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## **§ 1 Scope of application**

- (1) These General Terms and Conditions for Sales (“AVB”) apply to any and all of our business relationships with our customers as purchasers (“Client”). The General Terms and Conditions for Sales apply exclusively if the Client is an entrepreneur in terms of section 14 German Civil Code (BGB) and if the Client acts in execution of his commercial or self-employed activities, and they apply to legal entities or special estates under public law.
- (2) The General Terms and Conditions for Sales shall in particular apply to the contracts for the sale and/or delivery of moveable items (“Goods”) irrespective of whether we produce these Goods ourselves or if we obtain these from suppliers (sections 433, 650 BGB). Unless agreed otherwise, these General Terms and Conditions for Sales as amended at the time the Client places his order shall apply as framework agreement, but always in the version as last communicated to him in text form; they shall also apply to future contracts without us having to refer to these again in each individual instance.
- (3) Our General Terms and Conditions for Sales shall apply exclusively. Any deviating, contrary or supplementary general terms and conditions of the Client shall only and insofar become part of the contract as we have expressly agreed to any such. This consent shall be required in any case, also if we make a delivery to the Client without reservation knowing of the T&Cs of the Client or if we refer to a letter that contains or refers to the T&Cs of the Client or another third party.

## **§ 2 Offer and contract conclusion**

- (1) All parts of our offers are non-binding, unless we have expressly declared them to be binding or if they contain a specific time within which they must be accepted.

This shall also apply if we provide the Client with catalogues, technical documentation, models, other product descriptions or documents as well as tools – all the above also in electric form – to which we reserve ownership and copyrights (“provided items” and “provided files”).

The Client may not disclose any of these provided items and/or provided files, irrespective of their type, as such or the content thereof to third parties without our express consent, nor may he publish, copy or use them or have them copied or used by third parties. On our request, the Client shall return the provided items and provided files to us in their entirety and he shall destroy any copies thereof if he no longer requires them for ordinary business transactions or if the negotiations do not result in conclusion of a contract. An exception shall be the archiving of data provided electronically for standard data backup purposes.

- (2) An ordering of Goods by the Client shall be a binding offer to conclude a contract. Unless stated otherwise in the order, we shall have the right to accept this contract offer within 14 days of having received it.

- (3) The contract we conclude with the Client in writing or in text form, including these General Terms and Conditions, shall be the solely applicable basis for the legal relations between us and the Client, provided that no other covenants were agreed. The contract we conclude with the Client in writing or in text form shall contain all and the entire agreements between the parties to the agreement regarding the object of the contract. Any oral promises of ours made before conclusion of the agreement shall be non-binding and oral agreements between the parties to the contract shall be replaced by the contract we conclude with the Client in writing or in text form, unless they expressly remain binding as stipulated in the oral agreements or promises.
- (4) Individual agreements (including ancillary agreements, supplements, and amendments) shall always take precedence over these General Terms and Conditions for Sales. The content of such individual agreements shall – without prejudice to proof of the contrary – be agreed in writing or text form in order to be valid. **With the exception of managing directors or Prokuristen [authorised officer / authorised signatory], our employees are not authorised to agree terms that deviate from the written or textual agreement.**
- (5) Information we provide on the delivery or service item (e.g. weights, dimensions, functional information, capacities, tolerances, and technical data) as well as our representations of these (e.g. drawings and images) shall be approximations only, unless suitability for the purpose as agreed in the contract requires exact compliance. These are not guaranteed characteristics, but only descriptions or labelling of the delivery or service. Customary deviations and deviations occasioned by legal requirements or deviations which constitute technical improvements, as well as the replacement of components with equivalent parts shall be permissible, provided that they do not interfere with suitability for the contractually agreed purpose.

