



## **General Terms and Conditions for Supplies and Services**

(valid for AUMUND Fördertechnik GmbH only, hereinafter "AUMUND")

**Issued: 1st September 2022**

### **I. Basic conditions**

#### **1. Definitions**

1.1. These "General Terms and Conditions of Contract for Supplies and Services" are hereinafter called "TERMS".

1.2. "SUPPLIER" as referred to in the TERMS is AUMUND Fördertechnik GmbH.

1.3. "SUPPLY" as referred to in the TERMS is all supplies and services of the SUPPLIER to the PURCHASER, including partial supplies.

1.4. "CONTRACT" as referred to in the TERMS is the written agreement between the PURCHASER and the SUPPLIER including all its attachments and addenda in the written form as agreed hereto which concern the substance and the performance of the SUPPLY.

1.5 "ACCEPTANCE" as referred to in the TERMS is a procedure by which both parties confirm definitively that the SUPPLY or part of the SUPPLY has been carried out in conformity with the CONTRACT.

1.6 "PURCHASER" as referred to in the TERMS is the company (or its legal successors) or the person (or his or her legal successor), who has placed the order with the SUPPLIER to carry out the SUPPLY.

#### **2. Quotation and Conclusion of Contract**

2.1. These TERMS apply to every SUPPLY, unless amended or supplemented by the quotation or the CONTRACT. Varying purchase conditions or varying general terms and conditions of the PURCHASER will not become part of the CONTRACT, even if the SUPPLIER accepts and/or carries out the order unconditionally.

2.2. All SUPPLIER quotations are subject to confirmation and are non-binding, unless explicitly marked as binding or unless they contain a specific date limit for acceptance. Verbal confirmations by staff of the SUPPLIER prior to the conclusion of the CONTRACT are not legally binding.

2.3. The legal relationship between the SUPPLIER and the PURCHASER is governed solely by the CONTRACT concluded in writing, including these TERMS. The CONTRACT represents in full all agreements between the contractual parties relating to the SUPPLY.

2.4. In the absence of any other agreed condition, the CONTRACT is concluded upon receipt of the written order confirmation of the SUPPLIER.

2.5. The written order confirmation of the SUPPLIER is conclusive for the type and extent of the SUPPLY. If no explicit order confirmation is issued, the quotation is conclusive.

2.6. Additions and amendments to the CONTRACT including these TERMS are required to be in writing to become effective. Electronic communications, in particular telefax or email, are deemed to have been transmitted in writing.

3. Costs shall be borne by the PURCHASER for any additional SUPPLY which may become necessary as a consequence of local conditions, the joining of installation parts, orders, directives or regulations of public institutions issued after the conclusion of the CONTRACT, or because the relevant local authorities have a different interpretation of the generally accepted rules of technology.



4. The SUPPLIER reserves the right to carry out modifications and improvements related to design, manufacturing and construction, as long as the SUPPLY is not altered substantially and the changes can be accepted as reasonable by the PURCHASER.

5. If there is documentation which can only be issued with the participation of the PURCHASER and is part of the SUPPLY, and if, because of inadequate participation of the PURCHASER, this documentation cannot be completely submitted on the ACCEPTANCE date or at readiness for ACCEPTANCE, this does not constitute a defect which justifies a refusal of ACCEPTANCE.

6. Partial deliveries are permitted as long as they can be accepted as reasonable by the PURCHASER.

7. Should the PURCHASER demand amendments to the dispatch-related conditions stipulated in the CONTRACT, or if these are not specified in the CONTRACT, to the AUMUND standard dispatch-related conditions, the SUPPLIER reserves the right to either refuse the demand due to unreasonableness or in the event that the SUPPLIER accepts the request for changes, to charge an additional remuneration for this.

## **II. Prices and Payments**

1. In the absence of any particular agreement, prices are valid "ex-works" excluding packing and loading. If legally applicable, value added tax at the respective statutory rate shall be added to the prices.

