

General Terms and Conditions of Performance, Sale and Delivery

I. Subject of the Contract, Scope, Offer

- The present Terms and Conditions shall apply exclusively; any conditions (as defined by § 305 of the German Civil Code, hereafter "BGB") presented by Customer which contradict or deviate from the present Terms and Conditions shall not be part of the contract.
- The present Terms and Conditions shall apply to all contractual performances of EVOGUARD GMBH, regardless of the legal type of contract that such performance is based on. Therefore, they shall apply both to sales contracts and to contracts for work, to contracts for delivery of a work and to any combined contract types.
- Any individual agreements concluded between the parties hereto concerning the rights and duties of these parties shall take precedence over the present Terms and Conditions.
- All agreements entered into between EVOGUARD GMBH and Customer with regard to performance of the contract shall be made in writing.
- The present Terms and Conditions shall only apply in relation to merchants, legal entities subject to public law and trustees of public funds (as respectively defined by § 310 BGB).
- The present Terms and Conditions shall also apply to all future business transactions between EVOGUARD GMBH and Customer.
- If an order qualifies as an offer (as defined by § 145 BGB), EVOGUARD GMBH may accept such offer within 4 weeks of its receipt.

II. Documents, Business Secrets, Preparatory Work

- EVOGUARD GMBH shall retain all rights, in particular property rights and copyrights, in all cost estimates, calculations, plans, illustrations, drafts, preparatory work, drawings and other documents. Such works shall not be made accessible to third parties without the written consent of EVOGUARD GMBH. Any documents indicated as confidential by Customer shall not be made accessible to third parties by EVOGUARD GMBH without the written consent of Customer. Documents supplied by EVOGUARD GMBH shall be used solely to prepare for the conclusion of the contract, and thereafter for its execution. Any further use shall be prohibited.
- Customer shall not disclose to third parties any business secrets of EVOGUARD GMBH or of its associated companies (as defined by § 15 of the German Law of Share Corporations), which Customer has received knowledge of. EVOGUARD GMBH shall not disclose to third parties any business secrets of Customer or its associated companies, which EVOGUARD GMBH has received knowledge of.
- Both EVOGUARD GMBH and Customer shall use adequate means to ensure that their directors, officers and employees will also comply with the above obligations.

III. Time of Delivery, Scope of Delivery, Acceptance, Delay

- The time agreed for delivery shall commence upon dispatch of the order confirmation and clarification of all technical questions, provided that Customer has made available to EVOGUARD GMBH all plans, documents, approvals, releases and permits required, and any agreed advance payment has been received.
- The performance owed by EVOGUARD GMBH shall be deemed to have been effected in due time where the object of contract was duly shipped prior to expiry of the term for delivery, or where Customer was informed of EVOGUARD GMBH's readiness to make shipment within this term.
- A default in performance due to force majeure shall not entitle Customer to a claim (in particular, a claim for a contractual penalty or damages) against EVOGUARD GMBH. Any unforeseeable event or an event, which - though foreseeable - is beyond the influence and control of EVOGUARD GMBH and the effects of which cannot be avoided by the exercise of reasonable care shall be considered an event of force majeure. Such events include but are not limited to delayed performance by subcontractors/suppliers, acts of war (whether declared or not), war-like conditions, riot, revolution, rebellion, military or civilian coups d'état, insurrection, turmoil, outrages, mobilisation, requisition, blockade, embargo, government order, sabotage, strikes, go-slow strikes, lockout, epidemic diseases, fire, floods, storm tides, typhoons or other poor weather conditions, lack of raw materials and supplies, shipwreck, insufficient loading capacity or port facilities, delays resulting from transportation, loading and discharge, non-availability of freight capacity, justifiable change/exchange of freight forwarder and/or carrier and/or ship owner and/or other commercial shipping company, accidents in transit, earthquakes, radioactive accidents, physical or man-made obstructions of any kind at the building site/production facility.
- In all cases, where obstacles to performance - regardless of their nature - are not the responsibility of EVOGUARD GMBH, the latter shall be entitled to receive an extension of time for delivery as well as additional payments to compensate for the additional performance and/or costs.
- Where shipment is postponed at the request of Customer, Customer shall reimburse the costs actually incurred by the storage of the goods. In case of storage on-site in a plant of EVOGUARD GMBH, the latter shall be entitled to a lump-sum minimum amount of 0.5 % of the agreed price for each month as compensation for its additional costs. This stipulation shall not preclude EVOGUARD GMBH or Customer from furnishing proof of higher or lower costs, respectively.
- Clause 5 above shall equally apply to any other case of delayed acceptance on the part of Customer. Where Customer is in default with regard to acceptance or is in violation of any other contractual obligation with regard to cooperation, the risk of accidental loss, destruction or accidental deterioration of the goods shall pass to Customer at the time such default arises.

