General Terms and Conditions for the Purchase of Equipment, Systems and Assembly Works

I.
Governing terms and conditions

1. The legal relations between the Contractor and BPW Bergische Achsen Kommanditgesellschaft as the Client (hereinafter: BPW) shall be governed exclusively by these Terms and Conditions. Any terms and conditions of the Contractor departing herefrom shall not be deemed incorporated into the parties' contract, either through acceptance of the order or based on any lack of objections in individual cases.

2. The following documents shall be deemed incorporated into the parties' contract, in the following order of priority:
   a) Order letter with description of goods and services (specifications), including preliminary remarks, execution documentation and special agreements,
   b) these General Terms and Conditions,
   c) all national and EU-level legislation (laws, regulations, guidelines, DIN standards etc.) relating both to the materials to be used in performing the contract and the end product, the ready-to-use equipment or system,
   d) the factory rules for external companies, which are deemed acknowledged by the Contractor upon conclusion of the contract and which the Contractor undertakes to observe. The factory rules are available for inspection at any time during normal business hours in the Client's purchasing office, and a copy will be made available to the Contractor upon request.

II.
Offers

1. The Contractor must submit its offers to BPW free-of-charge, without this entailing any obligation on the part of BPW.

2. The Contractor shall be responsible for obtaining comprehensive information on all of the details of the invitation to tender and the planned works. By submitting an offer, the Contractor acknowledges that it has been informed of all of the necessary facts and circumstances, and in particular of the contents of the invitation to tender, local conditions, the location of assembly/delivery and the transport conditions. If, in the Contractor's opinion, it requires further information, then the Contractor shall be responsible for procuring whatever it requires. After the contract has been awarded, the Contractor may no longer rely on the fact that it has made errors, that the invitation to tender and accompanying documents are incomplete or incorrect, or that any goods or services are not specifically listed which, according to trade usage, would form part of the scope of the parties' contract.

III.
Formation of contract

1. No order/contracts or amendments or addenda thereto (including any waiver of this requirement of a writing) shall be valid unless made in written form, and the written form requirement can also be satisfied if a writing is forwarded by remote data transmission. If the Contractor fails to accept an order/contract within 10 days of receipt thereof, which it must confirm in writing to BPW promptly [*unverzüglich*] upon receipt, then BPW shall be entitled to cancel.

Orders shall be deemed to have been accepted under the terms and conditions of BPW no later than at such time as the Contractor commences performance of the order/contract, even without written confirmation.

2. The formation of the contract shall constitute a procurement obligation for the Contractor with regard to the goods/services that are the subject of the contract.

3. Goods and services, which deviatie from the order and which the Contractor supplies on its own authority, and additional services not ordered in writing shall not give rise to any (further) claim for payment on the part of the Contractor on any basis (including on the basis of *negotiorium gestio* or unjust enrichment). The rules of applicable law shall apply to any claims for recovery of property [*Herausgabeansprüche*]. The foregoing shall not apply if BPW subsequently acknowledges deviations or additional work.

4. BPW shall be entitled to demand changes to the design and execution of the order/item of delivery to a reasonable extent. The parties shall make appropriate provisions by mutual consent as to the impacts thereof, in particular with regard to additional costs or cost savings as well as delivery dates.

IV.
Technical documentation (in duplicate)

1. All documents of any kind provided by BPW, such as samples, drawings, blueprints, descriptions, models and the like, shall remain the property of BPW. They may not be used for any other purposes or be disclosed to third parties or reproduced. The Contractor shall return them unbidden to BPW (as well as any copies made therefrom) as soon as they are no longer required to complete the contract.

2. The Contractor shall review the documents that are provided by BPW within the meaning of the foregoing sub-para. 1 and shall do so promptly upon receipt for correctness and completeness, dimension-related accuracy and feasibility. The Contractor must report any defects or missing documents immediately in writing. In the event that Contractor is in breach of this obligation, it may not subsequently rely on any incorrect or incomplete transmission of information by BPW. The documents provided shall be deemed to have been approved to such extent.

3. The Contractor shall insure all documents and production equipment against damage and loss at no cost to BPW for so long as they remain in the Contractor’s possession. Section X (9) shall apply *mutatis mutandis*.

4. BPW’s approval of any drawings, calculations or other technical documentation shall not have the effect of suspending or limiting the Contractor’s warranty and guarantee obligations with respect to the goods and services. The foregoing shall also apply to the extent of any proposals submitted by BPW, unless the Parties expressly agree to the contrary in individual cases.

5. Following delivery of the system, the Contractor shall hand over to BPW the requisite number of drawings, calculations and other technical documentation (descriptions etc.) corresponding to the actual execution of the works, in German and standard DIN format. The foregoing must comply with the SI international standard system and the German standards then in effect. They must be capable of being copied and must be updated whenever subsequent changes are made to the goods or services. In particular, the Contractor shall hand over documentation of the control system and control software, including any source codes.

The Contractor must supply operating instructions complying with the requirements of the EU Machinery Directive as amended from time to time, which must be written in the language of the country where the machine is to be installed (within the EU).

The Contractor must maintain at its office technical documentation and a risk analysis/safety analysis according to DIN EN ISO 12100 for its equipment, showing that the operational safety of the equipment and the need to avoid accidents have been taken into account. The risk assessment may be written in the language of the manufacturer.

