General Selling, Service, Delivery and Payment Conditions ("GSC") of Johann Borgers GmbH, Borgers Süd GmbH and Johann Borgers Berlin GmbH & Co. KG (February 2019)


1.1. These General Selling, Service, Delivery and Payment Conditions (in the following "GSC") of Johann Borgers GmbH, Borgers Süd GmbH and Johann Borgers Berlin GmbH & Co. KG (hereinafter individually or jointly referred to as “Borgers-Companies”) exclusively apply to all quotations, orders, contracts, supplies and other performances. The terms “delivery” or “supply” in these GSC include any kinds and forms of sales, trades, supplies and services. Deviating, contrary or additional conditions of customers are rejected, except where expressly agreed by us in writing. It shall not be necessary for us to expressly reject contrary, deviating or additional terms and conditions of the customer in each instance, and these GSC shall exclusively apply to all courses of dealings and transactions. These GSC apply to all future business with the customer even without express reference to these GSC.

1.2. The GSC only applies towards companies, legal entities of public law and special estates under public law.

2. Offers, Formation of Contract and Documents

2.1. Our offers are non-committal unless the binding effect of our offer has been expressly stated, for instance by designation the offer as “binding” or “obligatory”.

2.2. Any contract for delivery is formed and valid only upon our written acceptance of the order. Written form shall also be observed by email, facsimile and EDI (electronic data interchange). Our execution of delivery is considered as confirmation of the order if the acceptance of the order has not been issued or the acceptance of the order has not been received by the customer.

2.3. We have the right to accept orders within 3 weeks beginning from our receipt of the order. The declaration of acceptance must be received by customer even if he waived the receipt. The execution of delivery with the acceptance period substitutes the declaration of acceptance.

2.4. Any oral agreements have to be confirmed by us in writing in order to become legally valid.

2.5. Dimensions, weights, illustrations, descriptions and other details as given in our catalogues, brochures, price lists or cost estimates and other documents, as well as information and explanation on material and durability are not guarantees and are informational only unless we have expressly separately agreed to in writing that they become part of the contract.

2.6. Information and explanation on material and durability can only be considered as guarantees if expressly stated as such. The same applies for the acceptance of a procurement risk.

2.7. We reserve the rights of ownership and copyright in cost estimates, drawings, plans and other documents and information of tangible and intangible nature, including in electronic form; any such documents and information may only be made available to third parties with our prior written agreement.

2.8. The customer assumes full responsibility for the tasks incumbent on him and documentation to be provided by him such as drawings, models, gauges, samples and suchlike.
3. **Deliveries, Time of Delivery**

3.1. Delivery periods and delivery dates only become binding by an express written agreement. Our acceptance of an order with a shipping date specified in an order does not bind us to that shipping date, and we may fulfill an order in multiple shipments.

3.2. Our delivery obligation is conditional upon the customer’s timely and proper implementation of its obligations. If the customer is to perform tasks or provide documentation or property such as but not limited to drawings, models, gauges and samples, the customer must timely and accurately perform those tasks and provide that documentation and property. We are entitled to rely on all of customer’s provided documentation and property, and we are not responsible for errors by the customer. We shall be entitled to reimbursement for any damages and/or additional expenses we incur for delays or errors by the customer.

3.3. The adherence to the delivery periods assumes that the customer has performed all acts of cooperation within the acceptance period and all open issues for the execution of the order are clarified.

3.4. Modifications requested by the customer after our acceptance of an order are subject to our acceptance and customer’s agreement to any cost increases resulting from the modification. Modifications will extend the delivery date for the period of time required to implement the requested modifications.

3.5. Deadlines or delivery dates for deliveries "ex works" are fulfilled when the customer has been notified that the deliverables are selected and ready for shipment within the agreed deadline or agreed date. If delivery is other than “ex works,” our delivery deadlines and delivery dates are still considered fulfilled if the deliverables have been forwarded to the carrier or were ready for shipment prior to the deadline but could not be delivered through no fault of our own.