2. In the absence of any particular agreement, payment shall be made, in full and without any deductions, to the SUPPLIER's bank account, as follows:

- 30% down payment within seven calendar days after receipt of the order confirmation by the PURCHASER
- 40% within ten weeks after receipt of the order confirmation by the PURCHASER
- Remaining amount within ten calendar days after notification of readiness for dispatch or readiness for collection. This provision relating to the due date of the residual payment unequivocally takes precedent over any other due date provisions which may find mention elsewhere in these TERMS.

3. The SUPPLIER has a right of retention to the SUPPLY until such time as the payment of the purchase price according to the CONTRACT has been received in full. This also applies to partial deliveries which are linked to particular partial payments.

4. The PURCHASER shall only be entitled to withhold payments if its counterclaims are undisputed or have been deemed to be justified by a court of law.

5. The PURCHASER shall only be entitled to offset payment against counterclaims from other contractual relationships if these are undisputed or have been deemed to be justified by a court of law.

6. If the manufacture or delivery is delayed by more than three months compared to the contractually agreed dates for reasons for which the PURCHASER is responsible, the SUPPLIER shall have a claim against the PURCHASER for adjustment of the contract price. A supplementary agreement shall be concluded for this purpose. When determining the amended price, the contracting parties shall take into account the development of the German Producer Price Index for hot metal, crude steel, rolled steel and ferroalloys (GP = 24 1, issued by the German Federal Statistical Office) between the conclusion of the contract and the date of the request for adjustment. The PURCHASER shall be free to counter the SUPPLIER with cost reductions which a reasonable supplier could have achieved for the specific subject matter of the contract within the same period of time with reasonable effort.

### III. Delivery Date, Delivery Delay

1. The delivery date is determined by the agreements between the parties to the CONTRACT. Adherence to the delivery date by the SUPPLIER presupposes that:

- a) all commercial and technical questions have been clarified between the parties to the CONTRACT,
- b) the PURCHASER has fulfilled all of its legal or contractual obligations, such as obtaining the required certifications and approvals from authorities, and
- c) the PURCHASER has fulfilled its payment obligations according to the CONTRACT.

If any one of the above conditions is not fulfilled, the due date for delivery will be delayed commensurately. This does not apply if the SUPPLIER is responsible for the non-fulfilment of a condition. Further rights of the SUPPLIER due to breach of a contractual obligation by the PURCHASER shall remain unaffected.

2. The obligation to adhere to the delivery date is subject to the SUPPLIER receiving correct and on-time deliveries from its sub-suppliers. The SUPPLIER shall inform the PURCHASER as soon as possible of any foreseeable delays.

3. The delivery date is deemed to have been complied with if the SUPPLIER has fulfilled all of its contractual obligations by the agreed date. If a SUPPLY of works or service, including installation at the operating site has been agreed, and if an ACCEPTANCE of such is to be carried out, compliance with the delivery date is deemed to have been met on the ACCEPTANCE date, even if the PURCHASER does not attend the ACCEPTANCE to which it has been invited with sufficient prior notice, unless the refusal of ACCEPTANCE is justified.

4. Should the failure to meet the delivery date be caused by force majeure, industrial action or other events beyond the SUPPLIER's control, a commensurate extension to the delivery date shall be applied. The SUPPLIER shall inform the PURCHASER as soon as possible of the commencement and termination of such circumstances.

5. The PURCHASER can withdraw from the CONTRACT without giving notice if it becomes irrevocably impossible for the SUPPLIER to fulfil the complete scope of supply before transfer of risk. Furthermore, the PURCHASER can withdraw from the CONTRACT if it becomes impossible for the SUPPLIER to supply part of the SUPPLY ordered, and if the PURCHASER has a justified interest in refusing the partial supply. If there is no justification the PURCHASER must pay the contractual price for the partial supply. In all other respects, sections VIII. 2 and 3 of these TERMS are applicable. If the impossibility arises during delay in ACCEPTANCE by the PURCHASER or if the PURCHASER is solely or partially responsible for these circumstances, it shall be obliged to provide compensation therefor.

