

## General Terms and Conditions of Sale and Delivery pertaining to the companies of the DRAEXLMAIER Group

Version 4 – March 2019

### I. General provisions

The legal relationships between a DRAEXLMAIER Group company (“DRAEXLMAIER”), which provides the delivery or service in question to the customer, and the customer are governed exclusively by these General Terms and Conditions of Sale and Delivery (“T&Cs”). Any conflicting terms and conditions of customers, in particular their terms and conditions of purchase, of quality, of logistics, of equipment customer standards, guidelines, special shipping instructions and terms and conditions regarding spare parts are not binding for DRAEXLMAIER even if the order is based on these or if they are referred to in portals, forms or other documents of the customer. This applies even if DRAEXLMAIER has not objected to the customer’s terms and conditions in the individual case, if DRAEXLMAIER is unable to object to them due to the programmed systematics of the customer’s supplier platform or if DRAEXLMAIER supplies goods without reservation.

### II. Offers; acceptance; order

1. All offers by DRAEXLMAIER are made without obligation and are non-binding unless they are expressly marked as binding or specify a particular deadline for acceptance.
2. DRAEXLMAIER does not accept any liability for information provided in catalogues, price lists, drawings and other documents. DRAEXLMAIER reserves the right to effect changes to specifications, product designs or other changes; such changes may have an impact on delivery deadlines and prices.
3. As regards the orders or demand forecasts of the customer, DRAEXLMAIER reserves the right to a reasonable period of at least one week to check these and to lodge any objection. To the extent that the customer’s order deviates from the offer—regardless of whether it constitutes a blanket order or an individual order—such order is deemed to constitute a new offer on the part of the customer and DRAEXLMAIER explicitly reserves the right to accept or reject it.

### III. Prices; terms of payment; set-off

1. Unless otherwise agreed in writing, the prices as stated in the offer made by DRAEXLMAIER apply. Prices are quoted exclusive of VAT and VAT will be charged at the statutory rate applicable from time to time.
- 2a. Prices offered with reference to non-binding volume or quantity forecasts made by the customer only apply on condition that the forecast volumes/quantities are in fact called-off by the customer; the determination whether the forecast volumes or quantities have been called-off is based on volumes or quantities across the calendar year. If the customer fails to call off the volumes/quantities forecast in the inquiry documents, DRAEXLMAIER is entitled to make price adjustments—also retroactively—regarding the lower quantities called-off and to issue annual corrective invoices accordingly. Unless otherwise agreed, these must be paid by the customer in accordance with clause 4 below.
- 2b. In addition DRAEXLMAIER is entitled, at its discretion, to request that the customer enter into price renegotiations. DRAEXLMAIER must address such request to the customer in writing. If such price renegotiations do not result in an agreement within three (3) months after the written request made by DRAEXLMAIER, DRAEXLMAIER is entitled to terminate the affected part of the contract by giving one (1) month’s written notice to take effect at the end of the month without incurring any liability vis-à-vis the customer.
3. If the costs that may have been taken into account in the prices—in particular costs of raw materials (e.g. steel, copper or plastic granulate), labour, customs duty, transport—change to a significant extent, DRAEXLMAIER is entitled to demand a reasonable change to the agreed prices. A significant change is deemed to exist if the costs of a cost position increase by at least 5% compared to the date of the offer or compared to the date of the last price adjustment. If the customer rejects such price adjustments or if the parties’ price renegotiations do not result in a new agreed price within three (3) months after the request has been made for such negotiations, DRAEXLMAIER is entitled to immediately terminate the contract by giving six (6) months’ written notice to take effect at the end of the month without incurring any liability vis-à-vis the customer. The parties are free to extend the three-month deadline for the renegotiations of prices in writing.

4. Unless otherwise agreed in writing, payments by the customer must be made within thirty (30) days after the date of the invoice, without any deductions, into the respective account of DRAEXLMAIER or credited in accordance with an agreed credit note procedure. Payment deadlines are only deemed complied with if the amount payable is at DRAEXLMAIER's disposal on the due date and without any deductions. Once the aforementioned payment deadline or any other payment deadline agreed in writing has been exceeded, the customer is deemed to be in default of payment without any reminder being required. If the customer is in default of payment of the agreed purchase price, DRAEXLMAIER is entitled to withhold goods and deliveries. This shall not affect more extensive statutory claims, if any.
5. If it becomes apparent after the contract has been entered into, that payment claims of DRAEXLMAIER are jeopardised due to a lack of solvency on the part of the customer, unjustified payment deductions by the customer or other circumstances preventing payment and if DRAEXLMAIER has to perform contractual obligations prior to payment (in particular deliveries), DRAEXLMAIER may refuse to perform its contractual obligations or, at the discretion of DRAEXLMAIER, set the customer a reasonable grace period within which the customer must either provide security or make payment reciprocally and contemporaneously in return for the delivery by DRAEXLMAIER. After unsuccessful expiry of the grace period, DRAEXLMAIER is entitled to withdraw from the part of the contract that has not been performed and to claim damages.
6. Set-off and/or debit notes by the customer are excluded unless they concern claims that (i) have been finally judicially determined, (ii) are ripe for a court decision (*entscheidungsreif*) or (iii) are undisputed and have been accepted. The same applies in relation to withholding payments due to counterclaims and/or retention rights.

#### **IV. Changes**

1. If the customer requests changes to the subject matter of the contract or to the performance prior to the validation of the product design, DRAEXLMAIER will consider the matter and notify the customer within a reasonable time whether the change request is appropriate and feasible, as well as of the impacts of the change request on prices and timing. DRAEXLMAIER is only obliged to make changes after the parties have agreed in particular on price and possible changes to delivery times, after they have documented the scope of the change and after the customer has issued a corresponding changed order.
2. As a rule, no changes shall be made after the product design has been validated. Following consideration of such change request, DRAEXLMAIER is however, still entitled to make such change on condition that the customer reimburses DRAEXLMAIER in advance for all associated costs and expenses and that the deadlines and specifications are amended in writing prior to the implementation of the change.

