General Terms and Conditions of Sale and Delivery As at: 27 November 2017

§ 1 Scope

1. Our conditions only apply to entrepreneurs in the sense of § 310 of the German Civil Code.
2. The following conditions shall apply to all our contracts, deliveries and further services, unless they are modified or excluded with our explicit written approval. They also apply in particular when we unreservedly supply goods or services, even if we are aware, when doing so, of contrary or different conditions on the part of the customer. The general terms and conditions of our contractual partner shall only be applicable with our written consent.
3. Our terms shall also govern all future contracts and orders even if this text is not sent again to our contractual partner with our quotation or confirmation of order.

§ 2 Offer and Conclusion

1. Our offers are subject to change. Contracts and other agreements shall only be binding upon our written confirmation or our delivery performance.
2. All agreements made between us and our customers are to be confirmed in writing at the moment of entering into such an agreement.

   Accords reached between our employees or representatives and our customer at the moment of entering into an agreement or afterwards must be confirmed in writing before they can become effective, with the representation rights of our employees and representatives subject to this limitation.

§ 3 Prices, Price Increase and Payment

1. Our prices apply to delivery ex-works plus packaging, carriage, postage, insurance and statutory value added tax (VAT), which we will calculate at the rates applying on the date of delivery or performance.
2. This condition applies to orders where there is an agreed delay of more than four months between conclusion of the agreement and completion of the order, or if such a delay is attributable to our suppliers. If our purchase costs increase during this period, or if a valid wage agreement leads to increased salary costs, we shall be entitled to increase the agreed purchase price in proportion to the corresponding increase in our own purchase prices and/or wage costs.
3. Our invoices are payable within 14 days after receipt without any deduction, unless otherwise agreed upon or otherwise specified in our offer or our order confirmation. If a discount settlement has been agreed upon, it only applies in case all older outstanding accounts are settled at the same time.
4. Once the payment deadline has passed, we shall be entitled to interest on overdue accounts of 9% above the current base rate. This does not affect our right to further claims– particularly in the event of delay by our contractual partner.
5. Settlement with counter-claims that are not disputed by us and not legally established is not permitted. The right of retention on the grounds of claims other than those arising from the same contractual relationship is excluded if such claims are not recognized by us and not legally established.

§ 4 Deterioration of Capability of our Contractual Partner

1. In the event of one of the situations listed below arising, or if it subsequently comes to our knowledge that such a situation already existed when the agreement was entered into, we may ask our contractual partner to pay the agreed price in advance. This applies to the following situations:

   If legal or out-of-court insolvency or conciliation proceedings are taken against the assets of our contractual partner, or if such proceedings have been abandoned on account of being too few assets to recover, or if there is a written statement from a bank or credit reference agency that places the creditworthiness of our contractual partner in doubt, or if a check or draft received by us from our contractual partner is not cleared and/or is protested.
2. If, after being granted reasonable extra time by us to do so, our contractual partner fails to make the advance payment to which we are entitled, despite being reminded that we will refuse to provide further services once the period has expired, we shall be entitled to withdraw from the agreement or demand compensation for loss and damage, with respect exclusively to the part of the agreement not yet fulfilled by us.

§ 5 Dispatch and transfer of risk / insurance

1. Irrespective of the location from which the goods are dispatched, the risk of accidental loss or accidental impairment shall pass to our contractual partner, including in those exceptional cases, in which shipping and/or assembly at no charge have been agreed with the contractual partner.
2. If the goods are not to be shipped or if shipment is delayed at the request of our contractual partner or by action attributable to it, the risk of accidental loss and accidental deterioration of the goods shall be transferred at the moment in which we notify our contractual partner that the consignment is ready for shipment. In this case, goods shall be stored at our contractual partner's cost and risk.

§ 6 Delivery and Performance Dates and Deadlines

1. Deadlines and dates for delivery and performance are only binding if explicitly confirmed by us in writing.
2. A period of performance or delivery determined according to its duration begins with the day on which agreement is reached on all details of the contents of the agreement, no earlier than the date on which the order is accepted by us, but not before the contractual partner has obtained all the required documentation, approvals, and permits, and not before the contractual partner has settled any outstanding payment.
3. Delivery or performance deadlines or dates shall be deemed kept, if the goods or in the event that the goods cannot or are not to be sent, when we notify the buyer prior to the deadline that the goods are ready for dispatch.