6. If the SUPPLIER is in delay and if the PURCHASER can prove damages suffered as a consequence, it has the right to claim a lump sum as compensation for delay, from the third week onwards. The amount of compensation is 0.3% of the value of the part of the SUPPLY for each full week during which it cannot be used in time or for its contractual purpose, up to an overall maximum of 3% of the value of the part of the SUPPLY which due to the delay cannot be used in time or for its contractual purpose. Further claims are categorically excluded.

7. If, upon expiry of a due date and under consideration of legal exceptions, the PURCHASER gives a reasonable deadline for fulfilment to the SUPPLIER, and if the deadline is not met, the PURCHASER is entitled within legal guidelines to withdraw. It shall undertake to inform the SUPPLIER within a reasonable timeframe after being requested to do so whether or not it intends to exercise its right to withdraw. Further claims relating to delay in delivery are determined exclusively by sections VIII. 2 and 3 of these TERMS.

8. If and insofar as the PURCHASER has contributory obligations with respect to the SUPPLY, these are to be performed within sufficient time as to allow the SUPPLY to be carried out by the agreed date. If a firm delivery date has not been agreed, the PURCHASER is obliged to carry out the entirety of its contributory obligations immediately after the SUPPLIER has given notice of readiness therefor. If, for reasons for which the PURCHASER is responsible, the SUPPLY is not delivered either by the agreed date or within a reasonable deadline set by the SUPPLIER after notice of readiness for dispatch, the SUPPLIER can at its own discretion either dispatch the SUPPLY or store it at cost and risk of the PURCHASER.

9. If the SUPPLY is delayed for reasons for which the PURCHASER is responsible, the PURCHASER shall bear the additional expenses incurred due to the delay (e.g., storage costs), starting one month after the agreed delivery date. For storage costs, SUPPLIER shall charge a flat-rate compensation of 0.5% of the invoice amount per month. The SUPPLIER reserves the right to claim and prove further or lower storage costs. The SUPPLIER is entitled to offset payments already received from the PURCHASER against the claim for compensation arising pursuant to this Clause 9 as a result of the delayed take-over (including storage). This shall also apply if it concerns payments made by the PURCHASER on the purchase price.

10. If the PURCHASER does not fulfil its contributory obligations towards the SUPPLY or only fulfils them partially, the SUPPLIER has the right, after setting a further deadline of 14 days and if that deadline has expired, to withdraw from the not yet fulfilled part of the CONTRACT or to refuse its fulfilment and to claim compensation for damages.

#### **IV. Transfer of Risk**

1. Risk to the SUPPLY is transferred to the PURCHASER according to the delivery terms agreed in the CONTRACT (e.g., EXW, FCA, FOB etc.). Furthermore, the risk shall pass to the PURCHASER if the PURCHASER is in default of acceptance.

2. If after transfer of risk the SUPPLY is still in the SUPPLIER's storage or on the SUPPLIER's premises, the SUPPLIER will only take out insurance for the SUPPLY if the PURCHASER requests it and pays the related costs in advance.

#### **V. Retention of Title**

1. The SUPPLIER retains title to the supplied items until such time as all claims of the SUPPLIER against the PURCHASER according to the CONTRACT have been settled.

This also applies if any or all of the claims of the SUPPLIER are included in a current invoice and the balance has been drawn and recognised. In the case of payments by cheque or bank draft, the retention of title remains in force until clearance by the PURCHASER of the draft accepted by the SUPPLIER and does not expire as soon as the cheque is presented.

2. The SUPPLIER is entitled but not obliged to insure the supplied items at the cost of the PURCHASER against theft, breakage, fire, water and other damage. This does not apply if the PURCHASER has taken out the appropriate insurance itself and can provide proof thereof.

3. As long as title has not been transferred, the PURCHASER must inform the SUPPLIER immediately in writing if supplied items are seized or otherwise exposed to third party intervention.

