Special Terms and Conditions concerning the Reservation of Title of ProdEq Trading GmbH

In addition to the General Terms and Conditions (Status: January 1999), the following Special Terms and Conditions concerning the Reservation of Title shall apply to all deliveries and services – also to future ones - provided by ProdEq Trading GmbH (supplier):

1. The supplier shall reserve the title for the delivery item until each and every claim of the supplier resulting from the business relationship with the ordering party has been fully settled. If settlement of the outstanding purchase price via a cheque/bill procedure has been agreed, the reservation shall also extend to the honouring of the bill of exchange by the ordering party and shall not expire with the crediting of the cheque received.

2. After having obtained a written consent from the supplier, the ordering party shall be entitled to resell the goods delivered to a third party unless the claim resulting from the resale has already been assigned to a third party. If the goods are not paid for immediately, the ordering party shall be obliged to resell the goods only under reservation of title. The right to resell the goods shall not be applicable if the ordering party has stopped its payments.

3. The ordering party agrees to assign to the supplier, for reasons of security, already at this point of time the claims due to it from the resale amounting to the final invoice sum (including VAT) which results from the delivery transaction between the ordering party and a third party, irrespective of whether the delivery item is resold before or after having been processed, combined or mixed with others.

4. The ordering party shall be entitled to collect the assigned claims as long as it fulfils its payment obligations towards the supplier and is not in a financial crisis. Upon request, the ordering party shall inform the supplier about the names of the debtors of the assigned claims and the amount concerned. The supplier shall be authorized to inform the debtors about the assignment.

5. If the delivery item is combined with other objects not belonging to the supplier, the co-ownership of the new object acquired by the supplier shall be proportional to the value of the delivery item as against the other combined objects at the moment of the combination. If the combination is done in such a way that the object of the ordering party is to be considered as the main object, the parties agree that the ordering party shall assign a proportional co-ownership share to the supplier. The ordering party shall preserve the sole ownership or co-ownership for the supplier. The same shall apply accordingly to cases where the delivery item is mixed with other objects not belonging to the supplier. As regards the co-ownership property of the supplier, the same provisions shall apply as to the object delivered under reservation of title.

6. Any possible processing or transformation of the delivery item by the ordering party shall always be carried out for the supplier, without resulting obligations for the latter. If the delivery item is processed together with other objects not belonging to the supplier, the co-ownership of the new object acquired by the supplier shall be proportional to the value of the delivery item as against the other processed objects at the moment of the processing. As regards the object that is the result of the processing, the same provisions shall apply as to the object delivered under reservation of title.

7. The ordering party shall not be entitled to pledge the object or to assign it by way of security.. In case of seizures, distraints or other dispositions by a third party, the ordering party shall immediately inform the supplier by registered mail and take the necessary steps for eliminating the measure. Any possible costs for interventions of the supplier shall be borne by the ordering party.

8. The ordering party shall be obliged to treat the delivery object with care. The supplier is entitled to insure the delivery item, at the expense of the ordering party, against theft, breakage, water and other damage, unless the ordering party has taken out an insurance policy itself and can produce evidence for this. The ordering party herewith assigns all claims for damage against a third party to the supplier.

9. If the ordering party violates the contract, in particular if it is in delay with its payments, the supplier shall be entitled to take back the goods after having sent a reminder and having set an appropriate deadline and the ordering party shall be obliged to hand out the goods. The supplier shall even be entitled to take away the goods himself and, for this purpose, to enter the premises where they are stored.
They shall not be returned to the ordering party before all outstanding payments have been settled. If the prerequisites for returning the goods to the ordering party have not been fulfilled within one months after the goods were taken away or handed out, the supplier, upon request, shall declare which of the rights he is entitled to he wants to assert. Subject to equitable discretion, the supplier may even choose the option to sell the goods and to set off the revenues from such a sale with its open claims against the ordering party. The costs for taking away, returning or selling the goods shall be borne by the ordering party. The assertion of the reservation of title as well as the seizure of the delivery item by the supplier shall not be considered as a withdrawal from the contract unless the Consumer Credit Law is applicable.

10. If the value of all security rights of the supplier arising from his business relationship with the ordering party exceeds the amount of all secured claims by more than 20%, the supplier, on request of the ordering party, shall release an appropriate share of the security rights and it shall be left to his discretion to choose the securities to be released.

11. The ordering party authorizes the supplier to have the reservation of title entered or registered in public registers or books and agrees to supply all signatures that are required.