

## General Terms & Conditions of Sale and Delivery

### 1. General Information

1.1. These General Terms & Conditions of Sale and Delivery (hereinafter "General T&Cs of Sale and Delivery") apply to all business relations between Supplier, i.e. – depending on the designation in the order confirmation – DAU GmbH & Co KG or an affiliate of Miba AG (hereinafter "Supplier") and an enterprise (hereinafter "Customer"); hereinafter, Supplier and Customer are referred to as "the Parties". In particular, these General T&Cs of Sale and Delivery shall in all instances, regardless of whether in the actual concrete case Supplier explicitly makes reference to these General T&Cs of Sale and Delivery, apply to all goods and services (hereinafter referred to as Goods & Services) provided by Supplier to Customer. These General T&Cs of Sale and Delivery are available at <https://www.dau-heatsinks.com/en/general-terms-conditions/> in several languages; the language version in the language in which the contract document for which these General T&Cs of Sale and Delivery form the basis was drawn up shall be deemed the authoritative version (the other language versions shall be deemed non-binding and are provided for informational purposes only); in cases of doubt, the German version shall be deemed the authoritative version.

1.2. Customer shall accept these General T&Cs of Sale and Delivery at the latest when it gives its contract declaration to Supplier. The legal relations between the Parties shall in all instances be governed by these General T&Cs of Sale and Delivery, unless other written provisions are explicitly agreed in a given individual case. This shall apply regardless of any reference made by Customer to its own terms & conditions of purchase or other terms and conditions, including if Supplier has not explicitly objected to their inclusion. Furthermore, this shall also apply in cases where Supplier, in full awareness that Customer's terms & conditions contradict or differ from its own, provides the contractual goods & services without reservation.

### 2. Conclusion of Contract

2.1. Offers made by Supplier are non-binding and subject to amendment. Orders placed by Customer which do not indicate an acceptance deadline shall be binding upon Customer for at least 30 days.

2.2. A contract with Supplier does not arise until a written order confirmation has been sent or Supplier has confirmed the order in writing.

2.3. Deviations between the order confirmation or accompanying documents and any statements made earlier by the Parties shall be deemed approved unless Customer explicitly objects to the deviations within an appropriate deadline, namely within 7 (seven) days of receiving the order confirmation. Customer does not have any right to object to the scope or applicability of these General T&Cs of Sale and Delivery.

2.4 All offers and the content thereof, e.g., descriptions of processes, components or technologies, drawings and designs, templates and/or software, which are provided as part of the offer (a) shall in all instances remain the intellectual property of Supplier, and Customer shall not acquire any associated rights or entitlements which have not been explicitly granted; (b) shall be made available to Customer for its personal use only, and only in order to allow assessment of whether to place an order with Supplier; (c) shall be kept confidential by Customer, and shall not be disclosed to third parties or duplicated in any way; and (d) if Customer decides not to place an order shall be returned to Supplier along with a suitable notification.

2.5 If Supplier provides an offer but no order is placed, Supplier reserves the right to charge Customer for labor and costs associated with preparing the offer, cost estimate and/or accompanying documents (e.g., plans).

### 3. Delivery; Tools; Production Site

3.1. The Goods & Services to be supplied (hereinafter referred to as contractual items, contractual goods or products) shall in all instances be defined in the specifications in the order confirmation and accompanying documents. In cases where unspecified reference numbers are used, they shall be deemed to refer to products manufactured by Supplier. Any changes to the contractual items require explicit written approval from Supplier. In the absence of explicit written agreement, intellectual property rights shall not be deemed to be part of the contractual items; furthermore, no rights or entitlements that have not been explicitly set forth in writing shall be transferred to Customer.

3.2. If, due to the nature of the production process, it is not possible to specify a particular volume in advance, overshipments or short shipments by Supplier shall be permitted. Furthermore, in the case of made-to-order production, special production or low-volume production, Customer shall accept the actual volume produced as the contractual items.

3.3. Unless agreed otherwise with Supplier, Supplier shall provide the machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and other items (hereinafter referred to as Supplier's tools) that are required to provide Customer with the contractual items, and shall keep them in good condition and, if necessary, replace them; Customer shall bear the costs of providing, maintaining and replacing them. Supplier is entitled to use Supplier's tools which it employs in supplying the contractual items to Customer to manufacture products for sale by Supplier to third parties. In the absence of explicit written provisions, which must also contain clauses regarding price and maintenance, Supplier's tools and the delivery of spare parts are not included in the contractual Goods & Services and Supplier retains ownership of Supplier's tools.