#### **V. Delivery; packaging; transfer of risk; intra-community delivery of goods, export delivery**

1. Unless otherwise agreed in writing, deliveries take place FCA—in accordance with INCOTERMS as amended from time to time—from the DRAEXLMAIER works/warehouse from which deliveries are made. DRAEXLMAIER does not accept any responsibility and liability for any packaging policies, packaging materials and/or types of packaging specified by the customer.
2. DRAEXLMAIER is entitled to make part deliveries to the extent that this is reasonable for the customer in the context of its production processes or due to general circumstances (e.g. in the case of particular urgency, minor deviations in quantity).
3. Risk shall pass to the customer in accordance with the agreed INCOTERMS. If the parties have not agreed any INCOTERMS, risk shall pass to the customer upon transfer of the supplied items to the carrier or any other person entrusted with the shipment.
4. If the shipment is delayed due to circumstances for which the customer is responsible or if the customer refuses to accept delivery, risk shall pass to the customer once DRAEXLMAIER notifies the customer that the goods are ready for dispatch.
5. In the event of deliveries within EU Member States ("**Intra-Community Delivery of Goods**") the customer must promptly cooperate in the appropriate manner in order to obtain evidence of an Intra-Community Delivery of Goods in order to comply with respective national statutory provisions regarding a possible tax exemption. DRAEXLMAIER may, in particular, require a certificate confirming an Intra-Community Delivery of Goods, duly dated and signed (e.g. in Germany a confirmation of arrival "*Gelangensbestätigung*"), which must have at least the following content: name and address of the goods recipient, quantity and customary trade description of the goods as well as place and date of receipt of the goods, the place and month of the conclusion of the transport of the item in the rest of the European Community, the issue date of the confirmation as well as the signature of the recipient or representative authorized by the recipient to take receipt. If the customer fails to comply with this obligation to cooperate, DRAEXLMAIER is entitled to charge VAT retrospectively; in addition, the customer will be liable for any loss or damage incurred as a result, in particular for any VAT incurred by DRAEXLMAIER.
6. In the event of deliveries into third countries ("**Export Deliveries**") the customer must promptly cooperate in the appropriate manner in order to obtain evidence of an Export Delivery in order to comply with respective national statutory provisions regarding a possible tax exemption. This applies, in particular, in those cases in which DRAEXLMAIER does not transport or ship goods to the foreign customer itself. If the customer fails to comply with

this obligation to cooperate, DRAEXLMAIER is entitled to charge VAT retrospectively; in addition, the customer will be liable for any loss or damage incurred as a result, in particular for any VAT incurred by DRAEXLMAIER.

## **VI. Delivery deadlines; delivery delays**

1. Delivery dates and delivery deadlines are only binding if DRAEXLMAIER has expressly confirmed them. The adherence of deadlines for deliveries of goods and the provision of services presupposes that the customer meets its obligations to cooperate and, in particular, provides all necessary drawings, documents, additional parts, approvals and clearances in a timely manner or at the agreed time.  
If these obligations to cooperate are not complied with or are not complied with in a timely manner, the deadlines are automatically extended accordingly.
2. Deadlines are automatically extended accordingly if the failure to comply with such deadlines is due to:
  - a) attacks (e.g. hackers, viruses, Trojans) directed at the IT systems of DRAEXLMAIER or any third parties contracted by the DRAEXLMAIER Group (e.g. cloud providers) provided that these are not preventable despite compliance with the usual protective measures and duties of care,
  - b) obstructions as a result of German, U.S. or other applicable national, EU or international provisions of foreign trade legislation or as a result of other comparable circumstances such as, for instance, trade restrictions, punitive tariffs levied in certain countries as well as trade barriers due to disorderly exits of certain countries from a union of states or economic union, or
  - c) failure on the part of DRAEXLMAIER's suppliers or suppliers of Directed Parts to supply DRAEXLMAIER in a timely or proper manner.In the aforementioned cases, DRAEXLMAIER is not liable vis-à-vis the customer for any claims, damage and costs incurred as a result.
3. If deliveries to be made by DRAEXLMAIER are delayed for reasons for which DRAEXLMAIER is solely responsible, the customer may withdraw from the part of the contract that is affected by the delay within the applicable statutory provisions provided that, following the expiry of a reasonable written grace period, DRAEXLMAIER has not yet shipped the delivery or parts thereof.
4. As a rule, DRAEXLMAIER is liable for delays in delivery only if DRAEXLMAIER is solely at fault for the delay. Any fault on the part of its sub-suppliers and sub-contractors is not attributable to DRAEXLMAIER and DRAEXLMAIER does not assume responsibility for such fault. If, in accordance with the above, DRAEXLMAIER is in default, the liability of DRAEXLMAIER is limited to the amount of the typically foreseeable damage and a maximum of 125% of the part of the performance that is affected by the default. In the event of a delayed delivery, DRAEXLMAIER is not liable for lost profit and damage suffered due to a disruption of operations.
5. DRAEXLMAIER is entitled, in the case of blanket orders made by the customer which do not contain a binding stipulation of call-off quantities or delivery deadlines, to request a binding stipulation of deadlines and call-off quantities if two (2) months have elapsed after receipt of the blanket order and the customer has failed to notify DRAEXLMAIER of any delivery deadlines and quantities. If the customer fails to meet this request within a reasonable time after receipt of the written request to that end, DRAEXLMAIER is entitled, at its discretion, to (i) set a delivery date, (ii) set the customer a reasonable grace period for the provision of such notification, failing which the customer is put on notice of refusal, after the unsuccessful expiry of which DRAEXLMAIER will have the right to terminate the part of the contract that has not been performed without incurring any liability and (iii) claim damages and reimbursement of expenses.
6. If, at the request of the customer, dispatch or delivery is delayed by more than ten (10) calendar days after notification by DRAEXLMAIER that the goods are ready for dispatch, the customer may be charged a storage fee, handling and processing costs of 1% of the price of the delivery and service items in question for each additional week or part thereof, but no more than 8% in total. The customer retains the right to provide evidence to show that DRAEXLMAIER has suffered less or no loss or damage. This does not affect any other damages claims on the part of DRAEXLMAIER.

