I. General Terms

(1) The terms and conditions of delivery and payment (GTC) shall apply to business transactions with companies, legal persons under public law and special funds governed by public law, and all services rendered or to be rendered by us exclusively, of which the validity is recognised by our contractual partners upon receipt of the order confirmation. This shall also apply to all future transactions with our contractual partners, even If our conditions have not once again been agreed upon in detail. Any terms and conditions used previously are invalid. Deviating conditions of purchase or other conditions of the contractual party shall not become subject matter of the contract, even if we do not expressly object to them.

(2) Individual agreements made with our contractual partner in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these terms and conditions of delivery and payment. A written contract or our written confirmation shall be authoritative for the content of such agreements.

II. Formation of agreement

(1) All quotations are non-binding in all parts and subject to change, unless otherwise expressly stated.

(2) Contracts with us shall be deemed as concluded once the order has been confirmed in writing; this shall also apply for all agreements with our sales representatives and for communications directed to us either orally or through electronic means of communication.
Our order confirmation must be checked by the contractual partner and we must be informed of any modifications within five working days.

(3) Minor changes to models undertaken at our discretion shall not constitute an entitlement to withdrawal or claims for damages.

III. Force majeure

(1) Our contractual partner is not entitled to a delivery or service in the event of a lack of delivery willingness caused by force majeure, work disputes, delivery delays on the part of our suppliers and other events for which we are not responsible. In this case, the delivery period shall be extended by at least the period required to eliminate the disruption. We inform our contractual party of such disruptions without delay.

(2) If the disruption makes delivery significantly more difficult or impossible for us and the disruption is not only of a temporary nature (longer than 6 weeks), we may withdraw from the agreement. In this case, any services already rendered shall be reimbursed. Further claims for compensation by our contractual partner are excluded. If our contractual partner cannot reasonably be expected to accept the goods due to a non-temporary disruption, our contractual partner may also withdraw from the agreement by setting a time limit by way of a written declaration to us.

IV. Delivery and delivery periods

(1) The delivery deadlines specified by us are non-binding. Fixed deadlines must be expressly confirmed by us. After expiration of a delivery deadline, a reasonable extension must be granted to us. In the event of a missed deadline that is beyond our control, we are entitled at our own discretion, according to these Terms and Conditions, to either withdraw from the contract in whole or in part, or to deliver at a later date. For goods delivered with a delay but where acceptance is not contradicted, delivery shall be deemed on time. Claims for damages from our contractual partner due to late delivery or non-delivery are excluded unless we are guilty of intent or gross negligence.

(2) Our contractual partner is obligated to accept delivery upon a notified deadline. We reserve the right to enforce the costs which we incur due to delays in acceptance of the delivery.

(3) We are entitled to make reasonable partial deliveries if the partial delivery can be used by our contractual partner within the framework of the agreed purpose, and it does not incur considerable additional expenditure or additional costs because of this. Partial deliveries shall be invoiced at the value of the partial delivery.

(4) Unless agreed otherwise, the material and price risk shall be passed on to the contractual partner upon handover to the transport person. This shall also apply for the event of delivery free domicile by us. Transport insurance shall only be taken out upon request of the contractual partner and at its expense.

V. Prices

The prices stated in our purchase price list in domestic currency do not include value added tax. This shall be charged at the statutory applicable amount. The prices valid on the delivery day in domestic currency shall be invoiced, unless otherwise agreed upon. Unless otherwise agreed upon, the prices shall be valid free domicile in the country of the contractual partner, otherwise free German border. Unless otherwise agreed upon, all prices are subject to all taxes, customs duties and other fees and charges, if applicable. These shall be invoiced at the rates applicable at the time of invoicing.

VI. Payment

(1) Our invoices shall be immediately payable without deductions. Agreements on discounts and payment terms (deferrals) shall only be valid for the respective order. Once the due dates stated on the invoices have passed, the contractual partner shall enter into default without further reminder, and shall entitle us to charge companies interest on arrears at the statutory amount. Further claims due to delay shall remain unaffected.

(2) We shall only accept cheques after prior agreement; the acceptance shall take place on account of performance. An acceptance shall not cause any deferral of our claim. Bills of exchange are not accepted.

(3) Default of payment, even regarding one of our invoices, shall entitle us to take action with respect to all transactions in accordance with Section 321 German Civil Code (BGB). In addition, all claims from the business relationship shall be due for immediate payment.

VII. Offsetting

Offsetting by the contractual partner with counter claims, or an assertion of the right of retention by the contractual partner, is excluded, unless the offsetting or the right of retention is based upon the same legal relationship or Section 320 BGB, or the claims are undisputed or established as legally binding.