- This agreement shall not preclude any further rights that EVOGUARD GMBH may have.
- Compliance with the time for delivery shall be subject to Customer duly fulfilling his contractual duties in a timely manner.
- Partial deliveries by EVOGUARD GMBH may only be rejected where they impose on Customer in an unreasonable manner.
- Where acceptance is provided for by contract or by law, such acceptance shall be governed by the legal provisions applicable to acceptance in contracts for work.

IV. Price and Payment

- The prices agreed upon are stated on an ex works basis. Any shipping costs, including the costs of packaging, loading, stowage and unloading shall be borne by Customer. The value-added tax applicable at the time of delivery shall be added to the above prices.
- To the extent that EVOGUARD GMBH is obliged by German regulations governing packaging to take back packaging used for transportation, Customer shall bear the costs of returning the used packaging and the reasonable costs for the reuse thereof. To the extent that the packaging taken back cannot be reused, Customer shall bear the costs of the material processing incurred by EVOGUARD GMBH. In addition, Customer shall pay any duties, clearance charges, taxes and other charges incurred as a result of taking back transport packaging.
- Containers used for transportation are not within the scope of this contract and are not considered packaging. They shall remain property of EVOGUARD GMBH. They shall be re-exported by Customer at his expense (shipping costs, duties, clearance charges, taxes and other charges) and risk, and sent back to EVOGUARD GMBH.
- Tools, excess material, welding supplies and other auxiliary equipment are not within the scope of this contract. They shall remain property of EVOGUARD GMBH. They shall be re-exported by Customer at his expense (shipping costs, duties, clearance charges, taxes and other charges) and risk, and sent back to EVOGUARD GMBH.
- The price agreed upon shall be due in cash without any deduction.
- EVOGUARD GMBH shall be entitled to interest on payments due and in arrears to the extent provided by law. The assertion by EVOGUARD GMBH of further rights or damages shall not be affected hereby.
- Customer shall not be entitled to any rights of set-off or retention, unless his counter-claims have become legally effective (res judicata), are uncontested or have been acknowledged by EVOGUARD GMBH, and EVOGUARD GMBH was given at least one month's advance notice of such counter-claim.
- Where circumstances are brought to the attention of EVOGUARD GMBH after the conclusion of the contract, which cast doubt on the credit standing of Customer, notwithstanding the above or agreed conditions of payment EVOGUARD GMBH shall be entitled to security for payment in the form of a simple (i.e. not payable on first demand), irrevocable payment bond or bank guarantee of indefinite term, which shall be returned against payment of the price owed.
- EVOGUARD GMBH shall be entitled to increase the agreed price reasonably if there are cost increases after the conclusion of contract, in particular where this is due to collective labour agreements or increases in the cost of materials. Upon request, EVOGUARD GMBH shall furnish proof for such increases to Customer.
- EVOGUARD GMBH shall be entitled to increase the agreed price reasonably if - after the conclusion of contract - Customer requests that the object of contract be modified, and additional expenses and efforts are required for such modifications. Upon request, EVOGUARD GMBH shall furnish proof of such additional expenses and efforts to Customer.
- Customer shall cause the agreed purchase price to be credited, at his own risk and expense, to one of the bank accounts indicated by EVOGUARD GMBH.

