General Terms and Condition of Sale

I. In General/Purview

1. The General Terms and Conditions set out below shall only apply to transactions with entrepreneurs in the terms of § 310 ABS. 1 of the German BGB.
2. These following Terms and Conditions of Sale shall govern all contracts concluded between the Client and us and concerning the delivery of goods. They shall also apply to all subsequent transactions without any need of express agreement thereon.
3. Our Terms and Conditions are exclusive; we do not acknowledge any opposing or differing Terms and Conditions of the Client, except if we have explicitly consented thereto. Our Terms and Conditions of Sale shall also apply, when we deliver without any reservation in knowledge of the Client's Terms and Conditions opposing or differing from our Terms and Conditions of Sale.
4. All agreements between us and the Client in relation with this/these contract/s of sale are set out in written in the Contract of Sale and in these Terms and Conditions.

II. Quotations/Documents of Quotations/Modification of the Contract Subject

1. Our quotations are free and not binding, except we have explicitly designated it as binding.
2. We retain full title and all copyright on the pictures, drawings, calculations and other documents. This applies also for such documents in written form, which are designated as confidential. Before any disclosure to third persons the Client needs our explicit written approval. Regarding the contractual good we will reserve the right to undertake modifications as far as legally allowed. We especially will retain the right to modify the construction and the design during the delivery period in the sense of the technical progress.
3. If contractual performances are promised of which the implementation depends on official authorisations, modifications can be made in term to get the official approval. Furthermore, any modification of order after the conclusion of the contract can only be taken into consideration, if the Client bears any additional costs caused thereby and explicitly allows a sufficient prolongation of the delivery time.

III. Contract Subject /Agreement on properties

1 In regard of the contractual good first of all the characteristics as agreed shall be decisive. In regard of the agreed characteristics reference is made to our Technical Conditions and to the detailed product description and the agreement on properties enclosed to the contract.
2. The contractual subject is solely the sold product with the properties and the characteristics and the purpose of use defined in the product description. Other or further going properties or characteristics or a further going purpose of use shall only prevail as agreed, if this is explicitly approved by us in written form.

IV. Security of the Retention of Title

1. We retain full title of the contractual good until the Client has discharged all payments arising from the contract of delivery. In case of a Client's behaviour opposing the contract, especially in case of delay of payments, we are entitled to take back the contractual good. The taking back of the good by us shall be regarded as the rescission of the contract. After taking back the good we are entitled to its exploitation, the proceeds of the sale are to be deducted from the Client's debts – the reasonable costs for the sale deducted.
2. The Client has to handle the contractual good with care; he especially has to ensure it at his own costs sufficiently at the value when new against damages by fire, water and theft. As far as maintenance and inspection work is necessary, the Client has to carry them out in time at his own costs.
3. In case of execution proceedings or other interference of third persons the Client has immediately to inform us in written form to enable us to file a suit in accordance to § 771 of the German ZPO. As far as the third person is not able to compensate our judicial and extra-judicial costs of a claim in accordance to § 771 of the German ZPO, the Client shall be liable for the loss caused to us.
4. The Client has the right to resell the good within the ordinary course of business; but he now already assigns to us all claims arising from the resale to his Clients in the amount of the final amount of invoice of our claim (VAT included), and this without regard if the contractual good has been resold with or without subsequent treatment. The Client still remains entitled to collect the claim himself even after the assignment. Our right to collect the claim by ourselves remains unaffected by this. However, we commit ourselves not to collect the claim, as long as the Client keeps to continue his payments with the received revenues, does not get in delay of payments and especially there is no petition filed for the institution of a composition or insolvency proceeding. But if this should be the case, we may require the Client to disclose to us the name of debtor, to give us all the necessary information for the collection, to hand out the corresponding documents and to inform the debtor (third) about the assignment.
5. The subsequent treatment or the transformation of the contractual good by the Client is in any case carried out for us. If the Subject of the contract is processed together with other goods which do not belong to us, we obtain the co-ownership on the new product on a pro rata basis in proportion of the value of the contractual good (final amount of invoice, VAT included) to the other processed goods at the moment of the processing. Further more, on the good resulting of the processing applies the same as for the contractual good delivered under retention of title.
6. If the subject of the contract is combined with other goods, which do not belong to us, we obtain the co-ownership on the new good on a pro rata basis in proportion of the value of the contractual good (final amount of invoice, VAT included) to the other goods combined at the moment of the combination. If the combination is made in the way that the Client's good is to be considered as the main-good, it is agreed that the Client assigns to us a co-ownership on a pro rata basis. The Client keeps safe the resulting sole-ownership or co-ownership for us.
7. For the security of our claim against the Client, he also assigns to us his claim against a third person resulting from the combination of the contractual good with a plot (of land).
8. We commit ourselves to release, on the Client's demand, the securities to which we are entitled as far as the realisable value of the securities exceeds by more then 10 % the claims to be secured; the choice of the securities to be released is incumbent upon us.