## **VII. Retention of title**

1. DRAEXLMAIER retains title to the supplied items, the tools and operating equipment produced by DRAEXLMAIER ("**Goods Subject to Retention of Title**") until all current claims under the business relationship between DRAEXLMAIER and the customer—provided they are related to the Goods Subject to Retention of Title—have been met. In the event of a running account, the retained title is also deemed to constitute security for all amounts outstanding.
2. If customers resell Goods Subject to Retention of Title, they hereby assign their future claims arising against their purchasers from such resale together with all ancillary rights—including any amounts outstanding—to DRAEXLMAIER by way of security. DRAEXLMAIER hereby accepts such assignment without the need for any further specific declarations to that effect. If the Goods Subject to Retention of Title are resold together with other items without an individual price having been agreed for the Goods Subject to Retention of Title, the customer hereby assigns that part of the total purchase price claim to DRAEXLMAIER which corresponds to the price charged by DRAEXLMAIER for the Goods Subject to Retention of Title. DRAEXLMAIER hereby accepts this assignment.
3. The customer is authorised to collect any assigned claims from resale until such authorisation is revoked. If there is an important reason, in particular in the event of payment default, suspension of payments, unauthorised charges

made by the customer or the commencement of insolvency proceedings, DRAEXLMAIER is entitled to revoke the customer's authorisation to collect any assigned claims. In addition, upon prior warning and following a reasonable notice period, DRAEXLMAIER may disclose the assignment by way of security, realise the assigned claims and require customers to disclose the assignment vis-à-vis their purchasers.

4. If the Goods Subject to Retention of Title are impounded, seized or if they have otherwise become subject to the disposal or interference of third parties, the customer shall notify DRAEXLMAIER without undue delay. In the event that *prima facie* evidence of a legitimate interest is provided the customer must, without undue delay, furnish DRAEXLMAIER with the information required for the exercise of its rights vis-à-vis the third party and hand over the necessary documents.
5. DRAEXLMAIER undertakes, upon written request of the customer, to release securities to which DRAEXLMAIER is entitled to the extent that their value exceeds that of the secured claims by more than 15%; DRAEXLMAIER may choose which security interest to release.

#### **VIII. Reservation of rights to documents and items provided**

1. DRAEXLMAIER reserves all ownership rights, copyrights and intellectual property rights in the documents, materials and other items (e.g. offers, catalogues, price lists, cost estimates, plans, drawings, CAD data images, calculations, product descriptions and specifications, samples, models, prototypes and other physical and/or electronic documents) provided to the customer.
2. The customer shall hold all documents, materials and other items provided to it by DRAEXLMAIER merely on loan from DRAEXLMAIER and treat them with the diligence of a prudent businessman.
3. The customer may use the documents, materials and items (i) only for the contractual purposes, (ii) may not make them available to third parties, (iii) must return them in full to DRAEXLMAIER in particular in the event that no contract is entered into as well as at any time upon request and (iv) must destroy any copies (including electronic copies) (or delete or block them, respectively) provided that they are no longer required by the customer in accordance with statutory retention obligations. Upon request, the customer shall confirm in writing that it has completely destroyed, deleted or blocked such documents, materials and items.
4. DRAEXLMAIER is entitled to use any documents and items of the customer that DRAEXLMAIER has received in the context of the performance of the contract without restriction for purposes of performing the contract, and to transfer them on to any subcontractors.

#### **IX. Taking receipt of deliveries; incoming goods inspection; acceptance**

1. The customer cannot refuse to take receipt of deliveries due to minor defects.
2. The customer must, immediately upon receipt, carry out an incoming goods inspection and notify DRAEXLMAIER of any defects in writing without undue delay and provide specifics. If the customer fails to meet this obligation, the goods delivered are deemed to have been approved unless the defect was not discernible at the time the incoming goods inspection was carried out. If a hidden defect becomes apparent at a later time, DRAEXLMAIER must be notified in writing without undue delay upon its discovery and specifics must be provided. If the customer fails to meet this obligation, the goods are deemed to have been approved including with regard to the hidden defect.
3. If an acceptance has been agreed, the customer is obliged to accept the work that has been prepared in accordance with the offer. Acceptance may not be refused due to immaterial defects. A work is deemed to have been accepted even if, after the work has been completed, DRAEXLMAIER has set the customer a reasonable grace period to accept the work and the customer fails to accept the work within this period. Moreover, a work is deemed to have been accepted if the customer starts utilizing it in accordance with its intended use. This shall not affect the acceptance provisions in relation to customer tools pursuant to clause XV.

#### **X. Material Defects**

1. DRAEXLMAIER only warrants that the supplied items have the agreed properties at the time the risk transfers to the customer. The agreed properties are as per the component drawing, the CAD data and/or a component specification agreed in writing between the customer and DRAEXLMAIER. There are strictly no other warranties provided. In particular, DRAEXLMAIER does not provide a warranty that the supplied items (i) are suitable for the use intended by the customer in accordance with the contract, (ii) are suitable for customary use, (iii) are merchantable or (iv) comply with all statutory or official requirements on all target markets of the customers on which the supplied items are to be used.

