

## 1 – DEFINITIONS AND CONTRACT FORMATION

**“Supplier”** means PORCHER INDUSTRIES GERMANY, a company with its principal office located at Benzstraße 14, 89155 Erbach, Germany.

**“Contract”** means the contract package comprised of (1) the Order Confirmation, (2) the Offer if any, (3) the GTCs, (4) the Product's technical specifications if any, and (5) the Order. For the interpretation of the Contract the rank of priority mentioned above shall apply between the Contract documents in case of discrepancies.

**“Customer”** means the contracting party of the Supplier under the Contract.

**“Product”** or **“Products”** means the products commercialized by the Supplier.

**“GTCs”** means these General Terms and Conditions of Sale.

**“Offer”** means the Supplier's commercial proposal for the supply of the Product, if any. Offers by the Supplier shall be non-binding.

**“Order”** means the Customer's order for the supply of Products, as set out in the Customer's purchase order form.

**“Order Confirmation”** means the document issued by the Supplier formalizing the acceptance of the Order or, as the case may be, a counteroffer of the Supplier. In case of discrepancies between the Order and the Order Confirmation, the latter shall prevail.

## 2 – SCOPE OF APPLICATION, MODIFICATIONS OR VARIATIONS

Sales and deliveries by the Supplier shall be made exclusively in accordance with these GTCs, which shall be accepted by the Customer by the placing of an Order or the receipt of delivery. They shall also apply to all future transactions with the Customer. The application of any conflicting or supplementary terms and conditions of the Customer shall be excluded, even if the Supplier does not expressly object to such terms and conditions.

Any amendment or variation to the Contract and/or these GTCs must be made in writing. The same shall apply to an amendment of this written form requirement.

## 3 – DELIVERY

Unless otherwise stipulated in the Contract, the Products are delivered FCA (Incoterms 2020) Supplier's factory or storage facilities designated in the Contract. Delivery dates and deadlines are merely estimates and are provided for information only; they depend, inter alia, upon carrier availability and the order in which the purchase orders are dealt with.

## 4 - WARRANTY, DUTY TO INSPECT, CUSTOMER'S RIGHTS IN CASE OF DEFECTS, LIMITATION PERIOD

### 4.1 Defects of the Products

The Products are free of defects if, at the time of the passing of risk, the Products comply with the agreements of the parties regarding their quality (i.e. the specific agreements made in writing regarding type, quantity, quality, functionality, compatibility, interoperability, that is the technical specifications), are suitable for the use contractually assumed by the parties, if any, and contain the agreed upon scope of delivery (including accessories and instructions), if any. There are no further requirements applicable to the Products. Only if the parties have not agreed on any requirements for the Products, the existence of a defect of the Products is to be assessed according to the objective requirements set forth in Section 434 (3) German Civil Code (*Bürgerliches Gesetzbuch*, "BGB"). In the case of the Products with digital elements, the Supplier owes an update of the digital elements only if the parties have expressly agreed so in writing.

If the Product must be integrated by the Customer into a material, equipment or product ("**Final Product**") whatever it is, the Customer will be responsible for verifying the compatibility of the Product with the Final Product as well as, if applicable, the conformity of the Product with the intended purpose of the Final Product. The Supplier declines in advance any liability arising from the incompatibility of the Product with the Final Product

or the non-compliance of the Product with the use or application for which the Final Product is intended, unless otherwise agreed in writing with the Customer. This does not apply if the incompatibility is based on a defect of the Product.

#### **4.2 Claims for defect or missing item of quantities visible on delivery**

If it has been agreed that the Products must be delivered at the Customer's facilities or any other location designated in the Contract, any visible damages or missing quantities of Products upon delivery must be indicated on the transport document in a mutually agreed statement to that effect and be notified to the Supplier by e-mail within 3 days after the delivery. The Supplier will be entitled to reject any claim for visible defects or missing quantities made by the Customer, which does not comply with the aforementioned provisions.

#### **4.3 Claims for defects after delivery**

Without prejudice to the above provisions regarding visible damages or missing quantities, the Customer's rights due to defects of the Products require that the Customer examines the delivered Products for defects without undue delay. Any claim for non-conformity of the Products is subject to notification in writing delivered by mail with proof of delivery within an eight-day period following the Product delivery. This does not apply to defects, which have only become apparent at a later point in time. In this case, the Customer must notify the Supplier of the defect immediately after its discovery.