### **§ 3 Prices and payments**

- (1) Unless agreed otherwise on a case-by-case basis, our prices are given in EUR ex works including loading at the works but excluding packaging and unloading. Added to the prices is value added tax at the statutory rate, customs duties as well as fees as public charges in case of export deliveries.
- (2) Insofar as agreed prices were based on our list prices for material, raw material or labour costs or vendor parts, and if the delivery will not be made within four months of conclusion of the contract, our list prices as applicable at the time the delivery is made shall apply.
- (3) In case of sale by dispatch, the Client shall be charged the transport costs ex works and the costs of any transport insurances requested by the Client (see hereto section 5(4)). Unless we invoice the transport costs that were actually incurred on a case-by-case basis, a fixed transport cost rate (excluding transport insurance) of 5 % of the net order value shall be deemed agreed.
- (4) Unless agreed on a case-by-case basis, the payment without discounts shall be made into our bank account within 14 days of the invoice date and delivery or acceptance of the Goods.

- (5) Offsetting against counterclaims of the Client or withholding payments based on such claims shall only be permissible if the counterclaims are undisputed or were legally determined or if they are based on the same order under which the delivery in question was made.

#### **§ 4 Delivery period and delay of delivery, partial delivery**

- (1) Time limits and dates for deliveries and services advised by us shall always be approximations only, unless a set period or date was expressly promised or agreed. If dispatch was agreed, the delivery periods and dates shall refer to the time of handover to the shipping company, carrier or any other party in charge of transport. If formal acceptance is required, the date of acceptance shall be decisive – with the exception of justified refusal of acceptance – or alternatively the notification of readiness for dispatch.
- (2) If the Client does not comply with his contractual obligations towards us, the time for delivery and service obligations shall be extended or the delivery periods or dates shall automatically be postponed by that time for which the Client fails to comply with these obligations. Our rights based on the delay of the Client shall remain unaffected.
- (3) We shall not be liable for impossibility of delivery or delayed delivery if any such are caused by force majeure or other events that were unforeseeable at the time the contract was concluded (for example interruptions in operations of all kinds, difficulties in obtaining materials or energy, delayed transport, industrial actions, justified lockouts, lack of staff, energy or raw materials, difficulties in obtaining necessary official permits, actions by public authorities or failure of suppliers to provide deliveries or suppliers providing an incorrect or delayed delivery) and that we are not responsible for. If such events make it considerably more difficult or impossible for us to provide a delivery, and if the disruption is not only temporary, we shall be entitled to withdraw from the contract. In case of temporary disruptions, the delivery or service periods shall be extended, or the delivery or service dates shall be postponed by the time of the disruption plus an appropriate start-up period. If the Client cannot be reasonably expected to accept the delivery or service due to the delay, the Client may withdraw from the contract by immediate written or textual declaration towards us.
- (4) The delivery shall be judged to be delayed in accordance with statutory provisions. However, a warning by the Client must be sent in all cases. If we delay delivery, the Client may demand a fixed-rate compensation for the damage caused by the delay. The fixed-rate compensation shall amount to 0.5 % of the net price (list value) per complete calendar week, but to no more than 5 % of that part of the entire delivery that cannot be used in time or as intended under the contract due to the delay. We reserve the right to prove that the Client did not incur any or only a much lower damage than the above fixed-rated compensation.
- (5) We shall be entitled to provide partial deliveries, if
- the Client can use the partial delivery for the purpose as set out in the contract;
  - the delivery of the remaining Goods that were ordered is secured, and
  - the Client does not incur any notable additional work or costs as a result of the partial delivery.

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**§ 5 Delivery, transfer of risk, acceptance, delayed acceptance, packaging**

