

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 the version effectively incorporated at the time of conclusion of the contract. The current version is always available at <https://www.prominent.com/de/agb> and shall apply to future Deliveries, services and offers only insofar as it is incorporated into the respective contract.
- 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.
- 1.6 These GTC shall apply exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law. They shall not apply to consumers within the meaning of Section 13 BGB.

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 subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data), as well as representations thereof (e.g. drawings and illustrations), shall be only approximate and shall serve solely to individualise the subject matter of the contract. They shall not constitute agreed characteristics. This shall not apply insofar as such information is expressly agreed as a characteristic in the order confirmation, an expressly incorporated product specification or a separate agreement.
- 3.3 Deviations customary in the trade and deviations made on the basis of legal provisions or representing technical improvements, as well as the replacement of individual parts by equivalent parts, shall be permissible insofar as they do not impair usability for the contractually intended purpose.
- 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 thirdparty software licenses shall take precedence with regard to the services (or parts thereof) that are the subject of these open-source software or thirdparty 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.de/de/Service/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. The Supplier shall be entitled to replace software or software components with functionally equivalent successor versions insofar as this is reasonable for the Customer. The Customer shall have a claim to the provision of source code, development documentation, service or diagnostic software, access codes, interface information or other software- or system-related technical information only insofar as this has been expressly agreed or is required by mandatory law.
- 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 any required 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 and services specified in the written contracts. Additional or special services shall be invoiced separately. Unless otherwise specified therein, prices are quoted in EURO FCA Supplier’s registered office (Incoterms® 2020). All costs of delivery and shipment shall be governed by the agreed Incoterms® rule. For deliveries abroad, the Customer shall in particular bear customs duties, fees and other public charges.
- 4.2 The prices are net prices plus the respective statutory value-added-tax. If Deliveries in generally 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 the contract, the Supplier shall be entitled to adjust the agreed price at its reasonable discretion insofar as, between conclusion of the contract and delivery, the costs relevant to pricing, in particular material, energy, labour, freight, procurement or financing costs, change to a more than insignificant extent. Cost reductions shall be taken into account according to the same principles. Cost reductions shall reduce the price only insofar as they are not offset by increases in other relevant cost factors.
- 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 delays in delivery insofar as these are caused by force majeure or other events that were not foreseeable at the time the contract was concluded or could not be influenced by the Supplier (e.g. effects of epidemics or 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 failure by suppliers to deliver, incorrect delivery or late delivery) for which the Supplier is not responsible. If such events make delivery or performance substantially more difficult or impossible for the Supplier and the hindrance is not merely temporary, the Supplier shall be entitled to withdraw from the contract. In the event of temporary hindrances, binding delivery dates and periods shall be extended until the hindrance ceases, plus a reasonable ramp-up period.
- 5.4 Delivery dates and periods shall be deemed complied with if, within the applicable period, the delivery item has been made available for delivery or handed over in accordance with the agreed Incoterms® rule. If handover cannot take place for reasons for which the Customer is responsible, timely notification of readiness for dispatch shall suffice.
- 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 installations 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 Revisions shall be processed by the Supplier within two weeks of receipt and returned to the Customer.
- 6.3 After receipt of a revision from the Supplier, the Customer shall review it within two weeks and return it to the Supplier.
- 6.4 If delays are caused by the Customer's failure to comply with deadlines or by more than one revision requested by the Customer, the agreed delivery date shall be extended by the period of delay 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 Insofar as an Incoterms® rule has been agreed for the delivery, the transfer of costs and risk shall be governed by the agreed Incoterms® rule. If no Incoterms® rule has been agreed, risk shall pass to the Customer no later than upon handover of the delivery item to the forwarding agent, carrier or other third party designated to carry out shipment; in the case of deliveries involving erection or assembly, on the date of takeover at the Customer’s own premises or, if agreed, after successful trial operation and, insofar as acceptance is required, upon acceptance. This shall also apply if partial deliveries are made or the Supplier has undertaken other services (e.g. shipment or installation).
- 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 after transfer of risk or during the Customer’s default shall be borne by the Customer. If storage is provided by the Supplier, storage costs shall amount to 0.5% of the invoice amount of the delivery items to be stored per completed week. The right to claim and prove higher or lower storage costs shall remain reserved.

