitled reaches or exceeds 150% of the value of the secured claims. Münstermann shall select, at its own choice, the security interests that are to be released.

(9) If the Customer breaches any of its duties, in particular in the event of delay/default of payment, Münstermann shall be entitled to demand surrender of the delivery item and/or the new item without setting a time-limit, and/or to set a time limit, after the expiration of which it can rescind the contract; the Customer shall be obliged to surrender the item. The request for surrender of the delivery item and/or the new item shall not imply the rescission of contract by Münstermann, unless such rescission is expressly stated.

#### 20. Intellectual Property, Confidentiality

(1) Ownership and copyright of all offers, estimates, samples as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents or materials of a physical or intangible nature, including electronic format, shall remain with Münstermann. Without Münstermann's express consent, Customer shall not make such items or their content available to any third party, disclose them, utilize them or allow others to utilize them, reproduce them or turn them to account in any other way. At Münstermann's request, the Customer shall return all of these items and destroy any copies made by the Customer if they are no longer needed in the regular course of business or if negotiations do not result in a contract.

(2) If Münstermann makes confidential information available to the Customer in the context of the preparation of an offer or the performance of a contract concluded with Münstermann, the Customer undertakes

- to maintain confidentiality,
- not to make them available to any third party and prevent unauthorized access by a third party,
- not to reproduce, utilize or circulate them or allow others to reproduce, utilize or circulate them
- not to use them for anything but the performance of the respective contract with Münstermann.

(3) The term "confidential information" shall cover the items set forth in par. 1 and any other financial, technological, scientific, patent-related or other internal information of or about Münstermann, its technologies and products, with regard to its business strategies, business data, industrial property rights, development, production or the company itself, of which the Customer becomes aware during the performance of this contract or the negotiations preceding it.

(4) The following information of the contract parties shall be exempt from the duty to maintain confidentiality:



- information that was in the other party's possession before its disclosure;
- information that at the time of disclosure was public or was state of the art and therefore neither confidential nor capable of being protected;
- information that after it has been disclosed becomes generally known through publication or in any other way, except as a result of one of the parties violating the confidentiality obligation agreed in this contract.

(5) The Customer's shall subject those of its employees who handle confidential information during the performance of the contract to the above confidentiality provisions.

## **21. Software Clause**

(1) If the scope of delivery contains software that has not been specially developed for the Customer, the Customer is granted a non-exclusive right to use the software and the documentation. The Customer shall be permitted to use the software together with the delivery item for which it is intended. The software may not be used on more than one system.

(2) The Customer may reproduce, process, translate the software or convert from object code to source code only to the extent permitted by law (sections 69a et seq. UrhG/copyright law). The Customer agrees not to remove manufacturer information - in particular copyright notices - or modify these without Münsterman's express prior consent.

(3) All other rights to the software and documentation, including copies, shall remain with Münstermann or the software supplier, respectively. There shall be no grant of sublicenses.

## **22. Governing Law**

The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall be excluded.

## **23. Jurisdiction**

The venue for any litigation arising from the business relationship between Münstermann and the Customer shall be, at Münstermann's discretion, either the city of Münster or the Customer's domicile. For any action against Münstermann, Münster shall be the only venue.

Obligatory statutory provisions regarding exclusive venues shall not be affected by this clause.

## **24. Language**

The contractual language shall be German.

## **25. Written Form**

Amendments or modifications to the agreements including these Commercial Terms & Conditions shall only be valid in written form. Münstermann employees, with the exception of general managers and authorised signatories (Prokuristen), are not authorized to agree otherwise. Fax transmission shall suffice to meet the written form requirement. Transmission by other means of telecommunication, in particular electronic mail, shall not be sufficient.

## **26. Saving Clause**

Should the contract or these Commercial Terms and Conditions be found to be incomplete, such lawful provisions shall be deemed agreed in order to fill any gaps as the parties would have agreed, in view of the economic objectives of the contract and the purpose of these Terms and Conditions, if they had been aware of these gaps.

**FEBRUARY 2011**