The Customer must furnish the proof of defects, by providing any relevant mean to that effect, such as samples demonstrating said defect. The Supplier is entitled to carry out any on-site verification and test the Products to which objection was made. The Customer shall grant the Supplier the necessary time and opportunity to exercise such right. The Supplier may also request the Customer to return the Products to the Supplier in suitable packaging, to which objection was made, at the Supplier's expense, or carry out an on-site inspection.

If a notification of defect by the Customer proves to be unjustified and if the Customer has realized or negligently failed to realize this prior to the notification of defect, the Customer shall reimburse the Supplier for all damages incurred in this regard, e.g. transport and inspection costs.

#### **4.4 Customer's rights in case of defects of the Products**

The Customer's rights in case of defects of the Products shall be governed by the statutory provisions, unless otherwise stipulated below.

Without prejudice to any rights the Customer may have in respect of defects in the Products, the Customer shall be obliged to accept also Products with insignificant defects.

In case of defect of the Products, the Customer is entitled, at the Supplier's choice, to a replacement or repair of the defective Products, at the Supplier's expense ("**Subsequent Performance**"). The Customer shall grant the Supplier reasonable time and opportunity necessary for Subsequent Performance.

The Supplier shall bear the transport, travel, labour and material costs incurred for the purpose of Subsequent Performance. If the removal of the defective Product and the installation of the repaired or replaced Product is necessary for the purpose of Subsequent Performance, the Supplier shall be entitled, at its discretion, to carry out the removal and installation itself or to leave this to the Customer. In the latter case, the Customer shall first submit to the Supplier an offer for the removal and installation by the Customer or a third party for the Supplier's review; the Customer shall be obliged to keep the costs as low as possible and, if possible, to use its own labour at its own expense. If the removal and installation is carried out by the Customer, the Supplier shall only reimburse the proven and necessary costs. The Supplier shall not be obliged to remove and install or to bear the corresponding costs if and to the extent that the costs thereof are disproportionate to the severity of the defect and the purchase price of the Product. The Customer is obliged to provide the Supplier with all information necessary for the removal and installation.

The Customer's rights in case of defects are excluded if:

- natural wear and tear,
- the Products have been altered without the written consent of the Supplier provided that the defect is based on this alteration,
- the defect arises as a result of the Supplier following any design or Products specification supplied by the Customer;
- the Products have been subsequently processed for the purpose of transforming the Products or incorporating them into other goods, products or equipment provided that the defect is based on the subsequent processing;
- the defect arises because the Customer failed to follow the Supplier's instructions as to the storage or use of the Products or (if there are none) good industrial practice;

the defect is due to the materials provided by the Customer.

The Customer shall have no right of recourse against the Supplier pursuant to Section 445a (1), (3) BGB for reimbursement of expenses which the Customer had to bear in relation to its customer due to the defect of the Products. The Customer may only claim reimbursement of such expenses against the Supplier within the scope of the claim for damages pursuant to section 9 **Erreur ! Source du renvoi introuvable.** below provided that the prerequisites for such claim are met. This shall not apply if the Products are sold by the Customer or a subsequent customer in the supply chain to a consumer within the meaning of Section 13 BGB. In this case, the Customer may claim reimbursement of its expenses from the Supplier in accordance with Section 445 (1), (3) BGB; the limitation period for this claim for reimbursement of expenses shall be governed by Section 445b BGB in deviation of section 4-5 below. Under no circumstances shall the Customer be entitled to reimbursement for expenses which the Customer had to bear in relation to its customer due to the defect of the Products if it was granted equivalent compensation for this by the Supplier, e.g. within the scope of a warranty lump sum or a price reduction.

#### **4.5 Limitation period for Customer's claims for defects**

The limitation period for the Customer's claims for defects shall be twelve months beginning with the delivery of the Products to the Customer. The statutory limitation period shall apply:

- (a) to the Customer's rights with respect to defects concealed in bad faith or caused intentionally by the Supplier;
- (b) if and to the extent the Supplier has assumed a guarantee;
- (c) to the Customer's damage claims due to personal injuries culpably caused by the Supplier;
- (d) to the Customer's damage claims for damages caused by the Supplier intentionally or by gross negligence;
- (e) to claims under the German Product Liability Act or any other mandatory statutory liability.

