YOUR FUTURE

GENERAL TERMS AND CONDITIONS
FILL GESELLSCHAFT M.B.H.

Status: 02nd May 2022

1. Scope

1.1. Orders accepted and to be handled, as well as supplies and services, shall be executed exclusively on the basis of the following terms and conditions. The contractual partner for the purposes of these terms and conditions shall be exclusively a business pursuant to § 1 of the Austrian Consumer Protection Act [KSchG].

1.2. They constitute an additional component of any contract concluded by us with our contractual partner, including any changes and amendments.

1.3. In placing an order, they shall be deemed to have been recognized by and legally binding on our contractual partner.
Any terms and conditions of business of the contractual partner or any amendments or supplements to our own terms and conditions shall only be valid if expressly approved by us in writing.
Any terms and conditions of the contractual partner shall not be accepted as binding, even if we do not expressly object to them upon receipt. Any terms and conditions of business of the contractual partner shall only be accepted as binding, in full or in part, with our express written approval.

1.4. Our terms and conditions shall likewise apply to any future contracts falling within the scope of the business relationship with our contractual partner, even if no reference should be made to them in the individual case. They shall in particular also apply to deliveries of spare parts and to the fulfillment of orders for repairs.
The relevant applicable version of our terms and conditions shall be that valid upon conclusion of the contract, which may be downloaded from our website https://www.fill.co.at.

1.5. Any declarations between the parties to the contract of legal significance may also be transmitted electronically (by email in .pdf format, or involving digital signatures), which shall be deemed to comply with any requirement of written form.

1.6. Should such declarations be received by us outside our usual business hours, they shall only be deemed to have been received by us as from the commencement of our business hours on the following day.

1.7. Our business hours are:
Monday through Thursday from 7:00 AM to 4:30 PM
Friday from 7:00 AM to 12:00 PM

2. Offers and conclusion of contract

2.1. On principle, our quotations are prepared in writing. Unless agreed otherwise, they are liable to change without notice and non- binding.

2.2. The contract shall be deemed concluded once we have dispatched a written declaration of acceptance in the form of an order confirmation.

2.3. Our contractual partner shall, in any case, review our order confirmation without delay. If no objection has been raised within ten working days (Mon.-Fri.) of receipt, our confirmation shall be deemed to have been acknowledged as being correct and complete (see Art. 3.2.). In particular, unless such an objection is received, also the requirements for the customer's electronic infrastructure, including the system environment for the software, shall be deemed to have been confirmed with binding effect.

2.4. We reserve the right to make unilateral modifications to designs, dimensions, and weights, as well as to deviate unilaterally from any predefined technical or functional specifications or implementation guidelines, to the extent that they are necessary and/or expedient, and reasonable for the contractual partner. When doing so, we shall give due consideration to the justified interests of the contractual partner.

2.5. If no contract is ultimately concluded, we reserve the right to make a reasonable charge for any cost estimate and plans prepared by us.

2.6. Should any documentation be prepared for us by third parties, we shall not be liable for the accuracy and completeness of its content or for any fault in regard to it, but shall be liable only for gross negligence in selecting such third parties.

2.7. Our order number is to be cited on any orders or documentation sent to us, otherwise, if we are not able to allocate it to the order in question, we shall be entitled to ignore such documents without processing them further.

3. Plans and/or documentation (documents)

3.1. The details regarding weights, measures, output, prices, etc. given in catalogs, brochures, circulars, advertisements, illustrations, websites (home pages) and price lists, etc. are liable to change without notice and non-binding. Such details shall only be binding if confirmed by us in our order confirmation.
The foregoing shall also apply to any details on products/work performed based on samples made available by us.

3.2. Any plans, test certificates, statistical calculations, parts lists, materials lists, etc. (documents) prepared by us are to be carefully reviewed by our contractual partner without delay upon receipt (see Art. 2.3.).

3.3. We expressly decline any obligation to examine any information/data/instructions and/or materials provided to us in order to ensure their accuracy or suitability, and we shall not be subject to any duty to issue warnings or instructions in this regard. On the contrary, the contractual partner shall guarantee their accuracy and suitability.

3.4. Descriptions of systems, equipment, machinery, components and technologies, as well as drawings, plans, sketches, performance data, detailed design documentation and any other technical documentation, and also any software provided which may also form part of the offer, regardless of whether in the form of a hard copy or available digitally, are provided to you exclusively for your own usage in order to examine a potential business relationship, are, and shall always remain, our intellectual property, must be treated in confidence and can be requested back by us at any time, without giving details of reasons.

3.5. They are, in any event, to be returned in their entirety upon request should no contract be concluded (see also Art. 9.).

3.6. To the extent that this documentation and/or data (see Arts. 2. and 3.3.) is not expressly covered by the scope of services described, it is likewise to be returned to us without delay upon request once the order has been executed.

3.7. Any documentation provided to us, such as drawings, samples and/or data sets, including any which did not lead to the contract being concluded, shall be available to our contractual partner.
Should they, however, not be collected or accessed within six weeks of submission of the offer or cancellation of the order, we shall be entitled to destroy them.

4. Execution of works, delivery period/delivery date

4.1. Essentially, the services (products manufactured/work carried out) ordered will be manufactured by us.
However, we shall at any time be at liberty to choose another manufacturer who shall be entrusted with supplying the products/works ordered.

4.2. Unless agreed otherwise, any agreed delivery period shall commence on one of the respective dates listed below:
1 working day following dispatch of the signed order confirmation; or
1 working day following the date of complete fulfillment of any technical, commercial and financial prerequisites incumbent upon our contractual partner under the contract; or
1 working day following the date on which we have received the down payment agreed prior to delivery of the goods and/or any other collateral to secure payment agreed has been created or a guarantee to ensure payment has been made, whichever comes later.
The foregoing shall apply mutatis mutandis also to any delivery dates agreed upon, which shall be postponed accordingly.

4.3. The agreed delivery period or delivery date shall be deemed to have been met if we have reported our readiness to deliver by the time it expires/passes.
Our deliveries/services shall be made/provided in accordance with our ability to delivery or to provide the service. In particular, contracts shall be concluded subject to the reservation that we may be unable to deliver, or may only be able to make partial deliveries, in the event that we do not receive delivery correctly or on time from our own suppliers. A declaration to this effect from our own supplier shall constitute sufficient proof of our inability to deliver/perform and the absence of any fault on our part. In the event that a service is unavailable or only partially available, the contractual partner shall be informed within a reasonable period. Any consideration already paid shall be reimbursed.

4.4. An agreed delivery period or an agreed delivery date shall be extended/deferred accordingly in particular as a result of delays in the supply by a third party of significant components specified by our contractual partner until the impediment has been resolved.
The foregoing shall also apply if such circumstances occur with their sub-contractors.
We shall also not be responsible for any circumstances detailed above if they arise during a delay which has already occurred.
However, we always make every effort to meet any delivery periods/dates committed to.

4.5. Our contractual partner shall not be entitled to modify delivery periods or delivery dates, for any reason whatsoever, without our written consent.
In the event that we have agreed to the modification of a delivery period or delivery dates, we shall be entitled to adapt our production dates and prices, as well as any fixed price contract, if needed, accordingly (see Art. 7.2.).

4.6. Should a delay in delivery be attributable to us, our contractual partner shall, in any event, be obliged to first of all grant us a reasonable grace period to provide our full services or missing partial services retrospectively.
In the case of specially-designed goods, in assessing the grace period it shall, in any event, be necessary to take into account that any parts already manufactured cannot be used in any other way.

4.7. Our contractual partner may only withdraw from the contract by written notice to that effect in the event that we are unable to perform within a grace period on account of gross negligence on our part, and only with regard to any parts not yet supplied.
The same shall however apply also to any parts supplied that cannot be used in an economically reasonable manner without the products/services still outstanding (see Art. 17.).

4.8. For any partial deliveries not covered by the withdrawal, we shall have a claim to the agreed (at least) pro rata remuneration.
Any products (parts) already supplied, but which are not usable, are to be returned to us without delay (see Art. 17.4.).

4.9. Any claims may be brought against us for the payment of damages, consequential losses/damages or loss of profit due to the failure to deliver/perform on time based on minor negligence on our part shall be excluded (see Art. 12.).
Our contractual partner shall not be entitled to bring any further claims against us on the grounds of delayed delivery/performance.

4.10. Partial deliveries by us shall be permissible. Any partial delivery shall, essentially, be deemed an independent transaction.

5. Acceptance

5.1. Our contractual partner undertakes to carry out a preliminary acceptance of the products (works) ordered, in the form of a preliminary inspection at our factory in Gurten or at any other location to be determined/determined by us, during our usual business hours (see Art. 1.7.).
The quality inspection of any parts produced during the preliminary inspection shall in principle be carried out by our contractual partner, shall fall under its own responsibility and shall be carried out entirely at its own cost.

5.2. Our contractual partner shall be notified in good time about the date scheduled for preliminary acceptance, so that he or a party authorized by him and of whom we have been notified in advance, can attend.

5.3. A preliminary inspection report is to be kept of the preliminary acceptance.

5.4. Should our contractual partner or its authorized representative not be present at the preliminary inspection, in spite of being notified about it in good time, the preliminary acceptance report will be prepared and signed by us alone. Our contractual partner will be given a copy of it.
In this case, our contractual partner will no longer have the opportunity to raise any objection regarding the accuracy of the report.
In this case, our forwarding of the preliminary acceptance report prepared and signed by us shall also be deemed approval of the delivery.

5.5. Unless agreed otherwise, we shall bear the costs of the preliminary inspection (preliminary acceptance) carried out.

5.6. Our contractual partner shall, in any event, be required to bear itself the costs incurred by it or its authorized representative in connection with the preliminary inspection, such as, for example, travel to our factory, living expenses and the hours worked, etc.

5.7. The preliminary inspection shall consider the criterion of the basic technical execution and function of the product/works according to the contract. Performance criteria such as cycle times, the quality of the parts produced, noise emissions etc. are expressly excluded as criteria for preliminary acceptance. Any defects that do not significantly impair the function and/or technical execution of the product/works shall not establish any entitlement to refuse delivery approval.

5.8. Should any significant defects come to light during the preliminary inspection (i.e. defects that significantly impair the function and/or technical execution of the product/works), these shall be rectified by us promptly.
Once they have been remedied, a notification about them having been remedied will be sent to our contractual partner.
This notification about the defects having been remedied shall simultaneously be deemed the approval of delivery.

5.9. After commissioning at the installation location, appropriate training of the operators will take place and therewith the safety-related operational handover of the product/works (BBÜ), which alone shall qualify and authorize the contractual partner to use the product/works. Our contractual partner declares in signing the handover protocol that it has completely and adequately informed itself concerning the handling, operation, possible applications, and product-specific danger of the product/works (see Art. 15.5.).
The product/works shall be ready for production upon completion of the handover, although the agreed performance criteria (cycle time, availability, etc.) need not be fulfilled at this point in time.

5.10. Unless agreed otherwise, final acceptance of our product/works delivered shall be completed in principle after the safety-related operational handover and a corresponding optimization phase. This period has to be agreed upon jointly.
If the optimization of the system has been completed by us, readiness for final acceptance shall be notified in writing. Final acceptance must be completed within 4 weeks of this time.
If final acceptance is not completed within this timeframe due to reasons beyond our control (e.g. lack of suitable infrastructure, no raw materials available, lack of qualified operators, etc.), final acceptance of the product/works shall be deemed to have occurred. The final acceptance report must be signed once the contractually agreed performance parameters, such as cycle time, availability, etc., have been delivered over an agreed period. Defects that do not significantly impair functionality shall not entitle the contractual partner to refuse final acceptance. Such defects will be noted in the final acceptance report and processed accordingly.

