§ 1 Applicability

(1) All deliveries, services and offers of the Seller shall be made exclusively on the basis of these General Terms and Conditions of Sale. These shall form part of all contracts which the Seller enters into with its contracting parties (hereinafter also referred to as ‘Buyer’ or ‘Client’) in relation to the services or deliveries it offers. They shall also apply to all future deliveries, services or offers to the Client, even if not separately agreed.

(2) Business terms and conditions of the Client or a third party shall not apply, even if the Seller does not expressly object to their application in any particular case. Even if the Seller refers to a letter containing or referring to the Terms and Conditions of the Client or a third party, this shall not constitute acceptance of the validity of those Terms and Conditions.

§ 2 Offer and conclusion of contracts

(1) All offers of the Seller are non-binding and subject to change, unless they are specifically marked as binding or contain a defined acceptance period. The Seller may accept orders within twenty-one days of receiving them.

(2) Only the purchase agreement concluded in writing is authoritative for the legal relationships between the Seller and the Client, including these General Terms and Conditions of Sale. This represents all agreements between the contracting parties with respect to the subject matter of the contract in full. Verbal promises before concluding the contract are not legally binding and verbal agreements between the contracting parties shall be replaced by the written contract unless it is expressly stated therein that they shall continue as binding.

(3) Amendments and additions to contracts concluded in writing, including these General Terms and Conditions of Sale, shall only be effective if made in writing. With the exception of managers and authorised signatories, the Seller’s employees are not authorised to consent to verbal agreements which deviate from this one. Telecommunication media shall apply as written form, in particular by fax or e-mail, if the copy of the signed confirmation is provided.

(4) Information from the Seller on the subject of the delivery or service (e.g. weights, measurements, practical values, capacity, tolerances, and technical data), as well as our depictions of these (e.g. drawings and illustrations) are only approximately applicable, unless strict compliance with these is necessary to use it for the intended contractual purpose. These are not guaranteed characteristics, but rather descriptions or indications of the deliveries or services. Deviations which are typical for the industry, and those take place on the basis of legal provisions or which represent technical improvements, as well as the replacement of components with equivalent parts are permitted provided this does not impede usability for the intended contractual purpose.
(5) The Seller shall reserve the right to the ownership or copyright to all offers and cost proposals offered by it, as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and support materials provided to the Client. The Client may not provide access to these items or their content to a third party without the Seller’s express consent, disclose them or use them themselves or through a third party or copy them. At the Seller’s request, these items shall be returned in full to the Seller and any potential copies destroyed if they are no longer required for the proper course of business or if negotiations have not led to a contract being concluded. Excluded from this, is electronically saving data provided for the purpose of usual data security.

§ 3 Prices and payment conditions

(1) The prices shall apply to the service and delivery scopes listed in the order confirmations. Additional or incidental services shall be charged separately. Prices shall be quoted in EURO ex works, plus statutory VAT, customs duties and charges on export shipments and other public charges.

(2) Insofar as the agreed prices are based on the list prices of the Seller, and the delivery only occurs more than four months after conclusion of the contract, the list prices of the Seller at the time of delivery shall apply (minus an agreed percentage or fixed discount).

(3) Invoice amounts shall be paid within seven days without any discount, unless otherwise agreed in writing. The payment date shall be the date it is received by the Seller. Payment by cheque is excluded, unless agreed separately in the individual case. In the event of delays in payment on the part of the Client, 5 % interest must be paid p.a. on the outstanding amounts from the day on which payment falls due; the imposition of higher interest rates and further damages in the event of delay shall remain unaffected.

(4) It is only permissible for the Client to set-off counter-claims or to withhold payments on the basis of such claims if the counter-claims are undisputed or established by law.

(5) The Seller shall be entitled to perform or provide outstanding deliveries or services only against advance payment or security, if after the conclusion of the contract circumstances become known which could substantially diminish the creditworthiness of the Client, and by which threaten payment of the outstanding claims of the Seller by the Client from the respective contractual relationship (including other individual orders for which the same framework agreement applies).

§ 4 Delivery and delivery period

(1) Deliveries shall be made ex works.