## **5 – PRICE**

Unless otherwise stipulated in the Contract, the prices are in EUROS, on FCA Supplier's designated facilities (Incoterms 2020) basis. They include the packaging but are exclusive of any VAT, customs duties and insurance costs. Any withholding tax will be added to the prices and shall be reimbursed by the Customer to the Supplier. If, after conclusion of the Contract, the Supplier has incurred unforeseeable cost increases with regard to the Products for which it does not bear responsibility, the Supplier shall be entitled, at its reasonable discretion, to

pass on such higher costs by increasing the agreed price on a pro rata basis. Within the scope of the price increase, inter alia, wage, material, storage, energy and freight costs as well as insurance premiums and public charges may be taken into account. Upon the Customer's request, the Supplier shall provide evidence of the price increase.

The prices mentioned in the Offer are only valid during the period of validity of the Offer. In the absence of a validity date in the Offer, the prices are valid for a maximum period of 90 calendar days from the date of issue of the Offer.

If, due to the Customer, a shipment or a delivery date is delayed or postponed by more than one month, the Supplier is entitled to invoice and the Customer will be bound to pay the storage costs incurred thereof.

## 6 - PAYMENT TERMS

All payments must occur on the date set forth on the invoice. Payment terms are 30 days end of month. The Supplier reserves the right to withhold delivery of the Products as long as the Customer has not paid for the Contract in full. The Supplier does not grant any discount in case of early payment.

The Customer is only entitled to a set-off if its counterclaim is uncontested, ready for decision or has been finally adjudicated. In the event of a defective Good the right of the Customer to offset against any rights in case of defects shall remain unaffected.

The Customer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same Contract and is uncontested, ready for decision or has been finally adjudicated. In the event of defective Products, the Customer's right of retention due to rights in case of defects shall remain unaffected.

The interest rate for default of payment due the day following the payment date mentioned on the invoice is nine (9) percent points above the base interest rate according to Section 247 BGB. In the event the Customer is in default, the Supplier shall also be entitled to a lump sum in the amount of EUR 40. Any claims for further damages due to the default shall remain unaffected; the lump sum pursuant to the preceding sentence shall be set off against the damages owed insofar as the damage consists of costs of legal prosecution.

If the Customer fails to pay any amount due under the Contract on the due date for payment, the Supplier shall also be entitled to suspend deliveries of the Products without prior formal notice. The Customer shall bear all consequences (if any) resulting from such a suspension. If the Customer does not remedy its payment default within 30 calendar days of the Customer being notified in writing to do so, the Supplier will be entitled to withdraw from the Contract. Any claims for further damages due to the payment default shall remain unaffected.

## 7 – RETENTION OF TITLE

The transfer of ownership of the Products is subject to the Customer having paid the full price of both, the principal amount and additional charges. In the event the Products are delivered in several lots, the ownership of the Products will be transferred upon payment of each delivered lot of Products.

The Customer shall only be allowed to sell the Products subject to retention of title ("**Products subject to Retention of Title**") within normal and proper business transactions. The Customer is not entitled to pledge the Products subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering the Supplier's title to such pro Products subject to Retention of Title ducts. The Customer hereby assigns its receivables arising from the resale of the products to the Supplier, and the Supplier hereby accepts such assignment. Should the Customer sell the Products subject to Retention of Title after processing or transformation or joining of Products subject to Retention of Title with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between the Supplier and the Customer plus a safety margin of 10 % of this price. The Customer is granted the revocable authorization to collect in trust the claims assigned to the Supplier in its own name. The Supplier may revoke

such authorization and the right to resell the products if the Customer is in default of the performance of material obligations such as making payment to the Supplier.

Any processing or transformation of the Products subject to Retention of Title by the Customer shall always be performed for the Supplier. If Products subject to Retention of Title are processed with other goods, the Supplier shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other processed goods at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the Products subject to Retention of Title.

Should the Products subject to Retention of Title be joined, the Supplier shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other goods at the date of joining. Should the joining or mixing of the goods occur in such manner that the Customer's goods are to be viewed as the main goods, it shall be deemed to be agreed that the Customer assigns proportionate joint ownership to the Supplier. The Customer shall hold the joint ownership created in such manner in custody for the Supplier.

The Customer shall provide the Supplier at all times with all desired information concerning the Products subject to Retention of Title or receivables assigned to the Supplier under this Contract. The Customer must keep the Products subject to the Retention of Title so that they cannot be confused with goods or products of the same kind from other suppliers. In particular, the Customer undertakes not to remove the package and the marking of the Products until the ownership has not been transferred to it. The Customer shall immediately notify the Supplier of any attachments of or claims to the Products subject to Retention of Title by third parties and shall provide the necessary documents in this regard. The Customer shall at the same time advise the third party of the Supplier's retention of title. The costs of a defense against attachments and claims shall be borne by Customer.