3.4. At any time, Supplier is entitled to shift the production site for the products to a different location, which may be operated by another Supplier group company.

3.5. Customer agrees to trace and document the use of each Good, in particular to maintain records regarding the source and lot number of each Good, and to keep such records for at least fifteen years from delivery.

#### **4. Intellectual Property**

4.1. Supplier retains all industrial property rights and intellectual property rights to and associated with the contractual items, their application and/or processes carried out with them, and their production methods, and to components, software (along with the source code, object code, user documentation, algorithms, user interface etc.), and to processes, plans, sketches, descriptions, drawings, manuals, assembly instructions, calculations, offers, cost estimates, other technical documents, templates, prototypes, catalogues, brochures, illustrations etc., including but not limited to all patent rights, trademark rights, design rights, copyright and other design rights, and/or rights to know-how and commercial, technical and process engineering information. Supplier alone is the holder of these rights, and they shall continue to be held by Supplier. Aside from the simple right for Customer to use the contractual items for their intended purpose – in their concrete form and configuration as received from Supplier – Customer shall not be granted any rights, and in particular shall not be granted licensing or utilization rights.

This right to use the contractual items for their intended purpose shall be held by Customer only, and is not transferable or sublicensable. Only Supplier is entitled to use or exploit those rights or to apply for protective rights and/or to uphold the rights in other ways. Customer is not entitled to modify the appearance of the contractual items in any way; in particular, it shall refrain from removing or modifying Supplier's brand name or other identifying marks.

4.2. Insofar as Customer is provided with manuals, end user documentation, similar instructions or other information, they shall be used solely to facilitate proper operation and use of the contractual items. Insofar as the contractual items include software, usage rights shall apply only to the contractual items for which the software was acquired or along with which the software was supplied, in order to facilitate operation of and solely for the duration of active use of the contractual items, and solely for the period of use of the contractual items by Customer.

4.3. Supplier shall exclusively and comprehensively retain all rights to outcomes, findings, developments, inventions etc. which arise in connection with Supplier's performance and which relate to the contractual items, including if Goods or Services are supplied on the basis of Customer's specifications or if Customer makes any other contribution thereto. Any rights which arise on Customer side shall be automatically transferred to Supplier when the outcomes, findings, developments, inventions etc. arise and shall automatically pass to Supplier, so that Supplier becomes the sole and exclusive rights-holder and beneficial owner. Furthermore, exploitation rights shall be comprehensively and exclusively assigned to Supplier.

4.4. Only Supplier is entitled to submit applications for protective rights or invoke priority rights (if applicable). All applications for protective rights shall be made and maintained at Supplier's discretion.

4.5 In the case of copyright-protected outcomes, Customer hereby grants Supplier the exclusive right to utilize the outcomes without chronological, material or geographic limitation based on all currently known or future types of exploitation, and in particular to duplicate, disseminate, lease and lend, transmit or send them via wireless or wired connection, or present, show or display them and make them available, and to grant all rights to the outcomes to third parties gratis or against payment or to grant sublicenses, and in doing so permit the third parties to utilize the outcomes to the same extent. Furthermore, Supplier is entitled to adapt the outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or hand them over to third parties.

4.6 Documents and information shall not be forwarded to third parties without Supplier's explicit written permission, and any use beyond what has concretely been agreed is prohibited. In particular, Customer shall not be granted any licensing rights and/or ownership rights to Supplier's documents, information, intellectual property, production systems or tools, including in the event of inadequate or late performance or complete lack of performance.

4.7 If Supplier is to grant rights to Customer, an explicit written provision shall first be drawn up, and unless explicitly stipulated otherwise, shall only include non-exclusive rights without the right to the transfer or granting of sublicenses and without the right to adapt. Customer shall not assert any rights relating to protective rights applications, and in particular shall not assert rights based on prior use.

4.8 Customer is not entitled to modify Supplier's brand name or other identifying marks, and is not entitled to remove them from the contractual items, packaging and/or accompanying documents, and/or is not entitled to use them without the aforementioned marks. If Customer resells the contractual items, it shall refrain from modifying or removing the items' identifying marks.

4.9 If, in order to provide the contractual items, it is necessary to use existing intellectual property rights and/or know-how belonging to Customer, Customer shall grant Supplier the necessary usage rights, which shall be global, non-exclusive, gratis, non-transferable, and sublicensable to subcontractors only (if appropriate), in order to ensure that the contractual items can be provided and delivered to Customer or a third party specified by Customer during the life of the business relationship.

