

# GENERAL TERMS OF DELIVERY AND PAYMENT

of MAINCOR Rohrsysteme GmbH & Co. KG to be used in business dealings with companies.

Schweinfurt, 22/02/2017

## 1. General

**1.1.** The following provisions shall apply to the contractual services assumed by MAINCOR Rohrsysteme GmbH & Co. KG (hereinafter referred to as "**MAINCOR Rohrsysteme**") with regard to its contractual partners (hereinafter referred to as "Buyer") in this order:

- the individual contractual agreement of the parties;
- these general terms of delivery and payment;
- the German Civil Code [BGB].

**1.2.** These General Terms of Delivery and Payment (hereinafter referred to as "**GTC**") only apply towards companies as defined by section 14 of the German Civil Code [BGB] and towards corporate bodies under public law and special funds under public law.

**1.3.** The GTC particularly apply to contracts on the sale or the delivery of movable property (hereinafter also referred to as "**Goods**" or "**Delivery item**"), regardless of whether MAINCOR Rohrsysteme produces the Goods itself or purchases them from suppliers (sections 433, 651 BGB). These GTC are considered as a framework agreement for future contracts on the sale and delivery of movable property with the same Buyer without MAINCOR Rohrsysteme having to point to these GTC again in individual cases. This shall also apply to any change of these GTC if MAINCOR Rohrsysteme points to any such change.

**1.4.** These GTC have exclusive effect. The Buyer accepts these GTC upon placement of the order or upon acceptance of the Goods at the latest. Any differing, conflicting or supplementing general purchase conditions or GTC of the Buyer will only become part of the contract if and to the extent MAINCOR Rohrsysteme has expressly agreed to their application. This requirement of approval shall apply in any case, for example, even if MAINCOR Rohrsysteme, being aware of the general purchase conditions or GTC of the Buyer, makes the delivery to the Buyer

without reservation. Any other terms and conditions, individual understandings, contracts or agreements will only be binding if they have been agreed upon in writing. In these cases, the GTC of MAINCOR Rohrsysteme shall apply complementarily.

**1.5.** Legally relevant statements and notifications which have to be made by the Buyer to MAINCOR Rohrsysteme after conclusion of the contract (e.g. setting of time limits, notices of defect, statement of withdrawal or reduction) shall be made in writing to become effective.

**1.6.** References to the validity of statutory provisions only serve clarification purposes. Even without such a clarification, the statutory provisions apply unless they are directly changed or explicitly excluded in or by these GTC.

## 2. Specification of services

For the products of MAINCOR Rohrsysteme, the operating manuals, product descriptions, technical handbooks and installation instructions of MAINCOR Rohrsysteme shall apply, which are available on [www.maincor.de](http://www.maincor.de).

## 3. Offer and conclusion of the contract

**3.1.** MAINCOR Rohrsysteme's offers shall be subject to change and without obligation unless the obligation was explicitly stated in the offer. This shall also apply if MAINCOR Rohrsysteme has passed over catalogs, technical documentation (such as drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to the Buyer.

As far as MAINCOR Rohrsysteme's offer is not binding by way of exception, a conclusion of the contract shall only take place upon the written confirmation of the order following the legally binding order of the Buyer.

MAINCOR Rohrsysteme's sales employees are not entitled to make oral collateral agreements or oral commitments which exceed the content of the written contract.

**3.2.** The Buyer's order of the Goods is considered as a binding offer unless otherwise stated expressly in this order. MAINCOR Rohrsysteme is entitled to

accept an order of the Buyer which is to be considered as binding within 2 weeks by sending a written confirmation of the order or by performing the contractual service with regard to the Buyer within the same period; in case of in-stock products or available stock, this period is reduced to one week.

**3.3.** In case of long-term or continuous business relationships with a Buyer, the original plans and product descriptions available to MAINCOR Rohrsysteme remain valid, whether they originate from MAINCOR Rohrsysteme or from the Buyer, in case of a repeat order or reorder unless the Buyer points explicitly and in writing to its change requests or highlights them in plans and product descriptions as a change request with regard to MAINCOR Rohrsysteme.

