

Hennecke Systems GmbH

General Terms and Conditions of Sale (Export)

Date: August 2013

Section 1 Scope of Application

- (1) All offers, deliveries and sales of Hennecke Systems GmbH (hereinafter referred to as "**Hennecke**") shall be subject to these General Terms and Conditions of Sale (hereinafter referred to as "**Terms & Conditions**"). These Terms & Conditions are part of all contracts concluded between Hennecke and any business partner, governmental entity or any public separate estate (hereinafter referred to as "**Customer**") regarding the sales and deliveries of the products manufactured by Hennecke (hereinafter referred to as "**Products**") abroad (hereinafter referred to as "**Sales Contract**"), whereas these Terms & Conditions shall also apply with respect to any future offers, deliveries and sales to the Customer, even though their application is not specifically agreed upon again.
- (2) Any conflicting conditions, conditions deviating from Hennecke's Terms & Conditions or conditions by the Customer, which change these Terms & Conditions, are herewith rejected; they shall only be valid vis-à-vis Hennecke if Hennecke agrees to such conditions in writing. Terms and conditions of the Customer or any other third party shall not apply, even though Hennecke has not rejected their application in each case. This rejection shall also apply in particular in the event that an order (hereinafter referred to as "**Purchase Order**") is placed with reference to the Customer's terms and conditions.

Section 2 Scope of Deliveries

- (1) If the Purchase Order has to be qualified as a proposal for concluding a Sales Contract pursuant to Art. 14 United Nations Convention as of April 11th, 1980 on Contracts for the International Sale of Goods in the English version (hereinafter referred to as "**CISG**"), Hennecke may accept such a Purchase Order within three (3) weeks from the receipt of the Purchase Order. Purchase Orders as well as amendments thereof shall only be valid and binding if such have been confirmed in writing (e-mail or fax sufficient) by Hennecke (hereinafter referred to as "**Confirmation Notice**") and within two (2) days after receipt of the Confirmation Notice, Customer has granted its written (e-mail or fax sufficient) consent regarding the contents of the Confirmation Notice (hereinafter referred to as "**Consent Declaration**"). All communication, declarations, notices etc. are to be drawn up exclusively in the English language.
- (2) Each Purchase Order shall in particular include the number of Products to be purchased by Customer, based on the respective Purchase Order. Following the receipt of the Consent Declaration, the number of Products to be purchased based on the respective Purchase Order shall be legally binding (the "**Confirmed Quantity**"). Customer shall be obliged to accept the Confirmed Quantity. Hennecke shall not be obliged to sell any quantities of Products exceeding the Confirmed Quantity which are not based on a new Purchase Order.
- (3) Hennecke is obliged to deliver the Products to Customer and transfer the title to the Products. Insofar as not stipulated otherwise in these Terms & Conditions or any individual Sales Contract, Hennecke is not obliged to deliver accessories not specified explicitly or to advise Customer. Furthermore, and unless not stipulated otherwise in these Terms & Conditions or any individual Sales Contract, Hennecke is not obliged to assist Customer at the installation and commissioning of the Products or to render additional instructions or technical assistance.
- (4) Unless not agreed to the contrary in writing in each individual case, delivery of the Products shall be made EXW (ex works; INCOTERMS 2010), Hennecke Systems GmbH, Aachener Straße 100, 53909 Zülpich, Germany.
- (5) Any Purchase Order hereunder may be cancelled by Customer only with Hennecke's prior written consent, whereas this stipulation is without prejudice to the rights of avoidance according to Section 13. Insofar as Hennecke grants the required consent to the cancellation of a Purchase Order in writing – whereas such consent does not incur any additional obligations upon Hennecke –, Customer shall be obliged to pay to Hennecke twenty percent (20 %) of the agreed net purchase price, plus any value-added tax (VAT) or sales taxes (if any), relating to such cancelled Purchase Order. This shall not apply if Hennecke proves that its loss is higher or Customer proves that the loss is lower in individual cases.
- (6) Hennecke is entitled to use the services of its affiliates and/or other third parties as sub-contractors to perform its obligations by virtue of these Terms & Conditions and any individual Sales Contract.

Section 3 Quotation; Prices

- (1) Quotations (*Kostenvorschläge*) by Hennecke are non-binding and subject to changes, unless they are concrete, customized, approved by Hennecke and designated as binding in writing. To the extent that nothing else has been stipulated, Hennecke shall be bound by such a quotation and by the prices contained therein for a period of **four (4) weeks** from the date of its preparation.
- (2) The prices for the Products shall be those indicated in the respective quotation of Hennecke valid at the time the respective Purchase Order is placed by Customer. All prices are EXW and in Euro or other valid currency in Germany and excluding the respective applicable rate of VAT which will be indicated in each invoice separately (if applicable).