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 Insofar as acceptance is required, the delivery item shall be deemed accepted if (1) delivery and, if the Supplier is also responsible for installation, installation have been completed, (2) the Supplier has notified the Customer thereof, expressly referring to the deemed acceptance under this clause 8.8, and has requested acceptance, (3) two weeks have elapsed since delivery or installation, or the Customer has commenced use of the delivery item (e.g. has put the delivered system into operation) and, in the latter case, one week has elapsed since delivery or installation, and (4) the Customer has failed to accept within this period for a reason other than a defect notified to the Supplier which makes use of the delivery item impossible or substantially impairs it.

9. Warranty, defects

- 9.1 The warranty period shall be one year from delivery or, insofar as acceptance is required, from acceptance, and five years for deliveries of buildings and items which, in accordance with their customary use, are used for buildings. This shall not apply in the event of intent or fraudulent concealment of a defect or insofar as the Supplier has assumed a guarantee for the characteristics of the delivery item. With respect to claims for damages, these limitation periods shall furthermore not apply in the event of a grossly negligent breach of duty, in the event of a culpable breach of material contractual obligations not consisting in the delivery of a defective item or performance of defective work, in cases of culpably caused injury to life, body or health, or in the event of claims under the Product Liability Act.
- 9.2 Insofar as the parties have agreed on characteristics of the delivery item, objective requirements for the delivery item shall not apply to that extent insofar as legally permissible. In business-to-business transactions, the parties agree in particular that reparability, disassemblability, replaceability of individual components, modularity, availability of spare parts, wear parts, consumables, replacement devices, tools, diagnostic means, software, firmware, access data, repair, maintenance, service or other technical information beyond the expressly agreed characteristics shall not form part of the customary characteristics of the delivery item unless expressly agreed in the order confirmation, an expressly incorporated product specification or a separate agreement, or mandatory law provides otherwise.

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- 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, a delivery item complained of shall be kept available for inspection and testing or returned to the Supplier carriage paid. In the event of a justified notice of defect, the Supplier shall reimburse the costs of the least expensive shipping method; this shall not apply insofar as the costs increase because the delivery item is located at a place other than the place of its intended use.
- 9.5 If the delivery item is located outside Germany, the Customer shall bear the resulting additional costs, in particular the costs of returning the delivery item or the travel costs incurred by the Supplier or its vicarious agents. This shall not apply if it would be unreasonable for the Customer to bear the additional costs. The Supplier's right under Section 439(4) BGB to refuse subsequent performance due to disproportionate costs shall remain unaffected.
- 9.6 The resale, integration, installation or other use of a delivery item that has been complained of shall not affect the Supplier's rights arising from a late or insufficient notice of defect. Claims for defects shall not exist insofar as continued use despite knowledge of the defect substantially impedes inspection or subsequent performance or causes or increases damage.
- 9.7 If a material defect exists and the Customer is entitled to claims for defects as a result, the Supplier shall provide subsequent performance in accordance with this clause 9. In business-to-business transactions, the Supplier shall be entitled to determine the type of subsequent performance, taking due account of the Customer's interests. In particular, the Supplier may provide subsequent performance by repair, replacement of individual components, delivery of a functionally equivalent replacement device or delivery of a technically and functionally equivalent product or successor product, provided that this does not cause substantial disadvantages to the Customer and that the agreed characteristics, agreed performance data, interfaces, approvals, compatibility requirements and intended usability are substantially maintained. The Supplier's statutory rights to refuse subsequent performance in accordance with the statutory provisions, in particular due to impossibility or disproportionality, shall remain unaffected. Clauses 8.3 to 8.6 shall apply accordingly. Changes in the subsequent performance compared with the original performance in the course of technical progress, in construction, design, dimensions or colour shall be permissible within customary industry tolerances insofar as they do not impair usability for the contractually intended purpose, no guarantee exists and the changes are reasonable for the Customer. Insofar as the complaint proves justified, the Supplier shall bear the expenses necessary for subsequent performance, provided this does not result in a disproportionate burden on the Supplier. Expenses which increase because the delivery has been taken to a place other than the place of performance shall be borne by the Customer.
- 9.8 If subsequent performance fails, in particular due to impossibility, unreasonableness, refusal or unreasonable delay, the Customer may withdraw from the contract or reasonably reduce the purchase price in accordance with the statutory provisions.
- 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 nonreproducible software errors. If the Customer or third parties carry out improper modifications or repair work, no claims for defects shall exist with respect to such modifications or repair work or any consequences resulting therefrom.
- 9.10 The examination of a notice of defect, negotiations concerning defects, participation in a fault or root-cause analysis, as well as repair, replacement, substitute delivery, rectification or other measures by the Supplier shall not, in themselves, constitute acknowledgement of a defect or legal obligation. An acknowledgement shall exist only if the Supplier expressly confirms it in writing. Insofar as legally permissible, such measures shall neither restart nor extend the limitation period for claims for defects. Statutory grounds for suspension, in particular during pending negotiations, shall remain unaffected. 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 consent 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.

