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Preamble

Gotec Gorschlüter GmbH (hereafter „GOTEC“ or „us“ or „we“) is specialized on coating and surface finishing of parts and modules for the automotive industry (hereafter as “products”). In addition to the pre-treatment and coating of metal parts, GOTEC as well refines other surfaces: for example complete assemblies, pipe sections, deep-drawing-, stamping-, bending-, and plastic parts as well as aluminium tubes and sleeves. GOTEC also produces or provides metal- or plastic-parts for its customers. At the request of the customer, GOTEC assumes the storage, the setting up of a consignment stock, the packing or packaging of items in small load carriers and the transport.

GOTEC Group has worldwide locations. The following terms and conditions of sale apply for GOTEC Plastics-GmbH, the whole GOTEC-Group and their associated companies.

§ 1 General

1. These General Terms and Conditions of Sale (GTC) shall apply for the supply, delivery and performance of goods and products to the contract concluded between GOTEC and the customer.
2. The terms and conditions of sale of GOTEC apply exclusively; GOTEC does not accept conditions of customers that may conflict with or differ from the terms and conditions of sale of GOTEC, except in the event that GOTEC has explicitly agreed to the application of such conditions in writing. The terms and conditions of sale of GOTEC also apply in the event that GOTEC delivers unconditionally to her customers, notwithstanding her knowledge of the existence of a customers’ conditions which may be in conflict with or differ from GOTEC’s terms and conditions of sale.
3. With placing his order, the customer (hereafter “customer”, “you”) declares his agreement to GOTEC’s general terms and conditions of sale. Please print these terms and conditions of purchase for your documents and read them carefully.
4. These terms and conditions of sale shall only apply towards companies and business clients in accordance to §§14, 310 IV BGB (German Civil Code).
5. These terms and conditions also apply to all future business with the customer.
6. Any reference to the applicability of statutory provisions is only made for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these General terms and conditions of sale.

§ 2 Information about Products and Resale

1. Instructions provided by GOTEC in brochures, instructions for use or other product information shall be strictly complied with in order to prevent damage. GOTEC expressly warns the customer against any use or treatment of the products beyond the defined areas of application and GOTEC shall not be liable for any consequences deriving from any abuse. The customer shall ensure that any further customer or user will be instructed sufficiently. The safety notes are not completed with mentioning such instructions and information.
2. Sale, Re-Sale and disposition of delivery and performance and any technology or documentation can be subjected to German, EU-, or US- export control rights or any other state export rights. A re-sale to embargo-countries or to barricaded persons or to persons, which use or are able to use the delivery and performance militarily, for NBC-weapons or for nuclear technology, requires our approval. The customer approves with his order the compliance with such laws and regulations and he approves that deliveries and performances are not brought to countries that restrict an import of such goods directly or implicit. The customer declares to have all the necessary permissions for the export and import.

§ 3 Confidentiality

1. All commercial or technical information made available by GOTEC (including features that are to be gathered for instance from the objects, documents or software handed over, and other knowledge or experiences) are, as long as and as far as they are not demonstrably public knowledge, to be kept in confidence from third parties and may be made available in the customers’ business only to such persons where it is necessary for the purpose of supply to the customer and who are likewise committed to maintaining confidentiality; they remain the exclusive property of GOTEC.
2. Without the prior written consent of GOTEC, such information must not be duplicated or exploited commercially.

3. At GOTECs request, all information originating from GOTEC (if appropriate also including any copies or records made) and loaned items must be, without undue delay, returned to GOTEC in full or destroyed, as far as they are not required necessarily for the ordinary business of the customer. The customer has to prove this requirement if requested by GOTEC. This obligation does not apply for routinely made backup copies of electronic data traffic as well as for secrecy-classified information and copies of it which the contracting partner of GOTEC must keep according to applicable law. The purpose has to be noted.
4. The recipient of patterns, fabrics or other materials may not analyse them without the express written consent of GOTEC, in particular he may not analyse the composition and / or preparation, neither chemically or otherwise.
5. After completion of the stated purpose, not consumed or destroyed patterns, fabrics or other materials have to be returned to GOTEC, unless otherwise is agreed or the recipient has the obligation of archiving.
6. A right to decompile software is explicitly excluded.
7. In this respect, GOTEC reserves the express right to all aforementioned information (including copyrights and the right to registration of industrial property rights, such as patents, utility models, semiconductors etc.).

