

**General Terms and Conditions of Sale and Delivery  
of Hübers Verfahrenstechnik Maschinenbau GmbH**

**I. Scope**

1. All goods, services and offers of Hübers Verfahrenstechnik Maschinenbau GmbH (hereinafter: Hübers) shall be provided exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These shall form an integral part of all contracts concluded by Hübers with its contracting parties in respect of the goods or services offered by Hübers. They shall also apply — in their respective current version — to all future goods, services or offers provided to the buyer, even where they are not agreed again separately.
2. The buyer's general terms and conditions shall not apply to the supply relationship unless Hübers has expressly agreed to their applicability in writing. Hübers's General Terms and Conditions of Sale and Delivery shall also apply even if Hübers, despite being aware of conflicting or deviating terms and conditions of the buyer, carries out the delivery without reservation.

**II. Formation of Contract, Subject Matter and Scope of Supply by Hübers and Responsibilities of the Buyer**

1. All offers made by Hübers are subject to change and non-binding unless they are expressly designated as binding or contain a specific acceptance period.

A binding contract shall only be formed through a written or electronic order confirmation from Hübers. The buyer shall be bound by its order for a period of four weeks.

The scope of delivery shall be determined by Hübers's written or electronic order confirmation. Any ancillary agreements or amendments shall only be effective if confirmed in writing or electronically by Hübers.

2. Unless otherwise agreed in writing, all goods shall be designed for three-phase 230/400 V 50 Hz power and a control voltage of 230 V.
3. The following services shall not form part of Hübers's scope of supply, unless the parties have expressly agreed otherwise in text form:
  - Constructing foundations and all other adaptations and alterations to existing buildings and facilities required for the integration of the goods into the building or for the transport of equipment or equipment components within the building;
  - Obtaining any public permits required for the installation and operation of the goods at the place of use;
  - Supplying energy at the points of consumption;

- Unloading the goods at the buyer's premises, providing crane systems as well as lifting and transport equipment and scaffolding;
  - Verifying the suitability or load-bearing capacity of parts of the building to withstand static and/or dynamic loads imposed by the goods;
  - Inspection of the goods by the operator that is required prior to initial commissioning in accordance with the German Ordinance on Industrial Safety and Health (BetrSichV);
  - Assembling and commissioning the goods;
  - Safety and protective equipment shall be procured and installed by the buyer in accordance with the regulations and laws applicable at the place of use. The same shall apply to fire detection and fire extinguishing equipment.
4. The buyer shall bear sole responsibility for ensuring that all structural requirements at the place of use of the goods — including, but not limited to, assembly, installation and operation — are properly fulfilled. This shall also apply where malfunctions of the goods occur permanently or sporadically as a result of inadequate structural conditions. The buyer shall, at its own cost and responsibility, prevent or eliminate all harmful environmental impacts — in particular those that may impair the functioning of the goods. The buyer undertakes to provide Hübers, upon request, with evidence of compliance with the structural requirements and of the measures taken to prevent harmful environmental impacts.
5. Unless the parties have expressly agreed otherwise in text form, the buyer shall be responsible for the interfaces and the interaction of the goods with the buyer's own plant and machinery or those of a third-party manufacturer with whose plant and machinery the goods are intended to interact.
6. Where, at the time of conclusion of the contract, the workpieces and materials to be produced or processed by means of the goods have not yet been finally determined, the buyer shall bear all costs and risks for all necessary testing, inspection and approval work, both at Hübers's premises and at the buyer's. This shall include in particular the production of new samples, including the materials required for this purpose. All of the aforementioned services shall be paid for by the buyer in addition to the agreed contract price for the goods.
7. The buyer shall ensure that all environmental conditions required for the operation of the goods as set out in Hübers's offer are complied with.
8. All necessary environmental protection measures shall be carried out by the buyer at its own responsibility in order to ensure compliance with all relevant public-law provisions. For the avoidance of doubt: any responsibility of Hübers for compliance with limit values or similar that may have been expressly agreed between the parties (e.g. within the scope of the specification of the goods) shall remain unaffected.

9. The buyer shall further ensure that, in the production process, only the materials provided for or underlying the parties' process design are used as intended with respect to quality, chemical composition, dimensions and other specified properties. In addition, all prescribed operating parameters shall be strictly complied with by the buyer.
10. Where installation/assembly of the goods is carried out by Hübers, the provisions of Clause VI shall apply in addition.
11. Hübers reserves the right to make design and form changes to the goods unless (i) such changes significantly alter the goods and the changes are not reasonable for the buyer, or (ii) Hübers's particulars relating to the goods or services (e.g. weights, dimensions, utility values, load capacity, tolerances, technical data) and the representations thereof (e.g. drawings, illustrations) have been expressly agreed with the buyer as binding. The aforementioned particulars provided by Hübers in relation to the goods or services, and any related representations, are neither guaranteed nor, without an express written or electronic undertaking by Hübers, do they constitute a description of the agreed quality. Without any other written or electronic undertaking by Hübers, they shall instead constitute merely non-binding descriptions or specifications of the goods or services, from which deviations are permissible in accordance with the first sentence of this Clause II.11. Where the agreed quality of the goods or services has been bindingly agreed with the buyer, changes by Hübers shall remain permissible to the extent that they are required by mandatory legal provisions and are reasonable for the buyer. If such changes are not reasonable for to the buyer, the buyer shall be entitled to withdraw from the contract. Further claims are excluded.
12. Hübers retains all rights, in particular title and copyright, in all documents, drawings, illustrations, specifications, samples, etc. made available to the buyer. The buyer shall use these exclusively for the purpose provided for under the contract. They shall be treated as strictly confidential and shall not be made accessible to third parties without the prior written consent of Hübers.