3.6. In the event the customer falls into arrears, pursuant to Section 293 of the German Civil Code (BGB), in accepting delivery or violates any other cooperation duty, we shall be entitled to give preference to other third party orders and reasonably extend the delivery period. Irrespective of any further claims, we shall be entitled to claim any damages and/or additional expenses we incur in this regard.

3.7. If the delivery or collecting of the deliveries is delayed at the request of the customer or due to circumstances that are the responsibility of the customer, we are entitled to reimbursement of our additional costs incurred, including storage costs. We are entitled to charge a lump sum payment of 0.5 % of the prices of the affected supplies for each calendar week or part thereof, beginning with the default of acceptance of the customer, up to a maximum amount equivalent to 10 % of the prices of the affected supplies. We reserve the right to reimbursement of actual higher costs incurred and to terminate an order; however, the lump sum payment will be credited against any higher costs charged.

3.8. We may deliver in multiple shipments unless we and customer expressly agreed otherwise in writing.

3.9. We also reserve the right to reduce deliveries by up to 10 % unless the customer has expressly stated otherwise in writing. In case of reduced deliveries the purchase price is reduced accordingly and the order shall be deemed fulfilled.

3.10. In case we are not able to deliver at the agreed time due to reasons outside of our responsibility and our reasonable control (such as, but not limited to non-availability of supply, labor interruption, plant failure or interruption, acts of God or government regulation), our
period of delivery will be extended. We will as soon as practicable inform the customer of a delay and of the estimated new delivery period. Such information of the customer shall in any case be deemed to be effectuated immediately, if we informed the customer within three working days after having obtained own knowledge. We may allocate existing capacity as we reasonably deem appropriate. If after two months after the initially agreed time of delivery we are still not able to deliver, either party is entitled to terminate the unfulfilled part of the order, and neither party shall be entitled to damages for the termination.

4. Default in Delivery

4.1. Whether there is a default in delivery, pursuant to Section 286 of the German Civil Code (BGB), shall be judged according to the applicable legal provisions; however, in any case a reminder of the customer is always necessary in order to constitute a default in delivery.

4.2. Our liability for damages caused by default shall be limited to 5% of the agreed purchase price, unless the default in delivery is based on a wilful or grossly negligent breach of duty of us, our legal representative or an agent of us.

4.3. Our financial condition, the type, scope and duration of the business relationship and the value of the affected late parts and services are adequately to be taken into consideration in good faith and in our favor with regard to the amount of the damage compensation.

4.4. The rights of the customer according to Section 11, as well as our legal rights, especially in case of the discontinuation of the duty to perform (e.g. due to impossibility or unreasonableness of the performance and/or post performance as defined in clause 10.1.4) remain unaffected.

5. Prices

5.1. All prices are in Euros unless otherwise agreed and the deliveries are made at the prices we have specified. Prices are “ex works” or ex the agreed dispatch location respectively and plus packaging, customs, insurance, installation and instruction costs, costs of shipment and value-added tax.

5.2. If costs decrease or increase, especially as a result of price changes or wage increases or adjustments or energy cost changes and such events take effect after the order is accepted, we reserve the right to charge an accordingly recalculated price at the cost in effect at the date of delivery if delivery takes place more than 4 months after the date of our acceptance. Evidence of such changes in cost will be provided upon request.

6. Payment Terms

6.1. Unless otherwise agreed, actual receipt of payment by us is due within 14 days as of the date of the invoice and is payable without any deductions.

6.2. In case of delay of payment, pursuant to Section 286 German Civil Code (BGB), statutory interest on arrears will be charged. The proof of further damages due to late payments remains reserved.

6.3. We have the right to withhold delivery on any order if the customer is in default of payment of any other order. If the customer is in default in any payments or if we have reasonable
concern for the customer’s ability to timely pay, we are entitled to demand assurance of payment or demand advance payment or security.

6.4. The customer is authorized to set off payments and to refuse the performance owed by him (right of retention) only on account of its undisputed or legally adjudicated claims. Customer’s right of retention is only possible if his counterclaim is based on the same legal relationship.

