

General Terms and Conditions of the company ProMik Programmiersysteme für die Mikroelektronik GmbH, Südwestpark 100, D-90449 Nürnberg (as at December 2019)

Part I: General Terms and Conditions of Purchase

1. General provisions – scope

- 1.1 Our General Terms of Sale shall apply exclusively. We do not acknowledge conflicting terms and conditions of the Supplier or those that deviate from our Terms and Conditions of Purchase, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Purchase shall even apply if we accept the Supplier's delivery in the knowledge of conflicting terms and conditions of the Supplier or those that deviate from our Terms and Conditions of Purchase.
- 1.2 All agreements that are made between us and the Supplier for the purpose of the execution of a contract must be laid down in writing in the present contract. Oral subsidiary agreements shall only be valid if they have been confirmed by us in writing.
- 1.3 Our Terms and Conditions of Purchase shall also apply to all future business with the Supplier.
- 1.4 Our Terms and Conditions of Purchase shall only apply for entrepreneurs in terms of Sections 14 and 310 (1) German Civil Code (BGB).
- 1.5 If master agreements/fixed price agreements have been concluded between the Supplier and us, these shall take precedence. They shall be supplemented by the present Terms and Conditions of Purchase as far as necessary.
- 1.6 The Supplier must treat the/any conclusion of a contract as confidential. It may only name us as a reference to third parties with our written consent.

2. Quotation

- 2.1 Quotations by suppliers shall be regarded as binding. Full and complete quotations must be created.
- 2.2 Additional work that becomes necessary after the placement of additional orders shall not be commissioned and approved by the basic purchase order, but must be fixed and negotiated separately.
- 2.3 The Supplier is obligated to advise us of more cost-effective, more technically sensible or more innovative alternatives.

3. Purchase order and order confirmation; binding character

- 3.1 We can revoke the purchase order if the Supplier has not accepted it in writing within two weeks of receipt (order confirmation).
- 3.2 Purchase orders and agreements shall only be binding if they have been placed or confirmed in writing by the Purchasing Department. Services for which a written purchase order has not been placed shall not put us under an obligation and shall not be paid for, even if such services are provided at the request of our staff. Subsequent agreements must be confirmed by us in writing in order to be binding for us. The execution of the purchase order shall be regarded as an acknowledgement of the present Terms and Conditions of Purchase by the Supplier. The Supplier shall be liable to the Buyer for compliance with all its contractual obligations.
- 3.3 The awarding of contracts/orders to subsuppliers shall require our prior consent. If subsuppliers are called upon, the Supplier shall be responsible for their conduct as for its own.

4. Prices

- 4.1 The price indicated in the purchase order shall be binding. In the absence of a written agreement to the contrary, the price shall include delivery "free domicile" to the delivery address specified by us, including packaging and any ready-to-operate installation.
- 4.2 The statutory VAT is included in the price, unless otherwise specified in the purchase order. Furthermore, this price shall settle all services and ancillary services that are necessary to

make the overall service specified in the contract ready for acceptance, in accordance with the quotation documents and the drawings or catalogues of the Supplier. All surcharges, taxes and duties, customs formalities and customs duties shall also be settled.

- 4.4 If a price is expressly agreed as “ex works or “ex stock” in the individual case, we shall only assume the most favourable freight charges. All costs incurred until the handover, including loading, shall be borne by the Supplier. The manner of pricing shall not affect the agreement on the place of performance.

5. Packaging

Delivery items must be packaged in such a way as to avoid transport damages. Hazardous substances must be packaged and labelled in accordance with the applicable laws. The corresponding safety data sheets must be delivered with the goods. Dangerous goods must also be packaged and labelled in accordance with the applicable laws. The classification as dangerous goods or, if applicable, the note “no dangerous goods” must be quoted on the delivery note. Only packaging made of environmentally friendly materials shall be permitted. It must be made without CFCs and be chlorine-free, chemically inactive, groundwater-neutral and non-toxic when incinerated. The Supplier is obligated, at our request, to take waste, packaging etc. away and dispose of it on its own responsibility and at its own expense. If the Supplier does not comply with this request, the disposal shall be carried at the Supplier’s expense, without setting a further grace period.

