

Purchasing Conditions

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Purchasing Conditions Pankl Racing Systems AG („PANKL“), Industriestraße West 4, A-8605 Kapfenberg, including all PANKL-Affiliates, January 2011

1. General Terms / Scope

- 1.1 The legal relationship between the SUPPLIER and PANKL in connection with the delivery of materials, semi-finished goods, finished goods, adaptations (in particular also heat treatments, surface treatments, etc.), inspections or services (in particular engineering services) shall be determined by the following general terms and conditions (“Purchasing Conditions”) and additional terms, if any.
- 1.2 These Purchasing Conditions shall apply exclusively; contravening or differing terms and conditions (in particular general terms and conditions or sales conditions) of the SUPPLIER shall not be applicable, even if PANKL has not explicitly contradicted them in individual cases. The Purchasing Conditions apply also in cases, where PANKL accepted the deliveries made by the SUPPLIER and paid for such deliveries, even if PANKL was aware of SUPPLIER's contravening or differing terms and conditions.
- 1.3 The Purchasing Conditions also apply for all future orders of PANKL and until PANKL issues new purchasing conditions, even if PANKL does not make reference to the Purchasing Conditions in each order.
- 1.4 These Purchasing Conditions shall apply for business relationships of the SUPPLIER with any company of the PANKL Group, regardless of the fact, with which of the PANKL Group companies the SUPPLIER has agreed upon the application of these Purchasing Conditions.

2. Conclusion of the Contract / Orders and Acceptance / Changes and Amendments

- 2.1 Supply contracts, orders and acceptances, order releases and other transactions, as well as any changes and amendments thereof have to be made in writing. Orders and order releases may also be issued by electronic data-transfer.
- 2.2 Non-written agreements made prior to, at or after the conclusion of the contract, especially subsequent amendments or changes of the Purchasing Conditions (including this in writing provision-clause), as well as any kind of ancillary or collateral agreements are subject to the written confirmation of PANKL.
- 2.3 Cost estimates and offers of the SUPPLIER are legally binding and costs for such estimates shall not be reimbursed by PANKL, unless otherwise agreed in writing.
- 2.4 If the SUPPLIER does not accept PANKL's order within fourteen days after its receipt, PANKL has the right to cancel its order.
- 2.5 To the extent reasonably acceptable for the SUPPLIER, PANKL may request from the SUPPLIER changes of the supplied products to be made by the SUPPLIER relating to their construction and manufacturing process. The impact of these change requests, especially with respect to additional costs or the reduction of costs and to delivery dates, are to be resolved in an appropriate and mutually agreeable manner. Any changes made by the SUPPLIER are subject to the prior written approval of PANKL.

3. Product Price and Payment Terms and Conditions

- 3.1 The SUPPLIER shall fill in the prices for the products into the copy of PANKL's order and shall return the copy to PANKL in cases where the prices are not determined at the time of PANKL's order. As far as PANKL has not accepted the price in writing, a valid contract shall not come into force. All additional charges (customs, package, transport, insurance) have to be stated separately in the SUPPLIER's offer and shall be borne by the SUPPLIER (except the applicable value added tax (VAT)), unless otherwise agreed in writing. Any increase of the product price including additional charges is subject to the prior written approval of PANKL.
- 3.2 Unless the parties have agreed otherwise in writing, PANKL shall pay the product price after the receipt of the appropriate invoice within 14 days following the delivery minus 3 % cash discount or net within 30 days following the delivery.
- 3.3 PANKL may exercise its setoff and retention rights in accordance with the applicable law.

