

**General Purchasing Conditions
(GPC)
of Rutronik Inc.
(Last updated: Oktober 2015)**

**Section 1
Scope**

- 1.1 These General Purchasing Conditions (GPC) shall apply to all business transactions (purchase of products, deliveries and services) between Rutronik Elektronische Bauelemente GmbH (hereinafter referred to as the "**Distributor**") and the supplier (hereinafter referred to as the "**Supplier**"), even if in subsequent transactions no reference is made to them. They shall also apply to contracts for the performance of work and services and to service contracts as well as to all and any legal transactions entered into with companies of the Rutronik Group. Any terms to the contrary or any deviating or supplementary terms used by the *Supplier* shall not become part of the contract unless the *Distributor* has expressly agreed to their validity in writing.
- 1.2 These Purchasing Conditions shall apply even if the *Distributor* accepts a delivery from the *Supplier* unconditionally and without reservation while being aware of the *Supplier's* conflicting or deviating terms or if, in future business, the *Distributor* does not include these Purchasing Conditions in an individual case.
- 1.3 Any rights beyond these Purchasing Conditions to which the *Distributor* may be entitled by law shall be unaffected.
- 1.4 The contractual language shall be English. If the contractual parties also use another language the English text and the English version of these GPC shall prevail.

Section 2

Conclusion of Contract and Changes to the Contract

- 2.1 Unless otherwise expressly agreed, a request for a quotation submitted to the *Supplier* by the *Distributor* or by any person acting on behalf of the *Distributor* shall not include assumption of the costs of preparing the quotation by the *Distributor*.
- 2.2 In its quotation, the *Supplier* shall adhere as closely as possible to the *Distributor's* request. If deviations from the *Distributor's* request cannot be avoided the *Supplier* must expressly inform the *Distributor* thereof in writing.
- 2.3 Unless the *Supplier* has stipulated a different period of time its quotation shall be binding upon the *Supplier* for a time period of 60 days.
- 2.4 Orders shall not become binding until they have been placed by the *Distributor* in writing or, in the case of orders placed verbally, by telephone or other means of telecommunication, confirmed in writing. The same shall apply to changes and supplements. Orders that have been generated with the use of automatic devices and that do not contain a signature or name shall be deemed to be written orders. The *Distributor's* failure to respond to quotations, requests or other declarations of the *Supplier* shall only be deemed as consent if such has expressly been agreed in writing. To the extent that orders contain obvious mistakes or writing or calculation errors, such orders shall not be binding upon the *Distributor*.
- 2.5 The *Supplier* shall send the *Distributor* a written acknowledgement of order without delay, however no later than one week after receipt of the order, expressly stipulating price and date of delivery. If the acknowledgement of order deviates from the order, such deviations shall only be deemed agreed if they have been expressly confirmed by the *Distributor* in writing.
- 2.6 The *Distributor* shall be entitled to change the order. The *Supplier* must advise the *Distributor* in writing of the consequences of any desired change to the order (e.g. increase in costs, deterioration in quality). The *Supplier* must not implement changes until the *Distributor* has given its written consent to the consequences of the desired change.
- 2.7 Call-offs within the scope of order and call-off planning shall become binding if the *Supplier* does not object to them within two working days from receipt.
- 2.8 If the *Supplier* discovers during the execution of a contract that deviations from the originally agreed specifications are necessary or advisable, the *Supplier* must advise the *Distributor* thereof without delay and submit change proposals. The *Distributor* will notify the *Supplier* whether it wishes the *Supplier* to make changes to the original order and if so, which changes. If, as a result of these changes,

there is a change in the costs incurred by the *Supplier* for the execution of the contract, both the *Distributor* and the *Supplier* shall be entitled to demand that the agreed prices be adjusted accordingly.

- 2.9 Order acknowledgements, dispatch notes, waybills, delivery notes, invoices and other correspondence from the *Supplier* must include, in particular, the order number, order date and supplier number.