§ 4 Offer

1. The customer's order represents a binding offer which GOTEC can accept within two weeks by forwarding an order confirmation, through delivery of the products or through performance. Offers submitted previously by GOTEC are without obligation and free of charge and valid for a period of 4 (four) weeks, unless otherwise agreed
2. Mailing of the GOTEC price list shall not be considered as an offer. GOTEC has no supply obligation regarding orders received on the basis of general offers, circulars or price lists.
3. Samples are not binding. Samples show the general character of the product but no special and unique features. A variance from the sample in a later delivery justifies no right for reclamation and is not defined as a defect.
4. If the customer is a company or a business client, GOTEC reserves the right to over- and under-deliver to a manufacturing tolerance of 10% of the ordered quantity. Those over- and under-deliveries fulfil the contract in whole. In the case of under-delivery the customer has no claim of an additional delivery of the shortage. In case of an over- or under-delivery, § 9 No. 3 of these general terms and conditions of sale applies additionally.
5. All details about weights, dimensions, performance and other technical data as well as DIN, VDE or other operational or co-external norms referred to in printed papers such as documents, catalogues, price lists, other sales documents of GOTEC, in electronic mediums or in the world wide web are indicative as far as they are not expressly described as binding.
6. Oral agreements or those by telephone of GOTECs representatives or employees as well as other arrangements between the customer and GOTECs representatives shall be valid only if expressly accepted in textual form by GOTEC.
7. If the customer cancels a confirmed order, GOTEC is able to claim 10% of the sale-price from the customer for the costs processed and the loss of profit. The customer is permitted to prove a lower expense.
8. All prices are in EURO without the statutory sales tax (VAT) and without freight and packaging costs, if nothing to the contrary has been agreed. The statutory sales tax (VAT) is due in the relevant statutory rate at the day of delivery.

§ 5 Terms of Delivery

1. The latest version of the Incoterms shall apply to all trade clauses. Unless otherwise agreed GOTEC will deliver EX WORKS GOTEC-manufactory. The goods designated for processing, refining or repair shall be delivered DDP GOTEC-manufactory by the customer to the GOTEC production plant and will be returned EX WORKS GOTEC-manufactory. GOTEC reserves the right to deliver through or own delivery organization.
2. If delivery is delayed due to the customer's fault, the risk shall pass to the customer on the day the goods are ready for shipment.
3. A single or multiple delivery of goods franco domicile by GOTEC do not legally entitle the customer for further deliveries free domicile.

4. GOTEC is entitled to partial deliveries if previously agreed with the customer.
5. If no firm delivery date has been agreed, delivery takes place within four to eight weeks after the conclusion of the contract in case of new products.
6. GOTEC is entitled to determine a firm calendar week for the delivery or performance. If there is a duty to collaborate by the customer, the delivery period does not start before the customer has performed his duty.
7. Terms of delivery and services that are a basis for the contract shall be extended appropriately in case of strike and force majeure for the duration of the hindrance, without an entitlement for the customer to withdraw from the contract or to claim damages. Additionally, § 16 of these terms and conditions applies in these cases.
8. Adherence to the delivery period by GOTEC assumes that all commercial and technical issues between the contractual partners have been resolved and the customer has met all the obligations accruing to him, such as the provision of the necessary official certifications or approvals or the making of down payments. If this is not the case, the delivery time is extended by a reasonable period. This shall not apply to the extent that GOTEC shall be liable for the delay.
9. Changes subsequently requested by the customer entitle GOTEC to put the delivery on hold until the desired changes have been examined with regard to their implementability and effects, particularly on costs and deadlines. The changes only become binding on GOTECs express written confirmation. GOTEC is entitled to change the delivery dates to implement the changes.
10. If the customer is a company or a business client, GOTEC concludes the delivery dates exclusively under the reservation of correct and timely delivery by our suppliers. GOTEC is entitled to withdraw from the contract in the event of our own suppliers fail to deliver or if such delivery is incorrect or is not made on time.