## 4. Prices, payment terms and delay in payment

**4.1.** Unless stipulated otherwise, MAINCOR Rohrsysteme shall adhere to the prices contained in its binding offer for four weeks starting on the date of the offer. In any other case, the prices stated in MAINCOR Rohrsysteme's confirmation of order shall be authoritative. Additional deliveries and services of MAINCOR Rohrsysteme shall be invoiced separately. All prices are quoted in Euro. Item 3.1. remains unaffected.

**4.2.** Unless agreed otherwise, the prices of MAINCOR Rohrsysteme are calculated ex works; packaging costs, costs for loading, freight and installation are not included in the price. The remuneration stated in the contract or in the order does not include the statutory turnover tax. Turnover tax is shown separately in the invoice at the legally applicable rate on the day of invoicing.

**4.3.** Unless otherwise agreed upon with the Buyer in writing, payment of the contractual services shall be due within 30 days from the date of the invoice without deduction. A payment shall only be deemed as effected when the payment contractually due is received by MAINCOR Rohrsysteme or on one of the accounts stated in MAINCOR Rohrsysteme's invoice. If a draft or a check is accepted, payment shall only be deemed as effected when the draft or check is honored. The acceptance of drafts always requires a prior written

agreement with MAINCOR Rohrssysteme. If a draft is accepted, the discount and collection fees of the bank shall be invoiced in addition to the purchase price.

**4.4.** If the agreed delivery time exceeds a period of six weeks from conclusion of the contract or if the delivery is deferred by more than six weeks from conclusion of the contract due to reasons, for which the Buyer is solely responsible or which are solely in the Buyer's risk area, MAINCOR Rohrssysteme is entitled to adjust the agreed price as far as essential changes of energy, material, work and raw material costs have occurred after conclusion of the contract. If the increase amounts to more than 10% of the originally agreed remuneration, the Buyer is entitled to withdraw from the contract; the right of withdrawal shall be declared in writing. This right of withdrawal does not apply if the Buyer does not exercise it towards MAINCOR Rohrssysteme within a period of two weeks from the date of notification of the price adjustment.

**4.5.** The Buyer falls into arrears without further statement by exceeding the period given in item 4.3. or deviating from this by exceeding an agreed payment date. In case of default, MAINCOR Rohrssysteme may demand default interest of 9 percentage points above the base rate as of the due date. MAINCOR Rohrssysteme reserves the right to prove a higher damage caused by default exceeding the default interest of 9 percentage points above the base rate. The Buyer is entitled to prove that the damage caused by default to MAINCOR Rohrssysteme was not higher than 9 percentage points above the base rate. In case of default by the Buyer, MAINCOR Rohrssysteme is entitled furthermore to withhold performance of further contractual services until the Buyer has made payment or granted a security in form of an absolute, irrevocable and unlimited guarantee of a German major bank or savings bank at MAINCOR Rohrssysteme's discretion.

**4.6.** If the Buyer does not meet its due obligation to pay in spite of a reminder with a set time limit, MAINCOR Rohrssysteme may withdraw from the contract and demand compensation according to the statutory provisions including the lost profit. However, MAINCOR Rohrssysteme has to allow setting off of what MAINCOR Rohrssysteme has saved due to the contract's cancellation or gained by use of its employees elsewhere or omitted to gain with malicious intent.

As far as MAINCOR Rohrssysteme has to allow setting off of saved expenses, MAINCOR Rohrssysteme shall meet its obligation to prove accuracy of these savings if MAINCOR Rohrssysteme proves the difference between the expected and the actual operational course of loading by an independent tax consultant or a comparable expert by means of figures which the independent tax consultant or the comparable expert has plausibly obtained from MAINCOR Rohrssysteme's books.

Deviating from this, MAINCOR Rohrssysteme may fix a lump sum of 60% of the remuneration accounting for the services not performed for the savings to be deducted. The Buyer reserves the right to prove that the costs actually omitted due to the cancellation exceed the aforementioned lump sum. MAINCOR Rohrssysteme's obligation to allow setting off of any additional income due to another possible use of MAINCOR Rohrssysteme's employees shall remain unaffected.

