1. Application
These Terms of Sale – the “Terms” – only apply to the extent that the customer is a trader (“Unternehmer”) as defined in German Civil Code [BGB] § 14, a legal entity under public law or an investment fund constituted under public law. These Terms govern all present and future contracts, deliveries and other services (hereinafter also referred to as “Service”) even if the Terms are not expressly referenced. Our Terms apply exclusively. We are not bound by the customer’s terms and conditions even if we do not expressly object to them again upon receipt. They do not become part of the contract even if the order is accepted or filled without reservation.

2. Contract
Our offers are non-binding unless expressly stated otherwise. We are not bound by any agreements, including, without limitation, oral side agreements and representations made by our sales staff, until we confirm them in writing.

Obvious mistakes or printing, spelling, arithmetical or costing errors are not binding and do not give grounds for claims. We extend no contractual guarantees (“Garantie”) except those we explicitly identify as such in writing.

The scope and subject matter of the Service is exclusively governed by the order confirmation or, if the order is filled immediately, the delivery note. If the order confirmation or delivery note contains changes to the customer’s purchase order, the customer is deemed to have consented to them if the customer unconditionally accepts the Service and does not object in writing immediately.

Our offers are based on information provided by the customer, without knowledge of the customer’s circumstances or requirements. We only assume liability for a particular intended use or fitness for a specific – technical – purpose if specifically and expressly agreed upon in writing, even if we perform on the basis of the customer’s drawings, specifications, plans, etcetera.

Information, samples, demonstration items or illustrations in catalogs, price lists or other advertising materials are approximations only (e.g. weights, dimensions or technical data) unless exact conformity is necessary for the Service to be used for the contracted purpose. Any reference to technical standards is only a description of our Service, not a guarantee of certain characteristics.

In the absence of any agreement to the contrary, we are not liable to provide instructions or advice. If we provide advice or technical information outside of the agreed-upon scope of Service, the advice or information will be provided without any liability whatsoever.

Any documentation (such as manuals) that we may maintain for certain Services will be available to the customer as a free download on our website. We can provide printed copies for a fee that covers our expenses.

3. Prices/Payment
Our list prices apply, as they may change from time to time. In the absence of any agreement to the contrary, the prices are ex works and do not include value-added tax or additional services such as packaging, loading, freight charges, unloading, transport insurance, assembly, customs, installation, implementation, introduction, training, maintenance, out-of-pocket expenses, travel costs or other expenditures.

In the absence of any agreement to the contrary, invoices are due immediately without discounts.

To be timely, a payment must be credited to our account by the deadline. Cash discounts are only allowed with our express written permission.

We may demand advance payment, particularly for orders of spare parts.

We can demand advance payment and/or exercise a right of retention with respect to further performance in the event of a default in payment or reasonable doubt as to the customer’s ability to perform. A default in payment automatically voids any rebates, cash discounts and other concessions, and default interest will become due pursuant to German Civil Code [BGB] § 288.

The customer has no right of retention or set-off except where based on the same contractual relationship.

If a customer located outside the Federal Republic of Germany (foreign territory buyer) or its authorized agent collects Services from us and transports or ships them to the foreign territory, the customer must provide us with the proof required for tax purposes (evidence of export). If this proof is not provided, the customer will have to pay value-added tax at the rate applicable within the Federal Republic of Germany on the invoice amount for the delivery.

4. Delivery, Passage of Risk
The Service/delivery is performed, and the documents are prepared in accordance with ICC Incoterms® 2010. The UCP 600 (Uniform Customs and Practice for Documentary Credits issued by the ICC Paris) apply.

We are allowed to provide the Service early, in parts, or in quantities that exceed or fall short of the contracted quantities as long as this is not unreasonable.

We will ship at the customer’s risk and expense without guaranteeing that the cheapest method will be used. Unless the customer’s place of business is stipulated as the place of performance for the delivery, the delivery deadline is deemed to be met as long as the carrier picks up the shipment for shipping by the deadline. We
6. Defects

If the customer is a merchant or a public law body with legal personality, it must carefully inspect the received Service without unreasonable delay upon receipt. We must be notified of any defects in writing without unreasonable delay ("notice of defects"). Damages sustained in transit or during shipping must be documented vis-à-vis the carrier. German Commercial Code [HGB] § 377 applies in all other regards. If no notice is given, the Service is deemed to be free from defects and in conformity with the purchase order unless the defect was not detectable during the inspection. Notice of such defects must be given immediately after discovering them.

Any resale, installation or other use of an allegedly defective Service is deemed approval of performance as contracted, and to that extent precludes the possibility of claims for defects.

Any negotiation regarding notices of defects does not constitute a waiver on our part of the defense that the notices were late, unsubstantiated or otherwise insufficient. Damage reduction measures do not constitute an acknowledgment of defects.

We may deviate from the stipulated scope or quality due to the materials, or modify the Service to reflect technical progress in terms of construction, design, dimensions, weight or color within the customary industry tolerances, provided (a) this does not restrict the usability of the Service for the contracted purpose, (b) no contractual guarantee exists, and (c) the customer can be reasonably expected to accept the change(s) and/or deviation(s) in light of an objective assessment of all circumstances.

If the Service is defective, we will discharge our obligation to remedy the defect by, at our option, repairing the defective Service or replacing it with a non-defective Service. We can refuse a type of remedy other than the place of performance. The customer bears any removal, installation or other costs.

