General Terms and Conditions of Sale, Delivery and Payment

I. General - Scope of Application

1. These General Terms and Conditions of Sale, Delivery and Payment apply to all future business transactions without the necessity of a special further hint. They also apply if we do not explicitly refer to them in future contracts, especially if we carry out deliveries or performances on the Purchaser’s behalf without any reservation being aware of the fact that the Purchaser’s General Terms and Conditions contradict the aforesaid General Terms and Conditions of Sale, Delivery and Payment.

2. All notes made by the Purchaser to his General Terms and Conditions are hereby rejected. We do not accept terms contradicting or deviating from our General Terms and Conditions unless they are agreed to, without an express term, with the Purchaser. Only such terms that are expressly accepted by us constitute a part of our contract.

II. Offers and Conclusion of Contract, Content of Performance

1. Our offers to the Purchaser are without commitment. Only the order is regarded as a binding offer. At our option this offer is accepted by sending of a confirmation note or the unreserved carrying out of the ordered deliveries or performances.

2. All notes made by the Purchaser to his General Terms and Conditions are hereby rejected. We do not accept terms contradicting or deviating from our General Terms and Conditions unless they are expressly accepted by us.

3. Unless another date of payment has been agreed upon, our invoices are payable within 30 days after receipt without discount. After the expiry of the due date for payment mentioned on the invoice, the Purchaser is in delay according to § 286 Sec. 2 No. 2 of the German Civil Code (BGB).

4. If the Purchaser does not pay due invoices, exceeds a granted credit period or if, after the conclusion of the contract, the Purchaser’s financial circumstances impair or if, after our knowledge of the setoff or if they have been accepted. In addition to this, the right of retention only exists if the pleaded counterclaim is based upon the same contractual relationship as our claim.

5. We give advice on applications to the best of our knowledge. All details and information concerning the suitability and application of our goods do not release the Purchaser from his own risk and costs. In this case the risk of an accidental loss and accidental impairment of the delivery items passes to the Purchaser after they have been placed at the disposal for a safe loading.

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II. Obligations of the Purchaser/Retention of Title

1. The Purchaser is obligated to address complaints regarding transport damages directly to the freight carrier with a copy to us within the stipulated periods.

2. We only default after the expiry of an appropriate respite set by the Purchaser. We are allowed to defer the delivery or performance for the duration of the impediment plus an extra charge regarding the damages for impeded performance due to a shortage of raw materials, energy or personnel, strike, lock-out, difficulties with regard to the acquisition of means of transport or traffic blocks or official interventions. If hereby delivery or performance is delayed for more than one month, we as well as the Purchaser are released from the contract in writing – to the exclusion of any claims for damages – regarding the amount affected by the delivery failure and under the conditions according to No. VII. Sec. 1 to 5 of this General Terms and Conditions of Sale, Delivery and Payment.

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4. If the Purchaser asks for a packing deviating from the standard, this packing will be charged at net cost price.

V. Compensation for damages

1. Any loss caused by the Purchaser as of his own risk and costs. In this case the risk of an accidental loss and accidental impairment of the delivery items passes to the Purchaser after they have been placed at the disposal for a safe loading.

2. The Purchaser is obligated to treat the purchased goods with care until the complete acquisition of property. He is especially obliged to store the items in separate storage or in a special storage, not to mix them with other articles of commerce or with the goods of third parties and to take all measures to prevent theft. The Purchaser is also responsible for the safekeeping of his claim against the business partner, without the necessity of a special further hint. They also apply if we do not explicitly refer to them in future contracts, especially if we carry out deliveries or performances on the Purchaser’s behalf without any reservation being aware of the fact that the Purchaser’s General Terms and Conditions contradict the aforesaid General Terms and Conditions of Sale, Delivery and Payment.

2. We reserve the right to adjust our prices at any time. If after the conclusion of the contract, the Purchaser’s financial circumstances impair or if, after our knowledge of the setoff or if they have been accepted. In addition to this, the right of retention only exists if the pleaded counterclaim is based upon the same contractual relationship as our claim.

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1. The delivered goods remain our property until full payment of the purchase price as well as of all of our other existing or future claims against the buyer arising from the business relationship or out of the claim for the purchase price against the Purchaser into an open account and the acceptance of an account balance do not affect our retention of title.

