

## **General Terms and Conditions of Sale**

### **§ 1**

#### **Scope of the Present General Terms and Conditions of Sale (GTCS); Protective Clause**

- (1) The present General Terms and Conditions of Sale (GTCS) shall apply to all of our business relationships with our customers. However, they shall only apply if the customer is an entrepreneur within the meaning of Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB), a legal entity under public law or a special fund under public law.
- (2) Our GTCS shall apply exclusively, even if we have knowledge of the terms and conditions of the customer and still accept orders, render services or indirectly or directly refer to letters, etc. containing terms and conditions of the customer or of third parties without reservation. We will not accept contradicting, deviating or complementary terms and conditions of the customer, unless we explicitly agree to their application in writing.
- (3) Our GTCS shall likewise apply, without any need for another reference to them, in the respective version to all future deliveries, services or quotations to one and the same customer. We will inform the customer of all modifications made to our GTCS without undue delay.

### **§ 2**

#### **Quotations, Orders, Contract Conclusion and Contract Content; Declarations and Notifications of the Customer; Written Form; Reservation of Rights of Ownership and Copyrights**

- (1) Our quotations shall be subject to changes without notice and non-binding, unless they are explicitly identified as being binding or include a defined time limit for acceptance.
- (2) The order made by the customer shall be deemed to be a legally binding offer for the conclusion of a contract.
- (3) Our acceptance shall be made by a written declaration (e.g. by our order confirmation or our notification of readiness for dispatch / pick-up).

Legally relevant declarations and notifications made by the customer towards us after conclusion of a contract (e.g. setting of deadlines, reminders, notifications of defects) shall require written form in order to become effective.

- (4) The requirement of written form shall also be deemed satisfied by a transmission by telefax or via e-mail.
- (5) The written contract including the present GTCS, which shall constitute an integral part of the written contract, shall be deemed to reproduce all agreements entered into between us and the customer with regard to the subject matter of the contract. Oral agreements entered into prior to the conclusion of the written contract shall not be considered legally binding and shall be fully replaced by the written contract, unless it is expressly stated in each and any of them that they shall remain applicable in a binding manner.
- (6) Individual, even possible oral, contractual agreements shall take precedence over the present GTCS. A written contract or our written confirmation shall be relevant as supporting evidence of the content.
- (7) With the exception of our managing directors, Prokurists (persons disposing of a general commercial power of attorney) and our other employees explicitly designated towards the customer as being our points of contact – including any constellation of powers of representation for each and any one of them – shall not be authorised to conclude contracts, to enter into individual written or oral agreements or to give other commitments.
- (8) We reserve our rights of ownership and our copyrights to all quotations, catalogues, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions, samples and other physical and/or electronic documents, information and objects handed over by us to the customer. The customer shall not be entitled to make available or disclose such documents or their contents to third parties nor utilise, reproduce or alter them wi

thout our prior written approval. The customer may use such documents only for the purposes specified in the contract and shall return them to us in their entirety at our request and destroy (and/or delete) any possible copy (even electronic) to the extent that such copies are no longer required by the customer in the ordinary course of business.

### **§ 3**

#### ***“EXW Incoterms (2010)”, Other Delivery Terms; Transfer of Risk; Default in Acceptance, Acts of Cooperation, Etc.; Acceptance***

