

General Terms of Sale and Delivery (“General Terms”) of ELTEN GmbH

1. General Provision, Conclusion of Contract

(1.1.) Our actual and future offerings, supplies and/or services made and rendered to our commercial customers (purchasing such goods and/or services in their capacity as commercial operators in terms of Para. 14 of the German Civil Code for their commercial and professional usage) are provided exclusively on the basis of the following terms and conditions also in those cases, where we do not specifically confirm individual orders. Conflicting or inconsistent terms of the buyer shall only apply, if confirmed by us explicitly in writing. These General Terms shall also exclusively apply even if we, with full awareness of the buyer’s contradictory terms and conditions or those differing from these General Terms unconditionally make deliveries to the Buyer. Upon placing the order, yet at the latest upon receipt of the goods we supplied and/or the services we rendered, the buyer hereby irrevocably and unconditionally agrees to these General Terms. We are entitled to rescind the respective supply contract if the buyer objects to the exclusive application of our General Terms of Sale and Delivery.

(1.2.) Any supply arrangements same as any modifications, amendments, ancillary agreements, declarations to terminate and any other statements and/or notifications must be made in writing (including telefax or email communication), unless otherwise agreed herein. All our offerings are non-binding and noncommittal, unless expressly agreed otherwise. A supply contract comes solely into effect even in an ongoing business relationship, as soon as we have accepted and confirmed the respective order of the buyer in writing or in any other text form. An order shall be deemed accepted unless rejected by us within a time period of ten (10) days in text form. The order confirmation can also be replaced by delivering the respective goods. In this event the dispatch of the said shipment shall be decisive for the coming into effect of the relevant supply contract.

(1.3.) In the event of an existing written individual contractual arrangement between the buyer and us (in particular in case of a supply framework or central settlement arrangement with an association the buyer is a member of and the like), the terms and conditions of such agreement prevail to the extent they conflict with these General Terms. This does not apply in cases, where individual contractual arrangements between the buyer and us exist, which grant more favorable conditions to the buyer (e.g. in the area of rebates and discounts) than those afforded to the buyer by the respective contractual arrangements with its association.

2. Pricing, Default in Payment, Set-Offs

(2.1.) Our offerings as contained in catalogs, advertisings, price lists and the like - are of a nonbinding and noncommittal nature, which applies also for any pricing information and quotations. Our prices and discounts valid at the respective shipment date are firm plus value added/sales tax if applicable. Unless otherwise stated in our order confirmation or in other individual written agreements with the respective buyer, all our pricing is based upon our list prices valid during the respective delivery period and quoted by us ex factory or ex warehouse exclusive of packaging, duties and other ancillary cost and charges of any nature, yet plus value added/sales tax if applicable (Incoterms Edition 2010). Any transportation cost for domestic deliveries will be borne by us and in the event of any deliveries abroad by the buyer. Additional cost and charges resulting from any special requests of the buyer (such as shipment by courier or express) shall be carried by the buyer. For those ordered quantities, which are below our minimum quantities set forth in our respective applicable price list, or which do not meet the fixed minimum order value, we are entitled to charge an extra processing fee as stated therein. Any deviating agreements must be made in writing.

(2.2.) We accept to be bound by any pricing, the buyer and we have agreed upon pertaining to a certain order, for a period of six (6) weeks from the date, the respective supply contract came into force. Except in the event of any contractual written arrangements to the contrary, we expressly entered into with the buyer, we shall be entitled to adjust our pricing in cases of increases of factors affecting our price calculation unforeseeable for us (such as higher costs of materials and raw materials, increase of labour cost, currency fluctuations, inflationary increases and the like).

