

## General Terms and Conditions of Sale and Delivery of Frauscher Sensortechnik GmbH

The following General Terms and Conditions of Sale and Delivery of Frauscher Sensortechnik GmbH may be downloaded from [www.frauscher.com](http://www.frauscher.com) and may also be provided in hard copy upon customer request.

### 1. Scope

1.1. These General Terms and Conditions of Sale and Delivery (“GTC”) are an integral element of all transactions between the customer and Frauscher Sensortechnik GmbH, hereinafter referred to as “Frauscher” pertaining to the sales and delivery of goods or the provision of other services by Frauscher (“Customer Contracts”). These GTC shall apply as from such time as the customer receives our order confirmation, but in any event no later than at such time as the customer accepts the delivery or the service, and are deemed agreed to cover all present and future Customer Contracts, even where, in respect of future Customer Contracts, no express reference to these GTC is made either at the time of order confirmation or of responding to a customer query or at the time of delivery of the goods or services. No signature by the customer on these GTC is required.

1.2. General terms and conditions of business or standard forms of the customer shall in no circumstances be deemed to constitute any element of the Customer Contracts, irrespective of whether they contain terms deviating from or supplementing these GTC or not. It shall not be deemed any acknowledgment of customer terms and conditions if we receive the customer’s general terms and conditions of business or standard forms (in whatever form) without objecting to them, nor shall our performance of the delivery

of goods or services be deemed any acceptance of such customer terms.

1.3. Contract terms or other contractual provisions on the part of the customer departing from these GTC shall only apply if and to the extent that Frauscher has expressly acknowledged them in writing with respect to any individual transaction and they shall only be deemed applicable to the transaction for which Frauscher has acknowledged the contract terms or other contractual provisions of the customer in such form. Contract terms departing from these GTC may, in particular, be contained in offers by Frauscher, general agreements with the customer and order confirmations by Frauscher.

1.4. In respect of contract terms with regard to a Customer Contract, the following priority shall apply as between order confirmation/offers by Frauscher, general contracts between Frauscher and the Customer and these GTC (including general terms and conditions of purchase and the like):

- 1st priority: Order confirmation by Frauscher/Offer by Frauscher
- 2nd priority: General contracts between Frauscher and the Customer (such as framework agreements and cooperation agreements)
- 3rd priority: GTC (including general terms and conditions of purchase and the like)

Where contract terms in the above-referenced documents are in conflict, the terms of the document which is ranked higher in priority shall prevail (thus, for example, terms in order confirmations and offers by Frauscher shall prevail over the terms of general contracts between Frauscher and the Customer). Terms in documents of lower priority which supplement, i.e. do not conflict with, other documents, shall be deemed applicable to documents of higher ranking, although even when applying such supplemental terms the contract term of the higher-ranking document shall in each case take precedence (thus, for example, in the case of order confirmations, supplemental terms of general contracts between Frauscher and the Customer shall be deemed to rank higher in priority and prevail over supplemental terms in the GTC).

## **2. Offer, formation of contract, written form requirement**

2.1. Frauscher's offers shall at all times be deemed subject to change and without obligation even where Frauscher specifies prices, deadlines or furnishes other specifications in such offers. This shall apply irrespective of whether an offer of this kind is made on the basis of an enquiry by a customer or without any such enquiry. Frauscher shall not be deemed bound by contract until such time as it forwards its written confirmation of order pursuant to section 2.3.

2.2. Where the customer places an order (in response to notice or similar statement by Frauscher or without any such previous communication), the customer shall be deemed bound by its order until

such time as Frauscher confirms or rejects the order, but in any event for a 21 day period.

2.3. Orders received by Frauscher pursuant to section 2.2 hereof (both initial orders and follow-up orders) shall only be binding on Frauscher at such time as Frauscher sends its written order confirmation. Amendments and addenda to any order accepted by Frauscher shall not be valid unless Frauscher furnishes written confirmation thereof.

2.4. Where Frauscher's order confirmation deviates from the customer's order, the customer shall be deemed to acknowledge the deviation from the original order if the customer fails to object to it within 14 days of receipt thereof.

2.5. Information contained in catalogues, brochures and the like as well as Frauscher's other verbal or written statements shall only be deemed to govern where Frauscher has expressly confirmed them in its written order confirmation.

## **3. Delivery**

3.1. Where Frauscher's written order confirmation under section 2.3 hereof or other communication under section 2.1 hereof do not contain any details in respect of delivery, the parties are deemed to agree to delivery FCA pursuant to INCOTERMS. FCA place of delivery is Gewerbestraße 1, 4774 St. Marienkirchen, Austria.

