# General terms and conditions for the sale and delivery of goods

## I. Application; Offers; Obligation to communicate information by the Purchaser

1. These general sales terms and delivery conditions (hereinafter referred to as "Conditions") shall apply to all – including future – agreements for deliveries and other services between us (hereinafter referred to as "we" or "us") and Purchasers who are entrepreneurs (Sec. 14 BGB (German Civil Code)), a legal entity under public law, or a public separate estate. We will not recognize conflicting or deviating terms and conditions of the Purchaser, unless we expressly agreed to the application thereof in writing. We are hereby objecting to potential terms and conditions of the Purchaser in the event that we receive such conditions in a confirmation letter or in other ways, or we perform deliveries or services vis-a-vis the Purchaser without reservations, or we accept services by the Purchaser without reservations without objecting to the Purchaser's terms and conditions again.

2. Our offers are non-binding. Agreements, in particular ancillary verbal agreements, acceptances, guarantees, and other assurances by our staff shall only be binding upon our written confirmation. The actual delivery of the ordered goods, other behaviors on our end, or silence do not justify any reliance of the Purchaser on the conclusion of an agreement. The written form shall also be deemed adhered to when sending a fax or email.

3. Prior to the conclusion of an agreement, the Purchaser shall give us written notice if the goods to be delivered are not exclusively to be suitable for their common use or if the goods are to be used in uncommon conditions or conditions which constitute a specific health or safety risk or require major strain. Moreover, the Purchaser shall notify us regarding any atypical damage potential or damage amounts connected to the agreement.

## II. Prices

1. Our prices are calculated, unless agreed otherwise in writing, ex factory, excluding packaging, plus statutory sales tax, in the respective amount valid at the time of the conclusion of the agreement.

2. If the goods are delivered packaged, we will charge the packaging at cost price; within the context of statutory regulations, we accept the return of packaging delivered by us if the Purchaser returns it free of charge within a reasonable period of time.

3. Packing containers are charged separately. We accept returns of rented packing containers winches and will credit them at 2/3 of the invoice amount, insofar as they are returned to us free of charge and free of defects within 2 years after the delivery. We do not accept returns of disposable packing containers.

4. We reserve the right to, at our reasonable discretion, make appropriate changes to our prices if price-relevant costs decrease or increase after the conclusion of the respective agreement, in particular based on collective wage agreements or changes in material and energy prices. We shall announce this in writing to the Purchaser in good time prior to entry into effect of the changed prices. The Purchaser may terminate the agreement in writing in case of retroactive price increases, however only within two weeks from the date when it received our announcement of the price increase.

**III. Terms of payment**

1. Unless agreed otherwise in writing, our invoices shall be due for payment 14 days after the invoice date. The payment is to be made in such a manner that the invoiced amount is at our disposal on the due date at the latest. The Purchaser shall be deemed in default at the latest 10 days after the due date of our receivables without a warning being necessary.

2. Granted discount periods shall begin as of the invoice date. An agreed discount shall only ever refer to the invoice amount, excluding freight and packaging costs, and requires complete settlement of all of the Purchaser's debts which have become due at the time of the discount.

3. Invoices with amounts under EUR 50.00 as well as for assembly, repairs, shapes, and tool cost proportions shall respectively be due in their net amount and payable immediately.

4. The Purchaser shall not be entitled to offset against our claims, unless the counterclaim is undisputed or legally established. Furthermore, the Purchaser shall not be entitled to retain payments or suspend other obligations affecting it, unless we materially violated due

obligations from the same contractual relationship despite a written warning, and have not offered adequate safeguarding. Sec. 215 BGB (German Civil Code) shall not apply.

5. If the payment due date is exceeded, at the latest at the occurrence of default, we shall be entitled to charge interest in the amount of the relevant bank interest rates for overdraft facilities; at least, however, the statutory delay interest will be charged. We reserve the right to claim additional damages caused by default. If the Purchaser is in default with payments with any payment obligations vis-a-vis us, all open receivables shall fall due immediately.

6. Insofar as our payment claim appears to be jeopardized as a result of circumstances occurring after the conclusion of the agreement, due to which a substantial deterioration of the financial situation of the Purchaser must be feared from our perspective, we shall be entitled to immediately demand payment of open receivables. If the Purchaser is in arrears with payments, which we deem an endangerment of our receivables, we shall additionally be entitled to take back already delivered goods, to potentially enter the Purchaser's premises and take away the goods. In addition, we may prohibit any further processing of the delivered goods. This shall not apply if the Purchaser is not at fault for the arrears in payments. The retrieval is not a withdrawal from the agreement. In both cases, we can revoke the direct debit authorization pursuant to Sec. V/5 and demand advance payment for outstanding deliveries. The Purchaser can avert all of these legal consequences by providing collateral security in the amount of our jeopardized claim for payment. We have a claim for usual collateral in terms of nature and extent for our receivables, also insofar as they are conditional or restricted. The statutory provisions regarding payment default will remain unaffected.

