

## Section 1

### Applicability of the General Terms and Conditions

1. The following General Terms and Conditions shall apply to all business relationships between us and the customer. The version valid at the time of conclusion of the contract shall be decisive.
2. These General Terms and Conditions have been designed for contracts not being subject to the special provisions for the purchase of consumer goods (Sections 474 et seq. of the German Civil Code (*BGB*)). If this presumption does not apply, the customer shall inform us in writing on a case-to-case basis without delay.
3. Terms and conditions of the customer or any third party shall not apply, even if we do not specifically object to their validity in the individual case. Even if we refer to any communication containing, or referring to, terms and conditions of the customer or any third party, this shall not constitute any agreement to the validity of such terms and conditions.

## Section 2

### Conclusion of contract

1. Any orders, in particular also those received by our employees, shall take effect exclusively if followed by a written order confirmation by us.

The actual delivery of the goods ordered, any other conduct on our part, or silence shall not justify in any way faith on the part of the customer that the contract has been entered into. We may issue the written order confirmation up to the expiration of 14 calendar days after the order has been received by us.

Our written order confirmation shall be decisive for the scope of the entire contractual content and, subject to short-term objections of the customer in writing, shall constitute the conclusion of a contract, even if it does not contain all items about which the customer wanted to reach an agreement, or otherwise deviates from the customer's declarations, also regarding the exclusive applicability of these General Terms and Conditions. Therefore, special requests by the customer, namely guarantees or other representations with regard to the goods or the execution of the contract, shall require explicit written confirmation in any event.

2. Our staff as well as our commercial agents or other sales agents are not authorised to waive the requirement for a written order confirmation, or make representations differing from its content, or provide guarantees. Amendments to the concluded contract shall likewise require our written confirmation.

3. The contract shall be concluded subject to the reservation not to perform or perform partially only if we ourselves are not correctly or not properly supplied. This shall only apply in the event that we are not responsible for the non-delivery.

If goods are unavailable or only partly available, the customer shall be informed immediately.

The consideration shall be refunded immediately.

4. If the customer orders the goods by electronic means, the contract text shall be stored by us and sent to the customer together with the validly included General Terms and Conditions by e-mail after the contract has been entered into.

5. We shall have the right to refuse to accept the order - e.g. after checking the creditworthiness of the customer.

### Section 3

#### Prices

Prices shall be charged in euros. The list prices valid at the time of the order confirmation shall apply to the deliveries of goods. Additional or special services shall be invoiced separately. The prices shall be understood to be stated in euros ex works plus packaging,

statutory VAT, customs duties in the case of exports as well as charges and other public levies.

#### Section 4

##### Delivery period

Agreed delivery periods or delivery dates shall be subject to the customer obtaining in due course any documents, permissions and releases to be procured, making down-payments as a greed and fulfilling any other obligations incumbent on him in a timely manner. Furthermore, agreed delivery periods shall commence upon the date of our written order confirmation. We shall be entitled to make delivery before the agreed date.

#### Section 5

##### Delivery, dispatch, transfer of risk, acceptance

1. We shall be obliged to supply goods of an average nature and quality under due consideration of the customary tolerances regarding type, quantity and packaging. We shall be entitled to fulfil our obligations after the agreed delivery date if the customer has been notified of the missed deadline and of the period of time for any subsequent performance, unless acceptance by the customer of such a subsequent performance is not reasonable for the customer and the customer objects to the proposed subsequent performance within a reasonable period of time. In the event of subsequent performance, we shall refund any demonstrably necessary extra costs of the customer as a consequence of the missed deadline, to the extent we are liable for damages under the provisions of Section 8.

2. Notwithstanding our rights arising from any default on the part of the customer, we may demand an extension of the delivery and service periods or postponement of the delivery and service dates by the period of time during which the customer fails to meet his contractual obligations towards us.

3. We shall only be entitled to partial deliveries if

- the partial delivery is useful for the customer with regard to the contractually intended use,
- delivery of the remaining goods ordered is ensured, and

- the customer does not incur significant additional expense or additional costs as a result thereof (unless we declare to bear such costs).

4. We may determine the dispatch route and the company commissioned with the dispatch in our discretion, provided the customer does not issue relevant instructions. Any costs incurred as a result of such instructions shall be charged separately.

5. Even if goods are not clearly marked and identified, the risk shall pass to customer not later than at the time the delivery item is handed over to the carrier, forwarder or any other third party commissioned with shipment (the time of commencement of loading being decisive here). This shall also apply in the case of partial deliveries or where we have agreed to provide other services also (e.g. dispatch or installation). If dispatch or handover is delayed as a result of a circumstance attributable to the customer, the risk shall pass to the customer as of the date on which the delivery item is ready for dispatch and the seller has notified the ordering party of this readiness.

