General Conditions of Sale

§ 1 Scope, Form

(1) These General Conditions of Sale ("General Conditions") apply to all our business relationships with our customers ("Purchaser").

(2) The General Conditions apply in particular to contracts involving the sale and/or supply of movable goods ("goods") regardless of whether we produce the goods ourself or purchase these from a supplier (§§ 433, 651 BGB). Unless otherwise agreed, the General Conditions applicable are those valid at the time the Purchaser places the order or in any case those included in written form as part of the Framework Agreement provided to the Purchaser and these shall also apply to all future orders of a similar nature without the Purchaser being explicitly notified of such.

(3) Our General Conditions apply exclusively. Terms and conditions of the Purchaser which deviate, contradict or supplement the same shall only be incorporated in the agreement if and to the extent that we have expressly consented to their application. This consent requirement shall also apply in cases, for example, when we unreservedly deliver goods or services ordered whilst aware of the Purchaser's General Terms and Conditions.

(4) Individual agreements reached with the Purchaser (including any supplementary agreements, additions or changes) take precedence over these General Conditions. The content of such agreements, in the absence of proof to the contrary, shall be set forth in a written contract or in written confirmation.

(5) Legally relevant declarations and notifications of the Purchaser regarding the contract (e.g. deadlines, notifications of defects, withdrawal or reduction declarations) must be presented in written form (e.g. letter, email or fax). Statutory requirements and other forms of legal proof remain obligatory, especially when there are doubts as to the legitimacy of the declarations.

(6) References to the applicability of statutory requirements are provided for explanatory purposes only. The statutory provisions shall therefore also apply without such a clarification insofar as they are not directly modified or explicitly excluded in these General Conditions.

§ 2 Conclusion of Contract

(1) Our offers are non-binding and subject to confirmation. This also applies to any catalogs or technical documentation (e.g. drawings, plans, calculations, cost estimates and references to DIN standards), product descriptions or documents ─ also in electronic form ─ to which we retain the property rights or copyrights.

(2) The order placed by the Purchaser shall constitute a legally binding contractual offer. Unless otherwise specified in the order, we are entitled to accept this contractual offer within two weeks after its receipt by us.

(3) This acceptance can be indicated either in written form (e.g. by an order confirmation) or by delivery of the goods to the Purchaser.

§ 3 Delivery Deadline and Delivery Delay

(1) The delivery deadline shall be agreed upon individually or provided by us upon confirmation of the order.

(2) Insofar as we cannot meet binding delivery deadlines for any reasons for which we cannot be held responsible (non-availability of performance), we shall inform the Purchaser thereof immediately and at the same time indicate the probable new delivery deadline. If the goods and services are not available within the new delivery deadline either we shall be entitled to cancel the contract in full or in part; we shall refund, without undue delay, any consideration already received from the Purchaser. The unavailability of goods or services in this sense particularly includes our suppliers failing to deliver in good time if we have concluded a congruent hedging transaction, the unavailability is through no fault of our own or our suppliers or we are not obligated to procure the items.

(3) The occurrence of our delay in delivery is determined in accordance with statutory provisions. A reminder by the Purchaser shall be required in all cases, however. Should we be late with delivery, the Purchaser shall be entitled to demand a lump sum compensation for losses caused by the delay. The lump sum compensation per each full calendar week shall be 0.5%, not to exceed 5% of the delivery value of the goods delivered behind schedule. We reserve the right to prove that the Purchaser suffered no loss or a significantly smaller loss than the above lump sum.

(4) The Purchaser's rights pursuant to § 8 of these General Conditions and our statutory rights, in particular upon exclusion of the obligation to perform (e.g. performance and/or subsequent performance become(s) impossible or unreasonable) remain unaffected.

§ 4 Delivery, passing of risk, acceptance, default of acceptance

(1) The shipment is ex-warehouse, which is also the place of performance for the delivery and any possible subsequent performance. At the request and expense of the Purchaser the goods can be shipped to another destination point (contract of sale involving the carriage of goods). Unless otherwise agreed, we are entitledto define the mode of delivery (especially with regard to the carrier, mode of transport, and type of packaging).

(2) The risk of accidental loss and the accidental deterioration of the goods shall pass to the Purchaser no later than the handover date. For a contract of sale involving the carriage of goods however, the risk of accidental loss and the accidental deterioration of the goods as well as the risk of delay shall pass upon handover of the goods to the forwarding agent, the carrier or or any other person or institution designated with the task of performing the shipment. If acceptance has been agreed, this will determine the transfer of risk. The agreed acceptance will also be conducted in accordance with the law on service contracts. If the Purchaser delays in accepting the goods, the transfer and acceptance shall still be deemed to have taken place.

(3) If the Purchaser is in default in acceptance, violates his duty to cooperate or our delivery is delayed for any other reason for which the Purchaser is responsible, we are entitled to demand compensation for resulting damages, including any possible extra expenditure (e.g. storage costs). For this compensation, we demand a lump sum equaling EUR 25.00 per calendar day beginning on the delivery deadline or ─ in the absence of a delivery deadline – the date of notification that the goods are ready for shipment.

The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the lump sum is however to be offset against further monetary claims. The Purchaser reserves the right to prove that we suffered no loss or a significantly smaller loss than the above lump sum.

§ 5 Prices and terms of payment

(1) Unless otherwise agreed, our prices are ex-warehouse excluding packaging, transportation costs the statutory rate of value added tax. Discounts shall not be granted if the Purchaser is in arrears with payments for earlier deliveries.

(2) In a contract of sale involving the carriage of goods (§ 4 Para. 1) the Purchaser shallbear the cost of transport ex-warehouse and the cost of any transport insurance re-

quested by the Purchaser. Any possible customs duties, fees, taxes and any other public levies shall likewise be borne by the Purchaser.

(3) If more than 4 weeks have passed between the conclusion of the contract and the delivery date specified in the contract, we shall be justified in charging the current market rate for the goods valid at the time of shipment.

(4) Unless agreed otherwise for a particular instance, the purchase price is due and payable within 7 days from invoicing and delivery (or acceptance) of the goods. We are however entitled, even within the scope of an ongoing business relationship, to demand prepayment for all of part of a delivery at any time. We will state such a reservation no later than when the order is confirmed.

(5) With expiration of the aforementioned term of payment the Purchaser will be in default. During default the applicable statutory interest rate will be charged on the purchase amount. We reserve the right to claim any further damages from the default. Our claim for the commercial maturity interest (§ 353 HGB [German Commercial Code]) against merchants remains unaffected.

(6) The Purchaser only has set-off rights or the right to retention of goods if his claim has been ascertained as legally valid and undisputed. In case of defects to the delivery, the Purchaser's rights with regard to counterclaims and in particular § 7 Para. 6 Cl. 2 of these General Conditions remain unaffected.

(7) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through the Purchaser's insufficient ability to pay (e.g. by an application for opening of insolvency proceedings) then according to the statutory provisions we are entitled to refuse service and - if applicable after setting a deadline - to cancel the contract (§ 321 BGB [German Civil Code]). For contracts regarding the production of nonsubstitutable goods (custom manufacturing), we can declare the cancellation immediately; the statutory provisions concerning the lack of necessity to set a deadline remain unaffected.

§ 6 Retention of Title

(1) We retain title to any sold goods delivered to the Purchaser until all of our existent current and future claims resulting from the sales contract and business relationship ("**secured claims**") have been paid in full.

(2) The goods for which the title is reserved may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The Purchaser must inform us in writing immediately if and when an application for the initiation of insolvency proceedings is filed or if any third-party claims rights (e.g. attachment) to the goods belonging to us.

(3) In case of violation of the contract by the Purchaser, in particular default of payment, we have the right to cancel the contract in accordance with the statutory provisions and/or require return of the goods subject to retention of title. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, we shall be entitled to demand solely the return of the goods and reserve the right to withdraw from the contract. If the Purchaser does not pay the due purchase price, we may however only reserve the right to the cancellation if we have unsuccessfully set the Buyer a reasonable deadline for payment in advance or if setting such a deadline is not necessary according to the statutory provisions.

(4) The Purchaser is entitled, until revocation, to sell or process the goods, the ownership of which is still reserved, in the normal course of business in accordance with Section (c) below. In this case the following provisions shall apply in addition.

(a) The retention of title covers the products resulting from the processing, mixing or connecting of our goods up to their resulting products' full value, and we shall be deemed to be the manufacturers. If third parties retain title to goods that are processed, mixed or combined with our goods to make a new product, we obtain joint title to the new product in relationship to the invoiced value of the goods processed, mixed or combined to make the new product. In all other cases the same applies to the ensuing products as applies to the goods delivered subject to retention of title.

(b) The Purchaser hereby assigns to us any and all claims from the resale of the goods or the products vis-à-vis third parties in full or to the extent of any co-ownership interest in accordance with the preceding paragraph. We hereby accept the assignment. The obligations of the Purchaser stated in Para. 2 shall also apply to the assigned claims.

(c) We and the Purchaser are authorized to collect any debts. We pledge not to collect the demands so long as the purchaser duly fulfills his liability to pay us and there is no other deficiency in the Purchaser's performance capacity and solvency and we have not exercised our right to retention of title as outlined in Para. 3. In this case, we can demand that the Purchaser disclose the assigned claims and their debtors, provide all information necessary for collection, surrender the relevant documents and inform its debtors (third parties) of the assignment. We are also authorized in this case to revoke the Purchaser's right to resell or process in any way the retained-title goods.

(d) If the realizable value of the collateral items exceeds our claims by more than ten per cent we shall upon request of the Purchaser release collateral items at our discretion.

§ 7 Purchaser's claims for defects

(1) The statutory provisions shall apply to the rights of the Purchaser in case of defects of quality and title (including including incorrect and short deliveries as well as improper assembly or faulty assembly instructions) insofar as not otherwise determined below. Special statutory provisions on final deliveries of unprocessed products to a consumer, including cases in which the Purchaser has further processed these goods, shall in any case remain unaffected (recourse against supplier under §§ 478 BGB [German Civil Code]). Claims of recourse against the supplier are expressly excluded if the defective goods were further processed (e.g. by being incorporated into another product) by the Purchaser or another company.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. Agreements as to the condition of the goods include any product descriptions so designated and made publicly available by us (in particular, through catalogs or on our internet homepage).

(3) In the absence of any agreed specification of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (§ 434 Para. 1, Cl. 2, 3 BGB [German Civil Code]). We shall not be held liable, however, for any public statements made by the manufacturer or other third parties (e.g. advertising messages)

(4) The warranty claims of the Purchaser require that he has observed his statutory obligations to examine the goods and to notify us of the defects in accordance with § 377 and 381 HGB (German Commercial Code). Should a defect become apparent at the time of delivery, during inspection or at a later time, this must be reported to us immediately in writing. Notice of obvious defects must be given in writing within four (4) working days from receipt of the goods, and hidden defects must be reported in writing within four (4) days after detection. If the Purchaser fails to examine the goods properly and/or fails to give any notification of defect, in accordance with statutory provisions we will not be liable for any defects not reported or not reported correctly.

(5) If the delivered object is defective we can then decide whether we shall provide subsequent performance by remedying the defect (rectification of defects) or by delivery of a defect-free object (substitute delivery). Our right to refuse the chosen rectification under the statutory provisions remains unaffected.

(6) We are, however, entitled to make the subsequent performance owed dependent on the Purchaser's payment of the purchase price due. The Purchaser is entitled to retain a reasonable portion of the purchase price that is relative to the defect.

(7) The Purchaser is obliged to grant us the necessary time and opportunity to meet subsequent fulfillment obligations and is in particular obligated to surrender the faulty goods for inspection purposes. In case of replacement, the Purchaser has to return the defective goods to us in accordance with statutory provisions. The subsequent performance shall not include either the disassembly or reassembly of the defective goods if we were not originally contractually obligated to install the product.

(8) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, labor and material costs as well as the disassembly and reassembly expenses shall be borne by us in accordance with statutory provisions if there is actually a defect. If a claim for remedy of defect of the Purchaser turns out to be unjustified we are entitled to claim the costs (in particular the inspection and transport costs) resulting from this to be refunded by the Purchaser unless the lack of defects was not identifiable by the Purchaser.

(9) If subsequent performance failed or a deadline imposed upon us by the Purchaser for subsequent performance expired without success or is dispensable under the statutory provisions, the Purchaser has the right to rescind the contract or to demand a reduction of the purchase price However, no right to cancellation exists with an insignificant defect.

(10) The Purchaser's claims for damages or compensation for wasted expenses, even in the case of defects, exist only in accordance with § 8 and are otherwise excluded.

§ 8 Other liability

(1) Insofar as not otherwise derived from these General Terms & Conditions including the following provisions we shall be liable according to the relevantstatutory provisions in case of a breach of contractual and non-contractual duties.

(2) We shall be liable for damages – irrespective of legal grounds – in case of willful intent and gross negligence. In cases of simple negligence we shall only be subject to the standard of liability for minor negligence in accordance with statutory provisions (e.g. the level of care exercised in our own business) for:

a) damage resulting from death, bodily injury or harm to health,

b) damages arising from a significant breach of fundamental contractual obligations (anobligation whose fulfillment is a prerequisite for enabling the proper fulfillment of the contract in the first place and in which the Purchaser regularly trusts and may trust); in this case our liability is limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The limitations of liability defined in paragraph 2 are also applicable in cases involving a breach of duty by, or for the benefit of, persons whose negligence we are responsible for in accordance with statutory provisions. They do not apply if we have fraudulently concealed a defect or have provided a guarantee for the quality of the goods and any Purchaser claims based on the German Product Liability Act.

(4) The Purchaser can only withdraw from the contract or cancel the contract due to a breach of duty which does not consist in a defect if we are responsible for the breach of duty. An unrestricted right of termination for the Purchaser (in particular in accordance with §§ 651 and 649 BGB (German Civil Code) is excluded. Furthermore, the statutory requirements and legal consequences shall apply.

§ 9 Statutory limitation period

(1) Notwithstanding § 438 Para. 1, No. 3 BGB (German Civil Code), the statute of limitations period for material defects and defects of title is one year beginning from the day of the delivery. Insofar as an acceptance has been agreed the statute of limitations shall begin with the acceptance.

(2) If the contractual object is a building or an object which has been used as a building in accordance with its normal use and which caused the defect (building material) then, in accordance with the legal stipulations, the statute of limitations is five years as of delivery (§ 438, Para. 1, No.2 BGB [German Civil Code]). Any further statutory special regulations regarding the statute of limitations (in particular § 438 Para. 1 No 1, Para. 3, §§ 444, 445b BGB [German Civil Code]) remain unaffected.

(3) The aforementioned limitation periods of commercial law shall also apply to the Purchaser's contractual and non-contractual claims for damages based on defective goods, except if application of the standard legal limitation period (§§ 195 and 199 BGB [German Civil Code]) would result in a shorter limitation period in this individual case. Claims for damages by the Purchaser in accordance with § 8 Para. 2 Cl. 1 and 2(a) as well as claims arising from product liability law become statute-barred exclusively according to the statutory provisions.

§ 10 Applicable law and place of jurisdiction

(1) For these General Terms & Conditions and the contractual relationship between us and the Purchaser, the law of the Federal Republic of Germany shall be applicable to the exclusion of international uniform law and in particular the UN Convention on Contracts for the International Sale of Goods.
(2) If the Purchaser is a merchant in terms of the German Commercial Code (HGB), a legal entity under public law or a separate estate of public law, the registered offices in Hamburg, Germany shall apply exclusively - also internationally - as a court of jurisdiction for all disputes arising directly or indirectly from the contractual relations. This shall also apply correspondingly if the Purchaser is a business owner as defined by § 14 BGB (German Civil Code). In all cases however, we shall be entitled to bring actions in the place of fulfillment for the delivery commitment in accordance with these General Terms & Conditions or an overriding individual agreement or at the general place of jurisdiction of the Purchaser. Any priority provisions to the contrary in the form of statutory provisions, in particular those beyond exclusive jurisdiction, remain unaffected.