

## General Terms and Conditions

of companies in the dormakaba group based in Germany in their business dealings with corporate partners

### 1. General points/Scope of application

- 1.1 The following General Terms and Conditions shall apply to all legal relationships between dormakaba Deutschland GmbH, DORMA Platz 1, 58256 Ennepetal, or any undertaking based in Germany that is affiliated with dormakaba Deutschland GmbH pursuant to sec. 15 et seq. of the Companies Act, (hereinafter, in each case, **dormakaba**) and a contracting partner (hereinafter, **CP**). In case of contracts for work, labor and materials, the following special conditions for contracts for work, labor and materials as set out under B. shall prevail, in case of contracts for the sale of software, the following special conditions for the sale and licensing of software as set out under C., and in case of maintenance/servicing agreements, the separate General Terms and Conditions for Servicing. All the aforesaid General Terms and Conditions are available for viewing and printing at [www.dormakaba.com/de](http://www.dormakaba.com/de). dormakaba shall also send a copy of the same to the respective CP free of charge on request.
- 1.2 Any of the CP's general terms and conditions of purchase or general terms and conditions that differ from these terms and conditions shall apply only if dormakaba has expressly consented to their application. Nor shall the performance of the contract by dormakaba act as a substitute for such written confirmation if this is done in the knowledge of the CP's conflicting and/or differing terms and conditions.
- 1.3 The General Terms and Conditions shall apply solely to businesses as defined by sec. 14 Civil Code (BGB), i.e. natural or legal persons or partnerships with legal capacity who acquire the goods or services for commercial or self-employed professional use, and to persons and funds under public law.
- 1.4 dormakaba shall reserve without restriction its rights of exploitation under property and copyright law with respect to cost estimates, drawings and other documents (hereinafter: **documents**). This shall equally apply to documents that are referred to as being "confidential". All the documents referred to in subsection 1.4 may be made available to third parties only with the prior consent of dormakaba and must, if the order is not placed by the CP, be returned unsolicited and without delay to dormakaba. The above provisions shall apply accordingly to the CP's documents; these may however be made available to such third parties as have been validly assigned deliveries by dormakaba. The undertakings affiliated with dormakaba pursuant to sec. 15 et seq. of the Companies Act are not considered to be third parties.
- 1.5 dormakaba reserves the right to make design changes customary in the trade. Even data on dormakaba products not provided with tolerances, as shown online or as contained in dormakaba's catalogues and/or brochures, are subject to production-dependent deviations and changes customary in the trade and/or industry, notably as the result of circumstances associated with the production process and the materials used.
- 1.6 The catalogues and particulars and information published online are constantly revised. None of the descriptions, illustrations and drawings included therein are binding and are neither in the nature of a quality description nor of a warranty.
- 1.7 dormakaba shall be entitled, even in the event of call-off orders or delays in taking delivery for which the customer is responsible, to procure the materials for the entire order and to produce the entire order quantity immediately and/or

to cover the entire order quantity. Accordingly, should the CP wish any changes to be made after the order has been placed, these can no longer be taken into consideration unless this has been expressly agreed between dormakaba and the CP.

- 1.8 Call-off orders must be called off and taken delivery of on a timely basis on the agreed dates and in the agreed partial quantities. In the case of call-off orders with no agreed term, production lot sizes or deadlines for taking delivery, dormakaba may require a binding indication of a set date for taking delivery no later than 2 months after confirmation of the order. If the CP fails to discharge its obligation to take delivery within 3 weeks, dormakaba shall be entitled to set a further final two-week deadline and, once this has expired without the required response, to withdraw from the contract or refuse delivery and, provided the other statutory requirements have been met, to demand compensation.

### 2. Conclusion of the contract/Contract amendments

- 2.1 The prices and terms of delivery are in principle set separately for each individual contract. If, as an exception, no provision is made in this regard, the following shall apply: The prices are understood to be ex works (Incoterms 2010) plus the VAT applicable in each case as of the date on which the claim for the consideration becomes payable, however excluding packing. Packing costs must be met by the CP and will be charged separately. If on conclusion of the contract dormakaba refers only to a list price, the price indicated in the respectively applicable dormakaba price list and applicable as of the date of delivery shall apply.
- 2.2 Unless otherwise provided for in the contract, dormakaba shall be entitled unilaterally to increase the consideration accordingly in case of any increase in material production costs and/or costs of materials and/or costs of procuring products and/or services, payroll costs and payroll fringe costs, social security contributions, as well as energy costs and costs incurred as the result of environmental regulations, travel expenses and/or currency regulations and/or a change in customs duties, and/or freight rates and/or public dues, if such costs directly or indirectly impact goods production or procurement costs or the costs of the contractually agreed services and if a period of more than 4 months elapses between conclusion of the contract and delivery. The option of an increase as defined above shall be ruled out if the increase in costs owing to some or all of the aforementioned factors is offset by a cost reduction brought about as the result of some other of the aforementioned factors as related to the total costs chargeable for the delivery (*balancing of costs*). Should the aforementioned cost factors reduce but the reduction in costs not be cancelled out by the increase in some other of the aforementioned cost factors, the cost reduction must be passed on to the CP in the form of a price cut.  
If as the result of the aforementioned entitlement to a price adjustment the new price or consideration is 6% or more higher than the original price, then the CP shall be entitled to withdraw from contracts that have not yet been fully performed as far as concerns that part of the contract that has not yet been performed. It may however only exercise this right immediately after notification of the increased price.
- 2.3 If dormakaba has assumed responsibility for set-up or assembly and unless otherwise agreed, then in addition to the agreed consideration, all necessary incidental costs shall be chargeable to the CP such as e.g. travel expenses