3.2. Unless otherwise agreed, Frauscher's obligation to make delivery shall include standard packaging suitable for transport, but it should be noted that packaging for shipment by sea vessel

does not constitute standard packaging and Frauscher will only undertake such packaging upon special agreement and for an extra charge. With respect to the conclusion of the forwarding agreement, FCA INCOTERMS shall apply. FCA shall likewise apply in respect of insurance cover, and the customer shall bear the entirety of the insurance costs in the event that Frauscher enters into transport insurance for transport of the goods. Upon delivery FCA, the risk of loss and damage to the goods forwarded, as well as the costs thereof, are deemed to pass to the customer.

- 3.3. Frauscher is authorised to effect partial delivery and invoice deliveries in instalments.

#### **4. Delivery period, default**

- 4.1. Unless an agreement has been made by the parties with respect to a specific calendar date, the delivery period shall begin on the latest of the following dates:

- The end of the day on which the order is confirmed;
- The end of the day on which the customer delivers its complete technical specifications to Frauscher (where Frauscher's performance of the order is agreed to be dependent on the customer's delivery of documentation) and final resolution of all technical details of the order;
- The end of the day on which Frauscher receives any downpayment or security (letter of credit, bank guarantee, etc.) prior to execution of the works.

- 4.2. Where amendments to a Customer Contract are subsequently agreed, a new, reasonable delivery period shall be agreed, or the delivery period shall be

deemed automatically extended by reasonable time in the absence of any agreement to the contrary. In addition, in the event of a force majeure event (within the meaning of section 4.4) and in the event of a breach of the customer's duty of cooperation or other contract breaches by the customer under the Customer Contract, delivery periods shall be deemed interrupted for the duration of the interrupting event in question, such that no default in delivery shall be deemed to arise. In such cases, Frauscher shall be entitled to set a reasonable grace period and upon the expiry thereof to rescind the Customer Contract. In the event of interruptions due to force majeure, both Frauscher and the customer are entitled to set a reasonable grace period and upon the expiry thereof to rescind the contract if the delivery of the goods is delayed by more than three months as a result of the force majeure event. In any case and without exception, including in these cases, the customer shall not be entitled to assert any claims for damages or other legal claims. The foregoing applies even if the events occur at a point in time at which Frauscher is itself in default.

- 4.3. Unless an express agreement has been made between the parties with respect to fixed-deadline delivery dates, delivery dates shall be deemed approximate and without obligation. Agreement with respect to a delivery date/date of performance shall not be deemed to constitute a fixed-term transaction [Fixgeschäft]. Frauscher is also entitled to effect deliveries early. Where delivery dates have been confirmed by Frauscher, Frauscher is permitted to exceed such delivery dates by up to 14 business days by furnishing written notification to the

customer, without the customer being entitled to derive any consequences of default of any kind whatsoever therefrom. In the event of any failure to meet a delivery date beyond the foregoing (default), the customer shall only be entitled to rescind the contract with respect to the quantity affected by the default if it sets a reasonable grace period of at least four weeks prior thereto. The grace period shall begin upon the date on which Frauscher receives the customer's letter, which the customer shall forward to Frauscher by recorded delivery (eingeschriebener Brief). With the exception of contract rescission under this section 4.3, any delays in effecting deliveries shall not be deemed to entitle the customer to assert any claims, irrespective of the legal basis thereof.

4.4. "Events of force majeure" shall be deemed to include, in particular, but not be limited to, the following events:

- all impacts stemming from forces of nature such as earthquake, lightning strike, frost, wind storm, flood;
- war, travel warnings of the Austrian Foreign Ministry, the entry into force of statutes or statutory amendments, interventions by public authorities, seizures, disruptions or destruction by means of transport (for which no liability is accepted as a matter of principle), prohibitions on export, import and transit, national and international foreign trade law provisions, embargos and other sanctions, international payment restrictions, breakdowns in the supply of raw materials and energy sources;
- business disruptions, such as through explosion, fire, strikes, sabotage and all other events which could not have been avoided or could only have been avoided

at unreasonable cost or by means which are not commercially reasonable.

## 5. Duty of acceptance, default of acceptance, passage of risk

5.1. The customer must immediately call for and accept custody of goods Frauscher has notified the customer are ready for shipment (and the customer must identify its freight carrier or other person accepting custody thereof); otherwise Frauscher shall be entitled to store the same in its free discretion at the customer's cost and risk and immediately invoice the customer therefor. The Customer Contract shall thereupon be deemed fully performed on the part of Frauscher. The same shall apply where the parties have agreed that the customer is entitled to issue a call-off order for the goods during a defined period and the customer fails to do so within such period or where the delivery is delayed due to the customer's lack of the necessary space or technical prerequisites.