§ 6 Delayed Delivery and Default in Acceptance

1. In the event of delay in delivery, the customer shall be obliged, at GOTECs request, to declare within a suitable period whether he still insists on delivery or asserts to his legal rights. Provided that the customer, for the assertion of rights, is obliged to provide GOTEC with an appropriate extension period for the rendering of our performance, then the time period shall only be considered to be appropriate if it is not shorter than 2 (two) weeks.
2. The customer can only withdraw from the contract within the context of the legal regulations, as far as GOTEC is responsible for the delay of the delivery or services.
3. Liability claims of the customer because of delivery delay are limited to the foreseeable, typically occurring damage unless mandatory statutory regulations to the contrary exist.
4. The liability in the event of delay in delivery or performance shall be limited to 0.5% of the value of the order for each completed week of delay in the context of a lump-sum compensation for delay, but not more than 5% maximum of the value of the order. For damages from the breach of an essential contractual duty our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.
5. In case the customer is in default of acceptance or if he violates other duties to cooperate, GOTEC is entitled to prefer other third party orders and extend the delivery period / performance period appropriately.
6. GOTEC shall be entitled, without prejudice to any further-reaching statutory and/or contractual claims, to demand compensation for the damages that originated to GOTEC thus far, including any additional expenditure If delivery is delayed due to circumstances for which the customer is responsible the risk of accidental deterioration, loss and destruction shall pass to the customer on notification of our readiness to ship.
7. If dispatch or shipment is delayed at the customer's request by more than one month after notice of the readiness to ship was given, the customer may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the supplies, but in no case more than a total of 5 %. The contractual parties may prove that higher or, as the case may be, lower storage costs have been incurred. More far-reaching claims in cases of default of acceptance shall remain reserved.

§ 7 Packaging

1. The packaging will be made at GOTECs discretion accounting for the means of transportation, unless the customer dictates a packaging.

2. If the customer is a company or a business client, GOTEC is free to choose the means of transportation, insofar as no other special agreements have been made. The customer bears all costs for a special request regarding the method of shipping; this also applies to express (non-standard) and next-day shipping, even if GOTEC pays the initial freight charges.
3. Upon the express customer's request, GOTEC will cover the shipment by a transportation insurance policy; the customer bears all costs for this insurance.

§ 8 Retention of Title

1. GOTEC reserves title to the delivered goods until full settlement of all debts due arising from current business relations, even if the concrete delivered goods are already paid.
2. In case of a breach of contract caused by the customer, including but not limited to the event of a default in payment, GOTEC is entitled to take back the object of purchase. By taking back the purchased goods, the consequence is a withdrawal from the contract. After retraction of the goods GOTEC is entitled to undertake their liquidation. The liquidation proceeds will be imputed to the liabilities of the customer, minus reasonable realisation costs.
3. The customer is obliged to handle the goods carefully as long as the retention of title exists; he is obligated to insure them adequate at his own expense against fire, water and theft at replacement value. If maintenance and inspection work is required, the customer has to do this at his own expense and on schedule.
4. Customers shall inform GOTEC immediately about compulsory enforcement measures, distraints or other legal restrictions with respect to articles or claims belonging wholly or partly to GOTEC and hand over the necessary documents for intervention. Independently, the customer must inform third parties in advance of the existing rights to the products. The customer has to carry the costs of the intervention that lead to a repeal of third parties access on the products subject to retention of title and to a reacquisition of the products, as far as these costs cannot be collected by third party.
5. In the event of resale / leasing of retained goods, the customer assigns all claims arising against his own customers and third parties as a result from any such business, including all ancillary rights, until complete repayment of GOTEC's claims as security. GOTEC accepts this assignment. The customer remains entitled to collect these claims even after the assignment until withdrawal. The authorization of GOTEC to collect the claim herself remains unaffected. However, GOTEC will not collect the claim as long as the customer fulfils his payment obligations from the proceeds, as long as he gets not in default of payment and as long as there is no application to open composition or insolvency proceedings or final payment default. If these cases turn to real, GOTEC can require that the customer names GOTEC the assigned claims and their debtors, gives GOTEC all the necessary information, documents and notifies and informs the debtor (third party) of the assignment.
6. In the processing of retained goods, in case of restructuring or combination with another item, GOTEC acquires ownership of the new product. This new product is considered as a good subject to retention of title. The customer is no further than the above entitled to dispose of our products subject to retention of title or co-property goods or assigned claims.
7. The processing or transformation of the products throughout the customer is always done for GOTEC. If the product gets processed with other goods and items, that are not belonging to GOTEC, GOTEC shall acquire co-ownership of the new item in proportion of the value of the goods (final invoice amount, including VAT) to the other processed objects at the time of processing. For the product resulting from the process the same conditions apply as for the delivered products under reservation of title.
8. If the product of GOTEC will be inseparably mixed or blended with other objects not belonging to GOTEC, GOTEC shall acquire co-ownership of the new item in proportion to the value of the goods (final invoice amount, including VAT) to the other mixed/ blended objects at the time of mixing/ blending. Is mixing/ blending done in a way that the item of the customer is seen as the main part of the product, it shall be deemed agreed that the customer transfers the co-ownership proportionately to GOTEC. The customer shall keep the created sole property or joint property for GOTEC.
9. In cases of breach of contract by the customer, in particular if payment is delayed, unauthorized disposal of the goods, at a substantial deterioration in the financial position of the customer, in cases of bill of exchange or cheque protests as well as the customer himself or a third party requests the opening of insolvency proceedings over the assets of the customer or the opening of such proceedings is rejected due to a lack of mass, GOTEC is entitled to prohibit the handling and processing as well as the sale of the goods. GOTEC is also entitled to take the goods into possession and to enter the customer's business for this purpose, to obtain relevant information and to search his files if necessary.