4. Delivery Dates, Passing of the Risk, Transport

- 4.1 The delivery dates and terms as defined in the order or the order releases are binding.
- 4.2 Delivery to PANKL shall be made DDP Incoterms 2000 to PANKL or to the place named by PANKL, unless different delivery terms have been agreed in writing. In case of DDP deliveries or in case PANKL has agreed to bear the transportation costs, PANKL has the right to change the delivery term from DDP to FCA Incoterms 2000. If PANKL has changed to FCA, the transportation costs will be deducted from the price. If PANKL bears the transportation costs, the SUPPLIER must choose the commercially most suitable way for transport and package, unless PANKL determines the way of the transport and the package.
- 4.3 If DDP was agreed upon, the day of the arrival of the product and the dispatched documents at PANKL's or at the named place shall be considered as the timely delivery at the agreed delivery date. This also applies if FCA has been agreed to: in this case, however, the SUPPLIER has to dispatch the products, taking into consideration the time usually required for dispatching and transport.
- 4.4 In case of contracts where the amount of the products to be delivered have to be determined by a respective release order (Abrufauftrag) of PANKL, PANKL shall define the amount of the single order in its sole discretion and also the date of the deliveries. Any notifications of SUPPLIER by PANKL concerning the estimated amounts of delivery will not bind PANKL to issue the respective release orders. Release orders may also be issued by electronic data transfer according to the standards applicable in the automotive and/or aerospace industries.
- 4.5 In case the SUPPLIER delivers more or less products than ordered, as well as in case of an early delivery, PANKL reserves the right to reject the delivery at SUPPLIER's expense or to amend the invoice accordingly.
- 4.6 The SUPPLIER is obliged to immediately inform PANKL about any foreseeable delays of the determined and fixed dates of delivery and/or other performance obligations. Simultaneously, the SUPPLIER has to inform PANKL about the reasons for and the duration of the delay. Physical acceptance of the delivery of the products without the reservation of its rights shall not be considered as the forfeiture of PANKL's rights arising out or in connection with the delayed delivery.

5. Delayed Delivery

In case of a delay in performance by the SUPPLIER, the SUPPLIER shall pay PANKL an amount of 0.5% of the delayed order value as a contracting penalty for each calendar day of delay. The maximum amount of the contracting penalty is limited to an amount equaling 10% of the delayed order value. Moreover, in case of a delay by the SUPPLIER, respective legal provisions shall be applicable. In case of a payment of compensation by the SUPPLIER, the already paid contracting penalty will be counted against the payment of damages.

6. Force Majeure

In case of Acts of God, civil unrest, governmental or administrative actions and other non-foreseeable, inevitable events, PANKL shall be released from its obligations during the duration and to the extent of such disturbance. Supply shortages and delayed deliveries of (sub-) suppliers of the SUPPLIER shall however not count as force majeure.

7. Notice of Defects

PANKL shall notify SUPPLIER of defects of the delivered products within 7 working days after such defects have been detected within the proper course of business. To this extent, SUPPLIER shall forfeit any rights that the notification of the defects is delayed. Payment of the price shall not be considered as the acceptance by PANKL of the defective products.

8. Warranty

- 8.1 The SUPPLIER shall provide a comprehensive warranty for himself, his subcontractors and sub-suppliers for the complete and flawless execution of order- and delivery calls, in particular for the usually assumed and, if need be, assured product properties according to patterns, samples and public statements. The SUPPLIER assumes full responsibility for the observance of all relevant legal provisions and regulations for the deliveries and/or any other services applicable at the place of destination. Furthermore, he assures that the design (as far as it is the object of agreement), finish, functionality and manufacturing technology of the delivery item and/or other services correspond to the respectively applicable provisions and the state of the art level of science and technology and that only first-class materials in appropriate quality, suitable for the respective purpose were used.
- 8.2 Unless these Purchasing Conditions state otherwise, the applicable law concerning defects or the non-performance (including improper title to the products) shall apply. Deviations from the agreed product specifications shall be considered as a material non-performance of the SUPPLIER's obligations, except if PANKL is able to remedy the defect without any noticeable effort.

PANKL has the right to choose the type of supplementary-performance. In case the SUPPLIER does not immediately remedy the defect after being requested by PANKL or in urgent circumstances, PANKL has the right to perform the remedy work by itself or a third party, especially in order to avoid higher damages or in the event of imminent danger. The respective remediation costs shall be borne by the SUPPLIER. Furthermore, the SUPPLIER shall bear additional remediation costs arising out or in connection with the defects, especially costs for transport, assembly and disassembly, administrative costs, etc. (on PANKL's level as well as on the level of PANKL-customers, their customers, and end customers) as well as all other costs in connection with the remedy of the defect. In addition, the SUPPLIER shall bear also such costs which PANKL might incur if PANKL is requested by its customers to take part in a “Remedy-of-Defect-Program” like “Contained Shipping Level” and “Executive Champion Programs” or similar programs of its customers, in particular automotive or aerospace companies. Statutory or other contractual claims arising out or in connection with the supply of defective products remain unaffected.

