



General Delivery and Payment Conditions

Anhang
Nr.: DOC-18-00402
Version: 4.00.0001

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General Terms and Conditions of Delivery and Payment

LINHARDT Group GmbH
LINHARDT Viechtach GmbH & Co. KG, 94234 Viechtach
LINHARDT Hambrücken GmbH, 76707 Hambrücken
LINHARDT Pausa GmbH, 07952 Pausa-Mühltruff

1. General – scope of application

- 1.1. Our Terms and Conditions of Delivery shall apply exclusively; we do not acknowledge any terms and conditions of the purchaser that are in conflict with or deviate from our Terms and Conditions, unless we expressly agreed to their applicability in writing. Our Terms and Conditions of Delivery shall also apply if we carry out the delivery to the purchaser without reservation while being aware of terms and conditions of the purchaser that deviate from our Terms and Conditions of Delivery.
- 1.2. All agreements made between us and the purchaser for the purpose of executing this contract shall be set out in writing in a contract. Modifications and supplements to this contract shall be made in writing. Our sales staff and our representatives shall not be authorised to act or collect on our behalf. Therefore, agreements with such persons shall only be effective upon our written confirmation. If our Terms and Conditions of Delivery require written form, such requirement shall also be met by communication via fax or e-mail without electronic signature.
- 1.3. Our Terms and Conditions of Delivery shall only apply to entrepreneurs in terms of Section 14 (1) *BGB* [German Civil Code], legal entities under public law and special funds under public law. They shall also apply to all future transactions with the purchaser within an ongoing business relationship.

2. Offer – offer documents – orders

- 2.1. Our offer shall be subject to confirmation, unless otherwise stated in the offer or unless we expressly declared otherwise in writing. A contract shall only be concluded when we confirmed an order in writing or when we execute the order. We do not accept any standard orders for less than 20,000 units; such orders shall be subject to a special agreement.
 - 2.2. We reserve industrial property rights and copyrights to illustrations, brochures, calculations and other documents; they must not be made accessible to third parties. This shall particularly apply to such written documents that are marked as “confidential”; the purchaser shall obtain our express written consent before passing them on to third parties. Item 14 shall apply in addition.
- #### 3. Prices – terms of payment
- 3.1. Unless otherwise stated in the confirmation of order, our prices shall apply “ex works” (Incoterms 2020) excluding packaging, freight, postage and the respectively applicable value added tax. Unless otherwise agreed in writing, our prices shall be Euro prices.
 - 3.2. Subject to deviating regulations, all invoices shall be due for payment within **30** days (receipt of the payment) after the receipt of the invoice, free of charge, in the agreed currency, to the paying agent stated by us. For payments made within 14 days, we shall grant a 2% cash discount, unless the purchaser is in delay with our other receivables.
 - 3.3. If order-related costs such as material, auxiliary material, wage costs and statutory duties significantly change after concluding the contract, we shall be entitled, if the delivery date is more than four weeks after the conclusion of the contract, to adjust the price accordingly, unless otherwise agreed. If the purchaser issues subsequent change requests, we may charge the purchaser additionally for our extra expenses.
 - 3.4. The purchaser shall only be authorised to set off against our claims if its counter-claims are undisputed, established as final and absolute or acknowledged by us. The purchaser shall only be authorised to exercise any right of retention or refuse performance if the requirements according to clause 1 are met and if its counter-claim is based on the same contractual relationship. We are furthermore entitled to set off all our claims against claims of the customer that it is entitled to against us or the companies stated in the title (group set-off clause).
 - 3.5. Bills of exchange and cheques shall only be accepted, if at all, on account of performance. Expenses for bills of exchange and cheques shall be borne by the purchaser. The payment date shall be the date we are able to dispose of the counter-value.
 - 3.6. We shall be entitled to credit payments made by the purchaser first to the oldest payable invoices, in the following order: first to costs, then to interest and then to the principal amount.
 - 3.7. If we are obliged to deliver in advance, and if we become aware of circumstances after the conclusion of the contract on the basis of which a significant financial deterioration of the purchaser must be assumed, we may, at our option, either demand collateral security within a reasonable period of time or delivery versus payment. If the purchaser fails to fulfil this demand, we shall be entitled to withdraw from the contract, subject to further statutory rights.

