



GST GmbH | GARANT | SERVICES | TRADING

## DEAL CONFIRMATION

**NO. S2022.001**

Amendment

Dated 25.11.2021

**Seller:** GST GmbH  
Bruchstrasse 3  
25468 Muelheim an der Ruhr, Germany  
Registered in Duisburg HRB 31190  
Tax Registration Nr: 120/5721/1330  
VAT Nr: DE 321298512

**Buyer:** CEPRO a.s.  
Delnicka 213/12  
170 00 Praha 7  
Czech Republic  
Tax Registration Nr: ICO: 60193531  
VAT Nr: CZ 60193531

**Product:** Diesel 10ppm DIN EN 590 without Bio components, seasonal grade

**Quantity:** January – December 2022 **4 Block Trains each 1.600 - 1.750 mt (+ / - 5%)** in sellers' option. Monthly quantity 6.400 - 7.000 mt

**Total Quantity:** **76.600 - 84.000 mt (+ / - 5%)** in sellers' option

**Delivery:** **FCA Hamburg** in buyers block Trains consisting of 26 RTCS each

GST GmbH  
Bruchstrasse 3  
25468 Muelheim an der Ruhr/Germany  
Amtsgericht Duisburg HRB 31190  
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Fax: +49 40 18016846

GST GmbH Hamburg Office  
Raboisen 38  
20095 Hamburg /Germany

Email: trading@garant-st.de



on <https://www.hypovereinsbank.de/portal?view=/de/services/finanzwissen/markte-kurse/devisenkurse.jsp> converted as follows USD/EUR further EUR/CZK.

Seller will invoice provisional price as rolling avg of all High quotations published in period 1-the day of B/L. After delivery month's end, price settlement will be made, and a price credit / debit note will be issued.

**Delivery period:** 01.January - 31. December 2022

**Loading Schedule:** to be agreed and reconfirmed by the loading installation latest on 45<sup>th</sup> days before the month of delivery begins.

**Delivery terms:** FCA Hamburg in sellers' option in buyers RTCs

**Payment terms:** 10 calendar days after B/L

**Obligations of the Buyer:**

After receipt of the goods the Buyer is obliged to custom-clear electronic Administrative Document via Buyer's Customs Office latest 5 days after receiving the delivery.

**Special conditions:**

1. In correspondence, advices, invoices please show our reference number as stated above.
2. Amendments/extensions of the Contract to be mutually agreed upon in writing between Buyer and Seller.
3. The Contract is elaborated and signed in two counterparts, each party to receive one thereof. In case of delay in the dispatch of RTCs at the Loading Installation, the seller will be entitled to claim all costs connected with such delay and overtime operations to the Buyer. In case the Buyer will fully fail the booked loading slot due to the delay of RTCs, Sellers will present to the Buyer documented claim from the loading installation.
4. The Buyer ensure to undertake all necessary steps to fulfill all requirements, terms and conditions given by the Loading installation. All costs connected with Buyers nonfulfillment of its obligations will be passed from the Loading installation to the Buyers.
5. Loading Installations Oiltanking Hamburg, Holborn Refinery Hamburg, Evos Hamburg.
6. The latest GST Delivery Terms and Conditions shall apply in supplement to this order and will constitute the entire part of the contract.

**GST GmbH**

.....  
**Karel Obalil**

**Hamburg, 25.11.2021**

.....  
**Place/Date**



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**GST**

GARANT  
SERVICES  
TRADING

## **GENERAL TERMS AND CONDITIONS**

**2020**

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## **1. TERMS AND DEEFINITIONS**