### **III. Prices and Payment**

1. The prices apply to the scope of service and supply set out in Hübers's order confirmations. Any additional or special service shall be charged separately. Unless the parties expressly agree otherwise, prices are in euros, EXW (Incoterms 2020), plus packaging and statutory VAT. Any customs duties, taxes, levies or similar charges shall be charged separately to the extent that they are to be borne by Hübers. All payments shall be made exclusively to Hübers.

2. If, after submission of Hübers's offer or after Hübers's order confirmation, significant cost factors change materially (i.e. by at least 10%) — in particular prices for purchased components, energy, labour, transport or insurance — Hübers shall be entitled to increase the prices reasonably, taking into account the interests of the buyer, in particular with regard to any obligations the buyer may already have entered into to resell the goods at a specific price.
3. Invoice amounts shall be payable upon receipt of the invoice by the buyer, in cash without any deduction, with all charges to be borne by the buyer, unless otherwise expressly agreed in writing. In the latter case, the timeliness of payment shall be determined by the receipt of payment by Hübers.
4. If the buyer fails to pay by the due date, the outstanding amounts shall bear interest at a rate of 5% per annum from the due date. If the buyer defaults on payment, Hübers shall be entitled to charge default interest at a rate of 9 percentage points above the applicable base rate per annum. The right to claim further damages resulting from payment default is expressly reserved; the buyer shall be permitted to demonstrate that Hübers has suffered no loss or a significantly lesser loss as a result of the payment default.

In the event of payment default, Hübers shall be entitled, in addition to default interest, to claim a flat-rate sum of EUR 40 in accordance with Section 288(5) of the German Civil Code (BGB). The right to claim damages exceeding this amount shall remain unaffected; however, any flat-rate sum received shall be credited against any such further claim for damages.

Default shall occur at the latest 30 days after receipt of the invoice and the due date, unless default has already occurred earlier by means of a formal notice of default.

The obligation to pay default interest and the flat-rate sum shall not preclude the assertion of further statutory claims arising from default of payment.

5. The buyer's right of set-off shall exist only where its counterclaims have been finally determined, are undisputed or have been acknowledged by Hübers. Furthermore, the buyer shall only be entitled to exercise a right of retention to the extent that its counterclaim is due and arises from the same contractual relationship.
6. Hübers shall be entitled to perform any outstanding deliveries only against advance payment or the provision of security if circumstances become known which are likely to materially impair the buyer's creditworthiness and which, in Hübers's reasonable discretion, jeopardise payment of Hübers's outstanding claims by the buyer.

#### **IV. Delivery and Delivery Times**

1. For delivery times, Hübers's order confirmation shall be decisive, to the extent that it expressly provides for or agrees a fixed time limit or a fixed delivery date. Delivery times and dates otherwise indicated by Hübers shall always be approximate only. The delivery time shall not commence before the buyer has provided any documents, permits and approvals to be procured by the buyer, nor before receipt of any agreed advance payment.

The delivery time shall be deemed to have been met if the goods have been made available at Hübers's own works by the expiry of the delivery time and Hübers has notified the buyer of readiness for dispatch.

2. Reasonable partial deliveries shall be permissible to an acceptable extent. This shall be the case where such a partial delivery is suitable for the buyer's intended use, the delivery of the remaining goods is ensured, and the buyer does not thereby incur any additional costs or significant additional effort.
3. Delivery is subject to timely and proper supply to Hübers by its own suppliers. Should Hübers, despite having previously concluded a corresponding cover purchase, be unable to procure the raw materials or components required for the manufacture of the goods in time due to circumstances for which Hübers is not responsible, and consequently be unable to deliver by the agreed date, Hübers shall not be liable for any delay in delivery and shall be entitled to postpone the fulfilment of its obligations by the duration of its inability to obtain supplies from its own suppliers, including a reasonable start-up period. The right of withdrawal shall exist only if it is established that delivery cannot be made within the foreseeable future or if it is not reasonable for the buyer to wait any longer. In the event of withdrawal, any payments already made by the buyer shall be refunded without undue delay. Hübers shall notify the buyer without undue delay of the failure to deliver and — where Hübers exercises its right to postpone the fulfilment of its obligations — of the new delivery date.
4. If Hübers is in default with a delivery or if delivery becomes impossible, the buyer shall be entitled to withdraw from the contract in accordance with the applicable statutory provisions. Hübers shall be liable for damages in the event of default or impossibility of performance only in accordance with the provisions of Clause X of these General Terms and Conditions of Sale and Delivery.
5. Force majeure events such as natural disasters (earthquakes, floods etc.), pandemics, war and conflicts, infrastructure and supply failures, or governmental or regulatory measures such as embargoes or export prohibitions shall entitle Hübers to postpone delivery by the duration of the impediment plus a reasonable start-up period. In respect of the part of the contract not yet performed, Hübers may in such case withdraw from the contract in whole or in part if performance is rendered impossible for a period of more than six weeks; any right of withdrawal of the buyer