**4.7.** In the case of economic inability of the Buyer, particularly in the case of insolvency proceedings or legitimate doubts regarding the continuous financial soundness, MAINCOR Rohrssysteme may claim all undue receivables from the business relationship with the Buyer and demand an advance payment for future services.

**4.8.** If defects are present, the Buyer shall not be entitled to a right of retention unless the right of retention is based on the same contractual relationship and the delivery is obviously defective; in such a case, the Buyer shall only be entitled to a right of retention if the retained amount is in a reasonable relation to the defects and the expected costs of supplementary performance, especially of a removal of defects.

Even if notices of defects or counterclaims are asserted, the Buyer shall only be entitled to set off if the counterclaims are established as final and absolute, if they were recognized by MAINCOR Rohrssysteme or if they are undisputed. The Buyer is not entitled to assert claims and rights due to defects if it has not made the payments due and if the amount due is in reasonable relation to the value of the delivery which is defective.

**4.9.** The Buyer shall only be allowed to cede claims to which it is entitled from MAINCOR Rohrssysteme to third parties

with MAINCOR Rohrssysteme's prior written consent.

**4.10.** If the Buyer is obliged to make payments to MAINCOR Rohrssysteme from several obligations and if a payment made by it is not sufficient to settle all debts, MAINCOR Rohrssysteme shall be entitled to credit the Buyer's payments - in spite of contrary specifications of the Buyer - against the older debts first. If the Buyer has to pay interest and expenses in addition to the principal claim, MAINCOR Rohrssysteme shall be entitled to credit a payment, which is not sufficient for settlement of the entire debt, against the costs, then against the interest and last against the principal claim. MAINCOR Rohrssysteme shall inform the Buyer on how the payment was settled.

## **5. Time of delivery and performance**

**5.1.** Dates and deadlines are not binding unless they are agreed to be binding explicitly and in writing. The Buyer may ask MAINCOR Rohrsysteme in writing to deliver within a reasonable period after a non-binding delivery date or a non-binding delivery deadline was exceeded by four weeks.

**5.2.** The start of the period is postponed until possible duties of the Buyer to cooperate have been fulfilled, including but not limited to the procurement of documents, plans, permits and clearances to be obtained by the Buyer as well as the compliance with agreed payment conditions and other obligations of the Buyer.

**5.3.** MAINCOR Rohrsysteme may, notwithstanding MAINCOR Rohrsysteme's rights from delay of the Buyer, demand from the Buyer an elongation of times of delivery and performance or a postponement of the times of delivery and performance by the period, in which the Buyer does not comply with its contractual obligations towards MAINCOR Rohrsysteme.

**5.4.** The time of delivery shall be considered as met if MAINCOR Rohrsysteme informs the Buyer of the readiness for shipment within the time of delivery.

**5.5.** MAINCOR Rohrsysteme shall not be liable for the impossibility of delivery or for delay in delivery if these were caused by force majeure or by other events which were not foreseeable when the contract was concluded and if MAINCOR Rohrsysteme is not responsible for these; cases of force majeure or other events which were not foreseeable include mobilization, war, strikes, lock-outs, natural disasters, operational defaults of any kind, difficulties in procurement of material and energy, delays in transport, lack of labor, lack of energy or raw materials, difficulties in obtaining the required official authorizations or the delivery by suppliers which is missing, wrong or not in due time in spite of a congruent covering operation which was concluded before and similar unforeseeable events. This also applies if the circumstances arise on part of subcontractors or suppliers charged or called in by MAINCOR Rohrsysteme to fulfill the contract, and it has not been possible to call in other subcontractors or suppliers. MAINCOR Rohrsysteme may also not be held responsible for the aforementioned circumstances if they

occurred during a default already at hand. MAINCOR Rohrsysteme shall inform the Buyer in writing immediately, however at the latest within one week after the event impeding the performance became known, of the impediment and the respective reasons.