2. In the context of a component or system installation (e.g. CKD or SKD) and supply of the customer by DRAEXLMAIER, any warranty for material defects is exclusively limited to the warranty that the installed components or systems are being assembled in accordance with the specification.
3. In the event that there is a material defect at the time the risk transfers to the customer for which DRAEXLMAIER is responsible, DRAEXLMAIER will at its discretion either remedy the defect or supply an item that is free of any defect ("**Subsequent Performance**"). Upon request, the supplied items complained about must be provided to DRAEXLMAIER without undue delay. DRAEXLMAIER will only bear the costs for Subsequent Performance to the extent that the Subsequent Performance is also carried out by DRAEXLMAIER itself.
4. Any costs and expenses that may be incurred in the context of the Subsequent Performance, in particular disassembly and assembly costs of the customer, must be appropriate and proportionate in relation to the price of the supplied item and are limited to a maximum of 110% of the value of the defective item affected in each case.
5. If the defect is insignificant, the disassembly and assembly costs will not be reimbursed. A defect is insignificant, in particular, in the case of an aesthetic flaw or a defect that does not negatively affect the function of the supplied item or only affects it to an insignificant degree.
6. The customer may not claim any flat-rate costs, expenses and damage.
7. The customer shall allow a reasonable grace period and provide reasonable opportunity for DRAEXLMAIER to effect the Subsequent Performance. The customer shall only be entitled to carry out the Subsequent Performance itself or to arrange for it to be carried out by a third party instructed by the customer provided that DRAEXLMAIER has given its prior consent.
8. Liability on the part of DRAEXLMAIER for claims based on defects and for damages shall be excluded for products or component products:
  - a) which are supplied by DRAEXLMAIER by way of sample or prototype for purposes of testing or evaluation. With regard to these, DRAEXLMAIER is only obliged to produce them at the customer's own risk in accordance with the specifications, performance criteria or drawings agreed with the customer;
  - b) to the extent that they are based on incorrect information, drawings, constructions, specifications or instructions transmitted by the customer (e.g. build to print, drawing, CAD data, 3D-print data);
  - c) which DRAEXLMAIER has to acquire or use as Directed Parts (definition pursuant to clause IXX.) unless the defect is based on a faulty installation of the Directed Parts by DRAEXLMAIER;
  - d) which are the subject of any repair, change, exchange or alteration that was not authorised on the part of DRAEXLMAIER; or
  - e) which are due to infringements of operating, assembly, disassembly and maintenance instructions, inappropriate, incorrect or unsuitable use / treatment, normal wear and tear or unprofessional interventions or repairs attributable to the customer or its purchasers.
9. Any claims for defects of quality become time-barred within 24 months from delivery to the customer. Subsequent Performance does not result in the restart of the limitation period.
10. Any Subsequent Performance carried out by DRAEXLMAIER as a gesture of goodwill is always carried out without the acknowledgement of any legal obligation. This does not involve a restart of the limitation period.
11. The implementation of a fault analysis process, analysis process or fault elimination process as part of a component diagnosis or the preparation of an 8D report by DRAEXLMAIER is carried out without the acknowledgement of any legal obligation and does not reverse the burden of proof. The burden of proof that a component was faulty at the time the risk transferred to the customer shall be borne by the customer.
12. The customer is aware that, based on state of the art, it is not possible to create software that is entirely free of errors. Both with regard to software of DRAEXLMAIER and third-party software, DRAEXLMAIER does not bear any liability for quality to the extent that any limitations of the software is caused by (i) the customer's failure to comply with the stipulated configuration, (ii) the customer's failure to observe installation guidelines issued by DRAEXLMAIER, (iii) any extension, modification, add-ons or change of the software configuration carried out by the customer, (iv) an inappropriate or unauthorised use of DRAEXLMAIER software or third-party software, or (v) a change, maintenance or repair of the DRAEXLMAIER software that is not carried out by DRAEXLMAIER or third-party providers authorised by DRAEXLMAIER in that regard.
13. With regard to third-party software, any liability is strictly limited to the extent and for the duration stipulated in the terms and conditions of the third-party software provider.
14. Any Subsequent Performance with regard to DRAEXLMAIER software shall only be carried out via releases, updates, patches or corrections provided by DRAEXLMAIER.

## **XI. Industrial third-party property rights; deficiencies in title**

1. DRAEXLMAIER will use the due diligence of a prudent businessman in order to procure that the supplied items, when used in accordance with the contract, do not infringe third-party patents ("**Third-Party Patents**") which have been registered either by the European Patent Office or in a state of the Federal Republic of Germany, the U.S. or China. DRAEXLMAIER has no further obligation in this regard.

2. If an item supplied by DRAEXLMAIER actually infringes a Third-Party Patent registered in the aforementioned countries and DRAEXLMAIER is responsible for this, DRAEXLMAIER is liable vis-à-vis the customer within the limitation period laid down in clause X. no. 9 as follows:
  - a) DRAEXLMAIER will, at its discretion and expense, either secure a right of use for the delivered goods or performance in question or change them such that the Third-Party Patent in question is not infringed. If DRAEXLMAIER is unable to accomplish this on acceptable terms, the customer is entitled to statutory rights regarding price reduction.
  - b) The obligation of DRAEXLMAIER to pay damages shall be governed exclusively by clause XII.
3. Claims of the customer for the breach of Third-Party Patents are excluded if the customer is responsible for the breach.
4. Claims of the customer are also excluded if (i) the breach of a Third-Party Patent is caused by special instructions issued by the customer (e.g. build to print, drawing, CAD data, 3D print data, specification), (ii) by parts directed by the customer, (iii) by a use not foreseeable by DRAEXLMAIER or (iv) by the customer making a change to the supplied items or using them together with products not supplied by DRAEXLMAIER.
5. In the cases laid down in the aforementioned nos. 3. and 4. the customer shall indemnify DRAEXLMAIER against all claims brought by third parties based on the breach of Third-Party Patents.

## **XII. Liability**

1. Unless otherwise provided for in these T&Cs, damages claims of the customer, regardless of their legal basis, in particular for breach of contractual obligations and tort, are excluded unless DRAEXLMAIER is liable for culpable breach of material contractual obligations whose fulfilment makes the due performance of the contract possible in the first place and on whose fulfilment the customer regularly relies. The claim for damages for the breach of material contractual obligations is, however, limited to the foreseeable damage that is typical for the contract for each case of damage.
2. DRAEXLMAIER is not liable for indirect damage and consequential damage, in particular consequential damage caused by a defect, lost profits as well as product recalls or service measures instigated by the customer without any statutory obligation.
3. In the context of a component or system installation (e.g. CKD or SKD) DRAEXLMAIER is only liable for any damage for which DRAEXLMAIER is responsible and which is caused by the loss of or damage to the item during the time at which the item is taken into possession until its delivery. Liability is limited to the value of the damaged or lost item.
4. In the event of product recalls, DRAEXLMAIER is liable vis-à-vis the customer only to the extent that the customer is under a statutory obligation to issue a recall and DRAEXLMAIER itself would have been under a statutory obligation to issue a recall with regard to the item supplied by DRAEXLMAIER.
5. Any exclusions of liability do not apply:
  - a) to the extent that DRAEXLMAIER is directly liable under the German Product Liability Act (*Produkthaftungsgesetz*),
  - b) in cases of intent,
  - c) in cases of gross negligence,
  - d) in cases of non-compliance with an express warranty assumed pursuant to clause XIII. according to the terms and conditions of the express warranty, or
  - e) in cases of culpable injury to life, limb or health.
6. When determining the amount of any damages claims that DRAEXLMAIER may have to fulfil, the economic circumstances of DRAEXLMAIER, the nature, scope and duration of the business relationship, the customer's contributory share in terms of causation and/or culpability and a particularly inconvenient assembly position of the supply part shall be adequately taken into account for the benefit of DRAEXLMAIER. In particular the compensation payments, costs and expenses to be borne by DRAEXLMAIER must be reasonable in relation to the value of the supply part.
7. Subcontractors, suppliers of parts specified by the customer and suppliers of raw materials do not constitute vicarious agents of DRAEXLMAIER (*Erfüllungsgehilfen*); DRAEXLMAIER is not liable in that regard for any fault of the aforementioned suppliers.
8. The aforementioned limitations of liability also apply for damages claims of the customer against corporate bodies, senior employees or staff members of DRAEXLMAIER.
9. The aforementioned provisions do not entail any change of the burden of proof to the customer's detriment.