5.2. The risk of accidental destruction and accidental damage is deemed to pass to the customer at the time of delivery pursuant to the FCA INCOTERMS which are applicable pursuant hereto, or in cases of default referenced in the FCA INCOTERMS. Where grounds of interruption as set out in section 4.2 are present or if the goods are deemed 'shipped' within the meaning of the 'deemed performance' pursuant to section 5.1, the risk shall pass to the customer at such time as the customer receives Frauscher's notification of its readiness to ship. The foregoing shall also apply where Frauscher organises and manages the shipment at the customer's request and expense. Where the customer is in default of acceptance, upon expiry to no

avail of a grace period of at least two weeks, which Frauscher shall set in writing, the customer shall pay to Frauscher a contractual penalty of 1% of the net order value, irrespective of fault. Frauscher's right to assert a claim for actual damages exceeding the amount of the contractual penalty shall remain unaffected thereby.

5.3. Every shipment of goods shall be deemed to have been delivered in proper condition to the freight forwarder or such other person as the customer has designated. Until proof of the contrary is furnished, any damage to the goods shall be deemed to have occurred during shipping. Irrespective of the INCOTERMS clause agreed by the parties in the particular case, Frauscher shall not bear any liability for any losses whatsoever arising during shipping or as a result of delays during shipping.

5.4. Manuscripts, originals, drafts, sketches, samples, models, films and other documentation or goods provided to Frauscher are deemed to be stored by Frauscher exclusively at the risk of the customer. Insurance of these goods against any risk whatsoever is exclusively the customer's responsibility. Frauscher shall have no liability whatsoever for any damage to or loss of such items except where Frauscher has, by its gross negligence, occasioned the damage or loss of the item.

## 6. Prices

6.1. Frauscher's prices are quoted in the currency set out in its offer, and absent any such specific reference, they are deemed quoted in euros. Where offers are made in currencies other than the

euro, Frauscher reserves the right to adjust the prices to take account of currency fluctuations relative to the euro occurring on or before the date of delivery (in the event of a default of payment by the customer: on or before the date of payment).

6.2. Frauscher shall invoice the customer based on its prices valid on the date of delivery, plus VAT (at the statutory rate as applicable from time to time). Frauscher's prices as indicated are quoted ex-works 4774 St. Marienkirchen, Austria. If public charges, taxes or other levies are charged in connection with the delivery of the goods, the customer shall bear the cost of these. The customer shall likewise bear the cost of any packaging exceeding standard packaging (such as for sea freight). Any cash discounts, rebates, etc. granted to the customer are calculated based on Frauscher's sales prices (net of VAT).

6.3. The agreed prices are based on Frauscher's production costs as of the date of its written confirmation of order. In the event of a change of the prices of materials and energy, wages, freight charges, customs duties, taxes and other costs with an impact on price, Frauscher reserves the right to make an adjustment to its cost structure at the time of delivery. Where Frauscher enters into a contract without specifying the price, the price applicable to the goods delivered in effect on the date of delivery or production of the goods for delivery shall be charged.

6.4. Supplemental costs occasioned by subsequent change orders issued by the customer (provided that Frauscher acceded to the change order request) shall be borne by the customer. In addition, Frauscher shall be entitled to invoice the customer for additional costs due to any

delay for which Frauscher bears no fault, in particular for delays attributable to resolving issues of the technical or legal prerequisites to delivery, warehousing costs due to a breach of the customer's duty of acceptance, or costs of Frauscher arising due to overtime, night or weekend work requested by the customer.

## **7. Payment, default of payment, set-off**

7.1. Absent any agreement to the contrary in the order confirmation or the delivery contract, the customer shall pay the amounts of invoices (including with respect to partial deliveries and deliveries made under addenda) to Frauscher within 30 calendar days of the date of the invoice; any bank charges or other charges in connection with bank transfers, documentary collections or documentary letters of credit shall be charged to the customer. The payment date shall be deemed the date of Frauscher's receipt of the funds or the date on which the funds are received at Frauscher's payment office. Any rebates, bonuses and cash discounts shall be contingent on the customer's complete and timely payment.

7.2. Frauscher reserves the right to require advance payment for delivery of the goods. No payments are accepted by bill of exchange or cheque, and shall not be deemed to satisfy the customer's payment obligation. Any rebates, bonuses and cash discounts shall be contingent on the customer's complete and timely payment.