In the event that subsequent changes are made to the goods and services, the drawings, operating instructions, calculations etc. must be updated to current status.

6. The Contractor is obliged to transfer title to these documents to BPW. The title to the intellectual property in them shall remain unaffected hereby.

V.
Scope of goods and services

1. The Contractor shall deliver and assemble a complete machine/system within the agreed deadlines, which shall contain all of the parts required for proper operation, even if any individual parts required are not separately listed in the order.

   The Contractor shall review the information provided by BPW on its own responsibility. Sec. IV (2) shall apply *mutatis mutandis*. Equipment elements and parts must be designed and arranged in such a way that they may be maintained, inspected and replaced quickly and easily. Wear parts must have a long service life.

2. By accepting an order, the Contractor warrants that it shall observe the following provisions, which form an essential part of this contract, and shall meet the requirements thereof. If these requirements are not complied with, then the Contractor shall not be deemed to have properly performed the contract. BPW reserves the right to assert claims for damages based on the consequences resulting from this, without prejudice to claims for defects.

   a) For all technical equipment
      - the prevailing Equipment and Product Safety Act
      - regulations of the prevailing Equipment and Product Safety Act
      - the Electromagnetic Compatibility of Equipment Act

   b) For Machines and technical equipment to which the European guidelines on harmonisation apply
      - EC machinery guidelines including any amendments,
      - any other applicable EC Community guidelines,
      - all harmonised European standards relating to equipment, including those European standards published in the Official Journal of the EC and sufficiently concrete Type C standards.

      In the event that an ordered machine does not conform to harmonised European standards the supplier has a duty to observe the German standards and technical specifications published by the Federal Government in the "Machinery Index" pertaining to the Equipment and Product Safety Act.

      In the event that in certain justified cases neither the harmonised European standards nor the German standards and technical specifications are adhered to, then it must be proven and documented that the same level of safety will be achieved in another way.

This obligation includes the requirement that:

- the CE marking is affixed to any ready-to-use machine,
- an EC declaration of conformity, which must comply with Annex II. A of the EU Machinery Directive, is attached, in German, to any machine bearing the CE marking
- a declaration of installation complying with the DIN European standards (EN) in accordance with Annex II. B of the EU Machinery Directive is attached to any machine that is not ready for use (which does not conform to the Directives); (a prerequisite in this respect is that the quality requirements of the relevant Internal Market directives are largely complied with),
- for any safety component as defined in the EU Machinery Directive which is supplied by a third party, an EU Conformity Declaration as per Annex II.A of the EU Machinery Directive is supplied along with it
- for any machine in accordance with Annex IV of the EU Machinery Directive, a certificate, from an approved testing and certification body is produced (and, where applicable, proof of EC-type examination),
- an instruction manual in accordance with Annex I. (1.7.4) EU Machinery Directive and DIN EN ISO 12 100-2 must be attached in German to any machine (including the prescribed noise emissions and vibration values). This also applies to any machine that is not delivered ready for use.
- technical documentation in accordance with Annex VII. of the EU Machinery Directive is supplied for any machine. This also applies to a machine that is not delivered in ready-to-use condition. Upon request, the Contractor shall provide a detailed description of selected solutions for preventing risks arising from the machine. In line with the TOP approach, the recommended protective measures must describe technical, organisational or personal protective measures (risk analysis, risk assessment, description of protection measures in line with the state-of-the-art).
- the Contractor has specified the necessary inspection intervals in accordance with the German Plant Safety Directive ([German acronym:] BetrSichV) in a manner that is binding and includes written explanations, on the basis of the relevant regulations.
- if there is any likelihood of explosive atmospheres, the Contractor must prepare an explosion protection document prior to initial commissioning of the machine following assessment of the explosion risks in line with the BetrSichV.
- the Contractor shall take account of the ergonomic principles under the BetrSichV when providing the work equipment.

c) For machines to which no EU internal market directives apply:
   - the German Occupational Health and Safety Regulations as well as the generally recognised safety and occupational medicine rules shall be applied. Where they are not applied, a certificate guaranteeing the same level of safety must be supplied.
   - for machines within the meaning of the EC Work Equipment Directive, the requirements governing equipment set out in the national regulations transposing the EU directives (e.g., BetrSichV) must also be complied with.

d) The requirements under c) above shall apply to used machinery from EEA countries without CE marking.

e) The requirements under c) above shall also apply to parts of machines not falling within the scope of the GPSG.

f) As regards high-noise technical equipment, the German Noise Vibration Ordinance ([German acronym:] LärmVibrationsArbschV) provides that advanced rules of noise abatement technology, which have been tried and tested in practice, must be observed and applied.

In the case of machinery bearing CE markings, the risk from noise emissions must be reduced to the lowest possible level, taking account of technological progress and the available means of reducing noise (particularly at source). The exposure limit values under the LärmVibrationsArbschV must be observed.

g) For machines with the GS mark, a certificate from an approved testing laboratory confirming the type test and a workshop certificate from the manufacturer must be supplied.

h) In cases involving orders of interlinked machines, unless otherwise agreed, the Contractor shall have a duty to furnish a declaration of conformity in accordance with the EU Machinery Directive in respect of the internal market directives and to affix a CE mark to the entirety of the machinery. In addition to operating instructions for the individual machines, the higher-level operating instructions for all of the machines in the aggregate, which must be produced for this purpose, must be based on holistic safety considerations, specifying the spatial and control interfaces. Overall responsibility is vested in the Contractor even if BPW wishes to provide and/or install essential equipment itself.

