



RotoMetrics France SarL

General Terms and Conditions of Sale

A. Introductory Provisions

1. General

1.1 RotoMetrics France SarL (“**Maxcess**”) offers the delivery of products (“**Products**”) and the provision of services (“**Services**”) to its customers (“**Customers**”). The following General Terms and Conditions of Sale (“**Terms**”) govern the delivery of Products to and the provision of Services for the Customers by Maxcess.

1.2 The Terms shall only apply to Customers who are entrepreneurs within the meaning of Sec. 14 of the German Civil Code (*Bürgerliches Gesetzbuch*).

1.3 No other terms and conditions of the Customer, notably its general terms and conditions, shall apply, irrespective of whether or not Maxcess has expressly rejected them. The Terms shall also govern exclusively even if, with knowledge of Customer’s other terms and conditions, Maxcess effects or accepts contractual performance without reservation.

1.4 Within the scope of an ongoing business relationship, the Terms shall also apply to any and all future deliveries to and service provisions for the Customers by Maxcess without Maxcess having to expressly refer to them again in each individual case.

2. Offers; Ordering Process and Conclusion of a Purchase Contract

2.1 Any offers of Maxcess are non-binding, unless expressly designated as binding by Maxcess. The same shall apply in relation to any cost estimates.

2.2 Maxcess will deliver the Products and/or provide the Services on the basis of individual purchase contracts (“**Purchase Contracts**”). A Purchase Contract comes into effect, if (a) the Customer issues a purchase order indicating the Products and/or Services to be purchased and (b) Maxcess (1) accepts the respective purchase order by issuing an order confirmation. Purchase orders and order confirmation must be issued in writing or text form (including fax, email and EDI) in order to be effective.

2.3 Maxcess may accept the Customer’s purchase order by means of an order confirmation within 72 hours from the date the purchase order is received, unless agreed otherwise.

2.4 Maxcess has no obligation to accept any purchase orders issued by the Customer. Further, Maxcess undertakes no minimum volume commitments in relation to the Products or Services, unless otherwise agreed.

2.5 Maxcess reserves the right to establish a minimum order size or to charge a service fee of EUR 50 for any orders valuing less than EUR 50.

2.6 The provisions set out in Part B, D, and E of the Terms shall apply additionally to a Purchase Contract contemplating the delivery of Products.

2.7 The provisions set out in Part C, D, and E of the Terms shall apply additionally to a Purchase Contract contemplating the provision of Services.

3. Quality of the Products and Services; Changes

3.1 The Products and Services shall comply with the specifications and requirements explicitly agreed between the Customer and Maxcess (if any).

3.2 Statements regarding the quality of the Products or Services indicated in publications of Maxcess, particularly in catalogues, brochures and folders, as well as general information in data sheets, drawings and accompanying quotations or in advertising are non-binding indications, unless expressly stated as binding in a Purchase Contract.

3.3 In case (a) Maxcess provides the Customer with drawings, specifications, documents, specimens, prototypes or other

materials (collectively “**Objects**”), which shall form the basis for the subsequent production of the Products to be delivered and (b) the Customer approves such Objects, Maxcess shall not be liable for any defects of the Products caused by incorrect, incomplete, unsuitable or defective Objects approved by the Customer; this shall not apply in case of intent (*Vorsatz*) or fraud (*Arglist*) on the site of Maxcess.

3.4 Maxcess reserves the right to make changes to the Products or Services to the extent such changes are reasonable for the Customer and immaterial for the function and use of the Products or Services considering the interests of Maxcess.

B. Delivery of Products

4. Delivery

4.1 Maxcess shall deliver the Products FCA (INCOTERMS 2020) from the delivery place indicated by Maxcess (“**Delivery Place**”), unless agreed otherwise with the Customer.

4.2 Partial deliveries are permitted to the extent they are reasonable for the Customer, particularly if the delivery of the remaining ordered Products is secured and the Customer does not thereby incur any significant extra expense or any significant additional costs.

4.3 Minor defects do not affect the Customer’s obligation to accept delivery of Products. In this case, the applicable delivery date or delivery period shall be deemed to have been complied with. The Customer’s claims for defects pursuant to Sec. 6 shall remain unaffected.

5. Retention of Title

5.1 The delivered Products shall remain in the ownership of Maxcess until all of the receivables related to the relevant Purchase Contract have been fully paid. If an open account exists between the parties, then the Products remain in the ownership of Maxcess until all payments owed against the recognized account balance in connection with the relevant Purchase Contract have been fully paid.