- (1) “EXW Incoterms (2010)” (with regard to the warehouse from which we perform our delivery) shall apply to all of our deliveries, unless anything to the contrary has been agreed upon.
- (2) Goods shall be insured by us against theft, breakages, transport, fire or water damage or other insurable risks only within the framework of an explicit agreement with the customer and at the customer’s expense.
- (3) By way of derogation from Paragraph (1) and only to the extent that this has agreed upon with the customer, we shall dispatch the goods to the place of destination specified by the customer. Such delivery, also with regard to the packaging, shall be carried out at the customer’s expense. We shall be entitled to determine the type of dispatch (in particular the transport company and the way of dispatch) as well as the packaging at our due discretion. The risk shall pass to the customer upon receipt of our notification of readiness for dispatch by the customer or, if such notification obligation does not apply, upon hand-over of the goods to the forwarding agent, freight forwarder or the respective person responsible for the transport at the latest. The same shall also apply if partial deliveries are made or if we accepted to also render other services (e.g. dispatch, transport or installation). Apart from that, Paragraph (1) and the regulations on the place of fulfilment (§ 13 of the present GTCS) shall remain unaffected.
- (4) If the customer falls into default of acceptance, fails to carry out a necessary act of cooperation or if our service is delayed for other reasons for which the customer is responsible, we shall be entitled to invoice the damage resulting therefrom including our additional expenses (in particular, for example, storage costs).
- (5) To the extent that it has explicitly been agreed upon that acceptance (according to the meaning of this term in accordance with the law related to contracts for work and services, Section 640 German Civil Code) is deemed mandatory, the goods shall be deemed accepted at the latest:
  - a) once the delivery and, to the extent that we are likewise obliged to carry out the set-up or to render any similar service (e.g. assembly, installation, commissioning, setting up / adjustment), the set-up and/or such similar service has / have been completed;
  - b) if we have informed the customer thereof without undue delay after completion and requested the customer to perform acceptance;
  - c) if (aa) fifteen (15) working days have passed since delivery or, as the case may be, set-up or such similar service, or (bb) the customer started using the goods (e.g. by commissioning the delivered and, as the case may be, set-up system) and ten (10) working days have passed in this case since delivery or, as the case may be, set-up or such similar service; and
  - d) if the customer has failed to perform acceptance within the time period specified above for any reason other than due to any defect notified to us which renders use of the goods impossible or substantially impairs such use.

### **§ 4**

#### ***Prices, Terms of Payment, Retention of the Goods; Exclusion of Rights of Set-Off and Retention; Lack of Ability to Perform on the Part of the Customer***

- (1) Unless otherwise agreed upon, our respective current net prices applicable as of the date on which the contract is concluded plus the statutory value-added tax shall apply in any case; the prices shall be deemed to be “EXW Incoterms (2010)” (see § 3(1) of the present GTCS). Possible insurance, transport and packaging costs (see § 3(2) and § 3(3) of the present GTCS) shall be added.

- (2) To the extent that prices agreed upon are our list prices, and to the extent that no fixed price has been agreed upon, and if our delivery is supposed to be carried out not earlier than four (4) months after conclusion of the contract, our list prices applicable at the time of delivery shall apply. Any percentage or fixed discounts agreed upon shall be deducted from the price applicable at the time of delivery without changes. Apart from that, the provisions of Paragraph (1) shall continue to apply.
- (3) Subject to Sub-Paragraph 2, and unless otherwise agreed upon, such as, in particular, the term of payment in accordance with Paragraph (4), our invoices shall be paid within a period of fifteen (15) working days after delivery and receipt of invoice (and, to the extent that this has been explicitly agreed upon, acceptance) without any deduction and in Euro (€). Delivery within the meaning specified above shall be deemed to mean receipt of our notification of readiness for dispatch / pick-up by the customer or, if so agreed, hand-over to the person responsible for the transport. The day of receipt of payment shall be relevant. We may combine the invoice with the notification specified above.

However, we shall be entitled at any time to make our deliveries subject to concurrent payments without giving reasons.