3. The scope of the contract also includes:
   - Installation/set-up, commissioning and adjustment of the machinery/system as well as performance of a test run,
   - Set-up, monitoring, maintenance and proper clearance of the construction/assembly site,
   - Provision of all equipment, scaffolding, tools, crew and equipment huts as well as operating materials, delivery and removal thereof free to the construction/assembly site, unloading and transporting to the place of use as well as storage thereof, irrespective of whether the materials are provided by the Contractor or BPW.

4. Work to be carried out within the zone of the BPW factory must not hinder operation of the works any more than cannot be avoided. The sequence of the works must be coordinated in good time with the responsible BPW employee. The factory rules for external companies must be strictly observed.

5. Prior to commencing the works/assembly, the Contractor shall take over and inspect the construction site, including all foundations, connections, layouts etc.

6. When undertaking the works/assembly, the Contractor shall have a special duty of care with regard to environmentally hazardous substances. If, in connection with performance of the works/assembly, any pollutants are introduced into the ground soil, sealed walls, rooms or containers or in any other way, or are suspected or found therein, then BPW must be informed immediately and given the opportunity to investigate and undertake suitable measures. The right to assert any other claims for damages shall remain unaffected hereby. The Contractor may only remove or store hazardous substances following prior notification and written approval of BPW.

7. The Contractor shall man the construction/assembly site with competent and experienced supervisors and workers. Prior to commencing the works/assembly, the Contractor shall submit to BPW a list of the names of workers it intends to employ within the zone of BPW’s factory. It shall also keep this list up-to-date. Upon request, the Contractor shall furnish evidence that it has the social insurance cover required by law for all workers employed. BPW may, for good cause, refuse workers deployed by the Contractor access to the works area without this resulting in any waiver of the Contractor’s duties agreed under this contract or forfeiture of BPW’s rights. The Contractor shall ensure that the workers employed by it comply with BPW’s instructions on maintaining safety and order and are subject to the usual control procedures.

8. All items brought on to BPW's factory premises are subject to a factory inspection. Prior to delivery and removal, the Contractor must furnish a list of all items to BPW. The Contractor, its employees and any sub-contractors whom it may engage shall mark their tools and equipment in a clear and unaltered way by name or company logo. BPW shall only process means of transport of any kind during its normal business hours.

9. In storing materials of any kind, the Contractor shall strictly observe the legal and regulatory rules relating to environmental protection. In particular, in respect of storage of materials and substances which are capable of contaminating the soil or water or otherwise detrimentally affecting them, the Contractor shall be responsible for taking precautions against any and all forms of leakage etc.

10. BPW shall bear no liability for theft or damage to items of property that the Contractor brings on to the factory premises, unless such damage is due to the gross negligence [*grober Fahrlässigkeit*] or intentional act or omission [*Vorsatz*] of BPW's employees.

11. The Contractor shall instruct and train BPW's qualified employees in such a way that BPW is able to warrant independent, fault-free operation of the system. BPW shall identify its designated employees in good time.
    The induction shall relate to the overall concept of the system, the individual stations, automatic components, the transport system, the control system (electrical and pneumatic controls) as well as the screwdriving and robotics technology.

12. BPW shall be entitled to arrange for its own employees to take part in assembly and commissioning of the system.

13. The Contractor shall furnish all detailed plans and technical documentation required (including control documentation) within the scope of the contract.

14. The Contractor shall have a duty to attend meetings, together with BPW, with the office of the Trade Inspector and other public authorities to resolve pending issues in connection with the system to be supplied, including formal acceptance.

VI.
Sub-contractors

1. Absent BPW's prior written consent, the Contractor may not delegate the supply of any goods or services, in whole or in part, to third parties, including through formation of any joint venture. If the Contractor intends to replace a sub-contractor previously approved by BPW, then such replacement must first be approved by BPW.

   The Contractor must provide BPW with a German-speaking assembly mechanic at site. The Contractor shall remain fully responsible for performing the contract even where goods and/or services are commissioned to third parties with BPW's consent. The Contractor shall be liable for the fault of third parties, in particular sub-contractors, in accordance with sec. 278 of the German Civil Code ([German acronym:] BGB).

2. In the event that BPW allows a sub-contractor to be engaged, the Contractor undertakes that it shall impose all obligations on that sub-contractor just as they are imposed on the Contractor under the present contract.

3. Where BPW furnishes assistance in respect of the performance of this contract, it shall do so upon the responsibility, and subject to the liability and the insurance cover of the Contractor. The same applies to any intermediate forwarders.

VII.
Price and payment

1. Prices are quoted free factory (construction/assembly site) of BPW, including full assembly and commissioning and ancillary costs (packaging, loading and shipping costs etc.), insurance plus statutory VAT. The prices are fixed prices and are not subject to any change during the term of performance of the contract.
   Unless otherwise agreed, the following terms shall apply to import supplies:
   - "untaxed" for supplies from EU countries,
   - "duty unpaid and untaxed" for supplies from third countries. Customs clearance is performed by BPW at the receiving factory.