7.3. The customer shall only be entitled to set off any claims it may have against Frauscher against Frauscher's claim for the purchase price if and to the extent

that the customer's counterclaim is undisputed or has been determined by res judicata court judgment. The customer shall only have a right of reservation based on claims arising out of the same contractual relationship.

7.4. Where a complete or partial default of payment of an invoice which is due and payable on the part of the customer occurs or where insolvency proceedings are opened over the customer's assets, Frauscher shall be entitled to immediately accelerate the entirety of its outstanding purchase price claims, including such claims as may arise from other contractual relationships or other orders, notwithstanding potential later due date or value date (acceleration), or to demand the furnishing of sufficient security by the customer. In addition, Frauscher shall be entitled to defer performance of its obligations until such time as the outstanding payment (or other contractual performance) has been made.

7.5. In the event of a default of payment by the customer, default interest pursuant to § 456 of the Austrian Entrepreneurial Code [UGB] shall be charged, and the customer shall reimburse Frauscher for all of its pre-litigation costs (in particular: dunning and collection charges and solicitor's fees). In all such cases, Frauscher's further and other claims (including its claims for compensatory damages) shall remain unaffected thereby.

7.6. Where no payment is made within a reasonable grace period from the date on which default arises and Frauscher has set a deadline for payment and threatened to rescind the contract, Frauscher shall be entitled (notwithstanding its rights under section 8 of these GTC –



Reservation of title) to rescind the Customer Contract and to repossess the goods it has delivered to the customer, asserting all of its expenses for doing so as well as reasonable compensation for diminution in value of the goods. Where Frauscher avails itself of its right of repossession, the customer shall ship the goods or, at Frauscher's option, shall package the goods in shipment-ready condition and hold them ready for Frauscher's collection. Furthermore, in such case, the customer shall pay to Frauscher its project-specific special expenses (such as control cabinet wiring) without delay following Frauscher's notification of the costs thereof.

7.7. On export transactions, the customer shall be obliged to return the originals of all export and customs documents to Frauscher; the customer shall otherwise be obliged to pay any customs duties or other charges which may be levied.

7.8. Prohibitions on assignment of receivables the customer may issue shall not apply to Frauscher.

## 8. Reservation of title

8.1. Every delivery of goods made by Frauscher shall remain Frauscher's property until such time as the entire amount of the invoice (including ancillary charges such as interest and costs) has been fully paid. The customer is obliged to arrange for separate safekeeping and proper storage of goods subject to Frauscher's reservation of title and to insure such goods in line with their value.

8.2. The customer is not authorised to treat or process the reservation of title goods; the customer shall only be permitted to pledge or transfer ownership

thereof by way of security with Frauscher's prior written consent. Where the reservation of title goods are processed, melded or comingled with other materials, Frauscher shall acquire co-ownership in the new item of goods created thereby pro rata in proportion to the value of the goods supplied by Frauscher relative to the other material. In all such cases, the customer is deemed the custodian of the property and obliged to cooperate in all measures necessary or useful in order to protect Frauscher's property.

8.3. Throughout the period of Frauscher's reservation of title, the customer shall notify Frauscher without delay of any charges and other interventions by third parties relative to the reservation of title goods and of any damage or loss with respect to the same, and shall bear/reimburse Frauscher for all costs arising in connection with the enforcement of Frauscher's property rights. The customer shall be liable to Frauscher for all losses arising out of its failure to give notice or for any belated notice.

8.4. The customer is deemed to assign, now and in advance, all receivables arising from the sale of the reservation of title goods to Frauscher. Upon Frauscher's request, the customer shall be obliged to disclose to Frauscher the name and address of its end customers as well as the existence and amount of any receivables arising from such sale. The customer shall furthermore be obliged to note this assignment in its books and to furnish documentary evidence thereof to Frauscher upon request. Frauscher is authorised to disclose such assignments to the respective third-party debtors at any time. Until revocation by Frauscher, the customer shall be deemed authorised

to collect receivables it has assigned to Frauscher in its own name, but for Frauscher's account, without this being deemed to modify in any way Frauscher's exclusive entitlement to the receivable. The customer is not entitled to assign receivables arising out of its resale or reservation of title goods to third parties.

- 8.5. Frauscher's assertion of its reservation of title shall not require any rescission, shall not be deemed the equivalent of a rescission of the contract, and shall not be deemed to relieve the customer of its obligations. The customer shall only have a claim to a credit of the proceeds of sale (by sale on the open market) of the reservation of title goods. Any and all costs incurred by Frauscher by repossession of the goods (shipping costs etc.) shall be charged to the customer.