- (4) If agreed upon, the following term of payment shall apply in lieu of Paragraph (3): The customer shall pay the invoice without any deduction and in euro (€).
  - a) 50% of the total price shall be paid after conclusion of the contract (§ 2(3) of the present GTCS). The term of payment shall be ten (10) working days after receipt of the corresponding invoice; we may combine the invoice with our written declaration of acceptance (§ 2(3) of the present GTCS).
  - b) 40% of the total price shall be paid after receipt of our notification of readiness for dispatch / pick-up. The final date for payment shall be ten (10) working days after receipt of the corresponding invoice; we may combine the invoice with the notification specified above.  
The customer shall not be entitled to pick up the goods, have them picked up or require dispatch of the goods before payment of such invoice; however, the customer shall be entitled to concurrent payment.
  - c) 10% of the total net price shall be paid after rendering of all services by us (and, to the extent that this has explicitly been agreed upon, acceptance). The final date for payment shall be ten (10) working days after receipt of the corresponding invoice.
- (5) Upon expiry of the respective final date for payment, the customer shall be deemed to be in default without further ado. During such default, the purchase price shall be interestbearing in the amount of the respective applicable statutory default interest rate. We reserve the right to assert further damage caused by default. *Vis-à-vis* merchants, our entitlement to commercial default interest (Section 353 German Commercial Code (Handelsgesetzbuch, HGB) shall remain unaffected.
- (6) The customer shall be entitled to set-off and to assert a right of retention only to the extent that the customer's counter-claim made in this respect is undisputed, ready for decision or enforceable by a final judgement; § 7(7), in turn, shall remain unaffected (right of the customer to retain part of the due payment which is deemed appropriate in relation to the defect).
- (7) We shall be entitled to refuse rendering our services outstanding within the framework of a contractual relationship if it becomes apparent after conclusion of the contract that our payment claim from the respective contractual relationship is at risk due to a lack of ability to perform (Section 321 Para. 1 German Civil Code) on the part of the customer. Our right to refuse rendering of services shall not apply if the payment is effected or a collateral security is provided for such payment. We shall be entitled to fix an appropriate time limit for the customer within which the customer shall, at the customer's discretion, effect his or her payment concurrently against our service or provide a collateral security for such payment. After fruitless expiry of this deadline, we may withdraw from the contract. The statutory regulations on the dispensability of setting a deadline shall remain unaffected. In the case of contracts on the manufacture of custom-made products (single items), we may declare our withdrawal immediately.

**§ 5**

***Delivery Deadlines, Possible Extension; Retentions Due to Force Majeure, Self-Delivery, Etc.;  
Partial Services; Inspection and/or Test by Us on Our Premises***

- (1) Delivery times / periods proposed by us for deliveries and services (delivery dead-lines) shall be deemed to apply only approximately, unless a firm delivery deadline has explicitly been confirmed or agreed upon.
- (2) A delivery deadline shall be deemed complied with if the customer has received our notification for readiness for dispatch / pick-up until expiry of such deadline or, if agreed upon, we have handed over the goods to the person responsible for the transport.
- (3) If it becomes apparent to us that a delivery deadline cannot be complied with, then we shall notify the customer thereof without undue delay and shall communicate the expected new delivery deadline to the customer.
- (4) We shall not be liable for the impossibility or delays of our services to the extent that such circumstances are based on force majeure or other events which are not pre-dictable at the time the contract is concluded and for which we are not responsible (e.g. interruptions of operation of all kind, fire, natural disasters, bad weather conditions, floods, war, riots, terrorism, transport delays, strikes, lawful lockouts, lack of workforce, energy or raw materials, delays in granting possible necessary official approvals, measures taken by public authorities / the government).

Such events shall be deemed to include, in particular, any non-delivery, incorrect or non-punctual delivery by our sub-suppliers if we are not responsible for this and had concluded a congruent covering transaction with the respective sub-supplier at the time the contract was concluded with the customer. Apart from that, this shall also apply in the event that we conclude the covering transaction immediately after the transaction with the customer. In the case of such events, provided that they remain transitional in nature, the de-livery deadlines shall be extended by the timely duration of the respective event plus a reasonable start-up period.

In the event, however, that such events make it substantially difficult for us to render our services or make such rendering of services impossible and are not only transi-tional in nature, we shall be entitled to withdrawal from the contract. [If, as a conse-quence of such delay, acceptance of the service is unconscionable for the customer, the customer may withdraw from the contract by means of a corresponding immediate written declaration.]