2. Payments shall be made within 14 days, applying a 3% discount, or 30 days net, unless otherwise agreed in writing.
   a) If premature deliveries are formally accepted, the due date for payment shall be governed by the agreed delivery date.
   b) In cases of defective goods/services, BPW shall be entitled to withhold payments up to 3 times the value of the defective goods/services until proper performance has been rendered.

3. Where partial payments have been agreed, the Contractor must send BPW a written request for payment 14 days before every agreed payment date. Payments shall not fall due before such time.

4. Where advance payments have been agreed, the Contractor shall furnish BPW in advance with bank *Bürgschaft*-guarantees from a major German bank, free of bank charges and having an unlimited term, in the amount of the specific advance payment. Corporate group guarantees will be accepted upon prior written agreement. The *Bürgschaft*-guarantee must be directly enforceable [*selbstschuldnerisch*]. It shall extend to repayment of the agreed down payment, including all ancillary claims, waiving rights under sec. 768 BGB, any defence of appeal or offset (sec. 770 BGB) as well as any defence of the failure to pursue remedies (sec. 771 BGB). The *Bürgschaft*-guarantee shall be returned to the Contractor immediately after successful formal acceptance has occurred.

5. Unless otherwise agreed, BPW shall retain the amount of 5% of the net contract value as security following formal acceptance. That warranty retention shall be paid out to the Contractor following expiry of the warranty period, provided that no defects are present. The Contractor may demand full payment of the agreed remuneration after formal acceptance, provided that it furnishes BPW, concurrently with payment, a warranty-*Bürgschaft* of 5% of the net contract value in line with the requirements applicable to advance payment guarantees [*Anzahlungsbürgschaften*] under sub-para. 4 above. This *Bürgschaft*-guarantee shall be returned to the Contractor immediately following expiry of the warranty period, provided that no defects are present.

6. The Contractor must issue the final invoice to BPW no more than 3 weeks after formal acceptance of the system.

7. Unrestricted title to the system shall pass to BPW upon payment of the agreed fixed price less the agreed warranty retention of 5% of the net contract value. The Contractor warrants that there are no third-party rights in conflict with this and, as a precautionary measure, undertakes that it shall itself promptly remove any conflicting rights which may nevertheless exist. In all further and other respects, the parties refer to the rules set out in sec. XVI.

8. Invoices must be submitted in duplicate. Before invoices fall due, they must meet the following requirements: They must comport with the requirements of applicable law, and in

particular they must separately show the remuneration (net invoice amount) and the amount of tax charged on such remuneration. They must also contain vendor numbers, invoice numbers, numbers and data or the purchase order, the purchase agreement or the call-off order, additional data from BPW (account references), unloading point, numbers and data from the delivery notes and the quantity of services and goods invoiced.

9. BPW shall be entitled to avoid any existing tradesmen's lien on the part of the Contractor in exchange for provision of an unlimited, directly enforceable *Bürgschaft*-guarantee from a major German bank, free of bank charges.

VIII.
Deadlines and breaches of duty

1. The Contractor must submit a detailed project schedule in accordance with the requirements of the specifications no later than 4 weeks after conclusion of the contract.

2. The agreed dates and deadlines are binding. BPW's continued interest in the performance of the contract as a whole is premised on timeliness of the Contractor's performance. The foregoing shall also apply in the event that the Contractor has already provided goods and services in part. The receipt of the goods or provision of the agreed services at the BPW factory to be supplied shall be determinative of the Contractor's compliance with delivery dates. The Contractor must agree its assembly work at the BPW factory area following delivery with the coordinator in charge. In this respect, sentences 1 to 3 of this sub-paragraph shall apply, *mutatis mutandis*.

3. If the Contractor fails to meet agreed interim deadlines, it shall pay in the case of a performance delay [*Verzug*] a contractual penalty [*Vertragsstrafe*] of 0.25% of the net invoice amount on the goods and services to be provided up to that date for each working day of delay; in total, the contractual penalty shall not exceed 5% of the net invoice amount on the goods and services to be provided up to the interim deadline. If the Contractor fails to meet multiple interim deadlines due to its default, then the contractual penalty may not exceed 5% of the net invoice sum for the total goods and services to be provided up to that point; thus, contractual penalties which have been previously triggered are credited against the total penalty.

   The same shall apply *mutatis mutandis* if the agreed completion date is not met; in such case, the following shall apply: In the event that the agreed final acceptance date is exceeded, the Contractor shall pay a contractual penalty of 0.25% of the net final invoice amount for each working day of delay in the event of default, taking full account of any contractual penalties previously triggered for failing to meet interim deadlines; in total, the penalty for failing to meet interim deadlines or the final deadline may not exceed 5% of the net final invoice amount.

   The Contractor shall promptly refund the amount thereof to BPW if there are no more outstanding payments from which BPW can immediately deduct it.

   BPW expressly reserves the right to assert further claims, crediting penalties triggered as offsets against the minimum amount of its damages.

4. The Contractor shall be liable to BPW for all direct and indirect losses caused by its default. Acceptance of late delivery of goods or services shall not constitute any waiver of BPW's claims for damages.

IX.
Duty of documentation and liability for defects/warranty

1. The Contractor hereby warrants that all of the goods and services provided shall comply with the most recent state-of-the-art, the relevant provisions of applicable law and the regulations and guidelines of authorities, professional associations and trade associations (*see also* at “Scope of services” above in sec. V.). In addition, the Contractor warrants that it shall comply with all requirements and output volumes documented in the BPW specifications.

