

# General Terms and Conditions of Delivery of ProMinent Deutschland GmbH

## 1. Scope

- 1.1. All deliveries, services and offers of ProMinent GmbH („the **Supplier**“) shall be exclusively based on these General Terms and Conditions of Delivery („**GTC**“). These shall be an integral part of all contracts which the Supplier concludes with its contractual partners („the **Customers**“) regarding all deliveries and/or services („the **Deliveries**“) offered by the Supplier. The GTC shall also apply to all future Deliveries or offers made to the Customer, even if they have not separately agreed again.
- 1.2. Terms and conditions of the Customer or third parties shall only apply if the Supplier expressly agrees to their validity. This shall also apply if the Supplier does not separately object to their validity in individual cases or provides its Deliveries without reservation or refers to a letter that contains the terms and conditions of the Customer or a third party or that makes reference to these.
- 1.3. These GTC shall apply in their current version. The Supplier shall inform the Customer in good time of any changes to the GTC. Amendments shall also be effective in ongoing contractual relationships if the Customer does not object within 14 working days of notification. The current version is always available at <https://www.prominent.com/de/agb>.
- 1.4. Legally binding notifications and declarations by one party to the other party and/or a third party must be made in writing. Additions and amendments to these GTC shall require the written form. Except for managing directors or authorised representatives, the Supplier's employees are not entitled to make any verbal agreements deviating from these GTC.
- 1.5. Telecommunication, in particular by fax or e-mail, shall suffice to comply with the written form requirement set out in these GTC.

## 2. Offer and conclusion of contract

- 2.1. All offers of the Supplier are subject to change and non-binding, unless they contain a specific term of acceptance. In this case, they can only be accepted within such term of acceptance.
- 2.2. A contract is concluded when the Supplier accepts an order from the Customer in writing or the Supplier starts to provide the Deliveries offered. The Supplier may accept orders from the Customer within four weeks of receipt.
- 2.3. The details of the respective order must be specified, in particular the type and scope of the Deliveries, payment details and costs. If the Customer does not specify these details, the Supplier may determine them at its own reasonable discretion.

## 3. Scope of Deliveries

- 3.1. The legal relationship between the Supplier and the Customer shall be governed solely by the respective contract concluded in writing, including these GTC. This contract shall fully reflect all agreements between the parties on the respective subject matter. Additions and amendments to the agreements made, including these GTC, must be made in writing to be effective.
- 3.2. Information provided by the Supplier regarding the Deliveries (e.g. weight, dimensions, serviceability, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) shall only be approximate and serve only to individualise the subject matter of the contract. They shall not be agreed or guaranteed characteristics/features of the Deliveries.
- 3.3. Deviations considered customary in the trade and deviations that are made to comply with legal regulations or represent technical improvements, as well as the replacement of individual parts with equivalent parts, shall be permitted, provided they do not impair the usability for the contractually intended purpose. Changes and deviations shall in any case be deemed approved if the Customer accepts the Deliveries without reservation.
- 3.4. Changes to orders after conclusion of contract require the consent of the Supplier and are subject to the conclusion of a written agreement. From receipt of the Customer's change request by the

Supplier and until the conclusion of a supplementary agreement or the withdrawal of the change request, the Supplier shall be entitled to suspend the execution of the order to be changed. Delivery dates and terms shall be extended and postponed accordingly. If the Supplier submits change proposals to the Customer, the above shall apply accordingly.