**5.6.** In case of a merely temporary impediment according to item 5.5., the deadlines and dates shall be postponed by the duration of the event impeding the performance plus a reasonable starting time after termination of the event suspending the deadline. If an impediment according to item 5.5. makes a delivery or service for MAINCOR Rohrsysteme essentially more difficult or impossible and if the impediment is not removed within a period of four months, MAINCOR Rohrsysteme may entirely or partly withdraw from the contract. Furthermore MAINCOR Rohrsysteme may demand from the Buyer to give a declaration whether they will withdraw from the contract due to the performance's delay or whether they insist on delivery. If the Buyer does not give a declaration MAINCOR Rohrsysteme also may withdraw from the contract. In both cases, MAINCOR Rohrsysteme may withdraw from the contract without being liable for damages. In case of withdrawal, MAINCOR Rohrsysteme shall immediately reimburse the respective service, which it might have received already, to the Buyer.

**5.7.** The occurrence of a delay in delivery by MAINCOR Rohrsysteme is governed by the legal provisions. However in any case, the Buyer shall grant MAINCOR Rohrsysteme a reasonable grace period - starting on the day on which the written notice of default is received by MAINCOR Rohrsysteme or in the case of a calendar-based deadline starting on the following day.

**5.8.** If MAINCOR Rohrsysteme falls in arrears with a delivery or service or if a delivery or service becomes impossible for MAINCOR Rohrsysteme, except for the cases of items 5.4. to 5.6., MAINCOR Rohrsysteme's liability shall be limited to damages according to item 8.

**5.9.** MAINCOR Rohrsysteme shall at any time be entitled to partial deliveries and partial services as far as this is reasonable for the Buyer and no disadvantages are caused to the Buyer.

**5.10.** If the Buyer falls into arrears with accepting the goods, MAINCOR Rohrsysteme is entitled to demand compensation of the resulting damage and

possible additional expenses. The same applies if the Buyer culpably has breached their duty to cooperate. Upon occurrence of default of acceptance or default of the debtor, the risk of accidental deterioration and accidental loss shall pass on to the Buyer. Item 6. remains unaffected.

## **6. Delivery, passing of the risk, shipping and packaging**

**6.1.** Unless agreed otherwise in the written agreement between MAINCOR Rohrsysteme and the Buyer, a delivery "ex works" is agreed upon.

The Goods shall be sent to another place of destination at the Buyer's request and expense. The type of shipment and the transport route are at MAINCOR Rohrsysteme's own discretion excluding any liability unless there are specific instructions. Loading and shipment are made uninsured at the Buyer's risk. MAINCOR Rohrsysteme endeavors to consider the Buyer's requests and interest concerning type of shipment and transport route; the additional cost incurred by this is charged to the Buyer even in case of an agreed delivery free of charge. On request and at expense of the Buyer, MAINCOR Rohrsysteme will cover the delivery with a cargo insurance. However, MAINCOR Rohrsysteme does not accept responsibility for the insurance's execution.

**6.2.** The risk of accidental loss and accidental deterioration of the Goods shall pass on to the Buyer at the latest upon delivery; item 6.1. shall remain unaffected. In the case of shipping of the Goods, the risk of accidental loss and accidental deterioration as well as the risk of delay shall pass on to the Buyer upon handing over of the Goods to a forwarding agent or carrier or another third party charged with execution of the shipping. If an acceptance is agreed, this shall be authoritative for passing of the risk. For the rest, the legal provisions of the law applicable to works and services apply accordingly to an agreed acceptance. The Buyer's delay in acceptance shall be deemed delivery or acceptance.

**6.3.** If the Buyer is in delay with acceptance or refrains an act of cooperation or if the delivery is delayed for other reasons the Buyer is responsible for, MAINCOR Rohrsysteme shall be entitled to demand compensation of the resulting damage including additional expenses (e.g. storage costs). If no exact delivery date was agreed, the same applies after communication of the readiness for shipment by MAINCOR Rohrsysteme. The lump-sum compensation for every commenced month amounts to 0.5% of the value or price of the delivery item, however at most to 5% of the value or price of the delivery item.

The proof of a higher prejudice of MAINCOR Rohrsysteme and the assertion of further legal claims by MAINCOR Rohrsysteme (including but not limited to compensation of additional expenses, reasonable compensation and termination) shall remain unaffected; however the lump sum shall be credited against further claims to money. The Buyer is allowed to prove that MAINCOR Rohrsysteme has not suffered a loss or that the loss was essentially lower.