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8. The Purchaser treats processes or alters the goods delivered by us under a retention of title exclusively for us without this entailing any obligation on our side. If the goods delivered by us under a retention of title are processed, mixed or connected with other items not belonging to us, we will become joint owners of the new article in proportion of the value of our own goods which have been processed, mixed or connected. The same, ceteris paribus, applies as for the delivered goods. If the processing, mixing or connection is carried out in the manner that the Purchaser has to be regarded as the main producer, we are entitled to rescind the contract and to reclaim our delivered goods – irrespective of any further claims (for damages) we might be entitled to. After the retraction of our delivered goods we are entitled to their realization. The realization proceeds will be offset against our liabilities towards the Purchaser – less appropriate realization costs.

VII. Rights of the Purchaser in Case of Defects

1. The Purchaser may notify us of open defects without delay, the latest however three days after the receipt of the goods. We have to be notified in writing of hidden defects within this time limit of eight days after their detection. The Purchaser is obliged to test whether the delivered goods are free from defects and fit for their intended purpose, if necessary by means of a sample processing. This also applies if components are added which have not been delivered by us. If defects are first detected during the manufacturing process, the goods have to be stopped at once and the production has to be resumed original bundled. At the latest, the Purchaser has to notify us for examination purposes. He is to be liable for hidden defects if after nine months from the passing of the risk to the Purchaser according to No. V. Sec. 1 and 4 b) of these General Terms and Conditions of Sale, Delivery and Payment the defects are reasonably detectable. In case of a delay or already properly asserted claims for defects according to the conditions mentioned in No. VIII Sec. 1–5 of these General Terms and Conditions of Sale, Delivery and Payment, unless the respective defects have been maliciously concealed by us.

2. If the delivered goods are defective, we are, at our own risk, only obliged to rectify the defect or to deliver goods free from defect (supplementary performance). However, no supplementary performance is due to a grossly negligent or intentional breach of duty by us or by one of our vicarious agents.

VIII. Rights and Obligations of Our Company

1. The company is only liable for damages or futile expenditures – arising from whatever legal reason – if the damage or the futile expenditures a) have either been caused by us or by one of our vicarious agents by a culpable breach of a material contractual obligation or b) are due to a grossly negligent or intentional breach of duty by us or by one of our vicarious agents.

2. In the case of damages or futile expenditures which were caused by an advice or by information that was not separately refundable, we are, according to No. VIII. Sec. 1.a) and b) of these General Terms and Conditions of Sale, Delivery and Payment only liable if the advice or information constitutes an obligation of due care and the negligent or intentional behavior of the advice or information. We are not liable to provide him with claims for damages caused by the grossly negligent or intentional behavior of employees, representatives and vicarious agents as well as performing agents.

IX. Limitation of Claims

The Purchaser's claims because of defects of the delivered goods or because of performances which were contrary to our duties – including claims for damages and claims for the reimbursement for futile expenditures – become time-barred within one year, unless something else follows from the subsequent No. IX. Sec. 2–4.

2. If the Purchaser or another buyer within the supply chain has fulfilled claims of the customer because of defects of new goods delivered by us, the Purchaser's claim against us is inalienable in the sense of § 437 of the German Civil Code (BGB). The same, ceteris paribus, applies as for the delivered goods according to § 434 of the German Civil Code (BGB), the limitation of the corresponding claims is determined by the statutory limitation periods.

3. If we have contractually or via an advice or information cause a violation of life, body or health, or if the damage was caused by the grossly negligent or intentional behavior of employees, representatives and vicarious agents as well as performing agents.

4. For security and to the extent of the value of our goods, the Purchaser already assigns to us his claims arising against a third party from the connection of our goods with a plot of land.

5. If the goods delivered by us under a retention of title are processed, mixed or connected with other items not belonging to us, we will become joint owners of the new article in proportion of the value of our own goods which have been processed, mixed or connected. The same, ceteris paribus, applies as for the delivered goods. If the processing, mixing or connection is carried out in the manner that the Purchaser has to be regarded as the main producer, we are entitled to rescind the contract and to reclaim our delivered goods – irrespective of any further claims (for damages) we might be entitled to. After the retraction of our delivered goods we are entitled to their realization. The realization proceedings will be offset against our liabilities towards the Purchaser – less appropriate realization costs.

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