**Section 3
Prices, Payment, Assignment**

- 3.1 The prices stated in the order shall be binding and shall be inclusive of freight, insurance, packaging as well as all and any other additional costs for free delivery to the place of delivery specified by the *Distributor*. Any price increases, irrespective of the reason thereof and even in the case of long-term supply contracts, shall only be accepted by the *Distributor* if an agreement to this effect has been made in writing. Unless the price is expressly designated as net price the price shall be inclusive of applicable taxes.
- 3.2 Invoices must be issued separately for each order immediately after dispatch of the goods and must state the order number and the tax number; value-added-tax is to be stated separately in the invoice. Invoices not issued in due form shall be deemed not issued.
- 3.3 Payment shall be effected by the *Distributor* after acceptance of the goods and receipt of the invoice within 14 days with a deduction of a 3% discount, or within 30 days net. Payment shall be subject to invoice verification.
- 3.4 In the event of defective deliveries the *Distributor* shall be entitled to withhold payment until the order has been properly performed without forfeiting its right to rebates, discounts or similar price reductions. The period allowed for payment shall commence as soon as all defects have been entirely remedied. If goods are delivered early, the period allowed for payment shall not commence until the agreed delivery date. To the extent that the *Supplier* is under the obligation to supply materials tests, test reports, quality documents or other records along with the goods, the receipt of such records shall be a prerequisite for the acceptance of the goods by the *Distributor*.
- 3.5 In case of default of payment the *Supplier* shall be entitled to demand from the *Distributor* default interest at a rate of 2% above the base interest rate applicable at the time, whereby the current interest situation is to be taken into account - unless the *Distributor* can prove that the damage actually sustained by the *Supplier* is below this amount. If an adequate additional period of time for payment including threat of refusal set by the *Supplier* after the onset of default of payment has fruitlessly expired, the *Supplier* shall be entitled to withdraw from the contract.
- 3.6 Payments by the *Distributor* must be made to the *Supplier* exclusively. The *Distributor* shall be entitled to offset rights and rights of retention as defined by law. The *Supplier* may only offset claims the *Supplier* may have against the *Distributor* or enforce a right of retention if and to the extent that the *Supplier's* claims are undisputed or its counterclaims have been recognized by declaratory judgement.

Section 4

Delivery, Passing of Risk and Transfer of Title

- 4.1 Delivery shall be DDP (warehouse Distributor) Incoterms 2010..
- 4.2 Each consignment must include the complete accompanying documents / delivery note and these documents must imperatively also state the *Distributor's* order number. Technical certificates, certifications, test reports, acceptance reports, quality test reports and other documents required for the use of the goods in accordance with the contract must be supplied free of charge together with the goods.
- 4.3 The goods must be delivered in packaging appropriate to the nature of the goods, taking into account the means of transportation used as well as any general packaging requirements which may be applicable to these means of transportation. In particular, the goods must be packed in such a manner as to prevent damage in transit. Packaging materials shall be used only to the extent required for this purpose.
- 4.4 Shipping shall be at the risk of the *Supplier*. The *Supplier* shall bear the risk of accidental loss or accidental deterioration of the goods until their acceptance by the *Distributor*. If the *Supplier* is under the obligation to install or assemble the goods, the risk shall not pass to the *Distributor* until after the goods have been put into operation.

- 4.5 The *Distributor* and its customers shall be granted the right of use as permitted by law of any software included in the scope of the delivery, including the respective documentation.
- 4.6 Upon delivery, title to the goods shall pass to the *Distributor* directly and free from encumbrances.

**Section 5
Force Majeure**

- 5.1 Acts of Force Majeure, disruptions in operations which are not the fault of the *Distributor*, unrest or riots, governmental measures or other uncontrollable circumstances shall release the *Distributor* from the obligation to accept the goods in due time for as long as such circumstances continue. During such circumstances and for a duration of two weeks following their termination the *Distributor* shall be entitled to withdraw from the contract, either in whole or in part, insofar as the duration of such events is not insignificant and the *Distributor's* requirement has been significantly reduced thereby as a result of procurement from another source. Any other rights the *Distributor* may have shall not be affected thereby.
- 5.2 The provisions stipulated in item 5.1 hereof shall also apply in the event of labor disputes.

