

## General Terms and Conditions of Business of **Sea-Bird GmbH** for its commercial dealings with other businesses – as at: 2011-08-01

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### **1 Application**

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- 1.1 Except as expressly otherwise agreed, the following General Terms and Conditions shall apply to all contracts, deliveries and other performances by Sea-Bird GmbH in the course of business with its customers, to the extent that they are entrepreneurs (within the meaning of Section 14 of the German Civil Code (BGB)), legal entities under public law or a special fund under public law within the meaning of Section 310 (1) sentence 1 of the German Civil Code. Any terms and conditions that vary herefrom, in particular purchase conditions of the customer shall not be recognised. They shall only form part of the contract if Sea-Bird GmbH expressly agrees to them in an individual case.
- 1.2 These Terms and Conditions shall also form part of the contract within the framework of an ongoing business relationship between Sea-Bird GmbH and a customer even if Sea-Bird GmbH has not expressly made reference to their inclusion.
- 1.3 These Terms and Conditions shall apply exclusively to all quotes and offers and all contracts entered into by Sea-Bird GmbH. Any conditions of the customer contradicting or varying from these Terms and Conditions shall not be recognised. They shall only form part of the contract if Sea-Bird GmbH expressly agrees to them in an individual case. These Terms and Conditions shall also apply in the event that Sea-Bird GmbH carries out performance for the customer without reservation in the knowledge of conditions of the customer that are contradictory to or vary from these Terms and Conditions.
- 1.4 Individual agreements entered into in single cases with the customer shall always have priority over these Terms and Conditions. A written contract or written confirmation by Sea-Bird GmbH shall be definitive for the content of such agreements.

### **2 Offers and Closure of Contract**

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- 2.1 All offers by Sea-Bird GmbH are subject to confirmation and without obligation, that is, they should only be construed as a request to submit a quote.
- 2.2 Illustrations, dimensions, descriptions, specifications and other technical details in brochures, data sheets, price lists, etc. are non-binding and shall not be construed to represent assurances of characteristics. Sea-Bird GmbH expressly reserves the right to make changes. The characteristics of a new item are as a matter of principle as stated in the text of the quote or the order confir-

mation, unless reference is expressly made herein to other documents.

- 2.3 Orders shall be deemed to have been accepted if the goods have been delivered to the customer or if the orders have been confirmed in writing by a representative of Sea-Bird GmbH with authority to sign. This shall apply in particular for legal correspondence conducted electronically, in which the confirmation of receipt of the order shall not yet be deemed to be the binding declaration of acceptance of the offer to enter into a contract, unless such acceptance is expressly declared in writing in the confirmation of receipt. The same shall apply with regard to amendments or additions to or deviations from quotes.
- 2.4 The right is reserved to make technical modifications and adjustments of products to meet subsequent standards within the scope of what the customer can reasonably be expected to accept.
- 2.5 Sea-Bird GmbH reserves the unlimited right of ownership and copyright for the use of cost quotes, drawings and other documents. All documents regarding offers and quotes may only be made accessible to third parties with the prior permission of Sea-Bird GmbH and must be returned without undue delay upon request if the order is not made.

### **3 Prices and Payment**

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- 3.1 The price list (offer and enquiry) of Sea-Bird GmbH in its respective current version applies for all orders.
- 3.2 Prices are ex works and include packaging, within Germany inclusive of insurance. All agreed prices are exclusive of statutory VAT at the applicable rate and other taxes and charges; export deliveries are exclusive of customs, duties and fees and other public charges. The deduction of discounts requires special written agreement. Additional deliveries and services will be charged separately.
- 3.3 If Sea-Bird GmbH is also responsible for assembly or erection of the delivered products and unless otherwise agreed, the customer shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
- 3.4 Except as otherwise agreed, the invoice shall be payable immediately upon receipt of the goods without deduction. If payment is not made within 14 calendar days of falling due, the customer is deemed to be in default of payment without additional reminder

being required. The same shall apply in the case of repairs and other services. If Sea-Bird GmbH is responsible for the assembly or erection of the machines it has delivered, the invoice amount shall be payable upon acceptance.