5.11. Should our contractual partner not complete final acceptance of the contractually agreed product provided (works carried out) notwithstanding its obligation to do so, we shall be entitled to either insist on fulfillment of the contract and on the contractually agreed fulfillment of the payment obligation or to withdraw from the contract.
In either case, our contractual partner shall be obliged to pay full damages, including warehouse charges (see Art. 12.). The foregoing shall be without prejudice to any further rights that may be vested in us.

6. Place of fulfillment and passing of risk

6.1. Should nothing to the contrary have been agreed, the product supplied (works carried out) shall be deemed to be delivered "ex works". (Readiness for collection notified/place of fulfillment) For the rest, the agreed Incoterms shall apply.

6.2. Benefit, risk and liability shall pass to our contractual partner at the time of the safety-related operational handover (see Art. 5.9.) – where this is scheduled to occur – at the place of performance, and otherwise upon performance by us at the place of performance, also in relation to the partial commissioning of the product (works) or parts thereof by our contractual partner.

6.3. If assistance and support from us is requested when loading the means of transport selected by our contractual partner, our contractual partner hereby undertakes to indemnify us against and hold us harmless in full with regard to any damage or detriment that may result from such action.

7. Prices (compensation for work)

7.1. The prices specified (compensation for work - fixed prices) shall refer to the date on which the contract was concluded, and, in so far as nothing to the contrary has been agreed, shall be understood to be exclusive of VAT.

7.2. We shall be entitled to increase our prices (compensation for work) if, as of the date of delivery, an unforeseeable change has occurred in the circumstances forming the basis for our pricing, of which we were not the cause and over which we have no control (see also Art. 4.5.).

7.3. The foregoing shall in particular apply to unforeseeable fluctuations in price for raw materials, etc. or any subsequent introduction of or increase in taxes, customs duties, other public dues, freight rates or ancillary expenses directly or indirectly affecting our delivery or making it more expensive.

7.4. Unless agreed otherwise, the prices specified (compensation for work) are understood to be ex works inclusive of packaging and without loading.

7.5. Unless agreed otherwise, we shall charge for the costs of assembly and commissioning on a time and materials basis at our hourly rates at the relevant time.

7.6. Should we not have established the prices at the time of concluding the contract, our list prices applicable on the date of delivery shall apply.

7.7. Any ancillary expenses, such as public dues, customs duties, compensatory amounts levied on imports or import and export taxes and fees shall, if nothing to the contrary has been agreed, be borne by our contractual partner.

7.8. The designations such as "as usual", etc. used in orders shall only refer to the execution of our services, not however to prices and ancillary expenses.

7.9. Should our contractual partner wish to exercise an expressly agreed right of withdrawal, the payments accrued and due for the products supplied (works carried out) and thus to be returned shall be charged, in order to compensate us for the expenses incurred by us by that date.

7.10. Any material already processed, as well as any material which has been ordered exclusively for our contractual partner, shall not be taken back, and shall accordingly be charged for (see Arts. 4.7. and 4.8.).

8. Payment

8.1. Payments are to be made by the deadline specified in our order confirmation.

8.2. Should no particular payment deadlines be mentioned, the following deadlines shall be deemed to have been agreed:
30% of the agreed price (compensation for work) at the time of ordering,
60% upon notice of readiness for dispatch,
10% after acceptance and no later than 3 months after delivery.
The final invoice shall be presented at the time of the safety-related operational handover (BBÜ), and shall be payable 30 days after the planned acceptance date.

8.3. Notwithstanding the foregoing, in so far as no immediate payment obligation exists the statutory amount of any VAT contained on an invoice is in any case to be paid by no later than 30 days from the invoice date.

8.4. In so far as nothing to the contrary has been agreed, payments are to be made immediately without deduction (early payment discount) upon receipt of the invoice, as well as being subject to exclusion of any claim on the part of our contractual partner for retention or to offset amounts against any counterclaims not expressly acknowledged by us in writing (see Art. 14.).

8.5. Payments shall be considered to have been made in a timely manner with reference to the day on which we have access to the funds in the agreed currency (place of fulfillment).

8.6. Payments shall, if not expressly dedicated, in principle first be applied to the oldest and/or any unsecured open claim.
The payments themselves shall firstly be applied to costs (expenses), then to interest due, and finally to the principal of the individual accounts receivable.

8.7. In the event of a delay by our contractual partner in making an agreed payment or any other performance, we may either withdraw from the contract immediately, after a reasonable grace period has elapsed (i.e. without setting a further grace period), or insist upon performance of the contract and
a) refrain from complying with our own obligations until such time as the default has been remedied or that other performance has been carried out;
b) benefit from a reasonable extension of the delivery deadline;
c) call in the consideration/compensation for work outstanding;
d) charge default interest from the due date at the level applicable for business-to-business transactions (§ 352 of the Austrian Commercial Code (UGB),
e) charge for any expenses incurred as a result, as well as for all reminder and collection expenses, including any costs of legal representation,
f)prohibit usage of the product/works by the contractual partner until outstanding payments or other performance has been settled, and where applicable prevent this either technically or physically.

8.8. We shall only accept bills of exchange following an express agreement, and only pending full discharge of the amount owed. The expenses shall always be our contractual partner's responsibility. Any credit resulting from bills of exchange or checks shall be made after deducting any outlays and subject to the value being credited on the day on which we are in a position to dispose of the proceeds.

8.9. If installment payments have been agreed to, should default occur by the payment not having been received on time by the due date, even in the case of just one installment, the entire outstanding amount shall immediately be due for payment.

8.10. Should these payment conditions not be adhered to, or should we, upon the respective contract having been concluded, learn about circumstances diminishing our contractual partner's creditworthiness, we shall be entitled to immediately call in all our claims, including any from other transactions concluded.

8.11. Should this occur, we shall be entitled to effect any outstanding deliveries, including under any other contracts concluded or yet to be concluded, exclusively on the basis of advance payment being made or to withdraw from the contract (from these contracts) and claim damages for our performance rendered (see Arts. 12. and 17.).

8.12. Any price reductions agreed (in particular discounts/early payment discounts) shall be forfeit as a result of this, and we shall be entitled to claim the full invoice amount outstanding.

8.13. Our right to claim full damages, inclusive of reimbursement of any expenses already occurred in connection with the agreements from which we are, in such a case, withdrawing, shall not be affected thereby, regardless of fault on the part of our contractual partner.

8.14. The right to reclaim the products supplied (works carried out) subject to reservation of ownership and/or parts thereof shall not be affected thereby (see Art. 10.).

8.15. In the event of our contractual partner defaulting, we shall also be entitled to dispose of the goods by way of public auction, as per the corresponding provisions under commercial law.

8.16. No liabilities on our part vis-à-vis our contractual partner shall result from our exercising these rights, and in particular no damage claims of any kind whatsoever shall arise and/or be asserted against us.

9. Industrial property rights, copyright and other intellectual property rights

9.1. All industrial property rights, copyright and intellectual property rights to the products/works manufactured or delivered by us along with their production processes, their application and/or the procedures thereby implemented, and to components, software or the corresponding source code and object code and the user documentation, plans, sketches, descriptions, diagrams, handbooks, assembly instructions, calculations, cost proposals and other technical documentation along with samples, prototypes, catalogs, prospectuses, illustrations, offers and the like, including in particular rights to patents, trade marks, registered designs, utility models and copyright and rights to know-how and commercial, technical and/or operational information shall be vested in and shall remain with us alone. With the exception of entitlement to use the product/works in accordance with its/their intended usage in its/their specific composition and design as acquired from us, our contractual partner shall not be granted any other rights thereto, including in particular any licensing or usage rights.

If the deliverable is software or if the product/works purchased from us contain(s) software, the right of usage shall extend exclusively to the product/works for which the software was acquired or with which the software is provided for the purpose of operation and exclusively for the period of the active deployment of this product/these works, and shall be limited to the duration of usage of the product/works by the contractual partner.

Unless the product/works is/are intended for onward sale to the customers of our contractual partner, these rights shall be vested exclusively in our contractual partner and shall not be transferable and/or sub-licensable.

9.2. If we furnish our contractual partners with handbooks, end user documentation or comparable instructions, these will be provided exclusively as assistance for the proper operation of the product/works. Our contractual partner is not entitled to use such documentation or software and/or the corresponding source code or object code in any manner extending beyond usage in order to operate the product/works, and shall in particular refrain from any exploitation, reproduction, dissemination, processing, alteration, provision to other parties, transmission or listing in any form and on any data carrier whatsoever, whether known or as yet unknown upon conclusion of the contract. An exemption from the foregoing shall be allowed only for any rights that must be granted as a matter of law in relation to usage of the software, in particular pursuant to Articles 5 and 6 of Directive 2009/24/EC of 23 April 2009, subject to the conditions and prerequisites set forth therein.

9.3. Should a claim be made against us due to a product of ours (work carried out by us) prepared on the basis of construction details, drawings, models or other specifications issued by our contractual partner, and/or should a claim be made against us by a third party for other reasons due to infringement of patents, trademarks or design or utility model rights or copyright or other intellectual property rights, our contractual partner shall be expressly obliged to indemnify us and hold us harmless in this respect.

9.4. All rights to performance, know-how, developments, inventions etc. accruing to us within the ambit of or in relation to the provision of our services shall be vested exclusively and entirely in us, irrespective of whether our contractual partner was in any way involved in the provision of the service. Any rights arising for our contractual partner shall be automatically transferred to us upon creation of the service, know how, development, invention etc., and we shall also be vested with the exclusive rights of usage (concerning the works). In particular, we shall also have the exclusive right to file industrial property right applications. Our contractual partner shall not exercise any rights in relation to industrial property right applications, including in particular any right of prior usage.

9.5. Our contractual partner shall not be entitled to remove or alter our trademarks, signs and/or any other indication affixed.

9.6. Any advertising provided by us for the purpose of passing on to end customers, including in particular product brochures, catalogs or advertising prospectuses may be passed on to such buyers in the form in which they were handed over by us without prior approval.

9.7. If following a request by our contractual partner we approve the passing on of our documentation to the contractual partner's buyers, our contractual partner shall be obliged to inform its buyers of our rights specified above and in addition to oblige them to comply with the terms set out above and require any further buyers to comply with them. This shall apply in particular to the duty to oblige any further buyer to comply with the terms set out above. In the event of any breaches, our contractual partner shall bear liability for the conduct of its buyers in the same manner as for its own.

10. Reservation of ownership

10.1. We reserve the right of ownership in all products supplied by us (and also parts of the foregoing) and/or work carried out by us until such time as all financial obligations have been fulfilled by our contractual partner. The terms of Art. 9 above shall apply in relation to intellectual property rights.

10.2. In order to preserve the agreed reservation of ownership, our contractual partner shall himself expressly be required to comply with any formal requirements relating to a specific country, or provide the necessary support in that respect.

10.3. Should our products or parts thereof and/or works carried out by us be processed or unified (mixed or linked) with other items not belonging to us, we shall acquire co-ownership in such new item in the proportion of the value of our products (works) to the value of the processed or unified item as at the time of processing or unifying it.
Our reservation of ownership shall consequently also extend to the new item.

10.4. If ownership has been reserved, the contractual partner shall not be entitled to sell products (works) supplied by us to any third parties, unless we have expressly agreed to it in writing.

10.5. The accounts receivable from third parties as a result of re-selling the retained products and/or works, regardless of whether the latter are unprocessed or have been mixed or mingled with any other products, are already at this point assigned along with ancillary rights to us by our contractual partner up to the amounts of the receivables to which we are entitled plus interest and expenses, and in fact regardless of whether the retained products and/or works have been sold to one or more customers without being further processed or following further processing or upon being mixed with other products.

10.6. Our contractual partner shall be required to register the assignment of the claim in its accounts, and make the assignment known, upon our request, to its customer.

10.7. In the event of seizure or other claims made by third parties, our contractual partner shall be required to notify us about the foregoing without delay, and provide us with evidence of our right of ownership in the retained goods having been secured.
The costs of the prosecution in this respect shall be borne by our contractual partner alone in full, or alternatively full compensation of the expenses is to be paid to us.

10.8. As long as our right of ownership in the retained product and/or works exists, our contractual partner shall be obliged to expediently install the latter, store it and keep it jointly insured for our benefit, at its own expense, against loss and loss of value, as well as fire and theft and storage or water damage.

10.9. We shall be entitled to visit our contractual partner's premises and building sites at any time, and mark our retained products/works accordingly, and also assign the retained ownership to a third party at any time, especially to a bank or other lender.

10.10. If our contractual partner is in default with an agreed payment or other service for a period of more than three months, we shall be entitled while maintaining the contract, to restrict or prevent the contractual partner's right of disposal of products, trades or systems supplied by us until payment has been made in full. This shall not affect the options for action listed in Section 8.7.

11. Warranty

11.1. The duration of the warranty shall be 12 months or until 5,500 operating hours have elapsed (whichever occurs first), commencing upon safety-related operational handover to our contractual partner, or in the event of delivery without commissioning, upon the passing of risk (see Art. 6.). It shall however commence no later than 8 weeks after delivery approval.

11.2. Our contractual partner shall be obliged to carefully check our services (products/works) without delay once received by it. Should any defects emerge, these are to be notified in writing immediately.

11.3. We shall, on our part, only provide a warranty for properties of our products or works that are expressly agreed, and/or for any which are, in that respect, usually presumed, however not for the suitability for particular processes or the goods in question serving the purposes of our contractual partner. In regard to our products, we shall not be bound by any statements made by any manufacturer, importer into the EEA or any person who, in any form whatsoever, designates themselves a manufacturer ("quasi manufacturer").

11.4. Essentially, our products (works) only feature such safety measures and services as may usually be expected based on official inspection provisions, operating manuals, our rules on the handling of items - in particular in regard to any checks required - and other advice given, unless anything to the contrary has been expressly agreed upon.

11.5. Regular commercial deviations in dimensions, packaging and material shall not entitle our contractual partner to file a notice of defect.

11.6. Should a product (work carried out) be prepared on the basis of construction details, drawings, models or other specifications of our contractual partner, the latter shall not result in our warranty extending to the accuracy of the construction, but only in it extending to the work being carried out in accordance with the specifications stipulated by our contractual partner. We shall expressly not be liable for other specifications in regard to output, performance, etc. of such products/works.

11.7. Our warranty shall not apply to any defects based on poor installation of the product/works supplied by the contractual partner or its agents (i.e. not installed in the required or customary manner), or resulting from any defective repair and maintenance, improper operation, or those due to repairs or modifications carried out by a third party without our written consent, nor shall it apply to normal wear and tear.

11.8. Insofar as technically feasible and economically expedient, any exchange of parts or improvement carried out to the product shall in principle be implemented by us at our factory, in regard to which our contractual partner shall be required to forward the product (works) or the defective parts to us at its own risk. In other cases, we will carry out the improvements on site. Should it transpire that our product (works) is/are not defective, or should the defects not be our fault, our contractual partner shall be obliged to compensate us for all costs incurred thereby.

11.9. In the case of work carried out on site under warranty, our contractual partner shall be required to provide us with any necessary aids, such as hoisting gear, power, any employees needed, etc., free of charge. Any protective devices must be periodically checked by the customer and must not be dismantled under any circumstances. Only if it is guaranteed that the system can be operated safely, any service or warranty work can be carried out by us.

11.10. Any parts replaced shall remain our property for as long as the service provided by us has not yet been paid for and/or to the extent that ownership in the entire work has been reserved (see Art. 10.).

11.11. In relation to software we warrant that the software complies with the relevant software description provided and confirmed by us. In addition, we warrant that the software is free from malware and/or computer viruses upon delivery. Any further properties may not be presupposed and shall not be deemed to have been agreed upon.

It is expressly stipulated that the software may not operate without error and/or interruption. The software is only programed in relation to the corresponding system or the corresponding product/works within the necessary system environment as specified in the relevant software documentation. In addition, any warranty shall be limited to faults that can be demonstrated and reproduced by our contractual partner.

Any warranty for software is expressly excluded in the event that our contractual partner alters the system environment and/or interferes in any way with the software on its own initiative. Any warranty is also expressly excluded in the event that the software is referred to by a higher-level system/program and the error objected to originate from this higher-level system/program, which shall be presumed to be the case unless our contractual partner is able to establish otherwise.

The existence of a defect covered by the warranty must always be demonstrated by our contractual partner. The occurrence of defects during the warranty period shall be reported in writing by our contractual partner promptly in a documentable and detailed form, stating all information that may be useful for an analysis of the defect. It is necessary in particular to state the steps of the procedure that resulted in the occurrence of the defect, along with the appearance and implications of the defect.

We may resolve a software defect at our choice either by rectifying it promptly or by supplying a new program. Our contractual partner shall only be entitled in the first instance to claim rectification as a remedy under warranty, and we expressly reserve the right to rectify the defect by an adequate workaround. If at least three attempts at rectification are unsuccessful, our contractual partner may claim an exchange or, after a grace period has elapsed, terminate its usage of the relevant software. These are the only remedies under warranty that are available to our contractual partner. No warranty shall be provided in respect of minor defects within the software that do not impair its proper functioning.

11.12. The warranty of title shall be limited as follows. We warrant that the product/works do not infringe any third party device claims within its/their specific composition as stated in the order confirmation. In the event of a defect in title that is covered by the warranty, the burden of proving which shall be borne by our contractual partner, we shall at our choice and at our own cost (a) alter or exchange the product/works or the software in such a manner that third party rights are no longer infringed, while the product/works or software continue(s) to fulfill the functions agreed to under contract, or (b) provide (an) alternative product/works or software with equivalent functionality, or (c) procure a right of usage for the contractual partner by concluding a license agreement.
Our contractual partner shall inform us promptly in writing in the event of any other loss of the above-mentioned claims should any claims be brought against it in relation to the infringement of such rights, and shall await our instructions.
No warranty is provided for any defect in title in relation to the products/works falling under Art. 11.6 above.

11.13. Should our contractual partner not comply with his payment obligations towards us, or not in good time, the obligation on our part to provide a warranty for any defective products (works) shall lapse.

11.14. As a reseller, we only provide a warranty in accordance with the scope of liability assumed by the manufacturer and/or supplier (factory supplying the parts).
Any further guarantee and/or warranties shall expressly not be assumed by us.

11.15. We shall not assume any warranty when selling used products, or when accepting orders for repair, or in the case of any changes or adaptation of products (works), in so far as nothing to the contrary has expressly been agreed to.

11.16. Asserting any defects shall not entitle our contractual partner to put forward the objection of the contract not having been fulfilled or to demand any change in the payment terms, and especially not to retain the remuneration for goods or services, in whole or in part.

11.17. Our contractual partner expressly waives the option to rescind the contract. The contractual partner shall not be entitled to carry out any work either itself or through a third party without our prior written approval.

11.18 Unless specified otherwise in these terms and conditions, our liability for defects is regulated conclusively under Art. 11. We shall not incur any further liability for defects with any basis in law whatsoever.

12. Liability and damages

12.1. We shall not incur any liability for damage to property or pecuniary losses in relation to minor negligence on our part or by our employees, appointees or other vicarious agents ("People"), irrespective of whether such losses are direct or indirect, in relation to loss of profit, consequential losses, losses resulting from delayed performance or the fact that performance is impossible, a positive breach of contract/an entitlement, culpa in contrahendo, defective or incomplete performance or losses resulting from third party claims against the contractual partner. The existence of gross negligence or willful conduct shall be proven in all cases by the injured party. If our liability is excluded or limited, this shall also apply to the personal liability of our employees.
The above disclaimer shall not apply if the losses result from hazards that are not typical for the legal relationship or that were not foreseeable taking account of the particular circumstances of the individual case.
In relation to software, liability shall in addition only subsist for losses resulting from reproducible errors. No claims may be brought under any circumstances in relation to defects and/or losses caused by malware, computer viruses, changes to the software environment and/or third party breaches of the law. Similarly, no claims may be brought in relation to defects and/or losses attributable to improper usage by or a failure on the part of our contractual partner to exercise the standard of care that is necessary in relation to the relevant software, and reasonable and commensurate taking account of technological possibilities. This shall apply in particular e.g. to the usage of unsuitable data carriers and/or system components, a lack of suitable anti-virus protection or security measures that do not reflect the state of the art as well as the deployment of unsuitable staff.
We shall only bear liability in the event of data loss caused by errors in the software provided by us if our contractual partner has carried out system checks and made data backups at regular intervals, and only up to the reasonable cost necessary in order to restore the data.

12.2. Should, for a particular reason, a justified obligation on our part to pay damages vis-à-vis our contractual partner arise, then such an obligation is, in any event, to be limited to 25% of the order value (individual contract). In addition, the amount of damages shall be capped at € 1.0 million for order values in excess of € 4 million. These restrictions shall apply in particular also to losses resulting from defective title, including in particular under industrial or intellectual property rights, and also for pecuniary losses. Any claims arising under the legal title of lost profits for consequential damage, damage to professional reputation or image and/or any indirect damages claims shall be excluded.

12.3. No damages claims may moreover be brought unless we have first received a written request for remedying the defect, providing an appropriate grace period to do so.

12.4. Any damages claims asserted by our contractual partner arising from work carried out by our staff or vicarious agents that they were commissioned with on the occasion of performing the contractually agreed services which are, however, not included in the scope of the agreed services, are entirely excluded.
In this respect, our staff shall be deemed workforce licensed to our contractual partner.

12.5. Should we have accepted, in the contract, any obligation to be subject to a contractual penalty, notwithstanding the provision of Sec. 373 Austrian Commercial Code (UGB) in conjunction with Sec. 1336 Austrian Civil Code (ABGB) we shall have a judicial right of mitigation.

12.6. Should the judicial right of mitigation be contractually excluded, in any event a contractual right of mitigation shall be deemed to have been agreed, which will be asserted by us as per the guidelines on a judicial right of mitigation.

12.7. By allowing a contract to be concluded without any reservation, our contractual partner also waives all pre-contractual obligations on our part to protect his interests, such as, for example, adherence to the duty to issue warnings where appropriate, or fulfillment of the obligation to provide information or instructions, as long as we are not guilty of gross negligence or intent. The latter shall in particular apply if an order is placed with us within the scope of a tendering procedure, in which our services to be provided are planned, re-written and/or prescribed by the contractual partner or by a third party appointed by it.

12.8. Liability claims may only be brought against us within 12 months of the provision of our service or, in the event of liability under tort, from the time the circumstances establishing the claim and the person liable to pay compensation became known, or should have been known but for gross negligence.

12.9. The contractual partner shall ensure that our products are deployed in a professional manner through appropriate training, instruction and documentation. The guidelines established must be complied with. In the event that the area of business of the contractual partner is subject to procedural, environmental and/or health and safety directives, rules or stipulations, the contractual partner alone shall be obliged to take account of these and to ensure compliance with these along with the operation of the product supplied as part of its business and shall indemnify and hold us harmless in this regard in respect of any third party claims.

12.10 Unless specified otherwise in these terms and conditions, our liability is regulated within the scope of legal possibilities conclusively under Art. 12. We shall not incur any further liability with any basis in law whatsoever.

13. Force majeure and hardship

Force Majeure:

13.1. Definition. “Force Majeure” means the occurrence of an event or circumstance (“Force Majeure Event”) that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (“the Affected Party”) proves:

a) that such impediment is beyond its reasonable control; and
b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
c) that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

Irrespective of point 13.1. lit b), the Parties agree that all impediments resulting from the Russia-Ukraine conflict and its further effects are qualified as unforeseeable. Furthermore, that the remaining conditions of Force Majeure are also given in this case.

13.2. Presumed Force Majeure Events. The requirements of point 13.1. of this clause are met in any case and do not require any proof from the Affected Party, in case of:
a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy;
c) currency and trade restriction, embargo, sanction;
d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
e) plague, epidemic, natural disaster or extreme natural event;
f) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
g) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
h) delay from upstream suppliers due to Force Majeure Events according to point 13.2. lit. a) to g).