- 3.5. If software is part of the scope of performance, the Customer shall be granted a non-exclusive, non-transferable and non-sublicensable right to use the software in object code, including its documentation. This right shall be limited to the exclusive use in connection with the Deliveries and solely for the contractually agreed purpose and the intended use. If the Supplier provides the Customer with supplements (e.g. patches) or a new edition (e.g. updates, upgrades) as part of the rectification or maintenance of the software, these shall also be subject to the provisions of these GTC. The software may contain open-source software or third-party software. In the event of a conflict between these GTC and the licenses that apply to the open-source software or third-party software, these open-source software or third-party software licenses shall take precedence with regard to the services (or parts thereof) that are the subject of these open-source software or third-party software licenses. The Customer shall be entitled to copy the software if and to the extent that this is necessary for the intended use and for the purposes of data backup and archiving in accordance with the Customer's operational requirements. Backup copies on movable data carriers shall be marked as such and provided with the copyright notice of the original data carrier. The authorization of the Customer to reproduce the code of the software under the conditions of Section 69d (1) UrhG shall remain unaffected. Other reproductions are not permitted. Decompilation of the software is only permitted if the requirements specified in Section 69e (1) UrhG are met. The information obtained in this way may not be used or passed on contrary to the provisions of Section 69e (2) UrhG. Any necessary function-preserving updates and security updates for the Supplier's Deliveries shall be made available to the Customer at <https://www.prominent.com/de/Service/Download-Center/Download-Center.html>. The Customer undertakes to inform itself regularly on the aforementioned website about any functional and security updates and to install these properly on the Deliveries within a reasonable period of time. If the Customer sells the Deliveries to a third party, the Customer shall be responsible for this obligation to inform and install the updates toward third parties.
- 3.6. Partial deliveries are permissible insofar as reasonable for the Customer.
- 3.7. In case of international deliveries, Deliveries of the Supplier shall be subject to the condition that there are no obstacles to fulfilment due to national or international regulations, in particular export regulations, embargoes, or other restrictions. The Customer is obliged to provide all information and documents required for the export/ shipment/ import. Delays due to export inspections or approval procedures shall extend delivery dates and delivery terms accordingly. If necessary, permits are not granted, the contract shall be deemed not to have been concluded. Any claims for damages by the Customer are excluded in this respect. All Deliveries that are subject to export restrictions are intended by the Supplier exclusively for the agreed use and to remain in the agreed delivery country. If the Customer intends to re-export products, it shall be obliged to comply with the relevant export regulations. The Customer is prohibited from re-exporting products -both individually or in system-integrated form - contrary to these provisions.

## 4. Prices and payment

- 4.1. The prices apply to the scope of Deliveries listed in the written contracts. Additional or special services shall be invoiced separately. Unless otherwise

specified therein, prices are quoted in EURO and ex works (EXW). All costs for delivery and shipment shall be borne by the Customer, in particular costs for packaging, transportation, loading and unloading and transportation insurance as well as customs duties, fees and other public charges for international deliveries.

- 4.2. The prices are net prices plus the respective statutory value-added-tax. If Deliveries in general are exempt from value-added-tax, e.g. due to transnational aspects the Customer shall provide the Supplier with the necessary evidence without delay. Otherwise, the Supplier shall be entitled to invoice the Customer for the respective value-added tax.
- 4.3. If delivery is to take place more than four months after conclusion of contract, the Supplier shall be entitled to reasonably adjust the contract price, in particular to apply its list prices valid at the time of delivery (in each case less an agreed percentage or fixed discount).
- 4.4. Invoiced amounts are due immediately and must be paid within thirty (30) days without any deduction, unless otherwise agreed in writing. The date of receipt by the Supplier shall be decisive for the date of the payment. If the Customer fails to make payment by the due date, the outstanding amounts shall bear interest from the due date at 9 % p.a. above the respective base interest rate; Supplier's right to claim higher interest rates and further damages in the event of default shall remain unaffected.
- 4.5. The Supplier is entitled to demand a down payment of up to 40 % of the agreed price after conclusion of the contract. The deduction of any discount requires the consent of the Supplier and shall be subject to a written agreement.
- 4.6. For international deliveries, unless otherwise agreed in writing, the provision of the Deliveries shall be subject to the provision of an irrevocable letter of credit by the Customer in favour of the Supplier, confirmed by a German bank.
- 4.7. The Supplier shall be entitled to execute or render outstanding Deliveries only against advance payment or provision of security if the Customer is in default of payment for this or another delivery or service, or if the Supplier becomes aware of circumstances after conclusion of the contract which are likely to significantly reduce the creditworthiness of the Customer and which jeopardize the payment of the Supplier's outstanding claims.