and transport costs, as well as per diems. If services are provided, at the CP's request, outside dormakaba's usual business hours, e.g. after 18:00 or on Sundays or public holidays, the CP must pay for this additionally in accordance with the prices indicated in the price list applicable as of the date of performance or - if a contractual agreement to the contrary was reached, in accordance with the contractually agreed prices.

- 2.4 Drawings, illustrations, sizes, weights or other performance data shall be binding only if this is expressly agreed.
- 2.5 The contractual relationship shall be established only after the order has been confirmed by dormakaba. If no such confirmation is forthcoming, the relationship shall arise through actual delivery based on the content of the reciprocal agreements.
- 2.6 Minor changes and/or technical adaptations of the goods or services provided to the state of the art of science and technology, design improvements or changes to materials and/or components are allowed, even without the CP's consent, provided the due attributes are retained.
- 2.7 If despite proper and adequate provision prior to the conclusion of the contract with the CP, dormakaba does not for reasons beyond dormakaba's control receive for the purposes of the provision of the goods or services owed by it and forming the subject matter of the contract goods or services from its sub-suppliers in keeping with the quantity and quality due under the goods or services agreement with the CP (*matching provision*), or does not receive these correctly or on time, or if force majeure events the duration of which is not negligible (i.e. events lasting more than 14 calendar days) occur, then dormakaba will inform the CP immediately in writing or in text form. In this case dormakaba shall be entitled to postpone the delivery for the duration of the impediment or withdraw from the contract in full or in part with respect to that part of the contract that has not yet been performed, provided dormakaba has met the aforementioned information obligation and has not assumed the supply risk pursuant to sec. 276 BGB or guaranteed delivery. Strike, lockout, official measures, energy and raw materials shortages, traffic jams or obstructions arising through no fault of its own, operational impediments arising through no fault of its own - e.g. caused by fire, water and machinery breakdown - and all other impediments which, viewed objectively, cannot be considered to have been culpably brought about by dormakaba or its vicarious agents. If a binding delivery and/or performance date or delivery and/or performance deadline has been agreed and if due to circumstances as provided for above the agreed date passes or the agreed deadline is exceeded, then the CP shall be entitled, once a reasonable final deadline has elapsed without the required response, to withdraw from the contract on account of that part of the contract that has not yet been performed. In this case, no further claims may be brought by the CP, in particular claims for compensation or for the reimbursement of expenses.  
The above provisions shall apply accordingly if for the reasons indicated in paragraph 1, even where no set delivery date has been contractually agreed, it is objectively unreasonable to expect the customer to continue to abide by the contract.

### **3. Delivery/Partial delivery**

- 3.1 Provided this can be reasonably expected of the CP, partial deliveries are allowed and will be charged for separately.
- 3.2 In any case of an acceptance of a return of goods by dormakaba, which shall only be made without any acknowledgement of a legal obligation of whatsoever kind and subject to a prior written approval, the CP shall pay a processing fee, which shall consider the value of goods and has to be agreed upon for each individual return shipment; in addition to this, the costs necessarily incurred by

dormakaba on remarketing the goods must be met, and this based on the sums expended. dormakaba will issue the CP with a credit note for the returned goods, after taking these costs into consideration, with the exclusion of any cash refund. The CP shall be entitled to provide evidence of the fact that dormakaba did not incur any, or only minimal expenditure in consequence of the return.

- 3.3 Unless otherwise agreed, the disposal of defective or dismantled (spare) parts does not form part of the services to be provided under the contract. This notwithstanding, however, dormakaba may also at its own discretion only provide the (spare) part against return of the dismantled (spare) part; in that case, ownership of the dismantled (spare) part is transferred back to dormakaba

### **4. Terms of delivery and delays**

- 4.1 For dormakaba to comply with delivery deadlines, all documents and required permits and approvals to be supplied by the CP, and notably plans, must be received on a timely basis, and the CP must meet the agreed terms of payment and its other obligations. If the CP fails to fulfil this obligation on time, dormakaba's delivery deadlines shall be extended by the corresponding period of time that runs between the contractually agreed due date for action on the part of the CP and the date on which the CP performs the obligations that it has fallen behind with, unless it is dormakaba who is responsible for the delay.
- 4.2 The deadlines shall be extended accordingly if the deadlines cannot be adhered to on account of one of the circumstances referred to hereafter:
  - viruses or other third party attacks on dormakaba's IT system, whenever these arose despite meeting the requirement to take the customary care in the form of security measures,
  - impediments arising from German, US or other applicable national, EU or international provisions of foreign trade and payments legislation or from other circumstances beyond the control of dormakaba.
- 4.3 The CP must on enquiry by dormakaba state within 7 calendar days whether it intends to withdraw from the contract on account of the delayed delivery or to insist on delivery.
- 4.4 If shipment or delivery is delayed at the request of the CP by more than one month following notification of the fact that the goods are ready for shipment, dormakaba shall be entitled to put the delivery items into storage and to charge the CP for each additional part of any month storage fees in the sum of 0.5% of the net price of the delivery items, subject to a maximum of 5% of the net price of the delivery items. If dormakaba puts the delivery items into third party storage, dormakaba may claim from the CP the storage costs actually incurred. The CP may in each case, at its discretion, provide evidence of the fact that dormakaba did not incur any, or only minimal loss or damage. dormakaba shall additionally be entitled to exercise its statutory rights. The provisions set out above in subsection 4.4 shall equally apply whenever the CP fails to make an agreed payment on account.