- 3.5 Except as otherwise agreed, payments by the customer shall first be allocated to already existing costs and interest then to the oldest debt accrued since the due date of payment.
- 3.6 Discountable bills of exchange and cheques will be accepted only on account of fulfilment. Bills of exchange and cheques will be credited subject to receipt less expenses per the value date of clearance, on which Sea-Bird GmbH can dispose freely over the counter-value. Costs associated with bills of exchange and cheques shall be borne by the customer.
- 3.7 Statutory provisions shall apply in the event of default of payment. Default interest shall be at a rate 8 % above the applicable base rate; Sea-Bird GmbH expressly reserves the right to assert further damages.
- 3.8 If the customer is in default of payment or if legitimate doubt exists as to its solvency, Sea-Bird GmbH shall have the right to render all claims against the customer payable with immediate effect.
- 3.9 In the event of default of payment, Sea-Bird GmbH may make the delivery of outstanding goods subject to concurrent payment. In this case, Sea-Bird GmbH may also make further deliveries subject to the prior lodging of security or to payment in advance.
- 3.10 The customer shall only have the right to set off or retain payments or to refuse performance if its counter-claims have been bindingly established by a court of law or are uncontested. Moreover, the customer shall only have the right to exercise any right of retention to the extent that its counter-claim is based on the same contractual relationship.

#### **4 Delivery and Default of Delivery**

- 4.1 At the customer's request, the goods will be dispatched to a different destination in return for additional payment. Except as otherwise agreed, Sea-Bird GmbH has the right in such a case to determine itself the mode of dispatch (in particular shipper, route and packaging).
- 4.2 Delivery dates and delivery periods shall only be binding if they have been confirmed in writing by Sea-Bird GmbH and the customer has provided Sea-Bird GmbH in good time with all information and documentation required for carrying out and delivering the order and has paid any agreed deposits in accordance with the terms of the relevant agreements. Agreed delivery periods begin with the date of confirmation of the order. Such periods shall be extended accordingly if orders are extended or added to subsequently.
- 4.3 In the event of force majeure or operational disruptions at Sea-Bird GmbH or its suppliers which temporarily hinder Sea-Bird GmbH, due to no fault of its own, from being able to deliver the purchased item per the agreed date or within the agreed delivery period, the delivery dates and delivery periods shall be extended appropriately by the period of hindrance plus a reasonable new run-up period, which may not, however, exceed a total of four months. If the hindrance lasts for more than four months, both parties to the contract shall have the right to rescind, the customer, however, only after setting a reasonable deadline for delivery. Other rights of rescission shall not be affected. The foregoing provisions shall apply mutatis mutandis in the event that Sea-Bird GmbH is not receiving its own deliveries from its suppliers in time, to the extent that Sea-Bird GmbH has entered into a congruent coverage transaction with its supplier.
- 4.4 If the customer is in default of acceptance or if it breaches any other duties of cooperation, Sea-Bird GmbH, irrespective of the

other rights to which it is entitled, shall have the right to store the products in an appropriate manner at the risk and expense of the customer. For storage by Sea-Bird GmbH the warehousing costs shall be 0.25 % of the net purchase price of the items for delivery being stored per complete week. The right is reserved to assert and prove additional or less warehousing costs. Sea-Bird GmbH moreover has the right to set the customer a reasonable subsequent deadline for acceptance. 'Reasonable' shall be deemed to mean a subsequent deadline of one week. If the said deadline expires without result, Sea-Bird GmbH shall have the right to rescind the contract and/or demand damages from the customer. Such damages shall be a lump sum of 15 % of the agreed net purchase price, unless the customer is able to prove that lesser or no damages have been incurred. Sea-Bird GmbH shall have the right, irrespective of the lump sum damages, to assert compensation for damages actually suffered.

- 4.5 Sea-Bird GmbH may undertake partial deliveries within a scope which may reasonably be expected of it if it has legitimate cause to do so.
- 4.6 If Sea-Bird GmbH is in default, the customer may, to the extent that it can plausibly show that it has thereby suffered damages, assert compensation in the amount of 0.5 % of the price of that part of the delivery which cannot be put into the intended operation by virtue of the default in respect of each complete week of default, to a maximum total, however, of 5 % of the said price. Any further claims by the customer in cases of delayed delivery, even after the expiry of any deadline set for Sea-Bird GmbH to perform delivery, shall be excluded.
- 4.7 The foregoing exclusions of liability and limitations of liability shall not apply to liability for damage, injury or loss arising from injury to life, physical injury or injury to health resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents. The foregoing exclusions of liability and limitations of liability shall not apply to liability for any other damage, injury or loss resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents or if such other damage, loss or injury occurs due to the absence of a guaranteed characteristic or to fraudulent concealment of a defect.