4. If the PURCHASER fails to comply with the CONTRACT, in particular with respect to delayed payments, the SUPPLIER has the right, after unsuccessful payment reminder and



withdrawal from the CONTRACT, to demand the return of supplied items, and the PURCHASER is obliged to surrender the supplied items.

5. Any application to commence insolvency proceedings relating to assets of the PURCHASER shall entitle the SUPPLIER to withdraw from the CONTRACT and to demand the immediate surrender of the supplied items.

6. The PURCHASER has the right to resell the supplied items in the normal course of business. The PURCHASER hereby assigns its claims from the resale of the supplied items to the SUPPLIER in the amount of the final invoice amount agreed with the SUPPLIER (including value added tax).

The SUPPLIER undertakes, however, not to collect its claims as long as:

- the PURCHASER duly fulfils its payment obligations, or
- authority to collect is not revoked, or
- no application to commence insolvency proceedings relating to assets of the PURCHASER has been made.

7. The treatment and processing or transformation of the supplied goods will always be carried out by the PURCHASER for the SUPPLIER. In this case the retention of title of the SUPPLIER to the supplied items remains in power over the transformed items. If the item under retention of title is processed or connected with other items not belonging to the SUPPLIER, the SUPPLIER shall acquire co-ownership of the new items in the ratio of the value of the item subject to retention of title to the other items at the time of processing or combination.

The PURCHASER shall hold the property or co-property in safe custody for the SUPPLIER.

## **VI. Parts and materials provided by the PURCHASER**

Other than expressly provided for elsewhere, parts and materials provided by the PURCHASER are subject to the following conditions:

1. The PURCHASER is responsible at its own risk and expense for transportation (including packing and customs) to the agreed place of use. Risk is transferred to the SUPPLIER, or to a recipient designated by written authority of the SUPPLIER, upon handover.

2. The PURCHASER is obliged to provide a delivery note with each consignment of parts and materials provided, which contains all necessary details for the treatment thereof. In particular, the delivery note shall contain details of the type of materials or parts, individual weights and total net weight, handling instructions, especially heat treatment instructions, and references to special features. In the absence of such information or if the information is incomplete, the SUPPLIER shall be entitled to carry out the order at its own discretion. The SUPPLIER has no liability for mistakes which are the result of missing, incorrect or insufficient information from the PURCHASER.

3. The PURCHASER is liable for completeness, flawlessness, quality, workability, dimensional accuracy, functionality, surface condition, packing, etc. of the parts and materials provided. If the provided parts and materials do not fulfil these requirements, the SUPPLIER reserves the right to reject them and to request others.

4. If the PURCHASER provides faulty, incomplete or inappropriate parts or materials, or does not supply them on the agreed date, the PURCHASER must bear all resulting consequences with respect to costs, risks and delays. Compliance with contractual deadlines and dates for supplies and services by the SUPPLIER is subject to the timely receipt of such



parts and materials.

5. The SUPPLIER is not obliged to carry out checks on inwards goods or suitability tests. Should the SUPPLIER nevertheless carry out such checks and tests on its own initiative, this does not release the PURCHASER from the aforementioned liability. The PURCHASER cannot claim that the SUPPLIER should have recognised quality or other defects when carrying out such checks.

6. The SUPPLIER accepts no liability for loss, theft, damage or destruction of the parts and materials provided by the PURCHASER, unless these are the result of gross negligence by the SUPPLIER. If the PURCHASER requests it to do so, the SUPPLIER will insure the parts and materials provided by the PURCHASER.

## **VII. Warranty and Claims for Defects**

The SUPPLIER is liable for material defects and title defects to the SUPPLY to the exclusion of further claims, subject to a differing provision in section VIII, as follows:

### **1. Material defects**

1.1. The SUPPLIER accepts no liability in any of the following cases:

- inappropriate or improper use, faulty installation or commissioning by the PURCHASER or by third parties, normal wear and tear, faulty or negligent handling, improper maintenance, unsuitable consumables, deficient construction work, unsuitable building ground, chemical, electrochemical or electrical influences, insofar as these circumstances have not been caused by the SUPPLIER.
- Consumables and wear parts are excluded from any warranty.