5.2 Any processing, transformation, combination, mixing or mingling of the Products delivered subject to retention of title (“**Retained Products**”) by the Customer is performed for Maxcess. If this is carried out with extrinsic items which do not belong to Maxcess or if Retained Products are inseparably combined, mixed or mingled with such extrinsic items (Sec. 947 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*)), then Maxcess shall acquire co-ownership of the new item *pro rata* the value of Retained Products to the extrinsic items which existed before the date of combining, connecting, mixing or mingling; with respect to the new item, the same shall apply as applies to Retained Products. If a combination, connection, mixing or mingling is made in a manner that would suggest that the Customer’s item is the main item, then the Customer shall transfer proportionate co-ownership to Maxcess.

5.3 Maxcess revocably consents to the resale of Retained Products by the Customer in the ordinary course of business. The Customer hereby assigns the receivables accruing from the resale together with all incidental rights to Maxcess in the amount of the final invoice amount (including value-added tax where applicable) are settled in full; in the cases of Sec. 5.2, the assignment shall be made proportionately to the co-ownership shares.

5.4 The Customer shall remain entitled and obligated to collect the receivables assigned to Maxcess. The right of Maxcess to collect the receivables itself shall not be affected thereby. Maxcess shall not, however, collect the receivables as long as the Customer (a) discharges its payment obligations from the collected proceeds, (b) does not generally cease making payments, (c) is not in default of payment, and (d) no insolvency proceedings have been opened, or respective petitions have been filed, against the Customer’s assets.