6. Transfer of risk – dispatch

- 6.1 The delivery must take place free domicile, unless otherwise agreed in writing.
- 6.2 In the case of deliveries with installation or assembly and in the case of services, the risk shall be transferred upon acceptance. In the case of a delivery without installation and assembly, the risk shall be transferred upon receipt at the receiving point specified by us.
- 6.3 A packing slip or a delivery note stating the contents and the complete purchase order number must be enclosed with all the shipments. If this is not done, we shall not be responsible for delays in the processing. Part or residual deliveries must be identified as such. Furthermore, dispatch notes must be sent to the Purchasing Department and the specified delivery address on the date of dispatch.

7. Invoices

- 7.1 Invoices must not be enclosed with the goods, but must be sent separately by post, furnished with the order number.
- 7.2 The purchase order number and the numbers of each individual item must be quoted in invoices. If this information is missing, the invoices shall not be payable. Invoice copies must be labelled as duplicates.
- 7.3 The VAT must be indicated separately.

8. Payments

- 8.1 Payments shall be made, unless otherwise agreed,
- with a 2 % discount within 14 days
- or net within 30 days.
- 8.2 The payment period shall begin as soon as the delivery or service has been provided in full and without defects and the properly issued invoice has been received. If the Supplier must provide material tests, test logs, quality documents or other documents, the delivery or the service shall not be considered complete until these documents have been received. A discount may also be deducted in the event of a set-off or if we withhold payments to a reasonable extent on account of defects. The payment period shall begin after the complete elimination of defects.
- 8.3 Payments and the commissioning or use / processing shall not imply an acknowledgement of the deliveries and services in accordance with the contract.
- 8.4 We shall be entitled to rights of set-off and rights of retention to the statutory extent.
- 8.5 The Supplier’s claims against us may only be assigned to third parties with our consent.

9. Delivery period

- 9.1 The delivery period quoted in the purchase order and all the other dates and times quoted by the Supplier shall be binding. The criterion for the punctuality of deliveries is the time of their receipt at the receiving point indicated by us; the criterion for the punctuality of deliveries with installation or assembly and of services is the time of their acceptance.
- 9.2 The Supplier is obligated to inform us immediately in writing if circumstances occur or come to its knowledge that indicate that the agreed delivery period cannot be observed. The obligation to observe the agreed dates shall remain unaffected.
- 9.3 In the event of a default of delivery, we shall be entitled, after a fruitless expiry of a reasonable grace period, to have the service that has not been provided carried out by a third party at the expense of the Supplier or to demand compensation in lieu of performance. If we demand compensation, the Supplier shall have the right to provide us with evidence that it is not responsible for the infringement of the obligation. In addition, the statutory provisions shall apply.
- 9.4 Early deliveries, deliveries outside the goods receiving times specified by us and part or excess deliveries shall require our written consent in advance.
- 9.5 If the Parties are prevented from observing their delivery periods due to force majeure, the delivery periods shall be extended by the period of the obstruction plus a reasonable start-up period. Only war and natural disasters shall be regarded as force majeure.

10. Quality

- 10.1 The deliveries and services must correspond to the agreed specifications, be free from material defects and be suitable for the use required by us, which has been communicated to the Supplier or was already known to the latter.
- 10.2 The Supplier must constantly align the quality of the products and services that it delivers to us to the latest state of the art and inform us of potential improvements and technical modifications.
- 10.3 The Supplier must set up and maintain a documented quality assurance system that is suitable in terms of its type and scope and that corresponds to the latest state of the art. It must prepare records, especially relating to its quality checks, and must make these available to us on request.
- 10.4 The Supplier hereby consents to have quality audits performed by us or by a third party contracted by us, with the involvement of our customer if applicable, in order to evaluate the efficacy of our quality assurance system.