- (3) Prices indicated in price lists, ads or other advertising materials are not binding and without obligation, save as they are not expressly denoted as binding.
- (4) The prices exclude any costs regarding packaging, shipping, freight, insurance and/or any charges such as levies, dues, taxes and customs duties.
- (5) Unless otherwise agreed, incidental expenses, such as travel and lodging expenses, per diems, loading times and expenses for transporting tools and personal luggage, as well as additional charges for overtime, holiday and Sunday work, are not included in the agreed prices and will be invoiced separately, in case such expenses incur. The same applies to waiting times, delays and additional travel for which Hennecke is not responsible and to any good and services that are not included in the agreed content and scope of delivery but are nevertheless rendered by Hennecke.
- (6) Customer warrants that all legal requirements for delivery free of German VAT are fulfilled. To the extent that Hennecke is obliged to pay VAT as a result of circumstances allocable to Customer or to the terms of delivery agreed upon, waiving the defence of limitation (*Einrede der Verjährung*), Customer will indemnify Hennecke without prejudice to any continuing claim by Hennecke.

Section 4 Terms of Payment

- (1) Payments are to be made to Hennecke's pay office within the agreed time allowed for payment in each individual Sales Contract and without any deductions and at the costs of Customer or if nothing else has been agreed, payments are to be made by irrevocable letter of credit at the Customer's expense. The due time for payment arises without any further pre-conditions.
- (2) Hennecke is entitled to fulfil pending deliveries regarding Products or Services only against security deposits of Customer if, after issuing the Confirmation Notice, circumstances become known to Hennecke that support the assumption of reducing the creditworthiness of Customer and by which the payment of the outstanding claims of Hennecke are endangered.
- (3) The date on which Hennecke has finally and unconditionally received the payment (in particular, a final and unconditional credit of the payment to the account of Hennecke in case of stipulation of a bank wire transfer) shall be decisive for the compliance of Customer with the period for payment agreed upon between Hennecke and Customer (jointly, the "**Parties**").
- (4) If Customer does not comply with a reminder to pay from Hennecke, which is sent after the expiry of the agreed period for payment, Customer shall be in default with payment after expiry of the grace period for payment stated within such reminder.
- (5) If a calendar day has been contractually stipulated for the payment, Customer shall be in default with payment without having received a reminder if Customer does not pay on time. If the payment day has neither been contractually stipulated nor agreed separately by both Parties, payment due date shall be **thirty (30) days** following the receipt of the invoice regarding the respective Purchase Order.
- (6) In case Customer fails to pay payments which are due, Customer shall be obliged to pay to Hennecke – without prejudice to compensation for further losses – the costs of judicial and extra-judicial means and proceedings as well as interest at the rate of ten (10) per cent *per annum* in excess of the base interest rate of the European Central Bank since the due date with regard to the outstanding amounts.
- (7) If Hennecke is able to prove higher losses as a result of the default, Hennecke shall be entitled to demand from Customer such higher losses. However, Customer is entitled to prove that Hennecke incurred no losses or lower losses as a consequence of the default in payment.
- (8) Statutory rights of Customer to suspend payment and to raise defence are excluded except where despite written warning by Customer, Hennecke has committed a breach of its essential contractual obligations to deliver or transfer the title to the Products and has not offered any adequate assurance.
- (9) Regarding any payment, Customer may only offset with counterclaims if such counterclaims have already been affirmed by a final and absolute decision of the competent court or if they have already been expressly recognized by Hennecke in writing as well as – subject to the respective statutory requirements – only with regard to the respective delivery to which the payment obligation pertains.

Section 5 Delivery

- (1) Delivery dates (*Liefertermine*) and delivery periods (*Lieferfristen*) indicated by Hennecke are only approximate unless a fixed date or period is expressly agreed upon between the Parties in writing in the individual Sales Contract.
- (2) Compliance with fixed delivery dates or delivery periods is subject to the timely receipt of all required documents to be furnished by Customer as well as required governmental approvals, releases, timely clarifications and approvals of plans and compliance with the agreed obligations of Customer, in particular timely payment. For fixed deliveries, a deadline shall be deemed to be complied with if the ready for shipment notice has been submitted

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within the agreed delivery period or prior to or on the delivery date towards Customer or to a carrier, freight carrier or any other third person commissioned with the transportation and delivery of the Products and designated by Customer.