- If one of the foregoing conditions has been met, then the Customer shall without undue delay inform Maxcess thereof in writing. Upon request of Maxcess, the Customer shall notify any debtors about the assignment and provide Maxcess with any documentation required for the enforcement of its rights.
- 5.5 Apart from that, the sale, pledge or assignment as security is prohibited for the Customer. Customer shall give notice of the ownership of Maxcess in the event of seizures and other impairments of the ownership interests and shall notify Maxcess hereof in writing without undue delay.
- 5.6 During the period of retention of title, the Customer shall treat the Retained Products with care and fully insure them at its own expense against risks and damages, such as robbery, fire and water and, upon request, furnish proof thereof to Maxcess.
- 5.7 If the laws of a country in which Retained Products are located do not permit a retention of title, but allow Maxcess to retain other comparable security interests in the Products, then Maxcess may enforce such other security interests. Where special regulations or any other provisions are applicable to a retention of title or other comparable security interests in such country, the Customer shall carry out the terms of such regulations or provisions to validate and preserve the rights of Maxcess.
- 5.8 Maxcess will release securities it is lawfully entitled to in case their sum exceed the unsettled claims to be secured by more than 20%.
- 6. Defects**
- 6.1 The Customer shall inspect the Products upon delivery and notify Maxcess of any defects pursuant to Sec. 377 of the German Commercial Code (*Handelsgesetzbuch*). Such notification of defects shall be made in writing and provide specific details of the defect. Obvious defects shall be notified to Maxcess without undue delay, but at the latest within one (1) week after delivery. Obvious defects are externally visible defects such as obvious damages in transit as well as obvious deviations of identity, quality or quantity of the Products. Hidden defects shall be notified without undue delay, but at the latest within one (1) week after being discovered. If the Customer fails to notify Maxcess of any defects pursuant to the preceding provisions, the Customer's claims for such defects shall be excluded.
- 6.2 Maxcess may rectify any defects by repairing or replacing the defective Products at its sole discretion ("**Subsequent Performance**"). Any Subsequent Performance shall be made without acknowledgement of a legal obligation. In case of any Subsequent Performance, the remainder of the original limitation period shall run from the completion of the Subsequent Performance.
- 6.3 Maxcess shall bear the direct costs associated with the Subsequent Performance, particularly the costs of transport, journeys, labour and material as well as the reasonable costs for the dismantling and assembly of the Products (together "**Subsequent Performance Costs**"). Upon request, the Customer shall make available to Maxcess the defective Products for inspection purposes at the Delivery Place; the obligation of Maxcess to bear the Subsequent Performance Costs shall remain unaffected. However, the obligation of Maxcess to bear the Subsequent Performance Costs shall be excluded to the extent that the expenditure is increased as a result of the Products being brought to a place other than the Delivery Place; Maxcess may charge such increased costs to the Customer.
- 6.4 If the Subsequent Performance finally fails, the Customer may rescind the affected Purchase Contract; however, in case of a minor defect, the Customer shall not be entitled to rescind the affected Purchase Contract. In any case, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
- 6.5 Maxcess has no obligation to perform Subsequent Performance in case the defects are caused by:
- any incorrect, incomplete, unsuitable or defective Customer Objects;
 - the compliance with any specifications or requirements of the Customer;
 - unsuitable or improper use of the Products, particularly in the event of a violation of applicable statutory provisions, standards of the professional or industrial associations, safety standards or recognized rules of technology;
- a modification of the Products by the Customer or use of the Products together with items not provided by Maxcess or which Maxcess has not recommended to be used together;
 - faulty or negligent handling or storage of the Products;
 - extrinsic chemical, electrochemical or electrical influences; or
 - a failure to comply with the notifications of Maxcess with respect to the avoidance of defects.
- 6.6 With respect to any recourse claims arising out of the supply chain, the statutory provisions shall apply. However, any damage claims arising out of the supply chain are subject to the provisions of Sec. 14.
- 6.7 Further claims for defects of any kind whatsoever are excluded, without prejudice to any claims for damages, which shall be subject to the provisions of Sec. 14.
- 6.8 If the Customer wrongly asserts claims for defects (e.g. if the Products are actually not defective), Maxcess may charge to the Customer the reasonable costs incurred to Maxcess in this connection. The same shall apply if Maxcess wrongly grants claims for defects without being obliged to do so.
- 6.9 The limitation period for claims for defects shall be one (1) year commencing upon delivery of the Products to the Customer. This shall not apply in the following cases: (a) fraudulently concealed defects (*arglistiges Verschweigen eines Mangels*), (b) liability under the German Product Liability Act (*Produkthaftungsgesetz*), (c) defects for which a guarantee for the quality of the Products (*Beschaffenheitsgarantie*) was given as well as (d) applicability of Sec. 445a, 445b and 445c of the German Civil Code (*Bürgerliches Gesetzbuch*); in the case of claims for damages, this shall also not apply in the following cases: (a) injury to life, body and health (*Verletzung von Leben, Körper oder Gesundheit*) or (b) intent (*Vorsatz*), fraud (*Arglist*) and gross negligence (*grobe Fahrlässigkeit*) of Maxcess or its legal representatives, executives, employees and vicarious agents.
- 6.10 Sec. 12 shall apply in case of an infringement of Third Party IP Rights by the Products.
- 7. Product Liability**
- 7.1 The Customer shall duly perform its monitoring obligations and inform Maxcess immediately in writing, in case it obtains knowledge of or has suspicion of (a) any alleged, potential or actual defects or other product characteristics, which are relevant to product liability (together "**Product Defects**"), in particular that require or appear to require corrective measures, warning notices, recalls or other service actions ("**Field Measures**"), and/or (b) any related governmental agency orders, judicial decisions and actual or impending third party claims.
- 7.2 The Customer shall secure potential evidence in relation to a product liability case and provide Maxcess with all necessary and potential evidence and other relevant information which are relevant to such product liability case upon request. This obligation shall continue until potential product liability or recourse claims against Maxcess expire.
- 7.3 The Customer shall (a) coordinate potential Field Measures with Maxcess in advance and (b) provide Maxcess with all necessary information in this connection. Maxcess shall reasonably cooperate with Customer at its own expense. The Customer shall however bear the burden of proof that (a) any alleged, potential or actual Product Defect is relevant to product liability and (b) requires Field Measures.
- 7.4 Insofar as it subsequently turns out that (a) the alleged, potential or actual Product Defect had no relevance to product liability and (b) the Product Defect would not have required Field Measures, the Customer shall indemnify Maxcess against all costs, expenses and damages in this connection, unless the Customer did not realize that the Product Defect had no relevance to product liability and could not have realized this.
- 7.5 The liability of Maxcess towards the Customer in connection with product recalls triggered by a Product Defect is in any case limited in scope and amount to the coverage of the product liability insurance / recall cost insurance of Maxcess, depending on which insurance is relevant for the respective case. However, this does not apply in case of intent (*Vorsatz*) and fraud (*Arglist*) of Maxcess.
- 7.6 In case claims are directly asserted against Maxcess by any claimants, the Customer shall indemnify Maxcess against all costs, expenses and damages in connection with a Product

Defect as well as any other product liability claims, in particular third party claims, to the extent that such claims originate from the sphere of responsibility of the Customer.