**6.4.** The kind of packaging is at MAINCOR Rohrsysteme's own discretion unless there is a specific agreement. MAINCOR Rohrsysteme shall invoice the packaging at cost price. MAINCOR Rohrsysteme does not take back any transport and other packaging, according to the packaging regulation. This does not apply to pallets. The Buyer shall arrange for disposal of the packaging at its own expense.

## **7. Warranty**

**7.1.** MAINCOR Rohrsysteme shall in general only have an obligation of warranty according to the conditions mentioned below if the Buyer observes MAINCOR Rohrsysteme's parameters stated in item 2 when using the services provided by MAINCOR Rohrsysteme.

**7.2.** The Buyer shall not be entitled to claims for defects in case of insignificant deviation of the delivered Goods from the agreed condition, an insignificant impairment of usability, in the case of natural wear and tear, excessive wear, in the case of use of inappropriate or other equipment which does not meet the specifications or in the case of defects caused by special outside influences which were not assumed in the contract and in the case of quantity variance customary to the trade.

The obligation of warranty also lapses if the Goods are changed inexpertly by the Buyer or a third party or by installation of non-proprietary parts unless the defect is not causally connected with those measures. Furthermore, the obligation of warranty lapses in the case of inexpert installation or maintenance by the Buyer or a third party as well as in the case of non-compliance with operation and maintenance manuals, provisions for use, handling and installation and in the case of a faulty selection of shipping and packaging if it is made due to the instructions of the Buyer.

Apart from that, claims for defects according to the conditions stated below only exist if the Buyer has duly observed its legally owed obligations to examine and notify.

**7.3.** If there is a defect of the Goods MAINCOR Rohrsysteme is obliged to execute a supplementary performance excluding the Buyer's rights to withdraw from the contract or to reduce the purchase price (abatement) unless MAINCOR Rohrsysteme is entitled to refuse supplementary performance due to legal provisions. The Buyer shall set MAINCOR Rohrsysteme a reasonable term for supplementary performance.

**7.4.** The supplementary performance may be made by removal of the defect (subsequent improvement) or by replacement delivery at MAINCOR Rohrsysteme's discretion; a supplementary performance within this meaning shall only be considered as failed after two unsuccessful attempts. MAINCOR Rohrsysteme shall bear all expenses necessary for removal of defects, including but not limited to transport, road, work and material costs, unless those have been incurred by bringing the Goods to another place than the place of performance.

If a Buyer's claim for removal of a defect turns out to be unjustified, MAINCOR Rohrsysteme may claim the resulting costs from the Buyer.

**7.5.** If the supplementary performance fails or MAINCOR Rohrsysteme is not ready or able to perform a supplementary performance or replacement delivery or it is delayed by more than a reasonable period for reasons MAINCOR Rohrsysteme may be held responsible for, the Buyer is entitled to withdraw from the contract or to demand a reduction of the purchase price (abatement).

**7.6.** Legal rights of recourse of the Buyer against MAINCOR Rohrsysteme shall only exist if the Buyer has not concluded any agreement exceeding the legal claims based on defects with its contractual partners. Item 7.4. applies accordingly.

## **8. Liability and compensation**

**8.1.** MAINCOR Rohrsysteme's liability for compensation, for whatever legal reason, including but not limited to delay, impossibility, defective or wrong delivery, infringement of the contract, infringement of obligations during contractual

obligations and tort shall be limited according to the provisions of item 8 as far as a fault is concerned.

**8.2.** MAINCOR Rohrsysteme shall not be liable

a.) in the event of simple negligence of the bodies, legal representatives and executives of MAINCOR Rohrsysteme;

b.) in the event of gross negligence of non-executive employees and simple vicarious agents of MAINCOR Rohrsysteme,

unless material obligations of the contract are breached. Material obligations include the obligation for delivery in due time which is free of defects as well as consulting, protection and custodial duties that are intended to enable the Buyer to use the Goods as agreed upon or to safeguard the health and life of employees of the Buyer or third parties or the property of the Buyer against significant damage.