- (3) Hennecke is entitled – irrespective of any rights arising as a result of default by Customer – to demand an extension of delivery periods or a postponement of delivery dates for the period in which Customer does not comply with its contractual obligations.
- (4) Without prejudice to its continuing legal rights, Hennecke shall not be liable for any delay in delivery caused by Force Majeure or other circumstances which could not be foreseen at the time of receipt of the Consent Declaration pertaining to the respective Purchase Order and which are beyond the control of Hennecke (i.e., acts of god, epidemic, war, warlike conditions, revolutions, earthquakes, quarantine, embargo, interruption of operations of all kind, in particular fire damages and floods, difficulties in obtaining material and energy, delay in transportation, strike, lockouts, lack of labour force, energy or raw materials, difficulties in obtaining necessary governmental permits, government regulation measures or lack of, delayed or wrong delivery of suppliers). Hennecke shall be obliged to inform Customer immediately after such a Force Majeure occurred leading to a delay in delivery. In the event such occurrences considerably complicate the delivery or even make it commercially or factually impossible and such occurrences are not of temporarily nature, Hennecke shall be entitled to withdraw from the respective Purchase Order. In case the occurrences are of a temporary nature, the delivery shall be extended or the delivery dates shall be postponed according to the duration of such impediments plus an additional appropriate lead time, as the case may be. If possible, Hennecke shall inform Customer about the expected duration of the delay in delivery. If Customer can not be reasonably expected to accept the delivery due to the delay, whereas such a delay has to exceed a minimum period of ninety (90) days, it may withdraw from the respective Purchase Order by immediately submitting a written notice to Hennecke, provided, however, that the obligation to pay when due all amounts for periods prior to such Force Majeure event shall remain unaffected. It is agreed and understood between the Parties that for the duration of such impediments, Customer's claim/s for performance shall be suspended, and in case of a permanent impediment due to the aforementioned occurrences, shall be excluded.
- (5) In case of delay in delivery and without prejudice to its continuing legal rights, Hennecke shall be entitled to fulfil its obligations after the delivery date or delivery period agreed upon between the Parties, if Hennecke informs Customer in writing (e-mail or fax sufficient) that it will exceed the fixed delivery date or delivery period and of the time period for late performance. Customer shall be entitled to object to such late performance within reasonable time in writing. Hennecke shall be obliged to reimburse necessary additional expenditures incurred by Customer as a result of exceeding the fixed delivery date or delivery period to the extent Hennecke is liable in accordance with Section 12.
- (6) Except as provided in the aforementioned paragraphs 4 and 5, Hennecke is only obliged to inform Customer of delay or non-performance as soon as these become certain.
- (7) Hennecke is entitled to make partial deliveries at any time and invoice them separately. The agreed payment periods will run separately for each partial invoice.
- (8) Hennecke is not obliged to perform any additional obligations not expressly stipulated in these Terms & Condition or the individual Sales Contract, as the case may be. In particular, Hennecke is not obliged to insure the Products, to procure certificates or documents not expressly agreed upon, to obtain required permits, approvals, consents, licenses or other formalities, to procure customs clearance and to bear levies, dues, taxes, duties and other charges accruing in- and outside Germany or to comply with weight and measuring systems, packaging, labelling or marking requirements applicable outside Germany.
- (9) At Customer's written request and expense, Hennecke will insure the Products against damages due to breakage, transport and fire. Unless agreed otherwise, mode of package shall be in the sole discretion of Hennecke and in accordance with the usual packaging conditions applicable in Germany.

Section 6 Packaging, Transfer of Risk

- (1) The type of packaging will be determined by Hennecke. However, Hennecke will endeavour to take into account the Customer's request concerning the packaging. Any additional expenses thus incurred will be borne by the Customer.
- (2) The risk as to price and performance due to accidental loss and/or destruction of the Products shall pass from Hennecke to Customer as soon as Hennecke has submitted to Customer the ready for shipment notice and allocated the Products on the industrial premises of Hennecke or the title in the Products has passed to Customer, whatever occurs first.
- (3) After transfer of risk, warehouse charges shall be borne by Customer in an amount of up to 0.5 % of the total gross invoice amount of the Products stored for every month of storage commenced or the actual additional costs incurred to Hennecke, whichever is higher. Hennecke reserves the right of

assertion and verification of warehouse costs beyond the above limit. The aforementioned stipulations are without prejudice to the right of Customer to prove that the damages incurred to Hennecke have not occurred or are substantially lower than the lump sum fee demanded by Hennecke according to the stipulations of the foregoing sentence 1 of this paragraph.

