

## General Terms & Conditions of Sale of SURTECO GMBH for Sales to Companies outside Germany

---

Status: August 2018

### I. Scope of Application of the General Terms & Conditions of Sale of SURTECO GmbH

1. All current or future sales of goods to Customers outside Germany by SURTECO GmbH will be governed by these General Terms & Conditions of Sale. Any obligations undertaken by SURTECO GmbH under separate agreements will not affect the validity of these General Terms & Conditions of Sale.
2. Terms and conditions of the Customer that differ from these General Terms & Conditions of Sale of SURTECO GmbH will have no validity even if no objection is raised to any such terms and conditions of the Customer or SURTECO GmbH makes delivery to the Customer unconditionally.
3. These General Terms & Conditions of Sale do not apply to sales to customers that are consumers within the meaning of § 13 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB). Such sales are governed by SURTECO GmbH's "General Terms & Conditions of Sale for Consumer Goods", which are available upon request.
4. If and insofar as these General Terms & Conditions of Sale of SURTECO GmbH for Sales to Companies outside Germany are not applicable, sales to the Customer will also be subject to the English-language version of the U.N. Convention on Contracts for the International Sale of Goods (CISG). The U.N. Convention on the International Sale of Goods will apply beyond its scope of application and notwithstanding reservations of member states to all contracts that are governed by and construed in accordance with the provisions contained in section I of these International Terms & Conditions of Sale. In the case of the use of commercial terms, the Incoterms 2010 will apply in the case of doubt, taking into account the understandings contained in the General Terms & Conditions of Sale set forth below.

### II. Placement of Orders

1. Before any purchase order can be accepted, the Customer must inform SURTECO GmbH in writing if any of the following circumstances apply:
  - The goods to be supplied by SURTECO GmbH are not intended exclusively for usual use, but are expected to have certain characteristics by the Customer. The same will apply in the event the Customer bases its expectations as regards the nature of the goods on public statements, advertising claims of SURTECO GmbH or other circumstances unrelated to the specific purchase order.
  - The goods are to be used under unusual conditions, in particular as regards potential risks in respect of health, safety and the environmental risks or heavier duty use.
  - The use of the goods by the Customer will be associated with atypical or unusual risks of liability that in particular exceed the limits to damages specified in section VII insofar such risks are known or should have been known to the Customer.
  - The goods are intended for use outside Germany or are to be delivered to a purchaser in another country by the Customer.

2. Purchase orders will be valid only if placed in writing. In the event the Customer's purchase order differs from a quotation of SURTECO GmbH, the modified purchase order will be valid only after receipt of written confirmation from SURTECO GmbH. The rules governing contracts that fall under electronic commerce pursuant to § 312 i(1) sent. 1 nos. 1 – 3 of the German Civil Code will not apply.
3. All purchase orders placed with SURTECO GmbH must be confirmed in writing. In the event SURTECO GmbH should fail to respond to a Customer's offer or purchase order, this will not constitute acceptance of any such offer or purchase order. SURTECO GmbH reserves the right to take up to 14 (fourteen) calendar days from the time of receipt of a purchase order from the Customer to issue written confirmation of acceptance. The Customer must notify SURTECO GmbH in writing without delay in the event confirmation of the purchase order is not received from SURTECO GmbH within 14 calendar days.
4. Written confirmation of acceptance by SURTECO GmbH will also be determinative and binding for the purposes of definition of the content and scope of the purchase order if it differs from the specifications of the Customer in respect of the nature, prices and quantity of the goods or otherwise, namely, as regards the precedence of these General Terms & Conditions of Sale over any other terms and conditions.

On the other hand, no sale will be deemed to have been consummated in the case of any difference between the content of SURTECO GmbH's confirmation of the purchase order and that of the purchase order or the offer of the Customer if the Customer has notified SURTECO GmbH of such differences in writing within no later than 7 calendar days of receipt of confirmation of the purchase order from SURTECO GmbH.

5. In the case of special orders, SURTECO GmbH may ship up to 20% in excess of or less than the quantity ordered and adjust the price accordingly unless expressly stipulated otherwise in the purchase order.
6. Special properties or characteristics, i.e., if the Customer has specific expectations as regards the use or nature of the products, warranties or other representations with respect to the goods or performance or requires descriptive materials, instructions for use and/or safety information in electronic or printed form, must be expressly confirmed in writing by SURTECO GmbH in each case.
7. Confirmations of purchase orders prepared by the customer will not be binding even if no objection is raised by SURTECO GmbH in the given case.
8. Unless acting in an authorized capacity, employees, sales representatives and other sales agents are not authorized to make representations or warranties to customers on behalf of SURTECO GmbH that differ from written confirmations of acceptance of orders issued by SURTECO GmbH.

### **III. Duties of SURTECO GmbH**

1. SURTECO GmbH agrees to provide the Customer with goods as specified in the written confirmation of acceptance of the purchase order and transfer ownership of such goods to the Customer. In the event the description of the goods is not sufficiently precise, SURTECO GmbH may make assumptions as regards specifications on the basis of the discernible and legitimate interests of the Customer. SURTECO GmbH will be under no obligation to perform any services for the Customer that are not specified in the written confirmation of acceptance of the purchase order issued by SURTECO GmbH or these General Terms & Conditions of Sale. SURTECO GmbH will also be under no obligation to supply the Customer with printed materials, provide information or deliver accessories or provide

instructions for processing or support. SURTECO GmbH's obligations in connection with a given sale will pertain exclusively to the respective Customer.

2. Third parties, including but not limited to customers of the Customer, may not require that SURTECO GmbH make delivery to them or bring any other claims of a contractual nature against SURTECO GmbH. Claims of the Customer arising in connection a given sale may not be assigned to third parties without the consent of SURTECO GmbH. The Customer agrees to hold SURTECO GmbH harmless from any claims brought against SURTECO GmbH by third parties in connection with any sale made by SURTECO GmbH.
3. SURTECO GmbH agrees to supply the Customer with the goods ordered as agreed on the basis of these General Terms & Conditions of Sale, taking into account usual commercial tolerances as regards type, quantity and quality, and of usual kind and quality otherwise. Dimensions, structure and color may vary as a function of the nature of the materials used and to the extent customary in the trade.

SURTECO GmbH reserves the right to make partial delivery and invoice partial shipments separately.

4. SURTECO GmbH will deliver the goods FCA Buttenwiesen (Incoterms 2010) to the delivery address of the Customer specified in the written confirmation of acceptance of the purchase order on the agreed date of delivery and – if no such address is provided – make the goods available for collection in normal packing by the Customer at the branch location of SURTECO GmbH in 86647 Buttenwiesen. SURTECO GmbH will be under no obligation to notify the Customer of the availability of the goods on the day of delivery or to separate or identify the goods in advance. Notwithstanding application of other clauses of the Incoterms, SURTECO GmbH will also be under no obligation to inspect the goods to ensure conformity prior to transfer of possession to the Customer, to provide the Customer with information on acceptance of the goods, to ensure the operational safety and safe loading and transport of the means used to transport the goods or to organize shipment or insure the goods. Other clauses will be agreed to only insofar as they concern shipment and the cost of shipment.
5. Compliance with delivery dates and times by SURTECO GmbH presupposes that the Customer will have fulfilled all of its obligations and provided all documents, permits, or approvals in a timely manner, made payments on account as agreed and fulfilled all other obligations in a timely manner. Stated delivery times will commence on the date of the written confirmation of acceptance of the purchase order issued by SURTECO GmbH. SURTECO GmbH reserves the right to make delivery prior to the agreed time or to schedule delivery within an agreed delivery period.
6. SURTECO GmbH may also fulfill its contractual obligations after the contractually agreed date of delivery without default if the Customer has been notified of the delay and informed of a period for fulfillment. SURTECO GmbH may attempt to fulfill its obligations more than once after the contractually agreed date of delivery. The Customer may, however, object to the announced correction within appropriate period such correction if it would be unreasonable to expect the Customer to tolerate such correction.
7. Regardless of whether the goods are shipped by SURTECO GmbH, the Customer or a third party, the risk or loss or damage will pass to the Customer even if the goods are not clearly identified as soon as they are made available to the Customer in compliance with the provision contained in section III.4. The customer will assume responsibly for loading and shipment of the goods at its own expense.
8. SURTECO GmbH may rely on the defense of uncertainty pursuant to § 321 of the German Civil Code if concerned that the Customer will not fulfill any or all of its contractual obligations. This will apply in particular if the Customer should fail to fulfill its obligations towards SURTECO GmbH or any third party satisfactorily, if the Customer should fall into

arrears of payment or if the limit set by a credit insurer is exceeded with the pending shipment. Instead of reliance on the defense of uncertainty, SURTECO GmbH may make future shipments contingent upon payment in advance by the Customer even if the deliveries have already been confirmed. SURTECO GmbH may make further shipments contingent upon payment of an appropriate security under the conditions specified in § 321 of the German Civil Code. Further legal rights of SURTECO GmbH will not be affected by § 321 of the German Civil Code.

