General Conditions of Sale and Supply
Status: May 2020

I.
Area of Application:

1. These General Terms and Conditions of Sale and Delivery shall apply in legal transactions with all contractual partners who are not consumers within the meaning of § 13 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). Our General Terms and Conditions of Sale and Delivery shall also apply to all future transactions as well as to all business contacts with the Purchaser, such as the commencement of contract negotiations or the initiation of a contract, even if they are not expressly agreed upon again or if they are not expressly referred to again.

2. Our General Terms and Conditions of Sale and Delivery shall apply exclusively. We do not recognize any deviating or conflicting conditions of the customer. Previous agreements and previous versions of our General Terms and Conditions of Sale and Delivery are cancelled by these General Terms and Conditions of Sale and Delivery.

3. The acceptance of our services and deliveries is considered as acceptance of the validity of these General Terms and Conditions of Sale and Delivery.

II.
The contract conclusion

1. Unless otherwise agreed, our offers are binding until the end of the validity period stated in the offer.

2. We will not be bound by an order until it has been confirmed by us in writing or we commence execution of the order. This applies in particular if the customer's order is not based on a concrete binding offer on our part.

3. If our offer or our order confirmation is based on technical information provided by the customer (illustrations, drawings, weights and dimensions, etc.), our offer is only binding if the order can be executed in accordance with the customer's technical specifications. If, after conclusion of the contract, it turns out that the order cannot be executed in accordance with the customer's technical specifications, we are entitled to withdraw from the contract if and to the extent that the customer is not prepared to accept the technical substitute solution proposed by us and to bear any additional costs actually incurred. In the event of such a withdrawal from the contract culpably caused by the customer, we are entitled to demand 15% of the net order volume from the customer as lump-sum compensation. The customer is allowed to prove that the damage was less. If he succeeds in providing such proof, he is only obliged to compensate the actual, lower damage.

4. If the customer arranges for sketches, drafts, samples or similar preliminary work on our part prior to placing the order, we are entitled to invoice the customer for our expenses for this preliminary work at cost price, if the customer does not place an order based thereon within a reasonable period of time. These drafts, samples, etc. and all rights of use thereto will remain the property of our company even after remuneration of our expenses and may only be used by us.

III.
Scope of services, delivery

1. Only our written offer or our order confirmation is decisive for the scope of delivery. Subsidiary agreements and amendments require our written confirmation.

2. Insofar as software is the subject of the delivery, the license conditions attached as an appendix do apply. Insofar as parts of the software provided include open source software components, we provide these as a free addition outside the rest of the contract.

3. If we provide new software releases (e.g. updates, new versions) or such software releases are received from us, the same license terms and conditions apply as for the software that we have provided initially. New software releases provided through our homepage are a gesture of goodwill and is not to be interpreted as recognition of defects. There is no legal claim for new software releases; this does not apply, if there is a defect and we provide a new software release to remove the defect or if there is a separate contractual agreement about new software releases.

4. We are entitled to a partial performance for all orders to a reasonable extent. We are further entitled to use subcontractors to fulfill our contractual obligations.

5. Delivery periods and dates always represent the best possible information, but are generally non-binding. The commencement of the delivery period as well as the observance of delivery dates are subject to the condition that the customer duly and punctually performs the cooperation activities incumbent upon him, that he provides all documents to be provided and that he makes the agreed advance payments. If we hand over the ordered goods to a transport person or if we notify the customer of our readiness for dispatch, the date of handover or the date of notification of readiness for dispatch shall be deemed to be the delivery date.

6. The documents enclosed with our offers, such as drawings, weights and dimensions, are, unless expressly marked as binding, only approximate.

7. If a delivery or service on call has been agreed, the customer has to approve the entire ordered service within a reasonable period of time, but at the latest within three months after agreement of the call order. At the end of this call-off period, we are entitled to settle the entire order step by step against provision of the total ordered performance in accordance with the terms of payment regulated in Section VII.

8. If the delivery or service is delayed by measures of force majeure, such as labor disputes, strikes, lockouts, war, armed conflicts, epidemics or pandemics or other events in Germany or abroad for which we are not responsible, the performance period is extended appropriately by the duration of the impairment and its after-effects. This also applies if these circumstances occur at our sub-suppliers. If the event of force majeure results in permanent impossibility of performance, we are entitled to withdraw from the contract. We are not responsible for reasons of force majeure even if they occur through no fault of our own during an already existing delay. In important cases, we will inform our purchasers immediately of the beginning and end of such obstacles.

9. We don’t get into a delay due to delays in the provision of services if we or our vicarious agents are only guilty of slight negligence.

10. In the event of force majeure or other circumstances beyond our control and extraordinary, we don’t get into delay. In this case, we are entitled to withdraw from the contract even if we are already in delay. If, in such cases, we do not declare within a reasonable period of time upon request by the Customer whether we will still perform the owed service, the Customer is entitled for its part to withdraw from the contract with regard to the part of the Contractor's service that has not yet been performed.

11. If the customer is in delay of approval or if shipment is delayed at the customer's request, the customer has to be charged for the costs incurred by storage with us or with a third party, starting with the notification of readiness for shipment. We are entitled to charge these costs at a flat rate of 0.5 % of the invoice amount (incl. VAT) for each full week, but not more than 10 % of the invoice amount (incl. VAT). The customer is free to prove lower damages. We are entitled to dispose otherwise of the delivery item after setting and unsuccessful expiry of a reasonable deadline and to subsequently supply the customer again with a reasonably extended deadline.

12. If we get into delay, the customer is entitled to claim his proven damage caused by the delay. In cases of slight negligence, the compensation is limited to a maximum of 0.5 % of the value of the (partial) delivery concerned, for each full week of delay, but in total to a maximum of 5 % of the value of the (partial) delivery.

13. If we are in delay, the customer is entitled to set us a reasonable grace period for performance. After the unsuccessful expiry of this period, he is entitled to withdraw from the contract - unless we did not have to expect the withdrawal despite the setting of the deadline - or, in the event of culpable action on our part, to claim damages instead of performance. In cases of slight negligence, the claim for damages is limited in accordance with the preceding paragraph.

14. If we are obliged to advance performance under the contract concluded, we may refuse the performance incumbent upon us if it becomes apparent after conclusion of the contract that our claim to counter-performance is jeopardized by a lack of ability to perform on the part of the other party. This is the case in particular if the consideration to which we are entitled is at risk due to poor financial circumstances or other impediments to performance are imminent, e.g. as a result of export or import bans, war events, insolvency of suppliers or absence of necessary employees due to illness.

15. We may refuse our performance obligations if these require an effort which, taking into account the content of the order and the principles of good faith, is grossly disproportionate to the interest of the purchaser in the performance. This is the case in particular if the omitted performance or manufacture or the performance or manufacture in breach of duty does not affect the Purchaser or affects it only insignificantly, such as in the case of cosmetic defects.

16. If non-compliance with delivery deadlines is due to delays in the granting of an export license for which we are not responsible, we don't get into delay because of this. If the granting of an export license is denied, we are entitled to withdraw from the contract. Claims for damages by the buyer are excluded in this case. The purchaser has to perform immediately and at his own expense all cooperative actions necessary on his part for the granting of an export license.

IV.
Transfer of risk

Unless otherwise agreed, we deliver the goods FCA Eningen, Incoterms® 2020. The risk of loss or deterioration of the goods will therefore pass to the customer upon handover of the goods to the customer's carrier at our works, even if partial deliveries are made. If the handover to the carrier is delayed for reasons within the customer's control, the risk will already pass to the customer upon notification of readiness for handover.

V.
Change of the scope of services

We reserve the right to make minor customary changes, in particular improvements, to the goods up to the time of delivery if this does not unreasonably prejudice the interests of the customer.

VI.
Prices

1. Our prices are net prices and are always understood to be free carrier, FCA Eningen, Incoterms® 2020 with the deviation that we organize appropriate transport insurance at reasonable costs and charge these costs on to the customer. Value added tax will be added to the invoice at its respective statutory rate. Shipping costs, customs and transport insurance and other expenses associated with the delivery, including the costs for the preparation of officially required safety or conformity certificates, are borne by the customer. If the customer desires freight insurance, we will take out such insurance for him at his expense if he instructs us to do so in writing.