C. Provision of Services

8. Services; Service Provision

- 8.1 Maxcess shall provide the Services with the due care of a prudent business man.
- 8.2 Partial services are permitted to the extent they are reasonable for the Customer, particularly if the provision of the remaining part of the ordered Services is secured and the Customer does not thereby incur any significant extra expense or any significant additional costs.
- 8.3 Depending on the Services Maxcess shall provide, Maxcess provides the Services as services (*Dienstleistungen*) within the meaning of Sec. 611 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*) or works (*Werkleistungen*) within the meaning of Sec. 631 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*).
- 8.4 In case Maxcess exceptionally provides the Services as works (*Werkleistungen*) within the meaning of Sec. 631 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*), the following shall apply:
- (a) In case of a minor defect, the Customer shall not be entitled to refuse the acceptance of the Services.
 - (b) In case of any defects of the Services, Maxcess may rectify such defects by remedying the defect or providing again the Services at its sole discretion ("**Rectification**"). Any Rectification shall be made without acknowledgement of a legal obligation. In case of any Rectification, the remainder of the original limitation period shall run from the completion of the Rectification.
 - (c) If the Rectification finally fails, the Customer may rescind the affected Purchase Contract; however, in case of a minor defect, the Customer shall not be entitled to rescind the affected Purchase Contract. In any case, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
 - (d) Maxcess has no obligation to perform Subsequent Performance in case the defects are caused by any circumstances described in Sec. 6.5 (a) and (b).
 - (e) Further claims for defects of any kind whatsoever are excluded, without prejudice to any claims for damages, which shall be subject to the provisions of Sec. 14.
 - (f) If the Customer wrongly asserts claims for defects (e.g. if the Services are actually not defective), Maxcess may charge to the Customer the reasonable costs incurred to Maxcess in this connection. The same shall apply if Maxcess wrongly grants claims for defects without being obliged to do so.
 - (g) The limitation period for claims for defects shall be one (1) year commencing upon the acceptance of the Services. This shall not apply in the following cases: (a) fraudulently concealed defects (*arglistiges Verschweigen eines Mangels*) or (b) defects for which a guarantee for the quality of the Services (*Beschaffenheitsgarantie*) was given; in the case of claims for damages, this shall also not apply in the following cases: (a) injury to life, body and health (*Verletzung von Leben, Körper oder Gesundheit*) or (b) intent (*Vorsatz*), fraud (*Arglist*) and gross negligence (*grobe Fahrlässigkeit*) of Maxcess or its legal representatives, executives, employees and vicarious agents.
- 8.5 Sec. 12 shall apply in case of an infringement of Third Party IP Rights by the Services.

D. General Provisions

9. Customer's Obligations

- 9.1 The Customer shall (a) provide Maxcess with all necessary information, documents, objects (e.g. specimens, prototypes etc.) or other materials (collectively "**Customer Objects**") required for the delivery of the Products or the provision of the Services (each a "**Contractual Service**") and (b) provide any and all services agreed (if any) required for the provision of the Contractual Services.
- 9.2 Maxcess is entitled to use the Customer Objects for the provision of the Contractual Services. The Customer grants Maxcess the (a) non-exclusive, (b) non-transferable, (c) sublicensable, (d)

royalty-free and (e) timely for the duration of the relevant contract limited right to use the Customer Objects for the provision of the Contractual Services.

- 9.3 The Customer Objects shall be (a) correct, (b) complete, (c) suitable for the provision of the Contractual Services and (d) free from any defects in material or title. Maxcess shall have no obligation to verify whether the Customer Objects meet the aforementioned requirements.
- 9.4 In case the Customer does not perform its obligations under Sec. 9.1 or does not perform them in due time, any agreed dates and periods will be extended for Maxcess for the duration of the impediment plus a reasonable preparatory period. Any further rights and claims of Maxcess shall remain unaffected.
- 9.5 Maxcess shall not be liable for defects of the Products or Services caused by any incorrect, incomplete, unsuitable or defective Customer Objects provided.
- ### 10. Dates and Periods
- 10.1 Dates and periods are non-binding unless they have been expressly agreed upon as binding.
- 10.2 Compliance with binding dates and periods by Maxcess requires that (a) all commercial and technical requirements for the Contractual Services under a contract have been clarified, (b) any obligations of the Customer have been fulfilled timely, notably any Customer Objects to be supplied by the Customer have been received by Maxcess and (c) any official authorisation or release that may be required for the Contractual Services has been issued and (d) any advance payments (if agreed) have been received by Maxcess.
- 10.3 In case of non-binding dates and periods, Maxcess shall not be in default of performance (*Leistungsverzug*) before the fruitless expiry of a reasonable grace period for the provision of the Contractual Services set by the Customer. The Customer may not set such grace period for the provision of the Contractual Services earlier than four (4) weeks after the non-binding date or period has passed without delivery.
- 10.4 In case Maxcess is in default of performance (*Leistungsverzug*), any damage claims of the Customer resulting from such delay shall be limited to 0,5% of the (net) contract value of the affected Purchase Contract for each full week of the default, however, in total to 5% of the (net) contract value of the affected Purchase Contract. Such limitation shall not apply in case of intent (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of Maxcess or its legal representatives, executives, employees and vicarious agents.
- 10.5 The Customer shall come into default of acceptance (*Annahmeverzug*) if it does not accept the Contractual Services on the binding date or when the binding period ends. In case of non-binding dates or periods, Maxcess may inform the Customer that the Contractual Services are ready; if the Customer does not accept such services within two (2) weeks from the receipt of the readiness notice, then it shall come into default of acceptance (*Annahmeverzug*). In the foregoing cases, the default of acceptance (*Annahmeverzug*) shall also arise if Maxcess stores Products at the Customer's request.
- ### 11. Prices and Payment Terms
- 11.1 All prices for the Products and Services are in EURO plus any applicable value-added tax (VAT), and any additional costs or charges, particularly charges for packaging, freight, insurances and custom duties (if applicable) are not included in the prices and shall additionally be borne by the Customer, unless agreed otherwise with the Customer.
- 11.2 Prices for Products shall be understood FCA (INCOTERMS 2020) from the Delivery Place, unless agreed otherwise with the Customer.
- 11.3 Unless agreed otherwise with the Customer, the following shall apply:

Payments under a Purchase Contract shall be made within thirty (30) days after the Customer has received the invoice issued by Maxcess. All payments shall be made in EURO and without deduction. The Customer shall bear any bank fees or costs incurred otherwise. The date of fulfilment of payment shall be the date on which the respective amount is received on the designated bank account of Maxcess.

- 11.4 In case of permitted partial deliveries or partial services, Maxcess shall be entitled to issue invoices for each partial delivery or partial service.
- 11.5 Maxcess may request from the Customer the provision of a security for its payment obligations under a Purchase Contract (e.g. a bank guarantee or letter of credit). All costs and fees associated with the provision of such security shall be borne by the Customer.
- 11.6 If the payment deadline is exceeded, the Customer shall be, without any additional re-minder, in default of payment (*Zahlungsverzug*). In the event of default of payment (*Zahlungsverzug*), Maxcess shall be entitled, to charge default interest at a rate of 9%-points above the base rate. Any further rights and claims of Maxcess due to the Customer's default in payment (*Zahlungsverzug*) shall remain unaffected.

12. Infringement of Third Party IP Rights

- 12.1 The Products and Services shall not infringe industrial or intellectual property rights of third parties ("**Third Party IP Rights**") in the agreed territory.
- 12.2 The Customer shall immediately inform Maxcess, in case third parties assert claims against the Customer due to an infringement of Third Party IP Rights.
- 12.3 Maxcess may at its sole discretion either obtain at its own expense a right of use in respect of the Third Party IP Rights which is sufficient for the agreed or presumed use, modify the Products or Services in such way that the Third Party IP Rights are no longer infringed, or replace the Products with new ones which no longer infringe the Third Party IP Rights (each, a "**Remediation Action**").
- 12.4 In case the Remediation Action finally fails, the Customer may rescind the affected Purchase Contract. However, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
- 12.5 Maxcess has no obligation to perform a Remediation Action in case the infringement of Third Party IP Rights is caused by any circumstances described in Sec. 6.5 (a) to (d).
- 12.6 With respect to any recourse claims arising out of the supply chain, Sec. 6.6 shall apply.
- 12.7 Further claims in case of an infringement of Third Party IP Rights by the Products or Services of any kind whatsoever are excluded, without prejudice to any claims for damages, which shall be subject to the provisions of Sec. 14.
- 12.8 If the Customer wrongly asserts claims for an infringement of Third Party IP Rights by the Products or Services (e.g. if there is actually no such infringement), Maxcess may charge to the Customer the reasonable costs incurred to Maxcess in this connection. The same shall apply if Maxcess wrongly grants claims pursuant to this Sec. 12 without being obliged to do so.
- 12.9 The limitation period for claims for an infringement of Third Party IP Rights shall be one (1) year commencing upon (a) the delivery of the Products to the Customer in case such infringement is caused by the Products and (b) the acceptance of the Services in case such infringement is caused by the Services. This shall not apply in the following cases: (a) fraudulently concealed defects (*arglistiges Verschweigen eines Mangels*), (b) liability under the German Product Liability Act (*Produkthaftungsgesetz*), (c) defects for which a guarantee for the quality of the Contractual Services (*Beschaffenheitsgarantie*) was given as well as (d) applicability of Sec. 445a, 445b and 445c of the German Civil Code (*Bürgerliches Gesetzbuch*); in the case of claims for damages, this shall also not apply in the following cases: (a) injury to life, body and health (*Verletzung von Leben, Körper oder Gesundheit*), (b) intent (*Vorsatz*), fraud (*Arglist*) and gross negligence (*grobe Fahrlässigkeit*) of Maxcess or its legal representatives, executives, employees and vicarious agents.