2. The prescription of claims for defects and recourse claims shall be governed by the provisions of applicable law (statutes of limitation). The term of any warranties shall be premised on the individual contracts or relevant undertakings of the Contractor.

   Prescription periods will begin to run at the time of formal acceptance and apply with respect to multi-shift operation of the system.

   For delivery parts which do not remain in operation during the investigation of a defect and/or elimination of the defect, the then-current prescription period(s) shall be extended by the period during which operations are interrupted.

3. The Contractor shall commence its efforts to remediate the defect promptly in each case. It must deploy appropriately qualified employees for this purpose. As a basic principle, the Contractor must provide an interim solution for bypassing the defect in question until ultimate rectification of the defect, unless this is demonstrably not feasible for the Contractor or is unreasonable in light of the impacts of the defect in question.

4. BPW’s continued interest in the performance of the contract as a whole is premised on timeliness of the Contractor’s remediation of the defect. The foregoing shall also apply in the event that the Contractor has already provided goods and services in part.

5. Where BPW demands remediation of the defect and the Contractor fails to comply with such demand prior to the reasonable deadline set by BPW, BPW may take such measures itself as are necessary or have them taken by qualified third parties at the Contractor’s expense and risk, without prejudice to the Contractor’s continuing warranty/guarantee obligation(s).

   In urgent cases (e.g., risk to operational safety, risk of BPW’s own default as an obligor *vis-à-vis* other contracting parties, etc.), BPW may, after consultation with the Contractor, immediately remediate the defect itself or have such remediation performed by qualified third parties and claim reimbursement of the necessary expenses from the Contractor. The same shall apply where a risk of high losses is present. BPW’s further claims as well as the Contractor’s existing warranty/guarantee obligations shall remain unaffected by the foregoing.

6. If the materials used by the Contractor contain substances or preparations that are listed in the Ordinance on Hazardous Materials in effect from time to time and/or in the appendices thereto, then the Contractor must label the materials accordingly. Where a label is not available, the Contractor must deliver a fully completed safety data sheet in accordance with Annex II of the REACH Regulation (EC) No. 1907/2006.

7. BPW may also assert warranty claims following expiry of the prescription period(s) if BPW has notified the Contractor in writing of the relevant defects prior to expiry of the limitations period. Where claims within the meaning of the 1st sentence hereof are asserted, they shall become time-barred within 18 months of the Contractor’s receipt of the written demand, but not before expiry of the agreed prescription period(s).

8. If a defect is attributable to the description of goods and services, to BPW's instructions or to substances supplied by or prescribed by BPW or preliminary goods and services provided by another company, then the Contractor shall be released from its warranty obligations for defects only on the condition that it has informed BPW in writing prior to its provision of the goods/services regarding any cognisable objections to the description of goods and services, to the instructions given by BPW or the preliminary goods and services provided by other companies and has afforded BPW the opportunity to remediate the defect.

9. BPW shall notify the Contractor of any defects of the goods/services within 2 weeks' time. In the case of obvious defects, this period shall begin to run at the time of handover; in the case of latent defects, this period shall begin to run upon their discovery in the ordinary course of business. In this respect, the Contractor is deemed to waive the defence of delayed notification of defects within the meaning of sec. 377 of the German Commercial Code ([German acronym:] HGB).

X.
Liability

1. Without prejudice to any other provisions contained in these General Terms and Conditions and in the contract documents, the Contractor shall be liable for all personal injury, damage to property and financial losses culpably caused by it, its employees and/or its vicarious agents. The same shall also apply in the event of a breach of the duty of confidentiality pursuant to sec. XV.

2. If BPW furnishes support by providing manpower and equipment, in particular cranes with or without operating personnel, then BPW shall not be deemed to assume any liability therefor provided that the Contractor has the right to issue instructions. BPW shall only be liable for having carefully selected workers and equipment.

3. If claims are asserted against BPW on the basis of strict liability to third parties under a legal provision which is not capable of derogation in advance, then the Contractor shall be liable to BPW to the same extent that it would be directly liable itself. The principles of sec. 254 BGB shall apply *mutatis mutandis* to claims for damages between BPW and the Contractor.

4. The Contractor's duty to pay damages shall also extend to measures taken by BPW to avert and avoid losses (e.g., recall campaigns).

5. BPW shall inform and consult the Contractor promptly and comprehensively where there is an issue of the Contractor's liability. BPW shall afford the Contractor the opportunity to investigate any case of damage. The parties shall coordinate with one another regarding what measures are to be taken in this regard, in particular with respect to settlement negotiations.

6. The Contractor shall take out its insurance policies such that the interests of BPW and any relevant third parties are safeguarded in the event of loss.

   The Contractor shall furnish evidence of a policy of business and product liability insurance containing at least the following sums assured for the Contractor, its managing directors and employees:

   - EUR 5 million for personal injury, per person and event of loss,
   - EUR 5 million for property damage, per event of loss, and

- EUR 100,000 for financial losses, per event of loss.

In addition, the Contractor shall furnish evidence of environmental liability insurance including cover for recourse claims, with a minimum sum assured of EUR 2 million.

The insurance policies must cover the entire term of the project, including the period of liability for defects/warranty, and must have a world-wide scope.