## 5. Delivery and delivery time

- 5.1. Delivery dates and dates for service provision as well as deadlines proposed by the Supplier are non-binding, unless a fixed deadline or fixed date has been bindingly agreed in the written contract.
- 5.2. Compliance with binding delivery dates and deadlines is subject to the timely receipt of all information and documents to be supplied by the Customer, the availability of all necessary approvals, releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the Customer. Delivery dates and delivery terms shall be extended accordingly if the Customer fails to fulfil these contractual obligations to the Supplier. As far as possible, the Supplier shall notify the Customer of the new delivery dates and delivery terms. Further rights of the Supplier shall remain unaffected.
- 5.3. The Supplier shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events that were not foreseeable at the time of conclusion of the contract or that cannot be influenced by the Supplier (e.g. effects of pandemics, operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure to deliver, incorrect delivery or late delivery by suppliers) for which the Supplier is not responsible. If such events make delivery or performance significantly more difficult or impossible for the Supplier and the hindrance is not only of temporary nature, the Supplier shall be entitled to

# General Terms and Conditions of Delivery of ProMinent Deutschland GmbH

withdraw from the contract. In cases of such temporary hindrances, the binding delivery dates and terms shall be extended until the hindrances have ceased to exist, plus a reasonable ramp-up period.

5.4 Delivery dates and terms shall be deemed to have been met if shipment has been agreed, if the ready-to-operate consignment has been handed over to the forwarding agent, freight carrier or another third party commissioned with transportation within the deadline or has been dispatched or, if this is not possible due to circumstances for which the Customer is responsible, the Customer has been notified of readiness for dispatch. For deliveries ex works (EXW), the delivery dates and terms shall be deemed to have been met if the Customer has been notified that the Deliveries are ready for collection.

5.5 If the Supplier is culpably in default with a delivery or service, the Customer may demand compensation for the proven damage incurred; but no more than 0.5% for each full week of delay and no more than 5% in total of the value of that part of the Deliveries which cannot be used on time or in accordance with the contract as a result of the delay. Further claims for damages arising from delay in delivery are excluded; this does not apply if liability arises in cases of intent, gross negligence, within the scope of a guaranteed delivery time or due to injury to life, limb, or health. Otherwise, clause 11 of these GTC shall apply. The Customer's right to withdraw from the contract after the fruitless expiry of a reasonable grace period granted to the Supplier in writing shall remain unaffected.

5.6 If the Customer is in default of acceptance, the Supplier may demand compensation for the damage incurred. Clause 7.5 shall apply accordingly.

5.7 The Customer is obliged to accept the Deliveries immediately and to unload them upon arrival. If unloading is delayed by more than 2 hours for reasons for which the Customer is responsible, by more than 24 hours for international deliveries without customs clearance and by more than 48 hours for international deliveries with custom clearance, the Customer shall reimburse the Supplier for the damage caused by the delay, in particular the idle time of the transportation vehicle and the transportation personnel.

## 6. Planning of installations and systems

6.1 When planning of facilities/ plants and systems, the number of revisions carried out by the Supplier during the planning period shall be limited to one revision. Further revisions shall only be carried out for a fee against approval of a supplementary offer to be prepared by the Supplier. The offered revisions shall only be carried out after acceptance of the supplementary offer by the Customer.

6.2 After receipt of the Supplier's revision, the Customer shall verify it within two weeks and return it to the Supplier.

6.3 If delays caused by the Customer's failure to meet deadlines or by more than one revision requested by the Customer, the agreed delivery date shall be deemed extended by the delay/ period caused by the Customer.

## 7. Place of performance, dispatch, packaging, transfer of risk, acceptance

7.1 Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship shall be the Supplier's registered office. If the Supplier is also responsible for assembly, erection, or installation, the place of performance shall be the place where such work is to take place.

7.2 If the Supplier is responsible for packaging and/or shipment, the type of shipment and packaging shall be at the Supplier's discretion. The packaging shall always be in standard packaging of the Supplier. If, at the discretion of the Supplier or at the request of the Customer, other packaging is used, the

Customer shall bear the corresponding additional costs.

7.3 The risk of transfer shall pass in accordance with the agreed Incoterm; regarding Deliveries involving installation or assembly, the risk shall pass to the Customer on the day of handing over at the Customer's premises or, if agreed, after faultless trial operation and, if acceptance is to take place, upon acceptance. This shall also apply if partial deliveries are made.

7.4 If dispatch, handover or acceptance is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day on which the Deliveries are ready for shipment, collection or acceptance and the Supplier has notified the Customer thereof.

7.5 Storage costs that occur after the transfer of risk has taken place or during Customer delay shall be borne by the Customer. If storage is provided by the Supplier, the storage costs shall amount to 0.5 % of the invoice amount of the Deliveries to be stored per full week. The Supplier reserves the right to claim and prove higher storage costs.