13.3. Notification. The Affected Party shall give notice of the event without delay to the other Party.

13.4. Consequences of Force Majeure. A Party successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages as well as from any (fault-based and no-fault based) penalty or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. The other Party may suspend the performance of its obligations, if applicable, from the date of the notice.

13.5. Temporary impediment. Where the effect of the impediment or event invoked is temporary, the consequences set out under point 13.4. above shall apply only as long as the impediment invoked prevents performance by the Affected Party of its contractual obligations. The Affected Party must notify the other Party as soon as the impediment ceases to impede performance of its contractual obligations.

13.6. Duty to mitigate. The Affected Party is under an obligation to take all reasonable measures to limit the effect of the event invoked upon performance of the contract.

13.7. Contract termination. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either Party if the duration of the impediment exceeds 120 days.

13.8. Unjust enrichment. Where point 13.7. above applies and where either contracting Party has, by reason of anything done by another contracting Party in the performance of the contract, derived a benefit before the termination of the contract, the Party deriving such a benefit shall pay to the other Party a sum of money equivalent to the value of such benefit.

Hardship:

13.9. The Parties are bound to perform their contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.

13.10. Notwithstanding point 13.9., where a Party proves that:

a) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and that
b) it could not reasonably have avoided or overcome the event or its consequences,

the Parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.

13.11. The Parties mutually determine that all aggravating events resulting from the Russia-Ukraine conflict and its further effects are qualified as not expected according to point 13.10. lit a).

13.12. Where the Parties have been unable to agree alternative contractual terms as provided for in this Clause, either party is entitled to request the judge or arbitrator to adapt the contract with a view to restoring its equilibrium, or to terminate the contract, as appropriate.

14. Prohibition on offsetting and retention

14.1. Our contractual partner may only offset our claims with any claims judicially established or which have been expressly acknowledged by us, otherwise offsetting shall be excluded.

14.2. Our contractual partner shall not be entitled to retain any payments due to any guarantee, warranty or damages claims.

15. Product liability

15.1. We shall be liable within the scope of validity of the Product Liability Act for personal injury, as well as damage to property, suffered by a consumer through a product/work supplied by us.

15.2. We shall not be liable for any damage to any property which occurs at the premises of our contractual partner (company) through the products (works) supplied by us (Sec. 9 Product Liability Act (PHG)).

15.3. We undertake, if necessary, to conscientiously represent our contractual partner's interests vis-à-vis the manufacturer, but need to, in this respect, nonetheless essentially refer claims asserted by our contractual partner to the manufacturer(s).

15.4. Our contractual partner, which has directly or indirectly acquired products (works) from us, shall, on its part, expressly be obliged to inform itself in detail on the handling, operation and maintenance of our product (works), on the specific risk levels involved with the product and on possibilities for using the product, and also brief its staff accordingly.

15.5. We have entirely complied with our obligation to provide information and issue warnings by providing the product/works and the documentation/product description to our contractual partner (Art. 5.9.).

15.6. Our contractual partner is expressly obliged to keep exact records on the works (products) supplied by us, in order, if necessary, to be able to discern without any doubt whether the product (works) supplied actually originate(s) from us.

15.7. Our contractual partner is, moreover, expressly required to retain this documentation for 10 years as from the date of delivery of our product (work).

15.8. In addition, it shall, if applicable, be required to also pass on all these obligations to its subsequent purchasers and/or successors in right.

15.9. In the event of a claim being made against us within the scope of the Product Liability Act, our contractual partner shall be obliged to provide us with all documentation and records (Art. 15.6), as well as any evidence, without delay, without claiming any cost reimbursement.
Our contractual partner shall, moreover, be obliged to provide us any assistance required in order to defend ourselves against such claims (without claiming any reimbursement of costs).
In the event that the liability of our contractual partner is engaged under the PHG or equivalent provisions of foreign law, it expressly waives any right of recourse against us, in particular under Sec. 12 PHG or equivalent provisions of foreign law, unless gross negligence on our part is proven.

16. Data processing and duty of confidentiality

16.1. Information about the processing of its personal data will be sent to the contractual partner by post upon request, or may be downloaded from our website https://www.fill.co.at/. We reserve the right to alter the Privacy Notice at any time and to adjust it in line with actual circumstances, insofar as permitted by law. The Privacy Notice is not a constituent element of the contractual relationship.

16.2. We shall allow our contractual partner to access or shall provide various confidential information ("Confidential Information") concerning (a) product/works in relation to the provision of the services, and the contractual partner may otherwise gain access to Confidential Information. Our contractual partner shall acknowledge our rights over such Confidential Information along with the duty to treat it in the strictest confidence at the latest upon receipt of such Confidential Information, which shall include in particular the information and items specified in Art. 9.1, along with other diagrams, sketches, photographs, descriptions, calculations, formulas, test results, knowledge and know-how, concepts, data on electronic data carriers, sample parts, prototypes, objects etc, whether in oral, written, graphic, electronic or any other form. Confidential Information shall include in particular also any information generated and created in relation to the project. This obligation is also to be passed on to any subsequent purchasers and successors in title. The latter shall in particular apply to any products that have especially been developed by us on behalf of our contractual partner and/or by us in general.

16.3. Our contractual partner undertakes to refrain from granting access to Confidential Information to third parties – whether in full or in part - without our prior written approval and to take all necessary precautions in order to ensure that unauthorized persons to not gain access to this information. As a matter of principle, our contractual partner may only use Confidential Information in order to use the product/works concerned in line with its/their intended usage. However, if usage in line with the intended usage of the product/works could result in the Confidential Information becoming publicly known, our prior written approval shall be obtained and our instructions shall be complied with. Any information generated must be treated by our contractual partner in the strictest confidence until instructed otherwise by us.
No usage other than in relation to the specific order or following its completion shall be permitted under any circumstances for our contractual partner's own purposes or for third party purposes, whether in the original form or in an amended or processed form.