### **5. Terms of payment, late payment, offset**

- 5.1 Unless otherwise agreed, the consideration for the respective supply or service shall accrue and be payable net within 7 calendar days of receipt of the goods and/or provision of the service.
- 5.2 Payments shall only be considered to have been made once they have been credited to one of dormakaba's bank accounts. Payments made by the CP to third parties, such as e.g. buying groups and/or central claims settlement agencies, shall not serve to discharge the CP's debts to dormakaba unless dormakaba has expressly asked the CP to do so or has assigned the receivable to such third parties.

- 5.3 If invoices for supplies and services are paid via the SEPA-based business direct debit system, the CP shall receive no later than one day prior to the due date advance notice of the direct debit, setting out the amount to be collected, the due date, dormakaba's creditor reference and the CP's mandate reference. This advance notice may be given separately in the form of a letter, fax or email, but may also accompany the invoice the amount of which is due for collection.
- 5.4 The CP shall only be entitled to the deduction of a discount by express agreement and provided all payments that may be claimed by dormakaba - including any payments on account - are transferred in full within the discount period to dormakaba's account.
- 5.5 Any discounts, rebates or other concessions granted may be cancelled if bankruptcy proceedings are initiated, or an application for such proceedings is made, with respect to the CP's assets.
- 5.6 dormakaba shall be entitled to refuse to provide the service if following the conclusion of the contract it is clear that dormakaba's claim for payment is at risk as the result of the CP's inability to pay. The entitlement to refuse to provide the service shall cease to apply if the CP provides a service in return or provides collateral for the payment. dormakaba may set a reasonable deadline within which the CP must gradually, at its option, make payment or provide collateral in return for the service provided. On expiry of the deadline without the required response, dormakaba may withdraw from the contract and/or demand compensation.
- 5.7 dormakaba may offset all amounts owed by it to the CP against all amounts that dormakaba, or those companies in which dormakaba has a direct or indirect majority shareholding under company law, is entitled to receive from the CP. dormakaba shall inform the CP on enquiry which companies are majority shareholdings of dormakaba as defined by this subsection 5.7.

## 6. Claims for material defects on the part of the CP

- 6.1 For contractual relationships subject to the sale of goods act, and relating solely to the supply of goods, the CP shall have the following claims for defects against dormakaba. For claims for defects on the part of the CP arising under contracts for work, labor and materials, the special conditions for contracts for work, labor and materials set out under B. shall prevail and/or apply additionally and for contracts for the sale of software, the special conditions set out under C. shall prevail and/or apply additionally.
- 6.2 Before the CP can make claims for material defects, it must have properly complied with its duty to investigate and requirement to give notice of such defects pursuant to sec. 377 HGB [Commercial Code]. If there is a breach of the duty to investigate and requirement to give notice of defects, the supplied goods shall be considered, in terms of the defect concerned, to have been approved in accordance with the contract. If notice of defects is not given in due form and on time, this shall rule out any claim arising from a breach of duty on account of material defects in relation to the defect concerned.
- This shall not apply in case of intentional gross negligence or fraudulent intent on the part of dormakaba, in case of injury to life, limb or health or the assumption of a guarantee of no defects or of a supply risk pursuant to sec. 276 BGB, or other offences of liability that are mandatory by law. This shall not affect the special statutory provisions applicable on final delivery of the goods to a consumer (suppliers' recourse, sec. 478, 479 BGB).
- 6.3 Notice of material defects must be in writing or in text form and must include a precise description of the defect. The CP must give dormakaba notice of identifiable material defects (e.g. in particular, damage in transit, delivery of a higher or lower quantity or of the wrong item) without delay,

and no later than 12 calendar days after collection in case of delivery ex works or ex storage location, and otherwise after delivery; for latent material defects, notice must be given without delay following their discovery and within the warranty limitation period provided for in subsection 6.11 at the latest. In case of damage in transit, the CP must obtain a damage assessment from the rail operator or post office, or a similar assessment from the carrier, immediately after the arrival of the goods at the place of performance.