## 9. Warranty

- 9.1. Within the limitation periods set out in section 16 hereof, pursuant to the terms set out hereinafter, Frauscher shall be obliged to remediate and rectify all such defects as impair the functionality of the goods, which were already present at the time of delivery and were due to a defect in manufacturing or design by Frauscher or of the material furnished by Frauscher.

- 9.2. The customer shall inspect the goods received by it at once to verify that they are free of defects. Any defects of which the customer has not given immediate notice to Frauscher or of which the customer has not given notice within seven days of the arrival of the goods at their destination, at the latest, in writing and precisely indicating the defect, shall be deemed approved. In such cases, the customer's right to assert any claims for

statutory warranty and/or compensatory damages and its right to challenge the transaction for mistake based on defects shall be deemed forfeited. Excepted herefrom are defects which could not have been discovered within that seven-day period, despite careful scrutiny by the customer. Such defects shall be deemed approved by the customer if the customer fails to give notice thereof in the manner described above within seven days of discovery thereof. The customer's warranty claim shall only arise where the customer has given written notice to Frauscher without delay of the defect which has appeared and has furnished a detailed description thereof. To the extent the loss arising is deemed under FCA INCOTERMS to fall within the sphere of risk to be borne by Frauscher, the customer shall be obliged to assert any claims Frauscher may have vis-à-vis the freight forwarder, shipper or transport insurance provider without delay, but within seven days of the arrival of the goods at their destination, at the latest, or in the event it learns thereof at a later point in time, then without delay upon learning thereof. § 924 of the Austrian Civil Code [ABGB] (presumption of defectiveness) shall not apply. Defects as to a portion of the goods delivered shall not entitle the customer to object to the entire delivery.

- 9.3. Subject to section 9.4 hereof, supplemental performance shall, as a general rule, be rendered at the place of performance as defined in section 7.1 hereof. Thus, in the case of a timely complaint pursuant to section 9.1 hereof, the customer shall consult with Frauscher and return the goods to Frauscher for its inspection of the asserted defects.



- 9.4. Where the goods or services have been subsequently relocated to another location, then, at Frauscher's option, supplemental performance may also be rendered at such other location. Frauscher shall bear expenses exceeding the costs of supplemental performance at the place of performance where it renders supplemental performance at a location other than the place of performance (=additional costs), except where the supplemental performance at another location is rendered at the customer's express request (who in such case shall bear the costs thereof).
- 9.5. The customer may not derive any claims or legal consequences as a result of Frauscher's acceptance of goods returned to it. Likewise, Frauscher's inspection of the defect shall not give rise to any claims on the part of the customer or other legal consequences. In the event of an unjustified complaint for defects, the customer shall, in any event, bear the costs of shipping incurred for shipping/returning the goods as well as any other expenses which may arise.
- 9.6. In the event of well-founded complaints for defects within the warranty period, Frauscher shall be entitled to avoid any claim of the customer for abatement of the purchase price by remediating the defect or supplying replacement goods. The customer shall have no warranty claims exceeding the foregoing; in particular, it shall have no claims to abatement of the price, rescission or cancellation. The customer shall not be authorised to rectify the defect itself or to cause a third party it has engaged to do so. Following the customer's discovery of a defect, the customer is not permitted to effect any further disposition over the goods without Frauscher's consent; where the customer nevertheless does so, it is deemed to waive any warranty claims and claims for damages it may have against Frauscher.
- 9.7. Where Frauscher rectifies defects not subject to warranty or performs other services or customer service work, such work shall be charged in accordance with Frauscher's valid price schedule or on the basis of time and expense incurred.
- 9.8. The customer shall be deemed to have no claims for warranty or damages in cases of defects caused by over-stress of the goods, negligent or improper handling and installation, poor maintenance, repairs performed without Frauscher's written consent, failure to comply with Frauscher's operating instructions and other instructions as well as use of the product beyond the specifications agreed with Frauscher. Frauscher shall not bear liability for damage to the goods resulting from actions by third parties or from effects of chemical, electrical or mechanical sources which are not envisaged by the Customer Contract. Goods which are subject to natural wear-and-tear shall not be deemed covered by the warranty with respect to such wear-and-tear.
- 9.9. Frauscher's warranty obligation shall be deemed to immediately lapse where any modifications or repairs to the goods are made without Frauscher's consent. The warranty period shall not be deemed extended by the performance of work which is subject to warranty.
- 9.10. Assertion of a defect shall not relieve the customer of its duty to make payment. In addition, the customer's assertion of a defect shall not entitle it to reject further deliveries under the Customer

Contract with Frauscher in question, or under any other Customer Contract with Frauscher.

