



# Allgemeine Verkaufs und Lieferbedingungen



- 7.7 Der Besteller ist verpflichtet, den Vertragsgegenstand unverzüglich nach Empfang zu untersuchen und erkennbare Mängel der WILHELM HORMES ING. GMBH & CO. KG unverzüglich mitzuteilen. Diese unverzügliche Mitteilungspflicht besteht auch dann, wenn sich später ein Mangel zeigt. Unterlässt der Besteller diese Mitteilung, so gilt der Vertragsgegenstand auch in Ansehung des Mangels als genehmigt.
- 7.8 Nimmt der Besteller die von der WILHELM HORMES ING. GMBH & CO. KG vertragsgemäß angebotene Nacherfüllung nicht an, so wird die WILHELM HORMES ING. GMBH & CO. KG nach Setzung und fruchtlosem Ablauf einer Nachricht von der Haftung bzgl. des beanstandeten Mangels frei.
- 7.9 Wenn die Nacherfüllung nicht gelingt, ist der Besteller unter Beachtung der vertraglich vereinbarten Bedingungen, einschließlich derer, die sich aus den vorliegenden Allgemeinen Leistungs-, Verkaufs- und Lieferbedingungen ergeben, zur Geltendmachung seiner sonstigen Mängelansprüche berechtigt. Ein Fehlschlagen der Nacherfüllung liegt insbesondere dann vor, wenn die WILHELM HORMES ING. GMBH & CO. KG eine von dem Besteller gesetzte angemessene Frist zur Nacherfüllung fruchtlos verstreichen lässt oder die WILHELM HORMES ING. GMBH & CO. KG die Nacherfüllung ungebührlich verzögert oder verweigert oder wenn eine zumutbare Anzahl von Nacherfüllungsversuchen keinen Erfolg gebracht hat.
- 7.10 Die WILHELM HORMES ING. GMBH & CO. KG kann die Beseitigung des Mangels verweigern, wenn der Besteller den vereinbarten Zahlungsverpflichtungen nicht nachkommt. Der Besteller kann Zahlungen dem Grunde nach nur zurückhalten, wenn eine Mängelrüge geltend gemacht wird, über deren Berechtigung kein Zweifel bestehen kann. Der Höhe nach ist dieses Zurückbehaltungsrecht beschränkt auf das Vierfache der für die Beseitigung des Mangels erforderlichen Kosten. Macht der Besteller einen Mängelanspruch geltend und stellt sich in der Folge, insbesondere nach einer entsprechenden Untersuchung durch die WILHELM HORMES ING. GMBH & CO. KG heraus, dass der vom Besteller geltend gemachte Mängelanspruch aus tatsächlichen oder rechtlichen Gründen nicht besteht, so hat die WILHELM HORMES ING. GMBH & CO. KG für ihre, insbesondere im Zusammenhang mit der Untersuchung, erbrachten Leistungen Anspruch auf eine angemessene Vergütung und auf Erstattung aller Auslagen.
- 7.11 Für Schadensersatzansprüche gelten die unten folgenden Beschränkungen, Modifizierungen und Ausschlüsse gemäß Ziffer VIII.
- 8. Ausschluss oder Beschränkungen der Haftung der WILHELM HORMES ING. GMBH & CO. KG**
- 8.1 Die Gebrauchs- und Bedienungsanleitungen als auch die Sicherheitsanweisungen der WILHELM HORMES ING. GMBH & CO. KG sind sorgfältig zu beachten. Insbesondere hat der Besteller den Instruktionen der WILHELM HORMES ING. GMBH & CO. KG zu folgen, wie der Vertragsgegenstand risikofrei zu verwenden ist, welche Vorsorgemaßnahmen regelmäßig und im Einzelfall zu treffen sind und welcher Fehleingebrauch zu vermeiden ist. Verstößt der Besteller gegen diese Pflicht, so haftet die WILHELM HORMES ING. GMBH & CO. KG nicht für den daraus entstandenen Schaden und etwaige Folgeschäden.
- 8.2 Die Haftung der WILHELM HORMES ING. GMBH & CO. KG bei Mangelschäden und Mangelfolgeschäden ist wie folgt beschränkt: Die WILHELM HORMES ING. GMBH & CO. KG haftet nicht für Mangelschäden (auch nicht für Schäden aus entgangenem Gewinn) und nicht für Mangelfolgeschäden, gleich aus welchem Rechtsgrund. Dieser Haftungsausschluss gilt nicht für Ansprüche des Bestellers auf Ersatz von Schäden, die auf grobem Verschulden (Vorsatz/grobe Fahrlässigkeit) beruhen.
- 8.3 Die Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG bei einfacher/leichter Fahrlässigkeit: Jegliche Ansprüche des Bestellers auf Ersatz von Schäden, gleich aus welchem Rechtsgrund, die nicht auf grobem Verschulden (Vorsatz/grobe Fahrlässigkeit) der WILHELM HORMES ING. GMBH & CO. KG beruhen, sind ausgeschlossen, sofern die Schäden nicht auf Vorliegen eines Mangels oder auf Verletzung von wesentlichen Vertragspflichten, deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglicht, beruhen.
