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General Terms and Conditions for Sales, Delivery and Payment

§ 1 Scope of Application

1. All quotations are based on the conditions below and are considered to be accepted for the duration of the whole business relationship by placing the order or accepting the delivery or performance. Deviating conditions, which have not been expressly accepted in writing, are not binding for us, even if they have not explicitly been contradicted.

2. The conditions set out below shall only apply in dealings with entrepreneurs in accordance with the legal definition in § 14 BGB (German Civil Code); regarding consumers as defined in § 13 BGB, only the relevant statutory provisions shall apply.

§ 2 Prices – Offer and Payment Conditions, limitations to right of set-off, withholding rights

1. Any offer for delivery of goods, for performance of work or performance of service shall be binding for a period of fourteen days, counting from its submission, unless a different period has been agreed to in writing.

2. Any offer is subject to punctual self-delivery by our suppliers, if we are not at fault for non delivery, in particular, if we have concluded a congruent hedging transaction with our supplier.

3. Unless otherwise stated in the order confirmation, prices apply Ex Works (Incoterms 2010), transport packing excluded. The packing will be charged separately. Place of Performance and payment is Poing/Germany, unless it is agreed otherwise in writing. Place for rectification in case of a contract of sales, is determined according to § 6.II.6, in case of a contract for work according to § 7 IV.5.

4. VAT is not included in the prices. It will be separately charged at the legal rate valid on the day of invoicing. If there is a period of more than four months between the conclusion of the contract and the agreed date of delivery/performance of the contractual duties, the relevant price shall be the relevant list price on the date of delivery/execution. In case said valid list price is more than 5 per cent higher than the initially agreed upon price, Customer may rescind the relevant contract by declaring so towards us in writing.

5. The purchase price or the invoice amount and prices for additional services fall due for payment on the handing over of the object of purchase or the acceptance of work and service and the delivery or remittance of the invoice. Deliveries of, as a rule, are done on a prepayment basis.

6. If the Customer is a businessman and makes regular purchases, it will, upon application and at our sole discretion, get a customer number granting it a payment term of 14 days from the date of invoice without any further discounts. Invoices for services and repair work as well as invoices for miscellaneous services such as spare parts for machines and equipment as well as used materials are due immediately.

7. If the Customer gets into arrears or if an essential deterioration of his capital occurs, our whole credit, including all credits for any other delivery made, will become due immediately. In this case we are entitled to charge interest on arrears according to § 288 BGB (German Civil

Code). It is agreed that the processing costs for reminders at the amount of 5.00 euro each shall be borne by Customer, with the exception of the reminder establishing default.

8. The Customer may only offset own claims against our claims, if its claims are acknowledged or covered by a legally binding title. In case of a contract for work, Customer may also set off any claims relating to correcting a defective work and/or additional costs for finishing performance of the respective contract for work. Customer may only claim a right of retention as far as it is based on claims originating from the purchase contract or the contract for work and services.

9. With the exception of claims regarding remuneration as set out in § 354 a HGB (German Commercial Code), Customer may not assign any of its claims against us.

§ 3 Delivery

1. Dates and times of delivery, which can be stipulated bindingly or not bindingly, shall be indicated in writing. The period of the delivery time shall start upon conclusion of the contract.

2. If we are prevented from delivering the article of sale on the agreed date or within the agreed time limit or from meeting the completion deadline accepted in writing, due to circumstances we have to account for, we shall be liable according to the legal provisions.

3. Force majeure and events temporarily preventing us – without any fault on our part – from supplying the delivery or service by the agreed date or within the agreed time, give us the right to delay the delivery or service by the duration of the impediment plus an appropriate period of adjustment. If the delivery time is extended or if we become discharged from our obligation, Customer shall not be entitled to derive any damage claims therefrom. If corresponding disturbances lead to a performance delay of more than 4 months, Customer has the right to rescind the contract. Other rights of rescission remain unaffected.

4. The Customer is obliged to accept the delivery or service. If the Customer gets into default of acceptance, we are entitled to receive compensation for any damage or loss encountered.

5. We reserve the right to amend construction or shape, to deviate from the colour tone as well as to modify the supply quantity during the delivery period along with the producers, as long as – with regard to our interests – the modifications or deviations are reasonable for the Customer. If we or the producer use signs or numbers for the marking of the order or the ordered delivery or service, no titles may be derived from this with regard to the specification of the delivery object or of the supply quantity.

6. We are entitled to reasonable partial delivery and partial performance at any time.

§ 4 Installation by Qualified Specialists

Customer is obliged to have the installation of the purchased goods carried out by qualified specialists.