## 8. Installation, assembly, commissioning

8.1 The installation, assembly and commissioning of the Supplier's Deliveries may only be carried out by qualified specialists in compliance with the Supplier's specifications and the relevant technical standards.

8.2 Unless otherwise agreed in writing, this item 8 shall apply if the Supplier is obliged to carry out the assembly and/ or installation.

8.3 The Customer shall, at its own expense and in good time before commencement and without interruption until completion of the work by the Supplier:

- a) Provide free access to the installations and the parts of the installations on which services are to be performed;
- b) carry out the measures necessary to protect persons and property at the plant and to provide appropriate equipment, in each case at least to the extent the Customer would take for its own protection;
- c) provide the necessary auxiliary personnel; the auxiliary personnel shall follow the instructions of the Supplier. The Supplier shall not assume any liability for the assistance and the auxiliary personnel.
- d) carry out all preliminary work and ancillary work, in particular earthworks, construction and other work that is not related to the Supplier's business sector/ is not in the responsibility of the Supplier;
- e) provide the equipment and materials required for the assembly and commissioning such as in particular scaffolding, lifting tools and other devices, fuels and lubricants;
- f) provide electricity, water, light, heat, fuel, including the necessary supply connections and
- g) provide sufficiently large, suitable, dry and lockable rooms at the place of installation and/ or assembly/ place of performance for the storage of machine parts, equipment, materials, tools, etc. and suitable work and staff rooms for the assembly personnel, including sanitary facilities appropriate to the circumstances;
- h) level and clear the access routes and the place of installation and/ or assembly.

8.4 At the Supplier's request, and prior to commencement of the installation/ assembly work, the Customer shall provide the necessary information on the location, of concealed/ underground power lines/cables, gas and water pipes or similar installations as well as necessary information on statics.

8.5 If the Customer culpably fails to fulfil an obligation under this clause 8, or fails to do so properly or on time, it shall compensate the Supplier for the resulting damage. In particular, the Customer shall reimburse the Supplier's costs for replacement visits and waiting times in accordance with the applicable hourly rates. Clause 7.5 shall apply accordingly in case of necessary storage.

8.6 The Customer shall immediately certify in writing the scope of the Supplier's services provided (daily,

in the event that services are provided on several days) as well as the completion of the installation, assembly and commissioning on site.

8.7 Commissioning may only be carried out by technicians approved by the Supplier and only in accordance with the Supplier's instructions. The Supplier and/or the technicians are entitled to refuse to commission a system if and as long as the operating conditions to be provided by the Customer do not permit safe operation of the system. Any costs incurred by the Supplier as a result of such a delay in commissioning shall be borne by the Customer.

8.8 If acceptance is required by law or by contract, the Deliveries shall be considered accepted if (1) the delivery and, if the Supplier is also responsible for the installation and/ or commissioning, the installation and/ or commissioning, has been completed, and (2) the Supplier has notified the Customer about delivery or completion and has requested the Customer to accept, and (3) two weeks have passed since the delivery or completion of installation and/ or commissioning or the Customer has started to use the Deliveries (e.g. the delivered system has been put into operation) for one week and (4) the Customer has failed to notify Supplier about an objection to the acceptance in writing due to a defect which makes the use of the Deliveries impossible or significantly impairs it.

## 9. Warranty, defects

9.1 The warranty period shall be one year from delivery or, if acceptance is required, from acceptance and five years for the delivery of buildings or the provision of construction services. This shall not apply in the event of intent or fraudulent concealment of a defect or if the Supplier has assumed a guarantee for the quality/ functionality of the Deliveries. Furthermore, the periods of limitation shall not apply to claims for damages in the event of grossly negligent breach of duty, in the event of a culpable breach of a material contractual obligation (except for the delivery or performance of defective Deliveries which are subject to the warranty provisions) in the cases of culpably caused injury to life, personal injury or damage to health or in the event of claims under the Product Liability Act.

9.2 Insofar as the parties have agreed on the quality of the Deliveries, other objective requirements for the Deliveries not explicitly agreed shall not apply.

9.3 The Deliveries shall be carefully inspected immediately after delivery to the Customer or to a third party designated by the Customer. With regard to obvious defects or other defects that would have been noticeable during an immediate, diligent inspection, the Deliveries shall be deemed to have been approved by the Customer if the Supplier does not receive a written notice of defects within seven working days after delivery. With regard to other defects, the Deliveries shall be deemed to have been approved by the Customer if the Supplier does not receive a notice of defects within seven working days after the defect becomes apparent; however, if the defect was already recognizable to the Customer, at an earlier time under normal use, this earlier time shall be decisive for the start of the notice period.