## IV. Terms of delivery; Default

1. Terms of delivery and dates shall only apply approximately, unless we expressly denoted them as binding in writing. Binding terms of delivery shall be deemed to begin after the receipt of all documents required for the execution of the order, potential timely material sourcing, and agreed down payments. In all other cases, the agreed terms will begin with the date of our written order confirmation.

2. Should the Purchaser not fulfill its cooperation or secondary duties in due time, such as, for example, opening of a letter of credit, provision of domestic or foreign confirmations, furnishing prepayment or the like, we shall be entitled to appropriately extend the agreed delivery terms and dates irrespective of our rights based on the default of acceptance of the Purchaser - according to the needs of our course of production.

3. Delivery terms and dates shall be deemed adhered to if the delivery item has left our premises at the end thereof. If the goods cannot be sent out on time or the Purchaser fails to timely call them off without any fault on our part, the terms and dates shall be deemed adhered to upon notification on readiness for shipment.

4. Our delivery obligation shall be subject to our suppliers delivering to us correctly and punctually, unless we are at fault for receiving incorrect or late delivery.

5. In the event of force majeure, we shall be entitled to delay deliveries by the time of the obstruction and an adequate start-up period. This shall also apply if such events occur during default. In this context, currency, trade-related, and other measures taken by authorities, strikes, lockouts, disruption of operations which are not our fault, obstruction of transportation routes, delay in import / customs clearance, as well as all other circumstances for which we are not at fault which significantly impede deliveries and services or render them impossible, shall constitute force majeure. In that event, it is irrelevant whether the circumstances occur with us, the supply plant, or another supplier. Should performance become unfeasible for one of the contractual parties as a result of the above-mentioned events, the so affected party may terminate the agreement by means of prompt written declaration.

6. In the event that we are in default, the amount of compensation for default damages shall be limited to 0.5 % for each week of delay, at the most to 5 % of the value of the delayed delivery. The Purchaser is entitled to provide evidence of damage in excess of such amount. We reserve the right to prove that no damage or only significantly smaller damage was incurred.

7. At the end of an adequate grace period determined by the Purchaser in writing, which shall be 4 weeks at least, the Purchaser may insofar terminate the agreement if the goods have not been sent out or reported ready for shipment by the end of the grace period. The same

shall apply if delivery of the goods becomes impossible for reasons which are our responsibility. We will promptly notify the Purchaser of the occurrence of an unforeseen event and communicate a period of time for supplementary performance.

8. The Purchaser shall not have any additional rights due to default. Any recourse to other bases of claims, in particular of non-contractual nature, shall be excluded.

## V. Reservation of Title

1. All delivered goods shall remain our property until any and all receivables have been settled by the Purchaser from the business relation, irrespective of the legal ground, including receivables arising in the future or that are conditional (hereinafter referred to as "Reserved Goods").

2. Treatment and processing of the Reserved Goods shall occur for us as manufacturer in terms of Sec. 950 BGB (German Civil Code) without obligating us. The processed goods shall be deemed Reserved Goods within the meaning of Sec. V/1. In case of processing, compounding and mixing of the Reserved Goods with other goods by the Purchaser, we shall become a co-owner of the new goods in proportion to the invoice amount of the Reserved Goods to the other goods used. If we cease to be the owner due to compounding or mixing, the Purchaser shall already assign us the proprietary rights to the new inventory or the goods to which it is entitled in the scope of the invoice amount of the Reserved Goods at this point in time and shall store it for us free of charge and in trust. The co-ownership rights arising herefrom shall be deemed Reserved Goods within the meaning of Sec. V/1.

3. The Purchaser may only sell the Reserved Goods in regular business dealings under its usual terms and conditions and only as long as it is not in default. The Purchaser shall not be entitled to other disposal of the Reserved Goods, in particular a repeated transfer of ownership, pledging, or assignment of our retention rights to third parties.