§ 5 Estimates of Cost, Technical Documents

1. Quotations, estimates of cost, drawings, pictures, measures, weights, or other performance dates generally are not binding. They are only binding if this is expressly stipulated in writing. Ownership and copyrights of estimates

of cost, pictures, drawings, or other documents remain reserved. A passing on to a third party is only permitted upon prior written consent.

2. Application technology advices – spoken and written – are only considered as not binding indications and do not release the Customer from its own test obligation with regard to the intended purpose of application.

3. In case the contract with Customer which is at the basis of the plans, proposals, drawings, and/or calculation mentioned above is not entered into, Customer shall return any and all relevant documents at its own cost and expense at our seat and destroy or delete respectively any copies and/or files created thereof.

4. Tools, samples and other devices created because of the execution of the relevant contract shall remain our sole exclusive property, unless Customer as consideration has paid a specific sum separately evidenced in writing in the relevant contract.

§ 6 Rules regarding Sales Contracts

I. Passing of risk

1. The risk of accidental loss and accidental deterioration shall pass on to the Customer upon handing over of the object.

2. In case of delivery, the risk of loss shall pass to Customer when the object is passed on to the person executing the transport or when the objects have left our stock for the purpose of shipment.

II. Liability for material defects, place of rectification

1. Customer shall examine any delivery within 14 days of receipt both regarding quantity as well as outer appearance of the objects and notify us of any faulty quantity and externally recognizable defects. If Customer fails to make such prompt notice, delivery shall be deemed accepted in that regard.

2. The limitation period for all newly manufactured goods is 1 year unless a shorter shelf life and usability has been indicated. The sale of used goods is carried out to the exclusion of any liability for material defects and/or defect of title, unless such defect has been maliciously concealed and/or a contractual guarantee has been given (§ 444 BGB German Civil Code).

3. Customer's claims for defect removal are mainly limited to subsequent performance, i.e. to subsequent improvement or substitute delivery. Unless the Customer is a consumer we have the option on subsequent improvement or substitute delivery. If the subsequent improvement or substitute delivery fails, the Customer may demand reduction or withdraw from the contract. A subsequent improvement may be considered failed when and to the extent to which an appropriate time limit set for the subsequent improvement has elapsed without any result. The preconditions for the exercise of the right of withdrawal are defined by § 323 BGB (German Civil Code).

4. The Customer has to assert his claims to removal of defects from us.

5. In case of a defect based on a deficient instruction sheet, liability for material defects shall only apply if the mounting or the installation of the sold object has been carried out skilfully. The Customer has to demonstrate and to prove the skilful execution.

6. The place for rectification regarding contracts of sales shall primarily be the initial place of performance, unless a different place of



rectification has been agreed to in writing. If said rule, by way of exception, shall constitute an undue burden upon Customer, the place for rectification shall be the delivery address of Customer given to us at the time of the conclusion of the contract.

7. Regarding damages, the limitations set out in § 8 shall apply.

III. Recourse against the Entrepreneur when selling to Commercial Resellers

1. If – within the scope of its commercial business – Customer has resold the purchased object to a consumer and has had to take this object back or has had to reduce the purchase price in consequence of the object's deficiency, Customer may assert claims for material defects against us.

2. Additionally the Customer may demand refund of the expenses it has had to bear in its relationship to the consumer, if the defect claimed by the consumer already existed upon passing of the risk to the Customer, if such expenses are reasonable compared to dealings with third parties at arms length.

3. Within the scope of this recourse against the entrepreneur the Customer shall not have the right to claim damages against us.

§ 7 Rules regarding Contracts for work

I. Right to termination according to § 649 BGB

1. If the contract for work has an initial term of more than two years, Customer shall be entitled to rescind the contract for work at any time prior to completion of the work. In case the initial term is 2 years or less, such right to termination shall be limited to a termination for cause.

2. In case Customer is entitled to rescind the contract according to Sec. 1 above, the amount due to us according to § 649 sentence 2 BGB (German Civil Code), taken into account all expenses not incurred by us, shall be a lump sum to the amount of 10 per cent of the total order value, excluding sales tax, if applicable. Customer shall be free to prove that the amount owed to us is substantially lower than 10 per cent of the total order value. We shall be free to prove that the amount due is actually higher than 10 per cent of the total order value.

II. No requirement for personal performance

Customer hereby authorizes us to conclude separate contracts regarding the execution of the contract for work.