10. Property rights, ownership

- 10.1 In accordance with this clause 10, the Supplier warrants that, when used for the intended purpose and in accordance with the contract at the agreed place of delivery, the delivery item is free from third-party industrial property rights or copyrights, or that the Supplier holds the necessary rights of use.
- 10.2 If the contractual use of a delivery item results in an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its option and expense, modify or replace the delivery item so that third-party rights are no longer infringed, or obtain the right of use for itself or for the Customer by entering into a licence agreement. If the Supplier fails to do so within a reasonable period, the Customer shall be entitled to withdraw from the contract or reasonably reduce the purchase price. The same shall apply if the Supplier could obtain a right of use only on terms unreasonable for it.

- Any claims for damages by the Customer shall be subject to the limitations 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 industrial property rights and copyrights is 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 or copyrights 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 in cases of intent and gross negligence, for culpable injury to life, body or health, under the Product Liability Act, as well as to the extent of a guarantee assumed or in the event of fraudulent concealment of a defect.
- 11.2 In the event of a simply negligent breach of a material contractual obligation, i.e. an obligation whose fulfillment is essential for the proper performance of the contract and on whose compliance the Customer may regularly rely, the Supplier shall be liable only for the foreseeable damage typical for the contract. Subject to clause 11.1, liability for all claims for damages and reimbursement of expenses arising out of or in connection with the respective contract, including any agreed indemnification claims, shall in total be limited to the net order value of the affected scope of delivery or service.
- 11.3 Subject to clauses 11.1 and 11.2, the Supplier shall in particular not be liable for loss of profit, loss of production, loss of use, business interruption, loss of data, financing costs, indirect damage or consequential damage.
- 11.4 In all other respects, the Supplier's liability shall be excluded.
- 11.5 The foregoing exclusions and limitations of liability shall apply to the same extent in favour of the Supplier's corporate bodies, legal representatives, employees and other vicarious agents.
- 11.6 Insofar as the Supplier provides technical information or advice and such information or advice does not form part of the contractually agreed scope of performance owed by it, this shall be provided free of charge and, subject to clause 11.1, to the exclusion of any liability.

12. Statute of limitations

All claims of the Customer – irrespective of their legal basis – shall become time-barred after 12 months; this shall also apply to the limitation of recourse claims in the supply chain pursuant to Section 445b(1) BGB. The suspension of expiry under Section 445b(2) BGB shall remain unaffected; it shall end no later than five years after the date on which the Supplier delivered the delivery item to the Customer. These provisions on the limitation of recourse claims and suspension of expiry shall not apply if the final contract in this supply chain is a consumer goods purchase. The statutory limitation periods shall apply to claims for damages under clause 11 and to defects in a building or delivery items which, in accordance with their customary use, were used for a building and caused its defectiveness.

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 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 so that the Supplier may bring an action pursuant to Sec. 771 ZPO. If the third party is not in a position to reimburse the Supplier for the judicial and extrajudicial costs of an action pursuant to Sec. 771 ZPO, 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 ancillary rights, irrespective of whether the Deliveries have been resold without or after processing. The assignment shall be limited to the amount corresponding to the Supplier's claim against the Customer arising from this delivery relationship. The Customer shall remain authorised to collect this claim even after its assignment. The Supplier's right to collect the claim itself shall remain unaffected; however, the Supplier undertakes not to collect the claim as long as the Customer duly meets its payment obligations and is not in default. If a legitimate interest can be substantiated, the Supplier may demand that the Customer disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform 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, at its discretion, release securities to that extent upon request of the Customer or a third party affected by the excess security.