V. Passing of Risk

- The risk of accidental loss, destruction and accidental deterioration of the object of contract shall pass to Customer upon handing over of the object of contract to the first carrier. This shall also apply to any partial shipments or in case where EVOGUARD GMBH itself has assumed additional costs, such as the cost of shipment or of other services, e.g. transportation, erection or assembly of the object of contract.
- Where the object of contract or part thereof is ready for shipment, and shipment or delivery is delayed for reasons in the responsibility of Customer, the risk of accidental loss, destruction and accidental deterioration shall pass to Customer on the day the goods are ready for shipment.
- Where EVOGUARD GMBH arranges for transportation of the object of contract, and damage in transit or a defect due to transportation is caused to the above object after delivery to the carrier, EVOGUARD GMBH shall assign its claims resulting therefrom, if any, against transport insurance(s) and carriers to Customer at the latter's request (any liability for the existence of such claims to be excluded); such assignment shall be concurrent with payment of the overall price agreed for the object of contract and of all costs owed. Any further claims against EVOGUARD GMBH resulting from any damage in transit or a defect due to transportation shall be excluded. This shall also apply where the scope of contract includes assemblies to be performed or the erection of a turn-key plant.
- Any limitation periods under transport or maritime law, bar periods, exclusions of liability and limitations of liability, which apply in favour of (natural or legal) persons entrusted with the transportation/loading/ unloading/storage of the object of contract in their relationship to EVOGUARD GMBH shall apply equally in favour of EVOGUARD GMBH in the contractual relationship between Customer and EVOGUARD GMBH.

5. Customer shall examine the object of contract for defects immediately upon unloading thereof in the port of destination and - if a defect is noted or suspected to exist - shall acknowledge receipt subject to reservation only and shall notify EVOGUARD GMBH immediately of any such existing or suspected defect. If the above obligations are not observed, the transport insurance(s) coverage is voided. Where coverage is voided for such reasons, liability of EVOGUARD GMBH for damage encompassed by the transport insurance(s) exclusion clause shall also be excluded.

VI. Retention of Ownership

1. EVOGUARD GMBH shall retain ownership of the object of contract until payment of all amounts owed by Customer has been received irrevocably and without reservation.
Until such date, Customer shall neither be entitled to charge the object of contract with a security interest (e.g. ownership by way of security, right of lien, mortgage, land charge, etc.) nor to resell the same. Where the law applicable at the site of construction/erection (lex rei sitae) does not recognise a provision of security by means of retaining ownership, such other means of providing security shall be deemed to have been agreed upon, which approaches most closely a "retention of ownership" or which constitutes according to that law the typical security (e.g. "charge" or "security interest, attached and perfected"). Customer shall fully cooperate in all acts (in particular, the provision of formal declarations) required by the law applicable at the site of construction/erection for the creation of a fully enforceable retention of ownership or any other fully enforceable means of providing security.
2. Customer shall notify EVOGUARD GMBH immediately of any attachment, seizure or other measure taken by third parties with regard to the object of contract. Customer shall submit to EVOGUARD GMBH any documents required for an intervention in this regard.
3. As long as rights are retained in the object of contract in favour of EVOGUARD GMBH pursuant to the above clause 1, EVOGUARD GMBH shall be entitled - with prior notice - to reclaim the object of contract delivered in case there has been a breach of duty by Customer, in particular where the ownership of EVOGUARD GMBH of the object of contract is endangered, where the object of contract delivered is improperly used by Customer, or where Customer defaults on payment. Where Customer does not act on the claim to return the object of contract, the required number of EVOGUARD GMBH's staff shall be irrevocably entitled to enter the construction site/manufacturing plant of Customer and to disassemble and remove the object of contract delivered. Reclaiming the object of contract shall not constitute a rescission of the contract, unless EVOGUARD GMBH has expressly declared such rescission in writing. Any attachment of the object of contract by EVOGUARD GMBH shall constitute a rescission of contract.
4. Where the object of contract is taken back, EVOGUARD GMBH shall be entitled to resell it; the proceeds of such realisation shall be set off against any liabilities of Customer, while allowing for reasonable costs of realisation.
5. Any processing or transformation of the object of contract by Customer shall always be carried out for and on behalf of EVOGUARD GMBH. Where the object of contract is processed together with other objects not owned by EVOGUARD GMBH, EVOGUARD GMBH shall acquire co-ownership of the new corporeal object in the proportion of the value of the object of contract to the other processed objects at the time of processing. The provisions regarding reserved rights applicable to the object of contract shall apply accordingly to the corporeal object resulting from processing.
6. Where the object of contract is inseparably commingled with other objects not owned by EVOGUARD GMBH, EVOGUARD GMBH shall acquire ownership of the new corporeal object in the proportion of the value of the object of contract to that of the other objects at the time of commingling. If commingling takes place in such a way that Customer's corporeal object is to be considered the principal object, a transfer of co-ownership by Customer to EVOGUARD GMBH on a pro-rata basis shall be deemed to have been agreed upon. The sole ownership or co-ownership thus created shall be held in custody by Customer for EVOGUARD GMBH.
7. As security for the claim of EVOGUARD GMBH against Customer, Customer shall assign to EVOGUARD GMBH any claims accruing to Customer against any third party as a result of connecting the object of contract with real estate.
8. EVOGUARD GMBH undertakes to release the securities it is entitled to at the request of Customer, to the extent that the value of realisable securities of EVOGUARD GMBH exceeds the secured claims by more than 20%; the selection of the securities to be released shall be at the discretion of EVOGUARD GMBH.