shall exist in accordance with the applicable statutory provisions, but shall in any event require that performance by Hübers has been rendered impossible for a period of more than three months and that subsequent acceptance of performance from Hübers is not reasonable for the buyer. Strikes, lockouts, political unrest or unforeseen circumstances, such as operational disruptions, that render timely delivery impossible for Hübers despite reasonable efforts shall be treated in the same way as force majeure. This shall also apply where the aforementioned impediments occur during a period of default or at a sub-supplier. Hübers shall notify the buyer without undue delay if a force majeure event within the meaning of this Clause IV.6 occurs. The buyer may ask Hübers to declare within six weeks whether Hübers will withdraw from the contract in whole or in part in respect of the part of the contract not yet performed, or whether Hübers will deliver within a reasonable additional period. If Hübers fails to make such a declaration within the time limit set by the buyer, the buyer shall be entitled to withdraw from the part of the contract that has not yet been performed.

## **V. Packaging, Dispatch, Passing of Risk and Acceptance of the Goods by the Buyer**

1. Unless expressly agreed otherwise, Hübers shall select the type of packaging at its discretion.
2. Risk shall pass to the buyer at the latest upon handover of the goods to the carrier designated by the buyer. This shall also apply in the case of partial deliveries. Furthermore, the buyer shall be in default of acceptance if Hübers has notified the buyer of readiness for dispatch but the buyer refuses to take delivery of the goods on the specified date or fails to collect the goods on that date or to arrange for them to be collected by a carrier.
3. If, at the buyer's request or for other reasons within the buyer's sphere of risk, delivery is agreed to be postponed to a date later than originally scheduled, the buyer shall be charged for the storage costs incurred; where storage takes place at Hübers's works, such costs shall amount to 0.5% of the net invoice amount for the affected delivery for each month or part thereof during which the delivery date is postponed. In the event that the buyer is in default of acceptance, Hübers shall additionally be entitled to the rights and claims set out in Clause V.4 below.
4. If the buyer is in default of acceptance or breaches any other duty to cooperate, Hübers shall be entitled to claim compensation for the resulting loss, including any additional expenditure incurred. In such case, the risk of accidental loss or accidental deterioration of the goods shall also pass to the buyer. After setting a reasonable period and upon its expiry without result, Hübers shall also be entitled to otherwise dispose of the goods and to supply the buyer within a reasonably extended period. In all other respects, Hübers shall be entitled to the rights under Section 373 of the German Commercial Code (HGB) in the event of default of acceptance

5. The goods shall only be insured against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the buyer and at the buyer's expense.
6. Delivered items shall be accepted by the buyer even where they have minor defects, without prejudice to the buyer's rights under Clause IX of these General Terms and Conditions of Sale and Delivery, and shall not be returned prior to the buyer being entitled to withdraw from the contract pursuant to Clause IX.3.

## **VI. Installation/Assembly/Commissioning of the Goods**

1. Where the parties have agreed that Hübers shall also carry out the installation/assembly of the goods, the buyer shall remunerate Hübers for the relevant services in accordance with Hübers's charge rates applicable at the time the work is carried out. The same shall apply to the commissioning of the goods. Upon request by the buyer, Hübers shall provide the buyer with a price list for this in advance.
2. All structural work, including that required for supply lines, support structures, cable ducts and waste disposal lines, shall be completed prior to the commencement of installation/assembly to such an extent that installation/assembly can begin immediately upon delivery and be carried out without interruption. The substructure shall be fully dry and set. The premises in which installation takes place shall meet the specific requirements of the goods and shall be adequately protected against external influences, well lit and sufficiently heated.
3. The buyer shall be obliged to provide a dry, adequately lit and lockable room for the storage of all components of the goods, materials, tools and other items required for assembly, which shall at all times be under the buyer's supervision and control. The risk of accidental loss or accidental deterioration of these items during storage, assembly and commissioning shall be borne by the buyer.
4. The buyer shall furthermore be subject to the following obligations:
  - Timely and free-of-charge provision by the buyer of raw materials also used by the buyer in series production (all relevant grades) and of the required ancillary materials (e.g. protective sheets, separating layers, pallets) in the quantities specified by Hübers.
  - Provision by the buyer of suitably qualified and adequately trained personnel to the extent required by Hübers during set-up and testing, production start-up and handover of the goods in operational condition. Hübers may issue project-specific instructions for the execution of the work. The right to issue instructions (under employment law) shall, however, remain with the buyer, who engages its employees as agents.
  - Free-of-charge supply of electricity, compressed air and water in the quantities and with the connection capacity specified by Hübers.
  - Waste disposal

- Provision of all safety-related equipment to ensure the safety of all personnel on site, in particular in view of the fact that any modification or installation of the goods may take place while production is ongoing.
5. Where parts of the goods or the goods themselves are to be transported at the place of use, the buyer shall bear responsibility and risk for this.