In case of installation services due by us, it is our duty to provide the delivery item ready for acceptance by the agreed date or by expiry of the agreed period.

4. Deadlines and dates shall be extended or postponed – also within existing delay – reasonably with the occurrence of force majeure and unforeseen impediments which occur after conclusion of the contract, for which we are not responsible, insofar as such impediments as proven have a substantial influence on the delivery or service. Strikes and lock-outs shall in any case be deemed hindrances for which we are not liable pursuant to this section. The aforementioned provisions shall also apply if the delaying circumstances have occurred to our supplier or their sub-suppliers. Insofar as such conditional delays last longer than 8 weeks, the contractual partner is entitled to withdraw from the contract whereas further claims shall be excluded.

5. Delivery deadlines shall be extended and dates postponed by the period of time in which our contractual partner is in default with his obligations – within a current business relationship also from other contracts – or the contractual partner fails to provide the prerequisites required for the start or continuation of the works and in particular, if the contractual partner fails to submit the necessary documents, plans or other requirements. Our contractual partner shall bear the burden of proof as far as the creation of the necessary conditions and provisions of the required documents, plans or specifications are concerned.

§ 7 Declaration regarding the Exercising of Rights after Setting a Deadline for Subsequent Performance

In all cases in which our contractual partner has granted us a period of grace for subsequent performance for non-delivery or our failure to duly effect delivery and this period of grace has lapsed without effect, we shall be entitled to ask the contractual partner to inform us within a reasonable period whether he will assert claims for performance/subsequent performance despite the fact that the period of grace has lapsed or whether he shall opt for any other optional rights at its discretion. If our contractual partner fails to make such a declaration within the reasonable time provided, all claims for performance/supplementary performance shall be excluded. If our contractual partner declares, within the reasonable period established, that he continues to demand performance/supplementary performance, this does not affect its entitlement to set a new deadline, or in the event of expiry without result, to exercise any alternative rights in this respect.

§ 8 Delay, Exclusion of Obligation to Perform the Contract

If we are in arrears with delivery, or if our obligation to fulfil the terms of this agreement is excluded under the terms of § 275 of the German Civil Code, we shall be liable for loss and damage only to the extent envisaged by § 12 section 3, subject to the following extra conditions:

1. If we are in default with the delivery and if there is merely a case of slight negligence on our part than claims for damages of our contractual partner shall be limited to a flat rate compensation for default in the amount of 1% of the delivery value for each completed week of the default a maximum however up to 8% of the delivery value, whereby we however reserve the right to prove that no damages at all or only slight damages were suffered as a result of the delay in delivery.

2. In the event of delay on our part, the contractual partner shall only be entitled to claim for loss or damage if he has first granted us a reasonable (six-week minimum) deadline extension, with an entitlement to set a reasonable deadline extension of fewer than six weeks if, in an individual case, a minimum deadline extension of six weeks cannot meet its requirements.

3. As a general rule, any right to claim rescission of contract or any claim for damages to which the contractual partner is entitled shall be limited to the unperformed part of the contract, unless the contractual partner is reasonably no longer interested in the performed part of the contract.

4. Any claims for damages asserted against us for delay or exclusion of the obligation to perform the contract under § 275 of the German Civil Code shall become statute-barred after one year from the commencement of the statutory period of limitation.

5. The above provisions shall not apply to damages to life, body, health or freedom of our contractual partner as well as to damages caused by deliberate action or gross negligence on behalf of us, our legal representatives or persons employed in the performance of our obligations; in events of default they shall also not apply if a fixed date has been agreed.

§ 9 Default in Acceptance of our Contractual Partner

1. In events of default in acceptance in whole or in part on behalf of our contractual partner, we shall be entitled either to withdraw from the contract or claim compensation for damages in lieu of performance, provided an appropriate grace period specified by us with threat of denial of acceptance after expiry of the period has expired inefficaciously, but limited to the part of the contract not yet performed. We are not entitled to a claim for compensation of damages if our contractual partner is not at fault concerning the default in acceptance. Our statutory rights due to default in acceptance remain unaffected.

2. The contractual partner shall indemnify our inventory costs, warehouse rent and insurance expenses regarding goods being due to acceptance but have not been accepted. However, we shall not be obliged to insure any stored goods.