13. Maxcess Objects

- 13.1 In case Maxcess makes available to the Customer information, documents, Objects (e.g. specimens, prototypes etc.) or other materials (collectively "**Maxcess Objects**"), Maxcess reserves the right of ownership and copyright, unless agreed otherwise.
- 13.2 The Maxcess Objects may only be used for the contractual purpose and must not be transferred, sublicensed, copied, reproduced or made available to third parties, unless agreed otherwise. Maxcess Objects must be returned to Maxcess immediately upon request.

E. Final Provisions

14. Limitation of Liability

- 14.1 Maxcess will only be liable (a) if it assumes a guarantee (*Garantie*), (b) if it is liable according to the German Product Liability Act (*Produkthaftungsgesetz*), (c) if it acts intentionally (*vorsätzlich*), fraudulently (*arglistig*) or grossly negligent (*grob fahrlässig*), (d) in cases of injury to life, body or health, or (e) in case of an infringement of essential contractual obligations (*wesentliche Vertragspflichten*), i.e. a duty the fulfilment of which is essential for enabling the due performance of a contract and on the fulfilment of which the Customer habitually relies and may rely on.
- 14.2 However, in case of a slightly negligent violation of essential contractual obligations, the liability of Maxcess will be limited to the foreseeable damages which are characteristic for such type of contracts (*vertragstypisch vorhersehbare Schäden*).
- 14.3 In the cases of Sec. 14.2, the liability of Maxcess for damages shall in any case be limited to an amount accounting twice the (net) contract value of the affected Purchase Contract, however in any case not more than EUR 100,000 per damage event and EUR 200,000 per calendar year.
- 14.4 In the cases of Sec. 14.2, the liability of Maxcess for loss of profits and business and any other indirect or consequential damages shall in any case be excluded.
- 14.5 Apart from that, Maxcess will not be liable, irrespective of the legal basis (contract, tort, indemnifications etc.).
- 14.6 If and to the extent that the liability of Maxcess is limited or excluded pursuant to the preceding provisions, this shall also apply to the corresponding personal liability of the legal representatives, executives, employees and vicarious agents of Maxcess.
- 14.7 The limitations and exclusions of liability set out in Sec. 6.5, 7.5, 8.4 (d), 9.5, 10.4 and 12.5 shall remain unaffected.

15. Force Majeure

- 15.1 In case Maxcess is hindered in performing any of its obligations under a Purchase Contract due to circumstances such as mobilization, war, civil war, terrorism, unrest, insurgency, embargos, natural catastrophes, epidemics, pandemics, fire, legislative activities, judicial decisions or administrative orders, or other unforeseeable circumstances for which Maxcess is not responsible such as labor disputes, strikes or lawful lockouts, operational or transport disruptions, raw material procurement difficulties, or delays by suppliers (together "**Force Majeure**"), Maxcess will temporarily be relieved from its contractual obligations under the affected Purchase Contract; particularly, any agreed dates and periods will be extended for Maxcess for the duration of the impediment plus a reasonable preparatory period. This shall also apply if Force Majeure arises at a point in time at which Maxcess is in default.
- 15.2 In case the impediment caused by Force Majeure lasts for one (1) month or longer, the parties shall in good faith make any necessary adjustments to the contractual obligations under the affected Purchase Contract in accordance with the then prevailing situation, insofar this is reasonable. If such adjustments are unreasonable for a party or impossible, the aggrieved party may rescind the affected Purchase Contract by giving written notice to the other party.
- 15.3 Sec. 15.1 to 15.2 apply accordingly, if (a) Force Majeure (e.g. Coronavirus / SARS-CoV-2) has occurred before the conclusion of the affected Purchase Contract and subsequently ended, but reoccurred after its conclusion or (b) the parties expected Force Majeure (e.g. Coronavirus / SARS-CoV-2) to end, but Force Majeure did not end, prior to the performance of the affected Purchase Contract, regardless of whether the causes and (potential) effects of such reoccurring Force Majeure were known at the time of conclusion of such contract.