1.2. If the PURCHASER provides incomplete, incorrect or no information, the SUPPLIER, notwithstanding mandatory statutory warranty provisions and intentional or grossly negligent acts, gives no warranty that the SUPPLY is suitable for a particular purpose or corresponds to the intended requirements and demands of the PURCHASER, unless this has been expressly confirmed in writing.

1.3. The PURCHASER shall carefully inspect the SUPPLY immediately after delivery to the PURCHASER or to a third party appointed by the PURCHASER or after collection. The SUPPLY is deemed to have been approved by the PURCHASER as free from obvious defects or other defects which would have been recognisable during an immediate careful check, if the SUPPLIER has not received a written complaint within three calendar days after delivery. With regard to other defects the SUPPLY is deemed to have been approved by the PURCHASER if the complaint has not been received by the SUPPLIER within three calendar days after the date on which the defect became apparent. If the defect had already been recognisable to the PURCHASER in normal use at an earlier date, this earlier date is the relevant date for the beginning of the complaint period.

1.4. SUPPLY which is found to be deficient due to a circumstance which occurred before the transfer of risk can either be remediated or replaced by defect-free SUPPLY at the discretion of the SUPPLIER. After consultation with the SUPPLIER, the PURCHASER must give the SUPPLIER the required time and opportunity to carry out all remediation work and replacements deemed to be necessary by the SUPPLIER; otherwise, the SUPPLIER is released from all liability for resulting consequences. Only in urgent cases of danger to the safety of the operation or in order to prevent disproportionately severe damage, in which cases the SUPPLIER is to be informed immediately, is the PURCHASER entitled to remedy the defect itself or to engage a third party to do so and to demand a reimbursement of the necessary expenses from the SUPPLIER. Defective parts which have been replaced become the property of the SUPPLIER.

1.5. Insofar as the complaint is found to be justified, the SUPPLIER shall bear the immediate costs of the remediation or the replacement, including shipping costs. The SUPPLIER is only obliged to accept costs of removal and installation and any necessary provision of required fitters or auxiliary staff including travel expenses if the defect in the SUPPLY lies within the responsibility of the SUPPLIER, and then only to the extent that bearing these costs does not impose an unreasonable burden on the SUPPLIER.

1.6. The obligation of the SUPPLIER to compensate for damages caused by a defect of the SUPPLY, on whatever legal grounds, is limited to a maximum of 10% of the order value. Excepted from this is compensation for damages which are a consequence of wilful actions, and liability pursuant to the Product Liability Act.

1.7. According to statutory regulations the PURCHASER is entitled to withdraw from the CONTRACT if the SUPPLIER, taking into account the legal exceptions, does not carry out remedial work on or supply a replacement for a material defect, even after having been given a legally acceptable extension to the time in which to do so. If the defect is minor, the PURCHASER only has the right to reduce the contractual price. In other cases, there is no entitlement to reduce the contractual price.

1.8. If the PURCHASER or a third party carries out improper remedial work, the SUPPLIER is not liable for any resulting consequences thereof. The same applies if alterations are made to the supplied items without prior approval of the SUPPLIER.

1.9. Further claims are determined solely by section VIII. 2 and 3 of these TERMS.

## 2. Title defects

2.1. If the use of the SUPPLY at the place of operation causes an infringement of industrial property rights or of copyright, the SUPPLIER shall at its own cost facilitate the PURCHASER's basic right to continue to use the SUPPLY, or modify it in a way which is acceptable to the PURCHASER, and so that the infringement of rights no longer exists. If this is not possible within acceptable economic conditions or within a reasonable time frame, the PURCHASER is entitled to withdraw from the CONTRACT. Under the aforementioned conditions the SUPPLIER shall also have the right to withdraw from the CONTRACT.

Furthermore, the SUPPLIER shall indemnify the PURCHASER against any undisputed or legally established claims of the owners of the property rights concerned.