#### **5 Delivery Contracts On Call**

- 5.1 For contracts with rolling delivery on call, Sea-Bird GmbH must be informed of quantities and delivery dates at the time of ordering. Sea-Bird GmbH shall have the right to finish the overall quantity of the order in line with its production planning at any time during the delivery period, except as expressly agreed to the contrary. If the overall quantity is finished, no subsequent modifications can be made to the ordered goods.
- 5.2 The customer is contractually obliged to allocate and accept the ordered quantity over the term of the contract. If the order quantity has not been accepted during the call-down period, Sea-Bird GmbH shall have the right, irrespective of its more far-reaching statutory rights, to demand that the entire remaining quantity be accepted and paid for. The customer shall be deemed to be in default of acceptance of the unallocated and not called-down part of the order quantity upon expiry of the term of the contract.
- 5.3 If no call-down period has been determined, Sea-Bird GmbH shall have the right, if the customer has not called down any goods during a period that may be considered a usual call-down period, to set a deadline for further call-down and, if this deadline expires without result, and, irrespective of more far-reaching statutory rights, to demand that the entire remaining order quantities be accepted and paid for.

5.4 Sea-Bird GmbH reserves the right to make appropriate price changes if costs decrease or increase after the closing of the contract, in particular due to collective bargaining agreements or changes in material prices. Sea-Bird GmbH shall provide the customer with proof hereof upon request.

## **6 Transfer of Risk**

- 6.1 The risk of accidental destruction or deterioration is transferred to the customer upon delivery, including delivery freight prepaid, in the following manner: for deliveries without erection or assembly, upon surrender of the goods to a shipping agent or carrier, but no later than when the goods leave the warehouse of Sea-Bird GmbH, even if delivery is made by Sea-Bird GmbH's vehicles. This shall also apply if delivery is made from the warehouse of a third party (drop shipment). This applies mutatis mutandis to partial deliveries. At the request and expense of the customer, deliveries will be insured by Sea-Bird GmbH, including outside Germany, against the other transport risks in the case of delivery with erection or assembly on the day of delivery in the customer's works, or, to the extent agreed, following a smooth trial run (acceptance). Sea-Bird GmbH will notify the customer of the delivery and acceptance date, which will usually be between 8 am and 8 pm on any working day, in writing at least three days in advance.
- 6.2 If dispatch or delivery or the commencement or carrying out of erection or assembly, or hand-over in the customer's own works or the trial run is delayed for reasons for which the customer is responsible, or if the customer falls into default of acceptance for any other reason, risk shall be transferred to the customer at the onset of such default of acceptance.
- 6.3 If the customer fails to attend an acceptance appointment, Sea-Bird GmbH shall have the right to have acceptance carried out by a publicly-sworn and appointed expert of its choice at the expense of the customer and to be issued with a certificate of completion in respect thereof.

## **7 Warranty in Respect of Material Defects**

- 7.1 Any claims by the customer in respect of defects and any claims for damages shall be in accordance with statutory provisions except as otherwise provided for in the following. In all cases, the special statutory provisions in respect of end-delivery of goods to a consumer (Recourse of the Supplier, Sections 478 and 479 of the German Civil Code (BGB)) shall remain unaffected.
- 7.2 Defects shall be notified to Sea-Bird GmbH, irrespective of the effects of Section 640 (2) of the German Civil Code (BGB) without undue delay, but by no later than seven calendar days after acceptance, pick-up or delivery. Concealed defects shall be reported without undue delay, but by no later than seven calendar days after they are established. If the customer fails to notify defects in good time, our performance shall be deemed to have been approved and accepted free of defects. Notification shall be deemed to be made without undue delay within the meaning of Section 377 of the German Commercial Code (HGB) if it is made within two weeks. Notification in accordance with Section 377 of the German Commercial Code shall be made in writing.
- 7.3 To the extent that a defect exists, the customer shall have the right at its discretion to subsequent fulfilment in the form of removal of the defect or to the delivery of a new, defect-free item. In the event of removal of defect or replacement delivery, Sea-Bird GmbH shall be obliged to bear all expenses necessary for the purpose of subsequent fulfilment, in particular transport costs, any toll costs, labour costs and materials costs, to the extent that these costs are not increased by virtue of the fact that the purchased item has been brought to a place other than the place of fulfilment.

7.4 Sea-Bird GmbH has the right to make subsequent fulfilment subject to the customer paying the due purchase price. The customer has the right to retain a reasonable portion of the purchase price proportionate to the defect.

7.5 If subsequent fulfilment fails, the customer has the right to choose at its discretion to rescind the contract or demand a price reduction.