9.4 At the Supplier's request, rejected Deliveries shall be provided for inspection and testing or be returned to the Supplier freight charges paid. In the event of justified notice of defects, the Supplier shall reimburse the costs for the most economically way of shipment; this shall not apply if the costs increase because the Deliveries are no longer located at the original place of fulfillment.

9.5 If the Deliveries are no longer located at the place of the original delivery/ fulfillment, the Customer shall bear the additional costs incurred as a result, in particular the costs of returning the Deliveries including transportation costs. This shall not apply if it is unreasonable to expect the Customer to bear these additional costs incurred. This shall not affect the Supplier's right to refuse subsequent performance due to disproportionate costs in

# General Terms and Conditions of Delivery of ProMinent Deutschland GmbH

- accordance with Section 439 (4) of the German Civil Code [BGB].
- 9.6 The resale, integration or installation as well as any other use and application of the Deliveries which are subject of a complaint or objection, shall be deemed to constitute approval of the Deliveries by the Customer as being in accordance with the contract.
- 9.7 In the event of material defects in the Deliveries, the Supplier shall be obliged and entitled, at its discretion and within a reasonable period of time, to rectify the defect or replace the Deliveries. Clauses 8.3-8.6 shall apply accordingly. Changes to the construction, design, dimensions or colour of the Deliveries compared to the original performance, which are made in the course of subsequent performance due to technical progress, are permissible within the tolerances customary in the respective industry, provided that they do not impair the usability of the Deliveries for the contractually agreed use, that no guarantee has been made and the changes are reasonable for the Customer. The Supplier shall bear – as far as the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, provided that this does not result in a disproportionate burden on the Supplier. Expenses which increase due to the fact that the Deliveries were taken to a place other than the place of fulfillment shall be borne by the Customer.
- 9.8 In the following events, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement of delivery, the Customer may only withdraw from the contract or reasonably reduce the purchase price. Further claims for damages remain unaffected.
- 9.9 The Customer shall – in particular - not be entitled to any claims for defects in the event of insignificant deviation from the agreed or assumed quality, in the event of insignificant impairment of usability, in the event of natural wear and tear or damage incurred after the transfer of risk as a result of unsuitable or improper use, incorrect assembly or commissioning by the Customer or third parties, incorrect or negligent handling, improper maintenance, excessive use, unsuitable operating material, faulty construction work, unsuitable building ground or damage caused by special external influences which are not assumed under the contract, as well as in case of non-reproducible software errors. If the Customer or third parties carry out improper modifications or repair work, the Customer shall not be entitled to claim damages from the Supplier for the resulting consequences.
- 9.10 All measures to remedy defects and in particular subsequent performance in accordance with clause 9.7, shall be carried out as a gesture of goodwill and without admission of a legal obligation, unless otherwise agreed individually or a defect has been acknowledged in accordance with clause 9.17. Subsequent performance as a gesture of goodwill shall suspend the warranty period for a period of maximal three months from (re-)delivery. The provisions of this clause 9 shall apply accordingly. In such cases, the (full) restart of the warranty period shall be excluded. Clause 9.3 Sentences 2 and 3 shall apply accordingly.
- 9.11 Costs and expenses incurred to the Supplier as a result of an unjustified complaint or notification of defect shall be borne by the Customer.
- 9.12 In all cases, the Customer shall be obliged to take all possible and reasonable measures to minimize the costs for the purpose of subsequent performance. The Supplier shall only bear the costs for a recall campaign if this is necessary according to the factual and legal situation.
- 9.13 For each return or consignment of the Deliveries the Customer shall enclose the original invoice or original delivery note and shall specify the reason for return and the article number. Each return shipment must be accompanied by a return delivery note and the Declaration of Decontamination in accordance with clause 14.1.
- 9.14 The Supplier's warranty obligations do not exist if the Customer modifies or has the Deliveries modified by a third party without Supplier's consent, in particular if the Customer replaces parts or uses consumables that do not comply with the original

specifications, and this makes the rectification of defects impossible or unreasonably difficult. This shall also apply if the Customer or a third party commissioned by the Customer improperly remedies a defect without having previously given the Supplier the opportunity to remedy the defect itself. The Supplier assumes no liability for the changes made by the Customer, or third party commissioned by the Customer.