- (5) Delivery deadlines shall be extended automatically to the extent appropriate if the customer does not fulfil his or her contractual duties or obligations. The customer shall be responsible for ensuring, in particular, that we are provided in due time with any and all documents, information, samples, specimen and other information and objects to be provided by the customer, as well as to set out the technical, construc-tional and organisational conditions, if applicable, for any set-up of products agreed upon, as the case may be, on the customer's premises or for similar services (e.g. assembly, installation, commissioning, setting up / adjustment).
- (6) The customer shall bear the sole risk for delays regarding our services, as well as our additional expenses respectively based on the fact that an inspection / a test, which has been agreed upon or approved by us after conclusion of the contract at the customer's request, of products already manufactured or still subject to manu-facturing by us on our premises (e.g., in practical terms, often so-called "preliminary acceptance" or "factory acceptance test") is not carried out within the time schedule provided for this purpose, provided that the respective cause of such deviation from the time schedule lies within the customer's area of responsibility (such as the cus-tomer's late arrival for any reason whatsoever) or is due to any event to which the customer is subject, as specified in Paragraph (4) Sub-Paragraph 1, even if the cus-tomer is not responsible for it. Apart from that, the aforementioned Paragraph shall apply accordingly.
- (7) We shall be entitled to render partial services if (a) a partial service can be used by the customer within the frame work of the purpose of the contractual provisions, (b) rendering of the remaining services can be guaranteed and
  - (c) such partial ser-vice does not result into any substantial additional expense and additional costs for the customer.
- (8) Our statutory rights, in particular with regard to the possible exclusion of our service obligation (e.g. due to impossibility or unreasonableness of the service and/or sub-sequent performance) and due to default in acceptance or default in performance on the part of the customer, shall remain unaffected.

- (9) If we fall behind with any delivery or service or if such delivery or service becomes impossible for us for any reason whatsoever, then our possible liability for compensation of damages in accordance with § 9 of the present GTCS shall be limited.

## **§ 6** **Retention of Title**

- (1) The retention of title agreed upon here shall serve the purpose of hedging our receivables from the customer from the respective contractual relationship, as well as our possible balance claims from current account receivables existing at the time the respective contract is concluded, respectively (hedged receivables).
- (2) The goods delivered by us to the customer shall remain our property until all hedged receivables have been paid in full. Such goods and the items replacing such goods in accordance with the provisions below which shall likewise be subject to such retention of title shall hereinafter be referred to as "goods subject to retention of title".
- (3) The customer shall store the goods subject to retention of title free of charge for us. The customer shall be obliged to take good care of such goods and to insure at the customer's expense against [damage by fire, water and theft] both adequately and at replacement value. If maintenance, repair or inspection work turns out to be required, the customer shall carry out such work in due time at the customer's own expense.
- (4) The customer shall not be entitled to pledge or transfer as a collateral security the goods subject to retention of title. In the case the goods subject to retention of title are pledged by third parties or in the event of any other access by third parties to the goods subject to retention of title, the customer shall clearly inform such third parties of our property and shall notify us in writing without undue delay so that we can pursue our rights of ownership. To the extent that such third party is not able to reimburse to us the court or out-of-court costs incurred by us in this context, the customer shall be liable towards us for such costs.
- (5) The customer shall be entitled to use, process / modify, combine, mix and/or sale the goods subject to retention of title within the framework of the ordinary course of business until the enforcement event takes effect (Paragraph (9)).
- (6) If the goods subject to retention of title are processed or modified by the customer (Section 950 German Civil Code), such processing shall be deemed to be carried out always for us as manufacturer in our name and for our account and that we directly acquire ownership or, if such processing or transformation is made on the basis of materials of several owners, or if the value of the newly created item exceeds the value of the goods subject to retention of title, the co-ownership (fractional ownership interest) to the newly created item at the ratio of the value of the goods subject to retention of title to the value of such newly created item.  
In the event that we are not subject to any such acquisition of ownership and/or co-ownership for any reason whatsoever, the customer shall already now transfer to us the customer's future ownership and/or (at the ratio specified above) co-ownership to the newly created item for security purposes; we shall hereby accept such transfer. If the goods subject to retention of title are combined (Section 947 German Civil Code) or inseparably mixed to a single item with other items which are not our ownership (Section 948 German Civil Code), then we shall acquire co-ownership to the newly created item at the ratio of the value of the goods subject to retention of title to the value of the other combined or mixed items at the time of such combination or mixing. If any of the other items is to be considered as the main item, then the customer shall already now transfer to us the pro rata co-ownership to the single item at the ratio specified above, provided that the main item is the ownership of the customer. We shall hereby accept such transfer.  
Our sole ownership or co-ownership to an item which resulted in accordance with the regulations above shall be stored by the customer free of charge for us.
- (7) The remuneration claims of the customer vis-à-vis the customer's purchasers from any resale of the goods subject to retention of title, as well as those receivables of the customer with regard to the goods subject to retention of title that result from any other legal ground vis-à-vis the customer's purchasers or third parties (in particular receivables from illegal acts and entitlements to insurance benefits), including any and all balance claims from current account receivables, shall already now be assigned by the customer to us by way of security, with the

co-ownership to the goods subject to retention of title being assigned on a pro rata basis according to our co-ownership share. We shall hereby accept such assignments.