11. Warranty and guarantees

- 11.1 With respect to any defects, we are obligated to properly fulfil the mandatory statutory examination and defect notification obligations pursuant to Section 377 German Commercial Code (HGB), unless otherwise agreed in an individual contract or in a quality assurance agreement. Our rights shall be deemed to be protected if the defect notification/report is dispatched on time. The date of the postmark shall be decisive for this. If a defect is discovered during the examination, the Supplier shall bear the costs of the examination of the goods, regardless of the assertion of other claims.
- 11.2 We shall be entitled to the statutory warranty claims in full. In any event, we shall be entitled, at our discretion, to demand an elimination of the defects or a replacement delivery from the Supplier. In this case, the Supplier is obligated to bear all the expenses that are necessary for the purpose of the elimination of the defects or for replacement deliveries – including all ancillary costs. We expressly reserve the right to compensation, in particular to compensation in lieu of performance.
- 11.3 The warranty period shall be 36 months, calculated from the transfer of risk, unless otherwise agreed in the purchase order and unless specified otherwise by mandatory statutory provisions.
- 11.4 We shall be entitled to undertake the elimination of defects / rectifications ourselves if the Supplier is in default with the supplementary performance.

- 11.5 Errors in a delivery or service shall entitle us to withdraw from all contractual relationships with the Supplier that involve the regular delivery of goods or the regular provision of works or services where there is a legitimate fear that errors or defects in a delivery or service will also have a lasting effect on other deliveries or services. This shall not apply if the Supplier can establish that there is no longer any danger of errors of this kind in the future.
- 11.6 Performance parameters indicated by the Supplier shall be regarded as guarantees.
- 11.7 Our claims to recourse shall be based on Section 478 BGB and Sections 445a and 445b BGB. Furthermore, the mandatory delivery recourse provisions shall remain unaffected.
- 11.8 The Supplier undertakes to keep spare parts for the goods that it delivers available for a period of 10 years.

12. Product liability – indemnity – third party liability insurance

- 12.1 If the Supplier is responsible for a product defect/damage to a product, we must, upon our initial request, be indemnified in this respect against claims for compensation by third parties under German or any other law. Responsibility of the Supplier must be assumed if the cause rests within its sphere of control and organisation and if it is also liable in relation to third parties.
- 12.2 Within the framework of its liability for damages in terms of 12.1, the Supplier shall also be obligated to reimburse any expenses that arise from or in connection with a recall by us and /or a legal prosecution, in accordance with Sections 683 and 670 BGB and in accordance with Sections 830, 840 and 426 BGB. We shall inform the Supplier of the content and the scope of the recall actions that are to be carried out – as far as possible and reasonable – and give it the opportunity to make a statement. Other statutory claims shall remain unaffected.
- 12.3 The Supplier undertakes to take out and maintain a product liability insurance policy with an insured sum of at least € 5 million per personal injury/case of damage to property – as a flat rate – (extended at least to the whole of Europe) during the term of the present contract, i.e. until the expiry of the limitation period for claims based on defects, and to provide evidence of this insurance policy on request. If we are entitled to further claims for compensation, these shall remain unaffected.

13. Property rights

- 13.1 The Supplier guarantees that no rights of third parties within the Federal Republic of Germany shall be infringed in connection with its delivery. This shall also apply to places outside the Federal Republic of Germany if the Supplier is aware of the places of delivery.
- 13.2 If claims are asserted against us by a third party on account of such an infringement, the Supplier is obligated to indemnify us against these claims when first requested to do so and to bear all the costs and expenses that we incur in connection with this.
- 13.3 In the event of claims for compensation by a third party, the Supplier shall be entitled to provide evidence that it is not culpable for the infringement of the rights of the third party. We shall not be entitled to make any agreements, and in particular to enter into a settlement with the third party, without the consent of the Supplier.
- 13.4 The Supplier's indemnity obligation shall relate to all expenses that we necessarily incur as a result of or in connection with the claim from a third party, unless the Supplier provides evidence that it is not responsible for the infringement of an obligation that underlies the infringement of the property right.