VIII. Warranty Claims

(1) In commercial transactions with companies and persons under public law, written notice of recognisable defects must be given immediately, at the latest 12 days after delivery. Written notice of hidden defects must be given immediately after discovery, within the warranty limitation period. We must be immediately informed in writing of any defects claims by the end customer, at the latest after 5 working days following announcement from the end customer. Failing this, defect or recourse claims relating to this matter shall be excluded.

(2) If, in the event of justified defects, we are obligated to supplementary performance, we must be given the opportunity to fulfil the supplementary performance claim at our own discretion through rectification or subsequent delivery. Recourse claims shall remain unaffected by preceding regulations without restriction. In the event of failure, impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the contractual partner can withdraw from the contract or reduce the purchase price – if the defect is only minor and regardless of any possible damage claims.

(3) Defect claims shall not exist in the event of only minor deviation from the agreed nature of goods, in the event of only minor impairment of usability, in the event of natural wear and tear, as well as for damages which arise after the transfer of risk as a result of improper, unsuitable use not in line with the contract, faulty assembly, excessive stress or improper modifications, rectification or repair works by the contractual partner or third party, or through incorrect or negligent handling, unless we are responsible for this.

(4) Claims of the contractual partner due to necessary expenses for the purpose of supplementary performance, particularly transport, road, work and material costs, shall be excluded to the extent that the expenses increase because the object of delivery has subsequently been shipped to a location different to that of the establishment of the contractual partner. This shall be the case unless this transfer is in accordance with the intended use of the contractual partner. A reimbursement of expenses to be carried out by us shall take the form of a credit note.

(5) Recourse claims of our contractual partner against us shall only exist insofar as the contractual partner has not come to any agreements with its customer extending beyond the legally mandatory claims relating to defects.

IX. Damages

(1) We are liable without limitation in accordance with the legal provisions for damages to life, body and health due to a grossly negligent or deliberate breach of duty by us as the contractor, our legal representatives or our vicarious agents. We are also liable without limitation for damages covered by liability according to the German Product Liability Act, as well as for damages due to deliberate or grossly negligent violations of the contract such as fraudulent intent by us as the contractor, our legal representatives or vicarious agents. If we have issued a quality guarantee and/or guarantee of durability with regard to the goods or parts thereof, we shall also be liable within the framework of this guarantee. For damages due to the absence of the guaranteed quality or durability, but which do not directly affect the goods, we shall only be liable if the risk of such a damage is evidently associated with the quality and durability guarantee.

(2) Our strict liability for compensation, regardless of the legal grounds, particularly due to impossibility, delay, defective or incorrect delivery, breaches of contract, breaches of obligations during contractual negotiations, and tort is limited to the following:

a) We shall not be liable in the event of simple negligence on the part of our institutions, legal representatives, employees or other vicarious agents, unless this involves a violation of essential contractual obligations (cardinal obligations) which must be adhered to for the fulfilment of the purpose of the contract.
b) Insofar as we are liable for damages on these grounds, this liability shall be limited to damages which we have anticipated as the possible consequence of a breach of contract, or we should have been able to anticipate by applying due diligence. All damages which do not exist on the goods (indirect damages), but which result from defects to the goods, are only liable for compensation if such damages are typically to be expected during proper use of the goods.

(3) Further liability upon sale of an item is excluded, regardless of the legal nature of the asserted claim; this shall also especially apply to tortious claims or claims to compensation for wasted expenditure instead of performance. The aforementioned exclusions and limitations of liability shall apply to the same extent in favour of our institutions, legal representatives, employees and other vicarious agents.

X. Settlement, Acknowledgment

(1) Legal proceedings with the aim of concluding a legal dispute – particularly settlement agreements or acknowledgements – taken by our contractual partner during a trial shall only be binding for us if we have approved of this action in writing beforehand.

(2) Similarly, extra judicial settlement agreements shall only be binding for us if this has been consented to writing. In the aforementioned cases, reimbursement to our contractual partner shall exclusively take the form of a credit note, and only to the amount specified in the legal dispute between the contractual partner and end customer. Judicial and extra judicial costs shall not be reimbursed in this case,and must be paid by the contractual partner.

XI. Reservation of title

The following agreed reservation of title shall serve to safeguard our existing and future claims against our contractual partner.