16.4. This obligation shall also extend beyond the date of the contract in question or the business relationship being terminated.

16.5. All Confidential Information shall be returned to us in the event that an order is not placed automatically within 3 working days, and in the event that an order is placed upon request. Any copies shall be destroyed. In particular, even in the event that usage of the product/works or software is discontinued, the contractual partner shall return all Confidential Information and shall permanently erase or render unusable any copies, including electronic copies. It is expressly stipulated that the contractual partner shall have no right of retention on any grounds whatsoever.

16.6. The duty of confidentiality of the contractual partner shall extend to all employees or third party appointees of the contractual partner, irrespective of the nature and legal classification of the relationship. The contractual partner undertakes to subject such persons to a corresponding duty of confidentiality, and to remind them of this duty at regular intervals. The identity of such persons shall be disclosed to us upon request, and their subjection to a duty of confidentiality shall be documented by the contractual partner.

16.7. We shall only use any information provided to us by the contractual partner that is marked as “confidential” or “secret” in order to perform the service commissioned and shall return this information upon request. Our rights under Art. 9.4 shall not be affected in the event that we use directly or without alteration any information that has not been designated as “confidential” or “secret”.

17. Withdrawal from the contract

17.1. In the event of a delay by our contractual partner in making an agreed payment or any other performance (contractual obligations), we may withdraw from the contract immediately after a reasonable grace period has elapsed (i.e. without setting a further grace period) (see. Art. 8)

17.2. We shall, in addition, be entitled to withdraw from the contract with immediate effect in the following cases:
a) if executing the delivery or the commencement or continuation of services is delayed for reasons which are the fault of the contractual partner, or which, in spite of a grace period being set, continue to be delayed;
b) if there are concerns regarding the contractual partner's ability to pay and said contractual partner does not, upon our request, either make advance payments or create suitable collateral prior to delivery (see Art. 8.);
c) if the extension of the delivery period due to the above circumstances exceeds half of the originally agreed delivery period;
d) if any industrial property rights owned by us (Art. 9.) and/or the non-disclosure obligation are directly or indirectly infringed by our contractual partner (Art. 16.2.).
Withdrawal may also be declared, for the above reasons, in regard to any part of the supplies or services still outstanding.

17.3. Should insolvency proceedings be applied for or instituted over the assets of the contractual partner or a request for the institution of insolvency proceedings be dismissed due to a lack of sufficient assets, we shall be entitled to withdraw from the contract, without setting a subsequent deadline. If this right of withdrawal is exercised, it shall take effect immediately at the time of the decision not to pursue the business of the contractual partner. If the business of the contractual partner is to be pursued, withdrawal shall take effect at the latest six months after the institution of insolvency proceedings. In the event of withdrawal, the contract shall under all circumstances be terminated with immediate effect unless precluded under the insolvency law to which the contractual partner is subject or in the event that termination of the contract is essential for us in order to avert serious economic detriment.

17.4. Without prejudice to any damages claims available to us, in the event of withdrawal from the contract any services and/or partial services already provided are to be billed, and shall be due for payment immediately.
This shall also apply in so far as the delivery or performance by us has not yet been accepted by the contractual partner. We shall, however, also be entitled to require the return of products and/or parts thereof supplied.

18. Mediation

18.1. The contractual parties shall attempt to resolve amicably any disputes resulting from this contract, including in relation to its efficacy. In the event that negotiations are not successfully concluded within 30 days, the contractual partners agree as a next stage to make a serious attempt to resolve the dispute through mediation. The determination of the matters in dispute, the selection of mediators registered with the Federal Ministry of Justice (Private Law Mediation Act, ZivMediatG) and the definition of the procedure shall occur by mutual consent. Each party shall be at liberty from the outset to withdraw from such mediation without any sanctions in order to take any further legal action

19. Applicable law, place of jurisdiction

19.1. These terms and conditions, the contract itself and any additional written provisions agreed shall be governed by Austrian law. The rules on the conflict of laws under private international law shall not apply.

19.2. The exclusive place of jurisdiction for all disputes which may arise from the contract, either directly or indirectly, shall be the competent court in 4910 Ried i.I., Austria.

19.3. We may, however, also call upon another court having jurisdiction for the contractual partner.

19.4. The parties may also agree on an arbitration court being competent. In that case, the provision on which court has jurisdiction (Art. 19.2) shall be overridden.

20. Final provisions

20.1. No subsidiary verbal agreements exist.
Any additions and amendments to these conditions and/or to the contract itself and/or its attachments shall, in any event, require to be made in writing in order to be legally valid.
This also relates to any deviation from this condition itself.

20.2. Should any term of the contract be or become invalid either in full or in part, the lawful term that comes as close as possible to the economic purpose of this term shall be deemed to have been agreed upon. This shall also apply in the event that the invalidity of a term results from a measure of performance or time provided for in the contract; in such cases, a legally valid measure of performance and time that comes as close as possible to that intended shall apply in place of that agreed upon. This shall not affect the validity of the remaining terms of the contract. The same shall apply mutatis mutandis in the event of any gap in the contract requiring supplementary provision.

20.3. In the event that our products are exported, the relevant applicable provisions on exports and controls shall be complied with. Any licenses shall be obtained and presented to us in good time by the contractual partner. If this does not occur, we shall be entitled to withdraw from the contract, without thereby incurring liability to pay damages to the contractual partner. The assessment as to whether a product requires an export license and is subject to special export controls shall be a matter exclusively for the contractual partner. The contractual partner shall hold us harmless against any third party claims of any type in the event of any failure to comply with such requirements. This shall also apply in respect of any costs arising for us in relation to the exercise of our rights.

20.4. Our contractual partner declares that, in regard to the pricing, which is reasonable for it, even in the case of any changes in the legal position brought about by these general terms and conditions he does not deem himself affected negatively by such changes.

20.5. In the event that our contracts or our general terms and conditions of business are also drawn up in any language other than German, the provisions in German shall take precedence.

20.6. For contracts drafted in English, our general terms and conditions shall apply in their English version.