(2) Deadlines and dates for the supply of goods and services proposed by the Seller are always approximate provided that a firm deadline or date has not been expressly approved or agreed to. If shipment of the products was agreed, the delivery deadlines and dates refer to the moment of transfer to the forwarder, carrier or to any other third party commissioned with the shipment.

(3) The Seller may, without prejudice to its rights arising from delay on the part of the Client, demand that the Client agrees to an extension or postponement of deadlines or dates for the supply of goods
and services by the period of time during which the Client fails to meet its contractual obligations
towards the Seller.

(4) The Seller is not liable for the impossibility of delivery or delays in delivery, insofar as this is due to
force majeure or other events unforeseeable at the time of conclusion of contract (e.g. breakdowns of
any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of
manpower, energy or raw materials, difficulties in obtaining official permits, official measures that were
causd by improper or untimely delivery by suppliers), for which the Seller was not responsible. If such
events significantly complicate the delivery or service for the Seller or make this impossible and the
impediment is not just temporary, the Seller shall be entitled to withdraw from the contract. In the event
of obstacles of a temporary nature, the deadlines for the supply of goods and services shall be
extended by the term of the impediment plus a reasonable lead time. If the Client cannot be expected to
accept the delivery or service as a result of the delay, it may withdraw from the contract through an
immediate written declaration to the Seller.

(5) The Seller is only entitled to effect partial deliveries if

- the partial delivery is suitable for the Client within the scope of the intended contractual purpose,
- delivery of the remaining goods orders is guaranteed, and
- the Client does not hereby incur considerable additional expense or additional costs (unless the
  Seller agrees to accept these costs).

(6) If the Seller falls behind with a delivery or service or if, for whatever reason, a delivery or service
becomes impossible for it, the liability of the Seller shall be restricted to claims for damages in
accordance with § 8 of these General Terms and Conditions of Sale.

§ 5 Shipping, Packaging, Transfer of risk, Acceptance

(1) The type of shipping and packaging shall be according to the Seller’s judgement.

(2) The risk shall be transferred to the Client at the latest when the goods are transferred to the carrier,
freight forwarder (whereby the beginning of the loading process is assumed) or otherwise with the
fulfilment of the shipping by a third party. This shall also apply to partial deliveries or if the Seller still has
other services to perform (for example, shipping or installation). If the dispatch or transfer is delayed as
a result of circumstances caused by the Client, the risk shall transfer to the Client on the day on which
the delivery item is ready for dispatch and the Seller has notified the Client of this.

(3) The Client shall bear storage costs after the transfer of risk. Where the Seller stores the goods, the
storage costs are 0.25% of the invoice amount of the delivery items to be stored per week commenced.
The right to assert and prove additional or lower storage costs is reserved.

(4) The shipment shall be insured against theft, breakage, transport, fire and water damage or other
insurable risks by the Seller only at the express request of the Client and at the latter’s expense.

(5) If an acceptance has taken place, the purchased item shall be deemed as accepted, if
• the delivery and, if the Seller is also responsible for the installation, the installation has been completed,
• the Seller has informed the Client of notional acceptance according to this § 5 (5) and has requested acceptance,
• twelve working days have passed since the delivery or installation or the Client has begun to use the purchased item (for example, the supplied equipment has been commissioned) and in this case six working days have passed since the delivery or installation and
• the Client has deferred acceptance within this period due to another reason due to an omission on the Seller’s part which has made using the purchased item impossible or fundamentally affected.

§ 6 Warranty, Material defects, Notification of defect

(1) The warranty period shall amount to one year from delivery or, if an acceptance is required, from the acceptance. This period shall not apply for claims for damages from the Client due to injury to life, body or health or due to wilfully or grossly negligent obligation breaches by the Seller or its vicarious agents which are respectively time-barred according to the statutory provisions.

(2) The supplied goods must be thoroughly inspected immediately following delivery to the Client or to the third party specified by it. They shall be deemed to be approved if the Seller has not received a written notification of defects pertaining to visible defects or other defects visible in the course of a prompt, thorough examination within seven working days following delivery. With respect to other defects, the supplied goods shall be deemed approved by the Buyer if the Seller does not receive the notification of defect in which the defect has been indicated within seven working days; if the defect was perceived at an earlier time by the Client during normal use, this earlier time shall be deemed as the beginning of the notification period. At the Seller’s request, a contested purchased item shall be returned to the Seller, carriage paid. In the case of justified notifications of defect, the Seller shall reimburse the costs of the reasonable delivery; this shall not apply if the costs are increased because the supplied good is at a location different from the location of its designated use.

(3) In the event of defects to the delivered goods, the Seller shall be obligated and authorised to a repair or replacement delivery within a reasonable period of time. If this fails, i.e. the repair or replacement is impossible, unreasonable, refused or there is an unreasonable delay to this, the Client may withdraw from the contract or reduce the purchase price appropriately.

(4) If a defect is the fault of the Seller, the Client may request compensation under the prerequisites defined in § 8.

(5) In case of defects of components of other manufacturers, which the Seller cannot eliminate for licensing or factual reasons, the Seller shall assert its warranty claims against the manufacturers and suppliers for the account of the Client or assign these to the Client. Warranty claims against the Seller shall exist in the case of such defects in accordance with the other conditions and these General Terms and Conditions of Sale only if the judicial enforcement of the above claims against the manufacturer and supplier was unsuccessful or, for example, due to insolvency, is futile. During the period of the
dispute, the limitation period of the respective warranty claims of the Client against the Seller shall be suspended.

(6) The warranty shall not apply if the Client changes the delivery item without the consent of the Seller or has it modified by third parties, thus making the elimination of the defect impossible or unreasonably difficult. In any case, the Client shall bear the additional costs incurred by the change to remedy the defect.

(7) A delivery of used goods which is agreed with the Client in individual cases shall take place to the exclusion of any warranty for material defects.

§ 7 Property rights

(1) The Seller shall guarantee that according to this § 7 the supplied goods are free from commercial property rights or copyrights belonging to third parties. Each Contracting Party shall immediately inform the other Contracting Party in writing if claims for breaching such rights have been asserted against them.

(2) In the event that the delivery object violates a commercial property right or copyright of a third party, the Seller shall modify or exchange the delivery item at its own discretion and expense so that the delivery item no longer violates third party rights, but still continues to perform the contractually agreed functions, or provide the Client with the right of use by concluding a licence agreement. If the Seller fails to this within an appropriate time period, the Client is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any compensation claims of the Client shall be subject to the restrictions of § 8 of these General Terms and Conditions of Sale.

(3) In case of defects of products of other manufacturers or pre-suppliers that are delivered by the Seller, the Seller shall according to its discretion assert its claims against the manufacturers and/or suppliers for the account of the Client or assign these to the Client. Claims against the Seller shall exist in such cases in accordance with this § 7 only if the judicial enforcement of the above claims against the manufacturers and/or suppliers was unsuccessful or, for example, due to insolvency, is futile.

§ 8 Liability for compensation

(1) The Seller’s liability for compensation, regardless of legal reason but especially due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and unlawful acts shall be limited according to this § 8.

(2) The Seller shall not be liable in cases of simple negligence on the part of its bodies, legal representatives, employees or other agents, in so far as this is not a breach of fundamental contractual obligations. Fundamental contractual obligations are the obligation to timely delivery and installation of a product free of significant defects which considerably impair its ability to function or usability, as well as advice, protection and care obligations intended to allow the Client to use the device in a contractually compliant manner or to serve the protection of the life and health of the Client’s employees or the protection of their property from significant damage.
(3) Insofar as the Seller is fundamentally liable for damages in accordance with § 8 (2), this liability shall be limited to damages which the Seller foresaw as a possible consequence of a breach of contract upon conclusion of the contract or should have foreseen through the application of due diligence in consideration of the circumstances, which were known to it or which it should have recognised. Indirect damage and consequential damage, which are the result of defects in the delivery item, are also only compensable insofar as such damage is typically to be expected in the case of the intended use of the delivery item.

(4) In the case of liability for simple negligence, the Seller’s obligation to pay compensation for material damages and other damage to property resulting from this shall be limited to the amount of EUR 5,000,000 (in words: five million) for each compensation case (corresponding to the current coverage amount of its product liability insurance or personal liability insurance) even if it concerns a breach of a fundamental contractual obligation.

(5) The above disclaimers and limitations of liability also apply to the same extent in relation to the management bodies, legal representatives, employees and other vicarious agents of the Seller.

(6) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services due, this is done free of charge and to the exclusion of any liability.

(7) The restrictions of this § 8 shall not apply for the liability of the Seller due to wilful behaviour, for guaranteed features, due to injury to life, body or health or according to the Produkthaftungsgesetz [German Product Liability Act].

§ 9 Retention of title

(1) The following agreed retention of title shall serve as security for all of the existing current and future claims of the Seller against the Buyer arising from the existing supplier relationship for components of supporting structures (rack systems) and electronic installation materials between the contracting parties (including balance claims arising from a current account relationship limited to this supplier relationship).

(2) The goods supplied by the Seller to the Buyer shall remain the property of the Seller until full payment of all claims arising from the business relationship. The goods, as well as the substitute goods collected by retention of title according to the following conditions shall be hereinafter referred to as ‘Retained Goods’.

(3) The Buyer shall keep the ‘Retained Goods’ safe for the Seller free of charge.

(4) The Buyer shall be entitled to process and to sell the Retained Goods up to receipt of recovery (9) in the ordinary course of business. Goods may not be pledged or assigned as security.

(5) If the Retained Goods are processed, as agreed, on behalf of and on the account of the Seller as manufacturer and the Seller shall acquire the ownership directly or – if the processing occurs from
materials from multiple owners or the value of the processed items is higher than the value of the Retained Goods – the co-ownership (fractional ownership) of the newly-made item in relation to the value of the Retained Goods to the value of the newly-made items. For the case that no such ownership acquisition should be entered into by the Seller, the Buyer shall transfer its future ownership or – in the aforementioned relationship – co-ownership of the newly-made items to the Seller as security. If the Retained Goods are combined with other items to homogeneous items or inseparably mixed and if one of the other items is viewed as the main item, the Seller shall transfer, if the main item belongs to it, the co-ownership of the homogeneous item proportionally to the Buyer in the relationship referred to in Sentence 1.

(6) In the case of selling the Retained Goods on, the Buyer shall assign the claim arising against the purchaser – in the case of the Seller’s co-ownership to the Retained Goods in proportion to the co-ownership portion – to the Seller as security. The same shall apply for other claims which substitute the Retained Goods or otherwise arise from the Retained Goods, such as for example, insurance claims or claims arising from unlawful actions in the event of loss or destruction. The Seller shall revocably authorise the Buyer to collect claims assigned to the Seller on its own behalf. The Seller may only revoke this collection power in the event of enforcement.

(7) If third parties have access to the Retained Goods, in particular via a pledge, the Buyer shall immediately inform them of the Seller’s ownership and inform the Seller of this in order to allow it to execute its property rights. If the third party is not capable of reimbursing the Seller for the associated court or extrajudicial costs, the Buyer shall be liable against the Seller for these.

(8) The Seller shall release the Retained Goods and their substitute items or claims if their value exceeds the secured claims by more than 50%. The Seller shall choose the items to be released.

(9) If the Seller withdraws from the contract due to behaviour by the Seller that is contrary to the contract (enforcement event), – in particular payment delay – it shall be entitled to demand the return of the Retained Goods.

§ 10 Jurisdiction, Place of performance

(1) If the Client is a businessperson, a legal person under public law or a special asset under public law, or if it has no general place of jurisdiction within the Federal Republic of Germany, the place of jurisdiction for all disputes arising from this business relationship between the Seller and the Client shall be Hamburg. Mandatory legal provisions on exclusive jurisdiction shall not be affected by this provision.

(2) The place of performance for all obligations arising from the business relationship shall be Hamburg, unless otherwise stipulated. If the Seller is also responsible for the installation, the place of performance shall be the place where the installation shall be carried out.

§ 11 Final provisions

(3) Insofar as the contract or these General Terms and Conditions of Sale contain omissions, then to fill these, those legally valid provisions are deemed to be agreed which the contracting parties would have agreed according to the commercial objectives of the contract and the purpose of these General Terms and Conditions of Sale, had they known of the omission.

Note:

The Client notes that the Seller stores data from the contractual relationship under Section 28 Bundesdatenschutzgesetz [German Federal Data Protection Act] for the purposes of data processing, and reserves the right, insofar as necessary to performance of the contract, to transmit the data to third parties (e.g. insurers).

Hamburg, 2018-02-12