The Customer is obliged to treat the Products subject to Retention of Title with care for the duration of the retention of title.

Should the realizable value of the securities exceed all of the Supplier's claims that are to be secured by more than 10 %, the Customer shall be entitled to demand a release to such extent.

Should the Customer be in default of material obligations such as payment to the Supplier, and should the Supplier rescind the Contract, the Supplier may, notwithstanding any other rights, request surrender of the Products subject to Retention of Title and may make use of them otherwise for the purpose of satisfying its matured claims against the Customer. In such case, the Customer shall grant the Supplier or the Supplier's agents immediate access to the Products subject to Retention of Title and surrender the same.

## **8 - FORCE MAJEURE**

The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from force majeure events. Force majeure events are unforeseeable, unavoidable and outside the control and sphere of influence of the Supplier and for which the Supplier does not bear responsibility, such as acts of God, war, natural disasters or labor disputes, epidemics and pandemics, or official orders or legal measures. Delivery dates and deadlines shall be extended or rescheduled, as the case may be, by the length of such force majeure event.

In case of a force majeure event, the Supplier will inform the Customer, as soon as possible after the event occurred. If the event lasts longer than 90 (ninety) days from its inception, each party is entitled to rescind the Contract.

## **9 – LIMITATION OF LIABILITY**

The Supplier's liability for damages shall be limited as follows:

For damages caused by a breach of a material contractual obligation, the Supplier shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the Contract. A material contractual obligation is an obligation the fulfilment of which is a prerequisite for the proper performance of the Contract and on the fulfilment of which the other party relies and may rely. The Supplier shall not be liable for damages caused by a breach of a non-material contractual obligation.

The limitation of liability as set out above shall not apply to (i) damages caused intentionally or by gross negligence any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent the Supplier has assumed a guarantee.

The Customer shall take all reasonable measures necessary to avert and reduce damages.

## 10 – GENERAL

### 10 – 1 Severance

The invalidity of single provisions of these GTC, in whole or in part, shall not affect the validity of the remaining provisions or the Contract.

### 10 – 2 Assignment

The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier. Section 354a German Commercial Code (Handelsgesetzbuch, "HGB") shall remain unaffected hereby.

## 11 – EXPORT CONTROLS AND SANCTIONS COMPLIANCE

The Products, services and technology (collectively, the "**Supplied Items**") that the Supplier may deliver or disclose to the Customer may be subject to applicable export control and trade sanctions laws, regulations and rules, including, without limitation, Council Regulation (EC) No. 428/2009, as amended, the US Export Administration Regulations, sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, and equivalent local export controls and sanctions (collectively "**Export Control and Sanctions Rules**"). The Customer covenants and agrees to comply with the Export Control and Sanctions Rules. Without limiting the generality of the foregoing, the Customer covenants and agrees not to sell, resell, supply, export, reexport, transfer, divert, distribute, dispose of, or disclose the Supplied Items, directly or indirectly, to (i) any territory subject to comprehensive U.S. sanctions; (ii) any party listed on the Specially Designated Nationals and Blocked Persons List, the Entity List, the Denied Persons List, the Military End-User List, or any similar lists of restricted parties maintained by the European Union, the United Kingdom, and the United Nations ("**Restricted Party Lists**") or any party owned 50% or more by a party listed on a Restricted Party List; or (iii) any other country, destination or person without first obtaining any required export, reexport, or transfer license or other government authorization and completing such formalities as may be required by Export Control and Sanctions Rules.

## 12 – INTELLECTUAL PROPERTY

The Supplier retains ownership of any intellectual property rights to the Products and, where applicable, to the studies, projects or developments covered by the Contract. The conclusion of a Contract for the supply of Products, studies, projects or developments does not entail the transfer of intellectual property to the Customer, even if the Products, projects, studies or developments have been purchased by the Customer. The Customer therefore undertakes not to use these Products, studies, projects or developments in a way that would infringe

the Supplier's rights and not to use the Products, studies, projects or developments for a purpose other than that provided for in the Contract.

### **13 – APPLICABLE LAW AND DISPUTE RESOLUTION**

These GTCs and the Contract and the parties' contractual relationship shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The German courts having jurisdiction at the place of the registered office of the Supplier shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the parties' contractual relationship. The Supplier shall be entitled, however, to sue the Customer at any other court having statutory jurisdiction.

### **14 - THIRD PARTY RIGHTS**

No one other than a party to this Contract shall have any right to enforce any of its terms.