14. Execution documents, drawings, tools

- 14.1 We expressly reserve ownership rights and property rights to illustrations, drawings, calculations, drafts, patterns and other documents, as well as to devices, models, tools and other production materials that we surrender to the Supplier. We shall be entitled to ownership of tools and other production materials that are paid for by us, unless otherwise agreed in a separate tool contract.
- 14.2 The aforementioned items may not be made accessible to third parties or destroyed without our express consent. They must be used exclusively for production on the basis of our purchase order and must be stored carefully by the Supplier during the execution of the contract at its own expense and insured. The care, maintenance and partial replacement of these items shall be

based on the agreements made between us and the Supplier. After the execution of the purchase order, they must be returned to us unsolicited, unless otherwise agreed in writing.

- 14.3 We reserve all the rights to software produced according to our specifications (including source code), drawings, products or data of various types, as well as to procedures and inventions developed by us. In this context, the Supplier shall make all the necessary information and documents available to us immediately, insofar as these are required for the registration of industrial property rights or for the protection of intellectual property.
- 14.4 All the rights of use and exploitation rights relating to documents that are surrendered to us by the Supplier shall be transferred to us.

15. Provision of parts and items

- 15.1 If we provide parts for the Supplier, we shall reserve the right of ownership to these. Processing or restructuring by the Supplier shall be done for us. If our reserved goods are processed with other items that do not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the value of our item (purchase price plus VAT) to the other processed items at the time at which they are processed.
- 15.2 If the item provided by us is inseparably mixed with other items that do not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the value of the reserved goods (purchase price plus VAT) to the other mixed items at the time at which they are mixed. If the mixing takes place in such a way that the Supplier's item can be regarded as the main item, it shall be deemed to be agreed that the Supplier shall transfer joint ownership to us on a pro rata basis. The Supplier shall keep the item owned in sole ownership or joint ownership safe for us.
- 15.3 If the security interests to which we are entitled as a result of 15.1 and / or 15.2 exceed the purchase price of all our reserved goods that have not yet been paid for by more than 10 %, we shall be obligated to release the security interests at our discretion, at the request of the Supplier.

16. Confidentiality

- 16.1 The Supplier undertakes to maintain strict confidentiality with regard to all the information that comes to its knowledge during the course of the business relationship (especially all illustrations, drawings, calculations, specifications, microfilms, software and software-related documentation received).
The information may only be used in connection with the respective purchase order and must not be surrendered or otherwise made accessible to third parties. The Supplier must take all the measures that are necessary for confidentiality (e.g. including imposing a corresponding confidentiality obligation upon its employees or sub-suppliers approved by us).
- 16.2 The confidentiality obligation shall continue to apply beyond the end of the respective order and our business relationships with the Supplier and shall only expire if and insofar as individual information has become public knowledge.
- 16.3 The Supplier is obligated to sign a separate, further-reaching confidentiality agreement at our request.

17. Long-term supplier declarations, certificates of origin, VAT documentation, export restrictions

- 17.1 The Supplier shall only supply products from the European Union and from states with which preferential agreements exist, and shall, at our request, present long-term supplier declarations or other certificates of origin with regard to the products procured by it, duly signed and including all the necessary information. If it cannot do this, it is obligated to advise us of this immediately after receiving our purchase order.
The same shall apply to VAT documents in the case of deliveries abroad and to EU countries.
- 17.2 The Supplier shall inform us immediately if a delivery is fully or partly subject to export restrictions under German law or another law