## 10. Liability

10.1. Frauscher's liability is, as a general rule, limited to the losses for damage to the goods delivered. Frauscher shall bear no liability for any compensatory damages exceeding the foregoing, in particular, it shall bear no liability for consequential damages (such as injuries to persons or to plants/facilities (e.g. railway facilities) as a result of interruptions of operations), to the extent such damages include or relate to lost profits, pure pecuniary damages or third-party damages. Where Frauscher's warranty obligation is inapplicable based on section 9 hereof, then in such case, Frauscher shall likewise have no duty to pay compensatory damages. The foregoing shall apply even where the customer has downstream liability beyond the foregoing to its customer, other counterparties or third parties.

10.2. Any and all liability for damages on the part of Frauscher under this contract, such as for consequential damages for defects, damages for default of delivery, technical advice, etc. shall be deemed limited to liability for intentional acts and omissions and gross negligence. Frauscher's liability shall furthermore be limited (to the extent permitted by law) to such losses as Frauscher could have foreseen or would have been able to foresee as a potential consequence, but in any event shall be limited (except in cases of intentional acts or omissions) to the net invoice amount of the goods affected by the defect or default.

10.3. The limitation of liability envisaged under section 10.1 hereof shall not be deemed to encompass liability for defective products which is not derogable and which is independent of fault, where as a result of such defects any person is injured, killed or suffers injury to his or her health.

## 11. Product liability

11.1. The customer hereby waives, now and in advance, all rights of recourse to which it would be entitled vis-à-vis Frauscher under § 12 of the Austrian Product Liability Act [PHG]. In the event the customer resells products or portions of products from Frauscher, the customer shall be obliged to impose this waiver on its end customers to the full extent. The customer shall also impose on its end customer an obligation to pass on such waiver with respect to all other subsequent customers. This duty to pass on the foregoing waiver shall apply even if the customer or a downstream purchaser of Frauscher's products uses the products to produce other products and places such other products on the market. Agreements imposing a waiver on other parties shall be drafted such that Frauscher shall acquire a direct right thereunder to assert a defence of exclusion of recourse independently against the party entitled to assert recourse under § 12 PHG in the event such party asserts a claim against Frauscher.

11.2. Frauscher does not warrant that the products it has delivered to the customer free of defects will be 'free of defects' within the meaning of the Austrian Product Liability Act when used as parts of products produced by the customer or its downstream customers. Frauscher shall thus bear no liability if its products, which

were free of defects when placed on the market, are deemed defective as a consequence of incorporation or installation into the systems or products of the customer or of the customer's downstream customers. Frauscher shall likewise bear no liability if the products placed by it on the market are deemed defective because they are produced, stored or supplied pursuant to the customer's direction (e.g. manufacturing details, specifications, plans, models or directions regarding storage or shipping).

- 11.3. When using or reselling the product, the customer is obliged to comply with Frauscher's user instructions, technical customer documentation (including safety-related terms of use (STU rules)), warnings and other product advice and to refrain from any and all improper manipulation of the product (e.g. disassembly, modification, heating, improper storage or shipping or any other negative impairment to product safety). Frauscher shall not be expected to anticipate any such improper manipulation or unintended use of Frauscher's products by the customer. The customer shall pass on, in full, Frauscher's product advice, warnings and other product information to its downstream customers or to such persons it permits to use the product. In the event that the customer resells products of Frauscher, the customer shall be obliged to impose the obligations agreed in this section in full on its downstream customer and also to pass on such obligation to all further downstream customers. This duty to pass on the foregoing shall apply even if the customer or a downstream purchaser of Frauscher's products uses the products to produce other products and places such other products on the market.
- 11.4. In the event that the customer learns of facts, in any way whatsoever, that cause Frauscher's products to appear to be defective within the meaning of the Austrian Product Liability Act, the customer shall notify Frauscher thereof without delay.
- 11.5. Where the customer produces new products from Frauscher's products, the customer shall ensure that the product is labelled such that it is clear to any person that neither Frauscher nor Frauscher's sub-supplier (component supplier) is the manufacturer thereof. This duty shall apply in particular to labelling on products and, where as a result of the characteristics of the product this is not possible, to labelling on the packaging of products. Rather, the customer labelling on products made from goods produced by Frauscher shall be such that it is clear who the manufacturer of the customer's product is.
- 11.6. Where the customer breaches any obligation set out in these General Terms and Conditions of Sale and Delivery, in particular, where it breaches a duty to impose an obligation on a third party, it shall indemnify and hold Frauscher harmless against all claims of third parties, to the extent such claims would not arise if such obligation were complied with.
- 11.7. In the event of any defects of title as well as any assertion of a claim against the customer or directly against Frauscher, the customer shall, in addition, indemnify and hold Frauscher harmless, irrespective of fault. In such case, the customer shall furthermore assume all costs arising therefrom, in particular the costs of any necessary enforcement of rights, and hereby undertakes to fur-

nish Frauscher with all documents expedient for this purpose. The parties shall thus also immediately endeavour to enter into a legal defence agreement.