6.5. We may offset all accounts receivable we have against the customer against all accounts receivable which the customer has against us.

6.6. In addition, we may offset all accounts receivables we have against companies associated with the customer in accordance with Section 15 of the German Stock Corporation Law (Aktiengesetz) against all accounts receivables the customer has against us.

7. Packaging and Shipment

7.1. Packaging will be made at our discretion taking into account standard commercial practice.

7.2. If no mode of shipment has been agreed upon, we may determine the mode of shipment.

7.3. We impose a reasonable cost for non-returnable packaging. Reusable packaging means (iron-barred boxes, euro-pallets, etc.) remain our property and shall be sent back freight paid to us without delay.

7.4. The customer is obliged to notify us in case of any discrepancies arising out of or in connection with the dispatch or transportation of the deliveries (e.g. with regard to the number of items, place, packaging, transportation documents) immediately after receipt of the deliveries.

8. Scope of Delivery, Transport and Passing of Risk

8.1. Unless agreed otherwise by both parties in writing, the deliveries shall be made "ex works".

8.2. The risk of accidental deterioration or accidental destruction of the deliveries passes to the customer once the deliveries have been sorted ready for dispatch and the customer has been notified thereof. This applies even in cases where we have taken over additional services, such as loading, transport or unloading. If the supply or the services are delayed as a result of circumstances caused by the customer, we are entitled to store the deliveries at the expense and risk of the customer at our own discretion and invoice them as if delivered.

8.3. If there is a requirement of an acceptance of the deliverables, the acceptance determines the passing of risk. It shall be carried out immediately on the acceptance date or following notification by us as to acceptance readiness. The customer shall not be entitled to refuse acceptance if there are only an insignificant defects.

8.4. In case of sale by dispatch, the risk of accidental deterioration or accidental destruction passes to the customer at the latest when the object of sale is dispatched or handed over to the representative of the shipping company at the place of dispatch. If the conduct of the customer delays the dispatch of the deliveries, the risk is transferred to the customer at the moment in which the customer is notified that the deliveries are ready for dispatch. Section 8.1 sentence 4 applies accordingly.
9. **Retention of Title**

9.1. The deliveries supplied remain our property until such time as all our claims arising from the business relationship have been fulfilled entirely.

9.2. If retention of title is not possible due to legal reasons, customer grants us a security interest in all goods delivered and in all receivables and proceeds arising from the customer's sale of our goods, until we have been paid in full. We may file financing statements evidencing our interest.

9.3. The customer shall be entitled to sell our goods in the regular course of business provided he is not in arrears with his payments to us. However, he shall assign to us in advance all receivables due to him from his customers or third parties up to the final total of our invoice (including value added tax), irrespective of whether the object of sale was further divested with or without further processing. We hereby accept these assigns. The customer shall be entitled to collect all claims until revoked. Our authority to collect these receivables independently is thereby not affected. However, we undertake not to collect such debts as long as the customer duly meets his payment obligations to us from the revenues he collects and as long as no application has been made to initiate insolvency proceedings to recover assets from the customer or the customer has not suspended or stopped payments. If such is the case, however, we may request that the customer informs us of all assigned receivables and the debtors thereof, provide all details required to effect collection, hand over the necessary documents and immediately notify his debtors of the assignment.

9.4. The customer's processing or reworking of the deliverables are always conducted to the effect that we are deemed to be the manufacturer (pursuant to Section 950 of the German Civil Code (BGB)). If the deliveries are processed together or mixed with objects which do not belong to us, we shall acquire part ownership of the new object in the same ratio as the value of the deliverable stands to the value of the other processed objects at the date of processing. The object created by the processing is subject to this Section 9 in the same way and to the same extent as the supplied deliverables themselves.

9.5. If and to the extent we had partial ownership of the deliveries (or the goods which replaced our deliveries) in accordance with the preceding conditions, the customer assigns to us an amount of his receivables according to our co-ownership share. We hereby accept these assignments.