## **VII. Retention of Title**

1. Hübers retains title to the goods until all claims against the buyer arising from the business relationship have been satisfied, including future claims arising from contracts concluded simultaneously or at a later date. This shall also apply where individual or all claims of Hübers have been included in a current account and the balance has been determined and acknowledged.
2. The buyer shall handle the goods subject to retention of title (hereinafter also the “reserved goods”) with care for the duration of the retention of title. The buyer shall furthermore insure the reserved goods at its own expense against fire, water and theft damage at replacement value for the duration of the retention of title. The buyer hereby assigns to Hübers all claims for compensation arising from such insurance. Hübers hereby accepts the assignment. If an assignment should not be permissible, the buyer hereby irrevocably instructs its insurer to make any payments exclusively to Hübers. Any further claims by Hübers shall remain unaffected. The buyer shall provide Hübers with proof of insurance upon request.
3. If the reserved goods are combined with other items not belonging to Hübers to form a single item, Hübers shall acquire co-ownership of the single item in proportion to the value of the reserved goods (final invoice amount inclusive of VAT) relative to the other items at the time of combination. If the reserved goods are combined with other items in such a way that the buyer’s item is to be regarded as the principal item, the buyer hereby transfers to Hübers a proportionate share of co-ownership in that item. Hübers hereby accepts this transfer. The provisions of this Clause VII.3 shall apply accordingly, if the reserved goods are mixed or processed with other items.
4. The buyer shall be revocably entitled to resell the reserved goods in the ordinary course of business. The buyer shall not be entitled to pledge the reserved goods, assign them as security or take any other action that would jeopardise Hübers’s title. In the event of attachment or other third-party interference, the buyer shall notify Hübers in writing without undue delay, provide all necessary information, inform the third party of Hübers’s ownership rights, and cooperate in the measures taken by Hübers to protect the goods subject to retention of title.
5. The buyer hereby assigns to Hübers all claims arising from the resale of the reserved goods in the amount of the invoice total inclusive of VAT, together with all ancillary rights. Hübers hereby accepts this assignment. Where the reserved goods are resold together with other goods not

supplied by Hübers, the claim arising from the resale shall be assigned in proportion to the value of the reserved goods (final invoice amount inclusive of VAT) relative to the other goods sold. If an assignment should not be permissible, the buyer hereby irrevocably instructs the third-party debtor to make any payments exclusively to Hübers.

6. The buyer shall be revocably authorised to collect the claims assigned to Hübers in its own name on behalf of Hübers. Hübers's right to collect these claims itself shall remain unaffected. However, Hübers shall not itself enforce the claims or revoke the authorisation to collect them for as long as the buyer duly fulfils its payment obligations. If, however, the buyer acts in breach of contract — in particular in the event of payment default — the buyer shall be obliged to disclose the assigned claims and the respective debtors to Hübers, to notify the respective debtors of the assignment, and to hand over to Hübers all documents and provide all information required by Hübers to assert the claims.
7. Hübers may revoke the buyer's right to resell the reserved goods and the authorisation to collect payment if the buyer fails to duly fulfil its payment obligations to Hübers, is in default of payment, suspends payments, or if insolvency proceedings in respect of the buyer's assets are applied for.
8. Hübers shall, upon request by the buyer, be obliged to release existing security to the extent that the realisable value of the security, taking into account customary banking valuation discounts, exceeds Hübers's claims arising from the business relationship with the buyer by more than 10%. The selection of the security to be released shall be at Hübers's discretion.
9. In the case of deliveries of goods to other jurisdictions in which the retention of title provisions under this Clause VII are not legally effective, the buyer hereby grants Hübers a security interest of at least equivalent value. If further measures are required for this purpose, the buyer shall take all necessary steps to grant Hübers such a security interest without undue delay. The buyer shall cooperate in all measures necessary and conducive to the effectiveness and enforceability of such security interests.

## **VIII. Software Updates**

1. To the extent that the goods comprise or consist of hardware operated by or incorporating software ("machinery with digital elements"), Hübers shall ensure that the software supplied corresponds to the state of the art at the time of passing of risk and does not have any known security vulnerabilities.
2. Hübers undertakes to provide the buyer with security-related updates (including patches to remedy vulnerabilities) during a reasonable period after passing of risk, to the extent that this is necessary to maintain product safety in accordance with the state of the art and is required by law. Such updates shall be provided free of charge.

3. The buyer shall notify Hübers without undue delay of any possible faults in the software and describe them comprehensively. The buyer shall, upon request, provide Hübers with all information required for fault rectification (in particular fault reports and descriptions as well as system log data). The buyer shall grant Hübers access to the machinery and/or the software for the purpose of fault diagnosis and rectification.
4. The buyer shall install, or have installed, any security-related updates provided without undue delay after receipt. If the buyer culpably fails to do so and any damage results from such failure, Hübers shall not be liable in this respect.
5. Further updates (e.g. functional upgrades or new features) shall only be owed by Hübers where this has been expressly contractually agreed.
6. The foregoing obligations shall apply without prejudice to any further statutory obligations under product liability law and mandatory provisions on product safety.