## **5. Audits**

Customer is only entitled to conduct audits of Supplier or its vendors if it has explicit written permission of Supplier.

## **6. Payment; Payment Terms**

6.1. All of Supplier's prices are subject to statutory value-added tax. Price lists shall be considered non-binding and for informational purposes only.

6.2. The basis for Supplier's prices is the cost structure (consisting of the costs of raw materials, development, production and wages, taxes, customs duties and other charges) as of the date on which Supplier issues the order confirmation. If, in the period leading up to the respective (partial) delivery, this cost structure increases by at least 10%, the relevant price shall be modified based on the change in the cost structure. The agreed prices do not include any payment for granting or transfer of rights (if applicable). Such compensation shall always be shown separately.

6.3. Supplier's invoices are payable in full without charges or deductions of any kind within 30 (thirty) days of the invoice date.

6.4. Customer is not entitled to withhold payment from Supplier.

6.5. Customer is only entitled to offset against Supplier if the claims are res judicata or have been explicitly acknowledged in writing by Supplier.

6.6. Supplier is entitled to offset or withhold amounts to be paid by Supplier or other companies affiliated with Miba AG against Customer and companies affiliated with Customer.

## **7. Delivery, Customs and Export Controls**

7.1. Supplier shall deliver Free Carrier (FCA own plant or freight warehouse of Supplier, per Incoterms 2010) including packaging.

7.2. A Supplier contract shall only be deemed a fixed-date transaction (§ 919, Austrian Civil Code [ABGB]) if that has been explicitly agreed in writing. Aside from that, a delivery deadline or delivery date shall only be binding upon Supplier if it has explicitly provided Customer with a written guarantee to that effect.

7.3. Supplier is entitled to make partial deliveries. Refusal to accept the contractual items shall not release Customer from its payment obligation.

7.4. Delivery periods shall start at the earliest when Supplier sends its order confirmation. If Supplier has not received all necessary documents and information to allow fulfillment of the contract, or if Customer has not completely fulfilled its duty to cooperate, the delivery period shall be suspended.

7.5. If delivery is delayed due to events beyond Supplier's control, including but not limited to force majeure, official actions, seizure, natural disasters, civil unrest or war, transport disruptions, interruption of operations, labor disputes, or if a vendor fails to deliver to Supplier or delivers in violation of contract, the delivery deadline shall be extended accordingly (and the delivery date shall be moved), including an appropriate restart period. If, due to such events, a delivery is delayed by more than the length of the original delivery period (or the period between the order confirmation and the delivery deadline), either Party is entitled to withdraw from the part of the shipment affected by the delay, provided it sends an explicit written notification within the 14-day period that follows the end of the aforementioned extension period.

7.6. If, pursuant to relevant legislation, Customer is entitled to withdraw due to delay on the part of Supplier, in the case of partial deliveries the right to withdraw shall only apply to the delayed part of the shipment. Customer can only invoke a right to withdraw if it has first set Supplier an appropriate grace period for delivery by sending a written notification.

7.7 Customer bears the responsibility for correct import customs clearance in the country of destination and pays relevant import duties and taxes. Supplier is responsible for the correct exportation of Goods & Services from its customs territory and shall comply with all associated legal obligations.

7.8 Supplier is entitled to refrain from making a delivery or rendering performance if it is prohibited under national or international law (e.g., embargoes, US (re)-export control regulations, other sanctions). If license requirements apply, Supplier is entitled to refrain from making the delivery or rendering performance until the relevant authority has granted the necessary license. If necessary for export control checks by authorities or by Supplier, Customer shall, upon request, immediately provide all information about the end user, the final destination and the intended end use of the goods to be delivered or the services to be rendered. In particular, this applies for deliveries to countries subject to UN-, EU- and US- embargoes and deliveries to other countries where restrictions due to sanctions regulations of Supplier's exporting country apply.

7.9 If goods are manufactured on the basis of drawings and specifications provided by Customer, Customer undertakes to indicate separately and in writing if the goods to be delivered (including provided software and technology) are covered by export control lists in accordance with EU- or US- export control regulations as well as the national export control laws of the exporting country of the goods (e.g. common list of military/defence related products of the EU, Annex I to EC Dual Use Regulation No. 428/2009, US-Munitions List, US-Commerce Control List). Customer shall inform Supplier immediately in case of any changes regarding licensing requirements of provided Goods or Services based on technical or legal changes, or based on official decisions.

7.10 Customer undertakes to comply with all UN- EU- and US- sanctions regulations and to check its business partners and suppliers against current UN-, EU- and US- sanctions lists. Any violation of these export control provisions shall entitle Supplier to immediately terminate all existing contracts with Customer due to significant grounds. Moreover, if Customer is listed on an UN- EU- or US- sanctions list, Supplier reserves the right to terminate all business relations, payment flows and performance with immediate effect. Furthermore, in the event of infringement of any of these compliance provisions, Customer shall comprehensively hold harmless, defend and indemnify Supplier from and against any and all resulting damages and claims.

## **8. Warranty**

8.1. The warranty period is 12 (twelve) months following delivery of the Goods.

8.2. Supplier hereby provides warranty that as of the contract date the purchase and use of the contractual items do not infringe any ownership rights of third parties in Supplier's country of domicile, and that the export of the contractual items complies with the export regulations in Supplier's country of domicile. Supplier does not owe Customer an overall system, but rather merely individual components. Accordingly, Supplier only provides warranty that the contractual items meet the concrete technical specifications explicitly agreed in writing as of the date of delivery. Supplier does not provide any further warranty. If performance is rendered/completed based on Customer's specifications and requirements, Supplier only provides warranty that performance was rendered in accordance with Customer's requirements and does not provide warranty for the appropriateness of the resulting structure, composition, design etc.

Specific characteristics, features and usage options of the contractual items shall only be deemed to have been promised if explicitly agreed in writing. In particular, Supplier does not provide warranty of suitability or possible uses which have not been explicitly promised in writing; and it is hereby explicitly stated that there is no implicit or explicit warranty of merchantability or fitness of the contractual items for a particular purpose, nor any warranty regarding the system in which the contractual items are installed. Furthermore, Supplier provides no warranty with respect to defects which are caused by the materials supplied by Customer in order to manufacture the contractual items or by the instructions issued by Customer, nor for functional defects resulting from unanticipated environmental conditions, design defects or other design-related problems.

Under no circumstances shall Supplier be held liable for (i) changes to the product which were carried out by Customer or a third party (ii) changes which Supplier has carried out based on a request from Customer (iii) use of or connection of the contractual items or the combination of the contractual items with other products by Customer or a third party (iv) contractual items which were manufactured in accordance with the specifications by Customer or a third party.

Declarations and promises by Supplier, in particular assurances of quality, shall not be deemed guarantees in the legal sense [*Garantien*] unless explicitly agreed otherwise in writing.

8.3. If Supplier has to provide warranty, it is entitled, at its own discretion, to first rectify or exchange the Goods within an appropriate period. Replaced items shall become the property of Supplier and shall be returned to it. If Supplier does not rectify or exchange the Goods within an appropriate period, or if it refuses to do so, or if rectification or exchange are not feasible, Customer is entitled, at its own discretion, to demand a price reduction or, insofar as the defect is not merely a minor defect, to demand cancellation of the contract [*Wandlung*]. In the case of contracts where partial delivery is permitted, the right to cancel is limited to partial deliveries which have not been properly fulfilled. If Customer sells, modifies or adapts the Goods in full awareness that they are defective, it shall forego its right to cancellation. No further warranty shall apply.

8.4. Supplier hereby confirms that the contractual items were developed by persons with regard to whom Supplier has secured the relevant intellectual property rights. Furthermore, Supplier confirms that as of the order confirmation date no third parties have asserted claims against Supplier with respect to infringement of their rights by the contractual products, and Supplier is not aware of any rights of third parties which would be infringed by the contractual products per se, in their actual concrete composition and design as delivered by Supplier. Supplier does not provide any further warranty.

8.5 With regard to software, Supplier hereby provides warranty that the software meets the software specifications which were supplied and confirmed by Supplier, and that as of the delivery date the software is free of malware and/or computer viruses. No further properties shall be assumed, nor are they promised.

It is hereby explicitly stated that the software does not run in a completely error-free manner and/or without crashes. With regard to the relevant systems or product/field, the software is merely programmed for the specified system environment which is indicated in the software documentation. Moreover, any warranty is limited to defects which can be demonstrated and reproduced by Customer.