We shall hereby revocably authorise the customer to collect for us the receivables assigned to us in the customer's own name. Our right to collect such receivables by ourselves shall not be affected by this.

Nevertheless, we shall not collect such receivables ourselves and shall not revoke the collection authorisation as long as the customer properly fulfils his or her payment obligations towards us (in particular, does not fall behind with payment), as long as no application for opening of the insolvency proceedings relating to the assets of the customer is filed and as long as no lack of ability to perform (Section 321 Para. 1 Sentence 1 German Civil Code) exists on the part of the customer. In the event that any of the cases specified above occurs, we may request the customer to notify us of the receivables assigned and the respective debtors, inform the respective debtors of such assignment and hands over to us all documents and provides us with all information that are / is required by us to assert the receivables. Paragraph 0 shall apply accordingly to the receivables assigned.

- (8) If this is requested by the customer, we shall be obliged to release the goods subject to retention of title and the items and receivables by which such goods are replaced to the extent that their estimated value exceeds the amount of the hedged receivables by more than 50%. We shall be entitled to select the objects to be released.
- (9) If we withdraw from the contract due to any action of the customer that is contrary to the contractual provisions, in particular due to the customer's default of payment, in accordance with the statutory regulations (enforcement event), we shall be entitled to request that the goods subject to retention of title be returned to us by the customer. Our request of return shall be deemed to be the latest date of our declaration of withdrawal. The transport costs incurred by us due to such redemption shall be borne by the customer. Possible pledging of the goods subject to retention of title on our part shall likewise be deemed to be a declaration of withdrawal.

## **§ 7** **Warranty for Defects**

- (1) The rights of the customer in the case of material defects and defects of title shall be subject to the statutory regulations, unless the present GTCS (including § 8) provide for anything to the contrary or additional provisions. [The special statutory regulations for the final delivery of the goods to a consumer (recourse against the supplier in accordance with Sections 478, 479 German Civil Code) shall remain unaffected in any case.]
- (2) We shall not be subject to any warranty obligation for material defects in the case of any agreed delivery of used products.
- (3) Unless anything to the contrary has been explicitly agreed upon, (a) our products and services shall exclusively comply with the statutory requirements applicable in Germany and (b) the customer shall be solely responsible for the integration of the products into the technical, constructional and organisation conditions existing on the customer's premises (system integration responsibility of the customer).
- (4) The customer shall be obliged to examine the delivered goods without undue delay after delivery to the customer or to the third parties determined by the customer. This provision shall be subject to Sections 377, 381 German Commercial Code and the regulations in the present paragraph.  
The immediate nature of the notification of defects by the customer shall imply that such notification is dispatched within a period of seven (7) working days after the examination or, if the defect is such that it was not detectable within the framework of such examination (Section 377 Para. 2 and 3 German Commercial Code), within a period of seven (7) working days after detection of the defect at the latest. However, if such latter specified defect has already been discernible for the customer under normal use of the goods at an earlier point in time than at the time of such detection, such earlier point in time shall be relevant for the beginning of the notification period.  
At our request, goods subject to a defect claim shall be returned to us in the first place at the customer's expense. In the case such defect claim is justified, we shall reimburse to the customer the costs of the most favourable way of dispatch; this shall not apply to the extent that the costs increase because the goods are located at a place different to the place of their intended use. Apart from that, Paragraph (5) (warranty for the required time and opportunity to examine defect claims and other complaints) shall remain unaffected.  
If the customer fails to examine the goods in a proper manner and/or to submit a defect claim, our warranty obligation and other liability for the respective defect shall be excluded.