- 6.4 The CP must provide dormakaba with the opportunity to check that material defects are present to the extent required for such purposes and with this in mind, must at its expense make the rejected goods immediately available for checking at the place of performance. dormakaba is not obliged to check whether goods sent in unsolicited are defective and may refuse to accept them. If once the allegedly defective goods have been checked the goods prove to be free from defects, and if the CP is responsible for the wrongfully given notice of defects, the goods will be sent back to the CP at its expense. In such cases, dormakaba shall also be entitled to charge the CP for all costs necessarily incurred as the result of the wrongfully given notice of defects, in particular the costs of checking, within the limits of the customary consideration.
- 6.5 The CP may only withhold payments where there is no doubt about the justification for the same. The CP may not exercise any right to withhold payments if its claims for defects are time-barred.
- 6.6 Defects in part of the goods supplied shall not entitle the CP to reject the entire delivery, unless a partial delivery is of no interest to the CP.
- 6.7 All those parts or services provided that present with a material defect must at dormakaba's option be repaired, resupplied or provided again at no charge within a reasonable period of time, to the extent that the said material defect was already present as of the date of the transfer of risk. The CP must give dormakaba the time and opportunity required to undertake the repair.
- 6.8 Additional costs, e.g. transport, route, material, installation or removal costs will not be borne by dormakaba.
- 6.9 In the event of failure or impossibility of subsequent performance, the CP may withdraw from the contract or reduce the purchase price. In addition, he may claim compensation in accordance with subsection 8 above.
- 6.10 Any claims for defects on the part of the CP are excluded in the following cases:
- in the event of insignificant deviation from the agreed quality;
  - in the event of insignificant impairment of usability;
  - in the event of natural wear and tear;
  - in the event of defects or damage arising after the transfer of risk as a result of improper use of the goods, excessive strain, unsuitable operating equipment, defective construction work, unsuitable substrate or as a result of particular external influences not provided for in the contract;
  - in the event of non-reproducible software errors;
  - in the event of defects or damage resulting from the CP himself or from third parties improperly installing or commissioning the goods, improperly installing or commissioning modifications or goods, or making modifications or repair work, insofar as the defect is based on this;
  - in the event of defects or damage due to neglected or improper maintenance, insofar as the defect is based on this;
  - in the event of defects due to improper storage by the CP or third parties, insofar as the defect is based on this.
- 6.11 The limitation period for claims for subsequent performance, rescission, reduction or compensation shall be two

years from the statutory commencement of the limitation period, unless otherwise stipulated in an individual contract. The above limitation period shall not apply in the event that the law

- according to § 438 (1) no. 2 of the BGB (German Civil Code),
- according to § 479 (1) BGB,
- according to § 634 a) (1) No. 2 BGB,
- in the event of fraudulent concealment of a defect,
- in the event of malice or intent,
- in the event of gross negligence,
- in the event of injury to life, limb or health,
- in the event of legally mandatory longer limitation periods, in particular liability under the Product Liability Act, or
- in the event of non-compliance with a quality guarantee or assumption of a procurement risk in accordance with § 276 BGB.

This shall not affect the statutory provisions on the expiry suspension, suspension or recommencement of the limitation period.

6.12 The CP has a right of recourse against dormakaba according to § 478 BGB (so-called recourse of the contractor) only if the CP has not made any agreements with his buyer that go beyond the legal claims for defects. Subsection 6.4 shall apply *mutatis mutandis* to the scope of the CP's right of recourse against dormakaba pursuant to § 478 (2) BGB.

6.13 Unless expressly agreed in writing, dormakaba does not assume any guarantee or procurement risk for the quality of the contractual goods (§ 443 BGB). dormakaba also only delivers from its own stock (stock liability).

## 7. Industrial property rights / Copyrights / Defects in title

7.1 dormakaba – unless otherwise agreed – must provide the delivery in the country of the agreed place of delivery or use, free of industrial property rights and copyrights of third parties (hereinafter: **property rights**) If a third party asserts justified claims against the CP due to the infringement of property rights by deliveries made by dormakaba and used in accordance with the contract, dormakaba shall be liable to the CP within the period specified above in subsection 6.11 as follows:

- dormakaba will at its own expense and discretion either obtain a right of use for the affected deliveries, change them while maintaining the owed characteristics in such a way that the property right is not infringed, or exchange them. If this is not possible for dormakaba on reasonable terms, the CP is legally entitled to withdraw from the contract or to reduce the remuneration.
- dormakaba is only liable for compensation and/or reimbursement of expenses within the scope of subsection 8.
- The above obligations on the part of dormakaba presuppose that the CP immediately informs dormakaba of the claims asserted by the third party in writing or in text form, does not acknowledge an infringement and that all defensive measures including settlement negotiations are reserved for dormakaba. If the CP terminates the use of the delivery for reasons of damage minimization or other important reasons, he shall be obliged to inform the third party that this termination of use does not imply any acknowledgement.

7.2 If the CP is responsible for the infringement of property rights, he cannot assert any claims against dormakaba due to the infringement of property rights.

7.3 The CP may not assert any claims due to the infringement of property rights if and insofar as the infringement of property rights is caused by the CP's specific instructions, by an application not agreed or intended for the dormakaba product or by the fact that the delivery is modified by the CP or used together with goods not delivered by dormakaba.