Section 7 Service Provision

- (1) "Services" in terms of these Terms & Conditions shall mean the contractual services of Hennecke, agreed upon between the Parties in the individual Sales Contract as the case may be, in particular, but not limited to, setup, installation, assembly, startup of the Products and/or technical training for the employees of the Customer regarding the usage of the Products.
- (2) As a matter of principle, Hennecke shall render the Services at its respective office, unless agreed otherwise in writing within the individual Sales Contract concerning the provision of Services at the Customer's premises or at the premises of a third party, designated by the Customer.
- (3) If and to the extent, Hennecke is obliged to render the Services at the Customer's premises or the premises of any other third party, designated by the Customer, then the Customer is obliged to provide Hennecke with a sufficient description of the actual conditions under which the Products and/or Services are to be used. In particular, Customer must inform Hennecke of the level of precision with which the Products and Services to be supplied are to operate and the environmental conditions under which they are to be used. If, because of a breach of these duties, the Products and/or Services prove unsuitable for the use specified in the individual Sales Contract through no fault of Hennecke, Customer has no right to withdraw from the individual Sales Contract, demand a reduction in the purchase price or the remuneration regarding the Service provision or claim damages.
- (4) Customer is responsible for transportation of the Products at its premises or the premises of any other third party designated by the Customer, particularly for preparing and making available suitable means of transportation and hoisting devices.
- (5) Customer is obligated to cooperate with Hennecke to the extent necessary. In particular, Customer must, at its own expense, acquire and provide, in a timely manner, the following:
 - a) all materials and articles necessary for the assembly and startup, such as hoisting devices and other equipment, as well as lubricants;
 - b) electricity and water at the place of use, including connections, heating and lighting, each in accordance with the installation instructions of Hennecke;
 - c) all preliminary construction and assembly work, including the construction and marking of suitable access roads and leveling and clearing of access roads and workplaces;
 - d) additional materials and articles required for carrying out the Services;
 - e) at the place of assembly: suitable dry and lockable rooms of sufficient size for the storage of machine parts, appliances, materials, tools and the like, and for the assembly personnel, suitable workrooms and lounges, including appropriate sanitary facilities; and
 - f) any additional equipment not included in the agreed scope of delivery but necessary to setup, install, assemble and startup the Products.
- (6) If Customer fails to take delivery of the Products and/or Services in a timely manner or is at fault for breaching any of its duties of cooperation, Hennecke has the right to demand compensation for any losses thus incurred, including any additional expenses, e.g. for additional time, labor or materials. Hennecke reserves the right to assert other statutory rights and the defense of non-performance.
- (7) If the Parties have agreed to conduct an acceptance, such must be conducted promptly after notice of completion. The costs of the acceptance shall be borne by Customer. Customer must provide the conditions necessary for conducting the acceptance. If the Parties have agreed on special features and Hennecke demands an acceptance, Customer must conduct such no later than within two weeks. If, through no fault of Hennecke, the acceptance is not conducted in a timely or complete manner, the acceptance will be deemed to have been conducted after such has been requested in writing and a reasonable time has lapsed, provided that Hennecke has made special reference to this consequence. In any case, the acceptance will take effect once the Products are put into operation. The foregoing provisions also apply accordingly to any partial deliveries and preliminary acceptance tests.
- (8) Hennecke shall provide the Services at its own discretion through its officials, employees or sub-contractors (hereinafter referred to as "Service Providers"). Hennecke may replace the Service Providers either wholly or partly.
- (9) All Services will be properly rendered by suitably qualified personnel acting with reasonable care.
- (10) The Customer or the third party designated by the Customer must support Hennecke in the elimination of impediment/obstacle/shortcomings of the Services.

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Section 8 Retention of Title

- (1) The following agreed retention of title (*Eigentumsvorbehalt*) serves as security for all and any claims of Hennecke against Customer, existing now and in the future arising out of or in connection with the business relationship between the Parties regarding the sale of the Products.
- (2) The Products remain the sole property of Hennecke until complete satisfaction of all secured payment claims (including interest if any). The Products, subject to the retention of title as well as the substitute thereof replacing the Products and also subject to the retention of title are hereinafter referred to as the "**Reservation Goods**".
- (3) Customer is obliged to detain the Reservation Goods free of charge for Hennecke. Insofar as maintenance services become necessary, Customer shall be obliged to render such services on its own cost and expense and on a regular basis. Customer shall be entitled to resell the Reservation Goods within the course of its ordinary business up to the point of the Event of Enforcement (succeeding para. 6). Any pledge or chattel mortgage of the Reservation Goods shall be inadmissible.
- (4) Customer hereby assigns to Hennecke all of its current and future claims which replace the Reservation Goods or in any other way arises from or are in connection with the Reservation Goods, in particular, but not limited to, insurance claims or claims arising from unlawful acts resulting in a loss or destruction. Hennecke hereby accepts the assignment. Furthermore, Hennecke hereby revocably entitles Customer to collect the assigned claims on its own behalf and on the account of Hennecke.
- (5) If third parties levy an attachment on the Reservation Goods, in particular by way of seizure, Customer shall be obliged to immediately inform such third party about the property of Hennecke and inform Hennecke about such seizure in order to enable Hennecke to enforce its property rights. Insofar as the third party is not able to reimburse Hennecke the costs arising from or in connection with the judicial and/or extrajudicial enforcement of its property rights, Customer shall be liable for such costs.
- (6) In case, Hennecke withdraws from the Sales Contract, in particular in case of default in payment, Hennecke shall be entitled to reclaim the Reservation Goods (the "**Event of Enforcement**").