18. Supplementary provisions, final provisions

- 18.1 The Supplier confirms that it has complied with all the applicable statutory and official provisions with its delivery.
- 18.2 At our request, the Supplier shall obtain down payment, performance or warranty bonds in our favour.
- 18.3 Unless otherwise stated in the purchase order, the place of performance shall be our registered place of business.
- 18.4 The place of jurisdiction for all disputes arising from the business relationship between the Supplier and us shall be Nuremberg.
- 18.5 If provisions of the present Terms and Conditions of Purchase are or become invalid or if there are gaps in the Terms and Conditions of Purchase, this shall not affect the validity of the remaining provisions.
- 18.6 If our Terms and Conditions of Purchase do not contain a provision, the statutory provisions shall apply.
- 18.7 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Part 2: Terms and Conditions for Delivery and Payment

1. Scope

- 1.1. ProMik's deliveries, services and quotations shall be provided exclusively on the basis of the present Terms and Conditions for Delivery and Payment. These terms and conditions shall be regarded as accepted with the conclusion of the contract at the latest. We hereby expressly reject counterconfirmations by the Buyer with reference to its terms and conditions or terms and conditions of purchase. Our Terms and Conditions for Delivery and Payment shall even apply if we perform the delivery or service in the knowledge of conflicting terms and conditions of the Customer or those that deviate from our Terms and Conditions for Delivery and Payment.
- 1.2. The present Terms and Conditions for Delivery and Payment shall also apply to all future business relationships of the same kind with the respective Buyer, even if they are not expressly agreed.
- 1.3. All agreements that are made between ProMik and the Buyer for the purpose of the execution of the present contract must be laid down in writing.
- 1.4. Our Terms and Conditions for Delivery and Payment shall only apply vis-à-vis entrepreneurs in terms of Sections 14 and 310 (1) BGB.

2. Conclusion of the contract / scope of delivery

- 2.1. Our quotations shall be non-binding and subject to change, unless otherwise specified in the respective quotation.
In the event of quotations that are non-binding and subject to change, the purchase order shall constitute a binding declaration of the Buyer's intention to place the order. The contract shall only become legally binding when the purchase order is confirmed in writing or by telex by ProMik.
- 2.2. Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this is expressly agreed.
Furthermore, all the information provided in our printed materials and illustrations shall only be approximate and shall not be binding for the execution of the order. We particularly reserve the right to make changes to the technical design.
- 2.3. We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to written documents that are described as "confidential". The Customer shall require our express written consent before they are passed on to third parties.
- 2.4. The ProMik sales staff are not authorised to make oral subsidiary agreements or to give oral assurances that go beyond the content of the written contract.

3. Prices

- 3.1. The prices shall be ex works, excluding packaging – unless expressly agreed otherwise.
- 3.2. All the prices specified in quotations, order confirmations and invoices shall be plus the VAT that is valid on the date of delivery.
- 3.3. All the price information in quotations shall be subject to change until the conclusion of the contract, unless it is expressly described as binding (where applicable for a fixed term) in the quotations.

4. Payment

- 4.1. Unless otherwise specified in the order confirmation or the invoice and unless otherwise agreed in writing, payments shall be due net immediately from the receipt of the invoice.
- 4.2. Bankable bills of exchange shall – by agreement – only be accepted on account of payment and shall not represent a satisfaction of the payment obligation. Any bill of exchange charges and interest that accrue shall be borne by the Buyer.
- 4.3. ProMik shall be entitled, in spite of any provisions of the Buyer to the contrary, to first offset payments against the latter's older debts, and shall inform the Buyer about the kind of offsetting that has occurred. If costs and interest have already arisen, we shall be entitled to offset the payments first against the costs, then against the interest and finally against the principal service.
- 4.4. A payment shall only be deemed to have been made when ProMik is able to dispose of the amount. In the event of cheques, the payment shall only be deemed to be made when the cheque is cashed.
- 4.5. If deadlines are missed, default interest of 1.5 % for each new month shall be charged.
- 4.6. If we become aware of circumstances that call the creditworthiness of the Buyer into question, in particular if it does not honour a cheque or it ceases its payments, or if we become aware of other circumstances that call the creditworthiness of the Buyer into question, we shall be entitled to declare that the whole of the remaining debt is due even if we have accepted cheques. In this case, ProMik shall also be entitled to demand advance payments or a security.
- 4.7. Even if notices of defects or counterclaims have been asserted, the Buyer shall only be entitled to offset, withhold or reduce payment if the counterclaims have been legally established or are undisputed. The Buyer shall only be entitled to withhold payments on account of counterclaims arising from the same contractual relationship.