## 12. Recalls

12.1. Where indications appear that a recall campaign for Frauscher products may be required resulting from defectiveness of the contract products, the customer shall furnish comments thereon without delay and hereby undertakes to Frauscher that it shall furnish all such information and documents as are necessary and expedient and shall inform Frauscher at all times with respect to any safety risks. The customer hereby expressly undertakes to carry out any recall campaigns which may become necessary. In the case of the customer's resale of Frauscher's products or portions thereof, the customer shall impose these duties of information and duties to conduct recall campaigns in their entirety on its downstream customers.

12.2. In the event that Frauscher should bear an obligation to conduct a recall campaign pursuant to the terms of the Austrian Product Liability Act or the Austrian Product Safety Act [Produktsicherheitsgesetz], the customer shall indemnify and hold Frauscher harmless with respect to all expenses arising out of or on the basis of a recall campaign of goods or products within which (Frauscher's) contract products have been integrated. To the extent that the customer is obliged to undertake or carries out a recall, the customer shall in any event indemnify and hold Frauscher harmless.

## 13. Rescission of Customer Contract

13.1. The customer and Frauscher are both authorised to rescind the Customer Contract (=purchase agreement) in such cases as are set out in these GTC and as are provided by law. In addition to the cases already referenced in these GTC, Frauscher shall furthermore be entitled to rescind the contract without incurring liability if

- the delivery of the goods, the commencement or continuation of its contractual performance is rendered impossible or subject to further delay, despite a grace period having been set, due to grounds for which the customer bears responsibility;
- in the event that insolvency proceedings are commenced over the assets of the customer or dismissed for a lack of assets covering costs to the extent that rescission is permitted pursuant to the applicable insolvency rules.

13.2. Rescission by Frauscher may also be declared with respect to an as-yet outstanding portion of goods or services to be supplied based on one of the grounds pursuant to section 13.1 hereof.

13.3. Notwithstanding any possible claims for compensatory damages, in the event of rescission, Frauscher shall have a claim to payment of such goods or services as it has rendered previously, as well as for any preparatory work it has undertaken in respect of the Customer Contract.

13.4. The customer shall have no right to assert any claims for *laesio enormis*, mistake or failure of consideration or change of consideration [Wegfall oder Änderung der Geschäftsgrundlage].

## 14. Intellectual property

14.1. Frauscher or its respective licensors shall retain ownership of any and all intellectual property (including, in particular, patent rights, know-how, trademarks and other trademark-related rights, industrial design rights and utility model rights, copyrights and other intellectual property rights) to the products covered by any delivery contract as well as to improvements and developments thereto, irrespective of type, and irrespective of whether such rights have been registered or not.

14.2. The customer is prohibited from itself copying or having any third party copy the products covered by any delivery contract, or to undertake reverse engineering with respect to the products for such purposes. In this context, it is irrelevant whether the products covered by a delivery contract are subject to intellectual property rights or whether such intellectual property rights do not exist or no longer exist.

14.3. Where a third party asserts a claim against the customer for an infringement of intellectual property by products covered by a delivery contract, the customer shall notify Frauscher thereof without delay in writing, attaching all information and documents it has in this regard. In such case, Frauscher shall be entitled, following written notification to the customer, to render decisions as to the measures needed to defend its rights vis-à-vis the third party, at Frauscher's own cost and expense, irrespective of whether such measures are extrajudicial or litigation-oriented, and to issue the necessary instructions for this purpose to the customer.

14.4. The customer shall notify Frauscher of all infringements of Frauscher's intellectual property which have come to its knowledge in the course of its business operations without delay and attaching all information and documents it has in this regard.

14.5. The customer shall indemnify and hold Frauscher harmless in the event of any claims asserted by third parties due to an infringement of intellectual property rights based on documents, drawings, models and other documentation furnished by the customer to Frauscher.

## **15. Technical advice**

Any and all technical advice provided by Frauscher, either in writing or verbally, shall not be deemed binding on Frauscher, and shall not relieve the customer of its own duty to inspect any delivery of goods for their fitness for their intended use.