9. If events and circumstances beyond the control of SURTECO GmbH such as, for example, natural catastrophic events, war, labor disputes, shortage of raw materials and energy, disruption of traffic and operation, damage due to fire and explosion or official prohibition or requirements should prevent or interfere with the shipment of the goods, SURTECO GmbH will be released from its contractual obligations and not be required to acquire the goods from third parties for the duration of the disruption and the effects thereof. If the duration of such events should exceed 2 months, SURTECO GmbH may rescind the sale.

#### **IV. Duties of the Customer**

1. The customer will be responsible for the fulfillment of the necessary formalities for the export of the goods to another country. SURTECO GmbH will nevertheless apply for the necessary export permits and handle customs formalities required for the export of the goods for the Customer. The Customer must therefore provide SURTECO GmbH with the data required for export necessary in writing. In the event the goods cannot be exported for reasons not attributable to SURTECO GmbH, for whatsoever reason, SURTECO GmbH may rescind the sale in its entirety or in part. The Customer will also be under obligation to pay the purchase price in the case of such rescission.
2. Unless expressly agreed otherwise, SURTECO GmbH will be under no obligation to obtain the documents, certificates, licenses or other permits required for the export or import of the goods, security clearance or the release of the goods from customs. SURTECO GmbH will also be under no obligation to bear any fees incurred in connection with delivery of the goods outside Germany or to comply with any systems of weights and measures, packing, identification or labeling regulations or registration or certification requirements in effect outside Germany. The Customer will be completely responsible for creation of the conditions and compliance with the legal requirements for the preparation for and sale of the goods in a market outside Germany. This latter will procure mandatory or appropriate translations of instructions, safety information, functional descriptions or other documents on the goods into any language other than German language under its own responsibility and at its own expense.
3. Payment of the purchase price by the Customer will be due as of the date specified in the written confirmation of acceptance of the purchase order and – in the absence of such – upon issuance of the invoice. The legal amount of default interest will be determined pursuant to § 288 of the German Civil Code. Outstanding amounts will become due and payable immediately in the case of retention of title to goods shipped to purchasers of the goods from the Customer of SURTECO GmbH, in the case of initiation of insolvency proceedings in respect of the assets of the Customer, if the Customer should fail to meet its obligations towards SURTECO GmbH or third parties without good reason, if the Customer should provide misleading information in respect of its creditworthiness or if the amount guaranteed by a credit insurer is reduced.
4. The agreed purchase price will cover the performance of the services of SURTECO GmbH, including the usual packing materials provided by SURTECO GmbH. In the event delivery is not made within 4 months after consummation of the sale, SURTECO GmbH may invoice the price pursuant to its price list in effect as of the time of shipment instead of the agreed price. Payable value-added tax will be invoiced separately at the legally applicable rate and paid by the Customer.

5. In the event the Customer cannot provide the necessary proof of export, SURTECO GmbH reserves the right add value-added tax, including retroactively, if necessary.
6. Discounts for prompt payment must be shown in the written confirmation of acceptance of the purchase order from SURTECO GmbH in the individual case and will apply only in the case of timely payment in full of all outstanding amounts due SURTECO GmbH by the Customer.
7. All payments must be made in full in euros without deduction of any costs or fees to a financial institution designated by SURTECO GmbH. Payment will be considered to have been timely if credited to the account as of the time due without reservation. Employees and sales representative or other agents of SURTECO GmbH are not authorized to accept payment.
8. The Customer warrants and represents that all conditions have been fulfilled and documentation provided for the purposes of compliance with the provisions of law governing customs and value-added tax in connection with the goods and/or services applicable in Germany. In the event SURTECO GmbH must pay German or foreign customs duties and/or value-added tax, the Customer will, without prejudice to further claims of SURTECO GmbH, hold SURTECO GmbH completely harmless from any such expenses, waive any further conditions, other objections and defenses, and in particular the waive the right to assert any statute of limitations, and reimburse SURTECO GmbH for any expenses incurred.
9. SURTECO GmbH may at its own discretion credit payments received towards outstanding amounts due from the Customer by original right or by assignment.
10. The Customer may not refuse to make payment, refuse to accept goods or offset any amounts due against claims against SURTECO GmbH unless the claim of the Customer is due and either legally enforceable, undisputed or based on the transaction. § 215 of the German Civil Code will not apply.
11. The Customer will communicate the data required to complete customs formalities on a timely basis prior to the agreed date of delivery.
12. The Customer will accept the goods at the agreed time of delivery without any additional extension at the specified delivery address and fulfill all obligations arising in connection with the sale under these General Terms & Conditions of Sale, in accordance with the rules of the ICC for the interpretation of the agreed clause of the Incoterms 2010 and under the relevant provisions of law. The Customer may refuse to accept the goods only in the case of rescission of the sale under the conditions contained in section V.9 or VI.1.
13. Notwithstanding any provisions of law, the Customer will bear the expense of the reuse, recycling or disposal of goods shipped to the Customer by SURTECO GmbH and the corresponding packaging and packing materials. SURTECO GmbH will be under no obligation to accept the return of goods or packaging or packing materials from the Customer or third parties to comply with any provisions of law governing waste disposal.
14. The Customer agrees to refrain from any business transactions involving the goods acquired from SURTECO GmbH that are prohibited by governmental regulations, including in particular foreign trade and U.S. export control laws. In the case of doubt, the Customer will obtain the written consent of SURTECO GmbH.