V. Prices/Terms of Payment

1. As far as nothing different results from agreements or from the order confirmation, our prices are valid 'ex works' excluding packing, which is charged at extra costs in the invoice.
2. The quoted purchase price is binding, the purchase price does not include the statutory VAT; it is shown separately on the invoice for the legal amount valid at the date of the invoice.
3. The deduction of a cash discount requires a separate agreement in written form.
4. As far as nothing different results from the contract, the purchase price is payable within 7 days after date of invoice without any deduction.
5. Payments are regarded as effected the day we have the money at our disposal Decisive for the punctuality of the payment of the purchase price is not the dispatch, but the receipt of the payment on our side. Furthermore, the legal provisions in regard to the consequences of the delay of payments prevail.
6. All outstanding claims become due, if the Client stops payments, an insolvency or composition proceeding over his assets is opened or the opening is rejected because of lack of assets, or circumstances become known which justify educated doubt on his creditworthiness.
7. If several debts of the same type are not discharged by the Client, the Client is not entitled to decide which debt he is paying for. Just we may balance the incoming payments against outstanding debts of the Client together with costs and interest.
8. We reserve the right to reasonably modify our prices, if after the conclusion of the contract diminishments or augmentations of costs occur, especially due to wage settlements or price increases for materials or currency fluctuations. On demand we will prove them to the Client.

We are only entitled to modify the prices, if the period between the conclusion of the contract and the agreed delivery date exceeds 6 weeks. The Client is only entitled to withdraw from the contract, if the price increase exceeds not only insignificantly the increase of the general costs of living between the date of the order and the delivery date.

VI. Delivery Period / Delay in Delivery / Partial Delivery / Reservation of Self-Obtaining Supply / Labour Dispute Steps

1. Dates or periods of delivery which are not expressly agreed as binding, are only a non-binding information. The delivery time announced by us starts only when all technical questions are settled.
2. The keeping of our delivery duty presupposes the correct compliance with his obligations in time by the Client. The retention of the defence of the non-fulfilment of the contract shall remain.
3. If the Client gets into delay of acceptation or if he culpably offends against other obligations of assistance, we are entitled to demand the compensation of the damage caused to us including any additional costs. Further going claims remain unaffected.
4. In the case of the conditions mentioned in number VI 3, the risk of an accidental destruction or an accidental deterioration of the purchased good passes to the Client at the moment he gets in default of acceptance or in debtor's delay.
5. Partial shipment or partial delivery and/or changes in charge are allowed, as far as they don't unreasonably charge the Client. Breaches of duty or damages concerning a partial shipment or partial delivery do not entitle the Client to claims in regard of other partial shipments or partial deliveries from the contract as whole.
6. If the non-observance of periods is due to force major, e.g. mobilisation, war, rebellion or similar events, e.g. strike, lock out etc., the periods are reasonably extended.