- 8.4 Die Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG bei nicht typisch voraussehbaren Schäden: Jegliche Ansprüche des Bestellers auf Ersatz von Schäden, gleich aus welchem Rechtsgrund, die nicht auf grobem Verschulden (Vorsatz/grobe Fahrlässigkeit) der WILHELM HORMES ING. GMBH & CO. KG beruhen, sind, sofern diese nicht bereits gemäß der Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG bei Mangelschäden und Mangelfolgeschäden (Nummer 2) und bei einfacher leichter Fahrlässigkeit (Nummer 3) ausgeschlossen sind, der Höhe nach beschränkt auf den Ersatz desjenigen Schadens, den die WILHELM HORMES ING. GMBH & CO. KG bei Vertragsschluss unter Berücksichtigung der Umstände, die die WILHELM HORMES ING. GMBH & CO. KG gekannt hat oder hätte kennen müssen, als mögliche Folge der Pflichtverletzung und/oder Vertragsverletzung hätte voraussehen müssen (typisch voraussehbarer Schaden).
- 8.5 Die Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG bei einer Leistungsstörung: Macht der Besteller gegen die WILHELM HORMES ING. GMBH & CO. KG wegen einer Leistungsstörung einen Anspruch auf Schadensersatz wegen Pflichtverletzung oder statt der Leistung geltend und beruht dieser nicht auf grobem Verschulden (Vorsatz/grobe Fahrlässigkeit), so ist dieser Schadensersatzanspruch, sofern er nicht bereits gemäß der Haftungsbeschränkungen zugunsten der WILHELM HORMES ING. GMBH & CO. KG bezüglich Mangelschäden und Mangelfolgeschäden (Nummer 2) und bei einfacher/leichter Fahrlässigkeit (Nummer 3) ausgeschlossen ist, über die Haftungsbeschränkung der WILHELM HORMES ING. GMBH & CO. KG auf den typisch voraussehbaren Schaden (Nummer 4) hinaus, der Höhe nach beschränkt auf höchstens 5 % des Lieferpreises. Eine Leistungsstörung liegt dann vor, wenn bei der Abwicklung des Vertragsverhältnisses Hindernisse auftreten, die eine ordnungsgemäße Erfüllung vertraglicher Pflichten erschweren oder ausschließen, oder wenn es zu einer Schädigung einer Vertragspartei durch die andere kommt.
- 8.6 Die Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG bei einem Verzögerungsschaden: Die oben aufgeführten Haftungsbeschränkungen zugunsten der WILHELM HORMES ING. GMBH & CO. KG bezüglich Mangelschäden und Mangelfolgeschäden (Nummer 2), bei einfacher leichter Fahrlässigkeit (Nummer 3), nicht typisch voraussehbarer Schäden (Nummer 4) und Leistungsstörungen (Nummer 5), gelten auch für Ansprüche des Bestellers gegen die WILHELM HORMES ING. GMBH & CO. KG auf Ersatz eines Verzögerungsschadens, sofern dieser nicht auf grobem Verschulden (Vorsatz/grobe Fahrlässigkeit) beruht. Darüber hinaus sind sowohl Schadensersatzansprüche des Bestellers wegen Verzögerung der Lieferung als auch Schadensersatzansprüche statt der Lieferung, in allen Fällen verzögerter Lieferung, auch nach Ablauf einer der WILHELM HORMES ING. GMBH & CO. KG etwa gesetzten Frist zur Lieferung, ausgeschlossen.
- 8.7 Die Beschränkung der Haftung der WILHELM HORMES ING. GMBH & CO. KG für deren Erfüllungsgehilfen: Jegliche Haftung für Erfüllungsgehilfen (§ 278 BGB) der WILHELM HORMES ING. GMBH & CO. KG, gleich aus welchem Rechtsgrund, ist ausgeschlossen, sofern nicht durch grobe Schuld (Vorsatz/grobe Fahrlässigkeit) des Erfüllungsgehilfen Vertragspflichten verletzt wurden, deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglicht. In keinem Fall geht die Haftung der WILHELM HORMES ING. GMBH & CO. KG für einen Erfüllungsgehilfen weiter als die Haftung der WILHELM HORMES ING. GMBH & CO. KG für eigenes Verschulden, wie diese sich unter Berücksichtigung der oben aufgeführten Haftungsbeschränkungen ergibt. Nach § 278 BGB ist ein Erfüllungsgehilfe eine natürliche oder juristische Person, deren sich der Schuldner zur Erfüllung seiner Verbindlichkeiten bedient.
- 8.8 Der Rücktritt des Bestellers vom Vertrag wegen nicht oder nicht vertragsgemäß erbrachter Leistung der WILHELM HORMES ING. GMBH & CO. KG ist ausgeschlossen. Dies gilt dann nicht, wenn die WILHELM HORMES ING. GMBH & CO. KG ihre Leistung vorsätzlich oder grob fahrlässig nicht vertragsgemäß erbracht hat.
- 8.9 Obige Haftungsbeschränkungen (Ziff. VIII.1 bis VIII.8) gelten nicht für Ansprüche gemäß § 1ff Produkthaftungsgesetz, nicht für Ansprüche aufgrund eines arglistig verschwiegenen Mangels, nicht für Ansprüche aufgrund der Übernahme einer Garantie für die Beschaffenheit oder für Ansprüche aufgrund der Verletzung des Lebens, des Körpers oder der Gesundheit des Bestellers, seiner Organe und seiner Arbeitnehmer, und nicht für Ansprüche wegen eines bei Vertragsschluss bestehenden Leistungshindernisses, das die WILHELM HORMES ING. GMBH & CO. KG bei Vertragsschluss konnte bzw. nicht konnte, aber diese Unkenntnis zu vertreten hat. Eine Änderung der Beweislast zum Nachteil des Bestellers ist mit den vorstehenden Regelungen nicht verbunden.
- 8.10 Jegliche Haftung der WILHELM HORMES ING. GMBH & CO. KG infolge höherer Gewalt ist ausgeschlossen.