- (5) The customer shall provide us with the time and opportunity required to examine defect claims and other complaints, as well as the time and opportunity required to make the subsequent performance owed by us, in particular to make available to us the goods concerned for the purposes specified above or, in the case of a fixed assembly or a similar local fixture, to provide us with access to such fixture. Apart from that, Paragraph (4) (return at our request) shall remain unaffected by that.
- (6) The expenses required for the purpose of examination and subsequent performance, in particular transport, travel, labour and material costs, shall be borne by us, provided that there is indeed a defect. Subsequent performance shall include neither the expansion of the defective item nor the reinstallation of the item free of defects, provided that we have initially not been obliged to install it. If any request of the customer for the rectification of a defect turns out to be unjustified, however, the may request the customer to reimburse to us the costs incurred by us in this context.
- (7) If the delivered item is defective, we shall be entitled and obliged in the first place at our discretion to be made by us within a reasonable period of time to render subsequent performance by rectifying the defect (subsequent improvement) or to deliver an item free of defects (replacement delivery). In the event of a replacement delivery, the customer shall return to us the item to be replaced in accordance with the statutory regulations. We shall be entitled to make the subsequent performance owed by us subject to the condition that the customer pays the due purchase price or, as the case may be, the current due instalment, with the customer being entitled, however, to retain such part of the due payment that is deemed reasonable in relation to the defect.
- (8) If subsequent performance was impossible or failed or if a deadline to be set for subsequent performance by the customer expired to no avail or is dispensable in accordance with the statutory regulations, the customer may, at the customer's discretion, either withdraw from the purchase agreement or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.
- (9) In the case of defects to products of third parties which have been delivered by us (in particular constructional elements) and to the extent that such defects cannot be rectified by us due to reasons based on licensing law or factual reasons, we shall, at our discretion, either assert our warranty claims towards such third parties for the account of the customer or assign such claims to the customer.

In the case of such kinds of defects, warranty claims towards us shall exist (under the other conditions and in accordance with the present GTCS) only if the legal enforcement of the claims specified above towards the third party has been unsuccessful or (e.g. due to insolvency) hopeless or (for ex. for time-related reasons) is otherwise unconscionable for the customer. During the period of our assertion of claims vis-à-vis the third party, the statute of limitations of the respective warranty claims of the customer against us shall be suspended.

- (10) Possible claims for compensation for damages shall exist only in accordance with § 9 of the present GTCS.

## **§ 8**

### ***Warranty for Property Rights of Third Parties***

- (1) In accordance with the present § 8, we shall be responsible for ensuring that the goods are free of industrial property rights or copyrights of third parties. Each of the parties shall inform the respective other party in writing without undue delay if claims are asserted against them based on the violation of such rights.
- (2) Claims due to the violation of property rights or copyrights of third parties shall be excluded if such violation is based on any instruction of the customer, any unauthorised modification or any use of the goods by the customer in a manner not compliant with the contract.
- (3) In the event that the goods violate an industrial property right or a copyright of a third party, we shall, at our discretion and at our expense, either alter or replace the goods in such a manner that they do no longer violate the rights of third parties, but that the goods continue fulfilling the functions contractually agreed upon, or grant the customer the right of use by concluding a licence agreement. If we are not able to do so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately.

- (4) In the case of infringements of rights by products of other manufacturers or suppliers which are delivered by us, we shall, at our discretion, assert our warranty claims vis-à-vis such manufacturers and suppliers for the account of the customer or assign them to the customer; § 7(9) shall apply accordingly.
- (5) Possible claims for compensation for damages shall exist only in accordance with § 9 of the present GTCS.

### **§ 9**

#### ***Liability for Compensation for Damages, Etc.***

- (1) Our liability for compensation for damages, given on whatever legal ground, in particular for compensation for damages in lieu of or in addition to the service, based on default within the framework of contractual negotiations, impossibility, delay, defectiveness, unlawful acts and for any other direct or indirect damage, shall be excluded, unless one of the following cases exists:
  - a) We maliciously concealed a defect.
  - b) We assumed a guarantee for the condition of the goods or a procurement risk.
  - c) This results in damage from the violation of life, body or health which is based on an intentional or negligent violation of duties on our part or on the part of one of our legal representatives or auxiliary agents.
  - d) This results in any other damage based on an intentional or grossly negligent violation of duties on our part or on the part of one of our legal representatives or auxiliary agents.
  - e) This results in damage from the negligent violation of essential contractual duties which is not already covered by Letter a) to Letter d) or Letter f). Essential contractual duties shall be deemed to be such duties whose fulfilment enables proper fulfilment of the contract in the first place and on whose compliance the contracting partner regularly relies and may rely on. In this case, however, the amount of our liability shall be limited to the damage typical of the contract concerned and predictable at the time the contract is concluded; or
  - f) we shall be subject to liability in accordance with the German Product Liability Act.
- (2) To the extent that our liability is excluded or limited in accordance with the regulations above, the same shall also apply to the personal liability of our bodies, legal representatives, employees and auxiliary agents.
- (3) The customer may withdraw from or terminate the contract due to a violation of duties on our part which is not based on a defect of the goods only if we are responsible for such violation of duties; apart from that, the statutory regulations shall apply in this respect. A free right of termination of the customer, in particular in accordance with Sections 651, 649 German Civil Code, shall be excluded.