As far as the events described above considerably change the economic signification or the content of the delivery or have a considerable influence on our business, the contract will be adjusted accordingly with respect to loyalty and good faith. If this would not be economically reasonable, we are entitled to rescind from the contract. If we want to exercise this right of rescission, we have to inform the Client about it immediately after knowledge of the implications of the events, even if first a prolongation of the delivery time had been agreed with the Client or if first the periods had been adequately prolonged as described above.

7. We do not take any risk of supply. We are entitled to rescind from the contract if we have not got the contractual good in spite of a prior conclusion of a corresponding covering purchase contract. Our responsibility for deliberate or negligent acting shall remain unaffected according to number XI. We shall immediately inform the Client if the contractual good is not available on timely and, if we want to rescind, exercise the right of rescission immediately; in case of rescission we will immediately reimburse the corresponding counterpart to the Client.

VII. Trade Clause/Shipment/Transfer of Risk/Clause on Packaging

1. If the good shall be delivered EXW, FOB, CF (or CFR), CIF, CRT, CBT, CIP or according to any other trade clause which is subject to the interpretation rules of the INCOTERMS in the version prevailing at the time, the regulations of the INCOTERMS prevailing for these trade clauses apply to this contract. This does not prevail as far as the regulations are in contradiction to the General Terms and Conditions of Sale.
2. The bill of loading or the air consignment note have probative force for the date of shipping or delivery.

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3. The delivery periods and delivery dates are extended irrespective of our further rights by the period during that the Client does not comply with his obligations towards us. If in such a case the performance of the contract reasonably cannot be expected from us, beside other rights the Client has the right to rescind from the contract. This is valid especially if the subjects of the contract are to be delivered FAS, FOB or FOP airport in accordance to this contract and the Client does not provide or indicate in time the ship or the aeroplane for the shipment or delivery of the contractual subject.
4. If according to the Conditions of the contract we are obliged to stow, to trim or to adapt the contractual subjects on board in the port of shipment, the transfer of the risk for the goods is not affected; this risk is transferred from us on to the Client according to the number VII. 6.
5. If we shall charter a ship for the transport of the contractual subject by sea, the Client has to bear and to pay all costs and expenses for the unloading of the contractual goods.
6. The loading and the shipment are effected uninsured and at the risk of the Client, if nothing different results from the agreements or the order confirmation. The risk of accidental destruction or accidental deterioration of the contractual good is transferred on to the Client according to the applicable conditions of the INCOTERMS, regardless of the moment of the property transfer, or if they are not applicable, at the latest with the delivery of the contractual good to the Client, his representative or the person who carries out the shipment. (The any earliest moment is decisive). If the shipment or the delivery is delayed due to reasons under the Client's responsibility, the transfer of the risk takes place at the moment of notification of the readiness for shipment to the Client. Storage costs after the transfer of the risk are at the expense of the Client.
7. We do not take back the transport packing or any other packing in accordance to directive on packing; excepted are pallets. The Client is obliged to care for the disposal of the packaging at his own costs. As far as an acceptance has to take place, this one is decisive for the transfer of the risk; it shall be accomplished immediately at the date of the acceptance, alternatively upon our notification of the readiness for acceptance. The Client is not entitled to refuse the acceptance if there is a non-essential defect.
8. If the shipment respectively the acceptance is delayed or not effected due to circumstances outside of our responsibility, the risk is transferred on to the Client the day the readiness for shipping respectively acceptance is notified.

VIII. Refuse of receipt/Storage expenses

1. If the Client refuses the receipt of the contractual good, we may set a reasonable period for the acceptation. If the Client has not accepted the contractual good within this set period, we are entitled to rescind from the contract and/or to claim for damage. In such event, we are entitled to claim for 20 per cent of the agreed purchase price as compensation, even without the proof of the really incurred damage.
2. This flat rate for damage does not cut off for the Client the possibility of proving that in the concrete case there is no or a remarkably less damage incurred.
3. If before the delivery of the contractual subject the Client declares towards us or a third person, that he is not willing to perform the contract, or that he does not want to accept the contractual subject, or if this intention is expressed conclusively by his behaviour, we are entitled to claim for the payment of a flat rate for damage in the amount of 20 % of the agreed purchase price instead of the performance of the contract.
4. If on the Client's demand the shipment of the contractual subject is delayed for more than two weeks after the agreed delivery time or, if no precise delivery date was agreed, after we have notified the readiness for shipment, we are entitled to charge for each month a flat rate for storage in the amount of 0.5 % of the price of the contractual subject. The Client has the right to prove that there is no or a remarkably less damage incurred. We have the right to prove that the damage occurred is superior.