## **XIII. Express warranty; procurement risk**

Any express warranty (*Garantie*) given or procurement risk assumed by DRAEXLMAIER is only deemed valid if it is (i) given or assumed expressly, (ii) explicitly referred to as an express warranty or procurement risk (iii) provided by DRAEXLMAIER in writing and (iv) provided in a separate document. Any details provided by DRAEXLMAIER in offers, catalogues, promotional materials and other general information do not, at any time, constitute an express warranty or the assumption of a procurement risk.

#### **XIV. Software and use of the software**

1. To the extent that the scope of delivery includes any software or firmware that is individually created or any pre-existing software of DRAEXLMAIER or the DRAEXLMAIER Group, any associated documentation and/or the new versions and in particular any releases, updates, patches, corrections ("**Software**"), the customer will—once the price has been paid in full—obtain the non-exclusive right to use the software exclusively in connection with the products for which the software is intended; such right is limited in time to the series production run and in the event of an order of spare parts to the spare part production run, and transferable to its end customers in the context of the intended sale of its products and not sub-licensable without the written confirmation of DRAEXLMAIER. DRAEXLMAIER reserves all other rights to the software as well as to the associated preparatory design material.
2. In the absence of DRAEXLMAIER's consent, the customer may only copy, edit or decompile the software to the extent that this is expressly permitted by statute. The customer undertakes not to remove or change any manufacturer's information and copyright notices.
3. Any third-party software components contained in the software:
  - a) The software may include open source software - e.g. the "Berkeley Software Distribution License" (BSD License), the "GNU General Public License" Version 2 (GPL V2) or the "GNU Lesser General Public License" Version 2.1 (LGPL V2.1) - ("**OSS**"). The customer is entitled to use the OSS in accordance with the OSS licensing terms from time to time in force. At the request of the customer, DRAEXLMAIER will provide the customer with the OSS source code in return for payment of an appropriate fee provided, that the licensing terms for the OSS allow for such a disclosure of the source code. The use of OSS by DRAEXLMAIER for a certain delivery or service does not require the prior consent of the customer.
  - b) The software may also contain other third-party software, i.e. software that is neither OSS nor software developed by DRAEXLMAIER itself but which has been licensed or obtained by DRAEXLMAIER from third-parties, e.g. Microsoft Ireland Operations Ltd. ("**Third-Party Software**"). The customer is merely authorised to use such Third-Party Software in accordance with the respectively applicable Third-Party Software licensing terms in force. At the request of the customer, DRAEXLMAIER will provide the Third-Party Software licensing terms in suitable format (e.g. electronically).
4. The customer has no claim to the provision of the source code of software or Third-Party Software.
5. DRAEXLMAIER does not provide any statement, accept any liability or make any express or implied warranty to say that the operation of the software, OSS or the Third-Party Software will be uninterrupted or bug free. Any liability or warranty for OSS is excluded.
6. The customer is itself responsible for all malfunctions, operational restrictions regarding security or performance of the software, OSS, Third-Party Software and other programs as well as in their communication, which are caused by modifications, interfaces or add-ons ("**Faults**"). DRAEXLMAIER hereby points out that add-ons, additional interfaces as well as minor modifications to the software, OSS or Third-Party Software may lead to Faults that cannot necessarily be foreseen and that may be substantial. Such Faults may arise from the fact that an add-on, an interface or a modification is not compatible with later versions. DRAEXLMAIER is in particular authorised, at any time, to amend the software without ensuring that any modifications, interfaces or add-ons used by the customer are compatible with later versions of the software.
7. The customer shall be obliged to ensure and maintain functional security pursuant to ISO 26262; this applies in particular to the overall system and the vehicle. The customer shall further assist DRAEXLMAIER by providing a development interface agreement that may be required under ISO 26262.

#### **XV. Operating equipment; tools**

1. DRAEXLMAIER will invoice the customer separately for any operating equipment, machines and/or tools (e.g. injection moulding tools) that have to be specifically produced or acquired by DRAEXLMAIER in order to manufacture the contractual item or the item supplied and title in which must be transferred to the customer ("**Customer Tools**").
2. The customer shall obtain title to these Customer Tools only upon full payment of the agreed purchase price. Tool signs of the customer shall only be affixed when the customer has paid the agreed purchase price for the Customer Tool in full.
3. If, at the time of the final inspection stage of the Customer Tool the purchase price or an instalment remains unpaid, these unpaid amounts are due and payable without deduction once the final inspection stage has been successfully completed. This also applies in the event of any minor deviation in the Customer Tool with the result that a so-called green initial sampling or acceptance by the customer has not yet taken place. A deviation is deemed to be minor if it is reasonable for the customer to approve the Customer Tool as "performance that is essentially in accordance with the contract" and if any deviations that have been detected can be rectified.

4. If the customer requests that parts of a Customer Tool that have not yet been accepted or subjected to green initial sampling be supplied, this is deemed to constitute an approval or acceptance. In this case the customer is also under an obligation to pay the purchase price or any unpaid instalments in full.
5. Any costs for changes, maintenance, repairs and servicing of the Customer Tools must be borne by the customer. The customer must sufficiently insure any Customer Tools located at DRAEXLMAIER or a subcontractor of DRAEXLMAIER against destruction, damage, loss and third-party liability risks.
6. The customer may refuse its consent to the relocation, amendment or scrapping of Customer Tools for good cause only.
7. At the end of series production or the end of the agreed time for a supply of spare parts as well as upon written request by DRAEXLMAIER, the customer must collect its Customer Tools, at its own cost and freight paid, within a time limit of one (1) month from the request. If the customer fails to comply with this request within the prescribed time, DRAEXLMAIER is entitled to either scrap or warehouse the Customer Tools at the customer's expense. The risk of deterioration, unusability or accidental destruction shall also pass to the customer upon expiry of the aforementioned time limit.