- (1) Deliveries are made ex works, which shall also be the place of performance for all obligations under the contract unless agreed otherwise. If we are also responsible for installation, the place of performance shall be location at which the item is to be installed. At the cost of the Client, the Goods shall be shipped to another destination (sale by dispatch). Unless agreed otherwise, we shall have the right to decide the form of shipping (especially the transport company, shipping method) as well as the type of packaging at own due discretion.
- (2) The risk is transferred to the Client upon handover of the Goods at the latest (the start of that process being decisive). In case of sale by dispatch, however, the risk shall already be transferred to the Client when the Goods are handed over to the shipping company, forwarder or other third party responsible for transport. This shall also apply in case of partial deliveries being made or if we are also providing other services (e.g. shipping or installation). If shipping or handover is delayed due to reasons the Client is responsible for, the risk shall be transferred to the Client from that day on which the Goods are ready for shipping and once we have notified the Client thereof. If acceptance was agreed, formal acceptance shall be decisive for the transfer of risk. Apart from the above, the legal provisions applicable to formal acceptance under the law governing contracts for work shall apply mutatis mutandis. Delay of acceptance by the Client shall be equivalent to handover or acceptance.
- (3) If the Client delays acceptance, if he fails to cooperate or if our delivery is delayed due to other reasons that the Client is responsible for, we shall have the right to demand compensation, including for additional costs (e.g. storage costs). We shall invoice a fixed-rate compensation of 0.5 % of the invoice amount of the stored Goods per complete week.

The right to prove higher damage and our legal entitlements (especially reimbursement of additional expenses, appropriate compensation, cancellation) shall remain unaffected; the fixed rate shall, however, be counted towards any further monetary claims. The Client shall have the right to prove that we did not incur any or only a much smaller damage than the above fixed-rate.

- (4) We shall only insure shipments against theft, breakage as well as transport, fire and water damage and other insurable risks on the express request and at the costs of the Client.

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**§ 6 Warranty, material defects**

- (1) The delivered Goods shall be inspected carefully immediately after delivery to the Client or to any third party named by him. As regards obvious defects or other defects that would have become apparent during an immediate careful inspection, the Goods shall be deemed accepted by the Client if we are not notified by the Client in writing or text form within seven working days after delivery. As regards other defects, the Goods shall be deemed accepted by the Client if we do not receive a notice of defect within seven working days after the time at which the defect became apparent; if the defect was already apparent at an earlier time during normal use, however, this earlier time shall be decisive for compliance with the time limit for notifications of defects. On our request, the defective Goods shall be returned to us, carriage paid. In case of justified notices of defects, we shall reimburse the costs for the cheapest shipping method; this shall not apply if the costs rise because the Goods are located at a place other than the location for its intended use.
- (2) If the delivered Goods suffer from material defects, we shall have the obligation and right to, at our choice that must be made within an appropriate period of time, initially provide subsequent improvement or a replacement delivery. If any such is unsuccessful, i.e. if subsequent improvement or a replacement delivery is impossible, unreasonable, refused or delayed beyond an appropriate time, the Client may withdraw from the contract or reduce the purchase price by an appropriate amount.
- (3) If we are responsible for a defect, the Client may demand compensation, provided the conditions set out in section 8 apply.
- (4) If components of other manufacturers have defects which we cannot remove due to licensing law or for other reasons, we shall, at our choice, assert warranty claims against the manufacturers and suppliers on behalf of the Client or we shall assign any such to the Client. Warranty claims against us based on such defects can only be asserted subject to the other conditions set out in and in accordance with these General Terms and Conditions for Sales and if the legal enforcement of the above claims against the manufacturers and the suppliers was unsuccessful or is unpromising, i.e. due to insolvency. For the duration of the litigation, the statute of limitations for the warranty claims in question of the Client against us shall be suspended.
- (5) There shall be no warranty if the Client modifies or has third parties modify the Goods without our consent and if doing so renders the removal of the defect impossible or makes any such unreasonably difficult. In any case, the Client shall bear the additional costs of the removal of any defects so caused.
- (6) Any delivery of used items that was agreed with the Client on a case-by-case basis is provided under exclusion of any warranty for material defects.

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## **§ 7 Property rights, use of software**

- (1) In accordance with this section 7, we guarantee that the Goods are not subject to the industrial property rights or copyrights of third parties. All parties to the agreement shall inform the respective other parties immediately in writing or text form if any claims based on the violation of any such rights are asserted against them.
- (2) If the Goods violate an industrial property right or copyright of a third party, we shall at our choice and at our costs either modify or replace the Goods so that they no longer violate the rights of third parties but the Goods still fulfil the contractually agreed function, or we shall obtain for the Client a right of use by conclusion of a license agreement with the third party. If we cannot arrange for this in an appropriate period of time, the Client shall have the right to withdraw from the agreement or to reduce the purchase price by an appropriate amount. Any damage claims of the Client shall be subject to the limitations set out in section 8 of these General Terms and Conditions for Sales.
- (3) If the products of other manufacturers that we deliver violate the rights of others, we shall at our choice assert claims against the manufacturers and suppliers on behalf of the Client or we shall assign these to the Client. In accordance with this section 7, claims against us for such violations can only be asserted if the legal enforcement of the above claims against the manufacturers and the suppliers was unsuccessful or is unpromising, i.e. due to insolvency.
- (4) If the scope of delivery includes the use of software, the Client is granted a non-exclusive right to use the software that is provided, including any associated documentation. It is provided for the use with or on the intended Good(s). Any use of the software on more than one system is prohibited.
- (5) The Client may only copy, modify, translate the software or convert from object code into the source code to the extent permitted by law (section 69a et seqq. Copyright Act (UrhG)). The Client undertakes to not remove any manufacturer information – especially no copyright notices – and to not modify these without the prior express permission of the supplier.
- (6) All other rights to the software and the documentation, including copies, shall remain with us and/or the software supplier. Granting sub-licenses is prohibited.

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**§ 8 Liability for fault-based compensation**

- (1) Our liability for compensation, irrespective of the legal grounds, especially any such based on impossibility or delay, defective or incorrect delivery, violation of contract, violation of obligations during contract negotiations, and tort, shall, if dependent on fault, be limited in accordance with this section 8.
- (2) We shall not accept liability in case of ordinary negligence of our corporate bodies, legal representatives, employees or other vicarious agents, provided that any such does not constitute a violation of essential contractual duties. Essential contractual duties are the obligation to provide a timely delivery and installation of the Goods, the Goods not suffering from defects of title and any such material defects that would limit their functionality or usability to more than an only a minor degree, as well as advice, protection, and care obligations that are to ensure that the Client can use the Goods as agreed or which are intended to safeguard the life or physical safety of the employees of the Client or his property against major damage.
- (3) If we are liable on the merits to pay compensation in accordance with section 8(2), this liability shall be limited to the damage that we have foreseen as possible consequence of contract violation when the contract was concluded or which we should have foreseen had we exercised customary care. Indirect damage and consequential damage caused by defects of the Goods shall furthermore only be reimbursable if such damage could be typically expected when the Goods are used as intended.
- (4) In case of liability for ordinary negligence, our compensation obligations for material damage and any resulting financial losses shall be limited to an amount of EUR 10 million per damage event, even if it was caused by a violation of essential contractual duties.
- (5) The above exclusions and limitations of liability shall apply in the same manner to our corporate bodies, legal representatives, employees, and other vicarious agents.
- (6) Insofar as we provide technical information or advice and if such information or advice is not included in the contractually agreed performance owed by us, any such information or advice shall be provided free of charge and without any liability being accepted for any such.
- (7) The limitations of this section 8 shall not apply to liability for deliberate actions, gross negligence, guaranteed characteristics, injury to life, limb or health or under product liability law.



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## **§ 9 Reservation of title**

- (1) Until payment in full of all our present and future claims under this contract and a current business relationship (secured claims), we reserve title to the sold Goods.
- (2) Goods that are subject to a reservation of title must not be pledged nor assigned to third parties as security before payment of the secured claims in full. The Client shall inform us immediately in writing or in text form if an application for opening of insolvency proceedings was filed or in case of associated other third-party intervention regarding the Goods belonging to us (such as seizure).
- (3) Should the Client violate the contract, especially in case of non-payment of any payable purchase prices, we shall have the right to withdraw from the contract in accordance with legal provisions and/or to demand return of the Goods based on the reservation of title. The demand for return of the Goods shall not constitute a simultaneous withdrawal from the contract; rather, we are entitled to demand return of the Goods and to reserve the right of withdrawal. If the Client does not pay the outstanding purchase price, we may only exercise these rights if we have previously given the Client an appropriate period for payment which remained unsuccessful or if no such period has to be set in accordance with legal provisions.
- (4) Until revocation as set out in point (c) below, the Client shall have the right to resell and/or process the Goods that are subject to reservation of title as part of normal business operations. The following additional provisions shall apply in this case.
  - a) The reservation of title shall extend to the products obtained by processing, mixing or combining our Goods at the full value of the new goods, we shall be considered to be the manufacturers. If any processing, mixing or combining with third-party goods leaves any ownership rights of the third party intact, we shall acquire co-ownership in proportion of the invoice values of the processed, mixed or combined goods. Apart from the above, the regulations governing Goods subject to reservation of title shall apply.
  - b) The Client already now assigns to us as security any claims against third parties arising from the resale of the Goods or the product, either in their entirety or to the amount of any co-ownership share of ours in accordance with the above clause. We accept this assignment. The obligations of the Client as set out in clause 2 shall also apply to the assigned claims.
  - c) The Client shall remain entitled to collect the claims, in addition to us. We undertake to not collect the claim for as long as the Client complies with his payment obligations towards us, his performance capability remains intact, and for as long as we do not exercise the reservation of title pursuant to clause 3 by way of exercising a right. But if non-compliance is the case, we may demand that the Client discloses to us the assigned claims and the debtors thereof, provides all information necessary to collect the claims, hands over the associated documents, and informs the debtors (third parties) of the assignment. Furthermore, we shall have the right in this case to revoke the permission for the Client to resell and process the Goods that are subject to retention of title.



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- d) If the realisable value of the securities exceeds our claims by more than 10 %, we shall release securities at our choice on request of the Client.

## **§ 10 Statute of limitations**

- (1) In deviation from section 438 clause 1 no. 3 BGB, the general statute of limitations for claims based on material defects and defects of title shall be one year after delivery or, if formal acceptance is agreed, after acceptance; but no more than 15 months after notification of the Goods being read for shipping / acceptance, provided that putting into operation / acceptance takes place more than three months after delivery and provided that we are not responsible for this delay.
- (2) If the Goods, however, are a building or items that were used in a building in accordance with their intended use and if they are responsible for the building being defective (building material), the statute of limitations shall be 5 years after delivery in accordance with legal provisions (section 438 clause 1 no. 2 BGB). The further special legal regulations on the statute of limitations shall also remain unaffected (especially section 438 clause 1 no 1, 71 clause 3, sections 444, 445b BGB).
- (3) The above statutes of limitations under sale of goods law shall also apply to contractual and extra-contractual damage claims of the Client that are based on the Goods being defective, unless the application of the usual statutory statute of limitations (sections 195, 199 BGB) would result in a shorter time limit on case-by-case basis. Damage claims of the Client based on deliberate action or gross negligence, injury to life, limb or health or under product liability law, however, shall only become time-barred in accordance with statutory limitation periods.

## **§ 11 Final provisions**

- (1) These General Terms and Conditions for Sales and the contractual relationship between us and the Client shall be governed by the laws of the Federal Republic of Germany under exclusion of international uniform law, especially the CISG provisions.
- (2) If the Client is an entrepreneur in terms of the German Commercial Code, a legal entity or special estate under public law, the exclusive – also international – place of jurisdiction for any and all disputes resulting directly or indirectly from the contractual relationship shall be our place of business in Schwelm. The same shall apply if the Client is an entrepreneur in terms of section 14 BGB. We shall, however, in any case remain entitled to bring action at the place of performance for the delivery obligation as per these General Terms and Conditions for Sales and/or any overriding individual agreement, or at the general place of jurisdiction of the Client. Any overriding legal provisions, especially any such regarding exclusive competences, shall remain unaffected.

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- (3) If the contract or these General Terms and Conditions for Sales contain regulatory gaps, those legally effective provisions shall be deemed agreed to fill such gaps that the parties to the agreement would have agreed on in consideration of the economic objectives of the contract and the purpose of these General Terms and Conditions for Sales had they been aware of such regulatory gaps.