WeDo Trade e. K.

General Terms and Conditions of Sale

§1 General

1.1 These General Terms and Conditions of Sale shall apply to all of our business relationships with our customers. These Conditions shall only apply if Customer is a merchant (Article 14 of the German Civil Code), an entity incorporated under public law or a specialized agency under public law.

1.2 These Conditions shall apply in particular to contracts governing the sale and/or delivery of movable Goods without regard to whether we produce the Goods ourselves or acquire them from suppliers (Articles 433, 651 of the German Civil Code). These conditions shall also serve as a master agreement for future contracts with the same Customer regarding the sale and/or delivery of movable Goods without further notice on our part in each individual case.

1.3 Our Conditions shall have sole applicability. Any general terms and conditions of Customer's that diverge from, contradict or add to them shall only become a part of the contract if and to the extent that we have expressly consented to them. This consent requirement shall apply in any and every case, e.g. even if we have delivered to Customer without reservation with knowledge of Customer's Conditions.

1.4 Individual agreements concluded with Customer for specific cases (including side agreements, addenda and amendments) shall always prevail over these Conditions. Such agreements shall require either a written contract or our written consent in order to be valid.

1.5 Legally significant declarations and notifications that are to be submitted to us after the contract has been signed (e.g. notice of grace periods or defects, or declarations of cancellation or unilateral price reduction) shall not be valid unless in written form.

1.6References to the applicability of specific laws are intended solely for clarification. Consequently, even without such clarifying references, relevant laws shall be applicable unless their applicability is directly changed or expressly precluded in these Conditions.

§2 Conclusion of Contract

2.1 Our offers are non-binding and without obligation. This shall apply even if we have supplied Customer with catalogues, technical documentation or other product descriptions or documents – even in electronic form – of which we retain the copyrights and title.

2.2 Customer's ordering of the Goods shall be deemed a binding contractual offer. Orders for Goods shall also be deemed valid if placed with a third party designated by the seller. We shall be entitled to accept such contractual offer within four weeks of our receipt of same unless otherwise specified in the order.

2.3 Such acceptance can be declared either in written form (e.g. order confirmation) or by delivery of the Goods to Customer.

§3 Delivery Periods and Default

3.1 A delivery period shall be agreed on an individual basis or be announced upon acceptance of the order.

3.2 Should we be unable to provide delivery during a firm delivery period for reasons for which we are not responsible (non-availability of performance), we shall immediately inform Customer of this and of a new planned delivery period. Should the performance still not be available within the new delivery period, we shall be entitled to completely or partially cancel the contract; in such a case, we will immediately reimburse Customer for any consideration Customer has paid. The service shall be deemed unavailable in this context in particular if not delivered by our supplier in a timely manner in the event we have entered into a matching cover trans-action. Our statutory rights of withdrawal and cancellation and the legal provisions concerning completion of the contract if the obligation to perform is excluded (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall be unaffected. Customer's rights of withdrawal and cancellation in accordance with Section 9 of these Conditions shall likewise be unaffected.

§4 Delivery, Passing of Risk, Acceptance, Default in Acceptance

4.1 Delivery is ex works and this is also the place of performance. The goods will be sent to a different destination at Customer’s request and expense (sale to destination according to Customer’s instructions). Unless otherwise agreed we are entitled to decide on the manner of shipping (in particular the carrier, routing and packaging).

4.2 The risk of accidental loss or deterioration of the Goods passes to Customer at delivery at the latest. However, in the case of sale to destination according to Customers instructions, the risk of accidental loss or deterioration of the goods and the risk of delay passes to Customer at handover of the goods to the forwarder, carrier or other person or organization carrying out the shipping. If acceptance has been agreed, the passing of risk shall occur upon acceptance. The German law applicable to contracts for work and services shall apply analogously in other respects to an agreed acceptance. Default of acceptance by Customer shall be equivalent to delivery or acceptance.

4.3 Should Customer refuse acceptance or fail to provide a cooperative service or should our delivery be delayed for any other reason for which Customer is responsible, we shall be entitled to demand from Customer compensation for the resulting damage including additional expenses (such as storage costs).

4.4 This shall affect neither the right to provide evidence of a larger amount of damage nor our statutory claims (in particular reimbursement of extra expenses, appropriate compensation and cancellation); however, the flat compensation amount shall be set off against any additional monetary claims. Customer shall be entitled to provide evidence that we have sustained either no damage or substantially less damage than the abovementioned flat amount.

§5 Prices and Payment Terms

5.1 Unless otherwise agreed in a particular case our prices current at the time of conclusion of contract shall be valid on the basis ex warehouse, exclusive of VAT.

5.2 In the case of sale to destination according to Customer’s instructions (Subsection 4.1) Customer shall bear the cost of transport ex warehouse and the cost of any transport insurance requested by Customer. Customer shall bear the cost of any customs duties, fees, taxes and other public charges. Transport packaging and all other packaging in accordance with the Packaging Ordinance is non-returnable and shall become Customer’s property, except for pallets.