2.2. Without prejudice to the liability provisions in VIII.2 and 3, the obligations of the SUPPLIER set out in section 2.1 above with regard to the infringement of industrial property rights or copyrights are conclusive.

However, such obligations are conditional upon:

- the PURCHASER notifies the SUPPLIER immediately of any asserted claims or industrial property or copyright infringements,
- the PURCHASER supports the SUPPLIER to a reasonable extent in defence of the asserted claims and enables the SUPPLIER to carry out the modification measures according to section VII. 2.1.,
- the SUPPLIER retains the right to all defence measures including out of court settlements,
- the title defect is not attributable to an instruction issued by the PURCHASER, and
- the rights infringement did not arise from any action of the PURCHASER to modify SUPPLY without authorisation, nor from use of SUPPLY by the PURCHASER in a way which does not comply with the CONTRACT.

### **VIII. Liability of the SUPPLIER, Exclusion of Liability**

1. If, as a result of deliberately omitted or faulty suggestions or advice, given either before or after conclusion of the CONTRACT, or as a consequence of deliberate breaches of other contractual obligations, in particular errors in the operating and maintenance manuals for the SUPPLY, for which the SUPPLIER is responsible, the SUPPLY cannot be used by the PURCHASER in the way provided for in the CONTRACT, the provisions in sections VII and VIII 2 und 3 shall apply and all further claims of the PURCHASER are excluded.
2. For damage that has not occurred to the SUPPLY itself, e.g. loss of production, loss of profit, third-party damages, costs for downtimes, loss of use, loss of orders, higher operating, maintenance or personnel costs, or indirect and/or consequential damages of whatever kind, the SUPPLIER shall, on whatever legal grounds, only be liable in the case of:
  - a. wilful intent
  - b. gross negligence of legal representatives or senior executives
  - c. culpable injury to life, limb or health
  - d. defects which have been maliciously concealed by the SUPPLIER
  - e. defects in the supplied items to the extent that liability exists under the Product Liability Act
  - f. the absence of a guaranteed quality.
3. In the event of property damage and financial loss caused by culpable breach of material contractual obligations, the SUPPLIER shall also be liable in the event of negligence on the part of its vicarious agents, but limited to reasonably foreseeable damage typical for the CONTRACT. Further claims are excluded. Material contractual obligations are those of which the fulfilment characterises the CONTRACT, and on the fulfilment of which the PURCHASER can rely.

### **IX. Statute of Limitations**

All claims of the PURCHASER, on whatever legal grounds, shall lapse 12 months after commissioning, but at the latest 18 months after delivery. However, for claims for damages according to sections VIII. 2 a to e the legal time limits shall apply.

### **X. Non-Disclosure / Intellectual Property / Software**

1. The PURCHASER is obliged to treat with the utmost confidentiality any technical or financial information, know-how and other trade secrets of the SUPPLIER, of which it has become aware either before conclusion or during implementation of the CONTRACT. The PURCHASER is prohibited from passing on to third parties or making available to third parties any data, files, documents or other materials from the domain of the SUPPLIER which contain trade secrets within the meaning of paragraph 2 no. 1 of the Trade Secrets Protection Act, without the express written consent of the SUPPLIER.
2. The SUPPLIER reserves its right to ownership, use and copyright of all technical and financial information which it has made available to the PURCHASER either before conclusion or during implementation of the CONTRACT. The PURCHASER does not obtain the right to use the aforementioned information to duplicate or extend the SUPPLY.
3. The PURCHASER may only use the aforementioned information to the extent that it is absolutely necessary for purposes of preparation of proposal(s) for its customer(s) or for operation, maintenance and service of the supplied items or the plant into which the sup-



plied items have been installed according to the CONTRACT. In so doing, the PURCHASER must ensure that the requirements for secrecy of the SUPPLIER are respected in every case and in an appropriate manner, and must at any time be able to provide written proof of the measures taken therefor to the SUPPLIER.