7. In addition, the Contractor shall take out assembly insurance corresponding to the scope of the contract, and which shall include transport, breakage, fire and theft insurance, and shall furnish BPW with evidence of such insurance. The assembly insurance must cover the deployment of BPW's personnel during test operations. Transport and breakage insurance must include intermediate forwarding and intermediate storage at BPW's factories. Such insurance policies must cover both the period running up to formal acceptance of the system by BPW as well as cases of repair and modifications performed as part of the Contractor's warranty/guarantee obligation(s).

8. No later than at the time of concluding the contract, the Contractor will let BPW know which additional insurances should be taken out in view of the special features of the specific contract.

9. In the event that BPW suffers losses that are covered by one of the foregoing insurance policies, the Contractor hereby assigns its claims against the insurance in question to BPW. BPW hereby accepts the assignment and shall endeavour to obtain the consent of the insurance company in question. The same shall apply if any third party suffers losses that BPW is obliged to pay. Any claims BPW may have against the Contractor shall be reduced accordingly. The Contractor is revocably authorised to assert claims against the insurance companies in its own name but for BPW's account. The Contractor undertakes that it shall provide BPW with a copy of all of the policies. If the Contractor fails to comply with its obligations in this regard, BPW shall be entitled to take out the relevant insurance policies in the name of and at the expense of the Contractor and/or to pay the premiums due and offset the costs incurred against the Contractor's claims.

10. BPW shall maintain business liability insurance in place with the sums assured as specified in sub-para. 6. BPW shall be liable for property damage and financial loss only to the extent of such business liability insurance. BPW shall be liable for personal injury suffered by the Contractor's personnel within the limits of statutory regulations. BPW may demand that the Contractor indemnify BPW against such claims, to the extent they exceed the amounts covered by BPW's business liability insurance.

XI.
Software

To the extent that the Contractor's scope of goods and services include software, the Contractor grants BPW the sole and exclusive right to use such software, including the documentation thereto.

XII.
Formal acceptance

1. The parties hereby expressly agree to carry out a formal acceptance procedure and premise the legal consequences described in this contract on such formal acceptance, and/or premise the Client's obligation to carry out formal acceptance under secs. 651, 433 (2) BGB on the existence of the conditions precedent described in this contract. In

particular, the primary performance obligations to be rendered by the Contractor shall not be deemed to have been satisfied if the Client rightfully rejects acceptance for non-compliance with the contract.

The fact that the system is commissioned or used with the consent of the Contractor, or that no formal acceptance takes place within a certain period, shall not give rise to any deemed formal acceptance.

2. The Contractor shall notify BPW in writing of the completion and readiness for acceptance of the goods/services. The Contractor's notification must be given in good time so that BPW can undertake all measures necessary for acceptance testing, i.e. inspection of the goods and services for defects. In addition to the other legal requirements, the condition precedent to the Contractor's entitlement to demand formal acceptance is that the Contractor has previously handed over to BPW all documents required for performance of the acceptance testing (detailed plans, technical and control documentation, operating manuals, etc.).

3. Successful test operations of the system parts, in line with the agreed requirements which are hereby stipulated to constitute material elements of this contract (e.g., requirements contained in the performance and technical specifications) shall be carried out at the plant of the Contractor. In the course of this, compliance with the warranted/guaranteed data and/or (other) guarantees given must be demonstrated. The Contractor may only deliver the system components to BPW following rectification of all recorded defects. Prior to such point, the Contractor shall have no entitlement to formal acceptance.

4. Following completion of the assembly works at BPW's premises, the system shall be deemed complete. Functional testing and commissioning work with and without load shall then commence with respect to the individual system parts, system groups and the overall system.

5. If a system is ready for operation following commissioning, a test operation shall be promptly commenced in order to determine the functionality of the system. The system shall be used by BPW, but shall still be operated under the Contractor's supervision and responsibility. Any damage occurring during test operations shall be the responsibility of the Contractor, unless the Contractor is able to prove that the operating personnel of BPW acted contrary to the terms and conditions stated and explained by the Contractor.

6. The commencement of test operations must be coordinated with BPW.

7. The test operations shall not be deemed to give rise to the passage of risk or formal acceptance or the commencement of the prescription period.

8. The Contractor's entitlement to demand formal acceptance shall arise only when the goods and services warranted and/or guaranteed by contract have been achieved (*see* sec. IX. (1)), in particular cycle times, output volumes, at a maximum technical fault rate which may be defined in BPW's specifications and with 100% qualitatively flawless output results. Once the Contractor has furnished proof that the warranted and/or guaranteed performance data have been achieved, the parties shall confirm formal acceptance in a formal acceptance record.

9. Where defects arise, BPW may refuse formal acceptance due to the non-compliance of a sub-section of the goods and services with the contract until such time as they have been remediated. If, during acceptance testing, only minor defects or deviations from conditions agreed by contract are discovered, then BPW shall accept the goods/services, subject to prompt and successful remediation of such defects, provided that the Contractor undertakes in writing to remedy them promptly. If the Contractor is unable to promptly

remediate the defects or the breach, then formal acceptance shall be deemed to have failed from the outset.