9.6. The customer shall not be entitled to dispose the deliveries or the security for the deliveries. In the event of levy or confiscation of our deliveries (or the receivables which replaced our title in the deliveries), the customer is to give notification of our ownership and must inform us of such occurrences without undue delay in order that we may preserve our rights towards third parties.

9.7. The customer shall coffer the reserved property for us based on the preceding provisions at no expense to us.

9.8. At the request of the customer, we shall release sureties if the achievable value of the object of sale does not only temporarily exceed a liability limit of 110% of the secured receivable. It is assumed that the liability limit is reached when the professionally estimated value of the object of sale corresponds to 150% of the secured receivables at the time when the demand for release is submitted. A different achievable value may be assigned to the deliverable if the customer provides the relevant proof.
9.9. If the customer violates provisions of the contract, in particular by falling into arrears with a payment or if our receivables are at risk due to a decline in the customer’s credit worthiness, we are entitled to take back the deliveries, once an extension granted by us has expired unsuccessfully, even though we may not have withdrawn from the contract. We are then also entitled to freely sell these deliveries or have them auctioned off. The revenue from the resale shall be offset against the amounts owed by the customer after deduction of the reasonable costs of the resale. The customer is liable for remaining indemnification amounts not realized by the resale.

9.10. The customer is obliged to handle the object of sale with due care and keep the object in perfect condition until full ownership has passed to him. The customer shall insure goods sold by us against loss or damage resulting from loss, damage, theft, fire, water or similar cases at his expense and to our benefit, and must provide proof of such insurances upon request. The customer must arrange maintenance and inspection work promptly and at his own expense if such work is necessary.

9.11. We are authorized to assign the claims for payment (receivables) against the customer to third parties.

9.12. If after the conclusion of the contract we become aware that the collection of our receivables against the customer are jeopardized due to lack of adequate financial abilities of the customer we are entitled to rescind the contract and to demand the immediate return of the reserved property.

9.13. The assertion of the title in the deliveries as well as the pledge of the delivery items by us shall not be considered a withdrawal from the contract.

10. Claims arising from Defects

10.1. Unless otherwise provided hereinafter, the statutory provisions apply to the customer’s rights in the event of material or legal defects. In all cases, the special statutory provisions that apply to final delivery of the unprocessed good to a consumer remain unaffected, even if the consumer has further processed that good ( regress against suppliers according to section 478 BGB). Regress claims against are barred if the customer or another company has further processed the defective good, e.g. by installing it into or combining it with another product.

10.2. Flat-rate or abstract calculations of the customer’s claim for damages or expenses are not accepted.

10.3. The customer’s claim for damages or reimbursements of futile expenses are valid in the case of defects only in accordance with Section 11 and are otherwise excluded.

10.4. Defects in Quality (Sachmängel)

10.4.1. Any warranty claims of the customer are subject to the fact that customer has met his legal and statutory duties to inspect and report defects properly. This also applies when the customer sells on the deliveries. An obvious defect (obvious defects are defects, which are recognizable by a examination) or incompleteness of the deliveries have to be communicated to us in writing immediately, at the latest within 1 week after receipt of the deliveries, exactly specifying the defect (or shortage) in detail and quoting the invoice number. Latent defects of quality must be objected in writing without undue delay, at the latest within 1 week after their discovery.
The customer has to inform us within the aforementioned period about the defect and the invoice number. The deliveries claimed to be defective have to be returned to us if so requested by us, so that we are able to check the objected defect. If there is a defect, we will refund the shipping costs. All claims of the customer due to defectiveness or incompleteness are expressly excluded if he does not properly meet these duties. If an inspection of deliveries was agreed and carried out, claims involving defects which could have been detected during inspection are excluded.