IX. Liability for Deficiencies

1. The Client is only entitled to claim for deficiencies, if he has correctly complied with his duties of inspection and objection in accordance with § 377 of the German HGB.
2. The Client has to notify to us obvious defects immediately in written form, at last within a period of two weeks after receipt of the contractual subject; otherwise the claims are excluded. For meeting the deadline the punctual dispatch is sufficient. The Client bears the full burden of proof for any conditions of entitlement, especially of the deficiency itself, for the time of the knowledge of the defect and for the timeliness of the notification of the deficiency.
3. There are no claims for deficiencies in case of not significant divergence of the agreed properties and in case of only insignificant impairment with usability and for normal wear and tear or damages which occur after the transfer of risk by incorrect or careless handling, excessive duty, unsuitable working materials, deficient construction work, unsuitable foundation soil or which are due to particular extern influences not supposed by the contract. Further more, no claims for deficiencies are given in case of unsuitable or inappropriate use of the contractual subject, in case of incorrect installation respectively start-up by the Client or a third person, further more in case of improper maintenance, nor in case of chemical, electrochemical or electrical influences, as far as we are not responsible for those influences. If any modifications or repair works are inappropriately affected, by the Client or a third person, without our previous consent, claims for deficiencies of those works and for the resulting consequences are also excluded.
4. As far as there is a deficiency we are responsible for and the reason was already given in the moment of the transfer of the risk, we are, under exclusion of the Client's right to rescind from the contract or to reduce the purchase price (abatement), obliged to make a subsequent performance at our choice, This does not apply if, according to the legal provisions, we are entitled to refuse the subsequent performance.
The Client has to grant us a reasonable period for the subsequent performance. At our choice the subsequent performance may be carried out by repair of the defect (rectification) or by supply of a new contractual subject.
5. In the case of repair we have to bear all necessary expenses for the repair purpose, especially the costs for the transport, the travel, wage and material expenses, as far as these are not increased by the fact that the contractual subject has been brought to an other place than the place of the performance.
6. In case that the subsequent delivery has failed, at his choice, the Client may demand the reduction of the purchase price (reduction) or declare the rescission from the contract; the attempt to rectify is to be seen as failed with the second futile try, as far as with regard to the contractual subject further repair attempts are not appropriate and reasonable for the Client. Only after the subsequent performance has failed, the Client may claim for damages because of a deficiency. The Client's right for the asserting of further claims remains unaffected by this. We refer to number XI.
7. With regard to the limitation period of the claim for warranty we refer to number XII.
8. According to the legal provisions, we are obliged to take back the new contractual subject respectively to reduce the purchase price even without the otherwise necessary setting of a period, if the Client's customers as consumers of the sold new movable good (Consumer good sale) can demand from the Client the taking back of the contractual subject or a reduction of the purchase price or if such a resulting right of recourse is countered to the Client. Further more we are obliged to reimburse the Client's expenses, especially the costs for transport, travel, wage and material expenses, which he had to bear in relation to the end-consumer in the context of the subsequent performance due to a deficiency in the moment of the transfer of the risk onto the Client. The claim is excluded, when the Client has not correctly complied with his obligation of examination and objection according to § 377 of the German HGB.
9. Our obligation according to number IX, 8 is excluded, as far as concerning a deficiency due to statements in advertisements or other contractual agreements which are not given by us, or if the Client has granted a special guarantee to the end-consumer. The obligation is also excluded when the Client himself was not obliged to the performance of warranty towards the end-consumer according to the legal provisions or has not made this objection against a claim against himself. This also prevails if the Client has granted the warranty towards the end-consumer, exceeding the legal extent.
10. In regard to the claims for deficiency and the corresponding properties of the contractual subject we first refer to number III, 1. Further more: For the properties of the contractual subject fundamentally prevails as agreed the manufacturer's product description and our Technical Conditions. Public statements, advertisements or promotions made by the manufacturer or of third persons are no contractual indications of the contractual subject's properties.
11. If the Client receives an incorrect installation instruction, we are only obliged to supply correct installation instructions, and this only if the fault in the installation instruction averts a correct installation.
12. The Client obtains no guarantees in the legal sense from our side. The guarantees of the manufacturer remain unaffected by this.
13. For the Client's claims for damage we further refer to number XI.

