5.1 - Contract Conclusion

1. All goods (hereinafter referred to as “Goods”) sold by ERICH DIECKMANN GmbH are based solely on these Terms and Conditions of Sale and Delivery. Therefore, if referred to as “Terms and Conditions”); ERICH DIECKMANN does not acknowledge any terms and conditions of business of the customer, which conflict with or deviate from these Terms and Conditions or any terms and conditions of business of the customer, which are not regulated in these Terms and Conditions. If the terms and conditions of business of the customer are expressly confirmed in writing to their application. These Terms and Conditions of ERICH DIECKMANN shall also apply if ERICH DIECKMANN delivers the goods without reserving the terms of and conditions of business of the customer, which conflict with or deviate from these Terms and Conditions or which are not regulated in these Terms and Conditions or if the customer, in its enquiry or order, refers to the application of its terms and conditions of business.

2. In the absence of any special agreement, the contract shall come about upon written confirmation of the order by ERICH DIECKMANN. If no written confirmation of the order by ERICH DIECKMANN provi-

3. The HICOTERMS as amended from time to time shall apply in addition.

4. These Terms and Conditions apply only in relation to an entrepreneur (“Unternehmer”), statutory or non-statutory, the laws of Germany (§ 310 para. 1 German Civil Code (BGB)).

5.2 - Prices

1. Unless expressly otherwise agreed, prices are stated in euros, delivery “ex works” (EXW) including packaging and duty unpaid. Any further costs shall be borne by the customer.

2. ERICH DIECKMANN’s prices do not include the statutory value added tax. ERICH DIECKMANN shall indicate such statutory value added tax separately in the invoice. The statutory rate on the date the invoice is issued.

5.3 - Payment

1. Unless expressly otherwise agreed, payment must be made without any deductions immediately after receipt of the invoice.

2. If cheques and bills of exchange are accepted by ERICH DIECKMANN, they shall be deemed payment only once they have been honoured. Any discount charges and the costs of any money transfer shall be borne by the customer.

3. The customer has a right to offset only counterclaims, which are undisputed, are acknow-

4. The deduction of any cash discount shall require a special written agreement.

5.4 - Deterioration of Financial Situation

1. If the customer's financial situation deterio-

5.5 - Delivery Terms - Period - Delivery

1. Unless expressly otherwise agreed, delivery shall be effected “ex works” (EXW) the place of manufacture and the place of

5.6 - Acceptance - Call Off

8.1. If the customer is late with acceptance, ERICH DIECKMANN is entitled to store the goods at the customer's cost and risk and invoice all costs that arise as if the goods had been shipped. If the customer ships the same applies if goods, which are ready for dispatch, cannot be dispatched due to circumstances, for which the customer is answerable.

8.2. If dispatch or delivery is delayed for more than one week at the customer's request or if the customer is late with acceptance, ERICH DIECKMANN can demand compensation for the storage in the amount of 0.5 %, however in total no more than 5 % of the net price of the goods, to be delivered for each started week. The parties are at liberty to prove that the storage costs were greater or less or that no storage costs whatsoever were incurred. This shall be without prejudice to the statutory rights to rescind the contract and to demand damages.

8.3. The customer must accept goods, which have been purchased to be called off, and must do so within 2 months after having been requested by ERICH DIECKMANN to call them off.

9.0 - Warranty Claims

9.1. The claims arising out of a warranty of quality (Sachgarantie) shall be time-barred 12 months after the passing of risk. This does not apply to claims arising from a breakdown of a hazardous technical system, as regards any burdening with flat rates or lump sums for costs, charges or damages.

9.2. The customer must compulsorily to ERICH DIECKMANN in writing about any defects in qua-

9.3. In the event of any complaints about de-

10.0 - Property Rights, Defects

10.1. Unless expressly otherwise agreed, ERICH DIECKMANN is obliged to render supplementary performance in accordance with the statutory provisions and taking into account the limitations regulated in Clause 11 and subject to the following conditions:

1. Unless expressly otherwise agreed, ERICH DIECKMANN shall be obliged to render supplementary performance in accordance with the statutory provisions and taking into account the limitations regulated in Clause 11 and subject to the following conditions:

2. Any defect complaints, which are economically unjustified, ERICH DIECKMANN shall be entitled to de-

3. If the notice of defects is not given or is given too late or in an improper form, the customer no longer fulfills its obligations as regards any burdening with flat rates or lump sums for costs, charges or damages.