- 9.15 If a defect is due to Supplier's fault, the Customer may claim damages under the conditions set out in clause 11.
- 9.16 Any delivery of used items agreed with the Customer in individual cases shall be made to the exclusion of any warranty for material defects.
- 9.17 A material defect shall only be deemed to have been acknowledged if it is expressly confirmed by the Supplier. Negotiations on complaints or assistance in the determination of defects or causes thereof shall not be deemed as acknowledgment and shall not prevent the Supplier from objecting that the complaint was not made in time or was not justified.

## 10. Property rights, ownership

- 10.1 In accordance with this clause 10, the Supplier warrants that the Deliveries are free from industrial property rights of third parties when used for the intended purpose and in accordance with the contract and at the agreed place of delivery, or that the Supplier holds the necessary rights of use.
- 10.2 If the contractual agreed use of the Deliveries leads to an infringement of industrial property rights at the place of fulfillment, the Supplier shall - at its discretion and at its own expense - modify or replace the Deliveries in such a way that no rights of third parties are infringed, or shall obtain the right of use for itself or for the Customer by concluding a licence agreement. If the Supplier fails to do so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. The same shall apply if the Supplier could only obtain a right to use under conditions that are unreasonable for the Supplier. Any claims for damages of the Customer shall be subject to the limitations set out in clause 11.
- 10.3 The Customer shall be obliged to notify the Supplier immediately in writing of any claims asserted by third parties and to support the Supplier to a reasonable extent in the defense against asserted claims or to enable the Supplier to carry out the modification measures pursuant to Clause 10.2 and all defensive measures including out-of-court settlements. Without the prior written consent of the Supplier, the Customer may not make any statements or take any actions that constitute an acknowledgement or concession towards the third party.
- 10.4 Claims of the Customer according to this clause 10 shall be excluded if the infringement of property rights are due to the fact that the Customer has modified the Deliveries, does not use it for the intended purpose or uses it in combination with other products that are not supplied by the Supplier or if the Deliveries were manufactured according to designs, specifications or instructions of the Customer. In such cases, the Customer shall indemnify and hold harmless the Supplier from all claims asserted by third parties due to infringement of industrial property rights and shall reimburse the Supplier for all related costs including legal fees and expenses.
- 10.5 If the infringement of industrial property rights constitutes a defect of title, clause 9 shall also apply.
- 10.6 The Supplier reserves the right of ownership or copyright to all offers and quotations submitted as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and media made available to the Customer. The Customer shall not, without the express consent of the Supplier, make these items accessible to third parties, disclose them, use them or let them be used by third parties or reproduce them. At the Supplier's request, the Customer shall return these items to the Supplier in full and shall

destroy any copies made if they are no longer required by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The Customer undertakes not to remove manufacturer's details, in particular copyright notices, or to change them without the Supplier's prior consent.

## 11. Liability and compensation

- 11.1 The Supplier shall be liable without limitation for claims due to injury to life, body or health, in cases of fraudulent concealment of a defect, mandatory liability under the Product Liability Act and to the extent of any guarantee assumed.
- 11.2 In addition, the Supplier shall be liable for damages or futile expenses if they have been caused by the Supplier, its legal representatives or by one of its vicarious agents through culpable breach of a material contractual obligation, i.e. an obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the Customer may regularly rely, or through any other grossly negligent or intentional breach of duty.
- 11.3 In the event of culpable breach of a material contractual obligation, the Supplier shall also be liable for simple negligence, but limited to the reasonably foreseeable damage typical for the contract and a maximum amount of EUR 250,000.00 per claim.
- 11.4 There shall be no further claims, in particular the Supplier's liability for damages, irrespective of the legal grounds, arising from impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, as far as these are subject to fault, shall be excluded.
- 11.5 The preceding exclusions and limitations of liability shall apply to the same extent in favour of the Supplier's executive bodies, legal representatives, employees and other vicarious agents.
- 11.6 The Supplier shall not be liable for damages culpably caused by its vicarious agents unless they breach a material contractual obligation through gross negligence. § 278 S. 2 BGB in connection with § 276 paragraph 3 BGB remains unaffected.
- 11.7 Insofar as the Supplier provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by the Supplier, this shall be provided free of charge and to the exclusion of any liability.