10. GOTEC is obliged to release the securities granted to GOTEC upon request of the customer if the value of the security exceeds the amount of GOTECs receivables by more than 20%. GOTEC can select the securities that will be released.

§ 9 Prices, Terms of Payment

1. The price stated in the invoice is binding.
2. The statutory sales tax is not included in the prices. The price will be quoted as a net price in € (EUR). The statutory sales tax (VAT) is stated in the invoice by the time of delivery/ performance separately at the applicable rate at the date of the invoice.
3. In cases of over- or under-deliveries the actually delivered quantity gets to be invoiced. The actual price given by GOTEC in the invoice shall be binding.
4. The amounts invoiced shall be payable within 30 days after receipt of the goods resp. upon completion of all services, without any deductions, unless otherwise agreed.
5. Employees and agents of GOTEC will only be authorized to accept payments if they hold collection authority. Advance payments and payments on account shall yield no interest.
6. An interest or advance payment/ payment on account does not take place.
7. In principle, the customer shall transfer payments into the account advised by GOTEC at his risk and cost. The place of execution is Wülfrath.
8. Acceptance of bills of exchange in lieu of payment shall require the written consent of GOTEC.

§ 10 Default in Payment, Impairment of the Customer's Financial Position

1. The customer gets in default in payment 30 (thirty) days after the receipt of the goods and the invoice or after termination of service and receipt of the invoice at the latest. Another deadline has to be agreed in writing between the parties to be valid.
2. If the customer gets in default of payment, GOTEC shall be entitled to charge the statutory default interest at a rate of 9% per annum above the base rate of interest applicable at the time. GOTEC is entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by GOTEC due to higher borrowing costs, GOTEC shall be entitled to charge such interest.
3. In the case of default of payment, the customer shall bear any and all dunning charges, collection charges, investigation charges and information charges incurred in connection with collection of the accounts receivable outstanding. Furthermore GOTEC shall be entitled to charge a fixed rate of 40,00 EUR in case of default of payment of the customer.
4. If the customer or a third party applies for insolvency proceedings to be opened over the assets of the customer, or insolvency proceedings against the customer are opened by court order, if he makes an asset information according to § 807 ZPO (german civil procedure code) or the opening of such proceedings is refused due to lack of assets, GOTEC is entitled to rescind the contract and to demand the immediate return of the conditional goods.

