General, scope of application

(1) The terms and conditions apply to all present and future business relations with entrepreneurs. Entrepreneurs within the meaning of these Terms and Conditions are natural or legal persons or partnerships with legal capacity with whom a business relationship is entered into, who act in the exercise of a commercial or independent professional activity.

(2) Differing, conflicting or supplementary general terms and conditions, even if known, will not become part of the contract, unless their validity is expressly agreed in writing.

§ 2 Conclusion of contract, placing of order

(1) Our offers are subject to change without notice. Changes or additions require a written confirmation to be effective. We are entitled to place subcontracts.

(2) With the order of a product / a work the customer declares bindingly that he wants to purchase the ordered product / place the order. We are entitled to accept the contractual offer contained in the order within two weeks of receipt. Acceptance can be declared either in writing or by delivery of the goods / handing over the work to the customer. In the letter of order or in a letter of confirmation, the services to be rendered are described and the expected delivery date (this is non-binding unless otherwise stated) is communicated.

(3) The conclusion of the contract shall be subject to correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for non-delivery, in particular if a congruent hedging transaction is concluded with our supplier. The customer will be informed immediately about the non-availability of the service. The consideration will be refunded immediately.

(4) We reserve the property rights and copyrights to information, in particular illustrations, drawings, calculations and other documents, which are passed on to customers or suppliers; they may not be made accessible to third parties. This applies in particular to such written documents and information which are designated as "confidential"; the customer/supplier requires our express written consent before passing them on.

§ 3 Delivery time, dispatch, transfer of risk, acceptance

(1) The delivery time results from the agreements of the contracting parties. Compliance with them by us presupposes that all commercial and technical questions between the contracting parties have been clarified and the customer has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or permits or the payment of a deposit. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.

(2) The packaging is carried out according to professional and commercial standards. All packaging costs shall be borne by the customer. The packaging material is charged at cost price and will not be taken back. All costs incurred by us in shipping the goods shall be borne by the customer. If the customer so wishes, we will take out transport insurance on behalf of the customer, charging the cost price. We shall not be liable for the cheapest shipment or transport time, unless we are not responsible for this.

(3) The delivery period shall be deemed to have been met if the subject matter of the contract has left the factory or the location/storage location by the time of its expiry. Insofar as acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance.

(4) The risk shall pass to the customer as soon as the goods have left the factory or the warehouse/location, even if partial deliveries are made or we have assumed other services, e.g. the shipping costs or delivery. If an acceptance test is to be carried out, this is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the supplier's notification of readiness for acceptance. The customer may not refuse acceptance in the event of an insignificant defect.

(5) If the dispatch or acceptance of the subject matter of the contract is delayed for reasons for which the customer is responsible or if the customer culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses.

(6) If we are hindered in the timely fulfilment of the contract by procurement, production or delivery disturbances at our premises or those of our suppliers (e.g. lack of energy, traffic disruptions, strikes, lockouts, force majeure, etc.), the delivery period shall be extended accordingly.

(7) The customer may withdraw from the contract without notice if the entire performance becomes finally impossible for us before the transfer of risk. Furthermore, the customer may withdraw from the contract if, in the case of an order, the execution of part of the delivery becomes impossible and the customer has a justified interest in rejecting the partial delivery. If this is not the case, the customer shall pay the contract price attributable to the partial delivery. The same shall apply in the event of incapacity of the supplier. If the impossibility or incapacity occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall remain obliged to counter performance.

(8) In the event of delay in delivery, we shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a firm deal within the meaning of § 286 Paragraph 2 No. 4 of the German Civil Code or § 376 of the German Commercial Code. We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to claim that his interest in the further performance of the contract has ceased. We shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage. We shall be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; in this case, however, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(9) Otherwise, in the event of a delay in delivery, we shall be liable for each completed week of delay within the framework of a lump-sum compensation for delay in the amount of 3% of the delivery value, but not more than 15% of the delivery value.

(10) Further legal claims of the customer remain reserved.

(11) We are entitled to make partial deliveries to a reasonable extent.

§ 4 Retention of title

(1) We reserve the right of ownership of the delivered goods and services until full payment of all claims against the customer that have arisen or will arise from the business relationship - regardless of their nature and legal basis. In the event of a breach of contract by the customer, in particular default of payment, we shall be entitled to exercise our statutory rights and take back the goods. After taking back the goods, they can be disposed of and the proceeds can be credited against the customer's liabilities. In order to assert the rights arising from retention of title, it is not necessary to withdraw from the contract, unless the debtor is a consumer

(2) In the event of processing or combining the reserved goods with other goods not belonging to us, we shall acquire co-ownership of the new goods in the ratio of the value of the goods supplied by us to that of the other external material. The customer shall store the new item for us free of charge. The customer hereby assigns to us his rights of ownership or co-ownership of the mixed stock or the new item.

(3) The customer may process and sell the reserved goods in the ordinary course of business as long as he is not in default of payment. Extraordinary disposals such as pledging, transfer of ownership by way of security and any kind of assignment are not permitted.

(4) In the event of seizure or other interventions by third parties, the customer must inform us immediately in writing. In the event of a lawsuit according to § 771 ZPO (German Code of Civil Procedure), the customer shall reimburse us for the court and out-of-court costs, insofar as these are not reimbursed by third parties.