## 9. Verjährung

- 9.1 Mängelansprüche die nach dem Gesetz Verjährungsfristen von 2 Jahren unterliegen (z.B. § 438 Abs. 1 Nr. 3 BGB; § 634 a Abs. 1 Nr. 1 BGB) werden auf 1 Jahr verkürzt. Von dieser Verkürzung der Verjährungsfristen ausgenommen sind Mängelansprüche des Bestellers aufgrund der Übernahme einer Garantie für die Beschaffenheit. Im Übrigen gelten die gesetzlichen Verjährungsfristen.
- 9.2 Bei Ablieferung des Vertragsgegenstandes beginnt die Verjährungsfrist bei einer Montageverpflichtung der WILHELM HORMES ING. GMBH & CO. KG mit der Vollendung der Montage. Ist der Besteller im Verzug der Annahme, so beginnt die Verjährungsfrist mit dem Eintritt des Annahmeverzugs.

## 10. Software

- 10.1 Die WILHELM HORMES ING. GMBH & CO. KG räumt dem Besteller an der überlassenen Software ein einfaches Nutzungsrecht gemäß § 31 Abs. 2 Urheberrechtsgesetz ein. § 31 Abs. 2 Urheberrechtsgesetz lautet: # Das einfache Nutzungsrecht berechtigt den Inhaber, das Werk neben dem Urheber oder anderen Berechtigten auf die ihm erlaubte Art zu nutzen. # Der Besteller erhält also ein Nutzungsrecht. Die WILHELM HORMES ING. GMBH & CO. KG bleibt bezüglich der Software jederzeit alleiniger Eigentümer/ Inhaber aller Immaterialgüterrechte.
- 10.2 Der Besteller ist zur Nutzung der ihm überlassenen Software nur auf dem Vertragsgegenstand berechtigt.
- 10.3 Der Besteller ist berechtigt, die überlassene Software auf unbestimmte Zeit für die gesamte wirtschaftliche Lebensdauer des Vertragsgegenstandes zu nutzen.
- 10.4 Der Besteller ist nicht berechtigt, sein Nutzungsrecht an Dritte zu übertragen, insbesondere ist der Besteller nicht berechtigt, die Software und die dazugehörige Dokumentation zu vertreiben, zu vermieten, Dritten Unterlizenzen hieran einzuräumen oder diese in anderer Weise Dritten zur Verfügung zu stellen. Überträgt der Besteller sein Unternehmen insgesamt auf einen Dritten, ist der Besteller berechtigt, dem Dritten das eingeräumte Nutzungsrecht zu übertragen. Veräußert der Besteller die Lieferance im normalen Geschäftsgang insgesamt an einen Dritten und ist dieser kein Wettbewerber der WILHELM HORMES ING. GMBH & CO. KG, ist die WILHELM HORMES ING. GMBH & CO. KG verpflichtet, auf entsprechende Anforderung einer Übertragung des eingeräumten Nutzungsrechts zuzustimmen, sofern die WILHELM HORMES ING. GMBH & CO. KG nicht begründet darlegt, dass dadurch die Gefahr besteht, dass Wettbewerber der WILHELM HORMES ING. GMBH & CO. KG Kenntnis von geheimen Wissen (Geschäftsgeheimnisse) der WILHELM HORMES ING. GMBH & CO. KG erhalten.
- 10.5 Die WILHELM HORMES ING. GMBH & CO. KG ist berechtigt, einer unbeschränkt beliebigen Zahl anderer Kunden Nutzungsrechte jeglicher Art bezüglich der überlassenen Software einzuräumen.
- 10.6 Dem Besteller überlassene Software darf keinem Dritten, ausgenommen seinen Mitarbeitern, auch nicht zeitweise und auch nicht unentgeltlich, zur Verfügung gestellt oder zugänglich gemacht werden.
- 10.7 Kennzeichnungen, Copyright-Vermerke und Eigentumsangaben an der überlassenen Software dürfen nicht verändert werden.
- 10.8 Der Besteller darf keine Kopie der überlassenen Software herstellen, ausgenommen die Erstellung einer Sicherungskopie durch eine Person, die zur Benutzung des Programms berechtigt ist, wenn dies für die Sicherung künftiger Benutzung erforderlich ist. Die Sicherungskopie darf nicht gleichzeitig neben der Original-Software genutzt werden.
- 10.9 Vervielfältigungen der zur Software gehörige Dokumentation weder ganz noch teilweise durch Fotokopieren, Mikroverfilmen, elektronische Speicherung oder ein anderes Verfahren ist nicht gestattet.
- 10.10 Disassemblierung, Reverse Engineering oder Dekompilierung der Software ist untersagt und der Besteller wird dies weder veranlassen noch gestatten, es sei denn, die Voraussetzungen des § 69 e) Urheberrechtsgesetz liegen vor.
- 10.11 Eigentums-, Urheber- und sonstige gewerbliche Schutzrechte an der Software, Updates und der Dokumentation stehen der WILHELM HORMES ING. GMBH & CO. KG zu. Gleiches gilt für Änderungen und Übersetzungen der Programme.
- 10.12 Die WILHELM HORMES ING. GMBH & CO. KG ist berechtigt, auf eigene Kosten notwendige Software-Änderungen aufgrund Schutzrechtsbehauptungen Dritter beim Besteller durchzuführen. Der Besteller kann hieraus keine Ansprüche herleiten.

## 11. Gebrauchte Maschinen und Anlagen(teile)

- 11.1 Gebrauchte Maschinen werden ohne Garantie und ohne Gewährleistung angeboten und geliefert. Zubehörite werden nur soweit sie mit der Maschine verbunden sind oder ihre Zugehörigkeit schriftlich bestätigt wurde, mitgeliefert. Die Ware wird in dem Zustand verkauft, in dem sie sich bei Vertragsabschluss befindet. Der Verkäufer übernimmt keinerlei Gewähr für die Beschaffenheit und Funktion. Jegliche Ansprüche des Bestellers wegen Vorliegen eines Sachmangels sind ausgeschlossen. Der Käufer hat das Recht die Ware vor Vertragsabschluss zu besichtigen und zu prüfen um festzustellen, ob sie geeignet ist. Ebenso hat er ausdrücklich das Recht bei der Verpackung und Verladung der Ware zugehen zu sein.

## 12. Generalüberholte, modernisierte Maschinen- und Anlagen(teile)

- Sofern die WILHELM HORMES ING. GMBH & CO. KG den Vertragsgegenstand als gebraucht mit den Zusätzen "generalüberholt, modernisiert" angeboten und geliefert hat gilt folgendes:
- 12.1 Der Besteller hat nur das Recht auf Nachbesserung d. h. Beseitigung des Mangels.
- 12.2 Sofern der Besteller das Fehlschlagen der Nachbesserung nachweist, hat er das Recht eine anderweitige Nachbesserung zu verlangen. Als fehlgeschlagene Nachbesserung gilt wenn die WILHELM HORMES ING. GMBH & CO. KG die vom Besteller gesetzte angemessene Frist untätig verstreichen lässt oder eine zumutbare Anzahl von Nachbesserungen keinen Erfolg erbrachten.
- 12.3 Wenn sich herausstellt, dass der Vertragsgegenstand sich wegen des Mangels nicht für die gewöhnliche Verwendung eignet kann der Besteller vom Vertrag zurücktreten.
- 12.4 Sofern sich herausstellt, dass die WILHELM HORMES ING. GMBH & CO. KG den Mangel arglistig verschwiegen hat, gelten die Beschränkungen der Mängelrechte des Bestellers unter 1. - 3. nicht.