§ 11 Price Adjustment

1. If the customer is a company or a business client, the agreed price in the order placement or in the order confirmation shall apply. If the price at the time of the performance has increased due to a modification of the market price or due to risen fees of third parties taking part in the performance, the higher price shall apply. In case the increase in price is 20% or more above the agreed price, the customer is entitled to withdraw from the contract. This right shall be exercised immediately after the customer has been informed of the price increase.
2. If the currency value other than EURO changes to the contractually agreed value by more than 5% (e.g. due to changes in currency parity), GOTEC is entitled to a corresponding price adjustment.

§ 12 Supply, Tools, Tooling Costs

1. If GOTEC needs parts for her products and components which the customer has to make available (supply), the customer is obliged to deliver these parts in a number corresponding to the whole order quantity plus a reserve of 10% of the whole order quantity free and along with placing the order at an early stage.
2. If the customer carries the tool cost shares, he does not gain the right to transfer or handing out the tool. The tool cost shares do not get repaid or redeemed.

3. GOTEC keeps the tool for five years, beginning with delivery of the last good that was produced with the help of this tool for the customer. Afterwards GOTEC gets the tool on her free disposal. The customer shall bear the costs incurred during the period of storage for storage and maintenance of the tool. The customer receives a separate bill for these costs.
4. In case the customer has to carry only a fraction of the tool costs and he purchases not all of the ordered goods that correlate with the ordered tool for whatever reason, the customer is nevertheless obliged to carry the whole tooling costs, including storage costs, the insurance costs and the maintenance costs.
5. In derogation from the preceding paragraphs, tool costs are to pay in half immediately after conclusion of the contract and the other half upon presentation of the pattern net without discount.

§ 13 Limitation of own Claims

Contrary to § 195 BGB (German Civil Code), GOTECs claims for payment expire in five years. With regard to the beginning of the statutory limitation, § 199 BGB (German Civil Code) applies.

§ 14 Warranty Period, Liability for Defects

1. In case of a defect, the customer may define an appropriate period of grace for subsequent fulfilment. GOTEC reserves the right to choose how to remedy possible defects, either way to correct the defective parts through repair or through exchange, at our discretion. Obvious defects and quantity discrepancies can only be claimed if they are noted immediately after receipt of the products to the transport carrier on the transport document and reported to GOTEC within 3 business days after receipt of the products. Hidden defects can only be claimed if they are reported to GOTEC in writing immediately after the discovery.
2. The defect claims are barred by limitation of one year in for the delivery of new goods and work performances. The time period begins with the delivery of the goods or with the finish of the work performance. In cases of delivery of used or second-hand goods, GOTEC delivers under exclusion of any liability or warranty. The statutory limitation in case of a recourse acc. to §§ 478, 479 BGB (German Civil Code) remains untouched. The above does not apply in case of damage claims originating from defects. Damage claims are subject to § 15.
3. An appropriate term for renewed performance need not be set if this is unnecessary in accordance with section § 323 (2) BGB (German Civil Code), in particular if GOTEC finally and irrevocably refuse renewed performance, if the performance is critically dependent on its timeliness or other special circumstances exist, which, after due consideration of the interests of both parties, justify an immediate rescission or an immediate demand for compensation.
4. The customer shall give GOTEC the time and the opportunity which is needed for supplementary performance, otherwise GOTEC shall not be liable for any consequences. Only in urgent cases where there is a risk to work safety or to avoid disproportionately large damage (of which GOTEC shall be informed immediately) shall the customer have the right to remedy the defect itself or have it remedied by third parties, and to demand reimbursement of the necessary expenses by GOTEC. GOTEC has the opportunity to prove a minor damage or the disproportion of the measure.
5. Payments may only be held back by the customer for complaints due to defects in a scope which is appropriate to the defects occurred. The customer can hold back payments only if a letter of complaint is asserted where no doubt exist about. If the complaint in respect of a defect is unjustified, GOTEC shall be entitled to demand from the customer reimbursement of the expenses incurred by GOTEC.
6. GOTEC does not provide the customer with guarantees acc. to the law (de lege lata), especially no guarantees of quality or durability.
7. If the customer is a company or a business client and he has the right to demand compensation instead of performance or to withdraw from the contract, or to demand further renewed performance, GOTEC can request to exercise these rights within an appropriate period. The customer must inform GOTEC about his decision in textual form. If the customer does not exercise his rights in the relevant timeframe, the right to compensation instead of performance can only be asserted or the rescission declared if a new appropriate period for renewed performance determined by the customer has expired fruitlessly.
8. If GOTEC takes action because of a reported defect and the customer has not proven the defect, GOTEC is able to charge an expense allowance.
9. The rights named above shall neither apply, as far as nothing else is agreed between the parties, to defects that are listed under No. 13 of this clause.