(2.3.) Unless otherwise expressly agreed upon in writing with the buyer, any payment in the event of open payment terms granted to the buyer by us, has to be made by the thirtieth (30th) day from the date of the respective invoice at the latest. A discount of two per cent (2%) is granted by us to the buyer, if full payment is made within ten (10) days from the respective invoice date. Any discounts and rebates granted to us by the buyer are subject to a complete and correct acceptance of the respective order and timely payment. In case of any return shipment, any discounts and rebates already granted to the buyer are subject to our chargeback rights. In the event of deliveries made in instalments, we are entitled to issue corresponding separate pro rata invoices. Within the framework of a direct debit scheme in the Single Euro Payments Area (SEPA) as agreed upon with the buyer, the corresponding direct debiting will take place two (2) days after the respective invoices became due and payable in line with the payment terms and conditions granted to the buyer and by taking special applicable discount arrangements - if any - into due account. In the event of small invoice amounts, we reserve the right to first add up the respective invoices and to forward to the buyer one direct debiting notification only with an accumulated direct debiting of four (4) invoices at minimum.

(2.4.) Payment shall solely be deemed effected by the buyer, when we are in a position to dispose of the respective amounts in an unrestricted fashion. Money orders, checks and bills of exchange are only conditionally accepted on account for performance and by charging any collection and discounting fees to the buyer.

(2.5.) In case of late payments, the buyer will be charged with interest rates from the due date of the respective payment at the annual rate of nine per cent (9%) above the prevailing base lending rate of the European Central Bank. Our right to claim additional damages in this context shall remain unaffected hereof.

(2.6.) Provided the buyer is more than fourteen (14) days from the due date late with its payments and/or in the event we become aware of circumstances, which cause doubts about the creditworthiness of the buyer, we explicitly reserve the right to make any further supplies conditional upon an adequate advance payment or the provision of collaterals, respectively to temporarily suspend all supplies until payment has been received in full with regard to all outstanding payments of the buyer. In addition, we are entitled to rescind in whole or in part supply contracts already concluded with the buyer, unless the buyer honors our request of full payment in advance or provides adequate collaterals.

(2.7.) The buyer will not be entitled to assert any set-off or counterclaim against us, unless its counterclaims have been approved finally by a competent court or are undisputed or have been approved by us explicitly in writing. Furthermore, the buyer is only entitled to withhold payment on the grounds of defects of certain parts of our delivered goods or services rendered to the extent such amounts correspond to the reduced commercial value of the defect goods or deficient services (see term 4.6 below). We have the right to avoid the exercise of the foregoing rights by the buyer (including its defense of non-fulfilled contractual performance) by providing collaterals, in particular bank guarantees. Such collaterals are deemed to be provided at the latest also in those events, where the buyer is in default of acceptance.

3. Deliveries, Delivery Obstacles, Contract Modifications

(3.1.) Any delivery periods or dates quoted by us are always intended as a guide and are approximate only, unless otherwise expressly agreed upon in writing and specifically indicated by us as fixed dates, where the respective goods are due to be delivered exactly on such specific date. In any event these fixed dates are deemed met if the respective goods were dispatched by us on time - or in the event of collection by the buyer - it has been notified by us in advance on time that such goods were ready to be picked up. Irrespective of the foregoing, any agreed-upon delivery period will only commence to run subject to the clarification of all technical and other questions relating to the respective delivery. We are at any time entitled to make partial or early deliveries. In these cases, we shall only charge once for any packaging and transportation cost (in the event of a destination abroad). Any subsequent orders placed by the buyer or any other modification requests relating to its original order are subject to our acceptance. If accepted, this may cause changes of the original delivery periods agreed upon. If the execution of any order is temporarily suspended by us on the grounds of lacking creditworthiness on part of the buyer, any delivery dates confirmed by us shall become obsolete. In the event such temporary suspension will be lifted subsequently, new delivery dates, which need to be confirmed by us in writing, shall apply.

(3.2.) Unless otherwise explicitly agreed upon in writing, all our deliveries are carried out for the account and risk of the buyer. In addition, the Incoterms of the International Chamber of Commerce Paris shall apply in their respective latest version. The goods supplied are deemed to be conformant, if they meet our respective product descriptions for the end-users. This shall equally apply in the event of only minor or customary deviations as to quality, measurements, colors, weight and the like, always provided such deviations do not substantially negatively affect the proper use of the respective products. We explicitly reserve the right to make any other changes or modifications relating to the products supplied by us to the extent these are caused by technical developments or technical improvements.