#### **IX. Defects Liability**

1. The buyer's claims for defects shall require that the buyer has duly complied with its statutory duty to inspect the goods and give notice of defects. Any notice of defects must be given by the buyer to Hübers in text form, specifying the type and extent of the defect precisely, so as to enable Hübers to examine the validity of the complaint.

The buyer shall furthermore inspect the goods immediately upon arrival for transport damage and shall note any damage so identified in writing on the consignment note, have such notice countersigned by the carrier, and notify Hübers thereof in writing.

Where, in accordance with the nature and intended use of the goods, they are to be installed in or attached to another item, the buyer shall, prior to the intended use, verify by means of appropriate tests whether the goods are suitable for installation in or attachment to another item and are free from defects after such installation or attachment.

2. To the extent that the goods are defective, Hübers shall be entitled, at its own discretion, to repair the defect or provide a replacement. Hübers shall bear the costs associated with repair or replacement in accordance with the statutory provisions. Where the buyer legitimately claims reimbursement of costs from Hübers in this connection that have been incurred through the use of the buyer's own staff or equipment, the buyer's reimbursement claims shall in that respect be limited to its internal costs. If the costs associated with repair or replacement increase as a result of the goods having been taken, at the buyer's request, to a place other than the agreed place of delivery, the buyer shall bear all additional costs arising therefrom.

Where the buyer has installed the goods in another item or attached the goods to another item, the buyer shall provide Hübers in advance with a cost estimate for the removal of the defective goods and the assembly and/or installation of the repaired or new goods. The buyer shall only be entitled to reimbursement of those costs for the removal of the defective goods and the assembly and/or installation of the repaired or new goods that are necessary and reasonable. The buyer shall be entitled to reimbursement of costs of removal and reinstallation only to the extent that the goods were installed in or attached to another item in accordance with their nature and intended use.

3. If Hübers is unwilling or unable to repair the defect or provide a replacement, refuses to do so, delays such action beyond reasonable periods for reasons attributable to Hübers, or if the repair or replacement fails for other reasons at least twice, the buyer shall be entitled, at its own discretion, to withdraw from the contract or to demand a corresponding reduction in the purchase price.
4. The buyer's right of withdrawal in respect of defects in the goods shall be excluded in cases where the buyer is unable to return the goods received, unless this is due to the fact that return is impossible by reason of the nature of the goods received, is attributable to Hübers, or the defect only became apparent during processing or transformation of the goods. Where a defective good is delivered or in the case of partial deliveries, the buyer shall only be entitled to withdraw from the entire contract or to claim damages in lieu of the entire performance in accordance with the provisions set out below if, judged by objective standards, the buyer has no interest in the performance already provided.
5. In respect of significant third-party products, Hübers's liability shall be limited to the assignment of the claims to which Hübers is entitled against the supplier of the third-party product. Should recourse against the supplier of the third-party product fail for reasons not attributable to the buyer (e.g. due to the supplier's insolvency), the buyer shall be entitled to claims for defects against Hübers in accordance with the provisions of this Clause IX.
6. Claims for damages shall be available to the buyer solely in accordance with Clause X of these General Terms and Conditions of Sale and Delivery.
7. Defects liability shall lapse if the buyer, without Hübers's consent, reworks the goods or has them reworked by third parties and the rectification of defects is thereby rendered impossible or unreasonably impeded. In any event, the buyer shall bear the additional costs of rectification of defects arising from such reworking. No defects liability or liability shall be assumed for malfunctions, defects or damage arising from the following causes:
  - unsuitable or improper use of the goods;
  - incorrect assembly and/or commissioning by the buyer or third parties, unless any assembly instructions provided by Hübers are defective and the defect is attributable thereto;

- modifications to the goods by the buyer or third parties;
  - natural wear and tear, unless Hübers has expressly guaranteed otherwise;
  - incorrect or negligent handling or storage;
  - unsuitable operating materials or substitute materials;
  - chemical, electrochemical or electrical influences, unless attributable to fault on the part of Hübers;
  - inadequate structural conditions at the place of use or harmful environmental influences, unless attributable to fault on the part of Hübers;
  - incorrect or incomplete documents, in particular samples or drawings, provided by the buyer to Hübers for the manufacture of the goods or which Hübers is required to observe in the manufacture in accordance with the buyer's specifications. Hübers shall not be under any obligation to examine the documents provided by the buyer for accuracy and completeness.
8. The limitation period for claims for repair or replacement, termination and price reduction on account of defects in the goods shall be one year from passing of risk. This shall also apply to the buyer's claims for reimbursement of costs in the case of the buyer's recourse claim pursuant to Section 445a BGB; the provisions of Section 445b(2) BGB shall remain unaffected. Any agreements deviating from the limitation period in the context of a recourse claim under Section 445a BGB shall be invalid if they are made before the recourse claim arises.

The limitation period for claims for damages based on defects in the goods shall be governed by Clause X.10 below.

