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**General Terms and Conditions of Sale****§ 1 Scope of application**

These terms and conditions of sale shall apply to business transactions with entrepreneurs, public-law legal entities and public-law special funds.

Our contractual performance shall be based exclusively upon the following terms and conditions. Our terms and conditions of sale shall apply exclusively. A buyer's contradictory terms and conditions or those terms to our detriment shall not apply even if we fail to object to these in each particular case.

**§ 2 Quotation and contract conclusion**

- 2.1. Our offers are subject to alteration without notice and without obligation, unless we have particularly in writing denominated them to be committal. Declarations of acceptance and buyer's orders, if classified as an offer pursuant to Article 145 BGB (*German Civil Code*), only take binding effect if we confirm them in writing. We have 5 working days time to accept buyer's orders from the time of receipt of such order.
- 2.2. Documents forming part of our offer pursuant to section 2.1, such as illustrations, drawings, etc, and resultant measurement and weight specifications are only indicative, unless we have explicitly in writing designated these to be binding. The same applies to instructions for use. We are entitled to manufacture with tolerances customary in the industry within the framework of what is reasonable for the buyer.
- 2.3. We reserve all proprietary rights and copyrights to all documents/records made available to buyer in context with placing orders, such as calculations, drawings, etc. Such items may not be made available to third parties without our written consent. If we decline to accept buyer's order within the period stated in paragraph 2.1, these documents/records shall immediately be returned to us.

**§ 3 Long-term and call-off contracts, price adjustments**

- 3.1. Indefinite contracts may be terminated with a notification period of six months.
- 3.2. If significant changes to labor, material or other costs arise during the term of long-term contracts (contracts with a term of more than twelve months and indefinite contracts), each of the contract partners is entitled to request adjustment of prices under due consideration of these factors. If the target quantity is exceeded/missed by +/- 25%, the partners shall adjust the unit price accordingly. Unless agreed upon differently, binding orders under call-off contracts will be placed no later than four months prior to the delivery date. Any changes to these orders shall be negotiated and agreed with our logistics function. Any additional costs caused by buyer due to delayed call-off or changes at short notice in terms of time or quantity shall be charged to buyer's account; our calculation shall be decisive.

**§ 4 Prices and terms of payment**

- 4.1. Unless agreed upon differently in writing, our prices are quoted ex works, exclusive of packaging and applicable statutory VAT. The costs for packaging will be invoiced separately.

- 4.2. The purchase price is due for payment no later than 14 days after delivery net. Interest for delay will be 9% above the base interest rate fixed by the European Central Bank. Buyer's default shall be based upon § 286 BGB (*German Civil Code*). The right to assert higher claims to compensation for damage caused by delay is reserved.

## **§ 5 Offsetting and retention rights**

The buyer is entitled to offsetting only if his counterclaims have been legally established or are undisputed. The buyer is entitled to exercise rights to retention only if his counterclaim is based upon the same contractual relationship.

## **§ 6 Delivery schedules**

- 6.1. Delivery schedules are principally non-committal and approximate. In case of doubt, the delivery period begins at the time we send the order confirmation.
- 6.2. The observance of deadlines for deliveries is conditional upon timely receipt of all documents/records, necessary permits and approvals to be supplied by the buyer, including plans, and observance of agreed payment terms and other obligations by the buyer. If these conditions are not fulfilled on time, the deadlines shall be extended appropriately; this does not apply if we are responsible for the delay.
- 6.3. If we culpably are in default of delivery, the buyer - if he can prove that he has incurred damage as a result - for each full week of delay may demand compensation of 0.1%, however in total no more 5% of the net price for the share of deliveries which could not be placed in serviceable operation due to the delay.
- 6.4. Any claims for compensation for damage by the buyer due to delayed delivery and claims for compensation for damage in lieu of performance exceeding the limits specified in section 6.3 are excluded in all cases of delayed delivery after expiry of a delivery deadline set for us. This does not apply where liability is compulsory in cases of intent, gross negligence or due to injury to life, limb or health. The buyer may only withdraw from the contract within the framework of statutory provisions to the extent we are responsible for the delayed delivery.
- 6.5. At our request, the buyer is obligated to declare within a reasonable period of time if he due to the delay in delivery intends to withdraw from the contract or insists on delivery.
- 6.6. We are entitled to make partial deliveries and to make excess/short deliveries of up to approx. 10%.

## **§ 7 Transfer of Risk**

- 7.1. Delivery is carried out "ex works" acc. to Incoterms 2010, unless we have explicitly agreed differently with the buyer. Unless we have expressly taken over the dispatch or assembly of the delivered object in writing, the risk of accidental loss and accidental deterioration of the goods we supplied therefore passes to the buyer upon handover or collection by the person responsible for transport. The same applies also to partial deliveries.
- 7.2. If dispatch, delivery, start, performance of installation or assembly, acceptance into own operations or trial operations are delayed for reasons attributable to the buyer or if buyer

falls into default of acceptance for other reasons, risk passes to the buyer at the time default in acceptance occurs.

## **§ 8 Force majeure**

Force Majeure, labor disputes, strikes, riots, governmental measures, delay of our suppliers' deliveries and any other unforeseeable, unavoidable and severe incidents for the duration of the interference and to the extent such interference takes effect will release us from our contractual fulfillment obligations. This shall apply also if these events occur at a point of time at which we are in default unless such default was caused intentionally or with gross negligence. We are obligated to make all reasonable effort to immediately provide all required information and in good faith to adapt our obligations to the changed circumstances.

## **§ 9 Retention of ownership**

- 9.1. We retain title of ownership to the delivered goods until all payments due under the delivery contract have been made. This applies also to all future deliveries even if we do not consistently and explicitly refer to such right. We are entitled to take back the delivered goods if the buyer acts in breach of contract.
- 9.2. As long as property rights have not yet passed to buyer, he shall be obligated to keep the goods in proper maintenance and condition. He shall be particularly obligated to adequately insure these at his own cost against theft, fire, and water damage at reinstatement value. As long as property rights have not yet passed, the buyer will immediately notify us in the event of seizures or other interventions by third parties against the delivered goods. If the third party is unable to reimburse to us the judicial and extra-judicial costs of proceedings pursuant to § 771 ZPO (*Code of Civil Proceedings*), the buyer shall be liable for the losses incurred by us.
- 9.3. Buyer shall be entitled to resell the delivered goods subject to retention of title in the normal course of business. Buyer here and now assigns to us the receivables from selling the goods subject to retention of title in the amount of the final invoice total (including VAT) of our claim. This assignment is in effect regardless of whether the object of purchase has been resold without or following processing. Buyer shall remain entitled to collect said receivable also after the assignment; this shall not affect our entitlement to collect the account receivable ourselves. However, we engage not to collect the receivable as long as buyer complies with his payment duties from the revenue collected, if he does not fall into arrears of payment and, in particular, if no application for insolvency proceedings has been made and there is no suspension of payment.
- 9.4. Processing or re-shaping of the object of purchase by buyer shall always be done in our name and on our behalf. In such case, the buyer's entitlement rights to the purchase item shall continue with the transformed item. If the object of purchase is processed with other objects not belonging to us, we shall acquire joint title to the new object in the ratio of the value of the object of purchase to the other processed objects at the time of the processing. This also applies if the object is blended with others. If the blending is such that buyer's object is to be regarded as the main object, it shall be deemed agreed that buyer only transfers joint title pro rata and that buyer shall safeguard the ensuing sole or joint title on our behalf.
- 9.5. We engage to release the securities accruing to us upon buyer's request to the extent that the realizable value of our securities exceeds the receivables to be secured by more than 20%.

**§ 10 Warranty**

- 10.1. Buyer's warranty claims shall be conditional upon buyer's compliance with his duties of examination and notification pursuant to § 377 HGB (*German Commercial Code*). To be in such compliance, he must immediately – however no later than one week after receipt - inspect the shipment for any defects and, if any such defects are found, must report these to us.
- 10.2. Claims for defects become statute-barred 12 months after delivery to the buyer of the goods we supplied.
- 10.3. The characteristics and qualities of the goods are based exclusively on the agreed technical delivery specifications. If we are required to deliver based on buyer's drawings, specifications, samples, etc., the buyer shall bear the risk of suitability for the intended purpose. The point of time at which risk passes in compliance with §7 shall be decisive for determining the goods' contractual condition.
- 10.4. If formal acceptance of the goods or initial-sample inspection was agreed, notices of defects are excluded if the buyer could have found these with diligent acceptance or initial-sample inspection.
- 10.5. We will not assume any warranty for material defects caused by inappropriate or incorrect use, incorrect assembly and/or start-up by buyer or third party, fair wear and tear, incorrect dimensioning (if we were not responsible for development of parts), incorrect or improper use or for the consequences of incorrect or unauthorized changes or maintenance and repair work performed by buyer or third parties. This shall apply also to any defects with only minor effect upon value or degree of suitability.
- 10.6. We must be given opportunity to investigate the claimed defect. Upon our request, any rejected goods will be returned to us in sufficient amount for us to investigate; we will cover the transport costs if the notice of defect is justified. If so required, the buyer will actively support the investigations; any required particular test devices and facilities will be made available at no cost. The contract partners will notify each other about the investigation results. On the basis of these investigation results, the parties will come to an agreement on any compensation for damage.

If the buyer fails to comply with these obligations or modifies the rejected goods without our prior consent, buyer loses all entitlements to claims for defects. If justified claims for defects were asserted in due time, we will at our own discretion rework the goods or make flawless replacement delivery. If we fail to comply with these obligations as provided in contract within an appropriate period of time, the buyer is entitled to fix a last grace period in writing within which we must meet our obligations. After fruitless expiry of this grace period, the buyer may request reduction of purchase price or he may withdraw from the contract or he may perform the required rework at our risk and expense himself or have such work done by third parties. Any cost refund is excluded to the extent expenditures increase because the goods we delivered have subsequently been shipped to a location other than the buyer's business site, unless such shipment complies with its normal use. We will conclude separate agreements on determination and allocation of buyer's expenditures for material defects; these agreements must be oriented towards the buyer's actual cost share and the appropriateness of the expenditures and must be verifiable by us as pertains to the buyer's claims for compensation.

- 10.7. We are capable only of performing validations at model test rigs. The buyer must perform adequate validation in original aggregates himself. Any claims for defects are excluded if these could have been established in a proper validation procedure.
- 10.8. If the buyer requests complaint processing by way of 8D-Report or in similar fashion, the expiration of a processing deadline set by the buyer will in no case constitute any implied acknowledgement of the complaint.
- 10.9. We will not assume costs for any field actions unless these are required due to compulsory statutory regulations.

## **§ 11 Other claims, liability**

- 11.1. Our liability for compensation for damage on any legal grounds is restricted, in particular if due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and unlawful acts.
- 11.2. We shall not be liable for any ordinary negligent acts performed by our company organs, legal representatives, employees or other agents to the extent these acts do not constitute essential contractual obligations. Such essential contractual obligations shall be constituted by the obligation to punctual delivery, the delivery of delivery object, the absence of defects in the delivery object which would significantly impair its functionality or commercial usefulness, as well as consultation, protection, and care duties, which enable the buyer to use the delivery object as provided in contract or which are intended to protect the health and life of the buyer's personnel or to protect buyer's property against significant damage.
- 11.3. Our liability is restricted to damage which we at the time of contract conclusion foresaw as potential consequence of a breach of contract or which we with due exercise of diligence should have foreseen. Indirect damage or consequential damage caused by defects in the delivery object are eligible for compensation only to the extent such damages may be typically anticipated if the delivery object is used as typically intended.
- 11.4. In any case, our liability is restricted to the respective amount covered by our product liability insurance even if it concerns a violation of essential contractual obligations.

## **§ 12 Confidentiality**

Contract partners will use the documents and records (such as sample, drawings, models, data, etc.) as well as know-how gained from the business relationship only for the parties' joint purposes and will treat them with the same level of confidentiality towards third parties as they would with their own records and know-how, provided the other contractual party has classified them as confidential or is obviously interested in such confidentiality. Such obligation shall not apply to records and know-how which are in the public domain or which were already known to the other contractual party at the time they were disclosed without such contractual party being bound to confidentiality.

## **§ 13 Tools**

- 13.1. Unless agreed upon differently, the tools we manufacture or which are manufactured for us remain our property. This shall apply also if we partially or entirely charge the tools to buyer's account.

13.2. If explicit agreement is made that the tools are the buyer's property, the buyer acknowledges that the samples and manufacturing means (tools, moulds, templates, etc.) he has ordered to a considerable extent incorporate our development know-how and that we as a consequence have considerable interest in confidentiality. For this reason, the parties agree that the buyer has no claims whatsoever to handover/possession of the samples and manufacturing means, irrespective of the legal grounds, even if the buyer pays the entire tooling costs and/or if the supply relationship is terminated.

If we file for bankruptcy and are unable to deliver, the buyer is entitled to demand handover/ possession of the manufacturing means, if applicable against payment of the residual tooling costs.

#### **§ 14 Spare parts**

Parts we manufacture on the basis of buyer specifications are subject to a 15-year spare-part delivery obligation from the time series production is discontinued. This shall not apply to catalogue parts. The parties will conduct price negotiations at the time serial production is discontinued.

#### **§ 15 Project cancellation**

If a project is cancelled for reasons not within our scope of responsibility and there are no series deliveries as a consequence of such project cancellation, the buyer will bear all project costs for development and manufacturing the product arising up to the time of notification of project cancellation.

#### **§ 16 Miscellaneous**

16.1. This contract and the entire legal relationship between the parties are governed by the laws of the Federal Republic of Germany excluding the UN-Convention on Contract for the International Sale of Goods (CISG).

16.2. Our legal domicile shall be place of fulfillment.

16.3. If the buyer is a fully-qualified merchant, a legal entity under public law or a public-law special fund, our legal domicile shall be exclusive place of jurisdiction for all disputes arising from this contract. We are also entitled to bring legal action at the buyer's legal domicile.

16.4. All understandings and covenants between the parties on fulfillment of this contract have been fixed herein in writing.

16.5. If a clause of these General Terms and Conditions and any further agreements is or becomes legally ineffective, this shall not affect the validity of the remaining clauses. The contractual parties agree to replace the ineffective clause by an effective clause coming closest in business terms to what the parties had originally intended. This applies analogously also to any legal voids.