General Terms of Delivery and Payment

§ 1 Applicability

1. Our terms and conditions only apply for entrepreneurs as understood in § 310 BGB (Bürgerliches Gesetzbuch [German Civil Code]).
2. The following terms and conditions of sale and payment apply for all of our contracts, deliveries, and other performances, insofar as they are not amended or excluded with our expressly declared approval in writing or via email. In particular, they apply even if we carry out the delivery/performance without reservation with the knowledge of our customer's deviating terms and conditions. Our contractual partner's general business terms and conditions apply only if we confirm them in writing or by email.

§ 2 Offer and conclusion of contract

1. Our offers are non-binding. Contracts and other agreements only become binding once they are confirmed by us in writing or by email or through our delivery/performance.
2. When concluding a contract, all agreements between us and our customer must be recorded in writing or via email. Agreements made between our employees or representatives and our customer at the time or after the contract is concluded require our approval issued in writing or by email; the representative authority of our employees and representatives is restricted in this respect.

§ 3 Prices, price increases, and payment.

1. Our prices apply for delivery ex works, not including packaging, freight, customs, insurance, and statutory value-added tax, which we shall in all cases charge additionally according to the valid rate on the date of delivery or performance.
2. Our invoices must be paid upon receipt without any deductions, unless otherwise agreed or stipulated in our order confirmation.
3. We are entitled to interest from the due date in the amount of 8% above the respective base interest rate. Further claims, in particular due to default by our contractual partner, remain unaffected.
4. Offsetting with counterclaims that we dispute and that have not been established by a final judgement is not permitted. The assertion of a right of retention for claims that are not based on the same contractual relationship is excluded if these claims are not recognised by us and have not been established by a final judgement.
5. Our customer may only retain payments because of a notice of defects if there can be no doubt regarding the justification of the notice of defects, moreover only to an extent that is commensurate with the defects that have occurred.

§ 4 Shipping and transfer of risk, insurance

1. For purchase agreements, in all cases and regardless of the place of dispatch, the risk is transferred to our customer when the goods are dispatched.
For work contracts, the risk is transferred to our customer on entry into service.
2. In the absence of shipping instructions from our contractual partner, or if a deviation from such instructions seems necessary, we shall ship according to our best judgement, without any obligation to use the cheapest or fastest shipping method.
We will only insure the delivery item against any insurable risk desired by our contractual partner, in particular against theft and transport damages, upon the request of our contractual partner and at the expense of such partner.
Events of transport damage must be reported to us without delay. Furthermore, upon delivery the receiver must ensure that the corresponding claims and reservations are registered with the freight forwarder.
3. If the dispatch is delayed at the request of our contractual partner or for reasons that are the contractual partner's responsibilities, the goods shall be stored at the expense and risk of our contractual partner.

§ 5 Delivery deadlines, acceptance

1. Delivery deadlines and dates apply as binding only if this is confirmed by us in writing.
2. A performance period stipulated only in terms of a certain duration shall begin with the expiration of the date on which the agreement was reached regarding all of the details of the order's content, at the earliest when we accept the order, however not before all of the documents, approvals and releases that must be obtained by the ordering party have been supplied, and not before the receipt of any advance payment that must be paid by the ordering party.
3. A delivery deadline or delivery date is deemed to have been met if the goods have been dispatched by us by the expiration of the deadline, or, in cases where the goods cannot or should not be dispatched, if our report regarding our readiness to deliver has been dispatched by such deadline.
4. Delivery deadlines shall be suitably extended, even within a delay, in the event of a force majeure and any unforeseen obstacles occurring after the conclusion of the contract for which we are not responsible, provided that such obstacles are proven to have a significant impact on the delivery of the purchased object. In terms of this paragraph, strikes and lockouts shall be deemed in all cases acts for which we are not responsible. The above provisions shall also apply if the circumstances causing the delay occur for our suppliers or sub-suppliers.
Insofar as delivery delays caused in such a manner last longer than six weeks, our contractual partner is entitled to withdraw from the contract, subject to the exclusion of any further claims.
5. Delivery deadlines shall be extended by the length of time that the recipient is in default with its obligations, (within an ongoing business relationship this also applies to obligations arising from other contracts), or does not create the necessary conditions for beginning or continuing the work to be implemented by the recipient, especially if the recipient does not provide the required documents, plans, or other specifications. Our contractual partner bears the burden of proof of having created the necessary conditions and provided the necessary documents, plans, or specifications.
6. We shall be entitled to carry out partial deliveries and invoice them separately.
7. The acceptance of work by the customer shall occur no later than within twelve working days after entry into service. The existence of minor defects does not entitle the customer to refuse acceptance. If acceptance does not occur within the specified period and the customer does not inform us within the specified period of the fact of the refusal and the reasons for the refusal, the acceptance shall be deemed as effected upon the expiration of the twelfth day after entry into service.