**8.3.** If MAINCOR Rohrsysteme is liable for damages on the merits in accordance with section 8.2., such liability is limited to damage that MAINCOR Rohrsysteme foresaw upon the execution of the contract as a possible consequence of a breach of contract or should have foreseen when taking into account the circumstances that were known to MAINCOR Rohrsysteme or that MAINCOR Rohrsysteme should have identified by applying customary diligence. Furthermore, indirect and consequential damage which results from defects of the delivery item must only be reimbursed if such damage must typically be expected in relation with the intended use of the Goods.

**8.4.** The aforementioned exclusions of and restrictions on liability shall apply to the same extent for the benefit of the bodies, legal representatives, employees and other vicarious agents of MAINCOR Rohrsysteme.

**8.5.** For the remainder MAINCOR Rohrsysteme's liability is limited, if legally admissible, to the scope MAINCOR Rohrsysteme's covered third party liability insurance acknowledges and reimburses.

**8.6.** If MAINCOR Rohrsysteme provides technical information or consulting services and such information or consulting is not included in the scope of services owed by MAINCOR Rohrsysteme under the contract, such information or consulting is provided free of charge and without any liability.

**8.7.** The limitations in accordance with

sections 8.1. to 8.5. do not apply to MAINCOR Rohrsysteme's liability for willful conduct or gross negligence, including gross negligence of its bodies, legal representatives and executives, for guaranteed properties, for injuries to life, body or health or under the product liability act.

## **9. Statute of limitations**

**9.1.** The limitation period for claims and rights due to defects of the service - for whatever legal ground - shall be 1 year. However, this does not apply in the cases of section 438 subsection 1 (1) German Civil Code [BGB] (defects of title in case of immovable objects), section 438 subsection 1 (2) German Civil Code (buildings, items for buildings), section 479 subsection 1 German Civil Code (claim to recourse of the contractor) or section 634 a subsection 1 (2) German Civil Code (buildings or works of which the success consists of performance of planning or surveillance for them). The periods given in the aforementioned sentence 2 are subject to a period of limitation of 3 years.

**9.2.** The periods of limitation according to item 9.1. also apply to any and all claims for compensation towards MAINCOR Rohrsysteme in connection with a defect, regardless of the claim's legal basis. If there are claims for compensation of any kind towards MAINCOR Rohrsysteme that in turn are not connected with a defect the period of limitation of clause 9.1. applies to them as well.

**9.3.** The periods of limitation of item 9.1. and 9.2. apply with the following requirements:

- the periods of limitation generally do not apply in the case of willful intent;

- the periods of limitation also do not apply when MAINCOR Rohrsysteme has concealed the defect fraudulently or granted a warranty for the service's condition. If MAINCOR Rohrsysteme concealed a defect fraudulently the legal periods of limitation apply instead of the periods given in clause 9.1.;

- the periods of limitation also do not apply for claims for compensation in the case of injury to life, body and health, in the case of claims according to the Product Liability Act, in the case of a grossly negligent breach of obligation or in the case of a breach of significant contractual duties.

## **10. Reservation of title**

**10.1.** The Goods delivered by MAINCOR

Rohrsysteme are subject to a prolonged reservation of title (reserved goods). MAINCOR Rohrsysteme reserves the title to the Goods, as far as legally permissible, until all receivables are settled.

**10.2.** The Buyer shall handle the reserved goods carefully and adequately insure them at their own expense at purchase value against fire, water and theft damages.

**10.3.** In the case of behavior of the Buyer contrary to contract, including but not limited to default of payment, MAINCOR Rohrsysteme is entitled to take back the reserved goods after reminder and the Buyer shall be obliged to return the reserved goods.

**10.4.** The assertion of the reservation of title, the withdrawal of the Goods and the garnishment of the contractual service by MAINCOR Rohrssysteme shall be considered as the rescission of the contract unless otherwise expressly stated by MAINCOR Rohrssysteme in writing.