10. Where formal acceptance testing shows that the system was not manufactured in accordance with the contract, the Contractor must request a repeat of the formal acceptance date within 1 month's time. The costs arising from such repeat formal acceptance testing shall be borne by the Contractor. Where two repeated attempts of formal acceptance are required and the goods and services agreed by contract are still not achieved, in particular if compliance with the guaranteed data and the (other) guarantees given is not demonstrated, then the Contractor shall be deemed to have failed to perform the contract.

11. If the system can be operated only with the approval(s) of the Technical Inspection Association ([German acronym:] TÜV), the Employer's Liability Insurance Association or other authorities, then the procurement and granting of such approval(s) shall be deemed an integral part of this contract falling within the Contractor's scope of responsibility. The costs thereof are deemed included within the fixed price. If approval is not granted or is delayed, then the Contractor shall bear the cost of all resulting disadvantages to BPW. The foregoing shall also entitle BPW to refuse formal acceptance.

XIII.
Spare parts

1. Following completion of the system, the Contractor shall submit an offer to BPW for a package of spare parts. That offer must include information on how frequently a particular part/machine/component occurs in the overall system and what reserves the Contractor considers reasonable, based on its experience, for two-year multi-shift operations.

2. The spare parts package must include all components which, in the event of a failure, could lead to a loss of production at BPW and have longer delivery times. The Contractor shall be liable for any losses resulting from a breach of this obligation.

3. Where the Contractor deploys fitters, it undertakes to provide the following service:
   Upon the Contractor's receipt of the fault report within business hours:
   - Mon. – Fri. 7.00 am to 12 noon: The required number of fitters will be on site at BPW that same day.
   - Mon. – Fri. after 12 noon to 6.00 pm and Saturdays from 6.00 am to 12 noon: The required number of fitters will be on site at BPW by 7.00 am the following working day, at the latest.

4. The Contractor undertakes to supply BPW with all spare parts for the entire lifetime of the system supplied, but at least for a period of 10 years from the date of formal acceptance.

5. In the case of parts which the Contractor does not itself manufacture, the Contractor must indicate the sources of supply and specify the parts in such a way that BPW is able to re-order them without confusion.

6. The warranty period for spare parts shall, without prejudice to the warranty periods provided under sec. IX. (2) of this contract – be 2 years from the date of commissioning.

XIV.
Passage of risk

The risk of material damage and counter-performance [*Gegenleistungsgefahr*] shall pass to BPW at the time of final acceptance.

XV.
Confidentiality

1. The Contractor may use for provision of goods and services to third parties or make accessible to third parties any descriptions, models, matrices, templates, samples, drawings, tools and other documents of any kind or means of production, including confidential information provided by BPW to the Contractor, but only with the prior written consent of BPW.
   Similarly, the Contractor must not supply any material produced according to templates, technical regulations, specifications etc. developed by BPW to third parties without BPW's prior written consent. The Contractor undertakes to keep all commercial and technical details relating to the order confidential and not to disclose them to third parties.

3. Furthermore, the Contractor undertakes that it shall impose these obligations, which it has assumed, on all persons and companies involved in the performance of the contract, in the same manner as imposed on itself.

3. The parties may advertise their business relationship only with prior written consent of the other party.

4. The Contractor shall pay BPW a contractual penalty of € 50,000.00 ("fifty thousand euro") for each breach of the data protection rules or security/confidentiality agreements for which the supplier is responsible or shall pay € 5,000.00 ("five thousand euro") in the event of a breach of sub-para. 3 hereof. The parties reserve the right to assert further claims beyond this, taking into account the penalty triggered as the minimum amount of losses.

XVI.
Intellectual property rights

1. Where it has acted culpably, the Contractor shall be responsible for ensuring that its components/product is free of third-party intellectual property rights and that no other rights exist which would exclude contractual use, either in whole or in part.

2. In the event that the Contractor is liable under sub-para. 1 hereof, the Contractor shall assume sole and unlimited liability towards any parties asserting an infringement of intellectual property rights or other rights to the goods/services and undertakes that it shall indemnify and hold BPW and its customers harmless against any claims asserted by the IP or copyright holders concerned.

3. The parties shall bear a duty to inform one another promptly in writing where any claim of an infringement of intellectual property rights is asserted against either of them.

4. The Contractor shall notify BPW of the use of published or unpublished intellectual property rights or applications for intellectual property rights in the components/deliverables of its own or which have been assumed under licence.

5. If the contractual use of the goods/services is impaired by intellectual property rights of third parties, then the Contractor, in the event that it is liable under sub-para. 1 hereof, shall have the right, to the extent it is reasonable to BPW, to either modify the contract products

or services such that they fall outside the scope of the intellectual property, but nevertheless comply with the parties' contract agreements, or to procure authority to use the intellectual property in accordance with the contract without restriction and without entailing additional cost to BPW.
If the Contractor fails to eliminate the impairment of the right of use within the meaning set out above, then BPW shall be entitled to resile from the contract in whole or in part, to demand an abatement of the compensation (including retroactively), up to the total amount of remuneration, or to demand compensation in damages instead of whole or part performance.

6. The warranty period for the Contractor's liability for intellectual property rights shall be 36 months from the date of formal acceptance.

XVII.
Unforeseeable events, insolvency

1. *Force majeure* events, labour disputes (strikes and lock-outs) civil unrest, official measures (plant shutdowns, operating restrictions, withdrawal or restriction of operating permits etc.), natural disasters and other unforeseeable, unavoidable and serious events shall release BPW from its obligation to formally accept the goods and services for the duration of the disruption and to the extent thereof. The parties shall have no claims for compensation or damages under the heading of delayed completion for the duration of such disturbances.