7.6 No claims shall exist in respect of defects if there is an insignificant deviation from the agreed characteristics, if usability is impaired to an insignificant extent, for natural wear and tear or if there is damage that has occurred after the transfer of risk due to wrong or negligent treatment, excessive demands, unsuitable materials, defective construction work, unsuitable building foundations or due to particular external influences which are not assumed under the contract, or in the event of non-reproducible software errors. If improper modifications or repairs have been carried out by the customer or a third party, no claims shall exist for defects in respect thereof or in respect of any consequential damage or loss.

7.7 If the customer establishes defects in the goods, it may not dispose over it, i.e. it may not be divided, resold or reprocessed, until agreement has been reached regarding the processing of the complaint claim.

7.8 The customer is obliged to make the item of goods regarding which a complaint has been made or a sample thereof available to Sea-Bird GmbH for the purpose of examining the complaint. The guarantee will cease if this is culpably refused.

7.9 Claims by the customer due to a defect in the purchased item shall become time-barred one year after surrender or delivery of the purchased item.

7.10 The foregoing exclusions of liability and limitations of liability shall not apply to liability for damage, injury or loss arising from injury to life, physical injury or injury to health resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents. The foregoing exclusions of liability and limitations of liability shall not apply to liability for any other damage, injury or loss resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents or if such other damage, loss or injury occurs due to the absence of a guaranteed characteristic or to fraudulent concealment of a defect.

## **8 Industrial Property Rights and Copyright-Legal Defects**

8.1 Except as otherwise agreed, Sea-Bird GmbH is obliged to make delivery free from industrial property rights and copyright of third parties (hereinafter referred to as 'Rights') only in the country in which the place of delivery is located. To the extent that a third party asserts legitimate claims against the customer in respect of the infringement of Rights by deliveries carried out by Sea-Bird GmbH and which are being used in accordance with the terms of the relevant contract, Sea-Bird GmbH shall be liable to the customer only within twelve months from the date of hand-over of the delivery in the following manner:

- a) At its discretion and at its own expense, Sea-Bird GmbH shall either obtain a right to use the deliveries in question or to modify the delivered goods in such a way that no Rights are infringed or to exchange the delivered goods. If it is not possible for Sea-Bird GmbH to do this under reasonable conditions, the customer shall be entitled to the statutory rights of rescission and reduction of payment.
- b) The duty of Sea-Bird GmbH to pay damages is as provided for under No. 9.
- c) Sea-Bird GmbH shall be subject to the foregoing obligations only to the extent that the customer notifies Sea-Bird GmbH of the claims being asserted by third parties in writing without undue

delay, does not acknowledge any infringement and all measures and settlement negotiations remain reserved for Sea-Bird GmbH. If the customer ceases to use the delivered goods for the purpose of damage limitation or for any other important reason, it is obliged to refer the third party to the fact that such cessation of use may not be construed as an acknowledgement of an infringement of Rights. Any indemnity obligations for Sea-Bird GmbH shall be limited in terms of their amount vis-à-vis the customer by the amount of the purchase price for the goods in question.

- 8.2 Claims by the customer shall be excluded to the extent that it is responsible for the infringement of Rights.
- 8.3 Claims by the customer are furthermore excluded to the extent that the infringement of Rights is caused by special requirements of the customer, by use of the goods which Sea-Bird GmbH could not have foreseen or by the fact that the delivered goods are modified by the customer or used in conjunction with products not supplied by Sea-Bird GmbH.
- 8.4 In the event of infringement of Rights otherwise the provisions with regard to material defects apply mutatis mutandis.
- 8.5 If other legal defects exist, the provisions in respect of material defects under No. 7 shall apply mutatis mutandis.
- 8.6 The foregoing exclusions of liability and limitations of liability shall not apply to liability for damage, injury or loss arising from injury to life, physical injury or injury to health resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents. The foregoing exclusions of liability and limitations of liability shall not apply to liability for any other damage, injury or loss resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents or if such other damage, loss or injury occurs due to the absence of a guaranteed characteristic or to fraudulent concealment of a defect.