**10.5.** The processing or the alteration of the contractual services by the Buyer shall always be carried out for MAINCOR Rohrssysteme. If the contractual services are processed with other objects not belonging to MAINCOR Rohrssysteme, MAINCOR Rohrssysteme gains the co-ownership of the new object in relation to the value of their objects with regard to the other processed objects at the time of processing. The Buyer shall store the jointly owned item for MAINCOR Rohrssysteme.

**10.6.** If the contractual service is mixed inseparably with other objects not belonging to MAINCOR Rohrssysteme, MAINCOR Rohrssysteme gains the co-ownership of the new object in relation to the value of their contractual service with regard to the other objects inseparably mixed at the time of processing. The Buyer shall also store the jointly owned item for MAINCOR Rohrssysteme in this event.

**10.7.** The Buyer must neither pledge nor assign by way of security the contractual service. In the event of garnishment, destruction, confiscation or other disposals by third parties, the Buyer shall inform MAINCOR Rohrssysteme immediately and shall provide MAINCOR Rohrssysteme with all information and documents required for safeguarding MAINCOR Rohrssysteme's rights. Executory officers or third parties (as the case may be) shall be made aware of MAINCOR Rohrssysteme's ownership.

**10.8.** The Buyer is entitled to duly sell or use the reserved goods in the normal course of business as long as they are not in delay of payment. In order to cover the purchase money debt during the reservation of title, the Buyer cedes to MAINCOR Rohrssysteme any possible receivables (including the turnover tax at the legally applicable rate) from the resale of the reserved goods or due to another legal ground (insurance, tort) with regard to the reserved goods. The cession by way of security shall be made to the full extent. MAINCOR Rohrssysteme hereby accepts the cession. The cession shall also extend, if the Buyer has a current account relationship with the subsequent purchaser, to a positive balance of the Buyer in the current account relationship

with the third party up to the amount of the claim to the purchase price.

MAINCOR Rohrssysteme may withdraw the authorization for resale if a prohibition of cession of the Buyer's claim with regard to its customers exists between the Buyer and its customers.

**10.9.** The Buyer is revocably authorized to collect the receivables for MAINCOR Rohrssysteme's invoices ceded to MAINCOR Rohrssysteme on its own behalf. The collection authorization can be withdrawn at any time if the Buyer does not duly meet its obligations to pay, if opening of insolvency proceedings is requested or if the Buyer terminates its payments.

If the collection authorization is withdrawn by MAINCOR Rohrssysteme, the Buyer shall be obliged to inform MAINCOR Rohrssysteme of the ceded claim, to disclose the debtor (third party), to provide any other information required for collection, to hand over the related documents to MAINCOR Rohrssysteme and to inform the debtor (third party) of the cession for the benefit of MAINCOR Rohrssysteme.

## **11. Industrial property rights**

**11.1.** MAINCOR Rohrssysteme is only liable for claims arising from the breach of industrial property rights if MAINCOR Rohrssysteme is responsible for the breach of industrial property rights and if the industrial property rights are not owned by the Buyer or an associated company in which the Buyer directly or indirectly holds a majority interest by means of a share or voting rights.

**11.2.** A liability on MAINCOR Rohrssysteme's part shall also be excluded if the Buyer does not notify MAINCOR Rohrssysteme immediately after becoming aware of a risk of breach and claimed breaches and leaves the conduct as well as the type of conduct of legal disputes to MAINCOR Rohrssysteme's discretion.

**11.3.** Furthermore, possible claims of the Buyer from the breach of industrial property rights are excluded if the breaches are caused by instructions (e.g. drawings, models or similar descriptions and directions) of the Buyer or are resulting from changes to the Goods made by the Buyer or from the use in combination with another item not received from MAINCOR Rohrssysteme. The same applies if the Goods are used in a way not foreseeable

for MAINCOR Rohrssysteme at contract conclusion.

**11.4.** In the case that there are breaches of industrial property rights, MAINCOR Rohrssysteme is entitled to purchase a license for these Goods in favor of the Buyer or to modify the object of contract or to replace it by similar Goods so that the breach is removed and the purpose given in the contract is ensured.

**11.5.** For the remainder, item 7. in connection with items 8. and 9. shall apply conclusively for claims for damages.

## **12. Confidentiality, data protection and fiduciary duty**

**12.1.** The contractual parties undertake to mutually behave in a loyal way. In particular, they must not entice away individual employees of the other contractual partner.