4. Delivery time

- 4.1. The start of the delivery time stated by us shall be subject to the clarification of all relevant issues and the compliance with the purchaser’s obligations. Unless otherwise agreed or something else results from the contractual relationship, the delivery time stated by us shall never be binding.
- 4.2. Delays in delivery due to force majeure or due to unforeseeable circumstances we are not responsible for such as operational downtimes, strikes, lock-out, lack of transport, problems with raw material procurement, official orders, or late delivery by our suppliers, shall not establish default on our part. An agreed delivery time shall be extended by the duration of the impairment plus a reasonable start-up time. If the impairment lasts longer than two months, we and the purchaser shall be entitled, after the expiry of a reasonable grace period, to withdraw from the contract regarding the part of the contract that is not yet fulfilled. Claims for damages shall be excluded in this case.
- 4.3. If the purchaser sets us a reasonable grace period of at least 2 weeks after our delay, it shall be entitled, after the unsuccessful expiry of such grace period, to withdraw from the contract. The purchaser shall only be entitled to damages instead of performance if the delay is based on intention or gross negligence or on negligent significant breach of duty. If we acted negligently, our liability shall always be limited to the foreseeable damage.



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- 4.4. The limitations of liability according to paragraph 4.3 shall not apply if a commercial transaction where time is of the essence was agreed; the same shall apply if the purchaser can claim due to the delay we are responsible for that it is no longer interested in the fulfilment of the contract. In these cases, liability shall be limited to the foreseeable damage typical for this type of contract.
- 4.5. If the purchaser is in delay with acceptance or if violates other duties to cooperate, we shall be entitled to demand compensation for the loss incurred by us, including any potential extra expenses. In this case, the risk of accidental loss or accidental deterioration shall be transferred to the purchaser at the time the purchaser starts to be in delay with acceptance.
- 4.6. We shall be entitled to make partial deliveries and deliveries prior to the expiry of the delivery time, unless this is opposed by an obvious interest of the purchaser.
- 4.7. On our demand, the purchaser shall be obliged to declare in writing within a reasonable period of time whether it withdraws from the contract and/or claims damages due to a delay in delivery or whether it insists on the delivery.
5. Serial deliveries, long-term and call-off contracts
- 5.1. Unless otherwise agreed, indefinite contracts may be terminated with a six months' period of notice to the end of the month.
- 5.2. If, regarding contracts with a term of more than twelve months or with indefinite term, the wage, material or energy costs significantly change after the expiry of the first four weeks of the contractual term, then, unless otherwise agreed, each contractual party shall be entitled to demand a reasonable adjustment of the price in consideration of these factors. Section 3.3. shall remain unaffected.
- 5.3. Our prices are calculated on the basis of the agreed order quantities. If binding order quantities are not agreed, our calculation shall be in accordance with the agreed target quantities. If the order quantity or target quantity is undercut by more than 20%, we shall be entitled to increase the price per unit accordingly. If the purchaser exceeds the quantity by more than 20% with our consent, it may demand a reasonable price reduction, if it does so in writing 2 months prior to the agreed delivery date at the latest. The amount of the reduction or increase shall be determined on the basis of our calculations.
- 5.4. Unless otherwise agreed, with call-off delivery contracts, we shall be notified of binding quantities at least three months prior to the delivery date by call. In this case, we shall be released from our delivery obligation if the call is not made in due time for reasons the purchaser is responsible for. If we deliver nonetheless, the purchaser shall pay any extra costs that are caused by a late call or subsequent changes to the call with regard to the time or quantity, which are effected by the purchaser.