## 9 Limitation of Liability

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- 9.1 Any damages claims by the customer on any legal basis whatsoever arising directly or indirectly in connection with the contract and the implementation thereof are excluded except as otherwise provided for in the following. Sea-Bird GmbH shall in particular not be liable in respect of the consequences of improper modification, use or treatment of the purchased item.
- 9.2 Liability shall in any case be limited to compensation of foreseeable damages which are typical for the type of contract. Damages claims by the customer based on contract penalty claims by the customer shall not in any case be deemed to be foreseeable or typical within the meaning of the foregoing for Sea-Bird GmbH.
- 9.3 To the extent that any damage or loss is covered by an insurance policy taken out by the customer to cover the damage eventuality in question, Sea-Bird GmbH shall only be liable in respect of any associated detriment to the customer from e. g. higher insurance premiums or interest rate disadvantages up to settlement of the claim by the insurance company.
- 9.4 The foregoing exclusions of liability and limitations of liability shall not apply in the event of a breach of a cardinal duty by Sea-Bird GmbH. Cardinal duties shall be defined as duties the fulfilment of which is essential for the implementation of the contract in due and proper fashion and adherence to which the parties to the contract trust, and should be able to trust, in good faith, i. e. rights and duties which it is practically incumbent upon the contract to vouchsafe in accordance with its content and purpose.
- 9.5 The foregoing exclusions of liability and limitations of liability shall not apply to liability for damage, injury or loss arising from injury to

life, physical injury or injury to health resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents. The foregoing exclusions of liability and limitations of liability shall not apply to liability for any other damage, injury or loss resulting from intentional or negligent breach of duty by Sea-Bird GmbH or any of its statutory representatives or agents or if such other damage, loss or injury occurs due to the absence of a guaranteed characteristic or to fraudulent concealment of a defect.

## 10 Indemnification

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The customer indemnifies Sea-Bird GmbH against any and all liability, damage or loss, claims, legal action and costs which may arise from or in connection with the sub-supplier, product design or packaging design envisaged by the customer or the containers selected or specified by the customer, in which the products are dispatched. If the customer sells the products, it shall indemnify Sea-Bird GmbH in the internal relationship between them against any and all product liability claims by third parties, to the extent that the customer is responsible for the error giving rise to liability.

## 11 Retention of Title

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- 11.1 The delivered products shall remain the property of Sea-Bird GmbH until all claims of Sea-Bird GmbH arising from the business relationship with the customer have been paid in full.
- 11.2 For a running account, the retained title shall serve as security for the balance owing to Sea-Bird GmbH. The customer is permitted to sell products subject to retention of title (hereinafter referred to as the 'Retained Products') only in the ordinary course of business. The customer does not have the right to pledge the Retained Products, transfer them as security or make any other disposition over them which could endanger the title of Sea-Bird GmbH. The customer assigns its claim from resale to Sea-Bird GmbH already as of now; Sea-Bird GmbH accepts the said assignment already as of now.
- 11.3 Any processing or conversion of the Retained Products by the customer is at all times carried out on behalf of Sea-Bird GmbH. If the Retained Products are processed with other items, Sea-Bird GmbH shall acquire joint ownership of the new item in the proportion of the value of the Retained Products to that of the other processed items at the time of processing. In respect of the new item created by means of processing, the same shall apply in all other respects as for products delivered subject to retention of title.
- 11.4 If the Retained Products are combined with other items, Sea-Bird GmbH acquires joint ownership of the new item in the proportion of the value of the Retained Products to that of the other items at the time of combination. If they are combined in such a way that the customer's item can be regarded as the main item, it shall be deemed as agreed that the customer shall assign joint ownership pro rata to Sea-Bird GmbH. The customer shall safeguard the joint ownership thus created on behalf of Sea-Bird GmbH.
- 11.5 If the customer sells the Retained Products after processing or combination with other goods or together with other goods, the claims receivable shall be assigned only in the amount of that portion corresponding to the price agreed between Sea-Bird GmbH and the customer plus a security margin of 10 % of the said price.
- 11.6 The customer is revocably authorised to collect the claims assigned to Sea-Bird GmbH in its own name in trust for Sea-Bird GmbH. Sea-Bird GmbH may revoke this authorisation and the right to resell [the Retained Products] if the customer is in default vis-à-vis Sea-Bird GmbH with essential obligations such as payment; in the event of revocation, Sea-Bird GmbH shall have the right to collect the claim itself.