5. Delivery and service period

- 5.1. Delivery dates or periods, which can be binding or non-binding, shall require the written form. If they are not expressly agreed as binding, they shall only be approximate and non-binding.
- 5.2. Delays to deliveries and services due to force majeure and due to incidents that make the delivery much more difficult or impossible for ProMik for an extended period – these particularly include mobilisation, war, strikes, lockouts, official decrees etc., even if they occur for ProMik's suppliers or their sub-suppliers – shall not be the responsibility of ProMik even when binding periods and dates have been agreed. They shall entitle ProMik to postpone the delivery or service by the duration of the obstruction plus an appropriate start-up period or to withdraw from the contract, in full or in part, on account of the part that has not yet been fulfilled.
- 5.3. If the obstruction lasts longer than three months, the Buyer shall be entitled, after setting a reasonable grace period, to withdraw from the contract with respect to the part that has not yet been fulfilled. If the delivery period is extended or if ProMik is released from its obligation, the Buyer cannot derive any claims for compensation from this. ProMik can only invoke the above circumstances if it informs the Buyer immediately in writing.
- 5.4. If ProMik is responsible for the failure to observe binding dates and periods or if it is in default, the Buyer shall be entitled to compensation for the default of ½ % for every complete week of the default, but no more than 5 % of the invoice value of the deliveries and services affected by the default in total. Additional claims shall be excluded, unless the default is based on gross negligence on the part of ProMik.

- 5.5. ProMik's compliance with its delivery and service obligations shall require the punctual and proper fulfilment of the Buyer's obligations.
- 5.6. If the Buyer falls into default of acceptance or if it culpably infringes other obligations to cooperate, ProMik shall be entitled to demand compensation for the damage that it incurs, including any additional expenses; the right to assert further claims or rights shall remain reserved. With the onset of the default of acceptance, the risk of accidental deterioration and accidental loss shall be transferred to the Buyer, unless the transfer of risk has already take place.

6. Dispatch and transfer of risk

- 6.1. Unless otherwise stated in the order confirmation, a delivery "ex works" shall be agreed. The goods shall then always be dispatched at the expense and at the risk of the Buyer. This shall also apply if the goods are delivered by ProMik in its own vehicles or if a carriage paid delivery is agreed. The transfer of risk shall take place when the goods are handed over to the carrier. In the event of delivery by ProMik in its own vehicles, it shall take place when the loading of the vehicle is complete.
- 6.2. We shall assume no guarantee for the cheapest form of shipping. If dispatch is delayed due to conduct on the part of the Customer or at the request of the Customer, we only need to apply the care that we always apply in our own affairs; in these cases, the risk shall be transferred with the notification of the readiness for dispatch.

7. Part deliveries

ProMik shall be entitled to provide part deliveries and part services at any time, unless the part delivery or part service is not of interest to the Buyer.