## **X. Damages**

1. Hübers shall be liable in damages, irrespective of the legal basis, in particular arising from impossibility of performance, delay, defective or non-conforming delivery, breach of contract, breach of pre-contractual duties or tort, exclusively in accordance with this Clause X. In all other respects, any liability in damages is excluded.
2. Hübers shall be liable in accordance with the statutory provisions for wilful misconduct and gross negligence on the part of Hübers's legal representatives or senior executives, for injury to life, limb or health, for guaranteed characteristics, and under the provisions of the German Product Liability Act (ProdHaftG).
3. In addition, Hübers shall be liable:
  - for damage arising from negligence on the part of its legal representatives, senior executives and other agents in breach of material obligations under the contract;
  - for damage caused by its non-managerial agents acting with gross negligence or wilful misconduct without breach of material obligations under the contract.

Material obligations are those obligations whose fulfilment is necessary for the proper performance of the contract and on whose observance the other party to the contract regularly relies and is entitled to rely.

Hübers's liability for damages in cases falling under this Clause X.3 shall be limited in accordance with Clauses X.4, 5 and 6.

4. Hübers's liability for damages under Clause X.3 above shall be limited to the amount of damage of the type typically foreseeable under the contract.
5. Hübers's liability under Clause X.3 shall be excluded to the extent that the buyer has itself effectively limited its liability towards its own customers. In this regard, the buyer shall use its best endeavours to agree liability limitations with its own customers — also in favour of Hübers — to the extent permitted by law.
6. Within the scope of Hübers's liability under Clause X.3, indirect damage and consequential loss resulting from defects in the goods shall only be recoverable to the extent that such damage is typically to be expected when the goods are used for their intended purpose.
7. To the extent that Hübers provides technical information or advice and such information or advice does not form part of the contractually agreed scope of services owed by Hübers, it shall be provided free of charge and without any liability.
8. If the buyer wishes to assert a claim against Hübers under the foregoing provisions, the buyer shall notify and consult Hübers without undue delay and provide full details. The buyer shall give Hübers the opportunity to investigate the damage. The contracting parties shall coordinate with each other regarding the measures to be taken, in particular in the context of settlement negotiations.
9. The provisions on the exclusion of defects liability in Clause IX.7 of these General Terms and Conditions of Sale and Delivery shall apply *mutatis mutandis* to claims for damages.
10. The limitation period for claims for damages on account of defective delivery shall be one year from the date on which risk passes. In the case of the buyer's recourse claim pursuant to Section 445a BGB, claims for damages on account of defects in the goods shall not become time-barred before the expiry of the periods referred to in Section 445b(2) BGB. The limitation period for claims for damages on account of breach of other contractual obligations shall be one year from the end of the year in which the claim arose and the buyer became aware, or without gross

negligence ought to have become aware, of the circumstances giving rise to the claim and the identity of the debtor.

In the event of injury to life, limb or health, for damage under the German Product Liability Act (ProdHaftG), and for damage caused by fraudulent conduct, wilful misconduct, gross negligence or negligence in breach of material obligations under the contract within the meaning of Clause X.3 of these General Terms and Conditions of Sale and Delivery on the part of Hübers's legal representatives, senior executives or agents, the statutory limitation period shall apply in deviation from the first paragraph of this Clause X.10. The same shall apply to the limitation period for claims for damages under the German Product Liability Act (ProdHaftG).

## **XI. Industrial Property Rights**

1. Unless expressly agreed otherwise, Hübers shall only warrant that the goods do not infringe any third-party intellectual property rights (hereinafter: "IP rights") in the country in which Hübers's registered office is located, unless Hübers has actual knowledge of infringements of IP rights in the country in which the buyer's registered office is located or in any other country to which the buyer has notified Hübers in writing that the goods are to be taken for their intended use. If a third party asserts justified claims against the buyer on the grounds of infringement of IP rights by products supplied by Hübers and used in accordance with the contract, Hübers shall be liable towards the buyer within the scope of the provisions of the first sentence as follows:
  - a) The buyer shall notify Hübers in writing without undue delay of the IP right infringements asserted by the third party. Hübers shall, at its own discretion and at its own expense, satisfy such claims, defend against them or settle the dispute. The buyer hereby grants Hübers the sole authority to decide on the conduct of the legal defence and settlement negotiations and shall grant Hübers the necessary powers of attorney in each individual case, including the right to grant corresponding sub-powers of attorney.
  - b) If the delivery constitutes an infringement of an IP right within the meaning of the first sentence, Hübers shall remedy the cause of the IP right infringement within a reasonable period of time. To this end, Hübers shall, at its discretion and at its own expense, either obtain a licence for the relevant goods, modify the goods so that the IP right is no longer infringed, or replace them.
  - c) If remedying the IP right infringement fails, is not possible on reasonable terms or is not reasonable for the buyer, the buyer shall be entitled to the statutory rights of termination or price reduction. Hübers's obligation to pay damages shall be governed by Clause X of these General Terms and Conditions of Sale and Delivery.

- d) Hübers shall not be liable for third-party claims arising from IP right infringements to the extent that these are caused by specific instructions of the buyer, by an application not foreseeable by Hübers, or by the goods being modified by the buyer or an unauthorised third party, or being used otherwise than in accordance with the operating conditions recommended by Hübers or the agreed conditions, or being used in conjunction with products not supplied by Hübers. Hübers shall not be liable for third-party claims arising from IP right infringements to the extent that the buyer is responsible for them. If third parties assert such claims against Hübers, the buyer shall indemnify Hübers therefrom upon first request.
- e) Hübers shall also not be liable towards the buyer if the buyer acknowledges the infringement vis-à-vis the third party without Hübers's consent, or if, in the event that the buyer discontinues use of the product, the buyer fails to inform the third party that such discontinuation of use does not constitute an acknowledgement of an IP right infringement.