III. Extended Right of Lien and Liability for Material Defects in Relation to Contracts for Work and Services

1. Based on our claims arising from the respective contract, we are hereby granted a contractual right of lien on the objects arrived into our possession by virtue of said contract.

2. A contractual right of lien may also be claimed for works and other services executed earlier as far as they are associated with the contractual object. For other claims from the business connection the contractual right of lien only applies as far as these claims are unquestioned or a legally binding title is submitted and the object of order is owned by the Customer.

IV. Liability for material defects, place of rectification

1. In case the relevant contract for work con-

cerns the erection of buildings and/or planning or supervisory duties in that regard, the statutory provisions regarding time barring shall apply (§ 634 a Sec. 1 Sentence 2 BGB German Civil Code). If other claims are concerned, Customer's claims for material defects shall lapse after one year from the date of acceptance of the work or service. In case of Customer's acceptance in spite of its knowledge of a defect claims for material defects are only due to Customer if Customer has reserved such rights in the acceptance procedure.

2. Unless otherwise agreed to in writing the Customer's acceptance of the work or service shall be carried out on our premises.

3. If the subject matter of the contract is the delivery of movables to be manufactured or produced and if the Customer is a legal person under public law, a separate fund under public law, or an entrepreneur who – when concluding the contract – acts in the exercise of his commercial or self-employed professional activity, any claims of the Customer for material defects will lapse after one year from the date of delivery. § 6 II. No. 2 sentence 1 of these terms and conditions shall apply accordingly.

4. If materials and/or indications (especially conditions of application, operating, and processing, recipes, specifications as well as other circumstances and parameters relevant for the work to be performed by us) supplied by the Customer cause a defect, any liability on our part shall be excluded.

5. The place for rectification regarding contracts for work shall be the initial place of performance. Unless a different place of initial place of performance has been agreed to in writing, the place of performance shall be the delivery address of Customer.

6. In all other instances the rules of our general terms and conditions in relation to sales contracts (§ 6.II. 3, 4, and 7) shall apply accordingly, in particular, without being limited to, the limitations on damages according to § 6.II. 7, 8).

§ 8 Liability

We are liable according to applicable statutory provisions to the extent that Customer

(i) asserts a claim made on the basis of a separate contractual guarantee or on the basis of the *Produkthaftungsgesetz* (German code on product liability);

(ii) asserts a claim for damages, which is based on deliberate intent, fraudulent intent, or gross negligence including deliberate intent, fraudulent intent, or gross negligence of our representatives or vicarious agents;

(iii) asserts a claim for damages, which is based on having incurred a loss of life, bodily harm, and/or an impairment to personal health; and/or

(iv) asserts a claim for damages or any other claim, which is based on a violation on our part of integral contractual duties, so called cardinal obligations. Cardinal obligations are those obligations which the contract has to grant to Customer in order to enable its whole purpose of the contract or in whose compliance Customer trusts and can trust regularly.

With exception to sections (i) to (iv) above, all liability for damages is hereby excluded.

§ 9 Intellectual property rights, Domains

1. Customer shall not be granted any license,

whether express or implied, with the delivery of goods. In particular, without being limited to, Customer is not granted any licence to include any of our trademarks into Customer's company name.

2. In case of a contract for work, Customer, subject to concurrent performance in full of its duties for payment, shall be granted an otherwise free, non exclusive, non-transferable licence, unlimited regarding both space and time, to use the results of the contract of work subject of copyright law for the purposes of said contract. To the degree third parties are executing the contract, we shall ensure to receive by means of a contract the corresponding usage rights.

3. Customer shall not register any domains, whether in Germany or abroad containing expressions which are covered by our trademark rights or are parts of our company name. If Customer still registers a domain in violation of this provision, Customer hereby irrevocably consents to either the transfer or the deletion of such domains at our sole discretion. These rules shall also govern the registration for the delivery of electronic mail and or presentation of Customer within social networks.

4. Indications as to our intellectual property rights or such rights of us and/or third parties which can be found on the product and/or its packing may not be removed, disfigured or concealed in any way by Customer. Customer shall also not add any such indications or stickers without prior written consent of the owner of the intellectual property rights or repack the objects.

5. Any usage of our Intellectual property rights and/or domains requires our previous written consent.

§ 10 Taking back of Goods/Restocking Fee

1. As far as we take objects back from the Customer voluntarily, the following applies: only objects, which are not custom-made products or special orders, can be returned, if they are in a proper, vendible condition. When goods are returned, the Customer will receive a credit note for the amount of the value of the returned goods less a restocking fee. If goods have a maximum product life, only the fair value of the objects at the time of return shall apply. We may, at any time, set off our claims against any claims evidenced in the credit note.

2. The restocking fee amounts to 10 % of the value of every returned object, unless a different amount has been agreed to in writing.

§ 11 Reservation of Title, Requirement of insurance

1. Any delivered object remains our property until all claims based on the purchase contract or the contract for work and services are fully settled. If the Customer is a businessman, we retain the property in all delivered objects until receipt of all payments arising from the business connection.

2. In case of breach of contract on the part of the Customer, especially in case of late payment, we shall be entitled to withdraw from the contract and to claim the release of the object under retention of title. The Customer shall be obliged to return the object. After withdrawal we are fully entitled to exploit the delivery object. The Customer is obliged to compensate the difference between the purchase price and the proceeds of exploitation. Furthermore we reserve the right to assert further claims



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against the Customer.

3. The Customer shall have the right to resell the delivered objects in his ordinary course of business. However, he already now assigns to us all claims for the amount he has invoiced to the consumer (including VAT), regardless of whether the delivered objects have been sold directly or after further processing. The Customer remains entitled to collect the sums due also after their assignment to us. Our competence to ourselves collect the sums due remains unaffected thereof. We undertake not to ourselves collect the sums due as long as the Customer fulfils his financial obligations according to the contract and as long as no application for opening of insolvency proceedings has been filed. If one of the latter circumstances has occurred, at our request the Customer shall give us all particulars necessary to collect the assigned sums due and shall hand over all relevant documents as well as inform the respective debtor (third party) of the assignment.

4. Any processing or alteration of the delivered objects by the Customer shall always be carried out in our favour. If the objects of delivery are processed with other objects not belonging to us, we shall acquire co-ownership of the object in the ratio of the value of the delivered objects to the other processed objects at the time of the processing.

5. If the objects of delivery are inseparably mingled or combined with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the delivered objects to the other components of the new objects. The Customer shall keep the co-ownership in custody for us.

6. The Customer shall neither pledge the delivered objects nor assign them by way of security. Customer shall immediately inform us in case such assignment is valid at the time of delivery (such as because of any assignment of an entire warehouse stock), or in case of seizures, confiscations, or other decrees by a third party and provide us with all information and documents necessary to protect our rights. Executory officers or a third party have to be informed of our ownership. Contracts regarding financing also requiring the transfer of the property in the delivered objects (such as sale and lease back contracts) are subject to our prior written approval, unless such contract irrevocably requires the financing entity to pay the relevant purchase price directly to us.

7. In case the value of our securities will exceed the claims to be secured by more than 20 %, we are obliged to release the exceeding part on demand of the Customer. We are free to choose which securities to release.

8. Customer shall insure the delivered objects at least to the amount of the entire total purchase price against all usual risk of loss, store them separately, treat them with care and label them upon our demand. In case of actual damage to the objects, Customer hereby assigns to us its insurance claims against the insurance company to the amount of the value of the delivered objects. We hereby accept said assignment. Upon our demand, Customer shall require to hand over at our seat copies of the relevant insurance contracts or of a certificate of insurance in either English or German, each free of charge

9. If the law covering the delivered object, does not permit the retention of title but allows us to reserve other rights regarding the delivered object, we may execute all rights of this kind. The Customer is obliged to assist us in

the measures we take to protect our ownership or the right taking our ownership's place in the delivered object.

§ 12 Data Protection

According to § 33 BDSG (German Data Protection Act) we point out that all data referring to Customer and suppliers are recorded and processed by us with the aid of electronic data processing in compliance with said protection act.

§ 13 Place of Fulfilment / Jurisdiction / Governing Law

1. For all disputes arising from the contractual relationship a suit shall be filed at the competent courts in Munich, Germany, if the Customer is a businessman entered in the commercial register as businessman, a legal person under public law, or a separate fund under public law. We shall also be entitled to file a suit at the jurisdiction of the Customer's head office.

2. German Law shall apply, excluding the laws regulating the international purchase of movables (especially the UN-Convention on Contracts of the International Sale of Goods), and its rules on the conflict of laws, even if the Customer has his head office abroad. English shall be the contractual language between the contacting parties at all times.

3. If individual provisions of the contract with the Customer including these General Terms and Conditions are or will become invalid in whole or in part, the validity of the remaining provisions shall be unaffected. The wholly or partially invalid provision shall be replaced by a provision whose economic success corresponds to the invalid one as closely as possible.

4. In principle, we are not willing and obligated to participate in a dispute resolution before a consumer arbitration board.

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TIP TOP Oberflächenschutz Elbe GmbH