8. Rights of the Buyer on account of defects

- 8.1. If a sales contract or a contract for labour and materials is available, claims for defects by the Buyer shall require the latter to have properly complied with its examination and reporting obligations in accordance with Section 377 HGB. The Buyer must examine the goods immediately after delivery, provided that this is feasible according to its ordinary course of business. If a defect is detected, it must report the defect to ProMik immediately in writing. Defects that cannot be discovered during the examination after delivery, even in a careful inspection, must be reported to ProMik immediately after their discovery. If the Buyer does not comply with its obligations, the goods shall be deemed to be approved.
If a contract for work and services is available, the Buyer is obligated to declare its acceptance or the reasons for refusing its acceptance to ProMik in writing no later than 1 week after the delivery of the work. If such a declaration is not made, the delivery shall be deemed to be accepted.
- 8.1.1. If there is a defect in the delivery and/or the service, we shall be entitled to supplementary performance at our discretion, in the form of an elimination of defects or the delivery of a new, defect-free item. In the event of the elimination of defects, ProMik is obligated to bear all the expenses that are necessary for the purpose of the elimination of defects, especially transportation, road, labour and material costs, unless these increase as a result of the purchased item or the work having being moved to a place other than the place of performance. The Buyer must provide ProMik with all the information and access options on-site or via the Internet that are necessary for the supplementary performance.
- 8.3. If the supplementary performance fails after a reasonable period, the Buyer may, at its discretion, demand a reduction in the price or withdraw from the contract.
- 8.4. If ProMik's operating or maintenance instructions are not followed, or if changes are made to the products, parts are replaced or consumables used that do not correspond to the original specifications, claims on account of defects in the products shall lapse, unless the Buyer refutes a substantiated claim that one of these circumstances has caused the defect.
- 8.5. Liability for normal wear shall be excluded.
The Buyer is obligated to avoid or to limit possible damages by backing up the data appropriately. It shall be responsible for regularly backing up the data itself.

- 8.6. Only the direct Buyer shall only be entitled to claims against ProMik on account of defects, and these cannot be assigned.
- 8.7. The limitation period for claims for defects shall be 12 months, calculated from the delivery (sales contract/contract for labour and materials) or acceptance (contract for work and services). This shall exclude claims for compensation for which ProMik is liable in accordance with Section 9 of the present Terms and Conditions. In this respect, the statutory limitation periods shall apply.

9. Liability

- 9.1. Claims for compensation against ProMik shall be excluded, irrespective of the nature of the infringement of obligations, including tort, unless it is a case of wilful intent or gross negligence and unless specified otherwise below.
- 9.2. In the event of the infringement of essential contractual obligations, ProMik shall also be liable for any negligence, but only up to the amount of the foreseeable, typically occurring damage.
- 9.3. The above limitations and exclusions of liability shall not apply to claims that have arisen on account of fraudulent conduct by ProMik, to a liability arising from the express assumption of a guarantee (e.g. guaranteed characteristics) or of a procurement risk in accordance with Section 276 BGB, or to claims in accordance with the German Product Liability Act and damages arising from culpable injury to life, limb and health.
- 9.4. If ProMik's liability is excluded or limited, this shall also apply to employees, representatives and vicarious agents of ProMik.

10. Cancellation by the Buyer

- 10.1. If the Buyer has a right to cancel the order, and if it cancels an order that it has duly confirmed and fully accepted, it must assume the full costs.
- 10.2. In the event of custom-made products, cancellation of the order after the order confirmation shall only be possible for good cause.