5.3 The purchase price shall be due and payable within the agreed delivery period or, should no delivery period have been agreed in a particular case, within 30 days from invoicing and delivery or acceptance of the goods.

5.4 Upon expiry of the above time period for payment, Customer shall be in default. During the default period interest at the statutory default interest rate at the time shall be due on the purchase price. We reserve the right to claim compensation for further damage caused by such default. Our claim against merchants for commercial interest after due date (Art. 353 of the German Commercial Code) shall not be affected.

5.5 Customer shall be entitled to setting off or retention rights only if and to the extent that such rights are undisputed or have been confirmed by a final judgment. This shall not affect Subsection 7.6 in the event of faulty delivery.

5.6 If after conclusion of the contract it becomes apparent that our claim for payment of the purchase price is jeopardized by Customer's inability to pay (e.g. an application for commencement of insolvency proceedings) we shall be entitled in accordance with the provisions of law to refuse to perform and –after fixing a time limit if necessary – to withdraw from the contract (Art. 321 of the German Civil Code). In the case of contracts for the manufacture of unique (custom-made) items, we shall be entitled to give notice of our immediate withdrawal; this shall not affect applicable law governing the dispensability of fixing a time limit.

5.7 Should Customer be in default of payment of a claim, all other claims against the buyer Customer shall be subject to being deemed due and payable.

5.8 Customer shall bear all fees, costs and expenses that shall accrue to us in connection with any and all legally successfully assertions of our legal rights against Customer outside of Germany.

§6 Retention of Title

6.1 We retain title to the Goods sold until full payment of all our present and future claims arising from the contract of sale and current business relations (secured claims).

6.2 Until the secured claims have been satisfied in full the goods subject to retention of title shall not be pledged to a third party or assigned as security. Customer shall notify us immediately in writing if and insofar as a third party executes attachment of our goods.

6.3 In the event of contract-breaching behavior by Customer, in particular failure to pay the purchase price due, we shall be entitled according to the provisions of law to withdraw from the contract and/or to reclaim the goods on the basis of the retention of title. Reclaiming does not at the same time constitute declaration of withdrawal; instead we shall be entitled simply to reclaim the goods and to reserve the right of withdrawal. I Customer does not pay the purchase price due, we may assert these rights only if we have first set Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.

6.4 Customer shall be entitled to resell and/or to process the goods subject to retention of title in the ordinary course of business. In this case the following additional provisions shall apply.

(a) Retention of title extends to the full value of the products created by processing, mixing or combining our goods, in which context we shall be deemed the manufacturer. If in the case of processing, mixing or combining with third party goods the latter's retention of title still applies, we shall acquire joint ownership in proportion to the invoice values of the processed, mixed or combined goods. In other respects the same rules shall apply to the product created as to the goods delivered subject to retention of title.

(b) Customer here and now assigns to us as security the claims against third parties arising from resale of the goods or product, in total or, if applicable, in the amount of our joint ownership share according to the previous clause. We hereby accept such assignment. Customer's duties according to Subsection 6.2 shall also apply with regard to the claims assigned.

(c) Customer shall retain its authorization to collect the claim along with us. We undertake not to collect the claim as long as Customer fulfils its payment obligations towards us, is not in default of payment, no application for commencement of insolvency proceedings has been made and its ability to pay is not otherwise impaired. However, if this is the case we can demand that Customer give us details of the claims assigned and the debtors, supply all the information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

(d) If the realizable value of the secured goods exceeds our claims by more than 10%, upon Customer's request, we shall release some security at our discretion.

§7 Customer's Warranty Claims

7.1 Save as otherwise provided below, Customer's rights in the event of defects of quality and legal imperfections in title (including wrong and short shipments and incorrect installation or defective installation instructions) shall be governed by applicable law. The special legal provisions in the case of ultimate delivery of the goods to a consumer (suppliers' recourse according to Articles 478 and 479 of the German Civil Code) shall be unaffected in all cases.

7.2 The primary basis of our liability for defects shall be the agreement made concerning the properties and condition of the goods. All product descriptions that are the subject of the individual contract shall be deemed the agreement concerning the properties and condition of the goods, irrespective of whether the product description originates from Customer, from the manufacturer or from us.

7.3 In the absence of any agreement as to properties and condition, the existence or nonexistence of a defect shall be assessed according to the statutory provision [Art. 434 (1) Sentences 2 and 3 of the German Civil Code]. However, we shall not be held liable for any public statements by the manufacturer or other third parties (e.g. advertising claims).

7.4 Customer's warranty claims presuppose that Customer has fulfilled its statutory duties of examination and notification (Articles 377 and 381 of the German Commercial Code). Customer shall notify us in writing without delay of any defect discovered during examination or later. Notification shall be deemed 'without delay' if given within two weeks; the time limitation shall be deemed observed if the notification is sent within this time period. Irrespective of the abovementioned duties of examination and notification Customer shall send us written notification of obvious defects (including wrong and short delivery) within two weeks from delivery; the time limitation shall likewise be deemed observed if the notification is sent within this time period. If Customer fails to perform its examination and/or defect notification duties as stipulated above, any liability on our part for defects of which we have not been notified shall be excluded.