VII. Rights of Customer in Case of Defects

1. EVOGUARD GMBH shall be liable to Customer that the object of contract at the time of the passing of risk to Customer is free of physical and legal defects. Irrelevant deviations from qualities agreed upon shall not constitute defects.
2. Nonetheless, EVOGUARD GMBH shall not be held liable for defects or damage arising from:
Defects resulting from constructions prescribed or specified by Customer, defects resulting from materials (including sample materials) prescribed, specified or supplied by Customer, or defect resulting from other input of Customer.
Defects or damage arising after the passing of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, inappropriate exchange materials, faulty construction work, inappropriate site or such defects arising due to special external circumstances not envisioned by the contract, as well as non-repeatable software errors.

Where Customer or third parties apply unsuitable modifications or maintenance work, any liability of EVOGUARD GMBH for these modifications, work or their consequences shall be excluded.

3. EVOGUARD GMBH shall not be liable for wearing parts (definition to follow) of the object of contract. Wear is the progressive loss of material on the surface of a solid body, due to mechanical causes, i.e. contact with and movement relative to that of a solid, liquid or gaseous opposing body. A wearing part is one used in places which unavoidably experience wear from operations, in order to protect other operating parts from wear, and which by design is intended for replacement.
4. Where a defect in the object of contract gives rise - while taking in account clauses 1 through 3, above - to the respective remedial rights of Customer, Customer shall, at first, only be entitled to demand remedial performance with regard to the defects within a reasonable time, whereby EVOGUARD GMBH is entitled to choose, according to its reasonably exercised discretion, between correction of defects or replacement delivery. Where the claim arises due to EVOGUARD GMBH withholding a defect in order to deceive or granting a guarantee regarding a quality of the object of contract, Customer shall have the right to choose between correction of defects and replacement delivery. The costs necessary for the purpose of remedial performance shall be borne by EVOGUARD GMBH. Replaced parts shall become property of EVOGUARD GMBH.
5. When requested to do so by EVOGUARD GMBH and at the latter's expense, Customer shall send the defective parts in question to EVOGUARD GMBH for repair or replacement, unless the defect requires repair at the place of installation.
In such case, EVOGUARD GMBH's obligation to provide remedial performance with regard to the defective part shall be deemed to have been completely fulfilled if EVOGUARD GMBH returns the duly repaired part or sends a corresponding replacement part to Customer.
Where costs have increased due to the object of contract having been brought to a site other than Customer's place of business, contrary to the usage originally specified, claims of Customer for such additional costs, that are made necessary by the remedial performance, in particular costs due to transportation and infrastructure, labour and material, shall be excluded.