## 13. Gerichtsstand, anwendbares Recht, Erfüllungsort

- 13.1 Bei allen sich aus und im Zusammenhang mit dem Vertragsverhältnis ergebenden Streitigkeiten ist, wenn der Besteller inländischer Kaufmann, eine inländische juristische Person des öffentlichen Rechts oder inländisches öffentlich-rechtliches Sondervermögen ist, der Geschäftssitz der WILHELM HORMES ING. GMBH & CO. KG ausschließlicher Gerichtsstand. Für Klagen gegen die WILHELM HORMES ING. GMBH & CO. KG von Besteller, die im Inland keinen allgemeinen Gerichtsstand haben, ist ausschließlicher Gerichtsstand ebenfalls der Geschäftssitz der WILHELM HORMES ING. GMBH & CO. KG. Für Klagen der WILHELM HORMES ING. GMBH & CO. KG gegen Besteller, die im Inland keinen allgemeinen Gerichtsstand haben, ist zusätzlicher Gerichtsstand, neben den gesetzlichen Gerichtsständen, auch der Geschäftssitz der WILHELM HORMES ING. GMBH & CO. KG. Von den Parteien gegebenenfalls getroffene Schiedsabreden haben Vorrang.
- 13.2 Bezüglich der Einbeziehung dieser Bedingungen der WILHELM HORMES ING. GMBH & CO. KG und für alle Rechtsbeziehungen, die sich für die Vertragsparteien und ihre Rechtsnachfolger aus dem Vertrag und aus eventuellen Nebengeschäften und/oder Folgegeschäften ergeben, gilt nur das Recht der Bundesrepublik Deutschland. Auch diese Rechtswahl und die vorstehende Gerichtsstandsvereinbarung verstehen dem Recht der Bundesrepublik Deutschland. Die Anwendung des UN-Kaufrecht (Übereinkommen der Vereinten Nationen vom 11. April 1980 über Verträge über den Internationalen Warenkauf) wird durch die vorstehende Rechtswahl nicht ausgeschlossen.
- 13.3 Erfüllungsort ist der Geschäftssitz der WILHELM HORMES ING. GMBH & CO. KG.
- 13.4 Sollten einzelne Bestimmungen der hier vorliegenden Allgemeinen Geschäfts- und Lieferbedingungen nicht zutreffen, behält der verbleibende Inhalt dennoch seine Gültigkeit.

# General Sales and Delivery Conditions



## 1. Offer, Contractual Contents

- 1.1. Pre-formulated contractual conditions ('General Terms' in the sense of §305 BGB), the customer uses will not be contractual content. The General Sales and Delivery Conditions of WILHELM HORMES ING. GMBH & CO. KG shall apply exclusively.
- 1.2. They shall only apply to relations with customers who are merchants within the meaning of Sec. 310 (1) BGB (German Civil Code), legal persons under public law, or public law funds.
- 1.3. They shall also apply to all further transactions between WILHELM HORMES ING. GMBH & CO. KG and the customer.
- 1.4. These Terms and Conditions shall apply to all contractual performances rendered by WILHELM HORMES ING. GMBH & CO. KG regardless of the legal type of contract that such performance is based on. They shall apply to sales contracts as well as to contracts for work and materials and for combined contracts.
- 1.5. These Terms and Conditions are preceded by individual agreements of the contracting parties.
- 1.6. All agreements which are reached between WILHELM HORMES ING. GMBH & CO. KG and the customer in connection with the purchase contract have to be recorded in writing.

## 2. Offer Phase

- 2.1. All documents such as illustrations, drawings, dimensional and weight specifications relating to the offer are to be generally understood merely as approximate values, insofar as they are not explicitly designated as obligatory. All rights, in particular all rights of a proprietary and copyright nature, concerning cost estimates, calculations, engineering designs, preliminary works and other documents, are reserved to WILHELM HORMES ING. GMBH & CO. KG. They shall not be made available to any third parties without the prior written consent of WILHELM HORMES ING. GMBH & CO. KG.
- 2.2. All documents provided by WILHELM HORMES ING. GMBH & CO. KG may only be used for purposes of concluding the contract and subsequently within the scope of fulfillment of the contract. Any further use is prohibited. WILHELM HORMES ING. GMBH & CO. KG as well as the customer have to make sure that their bodies and employees respect the above mentioned obligations.

## 3. Delivery, Time of Delivery, Acceptance, Delay

- 3.1. The time of delivery begins after all technical and commercial details have been clarified, all required documents, specimen, permits, approvals, permissions have been received and upon receipt of the down payment agreed upon.
- 3.2. The time of delivery shall be considered to be complied with if by the expiry of the delivery date the merchandise to be delivered has left the factory or readiness for dispatch has been notified.
- 3.3. The customer cannot make any claims (in particular no claims for penalty or indemnity) against Hormes for defaults due to force majeure. Force majeure shall mean all unforeseen events and those events, which – even if they could be foreseen – are beyond the control of WILHELM HORMES ING. GMBH & CO. KG and the effects of which cannot be prevented by reasonable efforts of WILHELM HORMES ING. GMBH & CO. KG. These are, inter alia, retarded deliveries of subcontractors/suppliers, war (whether declared or not), conditions similar to war, riot, revolt, rebellion, military or civil coup, insurrection, tumult, excesses, blockade, embargo, government act, sabotage, strikes, go-slow, lockout, epidemics, fire, flood, storm-tide, typhoons or other catastrophic weather conditions, general shortage of process materials, shipwreck, lack of docking or unloading facilities, delays due to transportation, non-availability of required shipping space, reasoned change of forwarding agent and/or freight carrier and/or ship owner and/or other commercial carriers, serious transport accidents, earthquakes, radioactive accidents, any kind of physical or artificial impediments at site/production facility.
- 3.4. In case of any impediments WILHELM HORMES ING. GMBH & CO. KG is not responsible for, WILHELM HORMES ING. GMBH & CO. KG shall be entitled to demand for an adequate prolongation of the delivery time and additional payment for compensating additional performance and/or costs.
- 3.5. If the delivery is delayed by the customer, the latter has to pay for all costs actually incurred for storage of the merchandise subject to the contract. In case of storage on the premises of WILHELM HORMES ING. GMBH & CO. KG the latter shall be entitled to demand a flat minimum amount of 0.5 % of the order value for each month as compensation for the additional costs. This regulation does not exclude the possibility of proving higher or lower costs.
- 3.6. § 3.5 shall also apply in case of any other default of acceptance of the customer. In the event that the customer is in default of acceptance or culpably violates other obligations to cooperate the risk of incidental destruction or incidental deterioration of the goods shall devolve on the customer at the time that the customer has fallen into acceptance default.
- 3.7. Further rights of WILHELM HORMES ING. GMBH & CO. KG are not excluded by this agreement.
- 3.8. For a delivery on time it is presumed that the buyer/customer fulfills his obligations in due time and form.
- 3.9. Partial deliveries made by WILHELM HORMES ING. GMBH & CO. KG can only be rejected if they are unreasonable for the customer.
- 3.10. If an acceptance is contractually agreed upon or if an acceptance is prescribed by law, the legal regulations concerning acceptance for contract for work shall apply for the acceptance.