7.4 In the event of infringements of property rights, the provisions of subsections 6.5, 6.6 and 6.10 shall also apply to the CP's claims specified in Section 7.1. In the event of other defects of title, the provisions of subsection 6 shall apply in addition. Any further claims, or any claims other than those regulated in this subsection 7, of the CP against dormakaba and its vicarious agents due to defects of title are excluded.

## 8. Compensation/Reimbursement of expenses

8.1 The CP's claims for compensation, for whatever legal reason, are excluded.

This does not apply if dormakaba is liable as follows:

- in the event of intent;
- in the event of malice;
- in the event of gross negligence;
- in the case of non-compliance with a guarantee or assumption of a procurement risk in accordance with § 276 BGB.
- due to the culpable breach of essential contractual obligations. Essential contractual obligations are those contractual obligations whose fulfillment is essential for the proper execution of the contract and on whose fulfillment the CP may rely;
- in the event of culpable injury to life, limb or health,
- in the event of liability of legally mandatory liability situations, in particular in accordance with the Product Liability Act.

8.2 In the event of a breach of essential contractual obligations, the claim for compensation shall be limited to the foreseeable damage typical for the contract, unless one of the liability exceptions specified in Section 8.1 (2) applies.

8.3 The liability is limited to €50,000.- in case of negligent breach of duty by dormakaba or its vicarious agents, provided that the foreseeable damage typical for the contract is covered to this amount. This shall not apply in the exceptional cases of liability specified in subsection 8.1 (2).

8.4 The statutory burden of proof shall remain unaffected by the above provisions. Likewise the plea of contributory negligence remains reserved.

8.5 **The terms "compensation" and "claims for compensation" in these General Terms and Conditions also include claims for reimbursement of wasted expenses.**

## 9. Retention of title

9.1 dormakaba retains ownership of the goods delivered by it (hereinafter: **reserved goods**) until all its claims against the CP arising from the business relationship have been fulfilled. This applies regardless of whether these are present or future, conditional or limited claims against the CP. If all security interests to which dormakaba is entitled exceed all secured claims by more than 10 %, dormakaba will release a corresponding part of the security interests upon the CP's request, whereby dormakaba may freely choose between different security interests.

9.2 The CP must treat the reserved goods with care, store them separately and mark them as reserved goods. In particular, he is obliged to insure the reserved goods at his own expense against theft, burglary, fire and water damage at replacement value. He may not pawn them or assign them as security as long as the retention of title exists. In the normal course of business he may resell the reserved goods, but only under the condition that the reseller receives the purchase price from his buyer or agrees a retention of title with the buyer.

9.3 In the case of the resale of the reserved goods, the CP hereby assigns his future claims from the resale against his buyers to dormakaba by way of security. This includes all ancillary rights as well as any balance claims. dormakaba hereby expressly accepts the CP's assignment.



**10. Processing, combination, mixing of the reserved goods; debt collection**

- 10.1 The CP may process, mix or combine the reserved goods with other objects. The processing is done in the name and on behalf of dormakaba. The VP keeps the resulting new object for dormakaba with the diligence of a prudent businessman. The new item shall also be deemed to be reserved goods.
- 10.2 If the goods are combined or mixed with other objects not belonging to dormakaba, dormakaba shall in any case receive co-ownership of the new object in proportion to the share resulting from the ratio of the value of the combined or mixed reserved goods to the value of the remaining goods at the time of the combination or mixing. The new item shall also be deemed to be reserved goods.
- 10.3 The provision on the assignment of claims in accordance with subsection 9.3 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed reserved goods invoiced by dormakaba.
- 10.4 In the case of the connection of the reserved goods with real estate or movable objects, the CP also assigns to dormakaba by way of security his claim to which he is entitled as remuneration for the connection, including the ancillary rights, in the amount of the ratio of the value of the connected reserved goods to the other connected goods at the time of the connection. dormakaba hereby expressly accepts the assignment.
- 10.5 The CP remains entitled to collect the claim even after the assignment. This does not affect dormakaba's right to collect the claim itself. However, dormakaba will not collect the claim if the buyer fulfils his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have been suspended. After prior warning and setting a reasonable deadline, dormakaba is entitled to disclose the assignment of security, to turn the assigned claims to account, and to demand the CP's disclosure of the assignment for security to its buyer.
- 10.6 The CP must inform dormakaba immediately about foreclosure measures against the reserved goods or about other interventions of third parties. Insofar as the third party is not in a position to reimburse dormakaba for the judicial or extrajudicial costs of a legal action pursuant to § 771 of the German Code of Civil Procedure, the CP shall be liable for the loss incurred by dormakaba in this respect.
- 10.7 In the event of breaches of duty by the CP, e.g. default in payment, dormakaba is entitled to withdraw from the contract as well as to take back the goods after a reasonable period set for the CP to complete the contract's performance; this shall not affect the statutory provisions on waiving a period of grace. The CP is obliged to surrender the goods; he entitles dormakaba to enter his premises for collection. The taking back or assertion of the retention of title or the seizure of the reserved goods by dormakaba

does not constitute a withdrawal from the contract, unless dormakaba has expressly declared this.

- 10.8 If the CP has already assigned claims to third parties from the resale of the products delivered or to be delivered by dormakaba, in particular on the basis of factoring with or without recourse, or has concluded other agreements on the basis of which dormakaba's current or future security rights from the retention of title can be impaired, he shall notify dormakaba thereof without delay. In case of non-recourse factoring, dormakaba is entitled to withdraw from the contract and to demand the return of already delivered products. The same shall apply in the event of recourse factoring if the CP is unable to freely dispose of the claim's purchase price in accordance with the contract with the factor.
- 10.9 If, in the case of deliveries abroad in the importing country, certain additional measures and/or declarations regarding the agreement of the retention of title are necessary on the part of the CP for the effectiveness of the aforementioned retention of title or the other rights specified there, the CP must carry out such measures and/or declarations immediately at his expense or make these declarations in due form. dormakaba will cooperate in this to the necessary extent. If the law of the importing country does not permit a retention of title, but allows dormakaba to reserve other rights to the delivery item, dormakaba can exercise all rights of this kind at its own discretion (§ 315 BGB). If such an economically and legally equivalent security of our claims against the CP is not thereby achieved, the CP is obliged to immediately provide dormakaba at his own expense with other suitable securities for the delivered goods or other securities at dormakaba's reasonable discretion (§ 315 BGB). The CP's right to judicial review and correction (§ 315 III BGB) remains unaffected in each case.

**11. Trademarks, copyright notices, alphanumeric identifiers**

The products' trademarks, copyright notices or alphanumeric identifiers including the documentation must not be changed.

**12. Compliance**

Within the framework of the execution of the respective contract concluded with dormakaba, the CP undertakes to comply with the dormakaba Code of Conduct valid at the time of conclusion of the contract, which will be sent to the CP free of charge upon request or can be viewed online at [www.dormakaba.com/de](http://www.dormakaba.com/de).

**13. Choice of law/Place of performance**

- 13.1 The legal relations between dormakaba and the CP are exclusively subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods.
- 13.2 The place of performance and jurisdiction is Ennepetal.

## B. Special terms and conditions for contracts for work, labor and materials

### 1. Scope

The basis of all contractual relationships between companies of the dormakaba Group with registered office in Germany (hereinafter **dormakaba**) and contractual partners with registered office in Germany (hereinafter CP) are the General Terms and Conditions of Business of the companies of the dormakaba Group listed above in the first instance. The following are considered to be companies of the dormakaba Group: dormakaba Deutschland GmbH, DORMA Platz 1, 58256 Ennepetal, Germany, or dormakaba Deutschland GmbH affiliates pursuant to § 15 f. of the German Companies Act. *For contracts for labor and materials as well as for contracts for work, the following special terms and conditions shall apply additionally and with priority.*

### 2. Cooperation duties

2.1 Unless otherwise expressly agreed, the CP assumes the following cooperation duties in addition to the contractual agreements:

2.2 The VP ensures continuous processing of the order. He shall specify the binding manufacturing dimensions or a binding measurement of the finished work and shall release drawings immediately upon receipt.

2.3 The CP is responsible for ensuring that the following conditions exist on the part of the purchaser when the service is provided:

- Existence of the necessary wiring and power supply for the connection of the dormakaba products. This must be installed by a recognized electrician and comply with the current VDE regulations. The mains connection must also be able to be switched off in accordance with VDE 0100 § 29-7 and protected against accidental and unauthorized switch-on. Separate proper fuse protection must be provided for each unit.
- Existence of the required cables and wires corresponding to the selected equipment according to the manufacturer's cable diagram and setting of the flush-mounted boxes, marking of the installation positions for the control devices (program switches, emergency switches, push-buttons, readers, controls, etc.) by the purchaser.
- The connections of the door periphery were provided by the purchaser.
- If the construction height exceeds 2m, approved climbing aids and scaffolding must be provided by the purchaser.
- Completion of the necessary masonry, caulking, plastering and connection work.
- Barrier-free access to the installation site and cleaning of the working area prior to commencement of mounting work, as well as provision of sufficient storage space in the working area.
- Provision of a meter marker near the door.
- Existence of implementation planning by the VP
- The working area is blocked for the duration of the mounting.
- Securing the delivery items and working materials of dormakaba and its vicarious agents against theft and damage until acceptance.
- Access to premises and the necessary authorizations for this
- Timely communication of required passwords and network addresses
- Expert support by IT specialist of the CP or the end user with system rights
- The following floor conditions are present in the door area:
  - for automatic sliding doors: finished floor;

- for sliding swing doors in escape routes: finished floor with a recess in the sliding area of the hinged door, in the swinging area of the door leaves and side parts there is a slight gradient of the floor to ensure that the elements disengage in the event of a panic;
- recesses for floor rail, if they are part of the order.
- An adequate fixing for the particular application and the later strain for the unit to be mounted (the relevant data can be found in the technical documentation).
- Creation of corresponding inspection openings for false ceilings or wall claddings.
- Installation of electric door openers including cables (cables in the frame of the door)
- Timely advance delivery of glass provided by the purchaser to the Zusmarshausen production plant.
- Advance delivery of the door leaf provided by the purchaser to the installation site.
- Timely advance delivery of special components to the relevant dormakaba production site by the purchaser.