If we fail to remedy the defect or refuse to provide either type of remedy, the customer may, after fixing a reasonable additional period, rescind the contract, reduce the compensation and/or claim damages. The right to a price reduction is excluded unless the defect is merely insignificant, was concealed with the intent to deceive or relates to a contractual guarantee of certain characteristics.

5. Ownership

We reserve all rights – including, without limitation, copyrights, ownership rights and other intellectual property rights – in and to all samples, demonstration items, tools, specifications, models, plans, data, drawings, cost estimates, tangible and intangible information, and similar items provided to the customer in electronic or any other form. In the absence of any agreement to the contrary, any reproduction or release to third parties is prohibited.

The customer will grant us the following security until the settlement of all accounts receivable (including any and all outstanding balances on running accounts) that the customer owes us now or in the future on any legal grounds whatsoever; we will release the security at our option on request insofar as its value exceeds the secured accounts receivable by more than 20%:

We retain title to the Service until all payments owed under the business relationship have been received. Until such time as title to the Service passes to the customer:

The customer must keep the Service in good working order. The customer must insure the Service for our benefit at the customer’s expense against theft, breakage, fire, water and other perils to the extent that the customer can be reasonably expected to do so. Proof of insurance must be presented on request. The Service must not be pledged or assigned as security.
b) We are liable to pay damages for willful misconduct and gross
negligence on any legal grounds whatsoever where fault-based
liability applies. Absent any laws stipulating a milder liability
standard (e.g. exercising the same standard of care as in one’s
own affairs), our liability for slight negligence is limited to

i. damages resulting from injury to life, limb or health,

ii. damages resulting from the significant breach of a material
contractual duty (an obligation whose satisfaction is essential
to the proper performance of the contract and upon whose
satisfaction the contracting party may and does consistently rely); in this case, however, our liability is limited to the pay-
ment of foreseeable, typical damages.

c) The liability limitations set out in section 2 also apply to
breaches of duty by or for the benefit of individuals for whom we
are vicariously liable by law. The liability limitations do not apply
wherever we have concealed a defect with the intent to deceive
or have extended a contractual guarantee regarding certain char-
acteristics of the goods or for customer claims under the German
Product Liability Act [ProdHaftG]. We have the right to raise the
defense of contributory fault or contributory causation.

d) The customer can only rescind or terminate the contract for a
breach of duty that does not constitute a defect if we are respon-
sible for the breach. The customer does not have the right to
terminate the contract at any time for convenience (including,
without limitation, pursuant to German Civil Code [BGB] § 651,
§ 649). The statutory requirements and legal consequences apply in all other regards.

e) The statutory provisions determine when we are in default in
delivery. The customer must issue a reminder in any event. In
the event of a culpable delay in delivery due to slight negligence,
our liability for liquidated damages for each completed week of
delay is limited to 0.5% of the amount invoiced for the Service
affected by the delay, but no more than 5% in total. We may
furnish proof that the damages are smaller. The damages will be
applied to further claims for damages.

8. Liability Disclaimer and Limitation
Where liability is limited to the foreseeable damages or losses which
are typical for the contract, our liability for each damage or loss
occurrence is limited to EUR 100,000.00 for property damage and
EUR 200,000.00 for other losses; the total liability for all such
damages and losses within a given calendar year is limited to twice
these amounts. This limitation does not, however, apply to the
extent that losses are covered by general liability insurance.

In the absence of any agreement to the contrary, the limitation
period for claims for defects expires one year from the time of han-
dover/delivery unless the law prescribes longer periods, e.g. in case
of fraud, willful misconduct, injury to life limb and health, under the
German Product Liability Act [ProdHaftG] or pursuant to German
Civil Code [BGB] § 438(1)(2) (construction and construction mate-
rials) and § 634a(1)(2) (construction defects).

9. Non-Disclosure and Data Protection
The customer will keep all the contents of the contract strictly con-
fidential, including, without limitation, prices, discounts, know-how
and other trade secrets, and will refrain from disclosing or otherwise
making available to third parties any information, documentation,
drawings or other documents without our express written approval.
This does not, however, apply to contents which are publicly known
without violating the non-disclosure obligation. The customer will
impose the same non-disclosure obligation on its employees and
associate companies and on third parties to whom the contents have
to be disclosed.
TERMS AND CONDITIONS (CONT.)

We may use the customer (including its logo, brand) and the project as a reference as long as the customer does not object giving good cause.

The customer consents to our processing its data (communication details, responsible employees, nature and volume of the customer’s purchase orders etc.) for contract administration and execution. We may also use the data to notify the customer about our products and services if these products and services are typically used in connection with the products and services that the customer has purchased from us.

The Terms also apply to the customer’s associate companies ["verbundene Unternehmen"] within the meaning of German Companies Act [AktG] § 15. The customer must bind its associate companies to comply with these Terms.

Any amendments and modifications hereto that are not based on an individual agreement must be made in written form (including fax). This also applies to a waiver of the written form requirement. If any provisions of these Terms are or become invalid, the validity of the remaining provisions will be unaffected thereby.

The customer may not assign to third parties any rights granted in this contract without our consent. German Commercial Code [HGB] § 354 a remains unaffected thereby.

German law applies unless national law inevitably conflicts with it.