3. If delivery delays by request of our contractual partner of if he defaults in acceptance, we shall be entitled to charge storage expenses amounting to the prevailing storage costs for the location for each month commenced after expiry of one month after transmitting our notification of readiness for dispatch, whereas we reserve to claim a higher damage if actually occurred.

§ 10 Compensation instead of Performance

If we are entitled to a claim for damages instead of the service we can demand 15% of the contractual price share, which corresponds with the affected part of the object of delivery or service, without proof as compensation, whereby our contractual partner reserves the right to prove that no damages at all or only slighter damages were suffered. This shall not affect our right to assert damages in an amount actually incurred in excess of this amount.

§ 11 Assembly Services

1. In case of provision of assembly work, our contractual partner is obliged to punctually create all conditions, such as ensuring the required approvals and preparing the assembly site so that all work can be done without hindrance, for the start of installation.

2. We are only under a liability to assemble, once our contractual partner has approved our drawings of the items to be installed with the measurements visible on them and only once he has confirmed in writing that all preparations for assembly are completed.

3. Our contractual partner has to inform us immediately about any obstacles or difficulties regarding assembly. Should this not occur, our contractual partner is obliged to reimburse all thus incurred costs.

4. Assembly work shall be accepted officially by signing a take-over protocol. Assembly services shall also be deemed to have been accepted, if our contractual partner does not meet the request for acceptance or signing of the take-over protocol within 10 days, even though the service is ready for acceptance or our contractual partner has already put the installed item into operation and uses it for a period of more than four weeks without notifying of not just negligible defects.

§ 12 Deficiency Liability and Compensation

1. The contractual partner's right to assert claims for defects of the objects supplied by us shall become statute-barred upon one year after delivery. The limitation period stipulated by law shall however apply to claims for damages and reimbursement of expenses pursuant to §§ 437 subsection 3, 439 para. 2 + 3, 634 subsection 4 of the German Civil Code in case of personal injuries caused by us to contractual partner or damages caused by willful or grossly negligent breach of duty through us, one of our representatives or persons engaged in the performance of our obligation.

   The statutory period of limitation shall also apply if the defect was concealed by us.

   As far as the events described in §§ 439 para. 2+3, 445 a para. 1 of the German Civil Code are concerned, the regulations stipulated therein shall apply, the aforementioned sentences 1, 2 and 3 shall, however, also apply to claims for damages.

2. Our contractual partner's rights in relation to defective goods shall be governed by the legal regulations with the proviso that our contractual partner shall be obliged to grant us an adequate period of grace for subsequent performance of at least four weeks in which we can remedy the defect or supply a fault-free replacement. Our contractual partner shall, however, have the right to set an adequate deadline of less than four weeks in individual cases where a period of grace of four weeks is unacceptable to the contractual partner.

   If only part of the goods delivered by us is defective, our contractual partner's right as to cancellation of the contract or damages instead of performance shall be limited to the defective part of the delivery/services unless this limitation would be impossible or unacceptable for our contractual partner.

   Our contractual partner's claims for the damages for defective delivery or performance shall be limited to the scope resulting from the following paragraph 3.

3. Our liability for damages arising from death, personal inquiry, damage to health or loss of freedom on the part of our contractual partner is, if attributable to culpable infringement of obligations, neither excluded nor limited.

   In all other cases of damages on the part of our contractual partner, we shall only be liable in the event of willful or gross negligence on our part, or that of our legal agents or representatives.

   If the damage is just due to minor negligence on our part, we shall only be liable to the extent that there is major infringement of contractual obligations, limited furthermore to the damage reasonably considered typical for an agreement of this type.

   Any claims for damages by our contractual partner for violation of duties, liability in tort or on any other legal grounds shall otherwise be excluded.

   The aforementioned limitations of liability shall not apply to the absence of warranted characteristics and warranties, if and to the extent that the purpose of the representation was to protect the partner against damage which was not caused to the goods supplied per se.

   If our liability is excluded or limited, this also applies to our employees, representatives and agents.

   The aforementioned exclusion of liability shall in any case also apply to consequential damage or loss.

   The above exclusion of liability shall however not apply to claims according to the Product Liability Act.

§ 13 – Manufacturer's Liability

1. Our contractual partner shall indemnify us against any claims for damages asserted against us by third parties based on the regulations as to tort or product liability or by virtue of any other regulations for defects or non-conformities of goods manufactured or delivered by us or our contractual partner to the extent that such claims would also be justified against our contractual partner or if the only reason why such claims are no longer justified is that they have in the meantime become statute-barred. Subject to these conditions, our contractual partner shall also indemnify us against costs of litigation which might be commenced against us based on such claims.