10.4.2. Liability for a specified purpose of use or any specified suitability shall only be assumed to the extent that the latter is agreed as such expressly and in writing. In all other aspects, the suitability and application risk is the sole responsibility of the customer. Our warranty is conditional upon adherence to any technical conditions as specified in the documentation and / or supplementary documents. Any other type of use is prohibited. The customer shall impose these and any other restrictions of use stipulated by the seller to subsequent customers.

10.4.3. Warranty claims for used objects of sale are excluded completely unless if and to the extent a liability for defects has been agreed expressly and in writing.

10.4.4. In case of a defect, which exists by passing of the risk, we shall, at our discretion, either repair or replace the delivery (repair or replacement delivery, hereinafter together: “post-performance”). In the event that a replacement delivery provided, the customer must return the defective good to us in accordance with the statutory provisions. If the customer does not comply with this obligation, then the customer has no further rights apart from post-performance.

10.4.5. Post-performance includes neither removal of the defective good nor reinstallation if we were not originally obliged to install the good.

10.4.6. The customer may only withhold payments if a notice of defect is asserted about which there is no dispute. If the notice of defect is unjustified, we are entitled to demand compensation from the customer for costs which have arisen as a result thereof. In case of a notice of defects the customer may withhold payments only to an amount which is in an appropriate ratio with regard to the actual defects.

10.4.7. In order for us to undertake all the work for post-performance deemed necessary by us, the customer must give us the necessary time and opportunity to remedy after consultation with us. If it fails to do so, we are released of liability for the consequences arising. We may consent to the customer rectifying a defect itself or have it rectified by third parties and to pay for the necessary costs of repair in the event of urgent cases when operational safety is at risk or in order to prevent disproportionate large damage. We shall be informed immediately in such an event.

10.4.8. Of the direct costs arising through post-performance, we shall bear the costs of the replacement part and/or repair including shipping if the complaint turns out to be justified. To the extent that the customer demands compensation for expenditures arising to him or recompensed to his customer due to legal requirement, the compensation to be paid by us shall be determined as follows:

- In determining the level of such compensation, our economic circumstances, the type, scope and duration of the business relationship as well as our degree of causation and the installation costs of the delivery item shall be appropriately taken into consideration in our favor. In particular, the
compensation to be paid by us shall be in an appropriate ratio to the value of
the defective scope of delivery and service during the 12 months preceding
the notification of the claim.

- The obligation to pay compensation shall be excluded to the extent that the
customer has, in turn, effectively limited liability towards his customer. Here
the customer shall endeavor to agree limitations on liability in the legally
permissible scope also in favor of us.

10.4.9. We are entitled to refuse post-performance to the extent the latter would be un-
reasonable according to the applicable legal provisions. In this case any other rights
to influence the legal relationship by unilateral declaration of the customer contin-
ue to exist.

10.4.10. Within the framework of statutory regulations, the customer has a right to rescind
from the contract if taking into account the statutory exceptions - an appropriate
period for post-performance of a defect has been set by the customer and has
elapsed without result. If the defect is only of a minor nature, the customer is only
entitled to an abatement of the purchase price/remuneration. The right to an
abatement of the purchase price/remuneration is excluded in all other respects.
Possible further claims are determined in accordance with Section 11.2.

10.4.11. Among others no warranty is assumed in the following cases: only minor deviation
from the agreed features, unsuitable or improper use, defective assembly or com-
missioning by the customer or third parties, natural wear and tear, defective or
negligent treatment, improper maintenance, unsuitable operating media and ex-
ternal influences not foreseen in the contract, to the extent that they are not the
responsibility of us. We do not assume liability for defects resulting from the instal-
lation conditions or improper operation or maintenance.

10.4.12. Guarantee promises by us, particularly quality and durability guarantees are ex-
pressly excluded subject to the provisions in Section 2.7.

10.4.13. If there is improper reworking by the customer or a third party, we shall not be lia-
ble for any consequences arising therefrom. The same applies to changes to the de-
liverables undertaken without our agreement.

10.4.14. Our post-performance, no matter in what form, shall under no circumstances be in-
terpreted as agreement to a customer's claim.