7.5 If the delivered item is defective, we shall have the option of deciding whether to provide subsequent performance by remedying the defect (rectification) or delivering a flawless item (replacement). This shall not affect our right to refuse – under the conditions prescribed by law – to provide the type of subsequent performance chosen.

7.6 We shall be entitled to make due subsequent performance conditional upon Customer's paying the purchase price due. Customer shall, however, be entitled to withhold an appropriate part of the purchase price in proportion to the defect.

7.7 Customer shall allow us the necessary time and opportunity for due subsequent performance and shall in particular hand over the goods concerned for inspection. In the case of replacement Customer shall return the defective item to us in accordance with the statutory provisions.

7.8 Should a defect actually exist, we shall bear the expenses incurred for the purposes of inspection and repair, in particular the costs of transportation, labor and materials. However, should Customer's demand for repair be proven unjustified, we shall be entitled to demand reimbursement from Customer of the incurred costs.

7.9 In urgent cases, e.g. if operating safety is jeopardized or to avert disproportionate damage, Customer shall be entitled to remedy the defect himself and demand reimbursement by us of the objectively necessary expenses incurred. We shall be advised without delay, if possible beforehand, of such self-remedying of defects. The right of self-remedy shall not apply if we would have been entitled to refuse to provide the corresponding subsequent performance in accordance with the statutory provisions.

7.10 If subsequent performance is unsuccessful or a deadline to be set by Customer for subsequent performance has elapsed without result or may be dispensed with according to the statutory provisions, Customer shall be entitled to withdraw from the contract of sale or diminish the purchase price. However, no right of withdrawal shall apply in the case of a minor defect.

7.11 The warranty of the delivered parts is 6 months after delivery date. Consumables, fragile and contaminated parts are excluded from this warranty. Warranty is only valid if the parts are shipped back well packed, the copy of the original delivery note is included and a clear detailed claim report is enclosed.

7.12 Customer shall be entitled to claim compensation or reimbursement of expenses incurred in vain only as provided in Section 9; otherwise such claims shall be excluded.

§8 Assignment of Claims

Assignment of claims against Customer to third parties shall be permitted. Customer here and now agrees to sign a notification of assignment submitted by Seller.

§9 Other Liability

9.1 Save as otherwise provided in these Conditions including the provisions below, we shall be liable in accordance with the relevant statutory provisions in case of breach of contractual and/or non contractual duties.

9.2 We shall be liable to compensate, irrespective of legal ground, in the event of intent and gross negligence. In the case of ordinary negligence we shall be liable only

(a) For damage due to injury to life, limb or health.

(b) For damage due to the breach of an essential contractual duty (an obligation that must be fulfilled in order to enable the contract to be duly performed and on the satisfaction of which the other party regularly relies and may rely); in this case, our liability shall be limited to compensation for the foreseeable damage typically occurring.

9.3 The limitations of liability pursuant to Subsection 9.2 above shall not apply if we conceal a defect with intent to deceive or if we have warranted the properties and condition of the goods. The same shall apply to Customer’s claims under the Product Liability Act.

9.4 Customer shall be entitled to withdraw or cancel on the grounds of a breach of duty that does not consist of a defect only if we are responsible for the breach of duty. Customer's free right of cancellation (in particular in accordance with Articles 651 and 649 of the German Civil Code) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

§10 Period of Limitation

10.1 Article 438 (1) No. 3 of the German Civil Code notwithstanding, the general period of limitation for claims based on defects of quality and legal imperfections in title shall be one year from delivery. If acceptance has been agreed, such limitation period shall commence at acceptance.

10.2 The aforementioned purchase law limitation periods shall also apply to Customer's contractual and extra contractual claims to damages based on a defect in the Goods unless application of regular limitation periods (Articles 195 and 199 of the German Civil Code) would lead to a shorter limitation period in a particular case. The limitation periods of the Product Liability Act shall remain unaffected in any case. Apart from this, the statutory limitation periods shall exclusively apply to any claims by Customer for damages pursuant to Section 9 of these Conditions.

§11 Choice of Law and Place of Jurisdiction

11.1 These Conditions and all legal relations between us and Customer shall be governed by the law of the Federal Republic of Germany excluding all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. Preconditions and effects of retention of title according to Section 6 shall, however, be subject to the law of the place where the item is located if the choice of German law is impermissible or ineffective under such law.

11.2 If Customer is a merchant as defined by the Commercial Code, an entity incorporated under public law or a specialized agency under public law, the exclusive place of jurisdiction, including in international matters, for all disputes arising indirectly or directly from the contractual relationship shall be our registered office in Aachen, Germany. We shall, however, also be entitled to sue at Customer's place of general jurisdiction.