(5) The customer hereby assigns to us by way of security any claims arising from the resale or any other legal reason (insurance/unlawful act) in respect of the reserved goods. The customer is revocably authorized to collect the claims assigned to us in his own name. The direct debit authorization is only revoked if the customer is in default of payment, if an application for the opening of insolvency proceedings has been filed or if there is a suspension of payments. Upon request, the customer must notify his contractual partner of the assignment in writing, provide us with all information, submit and hand over documents and surrender bills of exchange. In addition, the customer must allow us access to the reserved goods still in his possession and send us a precise list of the goods, separate and surrender the goods.

(6) If the realisable value of the retained securities exceeds the claim to be secured by more than 10%, we will release securities of our choice at the customer's request. The customer shall bear the burden of proof that the retained securities exceed 10 %.

(7) The customer must keep the delivery item in proper condition during the retention of title and have all necessary or planned maintenance and repair work carried out immediately.

§ 5 Compensation

(1) The price offered is binding. Price quotations do not include value added tax and are valid ex warehouse without packaging. If taxes, customs duties, freight charges, fees or expenses are increased or newly introduced or reduced or abolished between conclusion and fulfilment of the contract, we are entitled/obliged to increase or reduce the purchase price accordingly. The prices are valid for one month from the day of the conclusion of the contract, unless a fixed price has been agreed. If a delivery period of more than four months has been agreed or in the case of continuous obligations that last longer than four months, we are entitled to pass on to the customer any cost increases that have occurred in the meantime for procurement/delivery, including those caused by changes in the law (e.g. increase in value added tax), by increasing the price accordingly.

(2) We are entitled to demand an appropriate advance payment, unless the claim is otherwise sufficiently secured. This shall not only apply to self-contained partial performances.

(3) The customer undertakes to pay the purchase price within 10 days of receipt of the goods with a 2% discount or within 30 days net. After expiry of this period the customer is in default of payment. During the period of default, the customer shall pay interest on the money debt at a rate of 8% above the base rate. We reserve the right to prove and claim higher damages caused by default.

(4) The customer only has a right to offsetting if his counterclaims have been legally established or have been recognised by us or are undisputed. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

(5) If the customer is in default of payment, we are entitled to exclude the customer from further deliveries, even if corresponding delivery contracts have already been concluded.

(6) If the buyer is in default with any payment obligations towards us, all existing claims shall become due immediately

§ 6 Liability for defects

(1) The customer's claims for defects require that the customer has properly fulfilled his obligations to inspect the goods and give notice of defects in accordance with § 377 HGB.

(2) Insofar as a defect in the purchased item exists, the customer is entitled to choose between subsequent performance in the form of rectification of the defect or delivery of a new item free of defects. In the case of rectification of the defect or replacement delivery, we are obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, provided that these are not increased by the fact that the object of sale was taken to a place other than the place of performance.

(3) If the supplementary performance fails, the customer is entitled to choose between withdrawal or reduction.

(4) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. As far as we are not accused of intentional breach of contract, the liability for damages is limited to the foreseeable, typically occur-ring damage.

(5) We shall be liable in accordance with the statutory provisions insofar as we culpably violate an essential contractual obligation; in this case, however, the liability for damages shall also be limited to the foreseeable, typically occurring damage. An essential contractual obligation exists if the breach of duty refers to an obligation on the fulfilment of which the customer has relied and could also rely.

(6) Insofar as the customer is otherwise entitled to compensation for damages instead of performance due to a negligent breach of duty, our liability is limited to compensation for foreseeable, typically occurring damages.

(7) Liability for culpable injury to life, body or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.
(8) Unless otherwise regulated above, liability is excluded.
(9) The limitation period for claims for defects is 12 months, calculated from the transfer of risk. This does not apply if the purchased item is usually used for a building and has caused the defect. The period of limitation in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected; it is five years, calculated from delivery of the defective item.

§ 7 Total liability

(1) Any further liability for damages other than that provided for in § 6 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for property damage in accordance with § 823 BGB.
(2) The limitation according to paragraph 1 shall also apply if the customer demands compensation for useless expenses instead of a claim for damages.
(3) Insofar as liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

§ 8 Taking back goods

If we take back goods as a gesture of goodwill, because, for example, a customer has ordered the wrong size, the customer must send it back to us free of charge and we will make a handling discount of 20 % with regard to the repayment or offsetting of the purchase price.

§ 9 Data protection

The contractual partner agrees that we may process data received in connection with the business relationship, regardless of whether it comes from the contractual partner itself or from third parties, in accordance with the Federal Data Protection Act.

§ 10 Factoring

We are entitled to assign the claims arising from our business relationship. All payments are to be made with debt-discharging effect exclusively to ABN AMRO Asset Based Finance N.V., German Branch, Gereonstrasse 15 - 23, 50670 Cologne. Payments with debt-discharging effect can only be made to the account of this company No. 194111103 of Deutsche Bank AG (bank code 370 700 60). IBAN DE62370700600194111103, SWIFT DEUTDEDKXXX. The Client is aware and agrees that data necessary for the assignment may be transferred to ABN AMRO Asset Based Finance N.V., German Branch.

§ 11 Final provisions

(1) The law of the Federal Republic of Germany shall apply. The provisions of the UN Sales Convention shall not apply.
(2) If the contractual partner is a merchant, a legal entity under public law or a special fund under public law, our place of business is the place of performance and jurisdiction, unless otherwise stated in the order confirmation, or alternatively the place of business of our factor; however, we are also entitled to sue our contractual partner at his place of jurisdiction.