- 5.5. Due to the special features of the production technology, we shall be entitled to supply the following production-related excess or short quantities without this constituting a defect: for an agreed delivery quantity of at least 50,001 units, +/-5%; of 25,001 to 50,000 units, +/-10%; of 10,001 to 25,000 units, +/-15%, and of under 10,000 units, +/- 20%.
6. Transfer of risk, dispatch and packaging
- 6.1. Unless otherwise agreed in writing, "ex works" (Incoterms 2020) shall apply as delivery clause. This shall also apply if we undertook to pay the transport costs.
- 6.2. We shall take out transport insurance for the delivery on the purchaser's express demand only; the purchaser shall bear any related costs.
- 6.3. For lack of special instructions, we shall choose the means and route of transport at our discretion.
- 6.4. Disposable packaging that serves to protect and transport our goods, shall not be taken back. Should the customer wish a different arrangement within the framework of § 15 of the German Packaging Act, the place of return of empty packaging shall be Linhardt, any resulting additional costs or transport costs will be charged to the customer. Packaging material that has been lent or can be exchanged (e.g. pallets) shall be returned or exchanged within 2 months.
7. Dimensions, weights, standards and regulations
- 7.1. The DIN and EN standards shall apply for the compliance with the dimensions. Apart from that, we shall state dimensions and weights in our offers and confirmations of order to the best of our knowledge; however, they shall only be approximate, and they do not establish any quality guarantees. Minor deviations, particularly technically caused usual deviations, shall not authorise the purchaser to file any complaints and claims for damages, unless otherwise agreed.
- 7.2. Unless otherwise expressly agreed, we shall observe the recognised rules of technology, standards and regulations in Germany for the items to be delivered by us, and we shall not carry out any own research about standards and regulations applicable abroad. If the purchaser desires compliance with foreign standards and regulations, the purchaser shall inform us about such standards and regulations when concluding the contract, and at any rate in due time so that we can take them into account, and explain them to us on demand; the same applies with respect to all kinds of packaging regulations of the purchaser. Item 3.3. sentence 2 shall apply accordingly if the purchaser informs us after the contract was concluded.
8. Claims based on defects
- 8.1. The warranty rights (claims based on defects) of the commercial purchaser require that it inspects the goods immediately after receipt and notifies any visible defects to us in writing immediately after the inspection and/or that it notifies any hidden defects to us immediately after their identification by stating the defect in detail (Section 377 HGB [German Commercial Code]). It shall give us the opportunity to check the notified defect on site. We shall perform such check immediately if the purchaser explains its interest in such immediate check and settlement.
- 8.2. Claims based on defects including claims for damages of the purchaser shall be excluded if it fails to comply with our or with generally known safety and utilisation provisions and rules as well as our instructions for use or the recognised rules of technology when using our products and the damage is to be attributed to such non-compliance. The same shall apply to damage or consequential damage caused by improper use of our products or the instructions given by the purchaser (particularly intended purpose of use, test procedures, technical design and supply provisions given to us, construction documents, selection of the material) that the purchaser is responsible for.
- 8.3. Claims based on defects shall be excluded in case of only minor deviations from the quality or only insignificant impairment of the usability, e.g. in case of minor colour deviations. Technically caused or usual tolerances shall not constitute defects. Please note that the durability of plastics, colours and lacquers and potentially other parts we use for the manufacturing of our products may be limited and depend on proper storage.