If Customer modifies the system environment and/or knowingly performs interventions of any kind in the software, all other warranty for the software is hereby explicitly excluded. Furthermore, if the software interfaces with a superordinate system/program and the alleged error originates from that superordinate system/program – and that will be presumed if Customer cannot prove otherwise – warranty is hereby explicitly excluded. Warranty is explicitly excluded in cases of improper use, use of unsuitable storage media and/or system components, other failure to comply with defined system environment parameters, lack of suitable anti-virus or security measures which are not state-of-the-art, or use of unsuitable personnel.



In all cases it is Customer's responsibility to demonstrate that a defect to which warranty applies is present. If a defect arises within the warranty period, Customer shall immediately send a clear and detailed written notification containing all necessary information to allow analysis of the defect. In particular, the notification must describe the work steps which led to the occurrence of the defect, the manner in which the defect manifests itself and its impact.

At its own discretion, Supplier may rectify a software defect by immediately eliminating it, supplying a new program, or providing an adequate workaround. No warranty is provided for minor software defects that do not impair functionality.

8.6. The presumption of defects in the Goods in the first six months following handover, as defined in § 924 Austrian Civil Code, shall not apply.

8.7. Customer's right of recourse against Supplier, insofar as Customer itself had to provide warranty (§ 933b Austrian Civil Code), shall not apply.

8.8. If warranty claims are asserted, it is Customer's responsibility to demonstrate that the defect was present on the date of handover.

## 9. Reporting of Defects

9.1. Customer shall send Supplier explicit written notification of defects in the contractual items within an appropriate deadline, at the latest within 7 (seven) days of receiving the Goods in the case of obvious defects, and at the latest within 7 (seven) days of discovery in the case of hidden defects. In the case of partial and successive deliveries, a separate defects report shall be sent separately for each individual delivery. In all instances the defects report shall be deemed late if it is no longer feasible for Supplier to perform a follow-up check of the Goods for which defects have been reported. Once the defect has been determined, Supplier's explicit written permission is required for any sale, processing or further processing of the Goods in question, otherwise claims shall be forfeited.

9.2. Customer shall ensure that Supplier actually receives the defects report and shall bear the burden of proof for that the receipt. Merely sending back the Goods shall not be deemed reporting of defects.

9.3. Claims pursuant to warranty, damages claims based on the defect itself or on errors regarding the item's freedom from defects, or claims relating to other forms of compensation, cancellation or termination of contract cannot be asserted unless a defect report is sent in a timely manner.

9.4. If a defect report is sent, Customer shall, at Supplier's sole discretion, either return the parts in question to Supplier at Customer's cost and risk or arrange for Supplier to perform an on-site assessment. Performing an assessment of the Goods or accepting the returned Goods without reservation does not imply that Supplier has waived its right to object in the event that a defect report is sent late or not sent at all. When a reported defect undergoes assessment and rectification, Customer shall provide reasonable assistance and in particular information. If, following assessment, Supplier does not acknowledge the reported defects, Customer shall reimburse Supplier for all costs (including travel time) associated with the assessment.

## 10. Liability

10.1. Supplier shall only be held liable in cases of willful intent or gross negligence. Customer shall bear the burden of proof for demonstrating willful intent or gross negligence.

10.2. Supplier shall not be liable for indirect, incidental damages or consequential damages, removal or installation costs, recall costs, assembly-line stoppage costs, downtime, defect assessment (including additional test runs, material costs, and costs of additional incoming goods checks), additional handling expenses (including shipping costs and travel costs), financial losses, lost earnings and capital costs, or damages arising from third-party claims against Customer. In all cases, in terms of amount Supplier's liability is limited to EUR 5 million per claim.

10.3. The aforementioned limits on liability apply to all of Customer's claims under contract law and tort law, and also in particular to any infringements under intellectual property law and/or product liability claims. However, the aforementioned limits do not apply insofar as mandatory liability applies (i) under the Austrian Product Liability Act [PHG] (ii) due to willful intent or blatant gross negligence [*krass grober Fahrlässigkeit*] (iii) due to loss of life, personal injury or damage to health.

10.4. All damages claims shall become statute-barred 3 (three) years after the occurrence of damage. All other claims, regardless of the legal grounds, shall become statute-barred 3 years after delivery (Section 10.4 herein does not apply to warranty claims, which are covered in Section 8.1).

10.5. In light of Sections 10.1–10.4, and in all cases only to the extent that a liability limit or liability exclusion as stipulated therein is deemed non-permissible, Supplier is only liable for Customer's damage containment (e.g., a product recall) insofar as (i) mandatory legislation obligates Customer or its buyer to avert personal injury and (ii) Customer and Supplier are in agreement concerning imminent material defect claims or product liability claims and/or a public authority has issued an order for damage containment. Customer shall immediately consult with Supplier and provide it with comprehensive information; otherwise, any claims shall be excluded. In particular in the case of a product recall or settlement negotiations, the Parties shall seek to reach agreement on an action agenda, and such an agreement that stipulates appropriate measures shall not be refused unless there are significant grounds. (In light of Sections 10.1–10.4, and in all cases only to the extent that a liability cap or liability exclusion as stipulated therein is deemed non-permissible), Supplier is only liable for appropriate measures, which shall be taken following the timely involvement of and in agreement with Supplier, up to a total of EUR 5 million per claim.

10.6 If Customer demands that the contractual items be supplied/implemented based on Customer's specifications or concrete design requirements, or if Customer demands the use of technologies or solutions specified by Customer, Customer shall ensure that they or the application/use thereof are unencumbered by third-party rights, and in such situations, Customer shall hold harmless, defend and indemnify Supplier from and against any and all damages, claims or execution asserted by third parties, in particular in the case of production.

## 11. Cancellation

The Parties may only cancel the contract prematurely if there are significant grounds and after having sent a written warning, subject to Supplier's statutory withdrawal rights and the provisions in Section 13.

## 12. Retention of Title

12.1. Supplier retains ownership of the sold Goods until all its present and future claims arising from the contract have been paid in full.

Furthermore, Supplier also retains ownership of the sold Goods until all its present and future claims arising from any other business relations between the Parties have been paid in full.

For purposes of clarity, it is hereby stated that this also applies to the supply of machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and/or other devices, insofar as Supplier is contractually obligated to supply them.

12.2. Until the secured claims have been paid in full, the Goods supplied under retention of title shall not be pledged to third parties or assigned as security. Customer shall immediately notify Supplier in writing if and insofar as a third party seeks to take possession of the Goods which belong to Supplier.

12.3. If Customer infringes the contract, in particular if it fails to pay the due price, Supplier is entitled to withdraw from the contract as stipulated in the relevant legislation and to demand that the Goods be returned based on retention of title and withdrawal. If Customer does not pay the due purchase price, Supplier is only permitted to assert the aforementioned rights if Supplier has first unsuccessfully set Customer an appropriate payment deadline, or if setting such a deadline is unnecessary under the relevant legislation.

12.4. As part of its ordinary business operations, Customer is permitted to resell and/or process the Goods supplied under retention of title. In such cases, the following additional clauses apply:

a) The retention of title extends to the full value of the outcomes resulting from the processing, mixing or combining of Supplier's Goods, and Supplier shall be deemed the manufacturer. If, in the event of processing, mixing or combining with Goods of a third party, the third party continues to retain its ownership, Supplier shall acquire co-ownership based on the respective ratios of the invoice values of the processed, mixed or combined Goods. Aside from that, the resulting outcomes are subject to the same conditions as the Goods supplied under retention of title.

b) The claims against third parties which arise from the resale of the Goods or of the outcomes are now hereby assigned to Supplier by Customer either in total or in the amount of Supplier's co-ownership share (see paragraph

above) as security. Supplier hereby accepts that assignment. Customer's obligations set forth herein in Section 12, in particular those described in Section 12.2, also apply to the assigned claims.

c) Along with Supplier, Customer is entitled to collect the claims. Supplier shall refrain from collecting the claims as long as Customer meets its payment obligations to Supplier, does not fall into payment arrears, no requests for the opening of insolvency proceedings are submitted, and there are no other defects in its ability to perform the contract. However, if any of the above does apply, Supplier is entitled to demand that Customer notifies Supplier regarding the assigned claims and the debtor in question, provide all necessary information to allow collection, surrender the accompanying documents and notify the debtors (third parties) regarding the assignment.

d) If the realizable value of the security exceeds Supplier's claims by more than 10%, Supplier shall release the security at Supplier's discretion if asked to do so by Customer.

### **13. Supplier's Right to Withdraw**

13.1. Supplier is entitled to withdraw from the contract if there are significant grounds, provided it sets an appropriate follow-up deadline of a maximum of 14 days. Significant grounds shall be deemed present in particular if (i) Customer is in arrears in fulfilling key contractual obligations, in particular the duty to pay the price or collaborative activities which are required to enable Supplier to fulfill contract, (ii) if a request to open bankruptcy, settlement or other insolvency proceedings for Customer's assets is submitted or, (iii) bankruptcy, settlement or other insolvency proceedings are opened for Customer's assets or are not opened due to lack of cost-covering assets.