   The parties are obliged to provide the necessary information promptly, within the scope of what is reasonable, and to adapt their obligations, so far as possible, to the changed circumstances in good faith.

2. If the Contractor's financial circumstances deteriorate significantly after the contract has been awarded, and in particular if a petition is filed for the commencement of insolvency proceedings against the assets of the Contractor, or if the legal form of the Contractor's company changes, then BPW shall be entitled, for a period of 1 month, to resile from the contract. This period shall begin to run as soon as BPW becomes aware of one of the aforementioned circumstances.

XVIII.
Provision of material by BPW

1. Materials supplied by BPW shall remain the property of BPW and, for as long as such material is in the possession of the Contractor, the Contractor must insure it against damage and loss, at no cost to BPW. Sec. X. (9) shall apply *mutatis mutandis*. BPW's packaging material must be returned to it freight pre-paid in perfect condition, unless used for return delivery.

2. The Contractor shall inspect any material provided by BPW for defects promptly upon receipt, to the extent this is feasible in the ordinary course of business. Any defects or missing documents must be reported within 2 weeks' time. In the event of obvious defects, this period shall begin at the time of handover, and in the case of latent defects, the period shall begin to run upon their discovery in the ordinary course of business. Where defects are found, the defective material may not be used within the meaning of sub-para. 3 below. If the Contractor fails to notify BPW in due time and nevertheless uses the material within the meaning of sub-para. 3, then it shall be liable for any resulting damage. In all further and other respects, the rules allocating the burden of proof under sec. 377 HGB shall apply.

3. If a new chattel within the meaning of sec. 950 (1) BGB is produced as a result of processing or transformation of one or more substances, then BPW shall be deemed the manufacturer within the meaning of sec. 950 BGB where BPW provided one of the processed or transformed substances. If chattels within the meaning of sec. 947 BGB are combined with one another or comingled or blended with one another within the meaning of sec. 948, and if an item should be regarded as the principal item within the meaning of sec. 947 (2) BGB, then the Contractor shall hereby convey its co-ownership share (resulting from the ratio of value of the item(s) provided by BPW at the time of the combination of the items) to BPW (to the extent that the principal item is not already the item provided by BPW) in accordance with secs. 929 (1), 930 BGB and grants indirect possession to BPW in this regard under sec. 868 BGB.

IXX.
Compliance

1. The Contractor warrants that it shall comply with the applicable laws governing the general minimum wage and that it shall impose the same obligations on sub-contractors engaged by it. The Contractor shall furnish proof thereof to BPW upon request. In the event of any violation for which the Contractor is responsible, it shall indemnify and hold BPW harmless against any claims by third parties and shall have a duty to reimburse BPW for any fines imposed on BPW in connection therewith.

2. The Contractor shall comply with the applicable laws on dealings with employees, occupational safety and environmental protection and shall take affirmative efforts to reduce adverse effects on people and the environment with regard to its activities. To this end, the Contractor shall set up a management system under ISO 14001, to the extent possible. The Contractor hereby warrants that it will comply with the principles of the UN Global Compact Initiative, which primarily concerns the abolition of forced and child labour, the protection of international human rights, the elimination of discrimination in employment and responsibility for the environment (unglobalcompact.org).

3. In the event of any breach of the foregoing obligations for which the Contractor is responsible, the Contractor shall, following a warning, inform BPW within a reasonable time of what measures it has taken to prevent future breaches. If it fails to comply with this obligation or does not implement these measures within a (further) reasonable time, then BPW shall be entitled to resile from the contract or terminate the contract with immediate effect.

4. In the event of serious violations of law for which the Contractor is responsible, BPW shall be entitled to resile from the contract immediately or terminate the contract without notice.

XX.
General provisions

1. The present contract contains all relevant agreements between the parties. The parties have made no ancillary agreements.

2. If any term or provision of this contract is or becomes void, either in whole or in part, due to a violation of statutory rules or for any reason gives rise to doubts of a legal or factual nature, then such circumstances shall not render the entire contract void. Instead, the invalid term shall be interpreted as having been intended in a fashion and should be amended accordingly or recast in a way as most closely reflects the intentions of the parties, as those intentions flow from this contract as a whole, in a manner which is legally permissible.

If the invalidity of a term is based on a specific measure of performance or time (deadlines or dates), then it shall be replaced by such legally permissible measure as comes the closest to that term.

Either party may at any time require the other party to cooperate in agreeing a substitute term of this kind. The same shall apply if a contractual gap requiring supplementation becomes apparent during performance of this contract.

In all further and other respects, the provisions of applicable law shall apply.

3. The place of performance for the goods/services shall be the agreed destination, and in all other cases Wiehl. The place of performance for payments is Wiehl.

4. The parties' relations shall be governed exclusively by German law. The parties exclude any applicability of the United Nations Convention on Contracts for the International Sale of Goods. Sole jurisdiction and venue shall lie with the competent courts of Cologne.

5. Any assignment of the Contractor's claims for receivables under this contract shall require BPW's consent.

6. In the spirit the Data Protection Act, it is noted that BPW stores data pertaining to the Contractor and uses it in connection with the parties' collaboration.