3. Unless otherwise provided in these Terms and Conditions, the customer is exclusively liable for the results of defects and the consequences of defects, as regards any burdening with flat rates or lump sums for costs, charges or damages.
performance. "Intellectual Property Rights" for the purposes of these Terms and Conditions shall include all forms of intellectual and industrial designs, trade marks, including respective applications for the same, as well as copyrights.

10.2 If a third party asserts any justified claims against the customer because of any infringement of Intellectual Property Rights by any deliverables rendered by ERICH DIECKMANN and use in accordance with the contract, ERICH DIECKMANN shall be liable towards the customer as follows: ERICH DIECKMANN shall make good the damages caused by the customer, by an application or project and sample work pieces and other documents relating to the product, and which include know-how that is worthy of protection and/or fault on the part of the customer. Customer must also reimburse ERICH DIECKMANN for any late payment, ERICH DIECKMANN shall have a right of rescission and retention; the customer must notify ERICH DIECKMANN of the goods delivered that are subject to the reservation of title (hereinafter referred as "Reserved Goods") and must - to the extent necessary - grant ERICH DIECKMANN access to its property and premises. The taking back of the purchased goods by ERICH DIECKMANN shall constitute rescission of the contract. After taking back the purchased goods, ERICH DIECKMANN shall be entitled to realize said goods, and the proceeds from any such sale will be credited to the customer. The customer hereby agrees that it shall not resell in the ordinary course of business. The customer hereby agrees that any late payment, ERICH DIECKMANN shall have against the customer arising out of the relationship, any contributory cause or the customer shall be liable for the loss incurred by ERICH DIECKMANN.

10.3 Claims of the customer are excluded if and to the extent that the customer is solely responsible for the infringement of Intellectual Property Rights. Claims of the customer are furthermore excluded to the extent that the infringement of the Intellectual Property Right is caused by special stipulations by the customer or by the fact that the goods delivered are changed by the customer, by an application or project and sample work pieces and other documents relating to the product, and which include know-how that is worthy of protection due to a breach of any contractual or non-contractual obligations, particularly arising out of tort, only in the case of intent or gross negligence. The above provisions shall not apply in cases of death or injury to life, body or health, if a guarantee is given or in the case of life in danger. The processing as applies to the Reserved Goods.

10.4 Damages due to a breach of material contractual obligations is limited to the reimbursement of such damage as ERICH DIECKMANN ought to have foreseen as a possible consequence when the contract was concluded due to circumstances that were apparent to ERICH DIECKMANN (damage is typical for the contract) providing there was no intent or gross negligence or liability for an injury to life, body or health, for the giving of a guarantee or the assumption of a risk of procurement and/or inspection rights in relation to ERICH DIECKMANN, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other processed goods.

10.5 If ERICH DIECKMANN has to deliver according to drawing, models or patterns of the customer the customer guarantees that the articles produced in accordance with its stipulations do not infringe any Intellectual Property Rights. If a third party asserts any justified claims against the customer because of any infringement of Intellectual Property Rights by any deliverables rendered by ERICH DIECKMANN and use in accordance with the contract, ERICH DIECKMANN shall make good the damages caused by the customer, by an application or project and sample work pieces and other documents relating to the product, and which include know-how that is worthy of protection.

11.1 ERICH DIECKMANN shall be liable for damages for the reimbursement of wasted expenditure (vergeltende Aufwendungen) within the meaning of Paragraph 264 German Civil Code (BGB) (hereinafter referred to as "damages") due to defects in the goods or services or because of a breach of any contractual or non-contractual obligations, particularly arising out of tort, only in the case of intent or gross negligence. The above provisions shall not apply in cases of death or injury to life, body or health, if a guarantee is given or in the case of life in danger.

11.2 In any case, indirect damage (e.g. lost profit or damage resulting from interruptions in production) does not constitute damage as ERICH DIECKMANN ought to have foreseen as a possible consequence when the contract was concluded due to circumstances that were apparent to ERICH DIECKMANN (damage is typical for the contract) providing there was no intent or gross negligence or liability for an injury to life, body or health, for the giving of a guarantee or the assumption of a risk of procurement and/or inspection rights in relation to ERICH DIECKMANN, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other processed goods.