11. Retention of title

- 11.1. Until all the receivables (including all the balance claims from a current account) to which ProMik is entitled from the Buyer now or in the future, on any legal basis, have been settled, ProMik shall be granted the following securities, which it shall release upon demand at its discretion, provided that their value does not exceed the receivables by more than 20 % on a long-term basis.
- 11.2. The goods shall remain the property of ProMik. Processing or restructuring shall always be performed for ProMik as the manufacturer, but without placing it under any obligation. If ProMik's (joint) ownership lapses as a result of combining, it is hereby agreed that the Buyer's (joint) ownership of the new single item shall be transferred to ProMik in proportion to the value (invoice value). The Buyer shall keep the item that is (jointly) owned by ProMik safe free of charge. Goods for which ProMik is entitled to (joint) ownership are hereinafter referred to as reserved goods.
- 11.3. The Buyer shall be entitled to process and sell the reserved goods in the ordinary course of business, as long as it is not in default. Pledging the goods or assigning them by way of security shall not be permitted. The Buyer hereby assigns the receivables with regard to the reserved goods (including all balance claims from a current account) that arise on the basis on the resale or another legal basis (insurance, tort) to ProMik in full by way of security. ProMik shall revocably authorise the Buyer to collect the receivables that have been assigned to the ProMik for the latter's account and in its own name. This authorisation to collect the receivables can only be revoked if the Buyer does not duly comply with its payment obligations.
- 11.4. In the event of third party access to the reserved goods, especially attachments, the Buyer shall advise the third parties of ProMik's ownership thereof and shall inform the latter immediately so that ProMik can assert its ownership rights. If the third party is not able to

reimburse ProMik for the judicial or extrajudicial costs that have arisen in this context, the Buyer shall be liable for these.

- 11.5. In the event of conduct that is contrary to the contract on the part of the Buyer – especially in the event of a default of payment – ProMik shall be entitled to withdraw from the contract and to demand the return of the reserved goods.

12. Rights of use

- 12.1. ProMik GmbH shall retain all the rights to the computer programs provided and to the business secrets that underlie these programs.
- 12.2. On condition that the Buyer meets its contractual obligations, especially the obligations specified in the present Terms and Conditions for Delivery and Payment, ProMik shall grant a permanent non-exclusive licence to use these computer programs, but exclusively in the form and on the medium in which or on which the program is delivered.
- 12.3. The Buyer shall not be permitted to translate the program back in any way, to copy it or to use any technology to uncover the business secrets underlying the program. If the Buyer infringes this provision, the licence that is granted to it in this section shall end, without requiring a written termination. In this case, ProMik GmbH can demand that the Buyer refrains from the further use of the program or can demand compensation for the damage that has arisen, without prejudice to all other remedies.

13. Property rights

- 13.1. Without express written approval, the Buyer shall not be permitted to export/provide the service delivered by ProMik to countries outside the EC.
- 13.2. The Buyer must also always observe the relevant export regulations, especially those in the German Foreign Trade Ordinance, as well as the provisions of US law.
- 13.3. The Parties shall inform one another immediately if third parties claim infringements of property rights.

14. Confidentiality

- 14.1. The Buyer undertakes to maintain strict confidentiality with regard to all of ProMik's information that comes to its knowledge during the course of the business relationship (especially all illustrations, drawings, calculations, specifications, microfilms, software and software-related documentation received).
The information may only be used in connection with the respective purchase order and must not be surrendered or otherwise made accessible to third parties. The Buyer must take all the measures that are necessary for confidentiality (e.g. including imposing a corresponding confidentiality obligation upon its employees or sub-suppliers approved by us).
- 14.2. The confidentiality obligation shall continue to apply beyond the end of the respective order and our business relationships with the Buyer and shall only expire if and insofar as individual information has become public knowledge.
- 14.3. The Buyer is obligated to sign a separate, further-reaching confidentiality agreement at our request.
- 14.4. Unless expressly agreed otherwise in writing, the information submitted to ProMik in connection with purchase orders by the Buyer shall not be regarded as confidential.

15. Applicable law, place of jurisdiction, place of performance, partial invalidity

- 15.1. The law of the Federal Republic of Germany shall apply to the present Terms and Conditions for Delivery and Payment and to all the legal relationships between ProMik and the Buyer/Customer. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 15.2. If the Buyer is a merchant, a legal entity under public law or a public law special fund, Nuremberg shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
- 15.3. The place of performance shall be the registered place of business of ProMik.

- 15.4 If a provision in the present Terms and Conditions for Delivery and Payment or a provision in other agreements is or becomes invalid, this shall not affect the validity of all the other provisions or agreements.

----- **End of the document** -----