X. Claim for Subsequent Performance and Right of Retention of Payments

1. With regard to the price to be paid by the Client and to the question, when this price is to be paid, we first refer to number V of these Terms and Conditions.
2. In case of deficiencies the Client is not entitled to any retention, as long as and as far as this is not in a reasonable relation to the deficiencies and the foreseeable costs for the subsequent performance (especially the repair of defects). The Client is not entitled to claim for damages and rights because of deficiencies if he has not effected due payments or if the due amount (including possibly effected payments) do not stand in an adequate relation with the value of the deficient performance.

XI. Liability

1. In cases of light negligence, we are liable only for claims for damages and reimbursement of expenses, on which ever legal basis (e.g. delay, delivery of deficient goods, default in performance of a contract, violation of obligations at contracting or tort), if there is a violation of an essential obligation which endangers the purpose of the contract. A further going liability for light negligence is excluded.
2. Any liability independent of our responsibility is excluded from our side.
3. Our liability is limited to the damage which is foreseeable as typical for the contract in the moment of the conclusion of the contract.
4. All Claims for damages and claims for reimbursement of expenses against us, for which ever legal basis, are limited in time at latest one year after the transfer of the risk onto the Client, in case of tortious liability beginning with the knowledge or gross neglected not knowledge of the circumstances on which the claim is founded and of the person who has to reimburse. Any shorter legal periods for the time limitations have priority.
5. The exclusion of liability and limitations mentioned in the aforesaid paragraphs do not prevail in case of intent, in case of killing, in case of injury of body or health, as well as in case of a liability according to the German product liability law ("Produkthaftungsgesetz") as well as in case of fraudulent behaviour.
In these cases they do not prevail for number 6.
6. The provisions of these numbers shall also prevail in favour of the legal representatives and our staff members.

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XII. Time Limitation for Claims

1. The period of time limitation for claims and rights because of deficiencies of the contractual goods is two years after the delivery, but not for laying plexiglass panes. Therefore the period of time limitation for claims and rights because of deficiencies is one year after delivery; if the contractual subjects are second-hand, the period for time limitation is six months after delivery. This prevails however not in the cases of § 438 Abs. 1 Nr. 1 of the German BGB (Defect of title on immobile goods), § 438 Abs. 1 Nr. 2 of the German BGB (Buildings, goods for buildings) or § 479 Abs. 1 of the German BGB (Right of recourse of the entrepreneur). The periods mentioned in the fore standing sentence 2 are subject to a period of time limitation of three years.
2. The periods of time limitations according to the fore standing number 1 prevail for which ever legal basis of the claim, also for any claim for damages against us in relation with the deficiency. As far as there are claims because of deficiencies against us which are in no relation with the deficiency, the period for time limitation in number 1 first sentence prevails.
3. The fore standing periods for time limitations do not prevail:

a) in case of intent,
b) if we have concealed the defect with fraudulent intent or have given a guarantee for the properties of the delivery/performance. If we have concealed a defect with a fraudulent intent, the legal provisions which would prevail without a fraudulent intent apply instead of the periods mentioned in number 1, that are § 438 Abs. 1 Nr. 1 of the German BGB (Defect of title on immobile goods), Nr. 2 (Buildings and goods for buildings) and Nr. 3 (other supplies) under exclusion of the prolongation of the period in case of a fraudulent intent according to § 438 Abs. 3 of the German BGB.
c) in the cases of injury of life, of body, of health or freedom, in cases of claims according to the German product liability law ("Produkthaftungsgesetz"), in cases of gross negligent violation of an obligation or in cases of breach of essential contractual obligations. In these cases the legal periods of time limitations prevail.