6. Clauses, such as "Delivery free ..." or clauses of a similar type shall merely result in an adjustment of the transport costs, but will not alter the above provision governing the transfer of risk.

7. The customer shall bear any storage costs after the transfer of risk. If stored by the seller, the storage costs shall amount to [0.25]% of the invoice amount of the delivery items to be stored per full week. The assertion of, and furnishing proof for, additional or lower storage costs shall remain reserved.

8. The consignment shall be insured by us against theft, breakage, transport, fire and water damage or other insurable risks only upon the express request by the customer.

9. We shall not be obliged to take back from the customer any packing material (transport, sales or other packing materials). Notwithstanding any statutory provisions, the customer shall at his own cost procure for the re-use, recycling of materials or disposal as may be required otherwise. The above provision shall apply irrespective of whether, or not, the packaging is invoiced separately to the customer.

10. To the extent an acceptance needs to take place, the purchase item shall be deemed accepted if

- delivery is completed and, to the extent installation is also owed by us, installation is completed,
- upon our information of the contractor about it with a reference to the acceptance fiction pursuant to this Section 5 (9) and request for acceptance by him, [twelve] working days have lapsed since delivery or installation, or the customer has started to use the purchase item (e.g. has commissioned the delivered equipment) and in this case [six] working days have lapsed since delivery and installation; and
- the customer has failed to accept the purchase item within this period for reasons other than a defect we have been notified of that renders the use of the purchase item impossible or significantly impairs its use.

## Section 6

### Payment

1. The invoice shall be issued on the day of dispatch.
2. Payments shall be made within 30 days from the date of invoice, unless other conditions of payment have been explicitly agreed.

Payments shall be made in euros without deductions and free of expenses and other costs via the bank indicated by us. Unconditional crediting to the bank account shall be decisive for the punctuality of payment. Our staff, commercial agents or other sales agents shall not be entitled to receive payments.

The right to assign claims shall be reserved.

If the customer defaults on payment, we shall have the right to charge interest for default in an amount of 9 percentage points above the base interest rate. The right to claim further damages for default shall remain reserved.

If agreed instalments are not paid in due time, the remaining amount shall become due immediately.

The customer shall be entitled to offset only if his counterclaims are legally established or have been recognised by us in writing.

We shall be entitled to make deliveries or provide services still outstanding only against payment in advance or against the provision of security if, after the conclusion of the contract, circumstances become known to us which are of a nature suitable to considerably reduce the customer's credit worthiness and which jeopardise payment by the customer of our outstanding demands from the relevant contractual relationship (including from other individual orders to which the same framework agreement applies).

Delivery of further goods ordered shall be suspended until, first, the other claims from the business relationship have been fully met and an advance payment of the purchase price has been made for the newly ordered goods.

## Section 7

### Retention of title

1. The retention of title as agreed below serves to secure all our present and future claims against the customer from the supply relationship between the contracting parties (including any balance receivables from a current account agreement restricted to this supply relationship).
2. The goods supplied by us to the customer shall remain our property until any secured claims have been paid in full. Both the goods and all other goods taking the place of them pursuant to the provisions below, which shall also be subject to retention of title, are hereinafter referred to as "reserved goods".
3. The customer shall store the reserved goods free of charge for us.
4. The customer shall be entitled to process and sell the reserved goods in the ordinary course of business until the realisation event occurs (Section 9). Pledging and transfer by way of security shall not be permitted.
5. If the goods delivered are processed by the customer, it is agreed that they are processed

on our behalf and for our account as the manufacturer and we directly acquire ownership or - if processing involves materials provided by several owners or the value of the processed item exceeds that of the goods delivered - co-ownership (fractional ownership interest) of the newly created item based upon the proportion of the value of the reserved good to the total value of the newly created item. In the event that no such acquisition of ownership for us occurs, the customer, here and now, shall transfer for security purposes his future ownership or - in the above ratio - his co-ownership in the newly created item.

If the reserved goods are combined or inseparably mixed with other goods to form a uniform item and if one of the other goods must be viewed as the main item, we shall, to the extent this main item is the property of the customer, transfer co-ownership in the uniform item proportionally to the customer in the ratio stated in sentence 1.

6. In the case of a resale of the reserved goods, the Purchaser shall assign already now to us for reasons of security the claim against the acquirer arising therefrom - in the case of our co-ownership of the reserved goods proportionally in accordance with the share of co-ownership. The same shall also apply to any other claims taking the place of the reserved goods or arising with respect to the reserved goods, such as insurance claims or claims resulting from tort in case of loss or destruction. We authorise the customer revocably to collect the claims assigned to us in his own name. We may only revoke this authorisation for collection in the event of realising the value of the goods.