2.4 If commissioning has been ordered, the CP is also responsible for ensuring that the following preliminary work has been completed by the purchaser:

- Execution and completion of all necessary bricklaying and mortising work, in particular wall recesses.
- Built-in flush-mounted boxes for control units and program switches;
- Proper installation of the electrical lines including the mains connection according to dormakaba cable diagrams.
- Completion and complete mechanical drive mounting of all components and peripherals belonging to the unit.
- Completion and complete mechanical drive mounting, including hooking in the door leaves, side parts and casement view windows.
- Installation of floor sliders, necessary safety equipment such as pulse generators (radar, infrared), safety barriers including cable laying. In addition, in the case of pneumatically controlled units, installation of the pulse generator and laying of the connecting tube.
- Presence of the specified voltage.

2.5 Provision of the necessary information to enable the initial risk assessment to be carried out in accordance with the regulations/standards applicable at the time of performance.

2.6 If the CP culpably violates his cooperation duty, dormakaba is entitled to claim compensation. In the absence of the CP's cooperation, the execution periods of dormakaba shall be extended by the period between the original due date of the cooperation duty and its fulfilment.

### 3. Payments on account

The CP must make payments on account in line with the progress of the construction work and verifiable by measurement.

### 4. Claims for defects

For work contracts, the obligation to give notice of defects standardized under subsection 6.2 of the aforementioned Terms and Conditions shall not apply.

### 5. Acceptance

5.1 Acceptance of the contractual services must take place immediately after completion of the work. The CP must ensure that an authorized inspector is present. If the acceptance does not take place at this time for reasons for which the CP is responsible, dormakaba will set a reasonable deadline in writing for the determination of a date and

performance of the acceptance with reference to the consequences of it expiring without the required response.

5.2 If the acceptance does not take place within the set period due to the CP's lack of reaction or cooperation, the contrac-

tual services shall be deemed accepted upon expiry of the period.

5.3 dormakaba is entitled to demand a partial acceptance from the CP for self-contained partial services.

(AS OF: 01.11.2018)

## C. Special conditions for the sale and transfer of software

### 1. Scope

The basis of all contractual relationships between companies of the dormakaba Group with registered office in Germany (hereinafter **dormakaba**) and contractual partners with registered office in Germany (hereinafter CP) are the General Terms and Conditions of Business of the companies of the dormakaba Group listed above in the first instance. Companies of the dormakaba Group are dormakaba Deutschland GmbH, DORMA Platz 1, 58256 Ennepetal, Germany, or one of dormakaba Deutschland GmbH affiliates pursuant to § 15 f. of the German Companies Act. *For contracts for the sale or permanent transfer of software programs, including data carriers, program adapters, programming keys or documentation (hereinafter **software**), irrespective of the form of transfer (e.g. on a data carrier or integrated into hardware), the following special terms and conditions shall apply additionally and with priority.*

### 2. Performance object

- 2.1 Unless expressly agreed otherwise, dormakaba delivers the software in the version currently offered by dormakaba at the time of the conclusion of the contract (unless an explicit distinction is made, software includes standard and individual software). A guarantee in the legal sense or a procurement risk will not be assumed by dormakaba in the absence of an express agreement to the contrary.
- 2.2 Unless expressly agreed otherwise, the software's source code is not a contractual object in the case of standard software and will not be made available to the CP.
- 2.3 Subsection 2.2 shall also apply to individual software.
- 2.4 The product description by dormakaba in the documentation conclusively regulates the condition of the software's functionality. Further characteristics, in particular a suitability for the intended use by the CP or other customary characteristics of such software are not owed, unless expressly agreed otherwise.
- 2.5 The CP is obliged to ensure contractually agreed installation conditions before the start of the service. Unless expressly agreed otherwise, the CP has to inform himself about the essential characteristics of the software – including compatibility with other software and hardware – before conclusion of the contract. If there are doubts in this regard, he must get informed by dormakaba or qualified third parties before conclusion of the contract. Upon the CP's explicit request, dormakaba will inform the CP of the software's possible uses and conditions of use. This information does not constitute a consultancy contract; rather, such an agreement requires an express agreement between dormakaba and the CP.
- 2.6 The CP shall pay separately for the use of any hotline services by the CP – unless expressly agreed otherwise – in accordance with the current price list. This does not apply if it is a matter of asserting a software defect.

### 3. Rights of use

- 3.1 dormakaba grants the CP a non-exclusive, temporally and geographically unlimited right of use for standard software. The CP may only use this to the extent contractually agreed. The CP is not entitled to modify, disassemble or decompile dormakaba's software, except in the cases permitted by law (e.g. § 69 e Copyright Act) or unless otherwise expressly agreed. In relation to the CP, dormakaba is entitled to all copyrights on software produced by dormakaba within the meaning of §§ 69 a to 69 g Copyright Act.