#### **XVI. IP rights; rights of use**

1. The proprietorship in all final and provisional tangible and intangible results obtained in the performance of deliveries of goods and the provision of services as well as any developments for the customer shall pass to DRAEXLMAIER upon their incurrence; this shall include ideas, inventions, draft designs, copyrights, technical trade or business secrets and know-how, documentations, reports, samples and models ("**Work Results**"). Once payment has been made in full, the customer will receive a right of use in relation to the Work Results created by DRAEXLMAIER for the customer—except for technical trade or business secrets and know-how—for purposes of series production of passenger cars provided that a Work Result is used in the item supplied and is required by law; such right of use shall be non-exclusive and unlimited both in terms of location and time. A use of Work Results for or by third-parties requires the express prior consent of DRAEXLMAIER; DRAEXLMAIER may require payment of a reasonable, market-rate license fee in return for such consent.
2. The party whose employee has created Work Results, copyrights and design rights capable of being protected in the context of the provision of the goods or services and/or development ("**New Proprietary Rights**") shall be entitled to the New Proprietary Rights. Once the customer has paid for the contracted works in full, it will receive a right of use in relation to New Proprietary Rights of DRAEXLMAIER or the DRAEXLMAIER Group for purposes of series production of passenger cars provided that this is used in the item supplied and is required by law; such right of use shall be deemed settled by the customer upon full payment of the works ordered and shall be non-exclusive, unlimited in terms of location but limited to the duration of the project including the provision of any spare parts. A use of New Proprietary Rights for or by third-parties requires the express prior consent of DRAEXLMAIER; DRAEXLMAIER may require payment of a reasonable, market-rate license fee in return for such consent.
3. If employees of the customer as well as of DRAEXLMAIER are involved in New Proprietary Rights, such rights ("**Joint Proprietary Right**") shall be registered jointly. Each party shall bear its own registration costs depending on its share in the invention. The parties shall grant each other a non-exclusive right of use in Joint Proprietary Rights, which is unlimited in terms of time and location, free of charge and which covers the use for the parties own purposes as well as further development. The grant of a license requires the other party's consent and may be made conditional upon the payment of a reasonable license fee.
4. DRAEXLMAIER and DRAEXLMAIER Group is and remains the proprietor of the inventions and Work Results made prior to the start of the contract or the start of the development project as well as any proprietary rights registered or granted on such inventions and Work Results as well as the existing copyrights and design rights as well as the know-how ("**Pre-Existing Proprietary Rights**"). To the extent that Pre-Existing Proprietary Rights are necessary in order for the customer to use the development results in the context of the supply of components, the customer will be granted a right of use in the Pre-Existing Proprietary Rights for purposes of series production of passenger cars; such right of use shall be non-exclusive, free of charge, unlimited in terms of location but limited to the duration of the project including the supply of spare parts for as long and if DRAEXLMAIER or the DRAEXLMAIER Group has been contracted to supply at least 80%. Otherwise the customer shall pay a reasonable market-rate license fee to DRAEXLMAIER or the DRAEXLMAIER Group. Any other use of Pre-Existing Proprietary Rights by the customer for its own purposes or by third parties for the customer's purposes requires the express written consent of DRAEXLMAIER; DRAEXLMAIER may require payment of a reasonable, market-rate license fee in return for such consent.



## **XVII. Data; use of data**

1. **“Data”** for the purpose of these provisions are characters (e.g. numbers, letters or other symbols) or strings of characters that are generated or stored electronically, magnetically or in any other way that is not directly tangible, or that are generated, documented or stored in any other technical way (in analogue or digital form).  
**“Data Carriers”** for the purpose of these provisions are all types of storage media, whether tangible or intangible, which are used to store and access data.
2. **“DRAEXLMAIER Group Data”** is:
  - a) Data stored on Data Carriers, which are owned by or in possession of DRAEXLMAIER or the DRAEXLMAIER Group or owned by or in possession of contractors of DRAEXLMAIER or the DRAEXLMAIER Group (e.g. cloud providers, suppliers, subcontractors);
  - b) Data generated or stored by DRAEXLMAIER or the DRAEXLMAIER Group;
  - c) Data stored on Data Carriers or generated or stored by machines, systems which are owned by or in possession of DRAEXLMAIER or the DRAEXLMAIER Group or owned by or in possession of contractors of DRAEXLMAIER or the DRAEXLMAIER Group (e.g. cloud providers, suppliers, subcontractors); and
  - d) Data generated or stored by or in connection with products or digital twins of DRAEXLMAIER or the DRAEXLMAIER Group.
3. Only the DRAEXLMAIER Group shall be entitled to any DRAEXLMAIER Group Data, and the DRAEXLMAIER Group may use and in particular reproduce, change, delete or transmit such data at its sole discretion and without any limitations in terms of subject matter, time and location. DRÄXLMAIR may grant the customer the right to use certain DRAEXLMAIER Group Data in return for a separate fee for the customer’s own purposes or to allow third parties to use it for the customer’s purposes. Details and in particular the scope of such right of use in terms of subject matter, location and time must be agreed separately in writing.
4. **“Customer Data”** is:
  - a) Data that is stored on Data Carriers at the time the contract is entered into, that is owned by or in the possession of the customer or owned by or in the possession of the customer’s contractors (e.g. cloud providers);
  - b) Data provided to DRAEXLMAIER by the customer itself or a contracted third party for purposes of providing the goods or services; and
  - c) Data generated by customer series vehicles unless it already constitutes DRAEXLMAIER Group data.
5. The customer shall ensure vis-à-vis its customers and contractual partners, that consent can be provided to allow that all Data collected from the end customer vehicle using a DRAEXLMAIER Group product can be transmitted to the DRAEXLMAIER Group free of charge. DRAEXLMAIER and the DRAEXLMAIER Group shall be granted a right of use to such Data, to the extent that it does not already constitute DRAEXLMAIER Group Data; such right of use shall be non-exclusive, free of charge, transferable and unlimited in terms of location, time and subject matter. DRAEXLMAIER Group may use such Data, in particular, for purposes of predictive maintenance as well as product improvement.
6. DRAEXLMAIER is entitled at any time to request that the customer provide, within a reasonable time, details of which DRAEXLMAIER Group Data is being used, processed and stored and which recipients are using the Data for what purpose.
7. This provision shall not affect any intellectual property rights, rights in rem, the EU General Data Protection Regulation, non-disclosure obligations, provisions regarding the protection of know-how as well as rights to business and trade secrets.