4. The Purchaser's receivables from its buyers from the resale of the Reserved Goods shall already be assigned to us in the amount of the invoice amount of the Reserved Goods at this point in time. This shall also apply in the case of a resale after processing within the

meaning of Sec. V/2. We hereby accept the assignments. The assignment in advance shall also extend to all substitutes for the Reserved Goods, e.g. receivables from third parties (insurance, injuring parties) due to loss of or damage to the Reserved Goods.

5. The Purchaser shall be entitled to collect receivables in trust from the resale until our revocation, which shall be admissible at any time. At our request, the Purchaser is obligated to immediately notify its buyers of the assignment to us – unless we do so ourselves – and to give us the information and documents required for collection.

6. In the event of an occurred or impending pledging or other impairment of our Reserved Goods by third parties, the Purchaser is to immediately notify us in writing and to label our property of which we retain the title as such.

7. If the value of existing securities should exceed the secured receivables in total by more than10 %, then we shall upon written request of the Purchaser insofar be obligated to release securities at our own choice.

8. If the above-mentioned rights to retention of title are not valid or enforceable under the law of the territory where the goods are located, the security corresponding to the retention of title in this territory shall be deemed as agreed. The Purchaser undertakes to take and to collaborate in all required measures which are necessary to substantiate and retain comparable rights or securities.

## VI. Performing Delivery

1. With the handover of the goods to a carrier or forwarder, but at the latest upon exiting the warehouse or – in the case of wholesaler-to-client sales – the supply plant, the risk shall pass to the Purchaser, including if delivery is made freight prepaid. The obligation and costs of unloading shall be borne by the Purchaser. Insurance is provided solely upon written instruction and at the cost of the Purchaser.

2. We are entitled to make partial deliveries insofar as they are reasonable to the Purchaser. In the case of manufacture goods, excess and short deliveries of up to 10 % of the agreed amount shall be admissible.

3. In the case of call orders, we shall be entitled to manufacture or to have manufactured the entire ordered amount completely in one setting. We cannot take potential changes into account after the order was placed, unless this was expressly agreed in writing. Call dates and amounts can, unless expressly agreed otherwise, only be adhered to within the scope of our delivery or manufacturing possibilities. If goods reported ready to ship are not called according to the agreement, we shall be entitled to send or store them at the cost of the Purchaser at our discretion and to invoice them immediately. The risk also passes to the Purchaser if it does not fulfill its obligation to take the goods.

4. In the event of orders with consecutive deliveries, we must be notified in due time of call-offs and classifications for approximately the same monthly amounts. The determination of adequate lead time and call amounts shall be made in written agreement with the Purchaser in individual cases and in the case of a lack of agreement, according to industry standards. During call issuing, the Purchaser shall in any case take adequately into account the lead times and setup times required by us, as well as the necessary delivery by our suppliers. If calls or classification are not performed in due time, we shall – after expiry of a reasonable grace period – be entitled to perform classification on our end and to deliver the goods, or to terminate the impending part of the order and to demand compensation for damage instead of the service.

## VII. Warranty; Examination and notification duty

1. The goods shall be deemed defective if the Purchaser proves that it noticeably deviates from the type, amount, and quality agreed in our written order confirmation at the time of the passing of the risk. If there is no such agreement, the defectiveness of the goods shall be assessed in accordance with the DIN and EN standards effective at the time of the conclusion of the agreement, and if such standards are not available, according to customary business practice. References to standards and similar guidelines as well as specifications on quality, types, dimensions, weight, and usability of the goods, specifications in drawings and illustrations, as well as statements in advertising material shall not constitute assurances or guarantees if they are not expressly designated as such in writing. The same shall apply to conformity declarations and associated mark such as CE or GS. Suitability and usage risks fall to the Purchaser alone.

2. The existence of deficiency in title shall be determined pursuant to Sec. 435 BGB (German Civil Code).

3. The Purchaser's warranty rights require that it properly fulfilled its duty to examine the goods and notify us of any, both under the applicable law and these General Terms and Conditions. The Purchaser shall be obligated vis-a-vis us to immediately examine each individual delivery in all respects for noticeable and typical deviations, and to promptly notify us in writing of each determined defect, but at the latest 5 days after delivery. Any defect which is not discovered until later despite thorough examination shall be notified to us immediately, but at the latest 5 days after discovery.

4. Insofar as the goods have a defect for which we are at fault, we shall remedy the defectiveness or provide replacement at our discretion. Where we remedy the defect, we shall be obligated to bear all costs required for the purpose of remedying such defect, in particular transportation, labor, and material costs, insofar as they do not increase due to the goods being delivered to a different destination than the original place of delivery.