## 4. Price and Payment

- 4.1. Unless otherwise stated in the order confirmation our prices plus VAT effective on the day of delivery are quoted ex works Essen/Oldenburg. All costs for packing, loading, stowage and unloading are for the charge of the customer.
- 4.2. Should the German Packaging Ordinance oblige WILHELM HORMES ING. GMBH & CO. KG to take back the packaging used for the transport the customer shall bear the costs for the return of the packaging and its utilisation. If it is not possible to reuse the returned packaging, the customer shall bear the costs incurring for the recycling by WILHELM HORMES ING. GMBH & CO. KG. Where applicable the customer will additionally have to pay for all customs duties, customs clearance costs, taxes and other fees incurring from the return of the packaging material.
- 4.3. Containers are not considered to be packaging material. They will remain the property of WILHELM HORMES ING. GMBH & CO. KG. The customer has to bear the costs (transport costs, customs duties, customs clearance costs, taxes and fees) and risk concerning import, re-export and return to WILHELM HORMES ING. GMBH & CO. KG.
- 4.4. All tools, surplus material, welding gas bottles and other equipment used at site are not subject of the contract. They will remain the property of WILHELM HORMES ING. GMBH & CO. KG. The customer has to bear the costs (transport costs, customs duties, customs clearance costs, taxes and fees) and risk concerning import, re-export and return to WILHELM HORMES ING. GMBH & CO. KG.
- 4.5. The price agreed upon has to be paid without any deduction.
- 4.6. Due date and default interest rates have to be paid to WILHELM HORMES ING. GMBH & CO. KG according to legal regulations. This shall not affect the right of WILHELM HORMES ING. GMBH & CO. KG to assert further claims and rights.
- 4.7. The customer is only entitled to set-off rights and rights of retention if his counterclaims have been established as final and absolute, are undisputed and have been acknowledged by WILHELM HORMES ING. GMBH & CO. KG and if they had been announced to WILHELM HORMES ING. GMBH & CO. KG at least one month before.
- 4.8. Should facts come known to WILHELM HORMES ING. GMBH & CO. KG after conclusion of the contract that give rise to the justified doubt about the customer's creditworthiness, WILHELM HORMES ING. GMBH & CO. KG is entitled to ask the customer to provide a simple (not payable on first demand) and irrevocable bank guarantee as security or a bank guarantee with an unlimited term for the full amount of the price agreed upon, return paripassu with the payment of the due price.
- 4.9. WILHELM HORMES ING. GMBH & CO. KG shall be entitled to increase the price appropriately if after conclusion of the contract cost increases, particularly due to wage agreements and price increases for materials occur to WILHELM HORMES ING. GMBH & CO. KG. WILHELM HORMES ING. GMBH & CO. KG will give evidence to the customer thereof upon demand.
- 4.10. Should the customer ask for modifications of the ordered goods and should these modifications mean an additional effort the price agreed upon may be increased appropriately. WILHELM HORMES ING. GMBH & CO. KG will give evidence of the additional effort to the customer upon demand.
- 4.11. The customer has to transfer the price agreed upon to one of the bank accounts stipulated by WILHELM HORMES ING. GMBH & CO. KG at his own risk and cost.

## 5. Passing of Risk, Transport Insurance

- 5.1. Immediately upon dispatch of the goods to be delivered the risk will pass to the customer even if partial deliveries are effected or if the supplier has assumed other costs and performances, e.g. shipping costs or delivery and mounting. On request of the customer the shipment will be insured against transport damages at the expense of the customer.
- 5.2. Should the dispatch be delayed due to circumstances that the customer is responsible for the risk will pass on the day of notification that the goods are ready for shipment: the supplier, however, is obliged to take care for insurance on request and at the expense of the customer.
- 5.3. All goods, even if they show non-substantial defects, have to be accepted without prejudice to the right under section 5.2. Partial deliveries are allowed.
- 5.4. In case that WILHELM HORMES ING. GMBH & CO. KG arrange for the transport of the goods and a transport damage or a transport related damage arises after the goods have been handed over to the transport agent WILHELM HORMES ING. GMBH & CO. KG assign their claims, that may eventually result there from, against the transport insurance and the transport agent to the customer – on demand of the latter – without any liability that the claims remain unaffected. The assignment of the claims is effected paripassu against the payment of the total price for the goods under contract and all costs due. Additional claims vis-à-vis WILHELM HORMES ING. GMBH & CO. KG due to a transport damage or a transport related damage are excluded. This will also apply if the matter subject to contract includes assembly services or the mounting of a turnkey installation. Transport and maritime limitation periods,

preclusive time limits, limitations and restrictions of liability in favour of persons (natural and legal), who are related with WILHELM HORMES ING. GMBH & CO. KG, responsible for the transport/ loading/unloading/ storage of the goods under contract equally apply to corresponding circumstances under the contractual relationship customer/WILHELM HORMES ING. GMBH & CO. KG in favour of WILHELM HORMES ING. GMBH & CO. KG.

- 5.5. The customer undertakes to inspect the goods of the contract immediately before unloading at place of destination concerning damages and in case of a defect or a damage is suspected to confirm reception only under reserve and to inform WILHELM HORMES ING. GMBH & CO. KG immediately about the damage. In case of non-compliance with the above mentioned obligations the transport insurance(s) will not have to pay. Should the transport insurer's (s') obligation to pay cease due to the above reason also WILHELM HORMES ING. GMBH & CO. KG's obligation to pay ceases for damages covered by the liability limitation of the transport insurance(s).

