

§ 1 Scope, Changes of Terms

(1) All our deliveries and services („**Deliverables**“) and our offers are based and effected exclusively upon these general terms and conditions („**Conditions**“); the same applies to any future contracts. We do not accept any terms and conditions which deviate from these Conditions.

(2) These Conditions shall apply to any customers who are not consumers pursuant to § 13 BGB (German Civil Code) („**Customer(s)**“).

(3) We are entitled to change or amend these Conditions by unilateral notice, such change taking effect to the beginning of the second month following such notice. In such case Customer shall have the right to withdraw from the Contract, observing one month notice with effect to the effective date of the proposed amendment. Where Customer does not exercise this right, the amendment shall become effective.

§ 2 Offers, Offer Documents, Confidentiality

(1) All our offers, as well as cost estimates, are non-binding and subject to change.

(2) We reserve all rights and title in any copyright and all other rights on any of our images, drawings, calculations and other documentation. This notably also applies to any documents marked “confidential”. Customer may not pass such items on to any third party except with our prior written consent. If Customer violates any of the foregoing obligations, we shall be entitled to request immediate release and delivery of such documents.

§ 3 Prices, Due Date

(1) All our prices are calculated based on *ex works (EXW)* Neuruppin or Wenden (Germany) resp. the contractually agreed delivery warehouse (INCOTERMS 2010). All our prices are exclusive of statutory VAT which shall be added at the applicable rates. Deliverables for which no price has been agreed upon individually shall be invoiced based upon our price list applicable at the time the order is received.

(2) If the delivery date for Deliverables is more than four months past the date of signing of the Contract and our sourcing costs meanwhile have increased we shall have the right to increase the price agreed by an amount equivalent to such increase by giving notice of such increase to Customer. In such case Customer may withdraw from the Contract, by giving written notice within one week from the date on which Customer has received our notice of the price increase.

(3) To the extent not otherwise agreed in the Contract, all payments are due without any deduction within thirty (30) days of the date of invoice.

§ 4 Set-Off, Assignment, Right of Retention

(1) Customer may set off any counterclaims only to the extent such counterclaim is undisputed, acknowledged by us or established by final court decision. Customer shall not be entitled to assign any of its rights under the Contract – except for claims for payment – to any third party without our prior written consent, which consent shall not be unreasonably withheld.

(2) Customer has a right of retention only to the extent that his counterclaim is based on the same contractual relationship. There is no right of retention vis-à-vis our eventual claims for surrender, restitution or return of property based upon these Conditions.

§ 5 Packaging

(1) We will arrange for shipping, packaging and insurance only at the Customer's request and expense. Within reason, we shall meet Customer's requests concerning the mode of dispatch and shipping route.

(2) Subject to mandatory law, we will take back packaging material only subject to individual, separate agreement.

§ 6 Delivery, Customer's Obligation of Cooperation

(1) We reserve the right to execute partial deliveries and/or to supply a successor product to the Deliverable ordered, provided that the successor product meets the agreed specifications, is not more expensive than the Deliverable ordered, and the Customer has not explicitly precluded delivery of such successor product. Any delivery shall be subject to our being supplied correctly and in due time by our own suppliers.

(2) We shall not be subject to any agreed delivery dates until and unless Customer has complied fully and timely with all its duties and responsibilities, including payment in full of any agreed down payments. Time shall not be regarded to be of the essence except if the term “time bargain” has been agreed in writing. No delivery date shall be binding upon us unless such date has been expressly confirmed as “fixed” or “mandatory”.

(3) In case delivery is delayed due to Customer's orders or default, we will store the Deliverables at Customer's risk. We may claim a lump sum storage fee of 0.5% of the gross total contractual amount of such Deliverables for every month or fraction of a month of storage. Customer's right to prove a lower damage on our side, shall remain equally unaffected as our right to claim higher damages.

(4) Even absent express stipulation Customer has to cooperate fully with us to the extent necessary to enable us to define, manufacture, procure, adapt and/or configure the Deliverables. Customer notably shall timely (i) respond to any related questions, (ii) take decisions, (iii) deliver release notes and/or (iv) submit any drawings or other documents under its control. If Customer changes or revokes decisions, drawings or other records after submission to us, Customer shall be obliged to inform us explicitly with respect to each and any change made. Customer shall bear any additional cost resulting from such change, based upon our then applicable price lists. If the estimated additional cost exceeds 20 percent of the total price of the Contract, we will inform Customer thereof and shall refrain from further works and services until Customer has decided upon such additional work; any agreed delivery dates shall be deferred proportionately, taking as well into account any disposition we may have taken in the meantime with respect to any other orders.

§ 7 Limited Remedies for Defects (Warranty)

Subject to § 8 and the following restrictions, Customer may exercise its statutory remedies for defects in craftsmanship or title (“**Defects**“) of any Deliverables (“**Warranty Claim**“):

(1) Any Warranty Claims shall be excluded (i) if the Deliverable only insignificantly deviates from the specifications, (ii) unless the Defect in question substantially limits the suitability of the Deliverable for the agreed purpose, (iii) to the extent such Warranty Claim results from information, works or services or components provided by Customer or (iv) Customer has used the Deliverable for purposes outside the agreed purpose, contrary to applicable rules, regulations or our or the manufacturer's manuals and policies.

(2) We reserve the right to decide whether to repair or to replace any Deliverable which should prove to be defective.

(3) Any Warranty for the Deliverables not infringing third party rights shall be limited to the country of destination as stipulated in the Contract. Absent any such express stipulation the Warranty is limited to the country where Customer has its principal place of business. Furthermore any such Warranty Claims shall be excluded unless Customer has enabled us without any restriction to conduct the defense of such claims alone and has granted us the necessary powers.

(4) Customer's Warranty Claims shall be excluded unless payment in full of all payments due has been effected, unless the total amount of all payments effected would sum up to an amount disproportionate to the value of the Defect.

(5) Absent our express confirmation, we shall not be deemed to have guaranteed certain properties of the Deliverables. Any manufacturer's warranty issued with any Deliverable shall not be deemed a guarantee of certain properties.

§ 8 Liability

(1) We shall be liable in damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to us. In the event of death or personal injury we shall be liable also for negligence in accordance with the applicable laws. We shall also be liable in accordance with applicable law for any negligent violation of any fundamental duties under the Contract, such liability being limited, however, to only such typical damages which the parties could foresee at the time of signing the Contract. “Fundamental duties” shall mean any of our duties which we would have to meet to enable proper consummation of the Contract and the achievement of its purposes, but only to the extent Customer may reasonably rely upon fulfillment of such duties in view of the content and purposes of the Contract.

(2) Any claim or liability shall be excluded to the extent Customer has used the Deliverable (i) for any purpose other than the contractual purpose or (ii) in violation of any applicable laws and/or any manuals or policies issued by us or the manufacturer.

(3) Any mandatory liability under the German Product Liability Act and/or arising from a guarantee of properties shall remain unaffected.

(4) Any limitations on our liability agreed in the Contract or these Conditions shall apply also to the personal liability of our officers, employees and agents.

§ 9 Limitation Period

Customer's remedies for Defects of Deliverables – including the right to withdraw from the Contract – shall be subject to a limitation period of twelve months. This limitation period shall also apply to any claims for indemnification or damages, in particular incidental or consequential damages.

§ 10 Retention of Title

(1) Until payment in full of the purchase price by the Customer, we herewith retain title to the Deliverables (“**Reserved Deliverables**“). The Customer shall advise us without delay of any attachments regarding such Reserved Deliverables, in particular of any measures of forced execution or any other seizures, as well as of any loss or damage suffered by such Reserved Deliverables. Customer shall advise the third party of our right and title to such Reserved Deliverables.

(2) In the event that any Reserved Deliverable is shipped to or used in a country where this Retention of Title Clause is not fully valid and/or enforceable, Customer shall provide us with equivalent security.

(3) Customer shall be entitled to resell such Reserved Deliverables within ordinary business dealings. Customer herewith assigns to us any claims against third parties resulting from such resale. We herewith authorize the Customer to collect such amounts. We shall not claim payment of the assigned amounts from third parties unless (i) Customer is in arrears with its payment obligations to us or (ii) a motion to open insolvency proceedings is filed by or against the Customer. In such case, we may request Customer to provide us with any information and documents necessary or useful to enable us to recover such third party debt and Customer shall disclose the assignment to its (third party) debtor.

(4) We herewith engage to release, upon Customer's request, any of our securities to the extent their actual value exceeds the total value of our claims against Customer by more than 20%. We may decide in our sole discretion which securities will be released first.

§ 10 Applicable Law, Place of Venue, Place of Performance

(1) All disputes arising under or in connection with the Contract or these Conditions shall be submitted exclusively to the courts of Berlin, Germany, to the extent that the Customer is (i) a commercial entity or (ii) a public law corporation, fund or trust or (iii) if, at the time the claim is brought, Customer's domicile is outside Germany or unknown. We reserve the right to bring legal action against Customer in the courts having general personal jurisdiction over the Customer.

(2) In any legal action arising out of or relating to the Contract and/or these Conditions the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs, in addition to any award of damages or other relief.

(3) Any individual Contract and these Conditions shall be subject to the laws of the Federal Republic of Germany with the exception of its choice of law provisions and the UN Convention on the International Sale of Goods (UN-CISG).

(4) Place of performance shall be Neuruppin, Germany.