10.5. Legal Defects (Rechtsmängel Section 435 German Civil Code (BGB))

10.5.1. If the use of the delivery item, product or service leads to the breach of third party
industrial property rights or copyrights existing at the time of transfer of ownership
of the delivery item, product or service in the Federal Republic of Germany, we
shall, at our cost, in principle, acquire for the customer the right to further use of
the delivery item, service or product or we shall modify it in an acceptable manner
for the customer such that the breach of property rights no longer exists. If this is
not possible under the appropriate economic conditions or within an appropriate
period, the customer is entitled to rescind from the contract. We also have a right
of rescission from the contract under the specified conditions.

10.5.2. Our undertakings in Section 10.2.1 are, subject to the provisions in Section 11.2, fi-
nal and comprehensive in the event of breaches of industrial property rights or
copyrights. They are in force and apply only if a) the customer immediately notify-
ing us of asserted breaches of industrial property rights or copyrights, b) the customer supports us to the appropriate extent in the defense against asserted claims and/or enables us to carry out the modification measures in accordance with Section 10.2.1, c) we retain the right to take all defensive measures including out-of-court settlements, d) the deficiency in title is not due to an instruction from the customer, and e) the infringement of rights was not caused by the customer changing the delivery item on his own authority or using it in conflict with the contract or the customer is nor otherwise responsible for the infringement of an industrial property right.

11. Liability

11.1. Unless provided by other liability provisions in these GSC, including the following provisions, we are liable as provided by the statutory provisions in the event of a breach of contractual or non-contractual duties (e.g. tort).

11.2. We shall be liable, for whatever legal reasons, for damages only in case of fault for willful misconduct or gross negligence. In case of ordinary negligence, we are liable only

11.2.1. for damages arising from an injury to life, body, or health,

11.2.2. for damages arising from a non-trivial breach of a material contractual obligation (obligation whose discharge makes proper performance of the contract possible in the first place and of whose observance the other party to the contract normally is, and ought to be able to be, confident); in this case our liability is limited, however, to compensation for the reasonably foreseeable damage that typically occurs.

11.3. The limitations of liability set forth in Section 11.2 apply also in the case of breaches of duties by or for the benefit of persons for whose fault we are responsible according to the statutory provisions.

11.4. Claims and damages of the customer resulting from the violation or breach of third party intellectual property rights which are to be followed or reimbursed by us according to these GSC, are for each affected scope of service or supply limited to its respective price according to Section 5.

11.5. The obligation to compensate damages shall be excluded in the event the customer effectively limits the liability vis-à-vis its customers on its behalf. The customer shall try to agree upon limitations of liabilities in a legally permissible scope in favor of us.

11.6. The customer’s claims shall be excluded insofar as the damage can be traced to the customer’s violation of the operating instructions, maintenance and installation provisions, unsuitable or improper use, incorrect or negligent treatment, natural wear and tear or incorrect repairs.

11.7. We shall be liable for measures of the customer to prevent damage (e.g., recall operation) insofar as we are legally obligated in this regard.

11.8. Our financial condition, the type, scope and duration of the business relationship and the value of the affected late parts and services are adequately to be taken into consideration in good faith and in our favor with regard to the amount of the damage compensation.
11.9. The limitations of liability set forth in Section 11 do not apply as far as we have maliciously concealed a defect or guaranteed the quality of the good, nor do they apply to claims of the buyer under the Product Liability Act.

12. **Statute of Limitations**

By derogation from Section 438 para. 1 no. 3 BGB, the limitation period for claims for defects is 12 months from delivery. Special statutory provisions concerning the limitation period, in particular Section 438 para. no. 1, no. 2, para. 3, Sections 444, 445b BGB, remain unaffected. All other claims of the customer arising from a defective good – for whatever legal reason – likewise become statute-barred in 12 months. The customer’s claims for damages arising from an injury to life, body, or health or according to the Product Liability Act, however, become statute-barred exclusively according to the statutory limitation provisions.