**Section 6
Deadlines and Dates, Delay in Delivery**

- 6.1 Agreed dates and deadlines shall be binding and must be strictly complied with. The receipt of the goods at the *Distributor's* or at the place of delivery designated by the *Distributor* shall be authoritative in this respect. Delivery periods shall commence on the day the contract is concluded.
- 6.2 As soon as the *Supplier* realizes that there might be a delay in delivery, the *Supplier* must inform the *Distributor* thereof in writing without delay stating the reasons for and the probable duration of the delay. This shall not affect the binding effect of the agreed delivery date.
- 6.3 Delivery before the agreed delivery date shall only be permissible with the prior written consent of the *Distributor*. If delivery is performed before the agreed delivery date the *Distributor* shall be entitled to reject the consignment or to store it at the expense of the *Supplier*. Partial deliveries shall on principle not be permitted unless the *Distributor* has expressly agreed to them or they can be expected of the *Distributor*.
- 6.4 In the event of a delay in delivery the *Distributor* shall be entitled to withdraw from the contract regardless of whether or not there has been a fault on the part of the *Supplier*. If the *Supplier* is in default the *Distributor* shall be entitled to claim liquidated damages of 0.1% of the order value for each working day of the default, however not exceeding 5% of the order value. Such shall not apply in cases of Force Majeure. The right to assert any further damage shall not be excluded by the contractual penalty.
- 6.5 The *Distributor's* claim for delivery shall not be excluded until, at the *Distributor's* request, the *Supplier* pays damages in lieu of the delivery to the *Distributor*. Unconditional acceptance of the late delivery shall not constitute a waiver of any claims for damages.

**Section 7
Liability**

Unless otherwise provided for in these GPC the *Supplier* shall be liable in accordance with the provisions laid down by law for all and any form or type of breach of contract.

**Section 8
Material Defects and Defects of Title**

- 8.1 Specifications which have been agreed shall be an integral part of the order and may only be changed with the consent of both parties. The term "specification" shall also include any description of the scope of delivery to be considered binding, data sheets, images or drawings as well as samples that have been approved and information on the reliability of the goods provided by the *Supplier*.
- 8.2 Unless otherwise agreed, the *Supplier* undertakes to keep the consignments constantly in line with the state of the art and to point out potential improvements or technical modifications to the *Distributor*. Before modifying its production processes and facilities, materials or components delivered by sub-suppliers, relocating manufacturing sites, furthermore before changing quality assurance measures, including but not limited to changing procedures or equipment for testing the goods, which may have an effect on the quality or nature of the goods, the *Supplier*

must inform the *Distributor* thereof early enough for the *Distributor* to be able to verify whether such changes or modifications may have a detrimental effect. The duty to provide information shall not apply if, upon careful examination, the *Supplier* is able to rule out such detrimental effects and can substantiate this accordingly.

- 8.3 The *Supplier* guarantees and warrants that the goods delivered are state-of-the-art and in compliance with the applicable legal provisions and with the regulations and guidelines issued by public authorities, employers' liability insurance associations and trade associations. In the event of liability, the *Supplier* shall indemnify and hold the *Distributor* harmless from and against all and any third-party claims asserted against the *Distributor* or its customers for breach of any of these regulations. Any further claims the *Distributor* may have against the *Supplier* shall be unaffected thereby.
- 8.4 If the *Distributor* is responsible for inspecting the goods and for notifying defects, the *Distributor* will - to the extent and as soon as such is expedient during the ordinary course of business - verify immediately upon receipt of the goods whether the consignment complies with the quantity and type of goods ordered and whether there is any externally visible transport damage or there are any other defects. Any hidden defects must be notified by the *Distributor* within 14 working days after being detected. In this respect, the *Supplier* shall waive the objection of delayed notification of defects. Receipt of the goods as well as processing, payment and/or follow-up orders of goods which have not yet been identified and notified as being defective shall not constitute approval of the delivery and they shall not constitute a waiver of any claims for defects.
- 8.5 Where consignments are made up of a large number of goods that are identical in construction, the *Distributor* shall only be under the obligation to inspect a reasonable portion of the goods supplied for defects. If such inspection renders the goods impossible to sell, a random sample of 0.5% of the pieces supplied shall be sufficient. If individual random samples of a consignment are defective, the *Distributor* shall, at its discretion, be entitled to either demand that the *Supplier* single out the defective pieces or to assert claims for defects with respect to the entire consignment.
- 8.6 Unless otherwise provided for in the following, the statutory rights with respect to material defects and defects of title shall apply. The *Supplier* shall be liable in accordance with the provisions laid down by law without such liability being limited or excluded as to the grounds thereof or the amount.
- 8.7 The *Distributor* shall be entitled to select the type of subsequent performance (remedy of defect or replacement), unless such subsequent performance involves unreasonable costs for the *Supplier*. The *Supplier* shall bear all necessary expenses that the *Distributor* incurs in connection with the remedy of defect or the replacement delivery. If subsequent performance is not effected within a reasonable period of time, if it fails or if the setting of an additional period of time could be waived the *Distributor* shall have the right to withdraw from the contract or claim damages in lieu of performance according to the statutory provisions.
- 8.8 If the *Supplier* does not comply with its obligation to effect subsequent performance within a reasonable additional period of time set by the *Distributor* without being entitled to refuse subsequent performance, the *Distributor* shall have the right to carry out the necessary measures itself or have them performed by a third party at the *Supplier's* expense and risk. In cases where it is not possible to notify the *Supplier* of the defect and the impending damage and to set an even short period of time for remedial action because of particular urgency and/or because the damage to be expected in the absence of immediate remedial action is unreasonably high as compared to the warranty obligation, the *Distributor* shall have the right to take the necessary measures immediately and without prior consultation of the *Supplier*. The *Distributor's* entitlement to damages, especially the right to claim damages in lieu of performance, shall be unaffected thereby.
- 8.9 The limitation period for claims for defects shall be 24 months from the passing of risk. With respect to defects notified during the limitation period, the claims for defects shall become statute-barred no earlier than six months after the defects have been notified. If the *Distributor* purchases the goods for resale to its customers, the limitation period shall not commence until the point in time at which the limitation period applicable to the resale of the