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- 8.4. All our specifications are merely work descriptions and are only approximate. Unless otherwise expressly agreed, they shall not constitute any guarantees.
- 8.5. If a defect is identified that we are responsible for, we shall be entitled, at our option, to eliminate the defect or to provide subsequent delivery.
- 8.6. If defects are notified, payments of the purchaser may only be retained to an extent that is appropriate with regard to the identified defects. Such payments may only be retained under the conditions set out in section 3.4. clause 2 of these Terms and Conditions.
- 8.7. If the purchaser unjustly notifies a defect not actually caused by us for reasons we are not responsible for, we shall be entitled to charge the purchaser for the reasonable expenses incurred by us for the removal of the defect and/or its identification.
- 8.8. We may charge the purchaser for the extra expenses required for the purpose of subsequent performance, particularly transport, road, labour and material costs to the extent such expenses increase due to the transport of the delivered product to a place other than the delivery address, unless the transport to a different place corresponds to the contractual purpose and was known to us at the time the contract was concluded.
- 8.9. Any recourse of the purchaser when purchasing consumer goods (Section 478 BGB) shall be excluded with regard to the agreements of the purchaser with its buyers that exceed the statutory claims based on defects of the buyers. The purchaser shall inform us about the claims based on defects of its buyers in due time so that we are able to fulfil such claims of the buyers instead of the purchaser at our option.
- 8.10. Claims based on defects, particularly claims based on material defects, shall become statute-barred after 12 months from delivery, unless we caused the relevant defect in grossly negligent or intentional manner. This shall also apply to any issued guarantees that are binding to us, unless something else is stated in such guarantees. The statutory periods shall apply to limitation periods for claims based on defects that legally last more than 2 years (e.g. if a defect is maliciously concealed). Likewise, the statutory periods shall apply to the recourse claim according to Section 478 BGB. These limitation periods shall also apply to consequential damage, unless they are claimed based on tort. If subsequent performance is required due to a defective delivery, the limitation period from the notification of defect until the subsequent performance shall only be suspended, but not restarted.
- 8.11. Before the purchaser can assert further claims or statutory rights (withdrawal, reduction, damages or reimbursement of expenses, or with contracts for work and services, fulfilment by itself), we shall first be given the opportunity to subsequent performance within a reasonable period of time, unless we have given a different guarantee. If the subsequent performance fails despite two attempts, if it is impossible, unreasonable for the purchaser or if we refuse subsequent performance, the purchaser may withdraw from the contract or reduce the remuneration. Section 9 of these Terms and Conditions shall apply to the assertion of claims for damages and reimbursement of expenses.
- 8.12. Furthermore, the following shall apply to claims due to defects of title:
- 8.12.1. Unless otherwise agreed, we shall only be obliged to carry out the deliveries in Germany free from rights of third parties. Should our deliveries be used abroad, the purchaser shall be obliged to check the freedom from rights of third parties in the country of use before it uses them, or to inform us when concluding the contract, but always in due time and in full, about such rights so that we can take them into account. Unless otherwise agreed, we shall not carry out any research regarding industrial property rights abroad. Item 3.3. sentence 2 shall apply accordingly if the purchaser informs us after the contract was concluded.
- 8.12.2. If we are responsible for the violation of industrial property rights of third parties, we may, at our option, either obtain sufficient right to use for the agreed or presumed use and transfer it to the purchaser or change the delivered goods so that the industrial property right is not violated, or exchange the delivered goods, to the extent the agreed or presumed use of the delivered goods is not impaired. If this is not possible for us or if we refuse the supplementary performance, the purchaser shall be entitled to the statutory claims and rights. Section 9 shall apply to claims for damages and reimbursement of expenses.
- 8.13. We shall only take responsibility for our consulting services if this was expressly agreed. The purchaser shall be responsible for making sure that our deliveries are suitable for the purchaser's intended use.
- 8.14. The purchaser shall be liable for the correctness of the printing blocks, templates and samples supplied by the purchaser.
9. Damages
- 9.1. The assertion of claims for damages and reimbursement of expenses due to defects of the delivered goods shall be excluded to the extent we are not able to carry out subsequent performance for reasons we are not responsible for. The assertion of claims for damages for damage caused by defects shall be subject to our fault. We shall only be liable for consequential damage due to the delivery of defective goods to the extent the damage is based on our at least negligent significant breach of duty.
- 9.2. The assertion of claims for damages for a violation of a durability guarantee issued by us or by third parties (Section 443 (2) BGB) for which we are responsible shall be excluded if we have not caused such violation.
- 9.3. Apart from that, claims for damages and claims for reimbursement of expenses of the purchaser, irrespective of the legal ground, particularly due to breach of duties arising from and in connection with the contractual obligation, due to fault prior to or upon the conclusion of the contract and based on tort shall be excluded.
- 9.4. The above limitations of liability shall not apply to claims according to Sections 1, 4 Product Liability Act, in cases of intention or gross negligence, in case of injury to life, body or health, if a guarantee was assumed for the presence of a quality (quality guarantee). In case of other (not gross) negligent breach of essential obligations (cardinal obligations) our liability is limited to foreseeable and typical losses. Cardinal obligations shall be essential contractual obligations, i.e. such obligations that give the contract its character and on which the contractual partner may rely on; they are thus the essential rights and obligations that lay the foundations for the fulfilment of the contract and that are indispensable for the achievement of the contractual purpose. We shall never be liable beyond the statutory claims. These regulations (9.1. to 9.3.) shall not be connected with any changes to the burden of proof.
- 9.5. To the extent our liability is excluded or limited, this shall also apply to the liability of our vicarious agents, employees and representatives.
10. Reservation of ownership
- 10.1. We shall reserve the ownership of the delivered items until all payments based on the business relationship with the purchaser are received. If the purchaser acts contrary to the contract, particularly if it is in delay with payment despite a reasonable grace period set, we shall be entitled to take the delivered item back. This shall not apply if the purchaser already applied for insolvency proceedings or if insolvency proceedings were initiated due to which our immediate taking back of the delivered items is not permitted. After we have taken back the delivered item, we shall be entitled to