13.2. If, after the contract has been concluded, it becomes evident that Supplier's payment claims are in jeopardy due to Customer's inability to perform, in particular if its assets position has deteriorated, Supplier is entitled to refuse to render performance and to set Customer an appropriate deadline within which it shall render performance in a step-by-step manner [*Zug um Zug*] against delivery or shall furnish security. If Customer refuses or the deadline passes fruitlessly, Supplier is entitled to withdraw from the contract and demand damages.

13.3 Supplier is entitled to withdraw from the contract if the fulfillment thereof is prohibited under national or international law (e.g., embargoes, US (re)-export control regulations, other sanction provisions). This also applies to legislation which does not enter into force until after the contract is entered into.

### **14. Compliance**

14.1 Customer shall comply and ensure that Customer's employees, subcontractors and suppliers are required to comply with the Miba Code of Conduct, which is available on the Internet at:

<http://www.miba.com/en/coc/>

The Miba Code of Conduct is incorporated by reference into the contract between Customer and Supplier. Customer hereby declares that it is familiar with the Miba Code of Conduct and that it shall ensure that its employees comply with it. Customer shall immediately notify Supplier regarding any activities on the part of its employees which constitute an infringement of the Miba Code of Conduct. Customer shall help Supplier to obtain information relating to any infringement of the Miba Code of Conduct.

14.2 Any violation of the export provisions named in Section 7.8, 7.9 and 7.10 or of the Miba Code of Conduct shall entitle Supplier to immediately terminate all existing contracts with Customer due to significant grounds.

### **15. Confidentiality; Drawings and Models**

15.1 Customer shall ensure that all technical and commercial information of Supplier and affiliates of Miba AG of which it becomes aware as part of the contractual relationship is kept confidential. In particular, "Confidential Information" shall not be disclosed. The following in particular are deemed "Confidential Information," regardless of whether they relate to Supplier, affiliates of Miba AG or its customers/business partners: any information, documents, drawings, data, data on electronic storage media, processes and process steps, compositions, formulae, machinery, systems, templates, objects, market and marketing information, technical and commercial information, commercial and business secrets, financial information, business models and business processes or other information that merits protection which, before or after the conclusion of the contract, are knowingly or unknowingly handed over to Customer in written, graphical, oral, visual, or electronic form, or via the sending of a product or product sample, during a company visit or in any other way or which pass into Customer's realm of control and/or of which it becomes aware, or any copies or other information derived therefrom. In particular, information or work outcomes which arise in connection with the provision of the Goods/Services, regardless of whether they were created by Supplier, Customer and/or a third party, shall be deemed Confidential Information. The following is not deemed Confidential



Information: information which in its totality and in the precise structure and composition of its components was, as of the date on which the information changed hands under this contract, demonstrably already generally known to or easily accessible by individuals in circles that customarily deal with such types of information.

15.2 Supplier's prior written permission is required in each individual case for any disclosure of Confidential Information or for use of the Confidential Information for own purposes or a third party's purposes, regardless of whether all or part of the information is used, whether it is modified or processed, or is part of other information. This also applies to scientific publications. Furthermore, Customer shall only use the Confidential Information to the extent that is explicitly permitted under the relevant contract, and shall not use it for its own purposes or for other parties' purposes during and after the end of the contract, and shall handle the information in a manner that allows Customer to return it after the contract has been fulfilled. In particular, Customer shall not attempt to obtain any findings or draw any conclusions from the Confidential Information, nor trace back to the underlying information, nor to analyze it through observation, assessment, reverse engineering or testing.

15.3 Confidential Information which is handed over or made available to Customer in connection with Supplier's drawing up or fulfillment of the contract shall remain the property of Supplier, and along with specifications, drawings, plans, detailed drawings, production materials and other technical documents and tools (hereinafter jointly referred to as "Documents") shall be used by Customer for the actual contractual purpose as defined in the order confirmation only and not for any other purposes, and shall not be duplicated or made available to third parties. Upon request, these Documents and the Confidential Information along with all excerpts and duplicates shall be immediately surrendered to Supplier, any copies shall be destroyed, and any backup copies or recordings on electronic storage media shall be deleted, and written notification to that effect shall be sent immediately.