### **§ 10**

#### ***Statute of Limitations***

- (1) The period of limitation for – even non-contractual – claims based on material defects or defects of title shall, by way of derogation from Section 438 Para. 1 No. 3 German Civil Code amount to one (1) year from delivery (within the meaning of Paragraph (2)); this shall not apply, however, to the cases specified in § 9(1) Letter a) to Letter f) of the present GTCS. The latter cases shall be subject to the respective relevant statutory period of limitation.
- (2) Delivery within the meaning specified above shall be deemed to mean receipt of our notification of readiness for dispatch / pick-up by the customer or, if agreed upon, hand-over to the person responsible for the transport. If the goods are a built structure or an item which has been used for a built structure according to its usual manner of use and has caused their defectiveness (construction materials and constructional elements), the period of limitation in accordance with the statutory regulation shall amount to five (5) years from delivery (Section 438 Para. 1 No. 2 Letter a) or Letter b) German Civil Code). Furthermore, this shall not affect the statutory regulations for



claims in rem for recovery of property of third parties (Section 438 Para. 1 No. 1 German Civil Code)[, and/or] for our fraudulent concealment of a defect (Section 438 Para. 3 German Civil Code) [and for claims in recourse against the supplier upon final delivery to a consumer (Section 479 German Civil Code)].

### **§ 11**

#### ***Special Right of Withdrawal In Case of Cessation of Payment, Etc.***

We shall be entitled to withdraw from the contract in the following cases: (a) The customer ceases his or her payments to the customer's creditors. (b) The customer applies for opening of the insolvency proceedings relating to the customer's assets. (c) Application for opening of the insolvency proceedings are filed by us or by another creditor in a permissible manner. (d) Insolvency proceedings – or only preliminary insolvency proceedings – are opened. (e) Or the application is rejected for lack of assets.

### **§ 12**

#### ***Duty to Inform in the Event of Official or Own Measures***

If official measures are taken on the customer's premises or against the customer in connection with our products (e.g. order for redemption or a recall or other measures within the framework of market surveillance) or if the customer intends to take own measures relating to the products made available in the market, the customer shall inform us in writing without undue delay.

### **§ 13**

#### ***Place of Fulfilment***

The place of fulfilment for our deliveries shall be the warehouse from which we carry out our deliveries. If we owe set-up or similar services (e.g. assembly, installation, commissioning, setting up / adjustment), the place of fulfilment shall be the place where this is to be done in accordance with the contractual regulations.

### **§ 14**

#### ***Choice of Law and Place of Jurisdiction***

- (1) The business relationships between us and the customer shall be exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (2) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer does not have a general place of jurisdiction in the Federal Republic of Germany, then the exclusive – also international – place of jurisdiction for all legal disputes from the business relationship between us and the customer shall be our headquarters in Karlsruhe, Germany. We shall be entitled, however, to also sue the customer at the customer's headquarters or at the place of fulfilment (§ 13 of the present GTCS). Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected.

### **§ 15**

#### ***Severability Clause***

If provisions of the present GTCS are or become void or ineffective either in whole or in part, then this shall not affect the effectiveness of the remaining provisions. To the extent that provisions have not become an integral part of the contract or are ineffective, the content of the contract shall be determined by the statutory regulations (Section 306 Para. 2 German Civil Code). Only apart from that and to the extent that no complementary interpretation of the contract takes precedence or is possible, the parties shall replace the void or ineffective provision by such effective regulation that comes closest to such void or ineffective provision in economic terms.

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