(1) We shall reserve ownership of all goods delivered to us until the fulfilment of all claims – including all current account balance claims – resulting from the business relationship. We are entitled to take back the purchase item if the contractual partner breaches the contractual agreement. In addition, we reserve ownership of the reserved goods until complete fulfilment of the secured claim. Our contractual partner may only dispose of the goods by way of proper business transaction, and only as long as it is not in default of fulfilment of its obligations to us, or does not suspend its payments. Pledges or chattel mortgages are inadmissible. As a precaution, claims arising from the resale of reserved goods including all current account balance claims are already assigned to us by our contractual partner in their entirety. We revocably authorise our contractual partner to collect all claims assigned to us for our account in its own name. The direct debit authorisation can be revoked in the case of clause 3 of our General Terms and Conditions of Business. In every case, it shall end upon cessation of payment or application for insolvency proceedings against the assets of the contractual partner.

(2) In the event of access made by third parties to the reserved goods, the contractual partner shall refer to our ownership and notify us without delay. The costs of third party proceedings shall be borne internally by the contractual partner. To safeguard all current and future claims resulting from the business relationship, the contractual partner shall transfer to us all paid and unpaid goods originating from us and located in its premises and warehouses. We agree that the contractual partner shall store these goods for us. It must treat them as its own goods, insure them against theft and loss and resell them only to the extent that it is certain that the assigned proceeds from the resale will reach us. We are obligated to release the securities to which we are entitled in accordance with the above provisions at our discretion to the extent that their value exceeds the claims to be secured by more than 10 %.

(3) Upon request, the contractual partner must provide us with a precise list of the claims assigned by way of security with the names and addresses of the buyers, the amount of the individual claims, invoice date etc. and to provide us with all information and documents necessary for the assertion of the assigned claims. At our request it must provide us with the security assignment to its customers.

(4) In the event of a default in payment with even a single claim, we are entitled to make use of our retention of title or security rights in respect of all goods owned by us, to take back the delivered items and either to dispose of them, value the account and risk for the contractual partner as well as possible or to acquire them as security. This should not be interpreted as a withdrawal from the contract without an express declaration from us.

(5) The following supplementary provisions shall apply for the delivery of goods intended for further processing: Our ownership extends to the new item created by the processing of the reserved goods. The contractual partner shall manufacture the new item for us to the exclusion of its own acquisition of ownership and shall keep it in safe custody for us. This shall not give rise to any claims against us. If our reserved goods are processed with goods from other suppliers whose ownership rights also continue in the new item, we shall acquire co-ownership in the new item together with these suppliers at the full value of the new item, including value added in the percentage of the invoice value of our reserved goods to the total invoice value of all co-processed reserved goods, to the exclusion of the co-ownership of the contractual partner. If a part not initially covered by retention of title rights remains as other suppliers have not extended the retention of title to the value added by the contractual partner, our co-ownership share shall be increased by this remaining amount. If, however, other suppliers have also extended their retention of title to this remaining portion, we shall only be entitled to the portion of the retention of title which results from the ratio of the invoice value of our reserved goods to the invoice values of the co-processed goods of these other suppliers.

XII. Intellectual Property Rights

(1) We reserve retention and copyright for all quoting and sales documents as well as advertising materials made available to the contractual partner. The contractual partner shall be entitled to use these vis-à-vis third parties to the agreed extent, taking into account our industrial property rights. The provided material must be returned to us upon first request free of charge and to the exclusion of any right of retention. The explanations, notes and retentions stated in the catalogues and price lists form an integral part of these General Terms and Conditions.

(2) In the event that goods delivered by us infringe on industrial property rights or the copyright of a third party, we shall, at our choice and expense, exchange or modify the goods or have the usage rights granted to us or our contractual partner by concluding a corresponding licence agreement. Any claims for damages on the part of our contractual partner are subject to the restrictions stipulated in No IX.

XIII. Miscellaneous

(1) The inclusion and interpretation of these General Terms and Conditions as well as the conclusion and interpretation of legal transactions with the contractual partner itself shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods, the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(2) The invalidity of individual provisions of the contract or of these terms of delivery and payment or its components shall not affect the validity of the remaining provisions. The contracting parties are obligated to replace any invalid provisions in good faith and within reason with a valid provision equivalent to the economic aim of the original one, provided that this does not result in any material change to the contents of the contract; the same shall apply if a situation requiring regulations is not expressly regulated.

(3) The place of jurisdiction and performance is Rheda-Wiedenbrück, providing this is permissible according to Section 29 Para. 2 ZPO (Code of Civil Procedure). According to our choice, the district court Rheda-Wiedenbrück or the regional court Bielefeld is exclusively responsible.