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://prominent.picturepark.com/v/04ui7San/Declaration-of-Decontamination-ProMinent-GmbH-V2.2_INT-en.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.
- 14.4 Outside existing statutory or contractual claims for defects and outside mandatory statutory repair obligations, the Supplier shall provide repair, maintenance, inspection, diagnostic, servicing or other service work only on the basis of a separate agreement. The Customer shall have no claim to performance of such services, conclusion of a repair contract, provision of a replacement device or performance of other service work unless mandatory law or an express agreement provides otherwise.
- 14.5 Insofar as legally permissible and unless expressly agreed otherwise, repairs, maintenance, inspections, diagnostics and servicing outside liability for defects shall be performed at the Supplier's registered office or at a service or repair location designated by the Supplier. Transport, packaging, insurance, inspection, diagnostic, travel, assembly, disassembly, cleaning, decontamination, disposal and other ancillary costs shall be borne by the Customer unless mandatory law or an express agreement provides otherwise. In the event of justified claims for defects, clause 9 shall remain unaffected.
- 14.6 The Supplier shall be obliged to stock, hold, deliver or provide spare parts, wear parts, consumables, replacement devices, tools, special tools, diagnostic equipment, test equipment, service software, firmware, updates, access codes, interface information, repair, maintenance, service or other technical information only insofar as this is required by mandatory law or expressly agreed by contract. The Supplier shall be entitled to replace spare parts, components, assemblies or replacement devices with technically and functionally equivalent parts, components, assemblies, replacement devices or successor products insofar as this is reasonable for the Customer. Intellectual property rights, trade secrets, product, operational, IT and cybersecurity requirements, data protection requirements, export control requirements and mandatory statutory data-access rights, in particular under the Data Act, shall remain unaffected.
- 14.7 For wear parts, consumables and products or components with an intended limited service life, in particular sensors, electrodes, membranes, seals, hoses, dosing, measuring and control components, reparability, restorability or availability of individual replacement components shall be owed only if expressly agreed or required by mandatory law. The function, measuring accuracy, service life and durability of such products or components may depend in particular on the medium, concentration, temperature, pressure, duration of use, storage, cleaning, maintenance, calibration and other conditions of use.

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 laws, regulations and other provisions applicable in each individual case to national and international trade, in particular in the area of export control and customs in connection with applicable foreign trade law and, where relevant, the law of the European Union. Prior to any transfer, resale or export of the goods, in particular to third parties outside the EU, the Customer shall ensure that all applicable legal provisions, including but not limited to relevant sanctions lists and export control regulations, are thoroughly reviewed and complied with.

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- The Supplier points out that some of its products may be subject to specific 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 or Belarus, and/or via third parties for use in Russia or Belarus, 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 imposed 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 without delay.

18. Data Act

- 18.1 The information on connected products and related services required pursuant to Article 3(2) and Article 3(3) of Regulation (EU) 2023/2854 ("Data Act") can be found on our Data Act website, <https://www.prominent.com/data-act>, in the version applicable from time to time.
- 18.2 In addition to these GTC, the data-sharing agreement available at <https://www.prominent.com/resources/CompanyInfoPolicy/English/32795/Data-Sharing-Agreement-Amended-Model-Contract-Clauses-ProMinent-Group.pdf> shall apply to all deliveries relating to connected products or related services within the meaning of the Data Act, in the version incorporated at the time the contract is concluded. This data-sharing agreement is based on the respective Model Contractual Terms (MCT) of the EU Commission, which have in particular been adapted to the Supplier's specific business.

19. 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.

20. Severability Clause

If individual provisions of the contract or these General Terms and Conditions of Delivery are or become wholly or partly invalid or unenforceable, the validity of the remaining provisions shall remain unaffected. The invalid or unenforceable provision shall be replaced by the statutory provisions.

- 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 competent authorities in the European Union of the breach.

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.