- 1.1 In these Conditions, unless there is something inconsistent in the subject or the context, the following words and phrases have the meanings set opposite them below:
- 1.1.1 Agreement: the contract for the sale of Products between the Seller and the Buyer in which the Conditions are incorporated which could be on a spot basis (Spot Contract) or on a term basis (Term Contract).
- 1.1.2 Spot Contract: a contract for a period up to a maximum of 3 months.
- 1.1.3 Term Contract: a contract for a period of more than 3 months.
- 1.1.4 Seller: GST GmbH, Bruchstrasse 3, 25 468 Mülheim an der Ruhr, Germany ("GST"), sometimes also referred to herein as "we", "us" or "our" and includes the authorized representatives of GST GmbH as well as its agents.
- 1.1.5 Buyer: the person to whom the offer for the purchase of Products is addressed or who has agreed with the Seller to purchase products, including, where the context so admits, such person's agent or authorized representative(s).
- 1.1.6 Product(s): finished or partially refined Petroleum product(s) of the grade(s) specified in the Agreement
- 1.1.7 Loading Instalation: the terminal and or refinery where products are loaded from on behalf of the Seller for the Buyer.
- 1.1.8 Full Train: means group of 20 - 26 Rail tank cars (RTC)
- 1.1.9 Barge: means
- a self- propelled vessel or towed/pushed dumb craft employed in port areas and sheltered waterways which is not classified as a sea going vessel (inland barge)
  - a towed/pushed dumb craft classified for sea-going trade (sea-going barge).
- 1.1.10 Vessel: means a tankship or other vessel which is wholly or mainly constructed or is adapted for the carriage of Product and shall, except where otherwise provided, be deemed to include Barges.
- 1.1.11 ITT: internal tank transfer or the in tank transfer means delivery within designated tank or tanks within Terminal or Tank farm.
- 1.2 In these Conditions references to any legislation or provision of any legislation include references to that legislation or provision as re-enacted, replaced, amended, consolidated or extended.
- 1.3 The expressions "Seller" and "Buyer" in these Conditions include their respective successors, legal personal representatives, heirs and estates or permitted assigns or transferees, of all or part of their respective interests in any contract governed in whole or in part by these Conditions.

## **2. APPLICABILITY**

- 2.1 Subject to any variation under section 2.2, the Agreement will be on these General Terms and Conditions of Sale and Delivery ("the Conditions") where not inconsistent with the Agreement's specific terms, to the exclusion of any other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing by the parties to the Agreement.

## **3. OFFERS/CONCLUSION OF CONTRACTS**

- 3.1 None of our offers is firm unless expressly so stated in writing. Any offer will remain valid for a maximum period of one working day from the date it is sent to the Buyer, unless otherwise expressly stated in writing, and may at any time be withdrawn or altered by the Seller.
- 3.2.1 A Term Contract, as this is evidenced in writing and sent by Seller to Buyer, becomes binding upon its execution (i.e. signing) by both parties or on the execution of the subject matter of the Agreement, whichever occurs first. The same also applies in case of amendments or additions in writing to a Term Contract.
- 3.2.2 A Spot Contract will be confirmed by the Seller in writing and will be sent by facsimile or by Email to the Buyer (no hard copy to follow), with the name of the Seller's authorized signatory. The Spot Contract becomes binding if the Buyer does not indicate his disagreement with the terms mentioned therein within 3 working days after receipt of same or on the execution of the subject matter of the Agreement, whichever occurs first. To determine receipt of the Spot Contract by the Buyer the provisions of clause 23 of these Conditions are applicable.

## **4. SAMPLES/SPECIMENS/ANALYSES**

- 4.1 Samples, specimens, analytical data and other information on the characteristics of the goods are not binding, unless expressly stated in writing.
- 4.2 Any Samples are to be collected by authorized personnel in accordance with valid technical and safety regulations and standards only.
- 4.3 Only and exclusively examination results of independent surveyor organizations or accredited laboratories are to be taken in to further account as representative Samples.

## **5. WARRANTIES**

- 5.1 The Seller makes no guarantees or warranties, express or implied of the merchantability, condition or suitability of the Product for any particular purpose or otherwise under the terms of Section 443 and 444 German Civil Code (BGB). The description of the Product that is the subject of the Agreement is deemed to be only a characterization of it, as per Section 434 Paragraph 1 German Civil Code (BGB).

## **6. PRICES**

- 6.1 In the event the specifications for a Product vary from those contemplated by the Parties when the Agreement was originally reached by virtue of industry practice, governmental regulations or any other reason, the Seller may request an adjustment to the price, in accordance with industry practice or in accordance with a mutual agreement.
- 6.2 If, between the conclusion of the contract and its execution whether by signing it or by execution of the subject matter of the agreement, there is an increase in customs duties, taxes or other



charges or the initial costs of the Seller with respect to transport or similar unexpected costs (storage costs/discharge tariffs), Seller is entitled to adjust the price accordingly, even if

## **7. TRANSFER OF RISK**

- 7.1 The risk on the Product(s) passes as the Product(s) reaches the flange connecting Seller's pipeline or other delivery facilities to the Vessel's tank truck's or railcar's permanent hose connection at the Loading Terminal, at which time the Buyer shall assume all risk of loss, damage, deterioration or evaporation of the product so delivered.
- 7.2 In respect of deliveries by in tank transfer (ITT), the risk passes at time and day and in nominated tank(s) as specified in the Agreement or as agreed between the parties prior product transfer being effected and, where applicable, confirmed by the owner/operator of such tank(s).
- 7.3 Any Products returned by the Buyer or its carrier are returned at full Buyer's risk unless the Products is being carried by the Seller or Seller's agent.