- 8.3 Unless otherwise agreed in writing, the warranty period shall be 36 (thirty six) months. The warranty period starts with the handing over of the final product in which SUPPLIER's products will be built in to the end user, the latest 42 months after delivery to PANKL or to a third party named by PANKL. In case the product is subject to a formal acceptance test, the warranty period shall commence upon the acceptance by PANKL: if the acceptance test is being delayed without SUPPLIER being responsible for such a delay, the warranty period commences the latest 12 months after the SUPPLIER has provided the product for the acceptance test.
- 8.4 For those parts of the defective product which could not be used during the inspection of the defective product or the remediation work, the respective warranty period shall be prolonged by the period of such non-usability.
- 8.5 In cases of the delivery of replacement parts or in cases a repaired part shows the same defect or a defect is the consequence of the repair, the respective warranty period shall commence again.
- 8.6 Any claims which already exist at the commencement of the warranty period or which come into existence during the warranty period shall be subject to a warranty period in accordance with the statutory warranty period.
- 8.7 All other claims (in particular claims for damages) due to breach of contract or other obligations remain unaffected

9. Product Liability / Indemnification / Insurance

- 9.1 As far as PANKL is subject to a claim based on product liability, the SUPPLIER is obliged to hold PANKL harmless and shall indemnify PANKL of all claims brought by third parties, as far as such claims have been caused by a defect of the product delivered by SUPPLIER. In case PANKL's liability depends on an act of negligence or intent, the SUPPLIER is only liable if SUPPLIER itself acted in that manner.
- 9.2 Furthermore, and subject to clause 9.1, the SUPPLIER is obliged to reimburse PANKL for all costs and expenses concerning legal fees and recalls. PANKL shall inform SUPPLIER as far as possible and reasonably expectable - about the extent of such recall and SUPPLIER shall explain his view on this matter. The SUPPLIER is obliged to take out and maintain such recall and liability and recall insurance with an adequate insured amount for each personal injury / material-damage. Otherwise, the mandatory law shall be applicable.

10. Performance of Work

Persons and third parties engaged by the SUPPLIER for the performance of his obligation under the respective contract and which will be physically present at PANKL's premises or at premises of third parties named by PANKL, the respective work regulations of PANKL or such third parties named by PANKL shall be complied with.

11. Retention of Title and PANKL-Materials

- 11.1 PANKL has the right to sell the product within the ordinary course of business, however, without accepting any “extended” retention of title as well as any other form of retention of title. The SUPPLIER is obliged to inform PANKL immediately about any rights third parties might have concerning the product. This also applies for any (potential) assignment of receivables by the SUPPLIER to third parties with respect to the products.
- 11.2 PANKL shall remain the owner of any materials, parts, containers and/or special packaging provided by it to SUPPLIER. Those items shall only be used in accordance with the agreed terms of use. The processing of such items and the assembling will be carried out on behalf of PANKL. PANKL shall become co-owner of products which are comprised of PANKL's materials and parts. The proportion of the co-ownership shall be the proportion of the value of PANKL's items compared to the value of the product. The items provided by PANKL shall be kept in a proper condition by the SUPPLIER.

12. Assignment, Setoff, Right of Retention

- 12.1 The SUPPLIER is not entitled to assign in part or entirely his contractual rights (including its receivables) to third parties or to allow third parties to collect receivables without the prior written approval of PANKL. In case the SUPPLIER assigns his receivables against PANKL without PANKL's approval, PANKL is still entitled to pay the respective amounts to the SUPPLIER.
- 12.2 The SUPPLIER has only the right of set-off and retention if such rights are undisputed or confirmed by a legally enforceable judgment. The right of retention must furthermore be based on the same contractual relationship.