## **XVIII. Information security**

1. The customer is obliged to safeguard DRAEXLMAIER Group Data, its own Customer Data and any Data required for the provision of the goods and services, in accordance with the current state of the art against unauthorised access, amendment, destruction, distribution/export of data, against unauthorised amendment /manipulation of data or changes to the process logic, against unwanted data input or unwanted extension of functions and any other misuse (**“Information Security”**).
2. The customer must ensure a reasonable level of Information Security during operations (e.g. ISO/IEC 27001 or VDA model TISAX).

3. The customer must ensure that, in the context of the provisions of the goods and services, no software is used that might cause harm (e.g. viruses, worms or Trojans). If the customer becomes aware of an incident involving a breach of Information Security (e.g. gaps in security, loss of data, malfunctions, hazards, malware attacks, data abuse), in particular including cases of unauthorised access (e.g. data leak or cyber attack) or if there are any indications that—after due assessment—ought to cause the customer to suspect that such incident has occurred, the customer shall, without undue delay and without charging DRAEXLMAIER, (i) notify DRAEXLMAIER of such incident, (ii) take all necessary steps to investigate the circumstances and to limit the damage and (iii) support DRAEXLMAIER in the recovery of DRAEXLMAIER Group Data.
4. Moreover, the customer undertakes in the event of cyber or hacker attacks to carry out responsible disclosure procedures and measures.

#### **IXX. Directed Parts**

1. A **“Directed Part”** is a component that DRAEXLMAIER must use or acquire from a supplier on the basis of a specification, an approval list or other instructions issued by the customer and for which the customer has, in particular, already chosen the supplier, agreed the development, concept responsibility, specification, quality and/or price with the supplier in question.
2. The customer must ensure the following in relation to a Directed Part:
  - a) A Directed Part must meet all statutory and official requirements of the respective market on which the customer operates;
  - b) All technical and safety-related requirements of the overall system in which the Directed Part is being used have been complied with;
  - c) In the event that DRAEXLMAIER is under an obligation to pay the supplier of the Directed Parts the very same prices that it has received from the customer for the Directed Part, the customer must keep DRAEXLMAIER apprised of the up-to-date prices payable for the Directed Parts and notify DRAEXLMAIER of any changes in writing without undue delay. If, due to a failure on the part of the customer to notify DRAEXLMAIER, a negative price balance arises between DRAEXLMAIER and the supplier of the Directed Part, the customer shall make up the difference at the request of DRAEXLMAIER, who shall furnish evidence of such negative balance;
  - d) The customer must provide the appropriate production and material releases in order to avoid delivery bottlenecks;
  - e) The production and tool capacity and the tool design at the supplier of the Directed Part must be organised so as to meet the customer’s requirements;
  - f) The customer shall bear all costs regarding operating equipment, tools and qualification costs, in particular including their replacement or repair costs;
  - g) In the case of electronics components that are altered or discontinued by the manufacturer or in relation to which the manufacturer issues a product or process change notification to say that any associated change to the product or part has been assessed and validated by the customer as part of its overall system responsibility and that, where necessary, the customer has agreed the terms for and ensured a last-time buy for the component required by the customer with the manufacturer of the electronics component;
  - h) DRAEXLMAIER is not held liable for any loss/damage or costs (e.g. sorting costs, disassembly or assembly costs, assembly line stoppage etc.) caused by a faulty or defective Directed Part, unless DRAEXLMAIER is responsible for this loss or damage (e.g. faulty installation, incorrect handling);
  - i) Prior to the start of the series production by the supplier, the Directed Part has been approved by the customer (e.g. green initial sampling, PPAP), and
  - j) The tool for the Directed Part has been designed in accordance with the specification and for the intended use and the required lifetime.
3. The customer shall indemnify DRAEXLMAIER in full against any loss or damage, liability claims, costs or claims by third parties (in particular product liability claims or breaches of IP rights) arising in connection with a Directed Part or a tool used to produce Directed Parts. This shall exclude any loss or damage culpably caused by DRAEXLMAIER in the context of an installation carried out by DRAEXLMAIER in accordance with specifications.
4. The customer shall release DRAEXLMAIER from the obligation to fulfil the requirements regarding the management of suppliers of Directed Parts within the meaning of clause 8.4.1.3 of IATF 16949. These requirements must all be met and ensured by the customer.
5. DRAEXLMAIER is not under an obligation to check or supervise compliance with the specifications, terms and other provisions agreed between the customer and the supplier of the Directed Part. DRAEXLMAIER is solely obliged to install the Directed Part in accordance with specifications.
6. DRAEXLMAIER must examine any delivered Directed Parts only with regard to any externally visible transport damage, to quantity and to identity of the goods.

7. If, due to any difficulties arising based on delayed or incorrect deliveries in terms of quality on the part of the supplier of a Directed Part, DRAEXLMAIER has concerns about the project schedule or if DRAEXLMAIER knows of a cheaper supplier of products of a similar quality, DRAEXLMAIER may choose a different supplier provided it has consulted the customer and the customer has consented. The aforementioned provisions shall not be affected in the event that an alternative component is used.

## **XX. Spare parts**

1. Spare parts prices must be negotiated by the parties twelve (12) months prior to the end of the series production run. If the parties are unable to reach an agreement regarding the price of the spare parts, DRAEXLMAIER is entitled to terminate the spare part volume by giving one (1) month's notice to take effect at the end of the series production run or to exercise a retention right.
2. For electronic components that DRAEXLMAIER has not produced itself, DRAEXLMAIER is under an obligation to supply spare parts only while these can still be acquired subject to series-production terms from the respective producer or distributor of the electronic components at reasonable prices.
3. DRAEXLMAIER is able to provide spare parts that contain software, OSS or third-party software only while this is still available together with the appropriate updates.