Section 9 Regulatory Matters

- (1) Customer shall be responsible to obtain all necessary governmental permits (*behördliche Genehmigungen*), approvals (*Erlaubnisse*), consents (*Zustimmungen*) and licenses (*Lizenzen*) and to comply with any and all laws (*Gesetzen*), rules (*Vorschriften*), regulations (*Verordnungen*) or ordinances (*Verfügungen*) applicable to the purchase, export, import, installation and commissioning of the Products within the respective jurisdiction (hereinafter referred to as the "**Regulatory Framework**"), in particular to take delivery of the Products (*Warenabnahme*).
- (2) Customer will pay all taxes, license/permit/registration fees and/or royalties as well as all other costs and charges connected with the purchase, export, import, installation and commissioning of the Products, insofar such exist.
- (3) Any liability of Hennecke regarding damages in connection with directives and/or obligations imposed by governmental entities (*behördliche Anordnungen und/oder Auflagen*) as well as the violation or infringement of the Regulatory Framework shall be excluded. Customer shall be obliged to indemnify Hennecke on first demand if and to the extent such violation and/or infringement results in any damages, costs and/or expenses of Hennecke.
- (4) If Customer is not able to receive the required permits, approvals, consents and/or licenses from the respective governmental authorities, Hennecke shall be entitled to withdraw from the individual sales contract. Section 2 para. 5 shall apply *mutatis mutandis*.

Section 10 Non-Conforming Products

- (1) The Products shall be deemed non-conforming if at the time the risk pursuant to Section 6 passes, the Products are clearly different to the specifications provided for in the individual Sales Contract or the respective Purchase Order (as the case may be), or if no specifications have been agreed upon, are not fit for the Product Purpose according to Section 14 para. 3. For the avoidance of doubt, any technical improvements relating to the Products shall not be deemed being a deviation from the specifications of the Products agreed upon in the individual Sales Contract or the respective Purchase Order (as the case may be).
- (2) Hennecke shall in particular not being liable for the Products complying with further reaching expectations of Customer or for their compliance with existing legal requirements outside of Germany. Irrespective of the legal requirements applicable in Germany, the Products conform with the provisions stipulated in the individual Sales Contract or the respective Purchase Order (as the case may be), to the extent the legal requirements applicable at the place of business of Customer do not impede the Product Purpose.

Section 11 Warranty

- (1) The warranty period (*Gewährleistungsfrist*) shall in any event expire not later than twelve (12) months following the delivery of the respective Products.
- (2) Immediately after delivery of the Products, Customer or any third party designated by Customer shall be obliged to thoroughly examine the Products. They shall be considered accepted if Hennecke does not receive a written notice as to non-conformity of the Products with the individual Sales Contract or the respective Purchase Order (as the case may be) within ten (10) days following the delivery of the Products, giving in particular a detailed description of the reasons of non-conformity (hereinafter referred to as "**Non-Conformity Notice**"). At Hennecke's request, the Products subject to Customer's complaint have to be delivered to the premises of Hennecke for inspection purposes. If the Non-Conformity Notice is justified, Hennecke will reimburse the expenses for the delivery.
- (3) Following the due Non-Conformity Notice, Customer can rely on the remedies provided for by the CISG (hereinafter referred to as "**CISG Remedies**") in accordance with the terms stipulated in these Terms & Conditions.
- (4) Warranty claims are excluded in case of non-material defects, normal wear and tear or damage resulting from faulty or negligent handling, excessive stress, unsuitable equipment, defective construction work or an unsuitable foundation, or in case of non reproducible software errors.
- (5) In case the Non-Conformity Notice has not been given properly, in particular has been given delayed, Customer may only rely on the CISG Remedies if Hennecke has fraudulently concealed the lack of conformity of the Products with the individual Sales Contract or the respective Purchase Order (as the case may be). It is agreed and understood between the Parties that statements by Hennecke as to the lack of conformity of the Products are for the purpose of explaining the factual situation only, but do not entail any waiver by Hennecke of the requirement of a proper Non-Conformity Notice.
- (6) Without prejudice to further legal requirements, third parties' rights or claims based on industrial or other intellectual property rights shall constitute a defect in title to the extent only that the industrial or intellectual property right is registered and published in Germany. Irrespective of the registration and publication of such third party industrial or intellectual property right in Germany, the Products shall be deemed free of a defect in title to the extent the existing registered and published third party rights in Germany do not impede the usual use of the Products outside Germany, in particular at the Customer's place of business. Unless stipulated otherwise in these Terms & Conditions, Customer's claims due to defects in title, including those based on industrial or intellectual property rights of third parties, will be time-barred according to Section 11 para. 1.
- (7) Customer shall be entitled to demand (i) delivery of substitute Products, (ii) repair of the non-conforming Products or (iii) reduction of the purchase price regarding the non-conforming Products as set forth in and in accordance with the CISG Remedies.
- (8) Notwithstanding of Customer's remedies, Hennecke reserves the right to first attempt to rectify the reason of non-conformity, either and at its sole discretion by improvement or subsequent delivery (each a "**Subsequent Performance**") within an appropriate period of time. In the event of Subsequent Performance, Hennecke shall be obliged to bear all expenses for this purpose. The succeeding Section 11 para. 9 remains unaffected. In case the Subsequent Performance fails, is impossible or is seriously and finally rejected by Hennecke, Customer shall be entitled to withdraw from the individual Sales Contract or to demand the reduction of the purchase price at an appropriate scale. If Customer chooses to withdraw from the individual Sales Contract due to non-conformity after a failed Subsequent Performance, Customer shall not have any claim for damages apart from such cancellation of the individual Sales Contract and in accordance with Section 12.
- (9) The warranty ceases to apply to the extent Customer modifies the Products or has them modified by any third party without the prior written approval of Hennecke. The same shall apply if Customer does not comply with Hennecke's manuals, specifications or statements pertaining to suitability, processing and application regarding the Products. Customer shall be obliged to bear any eventual additional expenses arising from or in connection with the correction of defects due to such modifications or defaults of compliance.
- (10) Any rights of recovery of Customer against Hennecke pursuant to Sec. 478 of the German Civil Code (Recovery by the Contractor) shall not apply if Customer has made warranties or has entered into agreements with its customer that go beyond the warranty claims provided for in these Terms & Conditions or, as the case may be, in the individual Sales Contract.