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utilise it; the utilisation proceeds shall be set off against the purchaser's payables, by deducting the reasonable utilisation costs. The utilisation regulations of the German Insolvency Statute shall remain unaffected.

- 10.2. The purchaser shall be obliged to handle the delivery item with care; it shall particularly be obliged, at its cost, to take out sufficient insurance for the delivery item at the original value against losses caused by fire, water and theft. If maintenance and inspection work is required, the purchaser shall perform such work in due time at its cost.
- 10.3. In case of seizure of the goods or other interventions by third parties, the purchaser shall immediately notify us in writing. The purchaser shall be liable to us for the court and out-of-court fees of any potentially required action according to Section 771 ZPO [Code of Civil Procedure] (third-party proceedings instituted to prevent the execution of a judgment), unless we can obtain such cost from the defendant (third party).
- 10.4. The purchaser shall be entitled to resell the delivery item in the usual course of business; however, it shall assign to us all receivables to the amount of the final invoice amount (including value added tax) that accrue to it from the resale against its buyers or third parties, irrespective of whether the delivered item was resold without or after its processing.
The purchaser shall remain authorised to collect the receivable after the assignment. However, we shall be authorised to collect the receivable ourselves if the purchaser no longer meets its payment obligations from the earned income, is in delay with payment or if it or someone else filed an application for insolvency proceedings or if it has suspended its payments. In these cases, we may demand that the purchaser immediately discloses the assigned receivables and their debtors, provides all information required for collection, surrenders the related documents and informs the debtor (third party) about the assignment. However, it is not possible for us to collect the receivable if this is opposed by the German Insolvency Statute.
- 10.5. The processing or remodelling of the delivered item by the purchaser shall always be made for us. If the delivered item is processed with other items we do not own, we shall acquire co-ownership of the new item in the relation of the value of the delivered item to the other processed items at the time of processing. Apart from that, the provisions applicable to the items delivered under reservation shall also apply to the item resulting from processing.
- 10.6. If the delivered item is inseparably mingled with items we do not own, we shall acquire co-ownership of the new item in the relation of the value of the delivered item to the other mingled items at the time of mingling. If the items are mingled in a way that the purchaser's item is to be regarded as the main item, it shall be deemed agreed that the purchaser transfers co-ownership to us on a pro rata basis. The purchaser shall store the so accrued owned or co-owned item for us.
- 10.7. We shall undertake to release the collateral securities we are entitled to on the purchaser's demand to the extent the value of our collateral securities exceeds the receivables to be hedged by more than 20%. It shall be our responsibility to select the collateral securities to be released.
- 10.8. If the delivered item is situated outside Germany, the following shall apply instead of items 10.1 to 10.7: If the delivery item was delivered before the purchaser paid all amounts owed on the basis of the contract, it shall remain our property until the complete payment, to the extent this is permitted by the law that applies to the territory the delivery item is situated in. If such law does not permit the reservation of ownership, but if it allows us to reserve other rights to the delivery item, we shall be authorised to exercise all rights of this kind. The purchaser shall be obliged to take part in our measures that we will take to protect our property rights or the right to the delivery item that replaces the property right.
11. Order-related production facilities – supplies – execution documents
- 11.1. Order-related production facilities such as models, samples and templates that are supplied by the purchaser shall be sent to us free of charge at the purchaser's risk. The compliance of the production facilities supplied by the purchaser with the contractual specifications or the drawings or samples provided to us shall only be verified by us on the basis of express agreements. We may change production facilities supplied by the purchaser if this is required for technical reasons or if this facilitates the production and the items to be produced will not change.
- 11.2. The costs for necessary changes and maintenance of its production facilities shall be borne by the purchaser. This shall also apply to the replacement of its production facilities to the extent the replacement is required due to usual wear and tear or if we are not responsible for the uselessness of its production facilities (see item 11.3).
- 11.3. The production facilities shall be treated and stored by us with the same care that we use in our own matters. However, we shall not be liable for accidental loss or deterioration of the production facility. We may return production facilities of the purchaser we do no longer need at the cost and risk of the purchaser or, if the purchaser fails to comply with our request for collection within a reasonable period of time, store them at the purchaser's cost and destroy them after setting a reasonable grace period and issuing a written warning.
- 11.4. To the extent production facilities or models are created or procured by us on the purchaser's demand, the purchaser shall reimburse us for the related costs. Unless the full costs are charged, the purchaser shall also bear the residual costs if it fails to accept the number of units promised by it when concluding the contract. The models and production facilities created or procured by us shall remain our property; they shall be used exclusively for deliveries to the purchaser during the term of the contract. After three years passed since the last delivery, we shall no longer be obliged to store them. If, in deviation from this, it is agreed that the purchaser will become the owner of the facilities or models, the ownership shall be transferred to it upon the payment of the purchase price. The handover of the facilities and models shall be replaced by our storage obligation. The storage relationship may be terminated by the purchaser no earlier than two years after the transfer of ownership, unless otherwise agreed.
- 11.5. The materials to be supplied by the purchaser shall be delivered with a reasonable quantity surcharge in perfect condition.
- 11.6. Print or design documents provided to the purchaser shall be checked by the purchaser. If it agrees to them, the purchaser shall counter-sign the documents and send them back. Corrections shall be clearly highlighted. The purchaser shall be responsible for visible defects it has overlooked.
12. Industrial property rights
- 12.1. If deliveries are made according to drawings or other details or production facilities of the purchaser and if this violates industrial property rights of third parties, the purchaser shall indemnify us from and against all claims of such third parties. The same shall apply to documents provided by the purchaser.
- 12.2. Licence claims of the purchaser based on industrial property rights to the models and production facilities sent to us or created or procured by us on its behalf shall be excluded to the extent they are used by us according to the contract.
- 12.3. The sketches, drafts, drawings, etc. made by us shall remain our property and included in our exclusive right of use, unless otherwise agreed. They shall be returned to us and any copies of them shall be destroyed on demand. They shall not be subject to any right of retention.
- 12.4. The open print data created or processed by us shall be the company's property and shall not be surrendered, unless otherwise agreed. Open files shall be all files that need to be reopened in their original program.