## **8. DELIVERY BY RAIL (FCA / DAT / DAP RAIL)**

- 8.1 No rail cars may be dispatched to the Loading installation without prior notification to the Seller and reconfirmation by the designated GST Representatives/Department.
- 8.2 Seller requires a minimum of five German working days' notice of rail liftings. Working days are Monday to Friday both days inclusive, public holidays excepted. Each rail car will be given a reference number which must be quoted in all correspondence.
- 8.3 The Buyer must confirm the loading date in writing in the form of a nomination made against a contract number and train reference number and include all the information necessary for completion of the freight and, where required, customs documents.
- 8.4 It is normal practice for rail cars to be loaded on a "first come first served" basis in order to avoid delays and other obstructions to the due course of business, always subject to the absolute discretion of the loading installation.
- 8.5 We reserve the right to return any rail cars without loading them if these have not been registered in advance with the loading installation or their technical condition do not allow to execute the loading operation.
- 8.6. The requirements of the Deutsche Bahn AG ("D.B.") must be complied with and we are entitled to refuse to load onto any railcar that does not meet the safety regulations as imposed by D.B. or is in any way defective or unsuitable to load the agreed Product. Any delays and/or costs caused as a result of Buyer's failure to supply suitable means of transportation as defined above, is to be for the Buyer's account.
- 8.7 Buyer shall provide the Seller prior to arrival at the loading installation with a complete list of all rail cars numbers, including the name of the sender and station of departure for ease of identification. We cannot be held responsible for any delays and costs in loading due to failure of the Buyer to provide the above list.
- 8.8 Buyer and Seller will closely co-ordinate train nominations, loading and dispatching and will inform each other in good time of any changes to the agreed program.
- 8.9 Waiting costs and other incidental costs are to be borne by the Seller only in cases where all the requirements as above stated have been complied with by the Buyer and the train was not loaded on the agreed loading date(s).

In all other cases such costs are to be borne by the Buyer. The Seller will pass on to the Buyer any such costs or charges and Buyer is bound to indemnify Seller promptly upon receipt of the relevant invoice.

## **9. DELIVERY AND NOMINATION OF VESSEL**

- 9.1 The Buyer must notify the arrival of a Vessel two German working days in advance of its arrival. Substitution of a notified Vessel will be deemed as a new nomination and will cause the requirement of notice time to start again. The nominated Barge must have a current valid inspection certificate by a European Barge inspection Scheme (EBIS) inspector. Barges that are not acceptable under the E.B.I.S. system will be rejected.
- 9.2 Permission for the Vessel to move to berth will be given on a "first nominated first served" basis in order to avoid delays or other obstructions to the due course of business, subject always to the Refinery's discretion.

Vessels loading up to a maximum permissible highwater fresh water draft at the loading Installation will be required to strictly adhere to the declared maximum drafts. The maximum high-water fresh water drafts and low water fresh water drafts are declared by the harbor authorities with daily amendments/updates given due to the daily/present water conditions. During loading, if, on a falling tide the vessel achieves the maximum low water fresh water draft, she will be required to cease loading. Loading shall recommence on low water and shall continue until either the ship has received the full nominated cargo, or until shortly before the next high water, whichever is sooner. Maximum draft and departure time shall be stipulated by the harbor authorities dependent on prevailing weather conditions.

- 9.3 It shall be Buyer's responsibility to ensure that the performing Vessel shall be able to load the minimum contractual quantity whilst at all times meeting the prevailing draft restrictions at the berth. The costs and consequences for failure to do so shall be for the Buyers account.