16. Confidentiality; Publications

- 16.1 "**Confidential Information**" means (a) any and all trade secrets of a party within the meaning of Sec. 2 No. 1 of the German Act on the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*) as well as (b) any other information which is marked as "confidential" or similar or is confidential by its nature, including any and all specifications, requirements and other technical information.
- 16.2 The party receiving Confidential Information ("**Receiving Party**") shall (a) hold Confidential Information of the party disclosing Confidential Information ("**Disclosing Party**") in confidence

- and not disclose it to third parties, (b) protect it by taking the same degree of care as it uses to protect its own confidential information, but not less than a reasonable degree of care, (c) disclose Confidential Information only to such personnel having a specific need to know for the purposes of the fulfillment of contractual obligations, provided however that they are bound by contractual or legal confidentiality obligations no less restrictive than this Sec. 16 and (d) use Confidential Information only so far as this is necessary for the purpose of a contract and (e) comply with all applicable laws and regulations in relation to the receipt and use of Confidential Information.
- 16.3 Neither party shall (a) carry out any observations, examinations, deconstructions or tests within the meaning of Sec 3 para. 1 No. 2 of the German Act on the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*) in relation to Confidential Information nor (b) otherwise decompile, disassemble, reverse engineer, analyse or test any Confidential Information.
- 16.4 The foregoing obligations shall apply also for a period of five (5) years after termination of the relevant contract. Longer confidentiality obligations under applicable laws shall remain unaffected.
- 16.5 The foregoing obligations shall not apply to information that (a) has been in the public domain at the time of its disclosure, (b) enters after disclosure into the public domain through no unauthorized act of the Receiving Party, (c) was already rightfully known to the Receiving Party without any obligation of confidentiality prior to its receipt from the Disclosing Party, (d) is rightfully received by the Receiving Party from a third party without obligation of confidentiality, (e) is independently developed by the Receiving Party without reference to, or use of any Confidential Information, (f) is necessary to be disclosed in order to protect a legitimate interest according to Sec. 5 of the German Act on the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*), (g) is required to be disclosed in accordance with applicable laws, regulations, court, judicial or other governmental order, provided that the Receiving Party informs the Disclosing Party hereof immediately in writing and limits the disclosure to the extent possible or (h) is prior approved for disclosure in writing by the Disclosing Party.
- 16.6 The Receiving Party shall immediately return or destroy Confidential Information as well as all copies thereof (respectively delete if received in digital form) once the intended purpose is fulfilled. The aforementioned obligations shall not apply, in case the Receiving Party is obliged to keep the Confidential Information or copies thereof under applicable laws.
- 16.7 Any further confidentiality obligations under applicable laws, in particular under the German Act on the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*) shall however remain unaffected by the foregoing provisions.
- 16.8 Without the prior written approval of Maxcess, the Customer shall not make reference to Maxcess in publications or publicly refer to or advertise the relationship with Maxcess.
- 17. Subcontractors**
- Maxcess is generally free to engage subcontractors for the performance of its contractual obligations under a contract with the Customer.
- 18. Set-Off and Retention Rights**
- Set-off and retention rights of the Customer due to contested counterclaims, counterclaims which are not final or res judicata or counterclaims which are not based on the same contractual relationship as the claims of Maxcess are excluded.
- 19. Assignment**
- 19.1 The Customer may not assign its rights and obligations, neither in whole nor in part, without the prior written approval of Maxcess. Sec. 354a of the German Commercial Code (*Handelsgesetzbuch*) shall remain unaffected.
- 19.2 Maxcess is generally free to assign its rights and obligations, notably to affiliated companies within the meaning of Sec. 15 of the German Stock Corporation Act (*Aktiengesetz*).
- 20. Place of Fulfilment; Governing Law; Place of Jurisdiction**
- 20.1 Place of fulfilment shall be the registered office of Maxcess, unless agreed otherwise.
- 20.2 All legal relations between Maxcess and the Customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 20.3 The application of Sections 305 to 310 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall be excluded. A review and control of the content of contractual provisions (*Inhaltskontrolle*) shall only be conducted in accordance with Sec. 138 and 242 of the German Civil Code (*Bürgerliches Gesetzbuch*).
- All disputes arising between the parties shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. No award or procedural order made in the arbitration shall be published. The seat of the arbitration shall be Frankfurt am Main, Germany. The language of the arbitration shall be English.
- 21. Country specific variations**
- Notwithstanding the choice of law set out in Sec. 20.2, the country specific provisions set out in the **Annex** shall apply additionally to the Terms. In case of any inconsistencies between country specific provisions set out in the Annex and the Terms, the country specific provisions shall prevail.
- 22. Miscellaneous**
- 22.1 Changes or modifications of the Terms requires written form in order to be effective. The same shall apply to the cancellation of this written form requirement.
- 22.2 Should individual provisions of the Terms be or become invalid, the validity of the remaining provisions shall not be affected thereby.