6. Where the defective part is a product delivered by a third party, liability of EVOGUARD GMBH shall initially be limited to an assignment of the liability claims which EVOGUARD GMBH is entitled to against such third party. Only once legal action has been taken against such third party by Customer shall EVOGUARD GMBH's own liability be revived. This limitation of liability shall not apply, where the liability of EVOGUARD GMBH arises due to EVOGUARD GMBH withholding a defect in order to deceive or assuming a guarantee regarding a quality of a product manufactured by a third party.
7. Customer shall examine the object of contract directly upon receipt thereof and notify EVOGUARD GMBH of any recognisable defects without delay. This obligation of providing notice immediately shall also apply where a defect emerges later. The fact that EVOGUARD GMBH is certified as conforming to ISO 9001 shall not serve to release Customer from its duty to examine and give notice of defects according to § 377 of the German Commercial Code (HGB). Where Customer omits such notice, the object of contract shall be deemed to have been approved regardless of any defect.
8. Where Customer does not accept the remedial performance offered by EVOGUARD GMBH pursuant to the contract, upon fruitless expiry of an extension of time allotted EVOGUARD GMBH shall be released from liability for the claimed defect.
9. Where remedial performance has failed, Customer shall be entitled - subject to the conditions contractually agreed upon, including those provided for by the present Terms and Conditions - to make any other claims based on the defect. In particular, failure of remedial performance shall be established, where EVOGUARD GMBH has allowed a reasonable extension of time allotted by Customer to pass fruitlessly, or has unduly delayed or refused remedial performance, or where a reasonable number of attempts at remedial performance have been unsuccessful.
10. EVOGUARD GMBH may refuse correction of a defect, where Customer does not make payment as agreed upon.
Customer shall only be entitled to retain payment for cause, where the notice of defect is justified beyond all doubt. This right of retention shall be limited in its amount to four times the cost necessary to correct the defect. Where Customer makes a claim based on a defect, and it is subsequently shown, in particular by means of an appropriate inspection by EVOGUARD GMBH, that the claim based on defect made by Customer is unwarranted for factual or legal reasons, EVOGUARD GMBH shall be entitled to reasonable payment and reimbursement of all expenses for services, particularly those rendered in relation to the inspection.
11. All claims for damages shall be subject to the limitations, modifications and exclusions provided by the following Article VIII, as set out below.

VIII. Limitation or Exclusion of Liability of EVOGUARD GMBH

1. Customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by EVOGUARD GMBH. In particular, Customer shall comply with the instructions of EVOGUARD GMBH on how the object of contract is to be used without risk, which precautions are to be taken regularly and individually, and which types of errors in usage are to be avoided. If Customer breaches this duty, EVOGUARD GMBH shall not be liable for any damage resulting therefrom.
2. Limitation of liability of EVOGUARD GMBH for damage, both direct and consequential, resulting from defects:

EVOGUARD GMBH shall neither be liable for any direct damage resulting from defects (including damage consisting of lost profits) nor for consequential damage resulting from defects, regardless of legal reason. This exclusion of liability shall not apply to claims by Customer for damage based on gross fault (intent/gross negligence).