2. If, during the period between the conclusion of the contract and delivery, our suppliers increase their prices with respect to the product concerned or its raw materials, we are entitled, in the event that there are more than four months between the conclusion of the contract and the date agreed for our delivery or service, to increase the prices accordingly, also in relation to the customer.

3. If we have contractually assumed installation or assembly services, the customer has to bear, in addition to the agreed remuneration, all reasonable ancillary costs such as travel and transport costs and allowances.

VII.
Terms of payment

1. Our claim becomes due upon receipt of the invoice. The customer gets in delay of payment upon expiry of the payment period agreed in the individual contract with the customer, even without a reminder. From this point in time, he shall compensate us for any damage caused by delay, in particular the statutory delay interest.

2. In the case of special orders or special solutions, we reserve the right to agree a payment scale with the customer, including a reasonable advance payment.

3. Unless expressly agreed, the customer is not entitled to deduct any cash discount.

4. Payment by bill of exchange, check or acceptance is only permitted by express agreement and even then only on account of payment. Discount, charges, bill of exchange tax and collection charges are borne by the customer; they become due immediately. In the case of payment by check, payment is not deemed to have been made upon receipt of the check, but only upon its cashing.

5. Only undisputed or legally established claims may be set off against our claims for remuneration. The same shall apply with regard to the assertion of a right of retention. The customer is only authorized to exercise a right of retention if it is based on the same contractual relationship.

6. The assignment of claims against us by the customer is excluded.

VIII.
Reservation of ownership

1. We retain title to the goods delivered by us until no more claims arising from the order exist. If, at the time of delivery, there are other claims against the customer in addition to the claim to which we are entitled under the order, we retain title to the goods delivered by us until all of the above claims have been settled (extended reservation).

2. In the case of payments by check or bill of exchange by the customer, the claim arising from the order and delivery continues to exist until the amount owed is finally available to us.

3. The extended reservation shall apply in each case to the balance if the receivables are placed in a current account.

4. If the customer processes or finishes the goods still subject to retention of title, the processing or finishing will be carried out for us in such a way that we acquire co-ownership of the new item with the share corresponding to the purchase value of the delivered item in relation to the total sales value of the new item at the time of processing. In the event of processing with other goods not belonging to us by the customer, we are entitled to co-ownership of the new item produced in the ratio of the purchase value of our reserved goods used for the item produced to the sales value of the new item at the time of processing.

5. If the goods subject to retention of title are inseparably combined, mixed or blended with other goods, we acquire co-ownership of the entire quantity in the amount of the value share of our delivery, §§ 947, 948 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). If the customer acquires sole ownership by combining, mixing or blending, he hereby assigns to us co-ownership in the ratio of the purchase value of the goods subject to retention of title to the sales value of the newly produced goods at the time of combining, mixing or blending. We accept this transfer. In this case, the customer has to store the goods owned by us free of charge.

6. The reservation of ownership is extended to all claims of the customer which he acquires from the resale of the delivered goods or from the resale of the newly manufactured goods. The claims have to be assigned to us in the amount of the outstanding invoice amount. The customer hereby assigns these future claims as security at the time they arise. We accept this assignment. The customer is entitled to resell the goods subject to retention of title or the newly manufactured goods only subject to the proviso that his purchase or work compensation claim shall pass to us in accordance with the above provisions. The customer is not entitled to dispose of the goods in any other way.

7. The customer is not allowed to neither pledge the delivery item nor assign it as security. In the event of seizure, confiscation or other dispositions by third parties, the customer has to notify us immediately.

8. Our security rights do not prevent the customer from disposing of items belonging to us or claims assigned to us by way of security in the normal course of business. Normal business operations isn‘t longer be deemed to exist if the customer is in arrears with his payment obligations towards us one month after the default has occurred, bills of exchange are protested to him, payments are suspended or an application for insolvency is filed. In this case, the purchaser is obliged, at our request, to notify his customers of the assignments, to refrain from collecting the claims and to permit collection by us. At our request, the purchaser is also obliged to provide us with the addresses of his third-party purchasers at our first request.

9. If there is no longer a normal business transaction, we are entitled to take back the goods subject to retention of title at the customer's expense. Such repossession, the assertion of the reservation of title as well as the seizure of the delivery item don‘t constitute a withdrawal from the contract, insofar as this is legally permissible.