4. Insofar as software is included in the SUPPLY, the PURCHASER shall be granted the nonexclusive right to use the supplied software including the manuals belonging to it. Said software is provided for use on the supplied item for which it is intended. Use of the software on another system or systems is prohibited.

5. The PURCHASER shall be entitled to copy, revise or translate the software supplied by the SUPPLIER, or to convert from the object code to the source code, but only to the extent permitted by law. The PURCHASER undertakes to refrain from removing manufacturer's information, in particular copyright notices, and from altering them, without the prior express consent of the SUPPLIER. All other rights to the software and the manuals including copies thereof remain with the SUPPLIER and/or its software provider. The granting of sublicences is not permitted.

#### **XI. Special TERMS for PREMAS® Systems**

1. For the supply of PREMAS® Systems all parts of these TERMS are applicable unless this section XI. contains differing provisions.

2. The warranty period for PREMAS® Systems is 12 months after commissioning, or no longer than 18 months after notice of readiness for shipment.

3. Installation must be carried out in accordance with the installation instructions and the operating manual. Defects which have been caused by the PURCHASER or by third parties, e.g. by incorrect installation, improper use, improperly carried out repairs, or alterations carried out without the prior written consent of the SUPPLIER, and defects which have been caused by external influences, are all excluded from the warranty. Normal wear and tear does not constitute a defect.

4. The warranty is excluded if and to the extent that the PURCHASER has provided the SUPPLIER with incorrect or incomplete information about the condition of the machine or equipment which is to be monitored by the supplied PREMAS® System and/or about the conditions under which the machine or equipment operates.

5. For machines or equipment which are to be completed by the supply of a PREMAS® System by the SUPPLIER, the warranty terms according to section VII. of the TERMS apply.

6. The messages generated by the PREMAS® System regarding the condition of the machines or equipment are based on data from measurements in addition to an automated comparison of this data with measured values gathered from the operation of similar machines and equipment, and the knowledge of the SUPPLIER.

7. System indications regarding wear and downtimes are only approximations, and not legally binding, because in ongoing operation special influences stemming for example from the material conveyed, from latent defects in the machines or equipment, from other parts of the plant and/or from environmental conditions, can arise at any time which are not captured by the sensors or only take effect with a time lag after a measurement has been taken.

8. The PURCHASER agrees that the SUPPLIER is entitled to transmit to PREMAS AG, Switzerland the operating data of the machines and equipment of the PURCHASER gathered by the supplied PREMAS® Systems, for use after anonymisation in the further development of similar machines or equipment and for further developments in the software and the PREMAS® Portal.

9. PREMAS® Portal is provided by the SUPPLIER as SaaS (Software as a Service) by



way of a subscription scheme. The subscription will automatically renew for a further 12 months if it is not cancelled 3 months before the expiry date. From the beginning of the new subscription period the applicable prices and terms are those in use by the SUPPLIER at that point in time for new orders of the same kind.

10. PREMÁS® Portal subscriptions are invoiced at the date of activation or at the beginning of a new cycle. The invoice amount is payable within 30 days in full.

## **XII. Severability Clause, Applicable Law, Place of Performance and Place of Jurisdiction**

1. Should any provision be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected. The parties undertake to replace the invalid or unenforceable provision with a valid provision that comes as close as possible to the content and economic purpose of the invalid provision.

2. For all legal relationships between the SUPPLIER and the PURCHASER the law of the Federal Republic of Germany is exclusively applicable to the exclusion of the referral rules of private international law (Conflict of Laws) and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

3. Place of performance for SUPPLY and payments (including cheque and bank draft) and place of jurisdiction for any disputes which may arise out of the CONTRACT between the SUPPLIER and the PURCHASER is the registered office of the headquarters of the SUPPLIER in Rheinberg, Germany. The SUPPLIER is however entitled to bring legal action against the PURCHASER at the place of business of the PURCHASER.

### **Note**

The SUPPLIER will handle all personal data of the PURCHASER exclusively in compliance with the Federal Data Protection Act and the EU General Data Protection Regulation SGVO.