4. If in the context of the deficiency repair any parts are built-in, the Client may claim because of a deficiency of the good founded on the contract of purchase (Subject matter of purchase) until the expiration of the period of time limitation for the contractual subject. The mentioned provision does not prevail if the subsequent performance (§ 439 of the German BGB) is effected by delivery of a deficiency-free good.

XIII. Right of Retention/Set-Off

1. The Client is only entitled to set off against conclusively determined or accepted counter-claims.
2. The Client is only allowed to exercise a right of retention, if his counterpart claims are resulting from the same contractual relation.
3. In case of deficiencies the Client only has a right of retention in accordance of number X, 2.

XIV. Use of Software

1. As far as the supply scope contains software, the Client has a not exclusive right for use of the delivered software including its documentation. It is left for the use with the therefore designated contractual subject. The software may not be used on more than one system.
2. The Client is only allowed to copy, adapt, translate the software or to convert the object-code into the source-code in the legal extent (§ 69 a ff. of the German "Urhebergesetz"). The Client commits himself not to remove or to modify the manufacturer's data – especially copy right notations -.without our previous consent
3. All further rights on the software and the documentation included the copies remain at ours, respectively at the software-supplier. The grant of sub-licences is not allowed.

XV. Obligations according to the German "Elektrogesetz" (law on electric components)

1. According to the provisions of the German Law of Electric Components ("Elektrogesetz"), the Client is obliged to really give back the contractual subject after ending of the period of use. The Client engages himself not to sell the contractual subjects to staff members, nor to give away the contractual subjects nor to leave otherwise to privates homes.
2. According to the German "Elektrogesetz" we will take back the delivered contractual subjects after the ending of use at the Client's costs and dispose them according to the legal provisions especially because of the German "Elektrogesetz".
3. The Client must commit by contract third commercial persons, to whom he hands out the delivered contractual subjects, to give them back to him after the end of the use period in order to secure a correct disposal by us.
4. If the Client violates the foregoing commitments, the Client is obliged to take back the delivered contractual subjects after the effective end of use at his own costs and to dispose them by himself according to the legal provisions.
5. Our rights of take-over/release/disposal by the Client according to the German "Elektrogesetz" do not become time-bared before the expiry of two years after the definite ending of the use period of the contractual subject. The period of two years of the suspension of the running of a period begins at earliest with the receipt at ours of the notice given by the Client about the end of the use.

XVI. Final Provisions/Place of Jurisdiction/Place of Performance

1. If the Client is a tradesman, the courts at our headquarters shall have jurisdiction; however we may also fail a suit against the Client at the court at his residence.
2. The law of the Federal Republic of Germany applies; International Purchase law of the UN does not apply.
3. The Place of Performance is our headquarters, unless something else results from the contractual agreements.
4. If any provision of this Contract or with the Client, including these Terms and Conditions, shall be or become entirely or partly invalid, this will not affect the validity of the other provisions. The entirely or partly invalid provision shall be regarded as replaced by such valid provision that as closely as possible reflects the economic purpose. The same shall apply, if by the performance of the contract any loophole of the contract may result and shall be filled, or if a prevision becomes futile because of altered circumstances or is to be regarded as obsolete or becomes impracticable.
5. No agreed rights and obligations may be modified nor revoked nor new rights and obligations may be established by a deviating conduct of the contractual parties and because of this agreement.
6. The headings of the individual provisions of this agreement are only for convenience of reference and contain no separate contractual provision and no legal signification.