## 6. Retention of Title

- 6.1. The contractual subject remains property of WILHELM HORMES ING. GMBH & CO. KG until irrevocable and unconditional receipt of all payments the customer owes. Until this date the customer shall not be entitled to create a security interest (e.g. reserved ownership, lien, mortgage, land charge, etc) in the contractual subject or to resell it. In case the customer's payments are in default, the staff of WILHELM HORMES ING. GMBH & CO. KG is irrevocably entitled to enter the site/premises of the customer with necessary number of men, to dismantle the contractual subject and to take it away. In case that the legal rights at site (lex rei sitae) do not know the security interest 'retention of title' the security interest valid at place of site shall apply that comes logically next to a 'retention of title' and respectively the security interest that according to that law represents the typical security interest (e.g. 'lien' or 'security interest, attached and perfected'). The customer is obliged to cooperate (in particular for declarations of intent) and to take all actions that are necessary to agree upon and establish a fully effective retention of title valid according to legal law at site and respectively another fully effective security interest.
  - 6.2. In the event of seizure, attachments or other measures of third parties concerning the contractual subject the customer has immediately to inform WILHELM HORMES ING. GMBH & CO. KG and to deliver them all documents that are necessary for an intervention.
  - 6.3. For the case that the customer's behaviour is contrary to the contract, in particular in case of improper handling of the contractual good delivered or delayed payment of the customer, WILHELM HORMES ING. GMBH & CO. KG shall be entitled to demand – on prior notice – that the contractual goods be returned. This does not imply a termination of the contract unless this had been declared expressly and in writing by WILHELM HORMES ING. GMBH & CO. KG. The attachment of the contractual subject by WILHELM HORMES ING. GMBH & CO. KG does always imply a termination of the contract. After taking back the contractual subject WILHELM HORMES ING. GMBH & CO. KG shall be entitled to sell it or otherwise utilize it – the generated project from realisation shall be set off against the liabilities of the customer – less reasonable redemption costs.
  - 6.4. The transforming or processing of the contractual subject by the customer is always effected for WILHELM HORMES ING. GMBH & CO. KG. If the contractual subject is processed with other goods not belonging to WILHELM HORMES ING. GMBH & CO. KG, the latter shall acquire the co-ownership on the new good in proportion to the value of the contractual subject to the other processed items at the time of processing. The same applies for the new good produced through processing as for conditionally delivered products.
  - 6.5. If the contractual subject is mixed inseparably with other goods not belonging to WILHELM HORMES ING. GMBH & CO. KG, the latter shall acquire the ownership on the new good in proportion to the value of the contractual subject to the other mixed items at the time of mixing. If the goods are mixed in such a way that the item of the customer must be seen as the main item, the parties shall agree that the customer shall transfer a proportionate share in the co-ownership to WILHELM HORMES ING. GMBH & CO. KG. The customer keeps the resulting sole or co-ownership in safe custody for WILHELM HORMES ING. GMBH & CO. KG.
  - 6.6. To secure the claims of WILHELM HORMES ING. GMBH & CO. KG against the customer, the customer shall also assign to WILHELM HORMES ING. GMBH & CO. KG such claims accruing to the customer from combination of the contractual subject with real property against a third party.
  - 6.7. At the request of the customer, WILHELM HORMES ING. GMBH & CO. KG undertake to release the securities to which they are entitled insofar as the value of their securities exceeds the claims to be secured by more than 20%; WILHELM HORMES ING. GMBH & CO. KG shall be responsible for selecting which securities to release.
- ## 7. Limitation of Liability, Rights of Customer in Case of Defects
- 7.1. WILHELM HORMES ING. GMBH & CO. KG shall be liable to the customer that the contractual subject is free from any material defects and defects of title at the time the risk passes to the customer. Minor deviations of the agreed quality do not constitute a defect.
  - 7.2. WILHELM HORMES ING. GMBH & CO. KG shall not be liable for defects or damages caused by the following: Defects resulting from constructions given or ordered by the customer or from materials given, ordered or provided by the customer, including sample materials, or from other articles provided by the customer. Defects or damages that incur after passing of risk by incorrect or negligent treatment, handling by untrained or unqualified personnel, excessive strain, inappropriate equipment, deficient construction work, inappropriate framework, or that incur due to special external influences which are not included under the terms of the contract, as well as in case of non-reproducible software errors. WILHELM HORMES ING. GMBH & CO. KG shall not be liable for incorrect modifications and commissioning by the customer or third parties, and the consequences of this.
  - 7.3. A liability for wear parts of the contractual is generally excluded. Wear is the progressive loss of material from the surface of a solid body mechanically caused, i.e. contact and relative movement of a solid, liquid or gaseous antibody. A wear part is such a part that is used at places where wear inevitably arises during production in order to protect other part from wear and which is conceptually meant to be regularly exchanged.
  - 7.4. In the event of a defect of the contractual subject, that (under condition of sections 7.1. to 7.3 above) justifies corresponding claims for defects, the customer shall initially only be entitled to subsequent rectification within an appropriate time limit. WILHELM HORMES ING. GMBH & CO. KG shall decide ex aequo et bono whether to repair the defect or to deliver a replacement. If WILHELM HORMES ING. GMBH & CO. KG have fraudulently failed to disclose a defect or have accepted a guarantee for the nature of the goods the customer shall be entitled to choose either a repair of the defect or a replacement delivery. WILHELM HORMES ING. GMBH & CO. KG shall bear all expenses required for supplementary performance. All parts replaced will be property of WILHELM HORMES ING. GMBH & CO. KG.
  - 7.5. If the repair of a defect does not have to be effected at installation site on request and at the expense of WILHELM HORMES ING. GMBH & CO. KG, the customer will have to send the defective parts to WILHELM HORMES ING. GMBH & CO. KG for being repaired or replaced. In such a case the obligation of supplementary performance of WILHELM HORMES ING. GMBH & CO. KG concerning a defective part is deemed to be met as soon as WILHELM HORMES ING. GMBH & CO. KG sends the duly repaired part back or delivers a replacement to the customer at the expense of WILHELM HORMES ING. GMBH & CO. KG. Any claims of the customer concerning expenses incurring by the supplementary performance, in particular transport, road, work and material costs, are excluded if those expenses increase due to the fact that the goods supplied are sent to a different location than the customer's delivery address, unless shipment corresponds to the conventional course of business.
  - 7.6. If the defective part is delivered by a third party, the liability of WILHELM HORMES ING. GMBH & CO. KG will initially be limited to liability claims to which WILHELM HORMES ING. GMBH & CO. KG are entitled against the third party. Only after previous judicial action by the customer against the third party WILHELM HORMES ING. GMBH & CO. KG shall again be held liable. This limitation of liability does not apply if WILHELM HORMES ING. GMBH & CO. KG have fraudulently failed to disclose a defect or have accepted a guarantee for the nature of the goods delivered by a third party.
  - 7.7. The customer is obliged to control the contractual subject immediately upon receipt and to inform WILHELM HORMES ING. GMBH & CO. KG about evident defects. This obligation for immediate information shall also apply if a defect becomes evident later. If the customer does not come up to his obligation to inform the supplier, the contractual subject shall be considered to be accepted irrespective of any defect.
  - 7.8. If the customer does not accept the offer of WILHELM HORMES ING. GMBH & CO. KG of supplementary performance contractually agreed upon and after the period of grace has expired, WILHELM HORMES ING. GMBH & CO. KG can no longer be held liable for the defect.
  - 7.9. If the supplementary performance is not successful, the customer will be entitled to assert his claims taking into consideration the contractual conditions agreed upon including those resulting from the present General Sales and Delivery Conditions. The supplementary performance will be deemed not to be successful if WILHELM HORMES ING. GMBH & CO. KG fail to fulfil their obligation of supplementary performance within a specified deadline or if WILHELM HORMES ING. GMBH & CO. KG unreasonably delay or refuse the supplementary performance or if a reasonable number of trials have not been successful.