15. The Customer will without being requested to do so notify SURTECO GmbH in writing if special duties of notification, registration or disclosure apply under the law of the country of the Customer or purchasers of goods from the Customer or if any special conditions must be met to enter the market or special record retention requirements apply.

#### **V. Nonconformance**

1. Goods supplied by SURTECO GmbH will be deemed defective in the case of not insignificant deviation from the written confirmation of acceptance of the purchase order as regards their nature, quantity, dimensions, properties or serviceability at the time of passage of risk or, in the absence of any express agreement, in the case of not insignificant deviation from the quality commonly found in Germany or if the goods are unsuitable for usual use in Germany. Shipments with [hidden] shortages will be deemed nonconforming. SURTECO GmbH will accept no liability for natural deviations as regards the structure, color and grain of goods or color stability and weather resistance.
2. Shipments of goods by SURTECO GmbH will be deemed to have a defective title if encumbered by the rights or claims of third parties as of the time of the passage of risk. Notwithstanding other legal requirements, the rights or claims of third parties based on commercial or other intellectual property will be deemed to constitute a defect in title only insofar as such rights are registered, published and valid in Germany and preclude the use of the goods in Germany for the purposes for which they are sold.
3. Unless expressly stipulated in the written confirmation of acceptance of the purchase order issued by SURTECO GmbH, SURTECO GmbH does not warrant suitability of the goods for any use other than their usual use, fulfillment of any requirements of the Customer that exceed usual characteristics or the non-existence of rights or claims of third parties outside Germany. SURTECO GmbH also accepts no liability for defects arising after passage of risk. The same will apply in the event the Customer remedies defects itself or has defects remedied by a third party without the permission of SURTECO GmbH.
4. Warranties or representations by SURTECO GmbH must be agreed separately and included in the written confirmation of acceptance of the Customer's purchase order. The use of catchphrases, references to generally accepted standards, trademarks or signs of quality in the course of the correspondence in connection with a sale and submission of samples will not constitute a warranty or representation. The employees of SURTECO GmbH, its sales representative or other sales agents are not authorized to make statements regarding the use or economy of goods marketed by SURTECO GmbH or make warranties or representations.
5. In order to protect the Customer's warranty rights, the Customer must, regardless of the respective intended use, carefully inspect each individual shipment without delay to ascertain the presence of obvious typical deviations in quality, quantity or any other respect, verify compliance with product-specific legal requirements and other regulatory requirements and detect damage incurred in transit or damage to packaging prior to acceptance.
6. Notwithstanding the duty of the Customer to notify SURTECO GmbH without delay of any nonconformance ascertained, the Customer must notify SURTECO GmbH of any physical defect or defect in title in connection with a shipment of goods within no more than 1 year and in the case of used goods within no more than 6 months after delivery of the goods. Notification of nonconformance must be made in writing and addressed directly to SURTECO GmbH and precisely formulated so that SURTECO GmbH is able to initiate action to remedy the defect without further consultation with the Customer and enforce any rights of recourse SURTECO GmbH may have against its suppliers. Employees, sales representatives or other sales agents of SURTECO GmbH are not authorized to accept notice of defects, acknowledge the existence of defects or make statements in respect of warranty rights.

7. If the Customer has properly reported a nonconformity or defect in title to SURTECO GmbH, the Customer will have the remedies specified in these General Terms & Conditions of Sale. Further claims of the Customer against SURTECO GmbH arising from its obligation to deliver goods that are free from defects are excluded.

In the case of failure to make provide proper notice, the Customer will have no legal recourse unless SURTECO GmbH has intentionally failed to disclose a defect. Any statements made to the Customer by SURTECO GMBH in respect of defects will not constitute a waiver of the duty to submit a proper notice of defect.

8. The Customer will have no recourse against SURTECO GmbH in connection with the delivery of defective goods if and insofar as the Customer is liable to purchasers of goods from the Customer for the nature or properties of the goods that have not been agreed to by SURTECO GmbH and the Customer or if the Customer cannot be held legally liable for delivery of defective goods.
9. In the case of any claims against SURTECO GmbH arising from the delivery of defective goods to the Customer pursuant to the provisions contained in these General Terms & Conditions of Sale, the Customer may require that SURTECO GmbH remedy defects within an appropriate period after receipt of written notice of defect as prescribed by law. The delivery address of the Customer specified in the confirmation of acceptance of the purchase order will be the place of performance for the purposes of corrective action. SURTECO GmbH will bear expenses incurred by the Customer in connection with the corrective action within Germany. The Customer will bear such expenses if and insofar as expenses are higher due to delivery and use of the goods outside Germany. After detection of a defect, the Customer must take all reasonable measures to keep the cost of corrective action low. In the event corrective action should ultimately prove ineffectual, be impossible or not be initiated within an appropriate period of time, the Customer may, without prejudice to other rights provided for under these General Terms & Conditions of Sale, reduce the purchase price as allowed by law or set a period for correction under penalty of refusal to accept delivery in the case of failure to remedy the defect within a period of 4 weeks and rescind the sale upon expiration of that period. The above rights of the Customer will not affect the right of SURTECO GmbH to correct or replace defective goods under the conditions contained in section III.6.
10. All claims of the Customer arising from nonconformance will become time-barred after 1 year and in the case of used goods after 6 months after commencement of the legal period of limitation. This will not apply to claims of the Customer against SURTECO GmbH due to fraudulent, willful or grossly negligent breach of contract and claims arising from death or personal injury. The period of limitation will not be interrupted for the duration of measures taken by SURTECO GmbH for the purposes of corrective work or replacement.

## **VI. Rescission**

1. Notwithstanding the above provisions, the Customer may cancel the purchase order as allowed by law if it has become impossible for SURTECO GmbH to fulfill its obligations, if SURTECO GmbH should fail to fulfill material obligations on a timely basis or in the case of any breach of the conditions set forth in these General Terms & Conditions of Sale attributable to SURTECO GmbH. In the event performance is called for by a specific calendar date, SURTECO GmbH will be deemed to be in default only after the Customer has notified SURTECO GmbH directly of such nonconformance in writing and set an appropriate period of time for compliance.

The Customer's declared intention to withdraw from the purchase order must be exercised within an appropriate period of time after the occurrence of the event responsible for such withdrawal in the form of written notice addressed directly to SURTECO GmbH.

2. SURTECO GmbH may withdraw from a sale under these General Terms & Conditions

- if the sale is in violation of the law,
- if the Customer refuses to accept these General Terms & Conditions of Sale,
- if the special provisions pertaining to the sale of consumer goods (§ 474 et seq. of the German Civil Code) are applicable,
- if written confirmation of the purchase order by SURTECO GmbH is received by the Customer more than 14 calendar days after the date of issue for reasons that cannot be attributed to SURTECO GmbH,
- if a petition has been filed for initiation of insolvency proceedings in respect of the assets of the Customer,
- if the Customer is in material breach of its obligations towards SURTECO GmbH or third parties without good reason,
- if the Customer has provided incorrect information on its creditworthiness,
- if the amount covered by a credit insurer is reduced,
- if SURTECO GmbH does not receive supplies or does not receive such supplies on a timely basis for reasons not attributable to SURTECO GmbH,
- if SURTECO GmbH cannot fulfill its obligations for other reasons or can only do so through the use of funds that would be unreasonable in view of its own legitimate interests and those of the Customer in evidence at the time of acceptance of the purchase order and the agreed remuneration. Further legal rights of SURTECO GmbH will not be affected by the right of rescission. The Customer may not claim damages in the case of rescission by SURTECO.

## VII. Damages

1. SURTECO GmbH will be legally liable for damages due to breach of precontractual obligations, in connection with agreements with the Customer, in the case of breach of warranties and representations and in the case of delay only under the following conditions:
- Damages due to delivery of defective goods are excluded if and insofar as the nonconformance is not significant.
  - Liability for loss of profit and/or consequential damages and moral damages is excluded.
  - Damages will be paid only in respect of such losses as remain after exercise of the rights to correction pursuant to sections V and VI and other remedies specified therein.
  - SURTECO GmbH's liability is limited to material breach of its obligations towards the Customer due to willful misconduct or gross negligence.

- In the absence of intentional breach of contract, SURTECO GmbH's liability will be limited to damages for typical, foreseeable losses beyond the control of the Customer.
  - The liability of SURTECO GmbH in any given case will be limited to damages in the amount of 0.5% for each full week of delay or any fraction thereof, not to exceed a maximum of 5%, and 2.5% of the value of the goods not in conformity in the case of other breaches. The limit to liability will also apply in the case of gross culpable negligence on the part of SURTECO GmbH or its agents.
  - Notwithstanding provisions of law and the provisions contained in these General Terms & Conditions of Sale, the Customer may claim damages instead of performance only if the Customer notifies SURTECO GmbH accordingly in writing, sets an appropriate period for performance and expressly demands payment of damages in lieu of performance within an appropriate period following the occurrence of the circumstances responsible for such damages in writing.
  - SURTECO GmbH's liability for damages for breach of contractual and/or precontractual obligations towards the Customer will be limited exclusively to that specified in the provisions contained in these General Terms & Conditions of Sale. The Customer may not maintain concurrent causes of action, including in particular causes of a non-contractual nature. The Customer may bring no claims against the governing corporate bodies, employees, other workers, representatives and/or agents of SURTECO GmbH as individuals for breach of any obligations of SURTECO GmbH. Insofar as claims of the Customer against SURTECO GmbH have not already become time-barred, any action for damages must be brought within a period of 6 months, from the time of rejection of claims for damages by SURTECO GmbH. This will not apply in the case of willful misconduct on the part of SURTECO GmbH;
  - The above provisions pertaining to the liability of SURTECO GmbH will also apply to claims of the Customer for indemnification for expenses.
2. The following will apply in the event the Customer is liable for payment of damages to SURTECO GmbH:
- a) In the case of failure to make prompt payment, the Customer will pay reasonable costs of judicial and non-judicial enforcement, but in no case less than a minimum of € 40.00 plus interest in the amount of 9 percentage points above the base interest rate of the German Federal Bank.
  - b) In the case of failure on the part of the Customer to take timely possession of the goods or failure to call up goods as agreed, SURTECO GmbH may claim payment of one-time damages in the amount of 15% of the value of the respective shipment without providing documented proof of any loss if the Customer then fails to take possession of or call up the goods within a period set by SURTECO GmbH for compliance. The Customer may provide proof that no loss occurred or that the loss was less than the above amount.
3. The Customer agrees to limit the scope and amount of its liability for damages in connection with its business with purchasers of goods from the Customer insofar as legally permissible and usual in the industry.
4. § 348 of the German Commercial Code (Handelsgesetzbuch – HGB) will not apply.
5. Limitations to liability under these General Terms & Conditions of Sale will not apply to the liability of SURTECO GmbH
- under the Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG),

- in the case of fraudulent concealment of nonconformance,
- in the case of goods covered by a warranty or
- in the case of claims arising in connection with the loss of life, bodily injury or illness due to culpable negligence.