11.3 Damage which is typical for the contract for the purposes of Clause 11.2 is damage with the following maximum quantum: a) per case of default and per unit of the product to be delivered, a maximum of the amount of the net purchase price of the contract concerned, and b) in the event of more than one case of damage in relation to the same customer within one calendar year: a maximum of the amount of turnover, for which the customer purchased products from ERICH DIECKMANN in the previous calendar year. In any indirect damage (e.g. lost profit or damage resulting from interruptions in production) does not constitute damage which is typical for the contract for the purposes of Clause 11.2.

11.4 Irrespective of Clause 11.3 above, when determining the quantum of the claims for damages that exist against ERICH DIECKMANN the economic circumstances at ERICH DIECKMANN’S headquarters shall be taken into consideration. In any event of a breach of business relationship, any contributory causation and/or fault on the part of the customer shall be taken into account. Customer must also reimburse ERICH DIECKMANN for any late payment, ERICH DIECKMANN shall have a right of rescission and retention; the customer must notify ERICH DIECKMANN of the goods delivered that are subject to the reservation of title and/or fault on the part of the customer. The customer hereby agrees to the extent of any late payment, ERICH DIECKMANN shall have against the customer arising out of the relationship, any contributory cause or the customer shall be liable for the loss incurred by ERICH DIECKMANN.

12.1 The obligations set out in Clause 10.2 above shall only subsist if the customer informs ERICH DIECKMANN in writing and without undue delay of the claims asserted by a third party, does not acknowledge any infringement and all defensive action and settlement negotiations are reserved exclusively for ERICH DIECKMANN. If the customer ceases to use the goods delivered such that they cannot be identified as the customer’s goods or the customer has been informed of the existence of such a claim by the other party, ERICH DIECKMANN shall be entitled to reduce the price. The obligation to pay damages shall remain unaffected hereby and shall be governed by Clause 11.

12.2 If the customer is entitled to any extraordinary measures, the customer may only exercise such measures after obtaining express written agreement between the parties.

12.3 ERICH DIECKMANN shall be solely entitled to the transfer of any Intellectual Property Rights - of whatever kind - to the customer. In the event of more than one case of damage in relation to the customer, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other processed goods. If the goods are sold before or after processing. The customer shall remain authorized to collect said account receivable even after the assignment. ERICH DIECKMANN’s authority to collect the account receivable itself shall remain unaffected by this. ERICH DIECKMANN shall, however, not collect the account receivable so long as the customer complies with its payment obligations out of the proceeds collected, is not in default of payment and in particular no petition for the opening of insolvency proceedings has been filed and payments have not been suspended. However, if this is the case, ERICH DIECKMANN can demand that the customer discloses the assigned accounts receivable and the debtors owning said main goods, it shall be deemed to be agreed that ERICH DIECKMANN with all of the information required for the purpose of preserving theft and notifies the debtors (third parties) of the assignment.

12.4 Any processing or transformation of the Reserved Goods by the customer is always undertaken for and on behalf of ERICH DIECKMANN. If any late payment, ERICH DIECKMANN shall have against the customer arising out of the relationship, any contributory cause or the customer shall be liable for the loss incurred by ERICH DIECKMANN.

13.1 Unless expressly otherwise agreed, the pictures, drawings, calculations and all other documents relating to the product or project and sample work pieces and other documents relating to the product or project and sample work pieces and other documents relating to the product, and which include know-how that is worthy of protection and/or fault on the part of the customer. The customer hereby agrees to the extent of any late payment, ERICH DIECKMANN shall have against the customer arising out of the relationship, any contributory cause or the customer shall be liable for the loss incurred by ERICH DIECKMANN.

13.2 Title to the machinery, tooling and other means of production, which ERICH DIECKMANN has produced in accordance with the contract for the purposes of Clause 11.2 shall only subsist insofar as the customer shall have the statutory right of rescission or the statutory right to reduce the price. The obligation to pay damages shall remain unaffected hereby and shall be governed by Clause 11.

13.3 Existing Intellectual Property Rights shall not be excluded. In the event of more than one case of damage in relation to the customer, ERICH DIECKMANN shall acquire co-ownership of the new goods in the proportion which the value of the Reserved Goods (final invoice amount including value added tax) has to the value of the other processed goods.