§ 6 Default, exclusion of the obligation to perform

If we find ourselves in default with the delivery, or if our obligation to perform is excluded as per § 275 BGB, we shall be liable for compensatory damages only under the preconditions and to the extent of § 10.3, however with the following additional provisos:
1. If we are in default with delivery and only a case of simple negligence on our part exists, then our customer's claims for compensatory damages shall be limited to a flat-rate compensation for default in the amount of 1% of the value of the delivery for each full week of the default, but a maximum of 8% of the value of the delivery; however, we reserve the right to prove that no or only minimal damage resulted from delivery default.
2. In the event of our default, our customer shall have a claim for compensatory damages instead of performance only if the customer has previously set a four-week extension for the delivery, although the customer shall have the right to grant us an appropriate deadline of less than four weeks provided that in a particular case a minimum four-week extension for delivery cannot be reasonably expected from the customer.
3. The customer's right of withdrawal and claim for compensatory damages are basically limited to the part of the contract that has not yet been fulfilled, unless the customer reasonably no longer has any interest in the fulfilled part of the contract.
4. Claims directed against us for compensatory damages because of default or the exclusion of the obligation to perform as per § 275 BGB shall lapse after the expiration of one year after the statutory limitation period begins.
5. The provisions above shall not apply if the damages result from an injury to life, body, health, or freedom of our contractual partner, or the damages are based on an intentional or grossly negligent violation of duty by us, one of our legal representatives or vicarious agents; moreover, they shall not apply in the case of default if the performance was agreed for a fixed date.

§ 7 Default of acceptance by our contractual partner

1. If our contractual partner enters into complete or partial default with the acceptance of our performance we shall be entitled to withdraw from the contract and request compensatory damages instead of performance, after the expiration of a reasonable extension period without results set by us with a warning that, if the extension period expires, we shall reject the acceptance by the customer, but only with regard to the part of the contract that we have not yet fulfilled.
Our statutory rights in the event of our customer's default of acceptance remain unaffected.
2. The customer must reimburse us for our storage costs, warehouse rental, and insurance costs for goods that are due for acceptance but have not been accepted. However, no obligation exists for us to insure stored goods.
3. If the delivery of the goods is delayed at the request of the ordering party, or if the ordering party finds itself in default of acceptance, we may, after the expiration of one month from sending the notice of our readiness to deliver, charge storage charges in the amount of 0.5% of the invoice amount for each initiated month of delay; however, we shall retain the right to assert claims for any higher damages that actually result. Our customer shall retain the right to provide proof that the storage charges did not arise or did not arise in the requested minimum amount.

§ 8 Cancellation of orders, acceptance of returned goods, termination, compensatory damages instead of performance

If, at the request of our customer, we declare our consent to the cancellation of an issued order, or accept returned goods that we have delivered for reasons that are not our responsibility thereby releasing the ordering party from its acceptance and payment obligations, or if our customer terminates with respect to a work contract for reasons that are not our responsibility as per § 649 BGB, or if we have a claim of compensatory damages instead of performance, we can request without evidence an indemnification of 20% of the portion of the contractual price that corresponds to the pertinent part of the delivery item; however, our customer shall retain the right to prove that no damage or only minor damages resulted. Our right to assert claims for any higher damages that actually result shall remain unaffected.

§ 9 Properties of the goods, additional and reduced performance

1. Illustrations, drawings, dimensions, and other compositional information contained in catalogues, price lists, and other printed matter constitute only approximate values as per usual industry practice. Our samples and models are only approximate display items for properties, measurements, and other characteristics. Our specifications regarding the dimensions, characteristics, and intended use of our products serve only as descriptions and contain no assurances regarding their characteristics.
2. In the event of technical necessities, we reserve the right to deliver the ordered goods with deviations in terms of their properties, dimensions and other characteristics. We shall inform our customers of such changes. In this regard, our customer is not entitled to any warranty claims if and to the extent that the changes do not significantly curtail the usefulness of the products for the customer.
3. We reserve the right to make deliveries up to 5% above or below the ordered quantity. Warranty claims by our customer because of such quantitative deviations up to 5% are excluded. However, our contractual partner must in any case pay for the actually delivered quantity.

§ 10 Liability for defects and compensatory damages

1. Our customer's claims for defects of the object presuppose that
the customer has properly fulfilled its investigative obligations and obligations to report defects as stipulated in §§ 377 and 378 HGB (Handelsgesetzbuch [German Commercial Code]), whereby the report of defects must occur in writing. If our customer refrains from the proper and timely reporting of defects, the customer can no longer assert claims because of the circumstances to be reported, unless we acted maliciously.
2. The rights of our customers because of defects of the object shall be determined in accordance with the statutory regulations and the criteria that our customer must grant us a reasonable period of at least four weeks for supplementary performance, whereby the customer shall retain the right to grant us an appropriate deadline of less than four weeks in an individual case, provided that a minimum four-week period for supplementary performance seems reasonable for the customer.
The deadline for supplementary performance shall not in any case begin prior to the time in which our client has returned the defective goods to us, whereby we shall carry the costs for return shipping. If only part of the goods we delivered are defective, the right of our contractual partner to rescind the contract or request compensatory damages instead of performance shall be limited to the defective part of the delivery, unless this limitation is impossible or cannot be reasonably imposed on our contractual partner. Our contractual partner's claims for compensatory damages for defects of delivery or performance are restricted to the scope that results from point 3 below.
3. Our liability for damages as a result of injury to the life, body, health or freedom of our contractual partner that are based on a culpable breach of duty is neither excluded nor limited.
We are liable for other damages to our contractual partner only if they are based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents.
If we have caused the damage only through simple negligence, we shall only be liable for matters concerning the violation of essential contractual duties, namely limited to contractually typical and reasonably foreseeable damages. In other respects, our contractual partner's claims for compensatory damages for violation of duty, wrongful acts or any other legal grounds are excluded.
The above liability limitations do not apply for mistakes regarding guaranteed qualities if and to the extent that the guarantee had the purpose of protecting the partner from damages that have not resulted to the delivered goods themselves. To the extent that our liability has been excluded or limited, this also applies for the personal liability of our salaried employees, workers, staff and vicarious agents. The above exclusions of liability apply in all cases also for consequential damages. The above exclusions of liability do not apply, however, for claims as per the Produkthaftungsgesetz (Product Liability Act).
4. Defects in software programs shall be remedied within the guarantee period at the earliest possible time after the release of an improved version. For customer-specific program developments, the first four weeks after entry into service shall be deemed a trial operation. During the trial operation, any claims for compensatory damages are fully excluded.

§ 11 Producer's liability

Our contractual partner must release us from all claims for compensatory damages made against us by third parties on the basis of the regulations regarding wrongful acts or product liability, or by virtue of any other regulation because of mistakes or defects on goods produced or delivered by us or our contractual partner, insofar as such claims would also be founded against our contractual partner or are no longer founded because the limitation period has since expired. Under these preconditions, our contractual partner must also indemnify us from the costs of litigation that are brought against us because of such claims. Insofar as the asserted claims are also founded against us or no longer founded simply because the limitation period has since expired, a claim for proportional indemnification exists on our part against our contractual partner, the extent and amount of which shall be determined in accordance with § 254 BGB.
Our claims for indemnification and compensatory damages as per §§ 437, 440, 478 BGB or based on other legal grounds shall remain unaffected by the above provisions.

§ 12 Reservation of proprietary rights

1. Until all financial claims against our customer, to which we are now and in future entitled, have been fulfilled, our customer shall grant us the following securities, which we shall approve according to our own choice insofar as their nominal value sustainably exceeds our financial claims by more than 20%:
Delivered goods shall remain our property.

Processing and transformation always occur for us as the manufacturer, however without imposing any obligations upon us. If the goods delivered by us are processed with objects that do not belong to us, we shall then acquire co-ownership of the new item in accordance with the relationship of the invoice value of the goods we delivered to the invoice value of the other goods used at the time of processing. If our goods are combined with other moveable objects into a unified item, and if the other item is to be viewed as the main item, then our customer shall transfer proportional co-ownership to us, to the extent that this main item belongs to our customer.
Any handover required for our acquisition of ownership or co-ownership shall be superseded by the agreement made now, that our customer will safely store the object for us as a borrower; or, if the customer does not possess the object, that the handover is already superseded by the assignment of the claim for restitution against the holder to us.
Items to which we are entitled to (co) ownership are referred to in the following as goods subject to retention of ownership.
2. The customer is entitled to sell goods subject to retention of ownership in proper commercial transactions and to combine them with the items of others. The customer shall now already assign to us the financial claims arising from the sale, combination or any other legal grounds related to the goods subject to retention of ownership, in whole or proportionately in relation to the extent to which we are entitled to co-ownership of the sold or processed object. When allocating such claims in running accounts, this assignment also includes all balance claims. The assignment shall have priority over any other claims.
We authorise the customer, subject to revocation, to collect the assigned claims. The customer must transfer the collected amounts to us without delay, to the extent and as soon as our financial claims are due. To the extent that our financial claims are not yet due, the collected amounts must be recorded separately by the customer.
Our authority to collect the financial claims ourselves shall remain unaffected. However, we undertake not to collect the financial claims ourselves as long as our customer fulfils its payment obligations arising from the collected proceeds, does not fall into payment arrears, and in particular as long as no application for initiating insolvency or composition proceedings has been lodged or cessation of payments exists. On the other hand, if this is the case our customer is obliged to inform us of the assigned claims and the corresponding debtors, to turn over the associated documents and to provide all the information required for collection, and also to report the assignment to the third-party debtors, although we are also entitled to report the assignment to the debtors ourselves.
Even without being revoked by us, our customer's rights to further sell, process, combine, or install the goods subject to retention of ownership and the authorisation to collect assigned financial claims shall extinguish in the event of a cessation of payments, or the application for or initiation of insolvency proceedings or judicial or extra-judicial composition proceedings.
3. The customer must immediately inform us of the access of third parties to the goods subject to retention of ownership and to the assigned financial claims The customer shall bear any potential costs for interventions or defence.
4. The customer is obliged to handle the goods subject to retention of ownership carefully, in particular to adequately insure them for their value as new at the customer's own expense against fire and water damage and theft.
5. If the customer acts contrary to the contract, in particular in the event of default of payment, we shall be entitled to retrieve the goods subject to retention of ownership at the customer's expense, or to request the assignment of the customer's claims of restitution against third parties. If we take back or seize the goods subject to retention of ownership, this does not constitute a withdrawal from the contract, unless we expressly declare a withdrawal in writing.
6. Should our reservation of property rights lose its validity in the event of deliveries abroad or for other reasons, or should we lose ownership of the reservation of property rights for reasons of any kind, our customer shall be obliged to grant without delay a different security for the goods subject to retention of ownership or a different security for our financial claims that is effective according to the laws valid for the domicile of the ordering party and that most closely approximate the reservation of property rights according to German law.

§ 13 Ownership of documents, confidentiality

1. Illustrations, drawings, calculations, samples, and models shall remain our property. Our customer undertakes not to make such objects available in any form to third parties without our express approval. For each case of culpable violation of the aforementioned obligations, our customer promises us a contractual penalty in the amount of €5,000.00 in each individual case. Our right to request compensation for any actually resulting damages in excess of the contractual penalty remains unaffected.
2. The contractual partners mutually undertake to handle all of the commercial and technical details that become known to them through their collaboration as their own business secrets and shall maintain absolute silence with regard to these toward third parties. For each case of culpable violation against the specified undertaking, the contractual partners promise each other a contractual penalty in the amount of €5,000.00 for an individual case. The right to request compensation for any actually resulting damages in excess of the contractual penalty remains unaffected.

§ 14 Intellectual property rights

1. If the goods are to be manufactured according to drawings, patterns, or other information from the contractual partner, the contractual partner shall be responsible for ensuring that this does not infringe upon any third-party rights, in particular patents, utility models or other protective rights and copyrights. The ordering party shall release us from any third-party claims that result from any possible violation of such rights. Moreover, our contractual partner shall assume all costs that we incur because a third party asserts the violation of such rights and we defend ourselves against this.
2. Should results, solutions or techniques be created in the course of our developmental work that are in any way eligible for protective rights, then we alone shall be the holders of the proprietary, copyright, and usage rights that result from this, and we shall retain the right to undertake the corresponding applications for intellectual property rights on our behalf and in our own name.

§ 15 Software use

Insofar as the scope of delivery includes software, the ordering party shall be granted a non-exclusive right to use the delivered software, including its documentation. It shall be transferred through use on the delivery item intended for this purpose. Any use of the software on more than one system is prohibited. The ordering party may only copy, revise, or translate the software, or convert it from object code to source code, to the extent permitted by law (§§ 69a ff. UrhG (Urheberrechtsgesetz [Copyright Law])). The ordering party undertakes not to remove manufacturer information, in particular copyright notices, or to change such information without our prior express consent. All other rights to the software and the documentation, including the copies, remain with us or the software supplier. Issuing sub-licenses is not permitted.
For licenses included in the scope of delivery for third-party programs, their respective licensing and warranty terms and conditions apply.

§ 16 Assignment

Our customer is entitled to assign claims of any kind directed against us only with our written consent.

§ 17 Place of fulfilment, jurisdiction, applicable law

1. The place of fulfilment and exclusive jurisdiction for deliveries, performances and payments, including actions pertaining to cheques and bills of exchange, as well as all disputes resulting between the parties, is Velbert, although we also have the right to bring an action against our customer in a different jurisdiction that applies for the customer according to §§ 12 ff. ZPO (Zivilprozessordnung [Code of Civil Procedure]).
2. The relationships between the contractual parties are regulated exclusively according to the laws applicable in the Federal Republic of Germany, with the exclusion of international commercial law, in particular UN commercial law and other international agreements on the standardisation of commercial law.

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