#### **VIII. Retention of Title**

1. Goods delivered to the Customer will remain the property of SURTECO GmbH until all outstanding and pending principal and ancillary claims of SURTECO GmbH against the Customer are satisfied in their entirety. In the case of a running account, retention of title will apply in respect of the current balance.
2. The Customer will allow employees of SURTECO GmbH access to goods that remain the property of SURTECO GmbH at any times during usual business hours until such time as SURTECO GmbH no longer retains title. The Customer will insure goods to which SURTECO GmbH retains title against theft, damage and destruction and at the request of SURTECO GmbH store the goods separately or properly segregate the goods at its own expense, clearly identify the goods as the property of SURTECO GmbH and take all appropriate measures to ensure robust retention of title. The Customer hereby irrevocably assigns a security interest in any and all claims of the Customer against the insurers to SURTECO GmbH,
3. The Customer will notify SURTECO GmbH in writing without delay if any third party should seek to enforce claims or rights in respect of goods to which SURTECO still retains title or receivables assigned to SURTECO GmbH under the conditions pertaining to retention of title and support SURTECO GmbH's efforts to defend its interests free of charge. In the event a third party should acquire rights in goods while SURTECO GmbH retains title to such goods, a security interest in the rights of the Customer against such third party will be irrevocably assigned to SURTECO GmbH,
4. The Customer may dispose of the goods to which SURTECO GmbH retains title in the normal course of business only if not in arrears of payment and payment to the Customer by the purchaser of the goods from the Customer is not due before payment is due to SURTECO GmbH. The Customer will not be authorized to dispose of the goods otherwise (e.g., assignment of security interest, pledge, etc.). The Customer hereby irrevocably assigns to SURTECO GmbH a security interest in any and all claims against the purchasers of goods from the Customer arising in connection with the disposal of the goods to which SURTECO GmbH retains title together with all ancillary rights. If the event the Customer credits proceeds from the disposal to a current account maintained for purchasers, the Customer will irrevocably assign a security interest in the entire credit balance to SURTECO GmbH. SURTECO GmbH hereby accepts such assignments.
5. The Customer will remain authorized to collect receivables assigned to SURTECO GmbH on behalf of the latter as long as the Customer is not in arrears of payment. The Customer may not assign receivables to third parties. The Customer will keep a separate account for payments received and, regardless of any later due dates agreed to by SURTECO GmbH, remit payments received to SURTECO GmbH without delay until all outstanding amounts due to SURTECO GmbH have been paid in full. If the event payments are made to the financial institution of the Customer, the Customer hereby irrevocably assigns the corresponding amounts due from its financial institution to SURTECO GmbH. In the event the Customer receives bills of exchange in payment from third parties, the Customer hereby irrevocably assigns to SURTECO GmbH the proceeds due from the financial institution if the bills are discounted. SURTECO GmbH hereby accepts such assignments.

6. It is deemed agreed that goods obtained from SURTECO GmbH by the Customer are processed or transformed for SURTECO GmbH as producer within the meaning of § 950 of the German Civil Code and that this will entail no liability on the part of SURTECO GmbH. If the goods supplied by SURTECO GmbH will be mixed, combined or connected with other products so that the property of SURTECO GmbH is extinguished by operation of law, the Customer hereby assigns its property or co-property rights in the new product to SURTECO GmbH and will hold in trust the new product for SURTECO GmbH free of charge.
7. SURTECO GmbH will request of the Customer identify goods that remain the property of SURTECO GmbH. SURTECO GmbH will be under no obligation to quantify the scope of its retention of title without being requested to do after receiving payment. If the Customer is in possession of goods to which SURTECO GmbH retains title that have not yet been completely paid for, SURTECO GmbH will at the request of the Customer release such goods insofar as the invoiced value of the goods exceeds the total amount of outstanding receivables by more than 20% and no rights to separate satisfaction exist. The same will apply accordingly if the goods to which SURTECO GmbH retains title are replaced by claims against third parties and these claims are enforced by SURTECO GmbH in its own name. SURTECO GmbH will otherwise release securities at the request of the Customer insofar as the market value of the securities exceeds the total value of the secured claims by more than 50% plus the value-added tax incurred upon disposal.
8. If the Customer is in possession of goods to which SURTECO GmbH retains title that have not been completely paid for and insolvency proceedings are initiated in respect of the assets of the Customer or the Customer fails to fulfill its obligations towards SURTECO GmbH or third parties without good reason, SURTECO GmbH may revoke the Customer's right of possession and take possession of the goods without withdrawing from the sale. SURTECO GmbH will not have the right to take possession if and insofar as the insolvency administrator insists upon performance and in exchange pays the purchase price.
9. In the event of withdrawal from the sale, in particular due to arrears of payment on the part of the Customer, SURTECO GmbH may dispose of the goods as it sees fit and satisfy its claims from the proceeds. Without prejudice to any other rights of SURTECO GmbH, the Customer will indemnify SURTECO GmbH for expenses incurred in connection with the execution of the sale, the processing of the sale to date and the rescission of the sale as well as for the cost of retaking possession of the goods and pay SURTECO GmbH a fee in the amount of 2% of the value of the goods for the use of the goods per month and any fraction thereof elapsed after the passage of risk.
10. In the event the goods delivered to the Customer are processed or transformed or combined in any way with other products by the Customer, any warranty claims against SURTECO GmbH will expire.