13. Tooling and Packaging

- 13.1 PANKL reserves its title of ownership to the tooling if provided by PANKL to the SUPPLIER. In case the tooling shall be manufactured by the SUPPLIER or a third party engaged by the SUPPLIER, PANKL will acquire the ownership upon paying 80 % of the agreed tooling price. In all other cases, PANKL shall become co-owner in proportion of the agreed tooling price and the payment it has made so far. In case the tooling remains on the premises of the SUPPLIER, the transfer of the actual possession (“Übergabe”) to PANKL will be legally constructed as the SUPPLIER keeping the tools for and on behalf of PANKL free of charge. The SUPPLIER is obliged to use the tooling exclusively for the manufacturing of the products for PANKL and the delivery to PANKL. The SUPPLIER is obliged to mark all tooling in a way that the ownership of PANKL or third parties named by PANKL is properly visible.
- 13.2 The SUPPLIER is obliged to insure at his own expense all PANKL- or third party owned tooling to the extent of the original value against property damage. The SUPPLIER herewith assigns to PANKL all claims based on such insurances. PANKL herewith accepts the assignment.
- 13.3 The SUPPLIER is obliged to carry out all necessary and required maintenance and inspection work concerning the tooling as well as the necessary repair work including the procurement of replacement parts at his own expense, in timely manner. The risk of accidental loss of the tooling on the premises of the SUPPLIER shall be borne by the SUPPLIER. The SUPPLIER shall immediately inform PANKL of any disturbances regarding the tooling as soon as such events have occurred. In case of a suspension of the delivery, or in any case of a non-performance, actual insolvency proceedings regarding the property of the SUPPLIER, the actual insolvency of the SUPPLIER, or the termination of the supply contract by PANKL, PANKL has the right to reclaim the tooling after paying the outstanding tooling costs, if any. The SUPPLIER has neither the right of retention nor any other right to keep the tooling. In case the SUPPLIER has mandated a third party to manufacture the tooling or in case such tooling remains at the premises of such third parties for the production of the product or parts thereof, the SUPPLIER is obliged to conclude an agreement with this third party that grants the same rights towards the tooling as stated in this clause 13, in case the tooling is fully paid. The SUPPLIER assigns his claims regarding the tooling against the third parties, as well as other claims concerning the tooling to PANKL, as far as PANKL did pay the price of the tooling to the SUPPLIER or to the third party.
- 13.4 As far as payments of the SUPPLIER to third parties concerning the tooling are not fully made by SUPPLIER and in case of the termination of the contract between SUPPLIER and PANKL, the commencement of insolvency proceedings against the SUPPLIER and in case of the insolvency of the SUPPLIER, PANKL has the right to pay the outstanding tooling costs directly to the third parties instead of paying it to the SUPPLIER. In such an event, the SUPPLIER herewith assigns all claims, inclusive title of ownership, it might have against the third party to PANKL concerning the tooling. The SUPPLIER herewith accepts such an assignment.
- 13.5 The SUPPLIER shall be not allowed to relocate the tooling without the prior written consent of PANKL.
- 13.6 Clauses 13.1 till 13.5 shall also apply for the period of spare parts supply according to clause 17. Clause 13.3 shall also apply accordingly for any packaging material paid by PANKL.

14. Industrial Property Rights of Third Parties / Background-Foreground Rights, Know How

- 14.1 SUPPLIER is obliged to indemnify PANKL against all third party claims arising out or in connection with the delivery of the product or the performance of SUPPLIER's contractual obligations concerning the infringement of industrial property rights of such third parties and shall reimburse PANKL for all costs and expenses PANKL might incur with respect to such an infringement.

- 14.2 Clause 14.1 shall not apply if the SUPPLIER has manufactured the product in accordance with drawings, models or similar descriptions or information that were provided by PANKL and the SUPPLIER does not know or was unable to know that industrial property rights of third parties will be infringed.
- 14.3 The SUPPLIER shall inform PANKL about the prior or current use of any published or unpublished industrial property rights which are owned by him or licensed to him relating to the products.
- 14.4 The SUPPLIER herewith transfers the results of his development work made in connection with the development of the product including industrial property rights to the exclusive ownership of PANKL, as far as PANKL ordered the development work. As far as PANKL did not pay for the development work, SUPPLIER grants herewith to PANKL a nonexclusive, timely and geographically unrestricted, irrevocable, assignable and sub-licensable right-of-use (license), free of charge, which also includes the right to any kind of use, duplication and amendment of industrial property rights of any kind.
- 14.5 The SUPPLIER herewith grants to PANKL a non-exclusive, assignable, sub-licensable, timely and geographically unrestricted and irrevocable right of use (license), free of charge concerning the know-how, and/or industrial property rights of the SUPPLIER which existed prior to the contractual relationship with PANKL ("Altschutzrechte"), in order to enable PANKL to use the result of the development work as described in clause 14.4.
- 14.6 The application for registration and the assertion of industrial property rights concerning development work paid by PANKL and which are a result of the cooperation between the SUPPLIER and PANKL shall be made solely by PANKL. Inventions made by employees of the SUPPLIER during the term of the contractual relationship resulting from their activities must be claimed by the SUPPLIER accordingly. In case the development work is not paid by PANKL, SUPPLIER shall have the right to apply for registration. However, PANKL shall be at least entitled to a right of use in accordance to clause 14.4.
Any remuneration the employees are entitled to for having made their invention shall be paid by either PANKL or the SUPPLIER depending on who is the employer of those employees.
- 14.7 The above mentioned rights of PANKL remain with PANKL even if the respective contract with the SUPPLIER will be terminated. These rights of PANKL relate to all results and partial results concerning the development at the time of the termination.
- 15. Hazardous Goods and Materials / Notification**
- 15.1 Together with the offer, the SUPPLIER shall hand over to PANKL a duly completed material safety data sheet in accordance with § 14 of the "Regulation on Hazardous Goods and Materials" ("Gefahrenverordnung") and an accident procedure sheet (Transport) concerning all materials (substances, their contents) and objects (goods, parts, technical equipment; uncleaned packages) that might cause perils for life and health of human beings, the environment or for any objects based on the materials' nature, their characteristics, or their physical condition and, therefore, require, subject to the relevant provisions, a special treatment concerning packaging, transport, storage, access, and waste management. In case of any changes of the materials or the legal provisions, the SUPPLIER shall hand over to PANKL an updated data sheet. The SUPPLIER is obliged to deliver to PANKL annually and unrequested, a valid "long-term supplier's declaration" which contains the product number and the code number (index of goods, external trade statistic).
- 15.2 If SUPPLIER has made changes to the product which it also delivers to PANKL, SUPPLIER shall inform PANKL about such changes, irrespective of any other information requirements.
- 15.3 SUPPLIER has to provide PANKL with all information required and relevant for the assessment whether the safety and health of end-consumers of the products might be affected. The following information shall be provided:
- The attributes of the product including its content, packaging, assembly instructions, installation, maintenance and terms for use.
 - The impact on other products, if the use together with those other products can be expected.
 - The presentation, marketing, warning notices, instructions for use and recycling information as well as other product-related information.
 - Any kind of group of end users which might be exposed to a greater risk if they use the product.
- 15.4 The SUPPLIER shall make available to PANKL the information required for the registration in accordance with the European Community Regulation 1907/2006 regarding the registration, evaluation, authorization and restriction of chemicals ("REACH") and, if already registered, the respective registration confirmations. This shall also apply to information and/or registration confirmations regarding the Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labeling of dangerous substances ("Directive 67/548/EEC"). The SUPPLIER shall comply with its duties and obligations under REACH and/or Directive 67/548/EEC. The SUPPLIER shall procure that its (sub-) suppliers and all other suppliers of the supply chain, including the original producer, are being bound in accordance to this clause.
- 15.5 The SUPPLIER is obliged to observe all applicable export- and import control regulations (e.g. also international traffic in arms regulations, etc.) and shall be responsible for the passing on of relevant information to PANKL.
- 16. Quality Management / Spare Parts and Documentation**
- 16.1 Concerning the delivery of the product and/or performance of other obligations, the SUPPLIER has to apply the latest state-of-the-art, the applicable safety requirements, the provisions generally applicable in the automotive industry (e.g. VDA-standards) and in the aerospace industry as well as all provisions under the applicable Public Law (e.g. "Used-Car Automotive Directive" ("Alt-Autorichtlinie"), Consumer Goods Regulation ("Bedarfsgegenstandverordnung"), "FCKW-Halogen-Verbotsordnung", IMDS-security data, etc.), and especially the EU-Directive as of September 18, 2000, regarding the ban of "heavy metal" ("Schwermetallverordnung") (2000/53/EG and of June 27, 2002 (2002/525/EG)) and the agreed technical data and other agreed specifications.
- 16.2 The SUPPLIER has to establish and proof a process-oriented quality-management-system (minimum standard: ISO 9001 and a minimum standard of EN 9100 in the aerospace sector, however, a ISO/TS 16949 certification ought to be aspired; in the aerospace sector a NADCAP certification for special processes). PANKL reserves the right to audit the efficiency of SUPPLIER's quality-management system at any time on SUPPLIER's premises. The SUPPLIER agrees to comply with the VDA-volume 2 "Quality Assurance of Supplies / Supplier selection / Quality assurance agreement / Manufacturing process and product approval / Quality performance in the series / Declaration of constituents" in its latest version. Only upon PANKL accepting the master sample, the SUPPLIER may start the serial production and delivery. Independent of such an acceptance, the SUPPLIER shall always verify the quality of the products by himself and shall perform outgoing product inspections. In case, the automotive- or aerospace manufacturer requires different or additions to such standards, the introduction will be mutually agreed upon by the SUPPLIER and PANKL.
- 16.3 Drawings, CAD-data, specifications, description etc., attached or referenced in the order, shall be binding for the SUPPLIER. The SUPPLIER is obliged to examine them for any kind of discrepancies. In case SUPPLIER detects actual or assumes potential discrepancies, SUPPLIER shall immediately inform PANKL in writing. If SUPPLIER does not immediately inform PANKL, the SUPPLIER cannot claim at a later stage that such discrepancies exist. The SUPPLIER is solely responsible for drawings, plans and calculations made by the SUPPLIER even if PANKL approved them. Upon the delivery of tooling or equipment to PANKL, the SUPPLIER shall also hand over a documentation concerning the handling, service, maintenance and repair, the latest at the time of the delivery of the tooling and the equipment. The SUPPLIER shall be responsible for the CE-labeling.
- 16.4 Concerning special vehicle- or aerospace parts ("Dokumentationspflichtige Teile") which are marked in the technical documents as such parts or which are defined as special vehicle parts by special agreements, the SUPPLIER is obliged to document in special recordings when, in which way, and by whom these special vehicles parts were tested and the results of the required quality tests. The records and the documentation of the results must be properly kept and maintained for 15 years (40 years in the aerospace sector) by the SUPPLIER and, if requested, shall be presented to PANKL. The VDA-script "Special Vehicle Parts at Automotive Manufacturers and their Suppliers, Performance and Documentation" ("Dokumentationspflichtige Teile bei Automobilherstellern und deren Zulieferanten, Durchführung und Dokumentation") in its latest version shall be complied with by the SUPPLIER. Sub-suppliers of the SUPPLIERS shall adhere in the same way as the SUPPLIER.
- 16.5 As far as public authorities responsible for vehicle- or aerospace safety or emission standards and provisions etc., request to inspect the respective production sites and documents of PANKL, the SUPPLIER shall, on demand of PANKL, grant authorities the identical rights PANKL has towards the SUPPLIER and shall support them with SUPPLIER's best efforts.
- 16.6 The SUPPLIER is obliged to forward to PANKL all required declarations about relevant origin of the products for customs ("zollrechtlicher Ursprung") in a timely fashion. The SUPPLIER shall be liable for any disadvantages incurred by PANKL due to the improper or delayed provision of the required "Supplier-Declaration", unless the SUPPLIER is not responsible for such delay or impropriety. Upon request of PANKL, the SUPPLIER has to proof the details concerning the origin of the products by him via the relevant customs document confirmed by the competent customs authorities.
- 17. Spare Parts**
- The SUPPLIER is obliged to supply the product over a period of 15 years, commencing with the end of serial production determined by the automotive manufacturer. If the products cannot be produced within economically reasonable cost, SUPPLIER may supply a substitute. The last price valid for the serial delivery shall be applied regarding the spare parts for a period of one year after the end of serial production and shall be new determined after such year on the basis of a cost analysis.
- 18. Handing-Over and Use of Working Appliance Equipment**