## **10. ISPS REGULATIONS**

- 10.1 The Buyer warrants that any Vessel nominated by the Buyer and duly accepted by the Seller shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of the Convention for the Safety of Life at Sea ("ISPS Code") and that the Vessel has not, during its last 10 voyages, called at any ports which are not fully compliant with the ISPS Code.
- 10.2 The Vessel shall, when required, submit a Declaration of Security (as required by the ISPS Code) to the appropriate authorities prior to arrival at the Refinery.
- 10.3 Notwithstanding any prior acceptance of the Vessel by the Seller, if at any time prior to the passing of risk and title in the Product to be loaded on the Vessel, it ceases to comply with the requirements of the ISPS Code:
- a) the Seller shall have the right not to berth and not to load such Vessel and any demurrage resulting shall be for the account of the Buyer;
  - b) the Buyer shall be obliged to substitute such Vessel with a vessel complying with the requirements of the ISPS Code to which in turn the provisions of clause 10.1 will apply.
- 10.4 The Buyer shall be responsible for any demurrage arising from delay to the Vessel at the loading port resulting from the Vessel being required by the Loading Terminal or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

## **11. LAYTIME AND DEMURRAGE (FOB DELIVERIES)**

### **11.1 Laytime and Demurrage in respect of deliveries to barges**

Laytime shall be in accordance with the Tankschiff Transportbedingungen (TTB), latest version.

Laytime shall commence no earlier than the expiry of notice period, the notice period being 2 full German working days before the expected time of arrival (ETA) of the barge at the loading terminal, or on commencement of loading, whichever is earlier and will end as soon as loading papers have been issued by Seller.

Any time in excess of two hours on re-measurement of the cargo, shall not count against laytime.

Any time spent or lost by any cause attributable to the barge or barge owner, shall not count against laytime.

Demurrage will be due only if and to the extent demurrage is due to the owner of the barge.

The demurrage rate will be the rate according to TTB rules or the rate agreed with the owner of the barge, whichever is the lower.

If the barge validly tenders Notice of Readiness (NOR) prior to commencement of the nominated ETA, then such NOR shall, for the purposes of demurrage, be deemed to have been accepted at 00.01 hours on the nominated loading date or on commencement of loading, whichever is the earlier;

If the barge tenders NOR after the nominated ETA, but within the laydays agreed, the Seller will try to arrange to berth such barge as soon as possible upon its arrival and the Seller's demurrage liability shall not commence until commencement of loading; and

The demurrage claim must be submitted to the Seller in writing within 40 days from completion of loading, stating in reasonable detail the specific facts upon which the claim is based and including a copy of the original invoice of the barge owner, official timesheets of loading and discharging installation and a copy of the nomination. If the Buyer fails to comply with these obligations, any claim for demurrage will be considered time barred and extinguished.

### **11.2 Laytime and Demurrage in respect of deliveries to sea going vessels**

Laytime and demurrage will be in accordance with the relevant charter party terms and conditions.

The Seller shall only be liable for demurrage to the extent actually paid by Buyer. Buyer must notify Seller of a demurrage claim within 14 days from Bill of Lading ("B/L") date and must provide Seller with a fully documented claim (i.e. notice of readiness and time sheet for loading and discharge port, copy of charter party with all amendments or, in the event of the charter party being temporarily unavailable within the said time period, a fixture recap with all applicable terms as well as owner's invoice) within 30 days from B/L date. If Buyer fails to comply with any of the obligations stipulated in this clause 11.2, then any claim for demurrage will be deemed time barred and extinguished.

## **12. FORCE MAJEURE/CONTINGENCIES**

- 12.1 Seller will not be liable for any loss or damage resulting from any delay or failure in delivery or receipt of product due to the occurrence of a force majeure event, including any fire, explosion, act of God, force of nature, war, military operation, national emergency, civil commotion or strike, breakdown of machinery (permanent or temporary) or malfunction of or damage to any premises, equipment or materials (including, without limitation, any computer hardware or software), when reasonably beyond Seller's or Seller's supplier's control. The same applies for a cessation or reduction in oil processing or any interruption of production caused as a result of a governmental order, a refusal to issue permit or any other events whether similar or dissimilar to the above, reasonably beyond Seller's or Seller's supplier's control which cannot be prevented by the exercise of due diligence.
- 12.2 In the event where Seller's Supplier production ceases or is reduced or impaired by any of the Reasons stated above or due to any other reason reasonably beyond Seller's control, the Seller shall be at liberty to withhold, reduce or suspend deliveries hereunder to such extent as the Seller shall in its absolute discretion determine and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers.
- 12.3 Upon the occurrence of a force majeure event, as this is defined in clause 12.1 above, the Seller shall notify the Buyer promptly in writing of such event(s) and to the extent possible inform him of the expected duration of the force majeure event(s) and shall exercise due diligence to prevent, eliminate or overcome such cause where it is possible to do so and resume performance as earliest as possible.
- 12.4 If the disturbance, etc. continues for a prolonged period (i.e. for a period longer than first anticipated), the Seller is entitled to effect delivery with a corresponding delay or, at its option, to terminate the contract immediately or later in whole or in part. The Buyer is entitled to terminate the contract if the Seller does not declare at Buyer's request with reasonable notice, whether it is terminating the contract.
- 12.5 In the event where Seller's supplier fails to effect delivery and performance, for whatever reason, the Seller will be released from its obligation to perform the contract and to effect delivery without liability for damages. The Seller's obligation in this event is limited to refunding of already collected amounts from the Buyer connected with the failed delivery. Seller will inform Buyer about such circumstances with short notice.

## **13. QUANTITY/QUALITY**

- 13.1 The quantity determined by the Loading Terminal is final and binding on the parties, save for fraud or manifest error.
- 13.2 The quality as determined by the data ascertained at the Loading Terminal is final and binding on the parties, save for fraud or manifest error.
- 13.3 If the Agreement contains a provision for the appointment of mutually acceptable independent inspectors, then their findings are final and binding on the parties, save for fraud or manifest error.

## **14. PRODUCT LIFTING**

- 14.1 Liftings must be pro-rated / evenly spread over the contractual period stipulated in the Agreement. Seller is entitled, at its discretion, to refuse delivery at any one time where Buyer fails or refuses to lift his contractual quantity evenly as stated above.

- 14.2 In case Buyer fails to lift the entire contractual quantity in any one month (if the contractual quantity is determined on a monthly basis in the Agreement), in any week (if the contractual quantity is determined on a weekly basis in the Agreement) or generally over the period stipulated in the Agreement, Seller is entitled, without prejudice to any other rights available to him by operation of law, to claim damages for non or partial performance of the contract, or, at his choice, to demand payment of a storage fee of Euro 0.50 per 1.00 cbm ( one cubic meter) for each calendar day of such delay for full amount of the underlifted quantity unless the Seller agree with the Buyer washout the underlifted quantity. The Seller has the right to suspend any further deliveries to the Buyer until the Buyer has paid the above fee for the underlifted quantities.
- 14.3 The Buyer is obliged to nominate the quantities to be lifted by the 20<sup>th</sup> day of the month preceding the month of the delivery/lifting. The nominated quantity has to correspond with the contractual quantity unless the Parties agree otherwise in writing. Buyer is obliged to lift the whole nominated quantity of the product. In case Buyer does not lift the entire nominated quantity, the provisions of clause 14.2 are applicable. In addition, Seller has the right to require specific performance of the agreement with respect to the under-lifted quantity or may, at his option, cancel the under-lifted quantity.

## **15. CLAIMS AND LIABILITIES OF THE SELLER**

- 15.1 The Buyer must inspect the Products immediately upon receipt. Any complaints/claims for material defects of the Products i.e. for the Product(s) not being in accordance with the contractual specifications, as per sections 434, 435 of the German Civil Code (BGB) must be made in writing to the Seller promptly upon detection but in any case, not later than 30 days after delivery/lifting accompanied by evidence fully supporting the complaint/claim. If the Buyer fails to do so within the period stipulated herein, any claim for material defects of the Product(s) becomes extinguished.
- 15.2 The Product(s) must be unmixed and distinguishable for a claim to be considered. A representative of the Seller or a jointly appointed independent expert will be permitted to take samples (at least 2 litres).
- 15.3 In the event of a claim by the Buyer for a material defect of the Product, as defined in 15.1, Seller reserves the right to choose whether he will remove the defect, at his own costs, or deliver a new Product. This applies only for defects that were existent at the time of the passing of the risk as set out in clause 7 of these Conditions.
- 15.4 Subject to the provisions of clause 20 of these Conditions, (Intra-group settlements/set-off), the Buyer may not set-off or withhold payment on the ground that he has a claim against the Seller, except when the claim is legally enforceable by a judicial verdict or is uncontested.
- 15.5 Any Seller's liability whether in contract or in tort, for any acts or omissions shall be excluded unless expressly provided for in these Conditions.
- 15.6 Unless expressly agreed otherwise in these Conditions any claims of liability arising under or in connection with the Agreement shall be time barred after a period of 1 year following delivery/lifting or, in the case of total loss, after a period of 1 year following the agreed delivery date.
- 15.7 In the case that the Seller is liable for damages, the extent of such liability shall be limited to such damages as can be reasonably foreseen, arising out of or in connection with the Agreement and which were or ought to have been contemplated by the parties at the time of the conclusion of the Agreement. Any payable damages are limited to a maximum amount of Euro 100,000.00, with the following exception: Any payable damages caused by delay are limited to 3 Month Euribor plus 0,5% based on the purchase price calculated for the time of such delay.