10. Deliveries of second hand goods are supplied under exclusion of any rights of complaint or reclamation because of optical defects or other quality defects.
11. If the products shall be in conformity with earlier models/ deliveries, deviations will be avoided to the extent technically possible and to the extent where the expense is proportional.
12. GOTEC can claim the surrender of property and alienation of replaced parts.
13. Changes within the range of available technical allowances are not regarded as a material defect. In case of a significantly deviations, GOTEC is able to send a compensation delivery or to withdraw from the contract. The following are not deemed to be defects: ordinary wear and tear, characteristics of the product and damage caused after the transfer of risk due to improper or wrong handling, inappropriate storage or positioning, wrong usage, non-compliance with installation or handling regulations or manufacturer's instructions and other instructions delivered by GOTEC for the products as well as excessive strain or use; characteristics of the product or damages caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract; non-reproducible software errors.
14. Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.
15. GOTECs products must not be modified without the prior consent of GOTEC. If the customer applies his own components or devices to GOTECs products or changes products of GOTEC of any kind without previously coordinate this with GOTEC in writing, GOTEC is not liable for any resulting damage.
16. Before rejected goods are returned, GOTECs consent shall be obtained. The items shall be returned free of any charge to GOTEC (DDP GOTEC).
17. Subsequent performance by GOTEC, in any form, does not represent acknowledgment.

§ 15 Liability for Damage

1. GOTECs liability for the violation of contractual obligations or offence is limited to wilful misconduct and gross negligence. The above does not apply to injury to life, body and health, claims originating from a violation of cardinal obligations and compensation for damage due to delay (§ 286 BGB-German Civil Code). Insofar GOTEC can be held liable for any degree of fault.
2. The above mentioned exclusion of liability also applies to slightly negligent violation of obligations by GOTECs assistants or agents.
3. In case of light negligence, the liability for damages is limited to the foreseeable, typically occurring damage.
4. If a liability for damage due to simple negligence, other than the injury to life, body or health, is not ruled out, such kind of claim is barred by limitation of one year after the beginning of the emergence of the claim; damage claims originating from a defect are barred by limitation of one year after the reception of the object.
5. In particular, GOTEC is not liable for the consequences of improper modification or treatment of our products, in case of medical technical equipment GOTEC is not liable for damages caused by using unsuitable reagents or the consequences of inadequate maintenance of the customer or third parties, as well as for defects, which are based on normal wear and tear or caused by the transport.
6. The above mentioned exclusion of liability do not apply in cases of claims under the product liability law. GOTEC is liable for property damages only if a consumer gets damaged. In cases of resell of products that are obtained by GOTEC, the customer is obliged to negotiate this disclaimer of liability for property damage in the industrial sector to every single further customer.
7. If liability towards GOTEC is ruled out or limited, this shall also apply to the personal liability of GOTECs employees, staff members, representatives, agents, assistants and designees.

§ 16 Force Majeure

1. If the contractual partners are prevented from delivering due to force majeure, the delivery date shall immediately be extended for the duration of the force majeure, plus an appropriate start-up time. This case shall not constitute as a violation of law or contract.

2. All conditions which are independent of the will and influence of the parties such as natural disasters, government measures, decisions on the part of the authorities, blockades, war and other military conflicts, mobilization, civil unrest, terror attacks, strikes, lockouts and other industrial unrest, confiscation, embargoes and other unforeseeable, serious conditions which are not the fault of the parties and which arise after the making of the contract/ agreement shall be deemed to be force majeure events.
3. The contractual parties shall be relieved of liability for partial or full non-fulfilment of their obligations provided that the parties prove that said non-fulfilment was prevented by circumstances beyond the control of the parties and arose upon the signing of any contract.
4. The contractual parties will do everything they can, in case it is necessary and reasonable, to minimize the extent of the consequences, caused by force majeure.
5. The party affected by force majeure circumstances or facing circumstances beyond its control shall immediately notify the other party in writing of the occurrence, type and anticipated duration of these circumstances.
6. Should force majeure circumstances or circumstances beyond the control of the parties continue for more than two months the parties shall agree upon further execution of any contract. If the parties fail to reach a mutual agreement the party that was not affected by said circumstances shall have the right to terminate the contract without applying to the arbitration court. This party subsequently has no right to compensation for damages.