- 2. The buyer undertakes not to subject the goods and all associated components, software, documentation and other materials, in whole or in part, to any decompilation, disassembly, reverse engineering or other analysis aimed at determining the mode of operation, design, composition or method of manufacture.

The foregoing prohibition shall apply regardless of whether the reverse engineering is carried out by the buyer itself or by third parties acting on the buyer's behalf. Only such acts as are mandatorily permitted under Section 69e of the German Copyright Act (UrhG) (in respect of software components) or other mandatory statutory provisions shall be exempt from this prohibition. In such cases, the buyer shall notify Hübers in writing in advance of the nature and scope of the intended act and shall seek to reach a mutually agreed solution with Hübers.

- 3. In the event of a culpable breach of this provision, Hübers shall be entitled to claim damages from the buyer. Further statutory claims shall remain unaffected.
- 4. In the event of an IP right infringement, the provisions of Clauses IX.2, 5 and 6 shall apply accordingly.
- 5. The provisions on limitation periods in Clauses IX.8 and X.10 shall apply accordingly.

## **XII. Confidentiality**

- 1. If the parties have concluded a separate written confidentiality agreement, that agreement shall take precedence over the provisions of this Clause XII to the extent that the parties have made express provisions in that separate written confidentiality agreement.

2. The buyer shall keep confidential, without limitation in time, all information and documents made available to it by Hübers that are designated as confidential or, in light of other circumstances, are recognisable as trade or business secrets, and shall not record, disclose or use them, unless this necessary for the intended use of the goods or services supplied by Hübers. The buyer shall ensure, by means of appropriate contractual arrangements with its employees and agents/sub-contractors, that they too shall refrain from any independent use, disclosure or unauthorised recording of such trade or business secrets, at least for the duration of the business relationship. The confidentiality obligation binding on the buyer's employees and agents/subcontractors shall continue to apply after they leave the buyer's organisation, to the extent that this is legally permissible and reasonable.
3. The confidentiality obligation shall not apply to the extent that the content of the information and documents referred to in Clauses XII.1 and XII.2 consists of facts that are publicly known or subsequently become publicly known, without this being attributable to a breach of duty by the buyer. The confidentiality obligation shall also cease to apply to the extent that the buyer is required to disclose information by virtue of statutory provisions or an official or court order; in such case, the buyer shall notify Hübers in advance — to the extent legally permissible.

### **XIII. Use of Non-Personal Data**

To the extent that Hübers obtains non-personal data of the buyer in the course of performing the contractual relationship (in particular device characteristics and machine conditions, performance parameters, log data and other technical information), the following shall apply:

1. Hübers shall have the non-exclusive, non-transferable right to use the non-personal data generated or made available in the course of use of the product with digital elements ("Product Data" within the meaning of Art. 2(15) of EU Regulation 2023/2854, "**Data Act**") for the following purposes (hereinafter "**data licence**"):
  - to provide support, assess defects liability claims or comparable services, and to investigate claims by users, data owners or third parties (e.g. in relation to product malfunctions) in connection with the product or the associated service;
  - to monitor and maintain the functionality and safety of the product or the associated service and to carry out quality control;
  - to carry out fault analysis and optimisation of the functioning of the product or associated services offered by Hübers; and
  - for product development by Hübers and/or by third parties acting on behalf of Hübers.

2. The right of use shall include the right to access, process and evaluate the product data, to the extent necessary for the purposes set out in Clause XIII.1.
3. The right of use shall be limited to the purposes set out in Clause XIII.1. Hübers shall not use the product data to obtain insights into the buyer's financial position or assets.
4. The buyer shall receive no remuneration for the grant of the data licence pursuant to Clause XIII.1.
5. Without prejudice to other statutory requirements under EU or national law, Hübers shall be entitled to disclose non-personal data to third parties where such disclosure serves exclusively to support Hübers in achieving the purposes permitted pursuant to Clause XIII.1 and Hübers contractually obliges such third parties to comply with the requirements set out in Clause XIII.3.
6. To the extent that the buyer cannot access the data directly from the connected product, the provisions of Art. 4 of the Data Act on provision of data shall apply. The provision of the data shall be subject to the protection of Hübers's trade secrets and any right of refusal on the part of Hübers in accordance with Art. 4(6) to (8) of the Data Act.

#### **XIV. Export Control Law — Condition for Delivery by Hübers**

1. Delivery by Hübers is subject to the condition that any required export licences are granted and that no other obstacles arise from export or transfer regulations to be observed by Hübers as exporter or transferor or by a supplier of Hübers.
2. The goods supplied by Hübers (including software and technology) and/or the services to be provided may be subject to export control restrictions, such as the European Dual-Use Regulation (EU Regulation 2021/821) or existing embargo measures and sanctions against certain countries and/or persons. This shall also apply to all updates, upgrades or patches to software components. The buyer therefore undertakes, in the performance of the transaction, to observe and comply with all relevant and applicable export control provisions and rules, in particular the requirements and restrictions under the German Foreign Trade and Payments Act (AWG) and the German Foreign Trade and Payments Ordinance (AWV), the relevant EU regulations — in particular embargo measures targeting individuals and countries and counter-terrorism measures — and, where applicable, the corresponding restrictions and measures of the United States of America. This shall also apply, in particular, where the buyer supplies the goods delivered by Hübers to third parties, whether unprocessed or after further processing.
3. The buyer further undertakes to notify Hübers without undue delay of any prohibitions or licensing requirements under the relevant export control regulations applicable to the goods or services to be provided by Hübers or to the onward supply of the goods supplied or to be supplied by Hübers. This shall apply also and in particular where the performance of the transaction could constitute

an impermissible indirect provision of funds or economic resources within the meaning of the relevant EU embargo regulations, because one of the recipients of the service involved is directly or indirectly owned or controlled by a sanctioned natural or legal person, organisation or entity.

4. The buyer represents and warrants that (i) neither it, nor its affiliated companies, nor its or their shareholders, managing directors, senior executives or staff, nor — to the extent known to the buyer — representatives or other persons acting on behalf of any of the foregoing, are or have been subject to personal sanctions imposed by the European Union, the United States of America or any other country; (ii) it and/or the foregoing are not and have not been involved in any business relationships or activities that could reasonably be expected to lead to the imposition of such personal sanctions; (iii) neither it nor the foregoing directly or indirectly maintain business relationships or activities with or for the benefit of natural or legal persons, organisations or entities that are subject to such personal sanctions or that otherwise violate relevant export control provisions; (iv) neither it nor the foregoing carry out or have carried out any acts to circumvent the application of the relevant export control provisions; (v) neither it nor the foregoing have violated relevant export control provisions and/or are or have been the subject of official investigations or enquiries on account of a violation of the relevant export control provisions.
5. The buyer shall furthermore be obliged to provide Hübers fully and truthfully with all information, documents and data required for assessing the existence of export control restrictions and in particular for applying for any required export authorisation, to inform Hübers of the end use and final destination, and to use its best endeavours to assist in obtaining any such authorisation.
6. If the buyer breaches any of the foregoing provisions and Hübers and/or natural persons acting on behalf of Hübers are therefore subject to claims by a third party, including prosecuting authorities, Hübers shall be entitled at any time to declare termination of the contract. The buyer shall furthermore be obliged to indemnify Hübers against all claims asserted by third parties against Hübers on account of the buyer's breach and to compensate Hübers for any loss arising from such claims.
7. If, as a result of an export restriction, Hübers is or becomes wholly or substantially unable to fulfil its obligation to deliver goods or provide the service — for example because the delivery is prohibited or a required export authorisation is not granted — Hübers shall be entitled to declare withdrawal from the contract at any time. Any advance payments received shall be refunded to the buyer less the costs incurred by Hübers in connection with the performance of the contract. Otherwise, all claims in this case are mutually excluded.
8. “No-Russia/No-Belarus clause”: Any (onward) sale and/or any (re-)export and/or any other supply of the products supplied by Hübers (including software and technology), directly or indirectly, whether unchanged or incorporated into other products, to Russia and/or Belarus and/or via third parties for use in Russia and/or via third parties for use in Belarus is prohibited. In the event of a

culpable breach of this prohibition, Hübers shall be entitled to demand from the buyer a contractual penalty in the amount of 25% of the purchase price for the goods in question, as well as compensation for all losses incurred by Hübers, including fines imposed. The contractual penalty pursuant to this paragraph 8 does not constitute liquidated damages. Any further claims for damages exceeding this amount shall remain unaffected; the contractual penalty shall be set off against the damages payable. Hübers shall furthermore be entitled to declare withdrawal from contracts not yet performed or to terminate such contracts with immediate effect and/or to terminate the business relationship with the buyer. Furthermore, Hübers reserves the right to inform the competent authorities in the European Union of the breach of this prohibition.

## **XV. Final Provisions**

1. If the buyer is a merchant, the place of jurisdiction shall be the competent court at the registered office of Hübers. Hübers shall, however, be entitled to bring proceedings against the buyer before another court.

Notwithstanding the above, the following arbitration clause shall apply to contracts between Hübers and buyers based outside Germany:

All disputes arising from or in connection with this contract or relating to its validity shall be finally resolved in accordance with the rules of arbitration of the German arbitration institution Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS), excluding recourse to ordinary courts.

The arbitral tribunal shall consist of three arbitrators.

The place of arbitration shall be Bocholt.

The language of the proceedings shall be German.

The applicable substantive law shall be German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

2. Unless otherwise expressly agreed in writing, the place of performance for all obligations arising from the business relationship shall be the location of Hübers's registered office.
3. The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.
4. Should any provision of these General Terms and Conditions of Sale and Delivery be or become invalid, the validity of the remaining provisions shall not be affected. The contracting parties shall be obliged, by mutual agreement, to replace the invalid provision with a provision that most closely reflects its economic purpose. This shall also apply to any omissions in these General Terms and Conditions of Sale and Delivery.