§ 12 Liability

- (1) Hennecke's liability to pay compensation, irrespective of the legal basis, in particular due to non-conformity, insofar as it is at fault, shall be limited in accordance with this Section 12.
- (2) Any liability of Hennecke in case of Force Majeure shall be excluded. The same shall apply in case of negligence, unless this does result in a violation

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of an essential contractual obligation. Essential contractual obligation in terms of this Terms & Conditions shall mean such contractual obligations the fulfilment of which is a prerequisite for enabling the proper fulfilment of the individual Sales Contract in the first place and in which Customer may normally trust.

- (3) Insofar as according to the preceding Section 12 para. 2, Hennecke bears liability to pay a compensation in principle, the liability shall be limited to such damages which Hennecke have been able to foresee as a result of a breach of essential contractual obligations or under circumstances which have been known or should have been known to Hennecke at the time of submitting the Confirmation Notice with regards to the respective Purchase Order, applying due diligence, but in any case not exceeding the net purchase price relating to the respective Purchase Order. Hennecke shall not be liable for indirect and consequential damages (including, without limitation, loss of goodwill, losses arising out of a business interruption and frustrated expenses, financing costs), arising from or in connection with the design, workmanship, materials, manufacture, packaging, delivery, storage and/or use of the Products.
- (4) The liability of delayed performance by Hennecke shall be limited to 0.5 % of the net purchase price of the Products per week of delay completed, however, up to a maximum of 5 % of the net purchase price of the Products.
- (5) The preceding exemptions from or limitations of liability shall to the same extent also apply to institutions, legal representatives, employees and other vicarious agents of Hennecke.
- (6) If Hennecke provides technical advice or performs consulting work and such advice and/or consulting work does not belong to the contractual obligations of Hennecke, such advice and/or consulting work shall be provided free of charge and under exclusion of any liability.
- (7) The exemptions from or limitations of liability according to this Section 12 shall not apply to the liability of Hennecke due to wilful misconduct, guarantee of constituent elements (if any), damage to life, limb or health or Hennecke's liability according to products liability (*Produkthaftung*) as well as any other mandatory rules on liability which are not excludable. However, without prejudice to Hennecke's continuing legal rights and waiving any defence of limitation (*Einrede der Verjährung*), Customer will indemnify Hennecke without limit regarding any and all claims asserted by third parties against Hennecke based on product liability to the extent that such claims are based on circumstances which are attributable to Customer after the risk pursuant to Section 6 has passed.
- (8) Claims to compensation, if not based on wilful misconduct of Hennecke or the provisions of product liability law as well as other mandatory rules on liability, shall – to the extent legally permissible – become time-barred after six (6) months following the delivery of the respective Products. If the Products have not been delivered, the statute of limitations shall commence at the end of the year in which the claim was incurred.
- (9) Customer is required in the first instance to rely on other CISG Remedies and is entitled to claim compensation only in case of continuing deficiencies after the enforcement of such CISG Remedies.

§ 13 Avoidance of Purchase Orders

- (1) Without prejudice to comply with the applicable legal requirements, Customer shall only be entitled to declare a Purchase Order avoided (*aufgehoben*) after it has notified Hennecke in writing of its intention to do so and an additional reasonable period of time for performance has been expired to no avail.
- (2) Without prejudice to its continuing legal rights, Hennecke is entitled to avoid a Purchase Order (after having confirmed such and received the Consent Declaration) without compensation if
 - a) an insolvency or similar proceeding has been opened against the assets of Customer or such proceeding has been rejected due to lack of insolvency assets or if a liquidation has been appointed;
 - b) Customer is in default of payment regarding the delivery of two or more Purchase Orders and such default is not remedied within a two (2) weeks period after receipt of a corresponding notice by Hennecke, stating the payment default and threatening the avoidance of the Purchase Order;
 - c) Customer has infringed any of its essential contractual obligations arising from these Terms & Conditions or individual Sales Contract, as the case may be, and does not cure such infringement within a fifteen (15) days grace period after receipt of a corresponding notice of Hennecke, describing the infringement of the essential contractual obligation or refuses to cure such infringement before the expiration of the aforementioned grace period;
 - d) Customer infringes any of the IP-Rights as set forth in Section 15 or where there are reasonable grounds to suspect any violation of said IP-Rights or technology theft;
 - e) for other reasons Hennecke can not be expected to fulfil its obligations by means which are unreasonable, in particular in relation to the agreed counter-performance.

- (3) Furthermore, Hennecke shall at its sole discretion be entitled to demand and accept the fulfilment of Customer's contractual obligations, in particular the payment of the purchase price arising from an individual Sales Contract in part and, at the same time, partially avoid the respective Purchase Order.

Section 14 Product Use; Product Purpose

- (1) The Products are designed, authorized and/or warranted to be suitable for the use only according to the scope of Hennecke's product description with regard to the applicable directive.
- (2) Hennecke accepts no liability for Products incorporated and/or used in equipment or applications which is/are not allowed in Hennecke's product description and therefore such inclusion and/or use is/are on the Customer's own risk.
- (3) The Products are detailed and shall have the features as specified in the individual Sales Contract or the respective Purchase Order, as the case may be and shall serve the specified purpose hereinafter referred to as "**Product Purpose**".
- (4) The Products include instructions for installation and maintenance as well as operating manuals only in the English language.
- (5) The Customer has a non-exclusive, non-transferable, not sublicensable and unlimited (in terms of scope, area and time) right to use standard software with the agreed features in unaltered form on the agreed Products. To the extent that software is developed especially for the Customer (the "**Developed Software**"), the Customer has the exclusive and unlimited (in terms of scope, area and time) right to use the Developed Software with the agreed features in unaltered form on the agreed Products. However, Hennecke also retains the right to use the Developed Software (jointly) free of charge and to utilize the underlying ideas and concepts thereof. Use of the Developed Software (standard software, firmware and software modules) on Products other than those agreed upon requires the prior written consent of Hennecke, unless, because of a defect in the agreed Product/s, the Customer uses the Developed Software (standard software, firmware and software modules) on alternate equipment to the extent agreed upon. The Customer shall comply with the license terms of the respective Developed Software and/or standard software. Unless otherwise agreed, the Developed Software and/or standard software will be provided exclusively in machine-executable form (object code).]

Section 15 Industrial Property Rights

- (1) Hennecke remains the owner of any industrial or intellectual property right, including all eligible copyrights, patents, trademarks and other intellectual property rights which have been (already) granted or registered by the date of the execution of the individual Sales Contract or during the term thereof in connection with the Products (the "**IP-Rights**").
- (2) Furthermore, Hennecke unrestrictedly reserves all intellectual property rights or copyrights on all offers and cost estimates made by Hennecke as well as all drawings, images, calculations, prospects, catalogues, models, tools and other documents and auxiliaries (the "**Items**"). Without the prior written consent of Hennecke, Customer is not allowed (i) to grant any third party access to such Items nor to the contents contained therein, (ii) to provide such Items to third parties or (iii) to exploit or duplicate such Items, neither by itself nor by any third party.
- (3) Unless not explicitly stipulated otherwise, these Terms & Conditions or the individual Sales Contract do not grant the right to utilize any already existing or registered IP-Rights or IP-Rights to be registered. Any granting of rights of use or exploitation rights of IP-Rights requires the prior written consent of Hennecke and is subject to a separate license agreement. Any kind of implied licensing or utilization permission is excluded.
- (4) In the event Customer recognizes any infringement and/or violation of IP-Rights by any third party, Customer shall immediately inform Hennecke of such infringement and/or violation and assist Hennecke in initiating and conducting necessary legal steps to defend and protect its IP-Rights effectively.
- (5) Furthermore, Customer shall be obliged to immediately inform Hennecke by written notice (e-mail or fax sufficient) in case any third party asserts claims against Customer based on the allegation of the infringement of any industrial or intellectual property right or copyright of any third party (the "**Third Party Rights**") arising from the purchase or use of the Products.
- (6) Hennecke is not liable for any infringement and/or violation of any Third Party Rights if such infringement and/or violation is based on modifications of the Products that were not executed or authorized by Hennecke, either wholly or in part or resulting from the use of the Products deviating from the Product Purpose.
- (7) Hennecke shall defend Customer at Hennecke's own expense against any and all claims asserted against Customer for an alleged infringement of Third Party Rights regarding the delivery and use of the Products to the extent Hennecke is liable and reimburse Customer for all reasonable costs and amounts of damages finally adjudicated, insofar as (i) Customer notified Hennecke without undue delay of such claims in writing, (ii) furnishes

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all of the requisite information and provides other reasonable support and (iii) Hennecke retains its sole right to decide whether or not to take legal actions against the claim or to conclude a settlement.

Section 16 Confidentiality

- (1) Customer is obliged to keep all sales documents, specifications and price lists received as well as other documents and information (jointly the "**Confidential Information**") strictly confidential and to impose such obligations on its vicarious agents and employees accordingly.
- (2) This obligation to confidentiality shall apply unless such Confidential Information becomes publicly known without failure of Customer.
- (3) Unless otherwise expressly agreed in writing, the information submitted to Hennecke in connection with Purchase Orders shall not be deemed to be confidential.
- (4) Hennecke may include Customer's name in its own list of references.

Section 17 Final Provision

- (1) Changes, amendments and supplementary agreements to these Terms & Conditions as well as each individual Sales Contract are to be made in writing. The same applies for a waiver of the requirement of the written form. Adhering to the written form requirement in terms of these Terms & Conditions and unless explicitly agreed otherwise shall, deviating from Art. 13 CISG, require the autograph signature.
- (2) These Terms & Conditions as well as their interpretation are construed and governed by the CISG. Where standard terms of business are used, the INCOTERMS 2010 of the International Chamber of Commerce and the provisions stipulated in this respect in these Terms & Conditions apply. Outside the scope of application of the CISG, the contractual relationship between the Parties as well as its interpretation shall be governed by the non-uniform German law. The same shall apply to each individual Sales Contract concluded and/or the respective Purchase Order placed by Customer.
- (3) Unless agreed otherwise, place of performance and payment for all obligations arising from the legal relationship between the Parties shall be the place of business of Hennecke.
- (4) All disputes arising from or in connection with these Terms & Conditions or their validity and any individual Sales Contract hereunder as well as each Purchase Order shall be finally settled in accordance with the arbitration rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e. V.*), without recourse to the ordinary courts of law. The place of arbitration is Zülpich. The language of arbitral proceedings is English.
- (5) Any waiver of any breach or default of any provision of these Terms & Conditions, the individual Sales Contract or the respective Purchase Order by any Party shall not constitute a waiver of subsequent breaches or defaults of the same or the provision in question.
- (6) In case of any conflicts between the provisions of these Terms & Conditions and the provisions of the respective Sales Contract, the provisions of the respective Sales Contract shall prevail (legal preference of individual agreements).
- (7) Oral information provided by Hennecke shall only be binding to the extent that Hennecke confirms it in writing.
- (8) If one or several provisions of these Terms & Conditions are or become invalid, void or unenforceable, the validity of the remaining provisions as well as these Terms & Conditions themselves, shall remain unaffected. The same shall apply if these Terms & Conditions contain a gap. The Parties are obliged to agree upon a provision which, as far as legally possible, comes closest to the economic purpose of the individual Sales Contract and what was intended by the Parties, instead of the invalid, void or unenforceable provision as well as the gap, considering the meaning of the invalid, void or unenforceable provision. If the invalidity, voidness or unfeasibility is based on the agreed upon scope or time period (e. g. deadline or date) of performance, the Parties are obliged to agree upon a provision that comes closest to what is permitted by law in that case.

Note:

Customer hereby acknowledges that Hennecke records the customer-related data provided by Customer in the context of the business relation in accordance with Sec. 28 German Federal Data Protection Act (*Bundesdatenschutzgesetz*) for the purpose of data processing and reserves the right to transfer such data to third parties (i. e. insurances or freight carriers), to the extent necessary to fulfil its contractual obligations or to enforce its contractual claims.