- Samples, models, drawings or other documents that were made by the SUPPLIER in accordance with instructions provided by PANKL shall become the property of PANKL upon payment by PANKL. Effective upon the payment, the SUPPLIER keeps those drawings etc. on behalf of PANKL, who shall become owner of such models, drawings etc. upon such payment. These working appliances shall only be used by SUPPLIER in order to execute the orders of PANKL and not for the benefit of any third party. Without the prior written approval of PANKL, the access of third parties to such documents, appliances etc., is and shall be prohibited. The SUPPLIER shall carefully keep the working appliances free of charge and at his own expense and risk. Upon PANKL's request, the SUPPLIER shall return them at any time without having any kind of set-off or retention right unless agreed to by the Parties.
- 19. Changes of the product and other changes**
- The SUPPLIER shall be not allowed to change the product (including any changes to its specifications, its design and/or the materials), the production processes and/or the production location without the prior written consent of PANKL.
- 20. Confidentiality**
- 20.1 The SUPPLIER is obliged to keep strictly confidential all information disclosed by PANKL or the companies affiliated to PANKL within the meaning of § 15 AktG and to treat them as business and trade secrets and to ensure that third parties will not have access to such information. This does not apply for information for which the SUPPLIER can prove, that it:
- (a) is publicly available
 - (b) is provided to SUPPLIER by a third party which was entitled to provide such information and which was not subject to a confidentiality obligation
 - (c) was already known to SUPPLIER prior to the receipt of the information.
- 20.2 SUPPLIER is obliged to immediately inform PANKL in case he is aware that third parties gained access to confidential information or in case such confidential information had been destroyed or is lost.
- 20.3 SUPPLIER agrees not to make use of the confidential information outside the scope of their relationship without the prior written approval of PANKL.
- 20.4 This confidential obligation applies to all persons engaged by the SUPPLIER independent of their contractual relationship. The SUPPLIER undertakes to bind all those persons and employees ("Erfüllungs- und Verrichtungsgeschülften") or any other third parties which have access to the confidential information. The SUPPLIER will keep the number of such persons as small as possible with respect to the confidentiality
- 20.5 This confidentiality and use restriction obligation applies during the term of the business relationship and for a period of 10 years after its termination.
- 21. Advertisement**
- 21.1 The use of requests for quotations, orders, acceptance of orders of PANKL and the connected correspondence and the business relationship as such for promotion purposes is strictly prohibited.
- 21.2 Only upon the prior written approval of PANKL shall the SUPPLIER be allowed to engage in promotional activities regarding the business relationship with PANKL.
- 22. General Provisions**
- 22.1 In case the SUPPLIER ceases to make payment or apply for insolvency or non-judicial settlement proceedings or other judicial proceedings are applied for, PANKL shall be entitled to rescind from the respective contract with respect to the part not yet fulfilled. PANKL shall have the right to set off with (i) a receivable PANKL might have towards an affiliated company of the SUPPLIER as defined in § 15 AktG or with (ii) a receivable an affiliated company of PANKL as defined in § 15 AktG might have against the SUPPLIER or against an affiliated company of the SUPPLIER as defined in § 15 AktG against a receivable the SUPPLIER has towards PANKL.
- 22.2 Any provision which shall be or become deemed invalid shall not affect the validity and enforceability of the other valid provisions. The Parties agree that such invalid provisions shall be replaced by a valid provision which, in its commercial and legal effect, is approximate so close to the one which shall be substituted of which it may reasonably be assumed that the Parties hereto would have entered into this Agreement with such substituted provision.
- 22.3 The place of the performance to be carried out by SUPPLIER shall be the place to which the product shall be delivered to.
- 22.4 The court competent for PANKL shall have the exclusive jurisdiction for all disputes arising out or in connection with this business relationship. PANKL has the right but not the obligation to choose any other jurisdiction which would otherwise be the competent court under the applicable law. For all companies of the PANKL-group with their registered offices outside of Austria it is agreed that the factual and local competent court of the respective company seat shall be explicitly responsible in case of a possible legal dispute.
- 22.5 The laws of the Federal Republic of Austria excluding its conflict of law provisions shall exclusively apply, unless otherwise agreed to in writing. The application of laws on the international sale of goods, especially the Convention of the United Nations of 11.04.1980 on Contracts regarding the International Sale of Goods (CISG) is hereby excluded. Companies of the PANKL-group with their registered office outside of Austria shall have the right to opt for the explicit application of the law of their registered office's country instead of the application of Austrian law.
- 22.6 These Purchasing Conditions are being drafted in a German, English and Slovakian version. In case of a discrepancy of the three versions, the German version shall prevail. The English and the Slovakian version shall only be considered as translation for convenience.