Annex: Country Specific Variations for France

When Maxcess negotiates and enters into Purchase Contracts with French Customers and/or when the obligations arising out of the contract have to be or have been performed in France, the following specific variations to the Terms apply and, thus, the following provisions shall replace, and apply in lieu of, the corresponding provisions of the above Terms.

Specific variations

1. Sec 1.2 of the Terms is amended as follows:

The Terms shall only apply to Customers who are professionals within the meaning of the preliminary article of the French Consumer Code. The Customer warrants that the Customer is acting in its capacity as a professional.

2. A Sec.1.5 is inserted to the Terms as follows:

The Terms are expressly approved and accepted by the Customer, which represent and acknowledge that they are fully aware of the contents thereof, and are acting in their capacity as a professional within the meaning of the applicable law.

3. Sec 3.4 of the Terms is completed as follows:

Maxcess reserves the right to make changes to the Products or Services to the extent such changes are reasonable for the Customer and immaterial for the function and use of the Products or Services considering the interests of Maxcess. Any such change with respect to a Product or Services, which has already been subject to a Purchase Contract, will require the prior written consent of the Customer, which cannot be unreasonably withheld.

4. The acquisition of the co-ownership under the Sec. 5.2 of the Terms shall not be applicable to the Retained Products which can be separated without damaging the said products, Maxcess will stay the sole owner of such Retained Products.

5. Sec 5.6 of the Terms is completed as follows:

During the period of retention of title, the Customer shall (i) treat the Retained Products with care and fully insure them at its own expense against risks and damages, such as robbery, fire and water and, upon request, furnish proof thereof to Maxcess and (ii) differentiate, where necessary, Retained Products from other Products. In the event of an insurance claim, Maxcess will be subrogated to the rights of the Customer held against the Customer's insurer.

If all or part of the price is not paid by the due date, for any reason whatsoever, Maxcess may demand the return of the Retained Products, by operation of law and without any need for any formalities, at the Customer's own expense and risk, and any down payment made by the Customer at the time of the order will vest in Maxcess, by operation of law, as provisional damages.

Maxcess reserves the right to claim additional damages. In addition, Maxcess shall be entitled to recover the Reserved Products. Maxcess shall be entitled to enter Customer's business premises during normal business hours for the purposes of recovering the Retained Products.

6. A Sec. 6.11 is inserted to the Terms as follows:

Without prejudice to the foregoing, the Customer benefits from the statutory warranty against hidden defects to the extent articles 1641 et seq. of the French Civil Code is applicable to such defect.

7. Sec 11.3 of the Terms is amended as follows:

Payments under a Purchase Contract shall be made within thirty (30) days after the issuance of the invoice by Maxcess. The contracting partner may not defer any payments due to complaints concerning the products delivered. All payments shall be made in EURO and without deduction. The Customer shall bear any bank fees or costs incurred otherwise. The date of fulfillment of payment shall be the date on which the respective amount is received on the designated bank account of Maxcess.

8. Sec. 11.7 of the Terms is amended as follows:

If an invoice is paid late, a penalty equal to the three times the legal interest rate will be applied, by operation of law and without any need for any formalities. A fixed debt collection fee of 40 EUR is payable by the Customer for any late payment, by operation of law and without any requirement to give prior notice. Maxcess reserves the right to claim additional compensation from the Customer if the debt collection costs actually incurred exceed that amount, on production of supporting documents.

9. A Sec. 11.8 is inserted to the Terms as follows:

Maxcess may ask the Customer to make a down payment when an order is placed. Any down payments made by the Customer are to be applied against the price of the order and are not to be treated as a deposit (arrhes), allowing the parties to withdraw from an order by abandoning the deposit. They are stated in the invoice.

10. A Sec. 11.9 is inserted to the Terms as follows:

If Maxcess and the Customer had agreed on fixed prices and if for any reason Maxcess' production or purchase costs for the Product (including without limitation costs of energy, equipment, labor, regulation, transportation, raw material, or Product) increases over Maxcess' production or purchase costs for the Product on the date of entering into the relevant Purchase Contract, then Maxcess may, by written notice, request a renegotiation of the price of the Product. In the event the parties are not able to agree on a revised Product price within 10 days after a request for renegotiation is given, then Maxcess may rescind the Purchase Contract on 10 days written notice to the Customer.

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