- 15.8 The limitations and exclusions of liability under clauses 15.5-15.7 do not apply to claims resulting from death or personal injury to Buyer or Buyer's staff caused by negligent breach of duty by the Seller or intentional or negligent breach of duty by a legal representative or an agent of the Seller;
- resulting from a grossly negligent breach of duty by the Seller or from an intentional or grossly negligent breach of duty by a legal representative or an agent of the Seller

or

  - resulting from a culpable violation of a fundamental contractual obligation.  
Fundamental contractual obligations include the obligation to deliver the Product(s) free of essential defects, and any other obligations whose fulfillment is a fundamental prerequisite for the proper implementation of the Agreement in the first place, on the fulfillment of which the Buyer regularly relies and may rely.
- 15.9 In case where the claim presenting concerns about the Sellers breach of any written warranties as stated under clause 3 of these Terms and Conditions, the Buyer may assert claims for damages pursuant to the German Civil Code (BGB).

## **16. CLAIMS AND LIABILITIES OF THE BUYER**

- 16.1 The Buyer is obliged to protect the rights of the Seller against freight carriers, warehouse keepers as well as other possible third parties and is insofar entitled to exercise its rights under the Agreement.
- 16.2 The Buyer is liable to the Seller, its Affiliates and their contractual partners for personal injury and material damage to their property and their premises caused by any act or omission committed by the Buyer, its employees or its agents who act on behalf of the Buyer in connection with activities performed under the Agreement. The aforementioned shall not apply in case when the Buyer can prove that any injury or damage was not caused by fault of the Buyer or its servants or agents.

## **17. CUSTOMS DUTIES TAXES**

- 17.1 The Buyer is fully responsible and liable towards the Seller, for any claims of third parties or authorities for the imposition of any taxes, tax penalties, customs duties and charges of any kind caused by own or others fault or by disregard or misinterpretation of any customs and mineral oil tax regulations.
- 17.2 The Buyer irrevocably undertakes to indemnify the Seller in full against all claims of third parties, particularly against the imposition of any taxes, tax penalties, customs duties and charges of any kind.

## **18. PAYMENT**

- 18.1 The Buyer is obliged to pay the invoiced amount, free of expense, by the due date as stipulated on the invoice sent to the Buyer by the Seller by electronic mail (in pdf format), with no hard copy to follow.

If no terms of payment are stipulated, the Buyer will effect payment promptly after receipt of invoice so that the amount is in Seller's account with good value within 10 days after receipt of invoice. If no payment is received by the Seller within the payment period set forth in the invoice, or, if no period is set, within the aforementioned 10 days after receipt of invoice, the Buyer will be in default of payment with no further reminder required. For the purposes of these Conditions and without prejudice to the provisions of clause 23.6. below, the invoice will be deemed received within one hour after the time stated on the sender's email (taking into account the time difference between the parties),

- 18.2 The Seller may withhold delivery of any consignment of goods, or may forthwith cancel any contract with a Buyer if the Buyer does not promptly pay any amount due from it (however that amount may become due) by the latest time for payment permitted by the Agreement or if no



terms of payment are stipulated in the Agreement, by the latest time of payment according to clause 18.1, second para. The Seller will not be liable if any delivery is withheld, or the Seller's contract with the Buyer is cancelled, in such circumstances. The cancellation of a contract is subject to a prior demand for payment within a reasonable term sent by the Seller to the Buyer.

- 18.3 When cheques or bills of exchange are accepted, the debt will be discharged only by payment. All costs incidental to this mode of payment shall be borne by the Buyer. Bills of exchange will only be accepted with the express consent of the Seller in writing.
- 18.4. If the period allowed for payment is exceeded or Buyer is in default of payment, the Seller is entitled to charge interest at 9 percentage points above the basic interest rate ("LIBOR for USD payments or EURIBOR for EUR payments") per annum but in any event not below 0.97% per each calendar month, unless in the latter case the Buyer is able to prove that such costs have not been incurred or they are substantially less than 0.97% per month, in which case the actual costs will be charged but in any event not below 9 percentage points above the Ba per annum. Any possible exchange losses or other damages caused by default will be asserted independently. No particular reminder is required.
- 18.5 If the Seller takes any steps to collect any amount due and payable or takes any legal proceedings to recover any such amount, all the costs of the collection procedure or legal proceedings must be fully paid by the Buyer or reimbursed by the Buyer to the Seller, without any deduction or set-off. The Buyer is entitled to set-off counterclaims that are legally enforceable by judicial verdict or are uncontested.
- 18.6 If the Buyer's ability to pay is at any time within the duration of the Agreement in doubt, according to objective and reliable information of the Seller or if payments of previous deliveries have not been effected in accordance with the terms and conditions agreed, the Seller shall be entitled to the rights under § 321 BGB (German Civil Code) (defence of uncertainty) without prejudice to any other rights or legal remedies available to it.
- 18.7 Notwithstanding any other provision of these Conditions, although the Buyer may otherwise be entitled or required to make a payment to the Seller in one currency, the Seller may require the Buyer to make that or any other payment to the Seller in a different currency. In such a case the Seller and the Buyer will agree on an appropriate alternative currency and 2 business days before the relevant payment date they will fix the relevant exchange rate to be used to calculate the amount of the payment. In case the parties do not reach an agreement latest 2 business days before the relevant payment date for any reason, the Seller may set the exchange rate unilaterally (but not unreasonably) in accordance with section 315 German Civil Code (BGB). For the purposes of this Condition a "Business Day" is a day when deposit taking banks in Germany are open for over the counter deposit taking.
- 18.8 If due date falls on a Saturday or Frankfurt am Main Bank holiday other than a Monday, then payment shall be due on the preceding Frankfurt am Main banking day. If due date falls on a Sunday or Monday Frankfurt am Main bank holiday, then payment shall be due on the following Frankfurt am Main banking day.

## **19. SETTLEMENTS**

- 19.1 The Buyer may only make a set-off against uncontested counterclaims or counterclaims that are legally enforceable by judicial verdict or assert a right of retention in respect of these claims. A trader's right of retention (Section 369 HGB, German Commercial Code) and a right of retention of the Buyer in respect of contested claims are excluded.
- 19.2 The Seller is entitled to make a set-off against claims that it and its Affiliates hold against the Buyer.

## **20. RESERVATION OF TITLE**

- 20.1 The Product ("Delivered Products") remain property of the Seller until receipt of the full payment without any offsets or deductions from the Buyer to the Sellers designated Bank account.
- 20.2 The Buyer may sell the Delivered Products only in the ordinary course of business and only to the extent it has met its financial obligations towards the Seller. Pledging and transfer by way of security are not permissible.
- 20.3 If the Buyer defaults in payment or fails to fulfil its obligations under Art. 20.2 above Seller may withdraw from the contract upon reasonable notice without prejudice to its claim for payment or to its rights under Art. 20.1 above and demand return of the Delivered Products, enter Buyer's premises and repossess, remove and resell the Delivered Products for the purpose of recovery and the Buyer may not make any claim against the Seller or its employees or agents in respect of any such demand, entry, repossession, removal or resale;
- 20.4 If the Delivered Products are mixed, blended or combined, the Buyer hereby transfers to Seller as security for Seller's claims its co-ownership in the Delivered Products so mixed, blended or combined proportionally in terms of the value (invoice value), agreeing at the same time to hold these in custody for the Seller free of charge. If the Delivered Products are processed by the Buyer, the Seller is deemed to be the producer and owner of the processed products. The Buyer will hold them in custody for the Seller free of charge.
- 20.5 As security for Seller's claims, Buyer, when acquiring any Delivered Products, transfers to Seller, together with all ancillary rights, all claims resulting from the sale or processing of Delivered Products, including any rights to the products sold to a third party or to the processed products.
- 20.6 Upon Seller's request, the Buyer is obliged to provide the former with proof of its claims against the subsequent Buyers and to notify the latter of the assignment, on the understanding that payment up to the amount of Seller's claims be made exclusively to Seller. Seller is entitled at all times to inform the subsequent Buyers of the assignment and to collect the amounts outstanding itself. The Buyer is not authorized to make an assignment elsewhere. It is entitled to collect the debt so long as it fulfills its financial obligations towards third parties as well. The Buyer must inform Seller without undue delay of any attachments of and other seizures by third parties of Seller's Delivered Products.
- 20.7 If the value of the securities existing for Seller under the above paragraphs exceeds the claims to be secured by more than 10%, Seller will at its option, at the request of the Buyer, release an equivalent part of those securities or arrange for their release.

