# General Terms and Conditions of Sale

Version: May 2017

**§ 1 General Provisions, Scope**

(1) These General Terms and Conditions of Sale (hereinafter, GTCS) apply to all of our business relationships with our customers (hereinafter, "Buyers"), insofar as, pursuant to Sect. 310 (1) of the German Civil Code (BGB), the Buyer is an entrepreneur (Sect. 14 BGB), a legal person under public law or a special fund under public law.

(2) These GTCS apply in particular to contracts for the sale and/or delivery of moveable property (hereinafter, "Goods"), irrespective of whether we manufacture the Goods ourselves or acquire same from suppliers (Sections 433, 651 BGB). These GTCS, in the version currently in effect, apply as a framework agreement that also covers future contracts entered into with the same Buyer for the sale and/or delivery of Goods, obviating the need for us to refer to them in each individual instance.

(3) Our GTCS apply exclusively. General terms and conditions of the Buyer that deviate from, stand in opposition to or supplement our GTCS may be made part of the contract with the Buyer only and insofar as we have given our express written consent to their applicability. This requirement of consent applies in every instance, including in particular where, despite our awareness of the Buyer's general terms and conditions, we make deliveries to it without reservation.

(4) Any reference to the applicability of statutory provisions is only made by way of clarification. For this reason, even absent such clarification, statutory provisions are applicable unless modified or expressly precluded by these GTCS.

**§ 2 Offers and Conclusion of Contract**

(1) All of our offers are non-binding and subject to confirmation, unless they are expressly designated as binding or set forth a specific deadline for acceptance. We reserve our rights of ownership and copyrights in and to all offers and cost estimates submitted by us, as well as in and to drawings, images, calculations, brochures, catalogues, models, tools, and other documents and resources provided to the Buyer. The Buyer may not, without our express consent, make such materials available to third parties, nor may it disclose same or use or copy same either itself or through third parties and either as such or with respect to the contents thereof. If the Buyer no longer requires such materials in the normal course of its business, or if negotiations do not lead to the conclusion of a contract, the Buyer must, at our request, return all such materials to us and, if applicable, destroy all copies thereof.

(2) The Buyer's written order for the Goods constitutes a binding offer of contract. Unless specified otherwise in the order, we are entitled to accept this offer of contract within five days of its receipt by us.

(3) The legal relationships between us and the Buyer are governed exclusively by a written, executed purchase contract, which includes these GTCS. The purchase contract sets forth in full all agreements between the parties with regard to the subject of the contract. Verbal commitments made by us prior to conclusion of this contract are not legally binding, and verbal agreements between the parties are deemed to have been superseded by the written contract, unless it is expressly apparent from them that they are to continue to have binding effect. Our data regarding the subject of the delivery or service (e.g. weights, measurements, use values, load-bearing capacity, tolerances, and technical data), as well as our depictions of same (e.g. drawings and images), are approximate only, unless utility for the contractually intended purpose requires precise conformity. These do not constitute attributes as to nature and quality but are merely descriptions or identifications of the delivery or service. Production- related deviations of up to 10% that are customary in the trade and deviations that are occasioned by legal requirements or constitute technical improvements, as well as the replacement of components with parts of equal value, are permissible as long as they do not interfere with the utility of the contractually intended purpose.

(4) To the extent that we provide technical information or act in an advisory capacity, and such information or advice does not form part of the contractually agreed scope of services that we are obligated to render, same is provided at no charge and under exclusion of all liability.

(5) Individual arrangements made with the Buyer in specific cases (including collateral agreements, additions, and amendments to the purchase contract) always have priority over these GTCS. The content of such arrangements is subject to a written contract or our written confirmation.

(6) With the exception of general managers and/or holders of a general commercial power of attorney, our employees are not authorised to enter into verbal agreements that deviate from the purchase contract.

(7) The written form requirement is satisfied with transmission by fax; electronic transmission, particularly by e-mail, is not sufficient.

**§ 3 Prices and Payment Terms**

(1) Unless agreed otherwise in a particular case, the applicable prices are our prices in effect at the time of each conclusion of contract, with same being ex works and net of value-added tax. If the agreed prices are based on list prices and delivery is not to be made until at least four months following conclusion of contract, the applicable prices are our list prices in effect upon delivery (in each case, less an agreed percentage or fixed rebate).

(2) The deduction of early-payment discounts requires a special written agreement.

(3) With a sale by dispatch, i.e. if the Goods are sent to a location different than the place of production, the Buyer bears the transport costs ex works and the costs of any transport insurance desired by the Buyer. We are an SLVS-Verbotskunde (i.e. a customer exempted from forwarding, logistics and warehousing insurance), meaning that the shipper generally does not obtain insurance for us against transport damage. Accordingly, separate insurance must be obtained for each individual shipment, unless same is made at no charge. All customs duties, fees, taxes, and other public charges are for the account of the Buyer. We do not take back transport and other packaging pursuant to the German Packaging Regulation; rather, same become the property of the Buyer. The foregoing does not include pallets and exchange containers (e.g. exchange or special pallets, drums, IBCs, or other containers).We will charge for any exchange containers and pallets not returned to us at no charge within 30 days.

(4) The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the Goods. Payment is considered as having been made at the time when we have access to the funds. If made by check, the payment is considered as having been made at the time when the check is cashed. For payments made within 10 days of invoicing and delivery or acceptance of the Goods, we grant an early-payment discount of 2%.

(5) Upon expiry of the aforementioned payment deadlines, the Buyer is in default. During the period of default, interest is to be charged on the purchase price at a rate of 8 percentage points over the statutory base interest rate. We reserve the right to assert more extensive damages from the default. If the Buyer is a merchant, our claim to commercial interest accruing as of the due date remains unaffected (Sect. 353 of the German Commercial Code [HGB]).

(6) The Buyer is entitled to rights of set-off or retention only to the extent that its claim has been legally adjudicated or is uncontested. For defects in the delivery, clause 6, sub clause 7 remains unaffected.

(7) We are entitled to make pending deliveries or render pending services only against advance payment or the posting of security in the event that, following conclusion of the contract, we become aware of circumstances that can have a substantially adverse impact on the Buyer's creditworthiness and that threaten the payment by the Buyer of our open claims under the respective contractual relationship (including under other individual orders to which the same framework agreement applies).

**§ 4 Delivery Deadline and Default in Delivery**

(1) The delivery deadline is either agreed upon on a case-by-case basis or stipulated by us in writing with acceptance of the order. If the foregoing is not the case, the delivery deadline is approximately 4 weeks after conclusion of contract. Dates and deadlines tentatively pledged by us for deliveries and services are always approximate only, unless a fixed deadline or date has been promised or agreed upon. If shipping has been agreed upon, delivery deadlines and dates relate to the time of transfer to the shipping company, freight forwarder, or other third party engaged for transport.

(2) If, for reasons for which we are not responsible, we are unable to meet binding delivery deadlines (non-availability of the service), we will promptly notify the Buyer thereof and concurrently advise the prospective new delivery deadline. If the service continues to be unavailable by the new delivery deadline, we are entitled to rescind the contract in whole or in part; we will promptly refund any payments previously made by the Buyer. For the purposes of this agreement, non-availability of the service shall mean, in particular, untimely delivery to us by our suppliers, provided we have concluded a congruent hedging transaction. Our statutory rights of rescission and termination, as well as the statutory provisions on the performance of the contract under an exclusion of the duty to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected. The Buyer's rights of rescission and termination pursuant to clause 8 of these GTCS remain unaffected as well.

(3) We are not liable for impossibility of delivery or for delays in delivery, insofar as these were caused by force majeure or other events for which we are not responsible and which were not foreseeable at the time of contract conclusion (e.g. any type of interruption of operations, difficulties in procuring materials or energy, delays in transport, strikes, lawful lockouts, lack of workers, energy, or raw materials, difficulties in obtaining necessary permits from public authorities, measures implemented by public authorities, or unmet, incorrect, or untimely provision by suppliers). To the extent that such events substantially impede the delivery or service or make same impossible and such impairment is not merely temporary, we are entitled to rescind the contract. In the case of temporary impairments, the delivery or service deadlines are extended or the delivery and service dates are postponed for the period of the impairment, plus a reasonable restarting period. If, as a result of the delay, the Buyer cannot be reasonably expected to accept the delivery or service, it may rescind the contract by giving us prompt written notice thereof.

(4) In the event of a delayed delivery by the shipping company or freight forwarder as part of a "delivery service" offered by us, the Buyer may not assert any claims against us. The shipping company or freight forwarder is not an entity used by us to perform an obligation, so that we cannot be charged with a corresponding culpability. The Buyer is at liberty to assert claims for damages against the shipping company or freight forwarder. However, as mandated by statute, such claims are limited to triple the amount of the freight. Any damages in excess of this may not be asserted by the Buyer, including against us.

(5) We are entitled to make partial deliveries if

- the partial delivery is usable by the Buyer in connection with the intended contractual purpose,
- the delivery of the balance of the ordered Goods is assured, and
- the Buyer does not incur any substantial added effort or expense in this regard (unless we declare our willingness to assume these costs).

(6) If we are in default with a delivery or service, the Buyer must send a notice of default. Our liability is limited to damages pursuant to clause 7 of these GTCS. If a claim is made, the Buyer may demand liquidated damages in compensation of the default. For each completed calendar week of the default, liquidated damages amount to 0.5% of the net price (delivery value), but not to exceed 5% of the delivery value, of the Goods that have been delivered late. We remain entitled to prove that the Buyer suffered no damages whatsoever or only materially lesser damages than the amount of liquidated damages.

**§ 5 Delivery, Transfer of Risk, Acceptance, Default in Acceptance**

(1) Delivery is made ex works, which is also the place of performance. Unless agreed otherwise, we are entitled to determine the mode of shipment (in particular, transport company, method of shipment, packaging) ourselves.

(2) The risk of loss and deterioration of the Goods passes to the Buyer at the latest upon transfer thereof. For sales by dispatch, however, risk of loss and deterioration of the Goods, as well as the risk of delay, passes to the shipping company, the freight forwarder or other individual or entity charged with executing the shipment upon transfer of the Goods. If an acceptance inspection has been agreed on, such inspection shall be decisive with respect to transfer of risk. The same consequences arise if the Buyer is in default in acceptance.

(3) If the Buyer is in default in acceptance or fails to cooperate, or if our delivery is delayed for other reasons attributable to the Buyer, we are entitled to demand compensation for damages incurred as a result of this, including added expenses (e.g. storage costs). With respect to the amount of damages, we are obligated to itemise, demonstrate, and prove same. The Buyer is obligated to pay us an additional 50% of the amount of damages for the provision of such proof.

**§ 6 Claims for Defects by the Buyer**

(1) Unless stipulated otherwise below, statutory provisions are applicable to the Buyer's rights in the event of material and legal defects (including incorrect or incomplete delivery, as well as improper assembly or defective assembly instructions). In all cases, the special statutory provisions concerning final delivery of the Goods to a consumer remain unaffected (recourse to suppliers pursuant to Sections 478-479 BGB).

(2) The Buyer's claims for defects are subject to Buyer having met its statutory duties of inspection and objection (Sections 377 and 381 HGB). If a defect is revealed during the inspection or at a later point, we shall immediately be given notice thereof in writing. Notice is deemed to be prompt if it is given within one week, whereby timely sending of the notice suffices for meeting the deadline. Irrespective of such duty of inspection and objection, the Buyer shall give written notice of visible defects (including incorrect or incomplete delivery) within one week of delivery, whereby timely sending of the notice again suffices for meeting the deadline. If the Buyer fails to properly inspect the Goods and/or give notice of defects, our liability for unreported defects is precluded.

(3) Our liability for defects is above all based on the written agreement as to the nature and quality of the Goods. All product descriptions that form part of the specific written contract shall be deemed to be an agreement as to the nature and quality of the Goods; in this regard, it makes no difference whether the product description originated from the Buyer, the manufacturer, or from us. If nature and quality was not agreed upon, the determination of whether a defect exists is to be made in accordance with statutory provisions (Sect. 434 (1) sentence 1 and 2 BGB). However, we assume no liability for public statements made by the manufacturer or other third parties (e.g. advertised claims).

(4) Legally relevant declarations and notices that the Buyer is required to make or provide to us following conclusion of contract (e.g. setting of deadlines, notices of defects, declaration of rescission or reduction of price)must be given in writing in order to be effective.

(5) In the event of defects in the components of other manufacturers that we are unable to eliminate for license-related or actual reason, we will, at our discretion, either assert our warranty claims against the manufacturers and suppliers on behalf of the Buyer or assign same to it. Warranty claims may be asserted against us for such defects, subject to the meeting of other prerequisites and pursuant to the terms of these GTCS, only if judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, e.g. due to bankruptcy, has no prospect of success. The limitation period for the Buyer's relevant warranty claims against us shall be suspended for the duration of the legal proceedings.

(6) If the delivered item is defective, we may initially choose whether our remedy is to consist of elimination of the defect (repair) or delivery of a defect-free item (replacement delivery). Our right to refuse the type of remedy selected under statutory provisions remains unaffected.

(7) We are entitled to make the remedy owed by us dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a portion of the purchase price that is commensurate with the extent of the defect.

(8) The Buyer shall give us the time and opportunity necessary to provide the remedy owed by us, in particular, to hand over the rejected Goods for the purposes of testing. In the event of replacement delivery, the Buyer must return the defective item to us in accordance with statutory provisions.

(9) We bear the expenses required to inspect the Goods and eliminate the defect, in particular, transport, road, work, and materials costs, provided a defect actually exists. However, if the Buyer's demand for elimination of a defect proves to be unjustified, we may demand that the Buyer compensate us for the costs incurred as a result of this.

(10) In urgent cases, e.g. in case of risk to operational safety or to prevent unreasonable damage, the Buyer has the right to eliminate the defect itself and to demand compensation from us for the objectively necessary expenses incurred. We must be immediately informed of such self-remedy, if possible, in advance. There is no right of self-remedy if we were entitled to refuse a corresponding remedy pursuant to statutory provisions.

(11) If the remedy failed, or if a reasonable deadline set by the Buyer for remedy has expired without success or may be dispensed with pursuant to statutory provisions, the Buyer may rescind the contract or reduce the purchase price. However, there is no right of rescission for a minor defect.

(12) The Buyer may only claim for damages or reimbursement of futile expenses under the provisions of clause 7, otherwise any such claims are precluded.

**§ 7 Other Liability**

(1) Unless provided otherwise by these GTCS, including the following provisions, we are liable for a breach of contractual and extra contractual duties in accordance with the relevant statutory provisions. In the event of a breach of duty that does not consist of a defect, the Buyer may rescind or terminate only if we are responsible for the breach of duty. Any unrestricted right of the Buyer to terminate (in particular, pursuant to Sections 651 and 649 BGB) is precluded. In all other respects, the statutory prerequisites and legal consequences apply.

(2) We are liable for damages – irrespective of legal grounds (in particular, due to impossibility, default, defective or incorrect delivery, breach of contract, breach of duties in contract negotiations, and torts) – only for intentional or grossly negligent acts. The foregoing applies in particular to cases of initial impossibility, where the parties determine that it will be impossible to manufacture the subject of the purchase at any time. In the event of simple negligence, we are liable only for:

a) damages for injury to life, limb, or health,

b) damages for breach of a material contractual duty (an obligation, the fulfilment of which allows the proper execution of the contract in the first place and upon whose observance the party normally relies and is entitled to rely).

(3) The limitations on liability resulting from sub clause do not apply if we have fraudulently concealed a defect or have given a guarantee as to the nature and quality of the Goods. The same applies to the Buyer's claims under the German Product Liability Act.

(4) If we are liable for damages pursuant to sub clause, such liability for gross and simple negligence is limited to damages that we had foreseen at the time of contract conclusion as a possible consequence of a breach of contract or that we should have foreseen if we had applied the due attention and care customary in the trade. Furthermore, indirect damages and consequential damages that result from defects in the delivered item are only subject to compensation if such damages are typically to be expected with proper use of the delivered item.

(5) In the event of liability for simple negligence, our duty to compensate material damages and any additional property damages resulting therefrom is limited to an amount of EUR € 3 million for each event of damage (corresponding to the current coverage under our product liability insurance or general liability insurance), even if the matter involves a breach of material contractual duties.

(6) The aforementioned exclusions and limitations of liability apply to the same extent to our executive bodies, legal representatives, employees, and other vicarious agents.

**§ 8 Retention of Title**

1 )We retain title to the sold Goods until all of our current and future claims under the purchase contract and an on-going business relationship (secured claims) have been paid in full.

(2) The Buyer is authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In such case, the following provisions also apply:

(a) Retention of title extends to the full value of products resulting from the processing, mixing, or combining of our Goods, whereby we are deemed to be the manufacturer. If, following processing, mixing, or combining with third-party goods, such third party continues to have a right of ownership, then we acquire co-ownership relative to the invoice values of the processed, mixed, or combined Goods. In all other respects, the same applies to the resulting product as to the delivered Goods subject to retention of title.

(b) Pursuant to the foregoing sub clause, the Buyer hereby assigns to us as security, either in full or in the amount of our possible coownership share, its claims against third parties resulting from the resale of the Goods or the product. We hereby accept the assignment. The Buyer's duties set forth in sub clause (2) also apply in view of the assigned claims.

(c) The Buyer remains entitled, in addition to us, to collect the claim. We undertake to refrain from collecting the claim as long as the Buyer meets its payment obligations to us, does not default on payment, no application has been made for the opening of bankruptcy proceedings, and there is no other impairment of its ability to perform. However, if such is the case, we may demand that the Buyer disclose to us the assigned claims and the respective debtors, provide all information necessary for collection, turn over all associated documentation, and notify the debtors (third parties) of the assignment.

(d) If the realizable value of the provided securities exceeds our claims by more than 20%, we will release such securities of our choice at the Buyer's request.

(3) The goods subject to retention of title many not be pledged to third parties or otherwise transferred for the purposes of security until the secured claims have been paid for in full. The Buyer shall immediately notify us if and to the extent that third parties seek to attach the Goods belonging to us.

(4) In the event the Buyer acts in breach of contract, in particular, by failing to pay the purchase price when due, we are entitled in accordance with statutory provisions to rescind the contract and/or to demand immediate surrender of the Goods on the basis of retention of title. The demand for surrender does not simultaneously constitute a declaration of rescission; rather, we are entitled to demand solely the surrender of the Goods and reserve the right of rescission. If the Buyer fails to pay the purchase price when due, we may only assert these rights if we have previously and unsuccessfully given the Buyer a reasonable deadline to make payment or if the setting of such a deadline may be dispensed with pursuant to statutory provisions.

**§ 9 Limitation**

(1) Notwithstanding Sect. 438 (1) No. 3 BGB, the general limitation period for claims arising from material and legal defects is one year, beginning with delivery. If an acceptance inspection has been agreed, the limitation period begins upon acceptance.

(2) However, if the Goods relate to an item that has been used in keeping with its customary use in a building structure and has caused such structure to be defective (building materials), the limitation period is five years in accordance with the statutory provisions under Sect. 438 (1) No. 2 BGB, beginning with delivery. In addition, the special statutory provisions dealing with a third party's in rem claims for the surrender of property under Section 438 (1) No. 1 BGB, with fraudulent concealment by the seller (Sect. 438 (3) BGB), and with claims to recourse within a supplier chain upon final delivery to a consumer (Sect. 479 BGB) also remain unaffected.

(3) The aforementioned limitation periods under the law of the sale of goods also apply to the Buyer's contractual and extra-contractual claims for damages that are based on a defect in the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would result in a shorter limitation period in a given instance. The limitation periods under the Product Liability Act remain unaffected in any case. In all other respects, the Buyer's claims for damages pursuant to clause 7 are exclusively subject to the statutory limitation periods.

**§ 10 Choice of Law and Place of Jurisdiction**

(1) These GTCS and all legal relationships between us and the Buyer are governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational legal systems (governing contracts), in particular, the UN Convention on Contracts for the International Sale of Goods. The conditions for and effects of retention of title pursuant to clause 8, on the other hand, are subject to the laws of the place where the goods are stored, provided that under such law, the choice of German law is impermissible or ineffective.

(2) If the Buyer is a merchant within the meaning of the Commercial Code, a legal person under public law, or a special fund under public law, the sole place of jurisdiction – including internationally – for all disputes arising directly or indirectly from the contractual relationship is our registered place of business in Schwarzheide. However, if the seller is a subsidiary which directly enters into transactions, the sole place of jurisdiction shall be the place where our branch is located. However, we are also entitled to initiate legal proceedings at the Buyer's general place of jurisdiction.

(3) Should any provision of these General Terms and Condition or a provision in connection with any other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.