   If any claims that have been asserted would also be justified against us or if the only reason why they are no longer justified is that they have in the meantime become statute-barred, we shall be entitled to proportional indemnification by our contractual partner the amount and scope of which shall be based on § 254 of the German Civil Code.

   Our rights of indemnity, claims for expenses and damages pursuant to §§437 (3), 478 and 634 (4) of the German Civil Code or any other legal grounds shall remain unaffected by the above provisions; however, they do apply to the limitations in accordance with § 12 Section 3 of the present terms.

2. The contractual partner undertakes to pay all employed workers in accordance with at least §§1, 2 and 20 of the German Minimum Wage Law as well as other legal provisions and wage agreements, for whose fulfilment the employer shall be liable according to §13 of the German Minimum Wage Law in connection with §14 of the Posted Workers Act and/or comparable provisions.

The contractual partner undertakes to prove through submission of a written confirmation by a tax consultant or an auditor, immediately on demand, but no later than 7 days after receipt of the respective demand, that his employees have received the legal national minimum wage according to the specifications of the German Minimum Wage Law as well as other legal provisions and wage agreements, for whose fulfilment the employer shall be liable for according to §13 of the German Minimum Wage Law in connection with §14 of the Posted Workers Act and/or comparable provisions. If the contractual partner fails to present evidence, inTEC is entitled to a reasonable retention relating to due payments.

The contractual partner undertakes to ensure, that potential subcontractors, commissioned by him, are contractually obliged to fulfill the guidelines of the German Minimum Wage Law, in particular §§1, 2 and 20 of the German Minimum Wage Law and to include the commitment to comply with the specifications of the German Minimum Wage Law, in particular §§1, 2 and 20, to the contractual relationship with further subcontractors.

In case of breaches of the aforementioned obligation to provide evidence upon request as well as breaches against the obligations resulting from the German Minimum Wage Law, inTEC is entitled to the extraordinary termination without previous notice of all existing contracts between inTEC and the contractual partner.

The contractual partner indemnifies inTEC against all claims in case of an infringement against the contractor by the contractual partner or his subcontractor of the German Minimum Wage Law as well as other legal provision and wage agreements, for whose fulfilment the employer shall be liable for according to § 13 of the German Minimum Wage Law in connection with § 14 of the Posted Workers Act and/or comparable legal provisions.

§ 14 Reservation of Title

1. Until all our current or future claims due from our contractual partner have been satisfied, our contractual partner shall grant us the following collateral which we shall release as we see fit if its nominal value clearly exceeds our claim by more than 20%:

   The delivered goods shall remain our property.

   Processing and alteration are always carried out for us as producer but without any obligation. If items that are not our property are used in the processing of items subject to retention of title, we then acquire part-ownership of the resulting end product, in proportion to the value of our item relative to the finished article at the moment of processing.

   If our goods are combined into one other whole object together with other movable property and the other object used for creating the new object can be deemed to be the main object, our contractual partner shall transfer co-ownership of the new item in the ratio of the value of the goods delivered by him to the value of the other items used at the time of combining if this main object belongs to our contractual partner.

   Any transfer carried out by us which is required for the acquisition of ownership or joint ownership is to be replaced by the agreement so reached, by which our contractual partner is to hold the item as a borrower on our behalf or, if he does not own the item itself, with the transfer to us immediately replacing enforcement of the claim against the owner for the return of the goods.

   Items to which we hold title or joint title under the above terms are to be regarded as items subject to retention of title, as follows.

2. The contractual partner shall be entitled, only within the ordinary course of business and as long as it is not default, to resell, process or combine with other items or otherwise incorporate the conditional commodity. Any receivables created concerning the goods subject to reservation based on disposal, processing/combination with other objects or by virtue of any other legal grounds shall be assigned to us in part or in whole as of today in proportion to the coownership rights which we are entitled in the sold or processed object. If such receivables are made subject to current account, this assignment shall also refer to any outstanding balance claims. This assignment shall have priority over any other claims.

   We authorize our contractual partner, subject to revocation at our sole discretion, to collect on any assigned claims. Amounts so obtained by the contractual partner are to be transferred to us immediately, insofar as and as soon as our claims are due. If our claims are not yet due, the amounts collected by the contractual partner are to be accounted for separately.

   Our authority to collect the receivables ourselves remains unaffected. We do however undertake not to bring any claim for as long as our contractual partner remains up to date with his agreed payment commitments, does not fall into arrears with payments and does not, in particular, become the subject of insolvency or bankruptcy proceedings or suspension of payments.

   On our request, our contractual partner shall be obliged to disclose the assigned claims and their debtors to us, to hand over the related documents to us and to give us all information required for collection. If we are entitled to collect the claims, our contractual partner shall be obliged to give us all information required for collection and to inform third-party debtors about the assignment, with us being entitled to inform the debtors about the assignment ourselves.

   With the stoppage of payment, filing for or initiation of insolvency proceedings, and/or an in-court or out-of-court settlement, our contractual partner's right to re-sale, process or combine the goods subject to retention of title and the authorization to collect the ceded payable amounts expires even without our revocation.

3. Our contractual partner is to give us immediate access to the third party holding items that are subject to retention of title, and also to such ceded claims. Any costs which might be incurred for intervention or protection against intervention shall be borne by the contractual partner.

4. The contractual partner is obligated to treat the objects subject to retention of title with care and to insure them adequately and at his own expense to cover fire, water and theft damage for their new replacement value.

5. In case our contractual partner breaches any of his obligations, especially in case of delay in payment, we are entitled to take possession of, at the expense of our contractual partner, the goods subject to retention of title or to request assignment of the contractual partner's claims for surrender against third parties, without first or subsequently having to declare our intention to withdraw from the agreement. We shall not withdraw from the agreement particularly in case of withdrawal or attachment of the item subject to retention of title unless we explicitly declare this in writing.

6. If our retention of title is not applicable to deliveries abroad or for other reasons or if we lose our title to the reserved property for any other reason, our contractual partner is obliged to immediately grant another security for the reserved property or another security for our accounts receivable effective in compliance with the law applicable at the contractual partner's place of business and which conforms as closely as possible with the retention of title according to German law.

§ 15 Ownership of Documents, Confidentiality

1. Illustrations, drawings, calculations, samples and models remain our property. Our contractual partner shall undertake not to allow any form of access to such items to third parties without our express approval. Our contractual partner undertakes to pay damages of € 6,000.00 for each individual event of negligent or intentional violation of the aforementioned obligations as liquidated damages. This shall not affect our right to request for compensation for damage actually incurred in excess of the liquidated damages.

2. The parties to the contract shall mutually undertake to treat all commercial and technical details of which they become aware as a result of their collaboration and which are not in the public domain as if they were their own commercial secrets and in respect to these to maintain absolute confidentiality towards third parties. The contractual partners mutually undertake to pay damages of € 6,000.00 for each individual event of negligent or intentional violation of the aforementioned obligations as liquidated damages. This does not affect the right to request for compensation for damage actually incurred in excess of the liquidated damages.

§ 16 Industrial Property Rights

1. If a product is to be manufactured according to drawings, designs or other specifications of the contractual partner, the contractual partner guarantees not to violate any third party rights, in particular patents, registered designs and other industrial and intellectual property rights. The contractual partner herewith indemnifies us against third party claims which might arise as a result of potential violation of such rights. Furthermore, our contractual partner shall bear the full costs incurred due to the assertion of such claims by third persons and/or by our defense against such claims.

2. If results, solutions or technologies emerge in the course of our development work, which are legally protectable in any way, we shall be the sole holder of the property rights, copyrights and rights of beneficial use; we shall be entitled to make the respective applications for property rights on our own behalf and in our own name exclusively.

§ 17 Assignment

The assignment of any kind of claims against us by our contractual partner is only permitted with our written consent.

§ 18 Place of Performance, Court of Jurisdiction, Applicable Law

1. The place of performance and exclusive place of jurisdiction for deliveries, services and payments (including checks and bills of exchange) as well as all disputes arising between the parties is Solingen insofar as our contractual partner is a merchant. We do, however, reserve the right to proceed against our contractual partner in an alternative jurisdiction under the terms of §12 ff. of the German Code of Civil Procedure.

2. The contractual relation between the parties shall exclusively be subjected to German law excluding the international sales convention and in particular the UN Convention on Contracts for the International Sale of Goods and other international conventions regarding the uniform sale of goods.

inTEC GmbH
Lackiersysteme

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