(3.3.) Force majeure events, governmental or other public restrictions, strikes, lockouts and other events, for which we cannot be held liable and responsible, we are at our choice then either entitled to extend agreed-upon delivery periods for the duration of such disruptive events, or to rescind the concrete supply contract. In any event we undertake to notify the buyer in text form upon the said events and occurrences without any delay. In such cases the buyer shall not be entitled to claim damages on the grounds of nonperformance or default. This shall also be the case, where we did not receive deliveries on time from our own suppliers, unless we are liable for such deficiencies. In the event of agreed upon fixed delivery dates, the buyer shall only be entitled to rescind the respective supply contract after setting an adequate deadline requesting us to perform accordingly.

(3.4.) If for any reason the buyer fails to accept delivery of the goods in whole or in part in spite of the fact that it has been advised by us properly that the goods are ready for delivery of collection, or if the buyer refrains from any duty to cooperate, or if delivery is delayed out of reasons caused by the buyer, it will be in default of acceptance. In such case we are entitled to be adequately reimbursed for any cost we may incur in this context, including additional expenditures (e.g. inventory cost). These will amount to one per cent (1%) per each calendar week of the total value of the stored goods based on the respective order value placed by the buyer. Irrespective of the foregoing, we and the buyer are entitled to claim proven higher or lower storage costs and the statutory passing of risk rules shall remain unaffected by such default of acceptance. In particular, but without any limitation, the risk of accidental loss or deterioration of the goods shall in these cases immediately pass to the buyer.

(3.5.) Unless otherwise agreed upon with the buyer in writing, we explicitly reserve the right to use a freight forwarder/ parcel shipment provider of our choice for the transportation of our goods. Transportation will then take place by using the most economic shipment modality (cargo, mail or freight forwarder). Shipment will in this event be at our cost, but at risk of the buyer. If requested by the buyer, deliveries will be insured at its cost against the customary transport risks. In the event it has been agreed upon that the goods will be collected by the buyer, risk of accidental loss or deterioration will pass upon handing over the goods to the buyer, or, if collected by third parties authorized by the buyer, upon handing over the goods to these third parties. Once the buyer is in acceptance of default, risk will pass at that time to the buyer.

(3.6.) In the event we are in default of delivery, the buyer has to declare upon our request within an adequate deadline provided, whether it still wants to be supplied, or whether it will assert any other statutory rights. The buyer shall only be entitled to rescind the supply contract in the event of a delayed delivery on the grounds of statutory applicable rights, if we are responsible for such delay.

(3.7.) For any damage compensation claims of the buyer, Clause 6.2. below shall apply.

4. Warranty, Notice of Defects, Returns

(4.1.) For any rights of the buyer as to material defects and defects in title (including non-correct and short deliveries, same as the absence of warranted characteristics) the applicable statutory laws shall apply, unless set forth to the contrary below. In the event of a self-standing repair order or other contract for work services, the subsequent terms and provisions shall equally apply for such type of work and services. The warranty period shall be twelve (12) months and shall commence at the delivery date.

(4.2.) The buyer shall upon receipt of each shipment delivered by us to the buyer or to its third-party representatives immediately inspect the goods. In the event of defects of the packaging or of the products themselves, which are visible and can be detected already upon delivery, the respective shipment shall be inspected as to its completeness in the presence of the freight forwarder and damages shall be specified and listed in writing on the acknowledgment of receipt document. In addition, these damages shall be photographed and any other evidence in this regard shall be taken to avoid subsequent losses of rights. In the event of obvious defects or other defects which could have been detected by the buyer by means of proper diligent inspection, these defects shall be deemed approved by the buyer, unless we receive a specified written complaint of defect within seven (7) work days from the date, the respective defect materialized. If, however, such defect could have been detected by the buyer already before, such prior date will then be decisive for the start of the complaint period concerned. If and to the extent goods delivered by us to the buyer have not been manufactured by us, but have been purchased from a third party supplier, we shall comply with our warranty obligations at first by assigning all our warranty claims against the said third party suppliers to the buyer, who accepts such assignment on account of performance. Our warranty obligations will then be only of a subsidiary nature and only after the buyer started court action against the respective third party supplier.

(4.3.) In the event of wrong or surplus deliveries, the buyer undertakes to return without any delay the respective goods in their original packagings and without any modification of their original condition to us by using the return form provided by us. If the returned goods show damages or modifications of the original conditions, or have been returned without the original packaging and can therefore only be sold by us at additional cost, we are entitled to reduce the credit note issued to the buyer by up to thirty percent (30%) notwithstanding our right to prove higher damages, we may have incurred in this regard.

(4.4.) If the delivered goods proved to be in fact defective after our inspection, we are at our choice at first entitled to choose, whether we will rectify the defects by repairing those or whether we will supply a defect-free product instead. Our right to reject a rectification claim according to applicable statutory laws shall remain unaffected hereof. In the event of a substitute delivery order, where it turns out that a product is no more available, it will be replaced by another product, which comes as close as possible to the no more available product.

(4.5.) Any warranty claims of the buyer shall be excluded, if and to the extent the buyer has not observed our operating, servicing and/or care instructions. The same shall apply for any damages caused by improper application or usage, putting into operation, modification or repair, wrong and/or negligent treatment and/or natural wear and tear.

(4.6.) We are entitled to make the subsequent performance owed by us dependent on the fact that the buyer pays the due purchase price, yet the buyer shall have the right to withhold a proportional part of such purchase price, which adequately reflects the commercial value of the defects, which incurred.

(4.7.) The buyer undertakes to give us sufficient time and opportunity for the supplementary performance to be provided by us by in particular making the allegedly defective goods available to us for inspection purposes by forwarding them at the buyer's cost to us. Such return shipment needs to be accompanied by a concrete written specification of the alleged defects plus a copy of the invoice/bill of lading. Any cost and expenditures relating to the inspection as to whether the respective goods are defective or not, in particular transportation, travel, labor and material cost shall be borne by us, if and to the extent it turns out that a defect actually existed. If a defect complaint of the buyer proves to be unjustified, we are entitled to reimbursement of the cost we incurred in this regard. In the event we reject a repair or substitute delivery, or, if these failed or are unacceptable to the buyer, it can at its own choice rescind the respective supply contract to the extent permitted by applicable laws, reduce the purchase price and/or claim damage compensation by taking the terms and provisions of Clause 6. below into due account. This shall however not apply in case of only minor defects.

(4.8.) The mere indication of product characteristics and other contents or performance descriptions do not constitute a quality or manufacturer warranty on our part. Any additional guarantees will only be assumed by us, if and provided they have been explicitly confirmed by us in writing. In any event claims of the buyer relating to product defects will be statute barred after twelve (12) months from the date of receipt of the respective goods by the buyer. The specific statutory law provisions of Section 479 of the German Civil Code same as any other statutory rights of the buyer on the grounds of fraudulent concealment of and intentionally caused defects shall remain unaffected hereof.

(4.9.) Any spare part supplies and returns of repaired goods are made on the basis of an adequate transportation and packaging flat fee in addition to the compensation for our performance rendered in this regard, unless being covered by our warranty obligations.

(4.10.) In any event we only accept returns of goods we supplied to the buyer within a time period of subsequent six (6) months from the invoice date. Goods, which are not contained in our actual price list, respectively have been modified are generally excluded from any exchange or crediting. The amount to be credited by the buyer for any returns, which have been accepted by the ELTEN GmbH in writing before, will be reduced forty per cent (40%) on the basis of the overall respective invoice amount. This shall equally apply for goods, which have already been price tagged by the buyer, or were returned in a damaged condition. In the event of any individual written arrangements entered into with the buyer in the afore-described areas (e.g. pertaining to product returns) these contractual terms shall then prevail.

(4.11.) For any defects in title, the terms and provisions of this Clause 4. shall apply mutatis mutandis.

5. Retention of Title and Other Collaterals

(5.1.) The following terms and provisions of this Clause 5. shall apply to the extent they are legally valid and enforceable in the territory the buyer has its seat of business or where the respective goods supplied by us are stored by the buyer.

(5.2.) DWe expressly retain title to the goods delivered by us until payment in full has been made by the buyer for all and any claims based on the respective supply contract, respectively relating to all actual outstanding payments within the overall business relationship with the buyer. In the course of current account transactions, such retention of title shall serve as collateral for any debit balance in our favor.

(5.3.) The buyer is entitled to resell the supplied goods in its ordinary course of business. This shall in particular, but without any limitation not be the case, if the buyer agreed on an effective prohibition of assignment with its customer. On the contrary, the transfer to the current account is permissible. Upon resale, the buyer does hereby already assign all claims, it may have against its customers and/or other third parties to us in the amount of the respective overall purchase price (including value-added tax plus ancillary cost and interest rates, if any). In the course of current account transactions, such retention of title shall serve as collateral for any debit balance in our favour. Subject to our revocation, the buyer shall remain entitled and obliged after this assignment to collect the outstanding amounts from its customers and/or other third parties. In particular if we become aware of a substantial deterioration of the buyer's financial credit-worthiness and soundness, we shall have the right to collect the amounts assigned to us ourselves.

If we have valid reasons to believe that our retention rights could be endangered (e.g. in the event we became aware of a deterioration of the buyer's financial soundness or in case of a repeated non-settlement of invoices after these became due), we shall be entitled in addition to any other remedies we may have in law or equity to request from the buyer to disclose our existing ownership of the goods, which are subject of our retention of title rights to any third parties, the buyer may resell these goods to or may make other dispositions in this regard.

(5.4.) The buyer shall have no right make any dispositions of the retained goods, which could negatively affect our rights, such as mortgaging, pledging or assigning those. In the event third parties attempt to make interventions or dispositions relating to the retained products, in particular to attach the receivables, the buyer shall immediately inform us by using the most expedient way of communication in text form to enable us to exercise our respective rights. In the event of any lawsuit on the grounds of Section 771 of the German Code of Civil Procedure, the buyer undertakes to reimburse us for any legal fees and other expenditures we may have incurred in this context, provided the third-party defendant fails to do so.

(5.5.) The buyer explicitly agrees that in any event, where our retention and other collateral rights might be negatively affected, we are entitled to retake the retained goods, or to otherwise secure our rights and that this will be no unlawful interference. To accomplish this, we are authorized to have access to all warehousing and office premises of the buyer to the extent required to enforce our rights. The buyer undertakes hereby to fully cooperate with us in this regard.

(5.6.) We hereby undertake to release existing collaterals in whole or in part upon request of the buyer, if the value of all securities for which we claimed title retention rights exceeds our respective claims by more than twenty percent (20%). The buyer shall maintain comprehensive insurance coverage, which shall include any retained goods to be insured against the risks of fire, water, theft and other customary operational risks and hereby assigns all claims against its insurer pertaining to these goods to us.

(5.7.) In the event our retention rights as contained in this Clause 5 were in whole or in part legally invalid and/or not enforceable, the buyer agrees that we will have in respect of all sums due or owing from the buyer under the respective supply contract or in the course of current account transactions a general lien on all goods and property of the buyer in our possession (although such goods or some of them may have been paid for. We shall be entitled after the expiration of ten (10) business days' written notice to the buyer to dispose of such goods and property as it deems fit and apply the respective proceeds towards such sums.

6. Limitations and Exclusion of Liability

(6.1.) UNLESS OTHERWISE SET FORTH HEREIN OR REQUIRED BY MANDATORY APPLICABLE LAWS, THE FOLLOWING PROVISIONS SET OUT OUR ENTIRE LIABILITY (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF OUR EMPLOYEES, AGENTS AND SUB-CONTRACTORS) TO THE BUYER IN RESPECT OF:

(6.1.1.) any breach of these General Terms;

(6.1.2.) any use made or resale by the buyer of any of the goods we supplied, or of any product incorporating any of the goods supplied; and

(6.1.3.) any representation, statement or tortious act or omission including negligence arising under or pertaining to any business transaction;

(6.1.4.) all warranties, conditions and other terms implied by statute or case law, are, to the fullest extent permitted by applicable law, excluded from any transaction taking place between the buyer and us;

(6.2.) Nothing in these General Terms shall however exclude or limit our liability:

(6.2.1.) for death or personal injury caused our negligence; or

(6.2.2.) for any gross-negligent or deliberate misconduct or omission on our part;

(6.2.3.) for any matter which it would be illegal for us to exclude or attempt to exclude its liability; or

(6.2.4.) for any fraud or fraudulent misrepresentation on our part.

(6.3.) SUBJECT TO CLAUSE 6.2, ABOVE, OUR TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF ANY TRANSACTION(S) SHALL NOT EXCEED EITHER:

(6.3.1.) The price of the respective order giving rise to the claim; or

(6.3.2.) the total price actually paid by the buyer to us under the respective transactions during the six (6) month-period preceding the event leading to the claim for damages by the buyer, whichever is smaller.

(6.4.) SUBJECT TO CLAUSES 6.2 AND 6.3 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE SHALL NOT BE, IN ANY CASE WHATSOEVER, LIABLE TO THE BUYER, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND/OR ASSIGNEES FOR

(6.4.1.) any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, or

(6.4.2.) any special, indirect, consequential, incidental or pure economic loss, costs, damages, charges or expenses of whatsoever kind or nature arising out or in connection with any transaction; or

(6.4.3.) any loss, cost, damage, loss of revenue, loss of profit or loss of use, incurred or suffered by the buyer or any third party resulting from a defect, infringement or alleged infringement, an incident, the failure of the goods we supplied or any failure to perform according to the respective transaction even if we were advised of the possibility of such damages. The buyer shall defend, indemnify, and hold us harmless from and against any claim based on such damage, loss or cost.

(6.5.) Under no circumstances shall we be liable to the buyer for any damages resulting from or arising out of any illegal and/or fraudulent use of the goods we supplied by the Buyer, by any third party or by the end-user.

7. Intellectual Property Rights, Usage of Picture Materials

(7.1.) The buyer hereby expressly acknowledges our exclusive and sole ownership, respectively usage rights pertaining to our intellectual property rights (including but without limitation trademark, design and utility model rights, technology patents, copyrights and the like) and undertakes to neither directly nor indirectly engaged into any activities, which could negatively impair these intellectual property rights.

(7.2.) We hereby grants to the buyer a nonexclusive and at any time revocable license to use our intellectual property rights during the time of existence of our business relationship with the buyer strictly limited to its own marketing purposes in the course and within the scope of the buyer's capacity to distribute our products. This shall in particular, yet without any limitation, apply for the usage of our logos, trademarks, pictures and photographs, text materials and the like same as any other proprietary intellectual property rights in advertising and sales promotion materials of the buyer, be it in print, PoS or Internet-based media, always provided those have been explicitly authorized by us prior to any usage (hereinafter collectively referred to as the "Materials").

(7.3.) In addition hereto, our usage agreement with the buyer covering the utilization of pictures, advertising materials and other materials relating to the trademarks ELTEN®, WORTEC®, JORI® und LOWA Work® in its respective actual version shall apply. It is a strict prerequisite for any usage of the aforesaid Materials by the buyer that it has duly signed the usage agreement and returned it to us, same as for granting to the buyer the license set forth in the foregoing Clause 7.2. to use our intellectual property rights. In any case of conflict between the terms and provisions of the usage agreement and these General terms, the usage agreement shall prevail.

(7.4.) In the event of any violation of the terms and provisions contained in this Clause 7, in particular in any case of in particular in any case of repeated violation, we reserve the right to temporarily suspend or generally stop future deliveries, irrespective of any other rights or remedies we may have in this regard.

(7.5.) In any event of termination of the business relationship with the buyer, regardless of the legal reason, the buyer undertakes to immediately discontinue offline and online usage of our intellectual property rights and Materials and to return any Materials we provided to the buyer for sales promotion purposes without any delay to us or to hand those out to a duly authorized representative of us.

(7.6.) Any individual farther-reaching rights contained in contractual arrangements with the buyer, in particular in the area of its e-commerce activities shall take precedence over these General Terms to the extent the latter are conflicting.

8. Data Protection, Confidentiality

(8.1.) In the area of data protection and in particular pertaining to the usage of personal data of the buyer by us, our separate data protection declaration shall imply, which can be visited at <https://elten.com/en/home/data-protection-declaration/>.

(8.2.) Any Materials and information made available by us to the buyer shall be treated strictly confidential, unless these are already in the public domain, or commonly known, or are obviously meant to be disseminated and shall not be copied, published or made available otherwise to third parties without our prior express written consent. The buyer undertakes to either at our choice immediately return them upon termination of the business relationship and/or to destroy them in line with the terms and provisions set forth in Clause 7 above.

9. Place of Performance, Venue, Applicable Law

(9.1.) The exclusive place of performance for all obligations, covenants and deliveries for both parties relating to the business relationship with the buyer shall be our German headquarters in Uedem, Germany, unless the nature of the specific matter mandatorily requires a different place of performance.

(9.2.) For all our business transactions at B2B level with commercial operators, legal entities or funds under public law, the exclusive place of venue for all disputes with the buyer is Kleve, Germany, unless applicable statutory laws mandatorily stipulate that the courts of a different venue have exclusive jurisdiction in a specific dispute. It is hereby clarified that the foregoing jurisdictional rule shall also apply for any case matters and controversies between the buyer and us, which could be based on noncontractual claims on the grounds of the EU Regulation No. 864/2007. We shall however also be entitled to bring legal action against the buyer before a court, which is competent at its seat of business and before any other court having jurisdiction to rule upon the case. This shall in particular, but without limitation apply for temporary relief proceedings.

(9.3.) The whole business relationship between the buyer and us including these General Terms shall be exclusively governed by the substantive laws of the Federal Republic of Germany, without regard to any conflict of law principles, and by excluding the application of the United Nations Convention on the International Sale of Goods of 1980 (CISG), if the buyer resides outside Germany. For the sake of clarification, such choice of law includes also Article 14. Para 1 of EU Regulation No. 864/2007 and shall therefore also apply for noncontractual claims on the grounds of the foregoing Regulation. In the event that in single cases foreign law has to be mandatorily applied to a specific dispute, our General Terms shall be interpreted in a manner, which ensures that their economic purposes are met to the maximum extent possible under these foreign laws.

10. Final Provisions

(10.1.) Any modifications and/or amendments of contractual arrangements including these General Terms are only binding if made in writing. This shall also apply for any change of this written format requirement itself.

(10.2.) Any failure by us to exercise any rights in whole or in part in our business relationship with the buyer will not constitute a waiver or prevent the subsequent exercise of such or any other rights.

(10.3.) Our employees, sales reps and agents or other representatives, which are not part of our executive management or have not been explicitly authorized accordingly, are not entitled to make any legally binding statements and declarations on our behalf, unless these have been explicitly approved by us in advance in writing.

(10.4.) Unless otherwise set out in the foregoing General Terms or in applicable statutory mandatory laws, any claims of the buyer, it may have against us, shall become statute barred within a time period of six (6) months from the date, where the buyer became aware of the respective facts or should have been aware of those. Irrespective of the foregoing and any existing knowledge of the buyer, any claims become statute barred after the elapse of three (3) years from the date of invoicing of the respective delivery, regardless of the legal nature of such claims.

(10.5.) If any provision of these General Terms is or will be held invalid or unenforceable, the remainder of such provision and of the other provisions in these General Terms shall continue to be in full force and effect and in substitution for any such provision held invalid or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the maximum extent permissible under applicable law.

(10.6.) We explicitly reserve the right to change and/or amend these General Terms if required from our point of view and shall then forward without delay to the buyer the respective modified new written version, which shall then entirely replace the current version hereof. This shall equally apply for any proceeding version of these General Terms. Any orders placed by the buyer and confirmed by us already upon the forwarding of the respective new version of the General Terms or before shall be executed on the basis of terms and provisions of the previous version.

Version: June 2019