7. If any third party attempts to seize the reserved goods, in particular by way of attachment, the customer shall immediately notify such third party of our retention of title and inform us in order to enable us to enforce our ownership rights. If the third party is not able to refund the judicial and extrajudicial costs incurred to us in this connection, the customer shall be held liable to us therefor.

8. We shall release the reserved goods as well as any goods or claims taking the place of the reserved goods to the extent their value exceeds the amount of the secured claims by more than 50%. We shall choose the items to be released on this basis.

9. If we withdraw from the contract in case of a breach of the contract by the customer – in particular, default of payment – (realisation event), we shall have the right to demand the surrender of the reserved goods.

Section 8

Liability for breach of warranty and  
liability for defects

1. Without prejudice to statutory exclusions or limitations of our responsibility, the goods shall be deemed to exhibit material defects if, under due consideration of the provisions under Section 5, they noticeably deviate from the type, quantity or quality agreed in the written order confirmation, or, in the absence of agreed quality requirements, noticeably deviate from the quality which is customary in Hamburg, or are obviously not suitable for the usage which is customary in Hamburg.

Delivery of used goods shall exclude any warranty.

2. Unless expressly stated to the contrary in the written order confirmation, we shall, in particular, not be liable for the goods being suited for a use other than the customary use or for the goods meeting further expectations of the buyer. To the extent the customer, either himself or through third parties, attempts to remove material defects without our consent, we shall be released from warranty obligations, unless such work has been performed properly.

Any guarantees or representations requested by the customer shall always be specifically identified as such in writing, including in the case of follow-up transactions. In particular, catch-phrase-like descriptions, references to generally recognised standards, the use of trademarks or quality labels, or the presentation of models or samples shall not themselves constitute the assumption of a guarantee or representation.

Our staff, commercial agents or other sales agents shall not be entitled to provide guarantees or representations or make statements as to special applications or the economic efficiency of the goods.

3. The customer shall inspect each individual delivery immediately and in every respect for visible as well as typical deviations in terms of quality, quantity or any other aspect and directly notify any deviation immediately, however not later than within one week following the receipt of the delivery, in writing by providing a detailed description of the type and scope of such deviation; otherwise, the delivery shall be deemed to have been approved. Our staff, commercial agents or other sales agents shall not be entitled to receive any notifications of

defect or make any warranty-related statements.

4. In the event of any justified complaints, the customer may demand subsequent performance from us within a reasonable period of time following the notification of defects according to the statutory provisions. In general, we fulfil our warranty obligations, at our own discretion, either by reworking or replacing the goods. We shall not be obliged to bear the expenditures incurred for performance to the extent they are increased due to the relocation of, or any modifications to, the goods, that were effected after the notification of defects was sent. Minor defects shall not constitute a right to withdrawal for the customer. If the customer chooses damages, the limitations of liability according to Section 10 of these General Terms and Conditions shall apply.

4. Hidden defects shall be advised to us in writing within a period of one week after they have been detected. The timely dispatch shall be sufficient to observe the deadline.

5. The customer shall have the full burden of proof for all pre-requisites for the claim, in particular for the defect itself, for the time when the defect was determined and for the timely notification of the defect.

6. Any claims of the customer on account of the delivery of defective goods shall become statute-barred one year after the commencement of the statutory period of limitation. This shall not affect claims for damages due to wilful intent or gross negligence and, furthermore, claims from culpable injury to life, body or health.

## Section 9

### Withdrawal

1. In addition to the provisions under Section 8 and with due consideration of the relevant statutory provisions, the customer shall be entitled to withdrawal if the performance incumbent on us has become impossible, we are late with the fulfilment of principal contractual obligations or have otherwise violated in a material manner duties under this contract and the delay or the violation of duty is attributable to us according to Section 10.

2. Without prejudice to further legal rights, we shall be entitled to withdraw from the contract without compensation if the customer objects to the applicability of these General Terms and

Conditions, if the special provisions for the purchase of consumer goods (Sections 474 et seq. of the German Civil Code (*BGB*)) take effect, if insolvency proceedings are instituted against the assets of the customer, if the customer does not meet fundamental obligations owed towards us or any third party without providing a justifiable reason, if the customer provides incorrect information about his creditworthiness, if we, through no fault on our part, are not supplied correctly or in a timely manner, or if fulfilment of our performance obligations is no longer possible for us for other reasons with an amount of funds that is reasonable giving consideration to our own interests and the justified interests of the customer apparent at the time the contract was entered into, as well as, in particular, the agreed consideration.

## Section 10

### Damages

1. Our liability for damages on whatever legal grounds, especially on the grounds of impossibility, default, defective or incorrect deliveries, breach of contract, infringement of duties during contract negotiations and tort, to the extent such liability depends on fault, shall be limited according to this Section 10.