#### **IX. Miscellaneous**

1. Neither a handwritten nor electronic signature will be required to satisfy any written form requirement. Communication by fax or e-mail will suffice to satisfy the written form requirement as will any other legible and reproducible form of communication. The end of the communication need not be explicitly identified.
2. SURTECO GmbH will process and store customer data to the extent required to conduct business with the Customer and SURTECO GmbH is required to retain such data by law. Personal data of the Customer will not be transferred to other parties without the consent of the Customer. Personal data will be collected, transmitted and otherwise processed exclusively on the basis of the Federal Data Protection Act (*Bundesdatenschutzgesetz* – BDSG) and taking into account the provisions contained in Art. 13 and 14 of the General Data Protection Regulation (GDPR), which are appended to these "General Terms & Conditions of Sale" as an integral part thereof in the form of an information

sheet on the "Processing of Personal Data within Germany and the Countries of the European Union" (Information to be provided pursuant to Art. 13 and 14 GDPR).

3. The Customer agrees to notify SURTECO GmbH without delay in writing if governmental authorities become involved in or take action in connection with the goods delivered. The Customer will also continue to observe the goods delivered while in use and notify SURTECO GmbH without delay in writing in the case of any concern that the goods could endanger third parties.
4. Without prejudice to any further rights SURTECO GmbH may have, the Customer will hold SURTECO GmbH harmless from any claims of third parties brought against SURTECO GmbH under the Product Liability Act or similar legislation insofar as such liability arises from circumstances – such as, for example, the presentation of the product – brought about by the Customer or other third parties under the control of the Customer without the express written consent of SURTECO GmbH. This will also include indemnification of expenses incurred by SURTECO GmbH. The Customer hereby expressly waives any further conditions or other objections to SURTECO GmbH's right to be held harmless, in particular in respect of compliance with control and recall obligations as well as the right to plead limitation.
5. SURTECO GmbH retains all rights of ownership, copyright and other industrial rights and intellectual property as well as rights arising from know-how to illustrations, drawings, calculations and other documents, whether in physical or electronic form, as well as to any software made available to SURTECO GmbH by the Customer. SURTECO GmbH will treat the above materials and software confidentially and use such materials and software exclusively in connection with business subject to these General Terms & Conditions of Sale. The Customer warrants and represents that it is authorized to use all samples, drawings and other documents made available to SURTECO GmbH for the purposes of the creation of decors and surfaces, regardless of whether in physical form or on the basis of [digital] data.
6. Notwithstanding other provisions of law, tolling will also end if negotiations regarding an issue are not resumed for over 4 weeks. Recommencement of the period of limitation for claims of the Customer will in any case require the explicit written confirmation of SURTECO GmbH.

#### **X. General Contractual Principles**

1. The place of delivery will be that specified in the provision contained in III.4 of these General Terms & Conditions of Sale. The place of payment and performance for all other obligations arising in connection with business conducted between SURTECO GmbH and the Customer will be 86647 Buttenwiesen. These provisions will also apply if SURTECO GmbH makes delivery to the Customer or reverses a sale at a different location. Other clauses or Incoterms or clauses such as "F.O.B. ..." or similar clauses will only result in a different arrangement for shipment and freight costs; the provisions agreed to in these General Terms & Conditions of Sale will otherwise prevail.
2. Contractual and non-contractual understandings between SURTECO GmbH and the Customer will be subject exclusively to German law and customary German business practice. In the case of the use of commercial terms, the Incoterms 2010 of the International Chamber of Commerce will apply in the case of doubt, taking into account the understandings contained in these General Terms & Conditions of Sale. Exceptions to these contractual principles will be made exclusively on the basis of separate agreements between SURTECO GmbH and the Customer and these General Terms & Conditions of Sale.
3. All – contractual and other legal – disputes arising from or in connection with purchase orders based on these General Terms & Conditions of Sale, their validity, breach or rescission as well as any insolvency disputes will be decided in accordance with the rules of arbitration of Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS) in the currently

applicable version to the exclusion of recourse to the ordinary courts. The court of arbitration will consist of three arbitrators and a single arbitrator in the case of disputes involving an amount in controversy of less than € 150,000. Arbitration proceedings will be held in Cologne in the German language. If the event this arbitration clause is or should become invalid, all disputes will be brought before the courts with jurisdiction over 86647 Buttenwiesen. Instead of bringing an action before the court of arbitration and regardless of the validity of the arbitration clause, SURTECO GmbH may, however, also bring an action before the courts with jurisdiction over 86647 Buttenwiesen, the courts with jurisdiction over the place of business of the Customer or any other jurisdictional public courts.

4. In the event any provision of these General Terms & Conditions of Sale should be or become invalid, in their entirety or in part, the remaining provisions will remain valid. The Parties will then replace the invalid provision by a valid provision that most closely approximates the economic intent and purpose of any such invalid provision.