**12.2.** The contractual partners undertake to keep strictly confidential any data and information of the other contractual partner which became known to them directly or indirectly within the framework of the contract, whether oral, written or in any other way and to only use them for the purpose of this contract, even after the contract's termination. This shall also apply to data and information which were not identified or transferred as being confidential, as far as these data and information are considered to be confidential. This shall not apply if the data and information were already disclosed and open to third parties or if this data and information are transferred by a third party which is not subject to confidentiality or if this data and information imperatively have to be communicated due to a law and if this data and information is disclosed to the lawyers and auditors of the respective contractual partner for the purpose of counseling.

**12.3.** The contractual partners shall ensure that all employees or third parties who are charged with performance of the contractual obligations are also subject to this obligation to observe secrecy.

**12.4.** The contractual partners waive assertion of any claims for damages which result from the fact that unauthorized third parties obtain access to the respective data and information of the contractual partner in an illegal way. This does not apply if the access became possible due to a breach of duty of the contractual partner.

**12.5.** Statutory provisions, especially provisions regarding data protection, shall

remain unaffected.

**12.6.** If a party provides the other party with drawings, technical documentation or other technical information on the Goods before or after conclusion of the contract, these remain the property of the providing party. Without the consent of the providing party, these shall only be used for the intended purpose. Without the consent of the providing party, they must not be used, copied, reproduced, passed on to third parties or disclosed for other purposes.

### **13. Other provisions**

**13.1.** The Buyer shall ensure that the use of the Goods by them or by their contractual partners does not lead to a breach of any provisions under public law or any other compulsory statutory provisions.

If and as far as a behavior of the Buyer which is contrary to the contract leads to claims against MAINCOR Rohrsysteme, the Buyer shall indemnify MAINCOR Rohrsysteme against these claims. If claims are asserted which result from a behavior contrary to the contract, MAINCOR Rohrsysteme is entitled to prohibit the use of contractual services by the Buyer until the issue is settled conclusively.

**13.2.** The transfer of rights and obligations resulting from this contract by the Buyer to third parties requires the prior written consent of MAINCOR Rohrsysteme. This shall especially apply to the entitlement to delivery of the Buyer.

**13.3.** If unforeseeable circumstances within the meaning of items 5.4. or 5.5. essentially change the economic meaning of the contract concluded with the Buyer or have an essential influence on MAINCOR Rohrsysteme's operation, the contract concluded with the Buyer shall be adapted in good faith to the changed circumstances taking into account the interests of both parties. If a settlement cannot be reached, MAINCOR Rohrsysteme may withdraw from the contract according to item 5. This shall also apply if an extension of the delivery period was firstly agreed upon by MAINCOR Rohrsysteme and the Buyer. The Buyer shall be informed immediately of the withdrawal.

**13.4.** The contract based on these GTC is exclusively governed by the law of the Federal Republic of Germany. The place of jurisdiction is the domicile of MAINCOR Rohrsysteme unless the Buyer

is a corporate body under public law or a special fund under public law. The place of jurisdiction shall also apply to tortious claims. MAINCOR Rohrsysteme may also file a complaint against the Buyer at the Buyer's domicile.

**13.5.** Any amendments and supplements to the contract based on these GTC and to these GTC themselves must be made in writing. This also applies to this provision on the written form.

**13.6.** The Buyer is informed according to the provisions of the German Data Protection Act that their data are saved and processed by means of electronic data processing for performance of the business relationship.

**13.7.** If any provisions are or become ineffective, this does not affect the effectiveness of the remaining provisions. The ineffective provision will be deemed replaced from the beginning with an effective one of which the meaning and purpose and the letter correspond or come close to the ineffective provision.

In the case of gaps, a provision is deemed agreed upon from the beginning that reflects what the parties reasonably would have agreed upon according to the meaning and purpose of these GTC if they had considered such gap.

Unless otherwise provided in the confirmation of the order, the seat of MAINCOR Rohrsysteme shall be the place of performance.

### **MAINCOR Rohrsysteme GmbH & Co. KG**

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