## **LANGUAGE**

- 21.1 These Conditions have been written in the English language which is the sole authentic language of these Conditions. If these Conditions are translated into German and there is any ambiguity between English language version and the translated version, the English language version prevails in all cases.

## **SEVERABILITY**

- 22.1 If any provision herein is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Conditions and the Agreement and the remainder of such provision shall remain in force and effect.



## **23. NOTICES AND COMUNICATION**

- 23.1 Any notices (including communication concerning amendments or additions to terms and conditions, or the termination of the Agreement) to either of the Parties must be in English, in writing, signed on behalf of the party by an authorized representative and must be served by personal delivery, by pre-paid post, by facsimile transmission or by courier to the other party's last known business address and facsimile number specified for this purpose in the Agreement.
- 23.2 Any notice sent by pre-paid post will be deemed to be effectively served 5 working days after it has been placed in the post, in the case of facsimile immediately once the sender's facsimile machine has generated a report that the facsimile has been fully transmitted, and in the case of courier on the date the addressee or an employee of the party to whom it is addressed signs a "received" report.
- 23.3 Any notice given as aforesaid becomes effective at the time it is deemed effectively served on the addressee, as provided in clause 23.2, even if in the case of a facsimile transmission the addressee never read the notice in question (whether because of a power failure or otherwise), or in the case of pre-paid post or courier delivery, the person to whom the notice was addressed never read the notice in question.
- 23.4 If, but for this provision, deemed receipt of a notice under clause 23.2 would occur:-
- 23.4.1 before 9.00 a.m. on a Working Day, the notice will instead be deemed to have been received at 9.00 a.m. on that day; or
- 23.4.2 after 5.00 p.m. on a Working Day, or on a day which is not a Working Day, the notice will be deemed received at 9.00 a.m. on the next Working Day.
- 23.4.3 for the purpose of this clause 23.4 "Working Day" means any day which is not a Saturday or a Sunday or a public holiday at the place to which the notice is sent.
- 23.5 Any changes, amendments or additions to these terms or to the terms of the Agreement are not valid unless they are made in writing with notices to be given in accordance with the provisions of this Section 23; this applies also to any changes of the foregoing half-sentence.
- 23.6 Notices by Email
- Any communication other than amendments to the contract, assignment, termination and commencement of legal proceedings, may take place by e-mail. Any message sent by e-mail shall be sent to the e-mail address of the other party specified for this purpose in the Agreement and shall be deemed to have been received if sent on a business day of the recipient before 5:00 pm (local time of the sender) then on that day; in any other case, on the business day of the recipient after the date it was sent.

## **24. WAIVER**

- 24.1 No waiver by Seller of any breach of any of the terms and conditions herein and/or in the Agreement shall be construed as a waiver of any subsequent breach of the herein stated or any other terms and conditions.
- 24.2 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Agreement and/or these Conditions will not be construed as a waiver of any of its rights under the Agreement and/or these Conditions.

## **25. CONFIDENTIALITY**

- 25.1 No party will (and each party will take all reasonable precautions to ensure that none of its officers, employees or agents will):
- Disclose any term of the Agreement.
  - Disclose or use any information which is acquired under or arising out of or in connection with the Agreement or which has been acquired in negotiations leading up to conclusion of the Agreement, except as is reasonably necessary for the performance of the terms of the Agreement or as the parties may agree in writing.

## **26. JURISDICTION AND APPLICABLE LAW**

- 26.1 The place of performance for all deliveries is the place of dispatch. The place of performance for payment of any/all sums due by the Buyer is at Buyers bank counters in Hamburg and/or Mülheim an der Ruhr.
- 26.2 The courts of Hamburg will have jurisdiction for all legal disputes, as well as for procedures deciding claims arising out of bill of exchange and cheques.
- 26.3 These General Terms and Conditions and any legal relationship between the contracting parties shall be subject to the law of the Federal Republic of Germany excluding the international uniform law on sales and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).