## 12. Statute of limitations

All claims of the Customer - on whatever legal grounds - shall become time-barred after twelve months; this shall also apply for recourse claims in the supply chain pursuant to Sec. 445b (1) BGB. The suspension of the statute of limitations under § 445b (2) BGB shall remain unaffected; it ends at the latest five years after the time at which the Supplier has delivered the Deliveries to the Customer. These provisions on the limitation period for recourse claims and on the suspension of expiry shall not apply if the last contract in this supply chain is made by a consumer ("Verbrauchsgüterkauf").

## 13. Retention of title

- 13.1 The Supplier retains title to the Deliveries (reserved goods) until all payments arising from the business relationship with the Customer have been received. The retention of title also extends to balance claims resulting from an open current account agreement (open current account reservation) but limited to the contractual relationship between the Supplier and the Customer.
- 13.2 In the event of breach of contract by the Customer, in particular in the event of non-payment or late payment of the contract price due, the Supplier shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the Deliveries on the basis of the retention of title and the withdrawal. If the Customer does not pay the price due, the Supplier may only withdraw from the contract if it has previously set an appropriate deadline for payment

# General Terms and Conditions of Delivery of ProMinent Deutschland GmbH

or if setting such a deadline is dispensable under statutory provisions. If the Supplier takes back the Deliveries, it shall be deemed a withdrawal from the contract. For the duration of retention of title, the Customer is prohibited from pledging or transferring ownership of the Deliveries by way of security. If the Customer, nevertheless, pledges the Deliveries, the Supplier shall be entitled to withdraw from the contract without setting a deadline. In the event of seizures or other interventions by third parties, the Customer shall notify the Supplier immediately in writing. If the third party is not in a position to reimburse the Supplier for the judicial and extrajudicial costs of an action, the Customer shall be liable for the loss incurred by the Supplier.

- 13.3 The Customer shall be entitled to resell the Deliveries in the ordinary course of business; however, it hereby assigns to the Supplier its claims from the resale against the respective purchaser with all its ancillary rights, irrespective of whether the Deliveries have been resold without or after processing. However, the assignment shall be limited to the amount corresponding to the Supplier's claim against the Customer arising from this contract. The Supplier shall be entitled to collect such assigned claims, however not if the Customer meets its payment obligations and is not in default. If a legitimate interest can be substantiated, the Supplier may demand that the Customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- 13.4 The processing and alteration of the Deliveries by the Customer shall always be carried out for the Supplier. If the Deliveries are processed together with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new object in the proportion of the value of the Deliveries to the other processed objects at the time of processing. In all other respects, the same shall apply to the item created by processing as to the reserved goods. The Customer shall also assign to the Supplier the claims to secure the Supplier's claims which accrue to the Customer against a third party through the combination of the Deliveries with a property.
- 13.5 If the Deliveries are inseparably mixed/ connected with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new object in the proportion of the value of the Deliveries to the other mixed/ connected objects at the time of mixing/ connecting. If the mixing/ connecting took place in such a way that the item of the Customer is to be regarded as the main item, it is agreed that the Customer shall transfer proportional co-ownership to the Supplier. The Customer shall keep the sole ownership or co-ownership of the Deliveries for the Supplier. The Customer shall insure it against the usual risks, such as fire, theft, water, and the like to the customary extent. The Customer hereby assigns to the Supplier its claims for compensation to which it is entitled against insurers or other third parties arising from damage of the aforementioned kind in the amount of the invoice value of the Deliveries.
- 13.6 If the realizable value of the securities to which the Supplier is entitled exceeds the Supplier's claim by more than 10% in total, the Supplier shall be obliged to release securities at the request of the Customer, or a third party affected by the excess security at its discretion.

## 14. Declaration of decontamination and terms of repair

- 14.1 The Customer undertakes by legally binding declaration (Declaration of Decontamination) to thoroughly and professionally clean the Deliveries intended for repair or maintenance in order to exclude any risk to the Supplier from recontamination. The Deliveries must be free of all flammables, toxic, caustic, noxious, irritant

substances, or other substances detrimental to health or other preparations classified as dangerous in hazardous quantities. The Declaration of Decontamination must be attached to the outside of the packaging of the Deliveries and the corresponding data safety sheet for the medium used in the process must be enclosed. If no Declaration of Decontamination or no safety data sheet is attached to the Deliveries or if the Declaration of Decontamination is completed in a language other than English or German, the Supplier shall be entitled to refuse to process the consignment. Any costs incurred by the Supplier in this context, in particular for the return shipment, shall be borne by the Customer. The Declaration of Decontamination is available for download on <https://www.prominent.de/resources/CertificateDeclaration/German/15601/Declaration-of-Decontamination-ProMinent-DE-de.pdf>. Only this form shall be used by the Customer. Clause 9.13 shall apply accordingly for sending in Deliveries or parts thereof.

- 14.2 The payment terms set out in clause 4 shall apply.
- 14.3 Clause 13 shall apply accordingly for spare parts. In addition, the following retention of title is agreed:
- a) Insofar as replacement parts or similar inserted during repairs do not become essential components of the Deliveries or the system, the Supplier shall retain ownership of these parts until all claims arising from the repair contract have been settled.
- b) If the Customer is in default of payment or fails to fulfill its obligation arising from the retention of title, the Supplier may demand that the Customer returns the Deliveries for the purpose of removing the inserted parts. All costs for the return and the removal shall be borne by the Customer.
- c) If the repair is carried out at the Customer's premises, the Customer shall give the Supplier the opportunity to carry out the removal there. Labour and travel costs caused by the removal due to the execution of the retention of title, shall be borne by the Customer. Deliveries which were initially sent in for the preparation of a cost estimate for a repair, but for which no order for the necessary repair is received after two reminders have been sent, shall be returned at the Customer's expense.

## 15. Offsetting

- 15.1 The Supplier shall be entitled to set off its own claims or claims of companies affiliated with the Supplier against claims of the Customer.
- 15.2 Offsetting against counterclaims of the Customer or the assertion of a right of retention due to such claims shall only be permissible if the counterclaims are undisputed or have been legally established.

## 16. Export restrictions and sanctions

- 16.1 The Supplier and the Customer undertake to comply with all applicable laws, regulations and other provisions in particular in relation to foreign trade law and the laws of the European Union, in particular with regard to export control and customs. The Customer is obliged to check all applicable standards and any prohibition lists before any transfer of the Deliveries - in particular to non-EU third parties.
- The Supplier points out that some of its products may be subject to export restrictions.
- 16.2 Any (re)sale and/or any (re)export and/or any other delivery of the Deliveries, directly or indirectly, unchanged or integrated into other products, to Russia and/or via third parties for use in Russia is prohibited.
- 16.3 In the event of a breach of the prohibition pursuant to clause 16.2 above, the Supplier shall be entitled to demand from the Customer a contractual penalty in the amount of 25% of the purchase price for the affected Deliveries as well as compensation for all damages incurred by the Supplier, including the imposition of fines. The contractual penalty shall be set off against the damages to be paid.
- 16.4 In the event of a breach of the prohibition pursuant to clause 16.2 above, the Supplier shall also be entitled to withdraw from unfulfilled contracts or to terminate such contracts with immediate effect and/or to terminate the business relationship with the Customer.
- 16.5 In the event of a breach of the prohibition pursuant to clause 16.2 above, the Supplier reserves the right to inform the responsible authorities in the European Union of any breach of this prohibition.

## 17. Place of jurisdiction, applicable law, dispute settlement

- 17.1 The place of fulfilment and exclusive place of jurisdiction for any and all disputes arising from or in connection with this contract shall be the place of the Supplier's registered office, provided the Customer is a tradesman or a corporate body under public law or the Customer has no place of general jurisdiction in the Federal Republic of Germany. However, the Supplier shall also be entitled to file action at the place of the Customer's registered office.
- 17.2 German substantive law shall apply to the contractual relationships. The UN Convention on the International Sale of Goods (CISG) shall be excluded.
- 17.3 The Supplier is neither willing nor obliged to participate in dispute resolution proceedings before a consumer arbitration board.

## 18. Non-disclosure Agreement

Both the Customer as well as the Supplier are obliged to treat all confidential information of which they became aware during the execution of this contract and in the run-up to the contract negotiations, as strictly confidential. They shall not pass on any of this confidential information to third parties or otherwise make it accessible unless this information is generally accessible.

## 19. Severability Clause

Insofar as the contract or these GTC contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting partners would have agreed in accordance with the commercial intent of the contract and the purpose of these GTC if they had been aware of the loopholes.