13. **Investments**

If, due to serial supply contracts, we make investments based on purchase quantity forecasts presented to us for the serial production run, and if those investments will not be reimbursed to us by customer, then we shall be entitled to claim compensation amounting to the difference between the investments made and the amortization thereof if the purchase quantities forecast on conclusion of the contract have not been achieved in full by the end of production.

14. **Ownership of Tools and other Production and auxiliary Equipment**

14.1 Insofar customer is obliged to pay the tools and/or other production and auxiliary equipment required to manufacture the products, the ownership of these tools and/or other production and auxiliary equipment is not transferred to customer until payment has been received in full, insofar as a transfer of ownership to customer has been agreed. Should amortization of the product or part price have been agreed, the transfer of ownership, insofar as such transfer has been agreed, occurs when when the amortization has been taken place completely.

14.2 Any obligation by us to maintain, service and/or repair the tools and/or other production and auxiliary equipment, ends at the latest with reaching the lifetime of the tools and/or other production and auxiliary equipment. The Lifetime of a tools and/or other production and auxiliary equipment is reached in particular when the agreed load changes have been made, or when the costs and expenses for a maintaining, servicing and/or repair measures exceed the manufacturing costs of the tool and/or other production and auxiliary equipment by more than 50%.

14.3 In case customer obtained ownership of the tools and/or other production and auxiliary equipment, he is not entitled to demand the restitution as far as the respective contract has not been validly terminated.

15. **Software**

If and insofar as software is included in the scope of delivery, the customer shall be granted the non-exclusive right to use the supplied software including its documentation. It is provided for use on its intended delivery item. The software may not be used on more than one delivery item. The
customer may only copy, rework or translate the software or translate its object code into source code within the legally permissible scope (Articles 69 a ff. of German Copyright Law (Urheberrechtsgesetz, UrhG)). The customer undertakes not to remove producer information - particularly copyright marks - or to change them without our previous express agreement. All other rights in the software and documentation, including copies, shall remain with us and/or the software supplier. Sublicenses may not be granted by the customer to third parties.

16. Termination

16.1. We shall have the mutual benefit of all the customer’s rights to terminate the serial supply contract and any and all such rights shall therefore apply equally to the benefit of us as to the customer, irrespective of the legal reason.

16.2. By serial supply contracts we are entitled to reject any and all orders and shall not be obliged to deliver products, if the customer is not obliged to purchase at least 75% of the requested product quantity during the series production run (from SOP to EOP without spare part business).

16.3. To the extent the customer is entitled or otherwise permitted to either produce the products supplied by us by itself or in conjunction with any other third party or to purchase the products from any company, supplier or third party other than us, we shall be entitled to terminate the serial supply contract with immediate effect upon 4 weeks’ notice to the customer.

17. Place of Performance, Place of Jurisdiction, Applicable Law

17.1. Unless expressly otherwise agreed, the principle place of business of the respectively supplying Borgers-Company shall be or shall be deemed as the place of performance (Erfüllungsort).

17.2. Exclusively German law shall apply without regard to its conflict of law provisions (the EC-regulations “Rome I” and “Rome II” are therefore explicitly excluded). Additionally the applicability of the United Nations Sales Convention of 11 April 1980 on Contracts for the International Sale of Deliveries (CISG – “Vienna Sales Law”) shall be excluded.

In case the customer is a merchant, corporate body under public law or holder of special funds under public law and his registered office is within the EU, the place of jurisdiction for all disputes arising out of or in connection with the contract relationship shall be the principle place of business of the respectively supplying Borgers-Company. We shall, however, be entitled to file an action against the customer at the general place of jurisdiction of the customer.

17.3. In case the customer is a merchant, corporate body under public law or holder of special funds under public law and his registered office is outside the EU, all disputes arising out of or in connection with the contract relationship shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC). The Court of Arbitration shall consist of three Arbitrators. Place of arbitration shall be Düsseldorf, Germany, and the language of the arbitration shall be English.

17.4. The invalidity of any provision of these GSC shall not affect the validity of its other provisions.