- 11.7 The customer shall provide Sea-Bird GmbH at any time with all information requested about the Retained Products or about claims which have been assigned to Sea-Bird GmbH in accordance herewith. The customer shall notify Sea-Bird GmbH immediately of any recourse or claims to Retained Products by third parties and hand over the necessary documents. The customer shall at the same time refer the third party to the retention of title by Sea-Bird GmbH. The costs associated with defence against such recourse or claims shall be borne by the customer.
- 11.8 The customer is obliged to handle the Retained Products with care for the duration of the retention of title. If the realisable value of the securities exceeds the total secured claims of Sea-Bird GmbH by more than 10 %, the customer shall have the right to demand that they be released to the same extent.
- 11.9 If the customer is in default vis-à-vis Sea-Bird GmbH with essential obligations such as for instance payment, and if Sea-Bird GmbH rescinds the contract, Sea-Bird GmbH may, irrespective of other rights, demand the surrender of the Retained Products and sell them elsewhere to satisfy its due claims against the customer. In this event, the customer shall grant Sea-Bird GmbH or the agent of Sea-Bird GmbH immediate access to the Retained Products and surrender the same immediately.
- 11.10 In the case of deliveries to other jurisdictions in which the foregoing provisions regarding retention of title do not have the same security effect as in Germany, the customer shall do everything in its power to create corresponding security rights for Sea-Bird GmbH without undue delay. The customer shall cooperate in all measures, such as registration, publication, etc., for example, which are necessary and conducive for the effectiveness and implementability of such security rights.
- 11.11 At the request of Sea-Bird GmbH, the customer shall be obliged to take out appropriate insurance for the Retained Products, to provide Sea-Bird GmbH with the relevant insurance certificate and to assign the claims under the insurance policy to Sea-Bird GmbH.

## **12 Security provisions for Authorised Economic Operators**

- 12.1 To comply with the following security provisions in the case of goods which are produced, stored or transported on behalf of Authorised Economic Operators, delivered to the same or taken over by the same (hereinafter referred to as "AEO Goods"), the customer of Sea-Bird GmbH undertakes that
- AEO Goods shall be produced, stored, processed and loaded at secure premises and at secure terminals.
  - AEO Goods shall be protected during production, storage, processing, loading and shipping against unauthorised access.
  - staff employed for the production, storage, processing, loading, shipping and handing-over of AEO Goods are reliable. The customer of Sea-Bird GmbH undertakes that the staff so employed shall be carefully selected and trained appropriately.
- 12.2 Business partners acting on behalf of customers of Sea-Bird GmbH have to be instructed and obliged to take the same measures to secure the supply chain mentioned in the foregoing.

## **13 Export**

Any export licence necessary with regard to the respective country of destination is in place for all goods that Sea-Bird GmbH supplies under this Agreement. Amendments with regard to the country of destination may be prohibited or possibly require a relevant export permit under applicable export control regulations. The customer is liable in respect of any change of destination and is responsible for obtaining the relevant permits and shall hold Sea-Bird GmbH harmless against any and all claims in connection with the change in the country of destination.

## **14 Data Protection**

Pursuant to Section 33 (1) of the Federal Data Protection Act (BDSG), the customer is herewith referred to the fact that Sea-Bird GmbH stores its customer data in machine-readable form and processes the said data for the purpose of the contractual relationship existing with the customer and for marketing purposes.

## **15 Confidentiality**

Except as otherwise expressly agreed in writing, the information provided to Sea-Bird GmbH in connection with orders shall not be deemed to be confidential.

## **16 Design Changes**

Sea-Bird GmbH reserves the right to make design changes at any time. It shall not be obliged to make such changes to products that have already been delivered.

## **17 Jurisdiction and Applicable Law**

- 17.1 Place of fulfilment and jurisdiction for deliveries and payments (including proceedings involving cheques and bills of exchange) and any and all disputes arising between the parties shall be, to the extent that the customer is a merchant (Kaufmann), a legal entity under public law or a special fund under public law, the main seat of Sea-Bird GmbH in Kempten. Sea-Bird GmbH shall have the right, however, to sue the customer in any other legal jurisdiction.
- 17.2 The relations between the parties are governed exclusively by the laws applicable in the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods and private international law.
- 17.3 Should these General Terms and Conditions also exist in any other language than German, the version in German shall be definitive for the rights and duties created hereunder and the enforcement of the same.

## **18 General Provisions**

- 18.1 Any declarations, statements and notifications of legal consequence made to Sea-Bird GmbH by the customer after the closing of the contract must be made in writing to be valid.
- 18.2 References to statutory provisions have merely clarificatory significance. Even without such clarification, the statutory provisions in question still apply, therefore, to the extent that they are not expressly excluded in these General Terms and Conditions.
- 18.3 To the extent that one or more clauses of these Terms and Conditions are invalid, this fact shall not affect the validity of the remaining clauses. The parties agree already as of now that a clause corresponding as far as possible to the sense and purpose of the invalid clause shall be agreed to replace the invalid clause.

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