goods commences, but no later than six months after the risk has passed to the *Distributor*. The same shall apply if the *Distributor* acquires the goods for further processing.

- 8.10 In the event of remedy of defects or replacement deliveries the limitation period shall commence anew unless the *Supplier* carries out the repair or makes the replacement delivery as a gesture of goodwill, rather than in the performance of an (assumed) obligation of the *Supplier* for subsequent performance.
- 8.11 If costs are incurred by the *Distributor* on account of defects pertaining to the item delivered, including but not limited to transport, travel, labour or material costs or costs of an incoming inspection exceeding the normal scope of such inspection, or costs for measures to single out the defective products, the *Supplier* shall be under the obligation to reimburse such costs.
- 8.12 If material defects are found within a time period of 12 months (guarantee period) of the passing of risk, it shall be presumed that such defect already existed at the time of the passing of risk unless such presumption is not compatible with the nature of the item or defect.
- 8.13 Statute of limitation occurs two months after the day the *Distributor* satisfied the claims of its customers at the earliest. This suspension of the statute of limitation shall end five years after the day the *Supplier* delivered the respective goods to the *Distributor* at the latest.
- 8.14 If the *Supplier* supplies goods for which replacement parts are necessary, the *Supplier* undertakes to supply the *Distributor* with the necessary replacement parts and accessories for a period of another ten years following the expiration of the limitation period.
- 8.15 The *Supplier* shall be liable for faults of its agents and subcontractors to the same extent as the *Supplier* is liable for its own faults. The *Supplier's* sub-suppliers shall be deemed its auxiliary agents.

Section 9 Product Liability

- 9.1 The *Supplier* undertakes to indemnify and hold the *Distributor* and its customers harmless from and against all and any third-party claims arising from product liability which are due to a defect of a product supplied by the *Supplier* to the extent that the *Supplier* is responsible for product defects and for the damage sustained according to the principles of product liability law and the *Supplier* is at fault. Any further claims against the *Supplier* shall be unaffected thereby. If the cause of damage is within the sphere of responsibility of the *Supplier* the *Supplier* must provide evidence that the *Supplier* has not been at fault.
- 9.2 On the same conditions as are stipulated in item 9.1, sentence 1, hereof, the *Supplier* shall be under the obligation to reimburse the *Distributor* in particular for legal costs and such expenses as arising from or in connection with necessary preventive measures taken by the *Distributor* or its customers against claims from product liability, including but not limited to product warnings, replacement of products or product recalls. To the extent possible and if such can be expected of the *Distributor*, the *Distributor* shall advise the *Supplier* of the contents and scope of the measures to be taken and shall give the *Supplier* the opportunity to comment thereon.
- 9.3 The *Supplier* has to take out adequate insurance of a minimum of US \$ 10 million per personal injury / material defect against all and any risks arising from product liability, including the risk of product recalls, and, upon request, shall submit the insurance policy to the *Distributor* as evidence. Item 8.6 hereof shall apply accordingly.
- 9.4 As far as such can be done at reasonable cost and effort the *Supplier* undertakes to label its products in such a manner that they can always be identified as the *Supplier's* products.

Section 10 Property Rights and Confidentiality

- 10.1 The *Supplier* guarantees and assures that the delivery and use of the goods do not infringe any patents, licenses or other third-party property rights or copyrights. If, due to the delivery or use of the goods, the *Distributor* or its customers are held liable by any third party for infringement of any such rights and if the goods have not been manufactured by the *Supplier* in accordance with drawings or other detailed specifications of the claimant, the *Supplier* shall be under the obligation, upon first demand, to indemnify and hold the *Distributor* or its customers harmless from and against these claims and to reimburse the *Distributor* for all expenses incurred by the *Distributor* in connection

with the asserted claims.

- 10.2 The *Supplier* shall grant the *Distributor* and its customers the non-exclusive, transferrable right, unlimited as to territory and time, to use the goods of the *Supplier*, to integrate them into other products and to distribute them world-wide. The *Supplier* undertakes not to assert any property rights against any use of the goods.
- 10.3 For an unlimited period of time the *Supplier* undertakes to treat as confidential all and any information on the *Distributor* which may be disclosed to the *Supplier* and which is designated as confidential or can be recognized as trade or business secrets according to other circumstances and neither to record nor pass it on or otherwise utilize such information to the extent this is not necessary for the delivery to the *Distributor*. Through appropriate contractual arrangements with the employees and agents working for it the *Supplier* shall ensure that these persons, too, refrain for an unlimited period of time from any use, disclosure and unauthorized recording of such trade and business secrets for their own purposes.
- 10.4 Goods which have been developed by the *Distributor* or its customers must neither be used by the *Supplier* itself nor may they be offered or delivered to any third party.

Section 11

Export Control and Customs, Substances Contained

- 11.1 The *Supplier* undertakes to inform the *Distributor* in writing of any obligations to obtain permits for the (re)export of its goods under German, European and US export and customs regulations as well as export and customs regulations of the country of origin of its goods or of other restrictions relating to the marketability of the goods. Otherwise the *Distributor* shall be entitled to withdraw from the contract without requiring the setting of a deadline and regardless of whether the *Supplier* was at fault or not. Any further claims the *Distributor* may have shall be unaffected thereby.
- 11.2 For this, in its quotations, order acknowledgements and invoices the *Supplier* shall in particular provide the following information for the respective items:
- export list number in accordance with Annex AL to the German Foreign Trade Ordinance or comparable list items of relevant export lists,
 - ECCN (Export Control Classification Number) for US goods in accordance with the US Export Administration Regulations (EAR),
 - the trade-policy origin of its goods and the components of its goods, including technology and software,
 - information on whether the goods were shipped across the US, manufactured or stored in the US or manufactured using US technology,
 - the statistical reporting number (HS code) of its goods,
 - REACH candidates list of substances subject to authorization as well as
 - RoHS status including the exemptions applied
 - a contact within the *Supplier's* company for clarifying any queries from the *Distributor*.
- At the *Distributor's* request the *Supplier* undertakes to inform the *Distributor* in writing of all and any further export data relating to its goods and their components and to notify the *Distributor* in writing and without delay (before delivery of the goods concerned) of any changes in the above data.
- 11.3 The *Supplier* undertakes to comply with all and any applicable laws, regulations and customer requirements regarding the prohibition or restriction of specific substances. This shall also include the duty to label goods for recycling and disposal.

Section 12 Provision of Items and Material

- 12.1 The *Distributor* shall retain title to all and any tools, patterns, samples, models, profiles, drawings, standard sheets, artwork masters, gauges as well as all and any other items or records provided by the *Distributor* and these may not be passed on to any third party or be otherwise used for the *Supplier's* own purposes without the express prior consent of the *Supplier* provided in writing. The *Supplier* must protect such items against unauthorized inspection or use and, unless otherwise agreed, must return them in proper condition with the delivery of the goods, at the latest. The *Supplier* must not retain any copies thereof. There shall be no right of reten-