§ 17 Trade Mark Rights and Property Rights

1. GOTEC is not liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the time of closing the contract by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
2. GOTEC is not liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published by the European Patent Office or in the US Patent Office.
3. The customer must notify GOTEC immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at GOTEC's request – insofar as possible – allow GOTEC to conduct the litigation (including non-judicial proceedings).
4. GOTEC is entitled, at her discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall – insofar as the customer allowed GOTEC to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions GOTEC shall also have a right of rescission.
5. GOTEC reserves the right to carry out the action at our disposal under the terms of sentence one of this clause even if the breach of property right has not yet been legally determined or acknowledged on our part.
6. Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported GOTEC to a reasonable extent in the defence against claims by third parties.
7. Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not originating from GOTEC or if the products are used in a manner which GOTEC was unable to foresee.
8. If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the customer shall indemnify and hold GOTEC harmless.
9. A liability for the correctness, accuracy, absence of third party trade mark rights, completeness and/ or applicability of secret information, is excluded as far as permitted by law.
10. Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from GOTEC or if the products are used in a manner which GOTEC was unable to foresee.

11. Further-reaching claims or claims other than those claims of the customer governed by this clause on account of an infringement of third party industrial property rights are excluded.
12. In case GOTEC needs the technology or Know-How of the customer for the execution of the order, the customer grants GOTEC a simple, non-transferable and non-sub-licensable right to this technology/Know-How during the term of use and solely for the purpose of the contract.

§ 18 Property Rights of GOTEC

1. GOTEC reserves the ownership rights and copyrights to the samples, cost estimates, plans, drawings and similar information of either a tangible or intangible nature - including information in electronic form -, as well as to any and all other documents; said items shall only be made available to third parties with the written consent of GOTEC.
2. GOTECs services may contain products that are subjected to patented or licensing restrictions towards the customer. Details of such restrictions are available in GOTECs respective product descriptions, the respective package inlay, or appropriately our internet presence. The restrictions can be requested by the customer before and after conclusion of the contract as well.

§ 19 Form of Statements

1. Relevant statements from the customer towards GOTEC or a third party shall be made in textual form.
2. Oral statements made by GOTECs representatives or other auxiliary persons require the verification of GOTEC in textual form.

§ 20 Supplementary Rules - BARSP

In cases of deliveries of goods to GOTEC, the BARSP regulations shall also apply. Any case of violation against the BARSP regulations will be seen as a violation of contractually relevant duties.

§ 21 Place of Fulfilment, Applicable Law, Place of Jurisdiction, Contractual Language

1. If the contract does not stipulate anything to the contrary, the place of fulfilment and payment is the location of our seat of business by the time of closing the contract.
2. Unless mandatory statutory regulations to the contrary exist, the entire business relationship between GOTEC and the customer (in particular the supply agreements concluded) shall exclusively be subject to German substantive law. The applicability of conflict of laws and the UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements are hereby excluded.
3. The legal stipulations regarding places of jurisdiction shall remain unaffected, unless any special regulations have been made in the following special terms.
4. Exclusive place of jurisdiction with respect to contracts with companies, business clients, merchants, traders, legal entities under public law, special funds under public law or customers not domiciled or established in Germany, shall be the competent court at GOTECs seat of business. However GOTEC is also entitled to sue the customer at the location of his own place of business.
5. In case of conflicts between the German and the English version of these general terms and conditions, the German version shall prevail.

§ 22 Severability Clause

If any regulations of these general terms and conditions of sale or any contractual agreement between GOTEC and the supplier should be or become invalid this shall not affect the validity of all other provisions or agreements.