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- 12.5. If rights of third parties are violated and the purchaser is responsible, it shall indemnify us on first demand from and against all claims of third parties based thereon.
13. Indemnity
- 13.1. If we are not responsible for the related defect, the purchaser shall indemnify us from and against all claims, particularly for damages, including such that are punitive in nature (particularly in the USA and in Canada) that are asserted against us by third parties, including consumers (and their legal successors), irrespective of the legal ground, due to the products packaged in our products, including tobacco products. This shall also apply with regard to the fact that the consumption of tobacco products is generally detrimental to health and/or has caused (or might cause) health problems in specific cases or, that the – also improper – use of the products in our packaging causes or has caused physical injuries, material or other damage. This shall also apply to claims for execution on the basis of a decision made in the USA or in Canada or a state that is not part of the EU and the European Economic Area due to the products included in our packaging that are asserted to us in Germany, in the USA or in another state. Our right of indemnity shall include reasonable lawyer's fees and expenses for the defence of such claims.
14. Confidentiality
- 14.1. Every contractual partner shall use all documents (also including samples, models and data) and know-how it obtains in connection with the business relationship only for the jointly pursued purposes and shall not disclose them to third parties. This shall particularly apply if the other contractual party labels them as confidential or has an obvious interest in their non-disclosure.
15. Place of jurisdiction – place of performance
- 15.1. If the purchaser is a merchant, the place of jurisdiction shall be our registered office. However, we shall be entitled to sue the purchaser at the court of its registered office as well.
- 15.2. Unless otherwise stated in the confirmation of order, the place of performance for our services shall be the place of our supply plant. The place of performance for payment obligations shall be our registered office.
16. Applicable law, severability clause
- 16.1. The legal relations between the parties shall exclusively be subject to Germany law.
- 16.2. Should individual provisions of this contract or these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions.