

GENERAL TERMS AND CONDITIONS

for Deliveries and Services

1. Scope of Applicability

1.1 Our GENERAL TERMS AND CONDITIONS underlie the

- delivery contract (“**Deliveries**”) as well as the
- contracts to produce a work (“**Services**”) that are concluded with us.

Our GENERAL TERMS AND CONDITIONS shall apply exclusively. Insofar as provisions are not included in our **GENERAL TERMS AND CONDITIONS**, statutory law shall apply. We object to conditions referred to by Customer that are inconsistent with or supplementary to **our GENERAL TERMS AND CONDITIONS**.

Customer's conditions shall apply only in case and to the extent that we consent thereto expressly and in written form. Our GENERAL TERMS AND CONDITIONS shall apply even if we are aware of Customer's inconsistent or supplementary conditions and perform our Deliveries or Services without any reservations.

1.2 Our **GENERAL TERMS AND CONDITIONS** shall only apply with respect to entrepreneurs, legal entities under public law, and public utility funds as defined by Section 310 para. 1 of the German Civil Code (§ 310 Abs. 1 BGB).

1.3 Our **GENERAL TERMS AND CONDITIONS** shall also apply to any further business transactions with Customer.

2. Offers, Cost Estimates, Initial Samples/Series, Subsequent Changes of Contract

2.1 Our offers and cost estimates are subject to change and non-binding, unless expressly declared as binding.

2.2 Prior to the start of a series production (SOP), initial samples are manufactured for Customer which Customer has to order to pay; the testing of the initial samples shall be documented by us by any initial sample test report. The test results of the initial samples test report that are approved by Customer are the basis of the serial production ordered by Customer.

2.3 For the exact non-destructive determination of the thickness of layers applied by galvanic plating, also of multiple layers, the X-ray fluorescence spectroscopy (XRF spectroscopy) shall be applied as test parameter exclusively.

2.4 We reserve the right to post-contractually amend our Deliveries or Services in the following ways, if this is reasonable to

Customer:

- changes in products and/or process in the course of permanent advancement and improvement;
- minor and significant variations relating to colour, form, design, brushing structure, measures, weights or quantities;

- deviations customary in trade, especially optic deviations.

2.5 When placing the order, Customer shall be obliged to notify us if his specifications pursuant cl. 2.4 above must not be deviated from at any rate.

2.6 As far as reasonable according to our business capacities, we endeavour to take account of Customer's requests for postcontractual modifications to such Deliveries and/or Services forming the object of the contract. As far as the examination of the possibility of such modifications or their actual implementation may have an effect on the balance of contractual obligations (remuneration, time limits etc.), accordant written adjustment of the contractual provisions shall be made immediately. We are entitled to a reasonable additional compensation for the period of interruption resulting from the stipulation about the adjustment of the contractual provisions corresponding to the hourly rates of those of our employees who could not be assigned elsewhere due to the interruption. Additionally, we are also entitled to a reasonable compensation for any necessary examination as to whether and on what terms the modification requested is feasible provided that Customer requests such examination.

2.7 We are only liable for damages according to Section 122 of the German Civil Code (§ 122 BGB) in case of fault attributable to us.

3. Goods provided by Customer for processing

3.1 Customer shall be responsible for the goods provided by Customer for processing is fit for galvanic plating and is completely specified for processing by us, pursuant to the requirements of his order, especially with respect to quality, layer thickness, and tolerance. General requirements regarding fitness of goods provided by customers for galvanic plating are contained in our current version of Addendum (www.enayati.de).

Should prior or during the galvanic plating, damage occur to the goods provided by Customer for processing, especially role inclusions, torsion, elongation, sabre-shaped curvatures, or the like, as a result of the condition of the goods that were specified and provided for processing by Customer under his own responsibility, we shall be entitled to decide, pursuant to our discretion whether,

- the goods provided for processing be brought into a condition susceptible for galvanic plating, at Customer's cost (hourly expenses pursuant to current prices) and risk or
- the goods provided for processing be returned to Customer at the latter's cost and risk; or

- the goods provided for processing be subject to the galvanic plating process at Customer's risk; should in the latter case occur damage during the galvanic plating, we shall not be liable therefor in case our decision was made according to reasonable discretion.

3.2 Should, as a result of the condition of the goods that were specified and provided for processing by Customer under his own responsibility or as a result of lack of specification or as a result of Customer's deficient specifications, the galvanic plating not be properly performable or should, as a result thereof, occur during the galvanic plating process defects of the goods provided for processing or other difficulties or damage, without the involvement of any circumstance for which we are responsible, our claim to remuneration shall be governed by Section 645 of the German Civil Code (S 645 BGB). Customer's liability in excess thereof for his fault shall remain unaffected.

3.3 Customer agrees with us that each galvanic plating process implies rejects and shortfalls among the goods provided for processing. Notwithstanding a particular stipulation with Customer on the amounts of rejects and shortfall accepted by the latter, the version of our general standardized shortage provision that is current at the time of conclusion of contract shall apply.

3.4 Customer shall bear the cost and risk of shipping to our factory goods and means for production provided for processing. If, exceptionally we pick up goods or means of production at the customer or any other location indicated by customer or if we transport these back to customer or any other location indicated by customer after production, we shall be entitled to choose a transport person ourselves, unless the customer bears the costs of transportation.

3.5 We process the goods provided for processing in our capacity as manufacturer pursuant to Section 950 of the German Civil Code (S 950 BGB). Unless the value of the improvement rendered by us (processing or transformation, respectively) is significantly less than the pre-improvement value of the goods provided for processing, we shall acquire exclusive title to the improved goods. Otherwise, there shall be deemed agreed transfer of joint ownership of the improved goods to us in relation of the value of the improvement to the pre-improvement value of the goods provided for processing by Customer.

3.6 Packaging and storing material provided by customer shall arrive in time and cost free at our premises. We shall not be obligated but entitled to check, clean and repair said material at the customer's cost

4. Prices, Terms of Payment, Reservation of Supplementary Performance

4.1 We reserve the right to adequately increase our prices, if, subsequent conclusion of contract, cost increases occur which are beyond our responsibility, in particular due to changes in raw material prices or due to mandatory trade union wage agreements. We shall submit evidence for such occurrence to Customer upon the latter's request. In case of a fixed price limited in time, we are entitled to price increase, as set out above, with respect to on-going agreements upon expiration of the period applicable to the fixed price.

4.2 Unless otherwise agreed upon, our prices are quoted net **ex works** and do not include customs duties, postage, freight, packaging, and insurance. The statutorily prescribed VAT shall be charged separately. But for stipulations to the contrary, our prices include the standard quality examination as set out in the offer. Postcontractual extensions of orders shall be charged separately. In case, subsequently to contract conclusion, the necessity of additional expenses for manufacturing or examination becomes apparent, we shall notify Customer thereof immediately. The latter shall be payable additionally by Customer in case of respective placing of order.

4.3 Unless otherwise agreed upon, precious metal invoices shall be payable immediately without deduction. Payments of our transforming costs shall be effectuated within thirty (30) days after the date of invoice; only in case of payment within ten (10) days after the date of invoice, we shall insofar grant a discount of two percent (2 %). Payments shall be made free to our pay office. If Customer does not pay within thirty (30) days from the date of the respective invoice, the latter shall be deemed to be in delay in payment without any further notices or reminders from our part. For the rest, the statutory provisions on consequences of delay in payment shall apply.

4.4 In case of deferment we shall be entitled to charge interest for the term of deferment according to the statutory default interest rate.

4.5 We are entitled to require reasonable upfront payments from Customer, including statutory VAT, if based on justified reason and if no prevailing interests of Customer are affected. We are entitled to require reasonable down payments from Customer including statutory VAT, as far as such down payment is not considerably higher than the value increase achieved by Customer due to our performance in accordance with the agreements.

4.6 Bills of exchange and checks shall only be accepted in lieu of payment; bills of exchange shall only be accepted subject to prior written agreement. Any discount charges, expenses as well as any other costs in connection with the collection of either checks or bills of exchange shall be borne by Customer and shall be due for payment immediately. Debts shall only be deemed discharged upon encashment of the check or the bill of exchange as well as upon our release from any liability under that check or bill of exchange.

4.7 Customer may set off only such claims as are legally established, undisputed, or acknowledged. Customer may exercise a right of retention to fulfil an obligation only to the extent that Customer's claim against us results from the same contractual relationship as Customer's obligation.

4.8 In case of our delivery being non-conforming with the agreements, Customer may exercise a right of retention, as far as the retained amount is reasonably commensurate to the non-conformity (especially but without limitation any defects) Customer shall not be entitled to assert any claims and rights for non-conformity if Customer did not effectuate the payments due and if the amount due but unpaid is reasonably commensurate to the value of the — non-conforming — Deliveries or Services.

5. Package, Date of Delivery, Non-Performance beyond our Responsibility, Delay in Delivery, Impossibility of Delivery, Breach of Duty to Cooperate

5.1 Unless otherwise agreed, Delivery shall generally be effectuated „ex works“. Should packing material should be supplied by us, such as barred boxes, Customer shall return the latter immediately to us at Customer's cost and risk. In case of delayed or failed return, we shall remain entitled to respective damages.

5.2 Dates of Delivery or Service indicated by us are fixed dates only if they are expressly stipulated to be fixed.

5.3 The observance of Delivery or Service obligations, especially of dates of delivery requires

- Customer, correctly and in due time, observing all and any of his obligations to co-operate, especially the submission
- of documents, information, specifications, and goods to be provided by Customer;
- the clarification of all technical details with Customer;
- the receipt of down payments or the opening of a Letter of Credit, respectively, as agreed upon;
- the presence of administrative approvals or licenses that may be necessary.

We reserve the right to plead non-performance of the contract by Customer

5.4 For the observance of the delivery period, the point of time shall be decisive at which the Deliveries or Services are performed “**ex works**” or for which we have notified Customer of our readiness to dispatch or collect.

5.5 Delays in our Delivery beyond our Responsibility

5.5.1 We shall not be responsible for delays in Delivery or Service occurring for us, our suppliers or sub-suppliers that

- (i) constitute events of force majeure, or
- (ii) which occur after conclusion of contract or which we learn about only after conclusion of contract for no fault attributable to us, and with regard to which we prove that they could not have been foreseen and avoided by us even with reasonable care, unless we exceptionally have assumed the risk of procurement or granted a guarantee of supply in time. Among such events that we are not responsible for e.g. are: Legitimate labor struggle (strikes and lock-outs); operating troubles and breakdowns; shortage in or lack of raw material; shortage in or lack of operating supply items, epidemics and pandemics, public authority decisions or instructions Rank.

5.5.2 In the event of delay in Delivery or Service under cl. 5.5.1 above, any claims for damages of Customer are excluded.

5.5.3 In the event of a definite impediment to Delivery or Service within the meaning of cl. 5.5.1 above, either Party shall be entitled to immediately rescind the contract in accordance with the statutory provisions.

5.5.4 In the event of a temporary impediment to Delivery or Service within the meaning of cl. 5.5.1 above, we shall be entitled to postpone Delivery or Service for as long as the impediment may last. This period of postponement shall also include a reasonable start-up time. If we can prove an unreasonable impediment to Delivery or Service, we shall have the right to rescind the contract. Customer, however, shall have the right to rescission only under the conditions laid down in cl. 5.7 below.

5.6 Delays in Delivery or Service within the Scope of our Responsibility

If a higher degree of liability (especially a liability regardless of fault) or a lower degree of liability can neither be determined nor inferred from the other content of the contract, we shall be liable for damage caused by delay due to intentional or negligent breach of obligations as follows:

5.6.1 In case of intent we shall be liable according to the statutory provisions.

5.6.2 We are liable for damage caused by delay according to the statutory provisions; our liability for such damages, however, is limited to the foreseeable damage typically arising under contract:

- in case of gross negligence on the part of our legal representatives, executive employees and other vicarious agents;
- in case of slight (i.e. non-gross) negligence on the part of our legal representatives, executive employees and/or other vicarious agents, if they breach essential contractual obligations (cf. definition in cl. 8.8.2 below). This is in particular the case if the existing contract is a transaction where time is of the essence ("Fixgeschäft") or if Customer may assert that his interest in the performance of the contract has ceased to exist due to delay in Delivery or Service for which we are responsible.

5.6.3 Except for the cases governed by cl. 5.6.2 above, in slight liability, our liability for delay in Delivery or Service Shall be limited to a compensation for delay to 0.5 percent (0.5%) of the net invoice amount of the delayed Delivery or Service for each full week of delay in Delivery or Service, but in no event such compensation for delay shall exceed five percent (5%) of the value of the net.

5.6.4 Further Customer's claims and rights remain reserved.

5.7 Customer's Right to rescind the Contract in case of delay in Delivery or Service

If we prove that we are not responsible for the delay, Customer shall be entitled to rescind the Contract only

- if Customer has stipulated that his continuing interest in our Delivery or Service shall depend upon a timely Delivery or Service by us ("Fixgeschäft") or
- if Customer proves that, as a consequence of the delay, his interest in our performance of the contract has ceased to exist or that the maintenance of the contractual relationship cannot reasonably be expected from Customer.

For the rest, Section 323 paras. (4) to (6) of the German Civil Code (S 323 Abs. (4) — (6) BGB) shall apply. With respect to the legal consequences of the rescission, the statutory provisions of Sections 346 et seq. of the German Civil Code (SS 346 ff. BGB) shall apply; Customer may reclaim performances which Customer was not obliged to perform. The statutory rights to terminate a contract to produce a work ("Werkvertrag") shall remain unaffected.

5.8 If our Delivery or Service becomes impossible we shall be liable pursuant to the statutory provisions; our liability shall however be limited with respect to its amount:

For lack of intent or gross negligence attributable to us, to our legal representatives or to our agents, our liability for damages and for compensation of expenses shall be limited to twenty percent (20%) of the net invoice amount of

our Delivery or Service; in case of gross negligence our liability shall be limited to the foreseeable damage specific to the type of contract. This limitation of liability shall not apply, if we exceptionally assumed the risk of providing the product in any event (procurement risk).

Customer's statutory right to rescind the Contract in case of impossibility of our Deliveries or Services shall remain unaffected.

5.9 We are entitled to partial Delivery or Service, if and as far as Customer reasonably may be expected to accept this.

5.10 If Customer is in default in taking Deliveries or in accepting Services at the place of performance or in collecting goods or in requesting Delivery of goods ordered — also with regard to possible partial Deliveries — or if Delivery is delayed in any other way due to circumstances for which Customer is responsible or if Customer negligently breaches any other duty to cooperate, we shall be entitled to claim compensation of any damages caused insofar including compensation of any additional expenses without prejudice to our further statutory rights. Any further claims shall remain unaffected.

6. Passing of Risk, Insurance

6.1 In case of Deliveries, the risk of accidental loss, destruction or deterioration of any goods shall pass to Customer as soon as the goods have been delivered to the person or institution designated to pick up or execute the Delivery, however at the moment when the goods leave our premises at the latest. **This shall also apply if, in accordance with specific agreements to this effect, we effect Delivery by using our own vehicles, or if Delivery is effected freight and packaging paid, and also if Customer engages us with the shipping. In the latter case, we shall not be liable for selecting the least expensive method of shipment.**

6.2 If Customer is in default in taking Deliveries or in accepting Services or in collecting goods or in requesting goods or if Deliveries or Services are delayed in any other way due to circumstances for which Customer is responsible, the risk of accidental loss, destruction, or deterioration of the goods shall pass to Customer at the moment that Customer is in default, or at the moment when Delivery or Services could have been effected if Customer's conduct had been in accordance with his contractual obligations.

6.3 Upon Customer's request and at his expense, any Deliveries will be insured by us against theft, damage by breakage, by reason of fire, by water, or in transit, as well as against any other insurable risk from the time of the passing of risk. We shall be entitled to compensation of expenses or adequate remuneration, respectively, for storing of Deliveries by us after the passing of risk or upon Customer's request.

7. Retention of Ownership

7.1 We retain ownership of all goods delivered by us until we receive full payment of any outstanding amounts originating from the business relation with Customer ("Reserved Goods"). In case we grant open account credit terms to Customer, the retained ownership shall also be extended to the confirmed balance with regard to Customer's current account payable to us (Current Account Reservation) until all current liabilities have been discharged. In case of Customer's breach of contract, especially in case of his default of payment, we shall be entitled to take back the Reserved Goods. The taking back of the Reserved Goods is deemed a rescission of the contract. After taking back of the Reserved Goods, we are entitled to their realisation; the proceeds from the realisation shall be credited against Customer's liabilities less adequate realisation costs.

7.2 Customer shall have the right to resell any Reserved Goods in the ordinary course of business; however, by now, he shall assign to us—to the amount of the invoice total (including VAT)—any and all claims that he may have against his customers or against third parties as a result of the resale. If Customer grants open account credit terms to his customers and any claims resulting from a resale of Reserved Goods are entered into this current account, the current account claim shall be assigned to us to the amount of the confirmed balance; the same shall apply to the actual balance if Customer becomes insolvent. Customer shall remain entitled to collect the claims even after their assignment to us. Subject to the statutory insolvency provisions, our right to collect claims ourselves shall remain unaffected; however we undertake not to collect any claims for as long as Customer himself duly meets his contractual obligations, in particular for as long as Customer is not in default of payment and insolvency proceedings are not filed for Customer's assets and if he has not suspended payment in general. Under this right of resale, Customer shall not be entitled to pledge or transfer by way of security any of the Reserved Goods

7.3 If our obligation under cl. 7.2, not to collect claims ourselves, ceases to exist, we shall have the right—subject to the statutory insolvency provisions:

- to revoke Customer's right to resale and to take back and realise the Reserved Goods according to cl. 7.1 and/or
- to revoke Customer's authority to collect claims and to demand that Customer disclose to us

the claims assigned and the respective debtors (third parties), that he provide us with any and all particulars necessary for direct debit, that he hand over to us the corresponding documents and that he notify the debtors of the assignment.

7.4 In case of damage to or loss of the Reserved Goods, as well as in case of a change of possession or of residence, Customer shall immediately notify us thereof in writing; the same shall apply in case execution is levied upon the Reserved Goods by a third party or in case of any other interference by a third party so that we are in a position to bring a third party motion to vacate (under Section 771 of the German Code of Civil Procedure (S 771 ZPO)). If such third party is in no position to reimburse the judicial and extra-judicial costs incurred by us under the third party motion to vacate, Customer shall be liable for the costs incurred by us. If the release of the Reserved Goods is achieved without legal proceedings, costs hereby incurred may also be charged to Customer, costs for regaining pledged Reserved Goods shall be included herein.

7.5 Any processing or transformation of Reserved Goods by Customer shall always be deemed to be on our behalf. If Reserved Goods are processed together with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the joint property being defined by the ratio of the value of the Reserved Goods (invoice total plus VAT) to the value of the other goods processed or transformed, such values being assessed at the time of their processing or transformation. For the rest, any provisions herein which apply to the Reserved Goods shall also apply to the product of such processing or transformation. With respect to the product of such processing or transformation, Customer shall acquire expectant rights corresponding to his expectant rights to the Reserved Goods.

7.6 If Reserved Goods are inseparably commingled or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the joint property being defined by the ratio of the value of the Reserved Goods (invoice total plus VAT) to the value of the other goods which have been commingled or combined, such values being assessed at the time of their commingling or combining. If the commingling or combining of the goods has occurred in such a way that Customer's goods are to be considered the main product, it is deemed agreed that Customer transfer to us coownership of such product on a pro rata basis. Customer shall keep such property which is either owned by us solely or owned jointly with another person properly stored on our behalf.

7.7 If our Reserved Goods are resold after having been processed or transformed in any way, by now, Customer shall assign to us as security any claims resulting from such resale to the amount of the invoice total (including VAT) of our claims. If, on account of the processing or transformation of Reserved Goods with other goods which are the property of any person other than us or if on account of their commingling or combining with such other goods, we have only acquired co-ownership pursuant to the above clauses 7.5 or 7.6, Customer's claim for the purchase price shall only be assigned to us in advance in the proportion of the total amount charged by us for the Reserved Goods plus VAT to the invoice totals of the other goods which are not our property. For the rest, provisions as laid down in cls. 7.2 to 7.4 above shall apply mutatis mutandis to claims assigned to us in advance.

7.8 If under the laws of a foreign country within the borders of which the Reserved Goods are located, a reservation of ownership or an assignment is not legally effective, the security provision which in such jurisdiction corresponds to a reservation of ownership or an assignment shall be deemed agreed upon. If Customer's assistance is required in order to create such rights, Customer shall be obligated at our request to take all measures necessary in order to constitute and maintain such rights.

7.9 Customer shall treat our Reserved Goods properly and keep them in good repair; in particular, Customer shall at his expense sufficiently insure our Reserved Goods against theft, robbery, burglary, fire, and water damage. Hereby, Customer assigns to us any and all rights resulting from such insurance and relating to the Reserved Goods. We hereby accept such assignment.

Furthermore, we reserve all rights to assert our claims for performance and claims for damages, respectively.

7.10 We commit to release, upon Customer's request, the securities we are entitled to if the value of such securities exceeds the value of our claims to be secured by more than ten percent (10%). We shall have the right to select the securities to be released at our discretion.

8. Specifications, Liability for Defects

8.1 The requirements contained in our specifications exhaustively and conclusively define the quality of our Deliveries and Services. But for express provisions to the contrary, these specifications shall only constitute stipulations about the quality and not guarantees or covenants. In case of doubt, statements from our part in the context of the contract do not constitute guarantees or covenants in terms of an aggravation of liability or the assumption of a special obligation to meet claims. With respect to guarantees or covenants, in case of doubt, only explicit written statements from our part shall be operative.

8.2 Customer may only assert warranty claims if he has duly observed his duties to examine the Deliveries and to give notice of any defects in accordance with Section 377 of the German Commercial Code (S 377 HGB). We shall then notify Customer without delay whether the Delivery which is subject to a complaint or parts hereof, respectively, shall be returned to us or whether Customer shall wait until the Delivery will either be collected by us at his site or will be inspected by us on site. In case we request a return of Delivery, Customer shall use the same mode of shipment which we used when shipping the Delivery to Customer.

8.3 There shall be no liability for defects of any kind, in case the contractual products are inappropriately treated, used, or processed and Customer does not prove that the defects were not caused by influences as set out above and that as a result thereof we were not unreasonably hampered from removing the defect.

8.4 Customer shall not have any warranty claims in case of only insignificant deviations from the quality agreed upon or in case of only insignificant impediments to the use of the Delivery or of the Service.

8.5 In case that there is, according to the above, a defect, we shall be entitled to supplementary performance ("Nacherfüllung"), at our option, either by removing the defect or by delivering a non-defective substitute product or by supplementary processing (improving) of the goods provided by Customer for processing. We shall be entitled to remove defects by third parties on our behalf. Should either or both of those two types of supplementary performance be impossible or unreasonable, we shall be entitled to refuse it or them, respectively.

We may also refuse supplementary performance, as long as Customer fails to fulfil his payment obligations vis-à-vis us to an extent commensurate with the non-defective portion of our Delivery. Replaced parts shall become our property. Customer's rights with respect to supplementary delivery and removal of defects shall not be in excess of Customer's rights with respect to the original contractual products. We shall bear all expenses necessary for the purpose of supplementary performance, especially costs for transportation of man and material, working and material costs. If the Customer, in accordance with the type and the purpose of use of the product, has integrated in another object or has affixed the product to another object, we shall be obligated as part of our obligation of substitute performance to compensate any expense of Customer necessary for the removal of the defective and the integration resp. fitting of the substituted or repaired product. This obligation shall not apply as far as those expenses are increased due to the fact that the defective product was moved to a different place than the place of performance, unless such moving to a different place was necessary for the presupposed use of the product.

8.6 In case of impossibility or failure of supplementary performance, of delay by our fault, of unreasonable delay or of our serious and definite refusal of supplementary performance, or unreasonableness of supplementary performance for Customer, the latter shall be entitled, at his option, to either commensurately reduce the purchase price ("Minderung") or to rescind the contract ("Rücktritt").

8.7 As far as, with regard to the preconditions and consequences of supplementary performance, price reduction, and rescission, these GENERAL TERMS AND CONDITIONS do not contain provisions at all or do not contain provisions deviating from statutory law, the provisions of statutory law shall apply with respect thereto. Regarding the Customer's recourse against us due to expenses made in connection with defective new products, the statutory provisions shall apply.

8.8 Customer's claims for damages and reimbursement of expenses in connection with defects shall be governed— regardless of the legal nature of the claim—by the following provisions of cls. 8.8.1. to 8.8.4 exclusively; the aforementioned provisions shall apply especially also with respect to warranty claims, claims for breach of obligations, and claims in tort.

8.8.1 We shall be unlimitedly liable—pursuant to the applicable provisions of statutory law—for damage in case of:

- intent;
- culpable infringement of life, body or health;
- defects and other facts that have been fraudulently concealed; or defects whose absence has been guaranteed, or
- insofar as the quality of goods has been guaranteed.

8.8.2 Moreover, we are, in principle, liable for damages pursuant to the provisions of statutory law. Our liability for damages on the basis of statutory law is, however, limited—notwithstanding the provisions in cl. 8.8.1 above—to the foreseeable, damage typically arising under contract in the following cases:

- gross negligence on the part of our legal representatives, executive employees, and other vicarious agents;
- slight (i.e. non-gross) negligence on the part of our legal representatives, executive employees, and other vicarious agents—provided that any of the latter commit a breach of essential contractual obligations (i.e. obligations whose performance makes the proper implementation of the Contract only possible at all and in whose observance the contractor may regularly trust).

8.8.3 The liability according to the German Products Liability Act („Produkthaftungsgesetz“) remains unaffected.

8.8.4 Any further claims are excluded unless otherwise provided for in this cl. 8.8.

8.9 Customer's claims to recourse against us pursuant to Section 478 of the German Civil Code (S 478 BGB) (recourse of the merchant) are excluded to the extent Customer and his customer agreed on provisions in excess of the statutory liability for defects. For the rest, the claims to recourse against the manufacturer remain unaffected.

9. Liability for Collateral Duties

If, due to our fault or due to the fault of our legal representatives or agents, the product delivered cannot be used as contractually intended as a consequence of a lack or deficiency of advice or information rendered prior to the conclusion of contract or as a consequence of lack or deficiency of other collateral duties (especially instructions for use and maintenance of the product), the provisions of cl. 8.8 above shall apply accordingly, excluding any further claims of Customer.

10. Conformity with applicable law, Regulations and Rules by our Enterprise, Compliance

10.1 Guarantees, obligations, confirmations and declarations required by Customer with regard to our Compliance with national or foreign public law, regulations and rules by our enterprise, including but not limited to criminal law, anti-corruption law, competition law, environmental law, human rights, security of working and minimum wages, shall only constitute a contractual obligation vis-à-vis Customer if we have explicitly agreed to them in writing.

The same shall apply with regard to any conformity requested by Customer with non-statutory standards by our enterprise, e. g.

- the “Supplier Code of Conduct” on the basis of corporate and social responsibility rules of the United Nations,
- the principles of the Global Compact Initiative of the United Nations as expressed in the “10 Principles” for the business environment with regard to the protection of human rights and, with regard to labour rights, the abolition of compulsory work and child labour, the elimination of discrimination in respect of employment and occupation as well as the protection of the environment,
- the ISO norm 26000,
- other compliances rules of Customer.

10.2 If we breach the public law rules applicable to our enterprise, our Customer shall have only the recourse that is statutorily provided against us, unless we have previously explicitly agreed in writing otherwise. This shall especially apply to rights of termination or rescission, liquidated damages, claim for damage compensation, compensation of expenses and obligations to hold free and harmless. In case of non-binding standards, Customer shall only be entitled to assert claims that previously have been explicitly agreed upon in writing.

10.3 Any controlling and audit rights of Customer with the purpose of auditing our compliance in connection with the areas mentioned in cl. 10.1 above (breaches against compliance) shall be permissible only on the basis of written explicit agreement. The same shall apply in connection with any obligations of notification and information in this respect.

10.4 We shall not be liable for any breaches of compliance by third parties, especially, but without limitation, our sub-suppliers, unless such liability has been previously agreed to explicitly in writing.

11. Aggregate Liability, Rescission of Contract by Customer

11.1 The following provisions apply to Customer’s claims other than warranty claims. These provisions shall neither constitute a limitation nor a waiver of our statutory or contractual rights and claims.

11.2 Any liability for damages shall be governed analogously by the provisions in cl. 8.8 above — except for the liability for damages due to delay as provided for in cl. 5.6 above and the liability for damages due to impossibility as provided for in cl. 5.8 above. As far as a statutory liability applies the foreseeable damage typically arising shall apply and not the damage typically arising under contract. Any further liability for damages shall be excluded—

regardless of the legal nature of such liability. This shall apply in particular to claims for damages in addition to performance and claims for damages in lieu of performance for breach of obligations, as well as to claims in tort for compensation of damage to property under Section 823 of the German Civil Code (S 823 BGB).

11.3 The limitation contained in cl. 11.2 above does also apply if Customer claims compensation of expenses incurred.

11.4 Any fault of our legal representatives and vicarious agents may be attributed to us.

11.5 The statutory rules on the burden of proof shall remain unaffected.

11.6 As far as our liability is excluded or limited, such exclusion or limitation does also apply to the personal liability of our staff, employees, legal representatives and vicarious agents.

11.7 Customer shall be entitled to rescind the contract, subject to the applicable statutory provisions, only in case we are responsible for the breach of obligation. In the cases provided for in cl. 8.6 above (failure of supplementary performance etc.) and in cases of impossibility, however, the statutory provisions shall apply exclusively; as for Customer’s right of rescission on grounds of delay in Delivery or Service, the provisions contained in cls. 5.5.3, 5.5.4, and 5.7 above shall apply. Upon our request, Customer shall state within a reasonable time limit, whether, as a result of the breach of obligation, he will rescind the contract or insist in our Delivery under the contract.

12. Export Control and Customs, Obligation to hold harmless

12.1 With regard to the means of production, especially the goods provided by Customer for processing, Customer shall be obligated to inform us in writing and in good time on potential requirements for permissions or restrictions of (re-)exports under German, European or US import or export or customs regulations as well as export or customs regulations of the country of origin of the goods provided by Customer for processing. Customer shall be obligated to make available in time the following information:

- material, documentation or other identification numbers of Customer,
- description of the goods provided by Customer for processing,

- any export list numbers applicable to the goods provided by Customer for processing including the export control classification number under US commerce control list (ECCN),
- country of origin of the product under international trade politics,
- statistical number of product (HS code),
- a contact person in its enterprise for the purpose of clarification of potential questions.

12.2 Customer shall be obligated to inform us without any delay about potential changes of permission requirements with regard to the goods provided by Customer for processing, whether it be technical or statutory changes or any prescriptions of authorities.

12.3 Customer shall be liable for all additional costs and expenses that we incur due to the non-conformity of Customer with the aforementioned obligations and shall hold us free and harmless insofar upon first request.

13. Limitation of Actions

13.1 The limitation period for rights and claims based on defects of Deliveries or Services and other cases of non-conformity, no matter on what legal ground, shall be, notwithstanding cl. 13.3 below, one (1) year.

13.2 The limitation period laid down in cl. 13.1 above shall also apply to any and all claims for damages against us.

13.3 The limitation period according to cl. 13.1 above shall in principle not apply in case of intent. It shall neither apply in case of fraudulent concealment of a defect nor in case of guarantee for the quality of goods. The limitation period for claims for damages according to cl. 13.1 above shall not apply in the cases of cls. 8.8.1, 8.8.2, and 8.8.3 above, and in cases of recourse claims of Customer against us due to defective products newly produced by us; the statutory limitation periods shall apply insofar.

13.4 Unless otherwise expressly provided for, the statutory provisions about the commencement of the limitation period, about the suspension of expiry of the limitation period, about the suspension of the limitation period and about the recommencement of the limitation period shall remain unaffected.

13.5 The claims for reduction of the purchase price („Minderung“) and the right to rescind the Contract („Rücktritt“) are excluded, if the claim for supplementary performance („Nacherfüllung“) is barred by limitation. In that case, Customer may, however, refuse payment of the purchase price insofar as he would have been entitled to on the basis of his right to reduce the purchase price or his right to rescind the Contract.

14. Assignment by Customer

Customer shall assign claims against us arising from or in connection with our Deliveries or Services to any third party only with our prior written consent.

15. Rights to Know-How and Inventions

We reserve all rights and title to any valuable, new, and confidential information (know how) that we are in possession of or gained during the performance of any contracts concluded with us, as well as to inventions and any intellectual or industrial property rights that may exist insofar, unless otherwise agreed, and subject to the use of the products delivered to which Customer is entitled according to the spirit and purpose of the respective contract.

16. Place of Performance, Place of Jurisdiction, Applicable Law, Severability Clause

16.1 Unless otherwise agreed upon, place of performance shall be our place of business exclusively.

16.2 If Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship—herein included liabilities from checks and bills of exchange—shall either be our principal place of business or, at our sole option, the location of Customer. This provision as to the place of jurisdiction shall also apply to Customers having their location in a foreign country.

16.3 To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and Customer, German law, excluding the UN Sales Convention (CISG: United Nations Convention on Contracts for the International Sale of Goods, of April 11.04.1980), shall apply exclusively, without regard to conflict of laws rules.

16.4 Should individual provisions of these GENERAL TERMS AND CONDITIONS or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.

Enayati Oberflächentechnik GmbH

Panoramastr. 76
75217 Birkenfeld
Tel. 07231 94950
info@enayati.de
www.enayati.de