## **XXI. Termination**

1. DRAEXLMAIER may terminate a series supply contract concluded between the customer and DRAEXLMAIER by giving twelve (12) months written notice to take effect at the end of any calendar month. In addition, DRAEXLMAIER is entitled to terminate any individual supply contract entered into under the series supply contract at any time by giving six (6) months written notice. This shall not affect any other and more extensive rights of termination of DRAEXLMAIER, e.g. based on statute or on these T&Cs.
2. The contracting parties further reserve the right to terminate a supply contract for good cause without notice. The following in particular shall constitute good cause:
  - a) If the customer breaches a primary obligation under the contract and has failed to remedy such breach within sixty (60) days after DRAEXLMAIER has sent written notice to the customer setting out the breach of contract.
  - b) If the customer breaches applicable law or the customer's code of conduct as amended from time to time and, in the light of that breach and giving due consideration to all the circumstances and the parties' mutual interests, it is not reasonable for DRAEXLMAIER to continue working together;
  - c) If the customer has offered, promised or granted an inducement to a member of staff of DRAEXLMAIER or a public official, which may unduly influence them in connection of the negotiation, decision or implementation of the relevant supply relationship;
  - d) If the ownership or shareholding structure of the customer changes significantly (e.g. blocking minority) or if the customer's legal form changes and this affects legitimate interests of DRAEXLMAIER; or
  - e) If there are obstacles as a result of German, U.S. or other applicable national, EU or international provisions or sanctions under foreign trade legislation or as a result of other comparable circumstances which constitute significant trade restrictions, such as in particular a disorderly exit of certain countries from a union of states or economic union.
3. In the event of a legitimate termination by DRAEXLMAIER due to the aforementioned or other termination provisions in these T&Cs, DRAEXLMAIER does not have any liability whatsoever vis-à-vis the customer. DRAEXLMAIER expressly reserves the rights to assert possible damages claims vis-à-vis the customer from or in connection with the termination.

## **XXII. Confidentiality**

1. The customer and DRAEXLMAIER undertake to treat as confidential all information disclosed to them in the context of the business relationship, whether directly or indirectly, by the other party or a company affiliated with such party, as well as all business secrets. A "**Business Secret**" is (i) a piece of information that (ii) is neither known nor readily accessible, whether as a whole or in part, by individuals within the circles who commonly handle information of this kind and (iii) is therefore of commercial value (iii) and is subject to suitable confidentiality measures on the part of its lawful owner.
2. The customer and DRAEXLMAIER agree, in particular, to refrain from disclosing this information and these Business Secrets to third parties or to make them accessible to third parties in any other form and to take all reasonable precautions in order to prevent third parties accessing the information. The customer and DRAEXLMAIER shall ensure that their affiliated companies who receive information in the context of a project also comply with this provision. The staff members of the parties are not deemed to constitute third parties for the purposes of this provision provided that they have been made subject to the same confidentiality obligations as those contained in this clause (for instance in an employment contract).

3. If and to the extent to which it is absolutely necessary in the context of their business relationship, the customer and DRAEXLMAIER may pass on information and Business Secrets to their affiliated companies provided that the recipient is not a competitor of the other party. In addition, DRAEXLMAIER shall be entitled to pass on such information and Business Secrets to its sub-contractors to the extent that this is necessary for the execution of the order. The parties are mutually responsible to place the recipient under the same obligations as those contained in this clause prior to such information and Business Secrets being disclosed.
4. The customer is not permitted to parse, decompile, decode, reproduce, reconfigure and/or reverse engineer the disclosed information and Business Secrets or parts thereof.
5. Confidentiality obligations according to this clause do not apply if and to the extent that a piece of information or a Business Secret:
  - a) is or becomes publicly known without a breach of these obligations,
  - b) was lawfully obtained by a third party,
  - c) was already known to the receiving party,
  - d) had to be disclosed due to mandatory judicial, official or legal regulations or orders, provided that the disclosure must be kept to a minimum and the receiving party must notify the other party in writing of the intended disclosure, or
  - e) was developed independently by the receiving party without use of or reference to the information belonging to the other party.The party wishing to rely on one or several of the above exemptions is obliged to prove the facts on which this is based.
6. The confidentiality provisions do not affect any provisions regarding rights of use.

### **XXIII. Force majeure**

1. In cases of Force Majeure DRAEXLMAIER may delay, limit or cease delivery for the duration of the disruption or terminate the affected part of the contract without notice and without incurring any liability.
2. **"Force Majeure"** includes unusual events for which DRAEXLMAIER is not responsible and which render delivery impossible, delay it or make it considerably more difficult, in particular war, unrest, riots, acts of sabotage or similar events, strikes or other forms of industrial action, newly issued sanctions, trade disputes between countries, terminated trade agreements, terminated memberships in unions of states or economic unions, disorderly withdrawals of countries from a union of states or economic union, unforeseeable changes of the law implemented by a government or of the implementation of the law by its official authorities, emergency legislation, fire, explosions or other unavoidable events, floods, storms, earthquakes or other unusual natural events.
3. Energy and raw material shortages, transport bottlenecks beyond DRAEXLMAIER's control and any delayed deliveries of raw materials or supply parts due to Force Majeure for which DRAEXLMAIER is not responsible shall also be deemed to constitute instances of Force Majeure.
4. In the aforementioned cases DRAEXLMAIER is not liable for any claims, damage and costs arising in the context of deliveries that have not been made properly or in a timely manner.
5. DRAEXLMAIER shall notify the customer about any instances of Force Majeure without undue delay.

### **XXIV. Jurisdiction; governing law; severability clause**

1. The exclusive place of jurisdiction regarding all disputes arising directly or indirectly from the contractual relationship is the registered office of DRAEXLMAIER. DRAEXLMAIER is, however, also entitled to bring an action at the customer's registered office. Any mandatory legal provisions regarding exclusive places of jurisdiction remain unaffected.
2. The contractual relationship including its interpretation is governed by the law of the country, state in which DRAEXLMAIER has its registered office. The United Nations Conventions on Contracts for the International Sale of Goods (CISG) is excluded.
3. If a provision or part of a provision is or becomes invalid or unenforceable, such provision will be disregarded and thus does not affect the validity of the remaining provisions in these T&Cs. Where required, the customer and DRAEXLMAIER are obliged to replace the invalid or unenforceable provision with a valid and enforceable provision that is equivalent to it in terms of economic effect provided that this does not result in a material change to the content of these T&Cs.