## **16. Fair Competition, Trade Control and Compliance**

16.1. The Customer shall observe the rules of fair competition and act towards Frauscher in good faith.

16.2. The Customer shall comply with U.S., EU, and any other applicable economic sanctions and export controls laws, including without limitation, the laws administered or enforced by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, and the European Union. In the course of fulfilling its obligations and/or providing services under Customer Con-

tracts, the Customer shall provide confirmatory details at the request of Frauscher.

16.3. The Customer undertakes not to directly or indirectly, offer, promise, grant or solicit any undue payments or other advantage in the course of fulfilling its obligations and/or providing services under Customer Contracts. The Customer shall assure that all employees, officials and employees of their private partners shall comply with these provisions.

16.4. The Customer shall indemnify, protect and hold Frauscher, its agents, customers or other suppliers harmless against any claims, losses, profits, royalties, damages and expenses, including actual attorney fees, which may arise out of any claim of infringement of any nature or unfair competition or otherwise based on any of the above, including any settlement thereof. Frauscher may be represented and actively participate in any suit or proceeding arising out of any such claim and the Customer shall pay all costs of such representation.

## 17. Prescription

The limitation period for claims for defects of goods supplied by Frauscher (including any recourse claims under § 933 ABGB) as well as for any claims for damages or other claims against Frauscher shall be twelve months.

## 18. Place of performance, jurisdiction and venue, applicable law

18.1. The place of performance for all liabilities under this business relationship shall be 4774 St. Marienkirchen, Austria.

18.2. Any and all disputes between Frauscher and the customer arising from any legal relationship based on these GTC, any disputes regarding the formation of a Customer Contract per se, any disputes as to the validity of these GTC, shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by a sole arbitrator or by an arbitral tribunal consisting of three arbitrators. The language of arbitration is German; the place of arbitration is Vienna.

However, Frauscher shall be entitled at any time, as a claimant, also to have recourse to the ordinary courts, at its option, and to assert claims against the customer as well as in the court at the location of Frauscher's registered office with subject-matter jurisdiction over the dispute, i.e. either the Schärding District Court or the Ried im Innkreis Regional Court.

18.3. This contract shall be governed by Austrian law, excluding the conflicts-of-law provisions thereof. The parties hereby exclude any application of the United Nations CISG. Unless otherwise agreed in writing, for purposes of interpreting the clauses of contract used by the parties, the most recent valid version of INCOTERMS shall apply.

## 19. Confidentiality, data protection

19.1. The customer hereby undertakes to keep confidential all such information regarding Frauscher or the subject-matter of the contract as comes to its knowledge in connection with the contract, to the extent such information is not generally known or has come to its knowledge in



another legal manner. In the event that the customer makes use of a third party to perform its contractual obligations, it shall impose a corresponding contractual duty of confidentiality on such third party.

19.2. The same shall apply with respect to personal data, information under § 38 of the Austrian Banking Act [Bankwesengesetz] and the like pertaining to Frauscher or third parties, which comes to the customer's knowledge in connection with the contract with Frauscher. The customer shall protect all of this information and the work product arising therefrom, in particular against access by third parties, and shall comply with data secrecy under § 6 of the Austrian Data Protection Act [Datenschutzgesetz] and shall likewise impose an obligation on its staff engaged to deal with such matters to observe a corresponding duty of confidentiality.

19.3. Frauscher processes personal data pursuant to its Privacy Policy, which may be accessed here: <https://www.frauscher.com/en/Privacy%20Policy>

## 20. Miscellaneous

20.1. In the event of use and/or resale of Frauscher's goods, the customer shall bear responsibility for compliance with all relevant statutory and regulatory requirements.

20.2. The assignment of the customer's claims against Frauscher shall require Frauscher's express written consent, and in the absence of any such consent, shall be deemed invalid. Frauscher is entitled to assign its rights and duties under the Customer Contract to another Frauscher group company. The customer shall not

derive any right of termination in connection with any such assignment.

20.3. No declarations or notices by Frauscher or the customer based on these GTC or on the basis of the Customer Contract, such as complaints of defects and the like, shall be valid unless given in writing in German or English. Such declarations and notices shall be deemed validly given if made in each case to the address most recently stated to the other party.

20.4. In the event that individual terms of these GTC or any Customer Contract should be or become invalid, unenforceable or illegal in whole or in part, this shall not affect the validity of the remaining terms and the validity of these GTC and of the Customer Contract. The parties shall be deemed to have agreed to replace the invalid, unenforceable or illegal terms by such valid, enforceable and legal terms as come as close as possible to the commercial objectives envisaged by the invalid, unenforceable or illegal terms.