5. The Purchaser is to give us time and opportunity to determine the noted defect and to examine the rejected goods. The rejected goods are to be immediately returned to us upon our request; we shall assume the transportation costs if the notice of defect is justified. If the Purchaser does not give us time and opportunity to examine the rejected goods or

samples thereof despite our request, it shall not be entitled to claim the defectiveness of the goods. An unjustified demand for the remedy of a defect shall entitle us to claim compensation for damages if the Purchaser could have discovered upon thorough examination that no defect existed.

6. We shall neither be responsible for defects caused by unsuitable or improper use, faulty assembly and/or startup by the Purchaser or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper changes made without our consent or repair work by the Purchaser or third parties. The same shall apply to defects which only insignificantly lower the value or the suitability of the goods.

7. There are no additional claims due to defects of the goods. Any recourse to competing bases of claims, in particular of non-contractual nature, shall be excluded.

8. All claims by the Purchasers due to delivery of deficient goods shall expire one (1) year after the beginning of the statutory limitation period. Claims based on malicious and deliberate violation of the agreement shall remain unaffected. Replacement delivery or rectification shall not result in a new beginning of the statutory limitation period.

## VIII. Liability

1. Except for liability under the Product Liability Law (ProdHaftG), for malicious nondisclosure of a defect, due to a guarantee we assumed for the quality of an item or for damage arising from culpable injury to life, limb, or health, we are only liable to pay damages vis-a-vis the Purchaser in the case of a breach of duties arising from the agreement concluded with the Purchaser in accordance with the following provisions without waiving the statutory requirement for such a liability.

2. We are only liable for the culpable breach of material contractual obligations and the grossly negligent or intentional breach of other contractual duties to Purchaser. Material contractual obligations are such obligations which render, only if fulfilled, the proper execution of the agreement possible in the first place and on the fulfillment of which the Purchaser relies and may rely regularly.

3. In the event of a breach of significant obligations by simple negligence, our liability shall be limited to the replacement of the foreseeable, typically occurring damage.

4. In the event of a breach of other, i.e. non-material contractual obligations existing vis-a-vis the Purchaser by simple negligence, our liability shall be excluded.

## IX. Intellectual property rights

1. With regard to cost estimates, drafts, drawings, and other documents, we reserve the right of ownership and the intellectual property rights; third parties may only be granted access thereto upon our prior written consent. Drawings associated with offers and other documents shall be returned upon request.

2. Insofar as we delivered goods pursuant to drawings, models, prototypes, or other documents provided by the Purchaser, the Purchaser warrants that third-party property rights are not violated. If third parties prohibit us from manufacturing and delivering such goods in particular, invoking property rights, we shall be entitled to – without the obligation to verify the legal situation – insofar suspend all activities and demand payment of damages if the Purchaser is at fault. Moreover, the Purchaser shall be obligated to indemnify us immediately from all claims by third parties in connection therewith.

## X. Test components, shapes, tools

1. If the Purchaser is to provide components for the execution of an order, they are to be delivered on time, free of charge and free from defects to the production site in the agreed quantity, or otherwise in an adequate excess quantity for potential rejects. Should this not occur, costs and other consequences incurred herefrom shall be borne by the Purchaser.

2. The construction of trial components, including the costs of shapes and tools shall be borne by the Purchaser.

3. Our liability for tools, shapes, and other manufacture devices provided by the Purchaser shall be limited to our reasonable care. The cost of maintenance and care shall be borne by the Purchaser. Our duty to preserve records shall cease to exist – irrespective of the Purchaser's property rights – at the latest two years after the last manufacture using the shape or tool.

## XI. Place of performance; place of jurisdiction; applicable law

1. The place of performance for all obligations arising from the contractual relationship with the Purchaser and the place of jurisdiction shall be our legal seat. However, we may choose to file an action against the Purchaser at its place of jurisdiction as well.

2. German law shall apply to all legal relationships between us and the Purchaser, excluding its conflicts of laws provisions and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

## XII. Final Provisions

1. The INCOTERMS in their respectively latest valid version shall be relevant for the interpretation of trade terms.

2. The Purchaser shall keep secret any business and trade secrets of which it has or will become aware as well as information deemed confidential or clearly to be treated confidentially based on other circumstances, also beyond the business relationship until such information becomes public, however, at least for a period of 5 years after the end of the business relationship, and shall not disclose such information to third parties.

3. Should a provision of these Conditions be or become partially or fully invalid, this shall not affect the validity of the remaining provisions of these Conditions. The parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties.