Uniform Terms and Conditions of Sale and Delivery

I. Definition, scope of application

1. The following Uniform Terms and Conditions of Sale and Delivery (hereinafter referred to as “Terms and Conditions”) shall apply to the business relations between the Customer and the Company insofar as the Company refers to the Terms and Conditions upon conclusion of the contract (hereinafter respectively referred to as “Company”); Company shall not recognize any conflicting or differing terms and conditions of the Customer compared with these Terms and Conditions unless Company has expressly approved their validity in writing. The following Terms and Conditions shall also apply if Company accepts the order of the Customer without reservation and/or performs the delivery to the Customer without reservation while aware of terms and conditions of the Customer that conflict with or differ from Company’s Terms and Conditions.

2. Separately made individual agreements with the Customer (including subsidiary agreements, supplements, and amendments) take precedence over these Terms and Conditions in every case. A written contract or the written confirmation of Company shall be decisive for the content of such agreements. The contractual parties shall also satisfy the written form requirement by sending documents by fax or by e-mail.

3. In their respective version, these Terms and Conditions shall also apply as a framework agreement for future contracts between the same Customer and the Company without Company having to make reference hereto again in each individual case.

II. Offers, offer documents, order confirmation

1. All Company offers are nonbinding and subject to change without notice and are carried out subject to the reservation of self-delivery.

2. The order for the item of delivery placed by the Customer shall be deemed as a binding contractual offer and may be accepted by Company within 4 weeks. The minimum order value is EUR 150, excluding value added tax. A surcharge for shortfall in quantity shall be charged should this not be reached.

3. A contract for delivery shall only materialize by way of a written order confirmation or order confirmation by means of remote data transmission of Company, at the latest, however, upon delivery. If Company can prove by submitting a dispatch report that it sent a declaration by fax or remote data transmission, it shall be presumed that the Customer received the declaration.

4. Company reserves the property rights and copyrights to samples, cost estimates, drawings, calculations, and other information of a material and immaterial nature, which is not generally accessible – including in an electronic form. The Customer shall require the express written consent of Company before forwarding these to third parties.

5. All orders are subject to acceptance by authorized officials at Company. No contract is entered until the order is confirmed by Company in writing.

6. Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. Customer is obligated to provide all information and documentation needed for the export/ domestic shipment/ import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question. Company shall not be liable for any claims of damages to the extent such damages are caused by Customer’s failure to obtain required license or transgression of deadlines.

III. Prices, terms and conditions of payment

1. All Company prices are deemed FCA (“Free Carrier”) of the supplying plant in accordance with the rules of the Incoterms® of the International Chamber of Commerce (ICC) plus the valid statutory VAT on the date of invoicing. All additional costs, such as packaging, transport, customs duties, support with the execution of customs formalities, taxes, other public duties, or an agreed assembly shall be invoiced separately.

2. Provided that no other payment terms have been agreed, payments are to be made within 14 days from invoice date without deduction. Payment shall be made by way of a bank remittance. The receipt of payment to Company shall be decisive with regard to the timeliness thereof.

3. Once the above payment deadline has expired, the Customer shall be deemed in default. In the event of delayed or deferred payment, Company shall be entitled to charge interest in the amount of the respective applicable statutory interest rate on default. COMPANY reserves the right to assert further damages on default. In addition, Company shall be entitled to hold back all deliveries or services until payment is received in full. The entitlement to the commercial maturity interest (§ 355 HGB [German Commercial Code]) shall remain unaffected toward merchants.

4. The Customer may only set off claims against undisputed counterclaims recognized by Company or recognized by declaratory judgment. The Customer shall only be authorized to exercise a right of retention in the event that its counterclaim is based on the same contractual relationship.

5. In the event that, upon conclusion of the contract, Company becomes aware of circumstances which raise questions about the Customer’s creditworthiness, or in the event of a substantial risk of claim to payment due to a deterioration in the Customer’s assets, or if the Customer falls into arrears with the payment, then Company may demand advance payment or security with a reasonable deadline and refuse performance until its request or the payment entitlement have been fulfilled. In case of a refusal of the Customer or unsuccessful expiry of the deadline, Company is entitled to cancel the contract in whole or in part and to demand compensation in place of performance.

IV. Retention of title

1. Company reserves the right of ownership to the items of delivery until all payments from the business relationship with the Customer have been received.

2. In the event that the Customer acts in breach of the contract, in particular in the event of nonpayment of the due purchase price, Company shall be entitled to withdraw from the contract in accordance with the statutory regulations and/or demand that the items of delivery be returned on the basis of the retention of title and resell it. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, Company shall be entitled to merely demand the return of the items of delivery and reserve the right to withdraw from the contract. In the event that the Customer does not pay the due purchase price, Company may only assert such rights if Company has previously and unsuccessfully set the Customer a reasonable deadline for payment or if the setting of such a deadline is superfluous in accordance with the statutory regulations.

3. An application to commence insolvency proceedings concerning the assets of the Customer shall entitle Company to withdraw from the contract and to demand the immediate return of the items of delivery.

4. The Customer shall be entitled to resell the items of delivery within the ordinary course of business; the Customer hereby now assigns to Company all claims incurred by the Customer from the resale in the amount of the purchase price agreed between Company and the Customer (including VAT), regardless of whether the delivery items are resold without being fabricated or after being fabricated; Company hereby accepts the assignment. The Customer is authorized to collect such claims after they have been assigned. This shall not affect Company's authorization to collect the claims itself; however, Company undertakes not to collect such claims provided the Customer properly fulfills its payment obligations and is not in default of payment. In the event, however, that this is not the case, Company shall be entitled to demand that the Customer discloses the assigned claims and their debtors, provides all information required for collection, surrenders the related documents, and informs the debtors (third parties) of the assignment.

5. The processing or conversion of the items of delivery by the Customer is always carried out for Company. If the items of delivery are processed with other items of delivery, which do not belong to Company, then Company shall acquire the joint title to the new items of delivery in the proportion of the value of the items of delivery to the other processed objects at the time of processing.

6. In the event that the items of delivery are inseparably mixed or joined with other objects not belonging to Company, then Company shall acquire the joint ownership to the new object in proportion of the value of the objects of delivery to the other mixed objects. The Customer shall hold the joint title in safe custody free of charge on behalf of Company.

7. The Customer may neither pledge the items of delivery nor transfer title to such items by way of security and has to label these as Company property. The Customer has to inform Company immediately in case of attachments as well as seizures or other third-party dispositions, and provide Company with all the information and documents available to it, which are necessary to safeguard its rights. Enforcement officers or third parties are to be informed of the title of Company.

8. Company hereby agrees to release the securities to which it is entitled upon the request of the Customer to the extent such securities do exceed the value of the claims to be secured by Company by more than 10%, provided, such have not yet been satisfied. Company shall be responsible for selecting the securities to be released.

V. Deliveries, delivery period

1. Delivery and service deadlines are approximate deadlines and nonbinding insofar as Company has not described these as binding in writing. Agreed delivery and service deadlines presume that all technical and commercial questions have been clarified between the contractual parties and payments or other obligations of the Customer are available or have been fulfilled in time; agreed delivery and service deadlines shall only apply under these prerequisites. If this does not take place, the delivery deadline shall be adequately extended. This shall not apply insofar as Company is responsible for the delay.

2. The compliance with the delivery period is subject to Company's self-delivery being correct and received promptly. Company shall inform the Customer as soon as possible if there are any indications of delays.

3. The delivery period shall be deemed complied with if the item of delivery has left the Company factory by its expiry or Company has reported that the goods are ready for dispatch. Insofar as an acceptance is to be carried out – except with the justified refusal of acceptance – the acceptance date shall be decisive or alternatively the notification that the goods are ready for dispatch by Company.

4. In the event that dispatch or the acceptance is delayed at the Customer's request, then the item of delivery shall be stored at Company at the Customer's risk. The costs incurred through the delay, in particular the storage cost, shall be charged to the Customer.

5. The delivery period shall be extended by the duration of the impediment in case of force majeure or other events, which are beyond the scope of influence of Company, e.g., industrial disputes, delays in the delivery of essential raw materials, difficulties with energy supply. Company shall inform the Customer of the start and the end of such circumstances as soon as possible. If the aforementioned impediments last longer than six months, both contractual parties are entitled to cancel the contract with regard to the part, which has not yet been fulfilled. Claims for damages of the Customer against Company due to the previously mentioned impediments are excluded.

6. Partial deliveries shall be permissible provided no disadvantages for use arise thereby.

VI. Delay in delivery

1. The occurrence of our delay in delivery is determined in accordance with the statutory regulations. In each case, however, a reminder is required from the Customer.

2. Company shall be liable for delay in delivery in accordance with Section X.3. of these Terms and Conditions.

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VII. Dispatch, transfer of risk, acceptance

1. Unless otherwise specified in the order confirmation, delivery FCA ("Free Carrier") of the supplying plant in accordance with the rules of the Incoterms® of the International Chamber of Commerce (ICC) is agreed. Dispatch is at the Customer's risk and expense. This shall also apply to partial deliveries as well as returned goods. Insofar as an acceptance is to be carried out, this is decisive for the transfer of risk. It must be carried out immediately as of the acceptance date or alternatively after Company's notification concerning the goods' readiness for acceptance. The Customer may only refuse acceptance if there is a significant defect.

2. In case of separate agreements, the items of delivery can be shipped to another place of destination at the Customer's expense (contract of sale involving the carriage of goods); Company is entitled to determine the type of the shipment (in particular transport company, dispatch route, packaging, and insurance) itself.

3. The risk of accidental loss and the accidental deterioration of the items of delivery shall pass with the provision of the item of delivery at the agreed location and at the agreed time, by no later however than with the handover to the Customer. With the contract of sale involving the carriage of goods, the risk of accidental loss and the accidental deterioration of the items of delivery as well as the risk of delay shall pass with the delivery of the items of delivery to the carrier, the freight forwarder, or the persons otherwise determined for the execution of the shipment. Insofar as an acceptance has been agreed, this shall be decisive for the transfer of risk. If the Customer is in default of acceptance, the risk shall also be transferred. If the shipment/the acceptance/the handover is delayed or it is not carried out at all in full, owing to circumstances, which are not attributable to Company, the risk shall transfer to the Customer from the day of the notification that the goods are ready for shipment or acceptance.

4. Disposable packaging shall not be taken back. Reusable packaging is to be returned to Company by the Customer free of charge. Company shall invoice reusable packaging if this is not returned within a period of no longer than 4 weeks after the delivery/ collection; the IT-supported reusable packaging accounts that are kept at Company form the basis of the computation. These accounts are kept due to the empties receipts and the physical inbound and outbound control of the returned containers.

5. In the event that the Customer is in default in accepting delivery, omits an act of cooperation, or if a delivery from Company is delayed for other reasons for which the Customer is responsible, Company shall then be entitled to demand compensation for any damages arising therefrom, including additional expenses (e.g., storage costs). For this purpose, Company shall charge a lump sum compensation in the amount of 0.5% of the net price (delivery value) per calendar week up to a maximum total of 5% of the delivery value, beginning with the delivery period or – in the absence of a delivery period – with the notification that the item of delivery is ready for shipment. Company will not request any lump sum with which the damages, which are expected in accordance with the customary progress, are exceeded. The proof of higher damages and statutory claims (in particular, reimbursement of additional expenses, reasonable compensation, termination) of Company remain unaffected; the lump sum is, however, to be offset against further monetary claims. The Customer is permitted to prove that Company did not suffer any or only significantly fewer damages than the above mentioned lump sum.

VIII. Property rights

1. In cases where the items of delivery are used in accordance with the contract, Company shall be liable for claims arising from infringement of industrial property rights or copyrights, of which at least one is published from the property right family of the Federal Republic of Germany. In this respect, Company shall procure at the Customer's expense the fundamental right for the Customer to make further use of the item of delivery or shall modify the delivery item in a manner acceptable to the Customer to the extent that the infringement of property rights no longer exists. If this is not possible under economically viable conditions or within a reasonable period, the Customer is entitled to withdraw from the contract. Under the stated prerequisites, Company shall also have a right to withdraw from the contract.

2. In addition, Company shall indemnify the Customer from claims of the holders of the property rights concerned, which are not disputed by Company or that are recognized by declaratory judgment.

3. Section VIII shall be conclusive with regard to the obligation of Company – subject to Section X.3 – for the event of the infringement of property right or copyright. Such obligation only exists if

- the Customer informs Company immediately of property right or copyright infringements, which become known or are asserted;
- the Customer supports Company to a reasonable extent with defending the asserted claims or enables the execution of the modification measures for Company in accordance with Subclause VIII.1.;Company reserves the right to all defense measures including out-of-court regulations;
- the defect of title is not due to an instruction, drawings or models; or other descriptions or details of the Customer, which are deemed equivalent hereto;
- the infringement of rights was not caused by the fact that the Customer autonomously changed the item of delivery or used it in a manner that is in violation of the contract.

4. Insofar as Company is not liable in accordance with this section, the Customer shall indemnify Company from all third-party claims

IX. Warranty

Company shall assume warranty for material defects to the delivery as follows:

1. The Customer's claims for defects presume that the Customer has satisfied its statutory obligations for inspection and to report a complaint (§§ 377, 381 HGB). Should any defect be found upon inspection or thereafter, Company must be notified immediately. The notification is deemed as immediate if effected within two weeks; the timely dispatch of the notification is sufficient in order to safeguard the deadline. The notification must be in writing. Irrespective of the above obligation pertaining to inspection and notification of defects, the Customer has to report obvious defects (including wrong delivery or shortfall in delivery) within 5 business days from the delivery;

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the timely dispatch of the notification of a defect is sufficient in order to safeguard the deadline. The notification must be in writing. Should the Customer fail to provide the notifications of defect specified above, any liability of Company is excluded for the unreported defect.

2. Decisive for the design, measurements, weight, and suitability is solely the agreement of the condition reached concerning the item of delivery (the first sample sent to the Customer for examination and testing, the construction drawing of Company, or the agreed performance specifications). If no agreement exists concerning the condition, Company warrants that the material and workmanship are free of defects in compliance with the respective state of the art.

3. Company is entitled to create deliveries and services in deviation of the agreed condition insofar as this is required for production technology reasons at Company and the modification is deemed reasonable for the Customer.

4. If the item of delivery is faulty, Company can choose whether subsequent performance is provided by remedying the defect (subsequent improvement) or by delivery of a new item (substitute delivery). The right of Company to refuse the subsequent performance under the statutory prerequisites remains unaffected.

5. If the item of delivery is faulty, the Customer has to give Company the necessary time and opportunity prior to the start of manufacture (processing or installation) to perform all subsequent improvements and/or replacement deliveries that appear necessary to Company. In the event the Customer does not satisfy this obligation, Company shall be exempted from any liability for the resulting consequences. The Customer, after prior notification of Company, can only remedy the defect itself or have it remedied by third parties and request reimbursement of the necessary expenses from Company in urgent cases where an operational safety risk exists or in order to avert disproportionately large damages. The Customer's right to rectify defects itself or have it remedied by third party shall not exist if Company would have been entitled to refuse the remedial work due to statutory regulations.

6. Of the direct costs arising from the remedial work or a replacement delivery, Company – insofar as the complaint proves to be justified – shall bear the costs for the replacement part including the shipment. Costs incurred by the fact that the item of delivery has been taken to another location than the registered seat of the Customer or the contractually agreed place of performance shall be borne by the Customer.

7. If Company – by taking into consideration the legal exceptions – does not successfully meet a reasonable deadline for the remedial work or replacement delivery on account of a material defect, set to it by the Customer, the Customer can accordingly withdraw from the contract within the statutory regulations. If there is only an insignificant defect, the Customer is merely entitled to reduce the agreed price. The right to reduction of the price incidentally remains excluded.

8. Further claims are excluded subject to Section X.

9. The Customer shall provide Company immediately upon request and at Company's expense, with the parts that Company is to replace.

10. Claims based on defects shall in particular not arise if the defect is a result of stipulations of the Customer, violation of operating, service, and installation regulations, unsuitable or improper use or storage, faulty or negligent handling, and natural wear and tear, as well as interventions in the item of delivery carried out by the Customer or by third parties, e.g., improper remedial work of the Customer or a third party as well as changes to the item of delivery without prior consent of Company.

11. In the event it is determined that there is no material defect or that the defect is due to circumstances that do not oblige COMPANY to assume liability for defects, the Customer shall reimburse Company all costs incurred hereby.

X. Liability

Company shall be liable for claims of the Customer for damages and/or fruitless expenses – for whatever legal reasons – as follows:

1. Unless otherwise regulated within another liability provision of these Terms and Conditions, Company shall only be obliged to compensate for damages incurred by the Customer directly or indirectly as a result of a faulty delivery, due to violation of official safety regulations, or for any other legal cause, which is attributable to Company.

2. If through Company´s fault as a result of omitted or faulty execution of recommendations, and advice before or upon conclusion of the contract, or by the breach of other secondary contractual obligations – in particular instructions for the operation and maintenance of the delivery item – the Customer cannot use the delivery item in accordance with the contract, the regulations of Sections IX and X.3 shall apply accordingly under the exclusion of further claims from the Customer.

3. a) Company shall only be liable – for whatever legal reasons – for damages other than to the item of delivery itself in cases of willful intent, gross negligence of the executive bodies, executives, or vicarious agents, with culpable injury to life, body, health, with defects, which Company maliciously failed to disclose, or the absence of which was guaranteed by Company, and in accordance with the provisions of the Product Liability Act.
b) With the culpable breach of essential contractual duties (obligation, the fulfillment of which makes the proper execution of the contract possible at all and the compliance with which the contractual partner as a rule relies and is entitled to rely upon), Company shall also be liable in case of gross negligence of nonmanagerial staff and with slight negligence, in the latter case limited to the reasonably foreseeable damages upon conclusion of the contract, which are typical for the contract.
c) Further claims are excluded.

4. In the event that a claim is asserted against the Customer due to liability in accordance with a right, which cannot be excluded toward third parties, Company shall assume responsibility toward the Customer to the extent that it would also be directly liable. For the compensation of damages between the Customer and Company, the principles of § 254 BGB [German Civil Code] shall apply accordingly. This shall also apply in the event of the direct assertion of a claim against Company. The compensation obligation is

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excluded insofar as the Customer on its part has effectively limited the liability toward its buyer. The Customer shall make an effort to also agree upon limitations of liability to a legally admissible extent for the benefit of Company.

5. Company shall be liable – as it is legally obliged hereto – for actions taken by the Customer in order to defend damages (e.g., recall action).

6. The Customer shall inform and consult Company immediately and comprehensively should the Customer intend to assert a claim against Company in accordance with the above regulations. The Customer has to give Company the opportunity to examine the damaging event. The contractual parties shall agree about the measures to be taken, in particular in case of settlement negotiations.

XI. Statute of limitations

All claims of the Customer – for whatever legal reasons – are subject to a limitation period of 12 months after transfer of risk. For claims in accordance with Subclause X.3.b) as well as in cases of willful intent, gross negligence of the executive bodies or executives, with culpable injury to life, body, health, with defects, which Company maliciously failed to disclose, or the absence of which was guaranteed by Company, and in accordance with the provisions of the Product Liability Act, the statutory regulations shall apply. This shall have no effect on the special statutory regulations for in rem claims of third parties for handover (§ 438 Par. 1 No. 1 BGB) as well as to buildings and building materials (§ 438 Par. 1 No. 2 BGB).

XII. Design, tools

The tests and inspections stipulated by the Customer shall be decisive for the faultless suitability of the design and the material of the parts to be produced by Company insofar as these were accepted by Company. All proposals, design drawings and other documents entrusted by Company to the Customer shall remain the property of Company and shall not be made accessible to third parties without written consent. The Customer shall be liable for the accuracy and lawful nature of the use of the drawings, sketches, models, etc., sent to Company.

XIII. Regulations on Harzardous Substances

1. The company strives to exclude hazardous substances within the framework of the REACH Regulation (EG) 1907/2006. In rare cases, our products contain substances of very high concern (SVHC) in concentrations of more than 0.1 % by mass. If this is the case, you will automatically be informed via our delivery bill which product and which SHVC it is.

2. The multitude of other regulations such as RoHS, HKC (IMO), POP, TSCA, conflict minerals and national and international laws for the protection of people and the environment are constantly monitored by us and their compliance is demanded from our suppliers. Specific requirements such as filling out the MD (Material Declaration) of HKC are available upon request.

XIV. Miscellaneous

In determining the amount of the claims for damages and reimbursement of expenses, which are to be fulfilled by Company, the financial conditions of Company, type, scope, and duration of the business relationship, possible contributions to cause and/or fault of the Customer, and any especially unfavorable installation situation of the delivered item shall be reasonably taken into consideration in accordance with § 254 BGB for the benefit of Company. The replacement services, costs, and expenses to be borne by Company must be reasonably proportional to the value of the delivered item.

XV. Place of performance, place of jurisdiction, applicable law, severability clause, binding version

1. Unless expressly agreed to otherwise, the registered seat of Company shall be the place of performance.

2. If the Customer is a merchant, legal entity under public law or holder of special funds under public law, the place of jurisdiction shall be the court of jurisdiction for the registered seat of Company. However, Company shall be entitled to file an action against the Customer at its general place of jurisdiction. The same shall apply if the Customer has no general place of jurisdiction in the domestic country, after conclusion of the contract has relocated its place of residence or customary place of abode from the domestic country, or its place of residence or customary place of abode is unknown on the date of the action.

3. Exclusively, German law shall apply under the exclusion of all international and supranational (contractual) legal orders, in particular the Convention of the United Nations of April 11, 1980, concerning contracts for the international sales of goods (CISG – “Viennese Law on Sales”). However, the conditions and consequences of the retention of title in accordance with clause IV. are subject to the law of the country where the item is stored, insofar as the choice of law in accordance with Sentence 1 is invalid.

4. In the event that a provision or part of a provision of these Terms and Conditions is or shall become invalid, this shall have no effect on the validity of the remaining contract. The contractual parties are obliged to replace the invalid provision with a provision that comes as close as possible to the economic outcome of the invalid provision.

5. In the event of any discrepancies between the terms of the German and the English language version, the English language version shall prevail in all cases.

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