1. Scope; General

1.1 The following delivery and payment terms and conditions apply exclusively to all deliveries, services, contracts and offers (further ‘deliveries’) and only in relation to companies, legal entities governed by public law and special funds, as well as all enterprises in accordance with Section 310 Paragraph 1 of the German Civil Code. We hereby expressly reject any of our customer’s contrary terms and conditions; they apply only where we have expressly accepted them in writing. Also, in case we participate in a customer’s electronic platform and activate any dialogue between us and a customer, it is assumed that we do not comply with all or any of the aforementioned general terms and conditions of the customer.

1.2 The delivery and payment terms and conditions apply in the version as amended from time to time as a framework agreement with the same customer for future contracts for the sale and/or delivery of movable property even if they are not expressly re-agreed; we shall promptly inform the customer of any changes to our delivery and payment terms and conditions where such changes are not in agreement with the relevant statutory provisions or the German Civil Code. We hereby expressly accept these in writing. Where a customer’s contrary terms and conditions are only incorporatable into the contract if and to the extent we have expressly agreed to their application.

1.3 These delivery and payment terms and conditions are deemed accepted by the customer upon placement of an order and in any case no later than acceptance of the merchandise or service. The customer’s general terms and conditions of purchase and payment and reference to any such third-party terms and conditions are only incorporated into the contract if and to the extent we have expressly agreed to their application. This requirement for agreement applies in any case, for example also where, we being aware of the customer’s general terms and conditions of purchase and payment and/or the reference to any such third-party terms and conditions, does not object to an acceptance of terms of any other general terms and conditions of the customer.

1.4 Illustrations, descriptions, measurements and weights or other performance data in books of samples, price lists, general terms and conditions of business, carry out unconditional delivery to the customer. The same applies to our installation guidelines, which are the sole basis on which we send out requested figures.

1.5 Legal statements and notices which the customer is required to give us following entry into the contract (e.g. the so-called ‘material contractual obligations’) by us, our legal representatives, employees (e.g. advertising messages) in connection with the product supplied by us. In particular the occurrence of a technically unallowable leakage in the mechanical seal shall not be recognized as a product defect. Only after delivery, in case no compensation is due, the actual installation conditions can be decided, based on our experience and the best demonstrated available technical knowledge. Leakage is unallowable high and as such does not meet the product standard that may reasonably be expected.

1.6 The customer’s claims for defects assume that it has complied with its statutory duties to examine the merchandise right on delivery or in the course of timely notification to reject the delivery and take appropriate action. The customer shall immediately on receipt of the merchandise make it available for the purpose of inspection and must, in particular, surrender the rejected merchandise for the purposes of inspection. Where we deliver a subsequent performance covers neither the de-installation of the defective merchandise nor re-installation unless the parties (e.g. advertising messages) in connection with the product supplied by us. In particular the occurrence of a technically unallowable leakage in the mechanical seal shall not be recognized as a product defect. Only after delivery, in case no compensation is due, the actual installation conditions can be decided, based on our experience and the best demonstrated available technical knowledge. Leakage is unallowable high and as such does not meet the product standard that may reasonably be expected.

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2. Offer, entry into a contract and supporting documentation, industrial property rights

2.1 Our offers are subject to confirmation. The placement of an order for merchandise by the customer is treated as a binding contractual offer. Unless otherwise provided in the order, we are entitled to accept this contractual offer within five working days. If we do not confirm the order that shall be treated as an unconditional withdrawal from the contract in text form. If the order is not confirmed by us in writing or in text form the contract shall come into force upon performance of the order at the latest. Individual arrangements made with the customer for specific cases (including customer-specific invoices and customer-specific delivery) shall take precedence over these delivery and payment terms and conditions. The content of such arrangements is determined by way of a written contract or our confirmation in writing or in text form.

2.2 We point out that our sales staff are not authorised to enter into verbal collateral agreements or to give verbal assurances which go beyond the content of the written arrangements. Such telephone or verbal clarifications by our representatives do not represent a binding offer to the customer. They therefore have to be confirmed in writing in order to be legally binding unless the delivery date has been expressly agreed as fixed, i.e. it has been specified in writing that the delivery date will not be later than a specific date.

2.3 The documents and information associated with the offer such as, for example, drawings, assembly diagrams, illustrations, descriptions, measurements and weights or other performance data in books of samples, price lists, brochures, contracts, offers and other documents are not part of the offer. The offer may be modified until we confirm it in writing or in text form. Drawings and other documents provided as part of an offer must be returned to us upon request at any time and in any event if the order is not placed with us.

2.4 In the case of call-off orders we are entitled to acquire materials for the entire order and to manufacture the entire amount of the order immediately. Any amendment requests on the part of the customer can therefore no longer be considered. The order is thereby considered to be fully accepted, and any account entered for pre-deliveries or costs incurred.