- tion with respect to these items.
- 12.2 If the *Supplier* produces goods, tools, drawings or other manufacturing equipment on behalf of the *Distributor* or according to the specifications provided by the *Distributor* and such production occurs at the expense of the *Distributor*, it is agreed that, in deviation of the provisions stipulated under item 4.6 hereof, title to these goods or manufacturing equipment shall pass to the *Distributor* already at the time of their manufacture. If the *Distributor* assumes only part of the costs, the *Distributor* shall acquire co-ownership of the goods and manufacturing equipment in proportion to the *Distributor's* share in the costs. Furthermore, the *Distributor* shall obtain all rights of use and exploitation with respect to the industrial or other property rights created with the production of the goods and equipment manufactured in accordance with sentences 1 and 2 above. The *Supplier* shall be granted the revocable right to store the manufacturing equipment for the *Distributor* in a safe place free of charge. The *Distributor* shall provide the manufacturing equipment to the *Supplier* on a loan basis for the manufacture of the goods ordered.
- 12.3 The *Supplier* shall not be authorized to use the items or records beyond the scope of the order or to offer or deliver them to any third party without the written agreement of the *Distributor*. In the event of violations, the *Supplier* must pay to the *Distributor* liquidated damages to the amount of € 5,000.00 per violation. Any further claims the *Distributor* may have shall be unaffected thereby. The *Supplier* shall label the items in such a manner as to ensure that the ownership of the *Distributor* is documented unequivocally also in relation to third parties.
- 12.4 The *Supplier* undertakes to handle and store the items provided with due care. The *Supplier* must insure the items provided at its own expense at replacement value against damage by fire, water and theft. As early as with the present the *Supplier* shall assign to the *Distributor* all and any claims for compensation arising from such insurance. The *Distributor* hereby accepts the assignment.
- 12.5 The *Supplier* undertakes to carry out all necessary maintenance and inspection work as well as all servicing and repair work with respect to the items provided in a timely manner and at its own expense. The *Supplier* shall advise the *Distributor* without delay of any damage that occurs.
- 12.6 The *Distributor* shall retain title to all and any material, parts, containers and special packaging provided by the *Distributor*. These may only be used as intended. The processing of materials and the assembly of parts shall be effected for the *Distributor*. It is agreed that the *Distributor* shall acquire co-ownership of the products manufactured using its materials and parts in proportion to the value of the items provided and the value of the overall product, which are in this respect stored for the *Distributor* by the *Supplier*.

Section 13 Liability of the Distributor

NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES; MAXIMUM LIABILITY. NEITHER DISTRIBUTOR NOR ITS REPRESENTATIVES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE GPC, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY SUPPLIER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. DISTRIBUTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO SUPPLIER PURSUANT TO THESE GPC IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Section 14 Final Provisions

- 14.1 Should any of the provisions of these General Purchasing Conditions be or become ineffective or unenforceable,

either in whole or in part, or should there be a gap in the GPC, such shall not affect the validity of the remaining provisions. Such ineffective or unenforceable provision or the gap shall be replaced and be deemed agreed by a provision which approaches the purpose of the ineffective or unenforceable provision as closely as possible; the same shall apply if circumstances requiring regulation have not been expressly arranged for.

- 14.2 Only with the express prior written consent of the *Distributor* shall the *Supplier* be entitled to transfer rights and obligations arising from contracts with the *Distributor* to a third party or have an order or material parts of an order performed by a third party.
- 14.3 Place of performance for all services and performances, in particular for delivery and payment, shall for both parties be the seat of the *Distributor*, or for deliveries the place of delivery designated by the *Distributor*.
- 14.4 These Terms and Conditions and the sale of Goods hereunder shall be deemed an agreement and transaction made in and under the laws of the State of Ohio, and for all purposes shall be constructed and enforced in accordance with and governed by the laws of the State of Ohio, excluding (i) its conflict of laws provisions and (ii) the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in Cuyahoga County, Ohio. Supplier hereby consents to the sole jurisdiction of the state and federal courts sitting in Cuyahoga County, Ohio, and Supplier agrees not to raise, and hereby waives, any defenses based upon venue, inconvenience of forum, lack of personal jurisdiction, improper service of process or the like in any such action or suit. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR COUNTERCLAIM ARISING UNDER OR IN ANY WAY RELATED TO THESE TERMS AND CONDITIONS OR THE SALE OF GOODS HEREUNDER UNDER ANY THEORY OF LAW OR EQUITY, WHETHER NOW EXISTING OR HEREAFTER ARISING.**
- 14.5 Successors and Assigns; No Third Party Beneficiaries; Relationship of Parties. These Terms and Conditions are binding on and inure to the sole benefit of Supplier and Purchaser and their respective permitted successors and permitted assigns. Nothing herein, express or implied, confers on any third party (including without limitation any subsequent purchaser of Goods from Purchaser) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions. Nothing in these Terms and Conditions creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between Supplier and Purchaser. Neither Supplier nor Purchaser has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other or to bind the other to any contract, agreement or undertaking with any third party.