3. Limitation of liability of EVOGUARD GMBH for ordinary (as opposed to gross) negligence:
Any claims of Customer, regardless of legal reason, for damages not based on gross fault (intent/gross negligence) on the part of EVOGUARD GMBH shall be excluded, unless the damage is due to the presence of a defect or the breach of material contractual duties (so-called "cardinal duties"), the fulfilment of which is a prerequisite to the proper execution of the contract.
4. Limitation of liability of EVOGUARD GMBH for not typically foreseeable damage:
Unless any claims for damages by Customer are already excluded due to the limitations of liability of EVOGUARD GMBH for direct and consequential damage (clause 2) and for ordinary negligence (clause 3), where such claims - regardless of legal reason - are not based on gross fault (intent/gross negligence) on the part of EVOGUARD GMBH, such claims shall be limited in their amount to compensation for such damage which EVOGUARD GMBH, taking into consideration the circumstances that EVOGUARD GMBH knew or should have known at the time of conclusion of the contract, should have been able to foresee as a possible consequence of a breach of duty or a breach of contract (typically foreseeable damage).
5. Limitation of liability of EVOGUARD GMBH for improper performance:
Unless a claim by Customer has already been excluded due to the limitations of liability in favour of EVOGUARD GMBH with regard to direct or consequential damages (clause 2) and for ordinary negligence (clause 3), where - as a result of improper performance - Customer asserts a claim for either damages due to breach of duty or damages in lieu of performance against EVOGUARD GMBH, and where such claim is not based on gross fault (intent/gross negligence), this claim for damages shall be limited - beyond the limitation of liability of EVOGUARD GMBH for the typically foreseeable damage (clause 4) - to a maximum amount of 10% of the contract price of machinery delivered. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship, which impede or prevent proper fulfilment of contractual duties or where one party to the contract causes injury to the other party.
6. Limitation of liability of EVOGUARD GMBH for damage caused by delay:
The above limitations of liability in favour of EVOGUARD GMBH with regard to direct and consequential damages (clause 2), ordinary negligence (clause 3), not typically foreseeable damage (clause 4) and improper performance (clause 5) shall also apply to claims for damages of Customer against EVOGUARD GMBH with regard to damage caused by delay, unless such damage is based on gross fault (intent/gross negligence). In excess of the foregoing, in all cases of delayed delivery, including claims both for damages by Customer due to delay of delivery as well as damages in lieu of delivery, and even in cases where time for delivery may have been extended for EVOGUARD GMBH and has expired, damages shall be limited in their amount to 0.5% per fully completed week of delay - to a maximum of 5% - based on the price of that portion of the delivery, which could not commence operations expeditiously due to such delay.
7. Limitation of liability of EVOGUARD GMBH for persons employed in performing an obligation:
Except where - due to gross fault (intent/gross negligence) of persons employed in performing an obligation - such contractual duties were breached, the fulfilment of which was prerequisite to the proper execution of the contract, any liability for persons employed in performing an obligation (§ 278 BGB), regardless of legal reason, shall be excluded. In no event shall the liability of EVOGUARD GMBH for a person employed in performing an obligation exceed the liability of EVOGUARD GMBH for its own fault as provided for in the above limitations of liability. According to § 278 BGB, a person employed in performing an obligation is a natural person or legal entity whose services the obligor makes use of in order to perform its obligations.
8. Customer's right to rescind the contract due to non-performance or performance not in conformity with the contract shall be excluded. This shall not apply, where EVOGUARD GMBH has intentionally or grossly negligently failed to perform in conformity with the contract.
9. The above limitations of liability (Art. VIII.1 through VIII.8) shall apply neither to claims made pursuant to ss.1 (and following) of the Product Liability Law, nor to claims based on defects withheld in order to deceive, nor to claims based on the grant of a guarantee regarding a quality, nor to claims based on injury to life, body or health of Customer, his officers and employees, nor to claims based on an obstacle to performance in existence at the time of conclusion of contract, which EVOGUARD GMBH had knowledge of at that time, or is at fault for lacking of such knowledge. The above provisions shall not entail a shift in the burden of proof to Customer's disadvantage.
10. In cases where the freight forwarder is arranged for by the Customer, EVOGUARD GMBH will not be held liable for any costs incurred as a result of additional security checks or time delays occasioned by the requirements of the German Aviation Security Act and the EU regulations (EC No. 300/2008; (EC) No. 185/2010; (EC) No. 173/2012; (EC) No. 272/2009 or any other current national or international statutory provisions. The Customer agrees, on EVOGUARD GMBH'S first demand, to indemnify and hold EVOGUARD GMBH harmless from any costs or damages to the extent that such costs or damages are incurred as a result said of additional security checks as well as any ensuing time delays.

IX. Limitation Period

1. Where claims arising due to defects would - by default - be subject to statutory limitation periods of 2 years (e.g. § 438 s. 1 no. 3 BGB; § 634 a s. 1 no. 1 BGB), such limitation period shall be shortened to 1 year. Where Customer has claims due to defects which arise from the grant of a guarantee regarding a quality, these claims shall be excluded from such shortening of the limitation period. For all other claims, the statutory limitation periods shall apply.
2. The limitation period shall commence upon delivery of the object of contract and in case of an assembly obligation by EVOGUARD GMBH upon completion of the assembly.
3. Where Customer's acceptance is in delay, the limitation period shall commence upon the occurrence of delay in acceptance.

X. Software

To the extent that KRONES AG provides Customer with software, the following shall apply:

1. KRONES AG shall grant Customer a simple right of use pursuant to § 31 s. 2 of the Copyright Law (UrhRG) regarding the software provided. § 31 s. 2 of the Copyright Law reads: "The simple right of use entitles the holder thereof to make use of the work besides the author/originator or other persons entitled in the manner allowed to him." Customer shall only be granted a right of use. At all times, KRONES AG shall remain the sole owner/holder of all rights over immaterial property regarding the software.
2. Customer shall only be entitled to use the software provided in connection with the object of contract.
3. Customer shall not be entitled to receive the source program/source codes.
4. Customer shall be entitled to make use of the software provided for an unlimited period of time for the entire operational life span of the object of contract.
5. Customer shall not be entitled to assign its right of use to third parties, in particular Customer shall not be entitled to sell, rent, sub-licence or make available the software and the associated documentation to third parties by any other means. Where Customer assigns its complete business enterprise to a third party, Customer shall be entitled to assign its own right of use to such third party. Where Customer sells the complete object delivered to a third party in the normal course of business and such third party is not a competitor of KRONES AG, upon request KRONES AG shall consent to an assignment of the right of use granted to Customer, unless KRONES AG presents reasons for the fact that such action will create the risk of providing competitors of KRONES AG with secret knowledge (trade/business secrets) of KRONES AG.
6. The right of use of Customer shall be non-exclusive. KRONES AG shall be entitled to grant any form of right of use regarding the software provided to any number of other customers.
7. With the exception of staff members, Customer shall not make the software supplied available or accessible to any third party, neither temporarily nor free of charge.
8. Customer shall not change in any manner whatsoever any markings, copyright or ownership notices applied to the software provided.
9. Customer shall not create copies of the supplied software, except that one backup copy may be created by a person entitled to use the program, where this is necessary to secure the future use thereof. The backup copy shall not be used concurrently with the original software.
10. Customer shall not be entitled to photocopy, place on microfilm, electronically duplicate or otherwise copy, whether wholly or partially, the documentation associated with the software.
11. Any disassembly, reverse engineering or decompilation of the software shall be prohibited, and Customer shall neither arrange for nor permit the above to be done, except in accordance with the conditions of § 69 e of the Copyright Law (UrhRG).
12. KRONES AG shall be entitled to all proprietary rights, copyrights and other industrial property rights to the software, updates and documentation. The same shall apply to any modifications and translations/compilations of the programs.
13. KRONES AG is entitled to carry out, at its own expense, any alterations to the software installed at Customer's premises which may be necessary due to the assertion of proprietary rights by third parties. Customer cannot derive any rights from this.

XI. Jurisdiction, Applicable Law, Place of Performance

1. Where Customer is a fully qualified merchant registered in a German Commercial Register, a legal entity subject to domestic public law or a trustee of public funds (as respectively defined by § 310 BGB), the registered place of business of EVOGUARD GMBH shall be place of jurisdiction for any disputes arising from or in connection with the contractual relationship. In legal proceedings brought against EVOGUARD GMBH by Customer with no domestic place of jurisdiction, the exclusive place of jurisdiction shall also be the registered place of business of EVOGUARD GMBH. In legal proceedings brought by EVOGUARD GMBH against Customer with no domestic place of jurisdiction, the registered place of business of EVOGUARD GMBH shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements concluded between the parties shall take precedence.
2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of the present Terms and Conditions of EVOGUARD GMBH and to all legal relationships of the contractual parties and their legal successors/assigns, that result from the contract and/or any possible ancillary or subsequent transactions. The present choice of law clause as well as the above

covenant on jurisdiction shall also be governed by the laws of the Federal Republic of Germany.

The application of the U.N. Law on the Sale of Goods (Convention of the United Nations dated April 11, 1980 relating to contracts on the international sale of goods) shall not be excluded by virtue of the above choice of law.

3. The registered office of EVOGUARD GMBH shall be the place of performance.

Origin of goods: 0 = Third country products 1 = EU origin 2 = EFTA origin