10. At the request of the customer, we are obliged to release the securities to which we are entitled under the above provisions at our discretion to the extent that the realizable value of the securities to which we are entitled exceeds the claims to be secured.

IX.
Liability for Defects and General Liability

1. The limitation period for claims based on defects in our deliveries and services is one year from the statutory commencement of the limitation period. After the expiry of this year, we are allowed in particular to also refuse subsequent performance without the customer being entitled to claims against us for reduction, rescission or damages as a result. The shortening of the limitation period in accordance with this Section IX 1. does not apply to claims for damages other than those due to refusal of subsequent performance and generally not to claims in the event of fraudulent concealment of the defect or if we have assumed a guarantee for the quality of the item.

2. Claims of the customer for subsequent performance due to defects of the goods delivered by us exist only according to the following provisions:

   a) If the delivered item is defective, we are initially allowed to choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse the chosen type of subsequent performance under the statutory conditions remains unaffected.

   b) We are entitled to make the subsequent performance owed dependent on the customer paying the remuneration due. However, the customer is entitled to retain a part of the remuneration which is reasonable in relation to the defect.

   c) The customer has to give us the time and opportunity required for the subsequent performance owed, in particular to hand over to us the goods complained about for inspection purposes. If we choose replacement delivery, i.e. send the customer a defect-free item, the customer shall return the defective item to us in accordance with the statutory provisions.

   d) We bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, if a defect is actually present. The customer bears the expenses for rectification or supplementary performance which arise due to the fact that the purchased item has been taken to a place other than the customer's domicile or commercial establishment after delivery. If a request by the customer to remedy a defect turns out to be unjustified, we may demand reimbursement of the resulting costs from the customer.

   e) If the customer has installed the defective item in another item or attached it to another item in accordance with its type and intended use, we are obliged, within the scope of subsequent performance, to reimburse the customer for the necessary expenses for removing the defective item and installing or attaching the repaired or delivered defect-free item. § 442 section 1 of the German Civil Code (BGB) applies with the proviso that the installation or attachment of the defective item by the Customer takes the place of the conclusion of the contract for the purposes of the Customer's knowledge.

3. If the customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch – HGB), the following also applies: The customer must inspect incoming goods immediately. Transport damages are to be documented, in case of substantial damage of the goods the acceptance is to be refused. The customer's claims for defects, in particular the claims for supplementary performance, rescission of the contract, reduction of the purchase price and damages, require that the customer has complied with its statutory obligations to inspect the goods and to give notice of defects (§ 377 HGB). If a defect becomes apparent during the inspection or at a later date, we have to be notified thereof in writing without delay. The notification is deemed to be without delay if it is made within five working days of discovery of the defect, whereby timely dispatch of the notification suffice to meet the deadline. Irrespective of this obligation to inspect and give notice of defects, the customer shall give written notice of obvious defects (including incorrect and short deliveries) within five working days of delivery, whereby timely dispatch of the notice also suffices to meet the deadline. If the customer fails to duly inspect the goods and/or notify us of defects, we are not liable for the defect not notified. This doesn't apply if we have fraudulently concealed the defect. A merchant within the meaning of this provision is any entrepreneur who is entered in the Commercial Register or who operates a commercial business and requires a business operation set up in a commercial manner.

4. The customer may claim damages only in following cases:

   a) for damages which are based on
   - an intentional or grossly negligent breach of duty on our part or

- an intentional or grossly negligent breach by one of our legal representatives, executive employees or vicarious agents of obligations that are not essential contractual obligations (cardinal obligations) and are not primary or secondary obligations in connection with defects in our deliveries or services.

b) for damages based on the intentional or negligent breach of material contractual obligations (cardinal obligations) on our part, on the part of one of our legal representatives, executive employees or vicarious agents.

Material contractual obligations (cardinal obligations) within the meaning of the above subsections 5 a) and 5 b) are obligations whose fulfillment is essential for the proper performance of the contract and on whose fulfillment the customer regularly relies.

c) Furthermore, we are not liable for damages due to the negligent or intentional breach of obligations in connection with defects in our delivery or service (subsequent performance or ancillary obligations) and

d) for damages that fall within the scope of protection of a guarantee (assurance) expressly given by us or a guarantee of quality or durability.