- 3.2 Subsection 3.1 also applies to custom software, unless otherwise agreed in the contract.
- 3.3 The right to use the software is transferred to the CP only on full payment of the purchase price. In addition, the provisions of the above-mentioned General Terms and Conditions of the companies of the dormakaba Group regarding retention of title in Subsection 9 shall apply.
- 3.4 The CP may make a copy of the software for backup purposes. In doing so, it must also copy, without changing, the alphanumeric identifiers, trademarks and copyright notices and keep a record of the whereabouts of the copies. Documentation may only be copied in-house.
- 3.5 The CP may use the software on any hardware available to it; in doing so, it must comply with the system requirements for the respective software version specified by dormakaba in the installation prerequisites that form an integral part of the contract. If the CP changes the hardware, it must permanently delete the software from the previously used hardware by overwriting it.
- 3.6 The CP is entitled to sell or give away the right to use standard software to third parties, provided that the third party agrees to the continued validity of the present contractual conditions in favor of the CP. In any case, it may only deliver the software to the third party in a standard version. It must also hand over backup copies of the software to the third party or destroy the backup copies that are not handed over. At the same time, it must stop using the software, completely and permanently.
- 3.7 Unless expressly otherwise agreed, the CP must ensure that standard software, copies thereof and related documentation are not leased to third parties without the prior written permission of dormakaba.
- 3.8 Subsections 3.6 and 3.7 shall also apply to custom software, unless otherwise agreed in the contract.
- 3.9 The provisions in Subsection 3 shall also apply to all procedural techniques and expertise that became known to the CP in connection with the software handover, i.e. in particular such non-public knowledge of dormakaba that is only known to a restricted group of people, for which dormakaba has an economic interest in maintaining secrecy and for which the desire of dormakaba to maintain secrecy becomes outwardly apparent and is embodied.
- 3.10 The CP shall undertake, even beyond the duration of this contract, not to make available to third parties, in whole or in part, the software or dormakaba's procedural techniques and expertise that may have become known to it in connection with the performance of the contract, for example within the meaning of the aforementioned Subsection 3.9 – other than in the exceptions named in Subsection 3 (1-5). The CP shall be responsible for ensuring that none of its employees or third parties use the software or procedural techniques and expertise that may have become known to it in connection with the performance of the contract, in whole or in part, for purposes other than the use specified in Subsection 3.

### 4. Notice of defects and liability for material defects

- In addition to the provisions of the above-mentioned General Terms and Conditions of the companies of the dormakaba Group regarding the CP's claims for material defects in Subsection 6, the following shall apply:
- 4.1 A software defect does not exist if a dormakaba software product is not compatible with other manufacturers' software components, unless expressly agreed otherwise, or is



listed in the documentation as an obligation in accordance with dormakaba's product description.

- 4.2 The identifiable defects that must be reported promptly, but at the latest 12 calendar days after delivery in accordance with Subsection 6.3, also include in particular the absence of instruction manuals and significant, readily visible deficiencies in them. They also include all cases in which something else or an insufficient quantity of something is delivered.
- 4.3 In the case of a software defect, dormakaba shall meet its guarantee obligations by providing the CP with new, defect-free software of its choice (subsequent delivery) or removes the defect (rectification). Defect-free software can also be provided by making it possible for the CP to download said software.
- 4.4 The rectification can initially be rendered by dormakaba in the form of a time-limited workaround if in doing so the functionality of the software is no more than insignificantly impaired.
- 4.5 Contrary to Subsection 6.11 (1) of the above-mentioned provisions of the General Terms and Conditions of the companies of the dormakaba Group, the period of limitation is one year. It begins with the delivery of the software to the customer.

## **5. Exclusion and limitation of liability**

In addition to the provisions of the above-mentioned General Terms and Conditions of the companies of the dormakaba Group regarding compensation/reimbursement of expenses in Subsection 8, the following shall apply:

- 5.1 In case of loss of the CP's data, dormakaba's liability is limited to the expenditure necessary to restore the lost data on the CP's system by means of existing backup copies. The CP is obliged to back up its data, regularly and to the extent necessary, e.g. by producing backup copies.
- 5.2 The period of limitation for the claims for compensation and reimbursement of expenses stipulated in Subsection 8 of

the above-mentioned General Terms and Conditions of the companies of the dormakaba Group as well as in this subsection is one year. This shall not apply in the case of the fraudulent intent, willful intent or gross negligence on the part of dormakaba, in the case of the fraudulent concealment of a defect, in the event of a defect of title pursuant to § 438 (1) a BGB (German Civil Code), in the case of culpable injury to life, body or health, in the event of breach of a guarantee granted to the customer and/or assumption of the procurement risk in accordance with § 276 BGB (German Civil Code) as well as in other cases of legally mandatory liability (in particular e.g. in accordance with the Product Liability Act).

## **6. Third-party rights**

- 6.1 dormakaba shall defend the CP against all claims made by a third party due to infringement of a right to the software or parts thereof, in particular industrial property rights or copyright for the software, and shall assume costs and compensation payments legally imposed on the customer.
- 6.2 If claims within the meaning of Subsection 6 (1) have been raised or, in the opinion of dormakaba on the basis of objective indications for this, are to be expected, dormakaba can modify or replace the software at its own expense, provided that the properties of the software it is obliged to provide are retained, or can obtain a right of use in favor of the customer.
- 6.3 In all other respects, the provisions of the above-mentioned General Terms and Conditions of the companies of the dormakaba Group regarding industrial property rights / copyrights / defects of title in Subsection 7 shall remain unaffected.

(Status November 1, 2018)