15.4 Customer shall refrain from using its knowledge of the Confidential Information to assert any rights relating to protective rights applications, and in particular shall refrain from asserting rights based on prior use. As stipulated in Section 4, all work outcomes and documents which are generated or produced based on Confidential Information of Supplier, including jointly prepared specifications sheets (if any), shall become the property of Supplier when created and shall be marked as the property of Supplier (see Section 4 above). Production materials, in particular tools, templates, technical devices etc. which Supplier has made available to Customer shall be marked as the property of Supplier and are subject to the confidentiality provisions and limitations on use set forth herein in Section 15. These documents and production materials shall be immediately surrendered to Supplier upon demand, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

15.5 Customer shall give access to the Confidential Information only to employees who are directly entrusted with the execution of the relevant contract and whose knowledge of the Confidential Information is essential for execution of the contract and who are bound by a prior written non-disclosure agreement. Customer shall ensure that all Documents and materials which might contain Confidential Information of Supplier are safeguarded and protected against access by third parties.

15.6 Customer requires explicit written permission to indicate or draw attention to the business relationship with Supplier in advertising materials or publications of any kind.

15.7 If there are grounds for suspecting infringement of these confidentiality provisions, Customer shall bear the burden of proof for demonstrating that the Confidential Information was already known to the general public on the contract date or was disclosed without its involvement or responsibility. Vis-a-vis the Supplier, Customer is jointly and severally liable along with any third party to whom Confidential Information was disclosed by Customer, or by whom Confidential Information was disclosed to Customer, for any infringement of the confidentiality provisions herein.

15.8 Customer hereby acknowledges that an infringement of these confidentiality provisions could cause Supplier immediate or irreparable damage, for which statutory damages might be inadequate. For each case and for each day of infringement of this contract by Customer and/or a person to whom Customer has disclosed the Confidential Information in question, Customer shall pay Supplier liquidated damages of EUR 50,000, regardless of further claims or legal remedies of Supplier. The defense that a series of infringements should be treated as one continuous infringement is barred. Insofar as legally permissible, the contractually agreed liquidated damages shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

15.9 Supplier shall not be liable for ensuring that the use of the Confidential Information does not infringe the intellectual property rights, copyright and/or other rights of third parties, and/or for damages caused to Customer or

a third party. Supplier is completely at liberty to utilize and make use of the Confidential Information in any manner it wishes.

15.10 Section 15 herein continues to apply without limitation after the end of or cessation of the contractual relationship, for as long as is permitted under the relevant legislation, and in all instances for at least five (5) years after the end of the contractual relationship in question.

## **16. Data Protection**

If Customer processes personal data for and on behalf of Supplier in connection with the provision of Goods/Services, it shall comply with relevant legislation, in particular Austria's Data Protection Act [*DSG*] (as amended from time to time) and the EU General Data Protection Regulation. Accordingly, Customer shall enter into a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Furthermore, if data are transferred – to Customer or its subcontractors – to a recipient domiciled in a country outside the European Economic Area and this is absolutely necessary for the performance, Customer is obligated to conclude EU standard contract clauses or equivalent contract templates issued by the European Commission as appropriate safeguards as defined in Art. 46 Paragraph 2 lit. c and d of the General Data Protection Regulation.

## **17. Place of Fulfillment; Place of Jurisdiction**

17.1 The place of fulfillment for both Parties is the location specified by Supplier in the order confirmation, otherwise Laakirchen, Austria.

17.2 The sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, Supplier is also entitled, at its own discretion, to assert claims against Customer before the court with subject-matter jurisdiction for Customer's headquarters.

## **18. Applicable Law**

This contract, including the questions of whether it is legally valid and/or void and its advance effects and aftermath and its interpretation, is subject to Austrian law only, to the exclusion of conflict of law provisions and UN Convention on Contracts for the International Sale of Goods (CISG).

## **19. Severability**

If a provision of these General T&Cs of Sale and Delivery is ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the other provisions. In such cases, the provision shall be replaced by one which in terms of commercial outcome approximates to it as closely as possible and is not ineffective, invalid or unenforceable. The same applies to contractual gaps.

## **20. Transfer of Rights and Obligations**

Customer hereby agrees that Supplier may transfer the contractual relationship as a whole to an affiliate of Miba AG (independently of the percentage shareholding). In such instances, based on written notification, the affiliate specified by Supplier shall take over all obligations and claims arising from the legal relationship and shall assume all of Supplier's organizational and other rights.

## **21. Written Form**

In order to be valid, any changes or amendments to these General T&Cs of Sale and Delivery or other contractual agreements between Supplier and Customer shall be carried out in writing. The same applies to deviations from the requirement regarding written form.