In the event of a breach of a material contractual obligation due to simple negligence, the amount of our liability is limited to the damage typically to be expected and foreseeable by us at the time of conclusion of the contract when exercising due care.

Claims for damages by the customer in the event of a simple negligent breach of one of our obligations become statute-barred one year after the statutory commencement of the limitation period.

Claims for damages against us arising from statutory liability, for example under the Product Liability Act, as well as damages arising from injury to life, limb or health, remain unaffected by the above provisions and exist to the statutory extent within the statutory periods.

5. Statutory rights of the customer under §§ 478 and 479 445a, 445b of the German Civil Code (BGB) in the event that a claim is asserted against the customer or its other customers in a supply chain by a consumer shall remain unaffected by the provisions in this Section IX. However, the customer bears the burden of proving that the expenses for subsequent performance were necessary and that it could not have refused subsequent performance vis-à-vis its customer pursuant to Sec. 439 (4) of the German Civil Code (BGB) or could have performed subsequent performance in a cheaper manner.

6. If third parties are commissioned or involved in the initiation or processing of the contractual relationship between the customer and us, the above-mentioned warranty and liability limitations shall also apply in favor of third parties.

X.
Product Liability

If there are different, in particular stricter, product liability or product safety regulations in the countries in which the customer will use or resell our products compared to German law, the customer has to inform us of this when placing the order. In this case, we are entitled to withdraw from the contract within one month. If the customer fails to provide this information, we are entitled to withdraw from the contract within one month of learning of the relevant legal situation. In the latter case, the customer is obliged to indemnify us against claims by third parties which exceed our obligation to perform in the event of a comparable product liability case in Germany. This also applies if we adhere to the contract.

XI.
Services

Insofar as we undertake to provide services (such as training services) within the scope of an order, we owe the provision of a service and not the concrete success.

XII.
Approval

1. If we owe the performance of work within the scope of the respective order or if an acceptance of our performance has otherwise been agreed, the customer is obligated to declare in writing that our contractual services have been performed after corresponding notification of completion by our company.

2. If the approval is delayed through no fault of our own, our performance is deemed to have been accepted after 7 calendar days have elapsed since notification of its completion. Upon acceptance, our liability for recognizable defects do cease, unless the customer has reserved the right to assert a specific defect in writing. Irrespective of such a reservation, the remuneration remains due in full.

3. Partial approvals are to be carried out at our request. The above conditions apply mutatis mutandis in this respect.

XIII.
Confidentialy

During the term of the contract and for three years after its termination, the customer undertakes to keep secret all information which becomes accessible to it in connection with the contract and which is designated as confidential or is recognizable as business or trade secrets due to other circumstances and not to record it or pass it on to third parties or exploit it in any way, unless expressly approved in writing in advance or required to achieve the purpose of the contract.

Excluded from this is the information

- which was already known to the customer before the start of the contract negotiations or which is communicated by third parties as non-confidential, provided that these third parties are not in breach of confidentiality obligations on their part;

- which the orderer has developed independently of us;

- which are or become publicly known through no fault or action of the customer or

- which must be disclosed by the customer due to official or court order. In the latter case, the customer has to inform us immediately before disclosure. Further legal duties of confidentiality remain unaffected.

XIV.
Final Clauses

1. The place of performance and jurisdiction for all disputes arising between the parties from the contractual relationship is D-72800 Eningen, Germany insofar as the customer is a merchant, a legal entity under public law or a special fund under public law or the customer does not have a general place of jurisdiction in the Federal Republic of Germany or transfers its place of jurisdiction abroad. As an exception to this, we are also entitled to take legal action against the customer at his general place of jurisdiction.

2. If any clause in these General Terms and Conditions of Delivery and Payment or any provision within the scope of other agreements is or becomes invalid, this doesn't affect the validity of all other provisions or agreements.

3. The contractual language is German. If the parties use another language, in particular English, the German wording shall take precedence in accordance with the agreement.

4. German law applies to the contractual and other legal relationships with our customers. UN Convention on Contracts for the International Sale of Goods is excluded.