- 7.10. WILHELM HORMES ING. GMBH & CO. KG shall be entitled to refuse a supplementary performance if the customer is in default of his payment obligations. The customer is only entitled to retain payments if a notification of defects is asserted which is justified beyond doubt. The simple right of retention is limited to the fourfold of the costs required for the removal of the defect. If the customer has notified of a defect and it is later shown, in particular after a corresponding examination by WILHELM HORMES ING. GMBH & CO. KG that the notification of defect made by the customer was for legal or factual reasons not justified, WILHELM HORMES ING. GMBH & CO. KG shall be entitled to claim for an appropriate remuneration and the reimbursement of expenses for the performance provided, in particular in connection with the examination.
- 7.11. For all claims for damages the limitations, modifications and exclusions as per § 8 shall apply.
- 8. Exclusion or Limitation of Liability of WILHELM HORMES ING. GMBH & CO. KG**
- 8.1. The customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by WILHELM HORMES ING. GMBH & CO. KG. In particular, the customer shall comply with the instructions of WILHELM HORMES ING. GMBH & CO. KG in respect of operating the contractual subject without risk, of taking precautions regularly and individually and of avoiding of any misuse. If the customer violates against this obligation, WILHELM HORMES ING. GMBH & CO. KG shall not be liable for any damage resulting thereof and possible subsequent damages.
- 8.2. The liability of WILHELM HORMES ING. GMBH & CO. KG for damages caused by defects (direct damages) or consequential damages is limited as follows: WILHELM HORMES ING. GMBH & CO. KG is not liable for damages caused by defects (also in case of damages from loss of profit) or consequential damages regardless of their legal nature. This non-liability does not apply for claims for retention for replacement of damages which are based on rough faults (intention/serious negligence).
- 8.3. The limitation of liability of WILHELM HORMES ING. GMBH & CO. KG in case of simple/ordinary negligence: Any claims of the customer for replacement of damages, regardless of their legal nature, that are not based on rough faults (intention/serious negligence) are excluded, provided that the damages are not caused by a defect or by the violation of essential contractual obligations without the fulfillment of which due performance of the contract would not be possible.
- 8.4. The limitation of liability of WILHELM HORMES ING. GMBH & CO. KG in case of not typically predictable damages: Unless any claims for damages by the customer are already excluded due to the limitations of liability of WILHELM HORMES ING. GMBH & CO. KG for direct and consequential damage (No. 2) and for simple and ordinary negligence (No. 3), where such claims – regardless of legal reason – are not based on rough fault (intention/serious negligence) on the part of WILHELM HORMES ING. GMBH & CO. KG, such claims shall be limited in their amount to compensation for such damage which WILHELM HORMES ING. GMBH & CO. KG, taking into consideration the circumstances that WILHELM HORMES ING. GMBH & CO. KG knew or should have known at the time of conclusion of the contract, should have been able to foresee as a possible consequence of a breach of duty or a breach of contract (typically predictable damage).
- 8.5. The limitation of liability of WILHELM HORMES ING. GMBH & CO. KG for improper performance: Unless a claim by the customer has already been excluded due to the limitations of liability in favour of WILHELM HORMES ING. GMBH & CO. KG with regard to direct or consequential damages (No. 2) and for ordinary and simple negligence (No. 3), where such claims – regardless of legal reason – the customer asserts a claim for either damages due to breach of duty or damage in lieu of performance against WILHELM HORMES ING. GMBH & CO. KG, and where such claim is not based on rough fault (intention/serious negligence), this claim for damages shall be limited – beyond the limitation of liability of WILHELM HORMES ING. GMBH & CO. KG for the typically predictable damage (No. 4) – to a maximum amount of 5 % of the contract price of delivery. Improper performance shall be deemed to exist where obstacles arise during contractual relationship, which impede or prevent proper fulfillment of contractual duties or where one party of the contract causes injury to the other party.
- 8.6. Limitation of liability of WILHELM HORMES ING. GMBH & CO. KG for damage caused by delay: The above limitations of liability in favour of WILHELM HORMES ING. GMBH & CO. KG with regard to direct and consequential damages (No. 2), ordinary/simple negligence (No. 3), not typically predictable damage (No. 4) and improper performance (No. 5) shall also apply to claims for damages of the customer against WILHELM HORMES ING. GMBH & CO. KG with regards to damage caused by delay, unless such damage is based on rough default (intention/serious negligence). Furthermore, in all cases of delayed delivery, including claims both for damages by the customer due to delay of delivery as well as damages in lieu of delivery, and even in such cases where the time of delivery may have been extended for WILHELM HORMES ING. GMBH & CO. KG and has expired, claims for damages shall be excluded.
- 8.7. Limitations of liability of WILHELM HORMES ING. GMBH & CO. KG for persons employed in performing an obligation: Except where – due to rough fault (intention/serious negligence) of persons employed in performing an obligation – such contractual duties were breached, the fulfillment of which was prerequisite to the proper execution of the contract, any liability for persons employed in performing an obligation (§ 278 BGB), regardless of legal reason, shall be excluded. In no event the liability of WILHELM HORMES ING. GMBH & CO. KG for a person employed in performing an obligation shall exceed the liability of WILHELM HORMES ING. GMBH & CO. KG for their own fault as provided for in the above limitations of liability. According to § 278 BGB, a person employed in performing an obligation is a natural person or legal entity whose services the obligor makes use of in order to perform his obligations.
- 8.8. The right of the customer to withdraw from the contract due to non-performance or performance not in conformity with the contract shall be excluded. This shall not apply if WILHELM HORMES ING. GMBH & CO. KG has intentionally or seriously negligently failed to perform in conformity with the contract.
- 8.9. The above limitations of liability (clauses 8.1. to 8.8) shall apply neither to claims made pursuant to § 1 (and following) of the Product Liability Law, nor to claims based on defects withheld in order to deceive, nor to claims based on the grant of a guarantee regarding a quality, nor to claims based on injury to life, body or health of the customer, his officers and employees, nor to claims based on an obstacle to performance in existence at the time of conclusion of the contract, which WILHELM HORMES ING. GMBH & CO. KG had knowledge of at that time, or is at fault for lacking of such knowledge. The above provisions shall not entail a shift in the burden of proof to the customer's disadvantage.
- 8.10. Any liability against WILHELM HORMES ING. GMBH & CO. KG resulting from force majeure shall be excluded.
- 9. Limitation Period**
- 9.1. For claims for defects that are subject to statutory limitation periods of 2 years (e.g. §438 section 1 Nr. 3 BGB, §634 a section 1 Nr. 1 BGB) such limitation period shall be shortened to 1 year. Where the customer has claims due to defects which arise from the grant of a guarantee regarding a quality, these claims shall be excluded from such shortening of the limitation period. For all other claims, the statutory limitation periods shall apply.
- 9.2. The limitation period shall begin upon delivery of the contractual subject and in case of an assembly obligation by WILHELM HORMES ING. GMBH & CO. KG upon completion of the assembly. If the customer is in default of acceptance, the limitation period shall begin upon occurrence of delay of acceptance.

- 10. Software**
- 10.1. WILHELM HORMES ING. GMBH & CO. KG shall grant the customer a simple right of use according to §31 section 2 of the Copyright Law (UrhRG) for the software provided. §31 section 2 of the Copyright Law reads: "The simple right of use entitles the holder thereof to make use of the work besides the author / originator or other persons entitled in the manner allowed to him." The customer shall only be granted a right of use. At all times, WILHELM HORMES ING. GMBH & CO. KG shall remain the sole owner / holder of all rights over immaterial property for the software.
- 10.2. The customer shall only be entitled to use the software in connection with the contractual subject.
- 10.3. The customer shall be entitled to use the software for an unlimited period of time for the entire personal life span of the contractual subject.
- 10.4. The customer shall not be entitled to assign his right of use to third parties, in particular the customer shall not be entitled to sell, rent, sub-license or make available the software and the associated documentation to third parties by any other means. If the customer assigns his complete business enterprise to a third party, the customer shall be entitled to assign his own right of use to such third party. If the customer sells the complete object delivered to a third party in the normal course of business and such third party is no competitor of WILHELM HORMES ING. GMBH & CO. KG, upon request WILHELM HORMES ING. GMBH & CO. KG shall agree to an assignment of the right of use granted to the customer, unless WILHELM HORMES ING. GMBH & CO. KG presents reasons for the fact that such action will create the risk of providing competitors of WILHELM HORMES ING. GMBH & CO. KG with secret knowledge (trade/business secrets) of WILHELM HORMES ING. GMBH & CO. KG.
- 10.5. WILHELM HORMES ING. GMBH & CO. KG shall be entitled to grant any form of right of use for the software to any number of other customers.
- 10.6. Except for the staff members the software provided to the customer shall not be made available or accessible to any third party, neither temporarily nor free of charge.
- 10.7. Markings, copyright or ownership notices applied to the software provided may in no way be changed.
- 10.8. The customer is not entitled to create copies of the supplied software, except for one backup copy which may be created by a person entitled to use the program, where it is necessary to secure the future use thereof. The backup copy shall not be used concurrently with the original software.
- 10.9. Any reproductions of the documentation associated with the software, both partly or completely by photocopy, microfilm, electronic storing or any other duplication shall not be allowed.
- 10.10. All disassembly, reverse engineering or decompilation of the software shall be prohibited and the customer shall neither arrange for nor permit the above to be done, except in accordance with the conditions (of §69 e) of the Copyright Law (UrhRG).
- 10.11. WILHELM HORMES ING. GMBH & CO. KG shall be entitled to the proprietary rights, copyrights and other industrial property rights to the software, updates and documentation. The same shall apply to any modifications and translations / compilations of the programs.
- 10.12. WILHELM HORMES ING. GMBH & CO. KG shall be entitled to complete software modifications resulting from protective right claims by third parties at the customer's site and at his own expense. The customer may not derive any claims thereof.
- 11. Used Machines and (Parts of) Installations**
- 11.1. Used machines are offered and delivered without any guarantee or warranty. Accessories are only delivered if they are connected to the machine or their connection to the machine had been confirmed in writing. The goods are sold in the condition they are at the time of conclusion of contract. The seller does not assume any warranty for their quality and function. Any claims of the purchaser concerning a defect are excluded. The customer is entitled to see and to inspect the merchandise before conclusion of the contract in order to make sure that it is appropriate. Moreover he expressly has the right to be present when the merchandise is packed and made ready for dispatch.
- 12. Reconditioned and modernised Machines and (Parts of) Installations**
- If WILHELM HORMES ING. GMBH & CO. KG have offered and delivered the contractual subject as used with the addition 'reconditioned, modernised', the following shall apply:
- 12.1. The customer is only entitled to claim for subsequent improvement, i.e. removal of the defect.
- 12.2. If the customer can prove that the supplier has failed to remove the defect he is entitled to claim for another subsequent improvement. The improvement shall be deemed to have failed if WILHELM HORMES ING. GMBH & CO. KG fail to fulfil their obligations without action within a reasonable period provided by the customer or if a reasonable number of subsequent improvements were not successful.
- 12.3. The customer shall be entitled to withdraw from the contract if it turns out that the contractual subject is not appropriate for the general use due to the defect.
- 12.4. If it turns out that WILHELM HORMES ING. GMBH & CO. KG have fraudulently concealed the defect, the limitations of defect under section 1 – 3 shall not apply.
- 13. Place of Jurisdiction, applicable Law, Place of Fulfilment**
- 13.1. If the customer is a truly qualified merchant registered at a German Commercial Register, a legal entity subject to domestic public law or a trustee of public funds (as respectively defined by §310 BGB), the registered place of business of WILHELM HORMES ING. GMBH & CO. KG shall be place of jurisdiction for any disputes arising from or in connection with the contractual relationship. In legal proceedings brought against WILHELM HORMES ING. GMBH & CO. KG by the customer with no domestic place of jurisdiction, the exclusive place of jurisdiction shall also be the registered place of business of WILHELM HORMES ING. GMBH & CO. KG. In legal proceedings brought by WILHELM HORMES ING. GMBH & CO. KG against the customer with no domestic place of jurisdiction, the registered place of business of WILHELM HORMES ING. GMBH & CO. KG shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements concluded between the parties shall take precedence.
- 13.2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of these terms and conditions of WILHELM HORMES ING. GMBH & CO. KG and to all legal relationships of the contractual parties and their legal successors / assigns that result from the contract and/or any possible ancillary or subsequent transactions. This choice of law clause as well as the above covenant on jurisdiction shall also be governed by the laws of the Federal Republic of Germany. The application of the U.N. Law on the Sale of Goods (Convention of the United Nations dated April 11, 1980, relating to contracts on the international sale of goods) shall not be excluded by virtue of the above choice of law.
- 13.3. The registered office of WILHELM HORMES ING. GMBH & CO. KG shall be the place of fulfilment.
- 13.4. Should individual terms of the present General Sales and Delivery Conditions not apply, the residual contents still remain valid.

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