2. We shall not be liable in the case of simple negligence of our bodies, legal representatives, employees or other vicarious agents, unless material contractual obligations are violated. Material contractual obligations shall be deemed to be the obligation to deliver and install the delivery item in a timely fashion, its freedom of defects of title and of such material defects which impair its functionality and fitness for use more than insignificantly, as well as advisory, protective, custodial and duty of care obligations that are intended to enable the customer to use the delivered item in the contractually agreed manner or the purpose of which is to protect the body or life of the staff of the customer or his property against considerable damage.

3. To the extent we are liable for damages on the grounds of and in accordance with Section 10 (2), this liability shall be limited to damage we have foreseen as a potential consequence of a breach of contract at the time when the contract was concluded or which, by applying due care and attention, we should have foreseen. Furthermore, indirect loss and consequential damage due to defects of the delivered item shall only be subject to compensation to the extent that such damage can be typically expected when the delivered item is used in conformity with its intended purpose.

4. In case of any liability for ordinary negligence, our liability for material damage and further financial loss resulting therefrom shall be limited to EUR 10 million per claim (corresponding

to the current sum insured of the product liability insurance or third-party liability insurance), even if material contractual obligations are violated.

5. The above exclusions and limitations of liability shall equally apply in favour of our bodies, legal representatives, employees and other vicarious agents.

6. If we provide technical information or are active in a consulting capacity and such information or consultation is not included in the owed and contractually agreed scope of supply and services, this shall be deemed free of charge and excluded from any liability.

7. The restrictions of this Section 10 shall not apply to our liability for intentional conduct, for guaranteed characteristics, for violation of life, limb or health or according to the German Product Liability Act (*Produkthaftungsgesetz*).

8. Notwithstanding any further legal or contractual claims, the customer shall be obliged to pay damages to us as follows:

In the event of any late receipt of payment, the customer shall reimburse the legal costs for court and extra-judicial legal pursuit as well as interest amounting to 9 percentage points above the base interest rate.

Subject to evidence from the customer that a loss has not been suffered, or has been suffered only in a markedly lower amount, we shall be entitled in the case of delayed receipt or an agreed demand of delivery not made by the customer and after having set a reasonable grace period, to claim damages of a flat amount of 15% of the relevant delivery value without furnishing proof.

## Section 11

### Proprietary rights and copyrights for documents

We reserve our proprietary rights and copyrights to data carriers of any kind (e.g. hard disks, CD-ROMs), presentations, PDF files, displays and other documents. They shall not be made accessible without our express written consent and shall be returned to us at our request without delay together with any copies and transcripts made therefrom.

## Section 12 Industrial property rights

1. We represent according to this Section 12 that the delivery item is free of any third-party industrial property rights or copyrights. Either contracting party shall inform the other contracting party without delay in writing if claims are asserted against it on the grounds of a violation of any such rights.
2. If delivery item violates an industrial property right or copyright of any third party, we shall, at our discretion and our own expense, modify or exchange the delivery item such that no third-party right is violated any longer, while the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the customer by concluding a licence contract. If we do not succeed to do so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or reasonably reduce the purchase price. Any claims for damages of the customer shall be subject to the restrictions of Section 10 of these General Terms and Conditions of Delivery.
3. If products of other manufacturers delivered by us infringe rights, we shall, at our own discretion, assert our claims against such other manufacturers and sub-suppliers for the account of the customer, or assign them to the customer. Claims against us shall only exist in these cases pursuant to this Section 12 if legal enforcement of the above claims against the manufacturer and sub-suppliers was unsuccessful or is futile, for example, due to insolvency.

## Section 13

Customer within the meaning of our General Terms and Conditions shall be any person receiving our products, whether such person purchases or orders such products.

Section 14

Place of performance, place  
of jurisdiction, invalidity,  
applicable law

1. It is agreed that the place of performance for all mutually owed services, including any restitution claims, shall be Hamburg.

This provision shall also apply if we provide services for the customer at another place or if any services rendered need to be reversed.

The contractual and non-contractual legal relationships with the customer shall be exclusively governed by German law as well as the customs prevailing in Hamburg.

2. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall not apply.

3. If the customer is a merchant, a legal entity under public law, or a special fund under public law, or if he has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the contractual relationship between us and the customer shall be Hamburg. However, Hamburg shall be the exclusive place of jurisdiction for actions against us in these cases. This shall not affect any mandatory statutory provisions regarding exclusive places of jurisdiction.

4. If the contract or these General Terms and Conditions contain any gaps, such legally valid provisions shall be deemed agreed to fill the gap, which would have been agreed by the contracting parties in view of the economic aims of the contract and the purpose of these General Terms and Conditions if they had been aware of such a gap.

Note:

The customer acknowledges that we store data from the contractual relationship according to Section 28 of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) for the purposes of processing the same, and reserve the right to transmit the same to third parties (e.g. insurances) to the extent this is necessary to fulfil the contract.

**Date: November 2017**