2.5 In case of doubt payment falls due following acceptance of the initial sample, test part or tool. Unless otherwise stated, the delivery date stated in the order confirms the delivery date stated in our delivery and payment terms and conditions. The customer shall be entitled to reject subsequent performance if this cannot be reasonably expected from him.

2.6 We are entitled to make the subsequent performance owed conditional upon the customer’s paying the due purchase price. The customer shall have a right of retention only insofar as it is due proportionate to the respective defect and the expected costs of the subsequent performance, and provided that the customer’s counterclaim is based on the same contractual relationship.

2.7 Where we agree to allow us a reasonable time and opportunity to carry out the subsequent performance owed and must, in particular, shorten the rejected merchandise for the purposes of inspection. Where we deliver a subsequent performance covers neither the de-installation of the defective merchandise nor re-installation unless the parties (e.g. advertising messages) in connection with the product supplied by us. In particular the occurrence of a technically unallowable leakage in the mechanical seal shall not be recognized as a product defect. Only after delivery, in case no compensation is due, the actual installation conditions can be decided, based on our experience and the best demonstrated available technical knowledge. Leakage is unallowable high and as such does not meet the product standard that may reasonably be expected.

2.8 We are entitled to make the subsequent performance owed conditional upon the customer’s paying the due purchase price. The customer shall have a right of retention only insofar as it is due proportionate to the respective defect and the expected costs of the subsequent performance, and provided that the customer’s counterclaim is based on the same contractual relationship.

4.2 We are entitled to make the subsequent performance owed conditional upon the customer’s paying the due purchase price. The customer shall have a right of retention only insofar as it is due proportionate to the respective defect and the expected costs of the subsequent performance, and provided that the customer’s counterclaim is based on the same contractual relationship.
7.6 The customer only has a right of recourse against us to the extent that it has not entered into any arrangements with its buyer that go beyond the claims for defects and liability provisions required by law. Unless otherwise agreed in writing, to the extent the customer has any right to recourse against us the provisions of Clauses 6 and 7.1 to 7.7 apply accordingly.

8. Prices and payment

8.1 Unless otherwise agreed in writing, our prices are understood in EUR on the works from which the merchandise is manufactured plus statutory VAT and packing costs. Our invoices are payable immediately without discount. No deduction may be made from the balance unless previously agreed in writing. We retain the right to transmit invoices electronically. We are not obliged to accept cheques or other promises of payment. Their acceptance is always on account of performance. We do not accept payment by bill of exchange.

8.2 We may make appropriate price adjustments as a result of any changes to the cost of raw materials, labour, energy and other items not anticipated by us and beyond our control. The customer will be given written notice of the relevant adjustment. At the same time, the customer will be expressly advised that unless an objection is received in writing within a term of two weeks from the notification of the adjustment, the relevant adjustment will be considered to have been accepted by the customer. The customer may then terminate the contract in writing upon giving ten business [working] days’ notice. In terms of the above provision, a price adjustment as far as this relates to an increase in the price for merchandise or services to be delivered or performance to be rendered is possible only if the price increase is not justified by the customer at any time for any reason.

8.3 In case of part deliveries each delivery may be separately invoiced. Where no prices have been agreed upon entry into the contract, the applicable prices are those in effect on the date of delivery.

8.4 The customer is responsible for examining the merchandise which is payable to us or is credited to our bank account. While the customer is in arrears we may charge interest at the rate of 5% per annum over the relevant plus any applicable statutory interest. The customer releases the right to bring further claims for damages or for the right to unilaterally alter (or terminate a legal) relationship.

8.5 Interest does not accrue on prepayments or payments on account.

9. Assignment and right of retention; set-off

9.1 The customer is entitled to assign its claims arising from the contractual relationship only with our prior written consent.

9.2 The retention of payments or set-off due to any counterclaims by the customer that are disputed by us or not the subject of a final court judgement is not permissible.

10. Retention of title

10.1 Until full payment in full of all our current and future claims arising from the purchase contract and ongoing contractual relations, including any accessory claims (secured claims), we reserve title to the merchandise sold (merchandise subject to retention of title). In case of an open account the retained title acts as security for our claim from the purchase price. If the customer does not pay the purchase price in full in a public register or the effectiveness of the retention of title otherwise require the customer’s cooperation, the customer consents to the entry of the retention of title and irrevocably authorises us to make the registration, or the customer will undertake the necessary acts of cooperation. The customer bears the costs of such registration or act of cooperation.

10.2 The merchandise subject to retention of title may neither be pledged nor transferred by way of security to third parties without our consent. If the customer has breached any of the obligations set out in the contract and the customer is in arrears with the performance of its duties to us, we may repossess the merchandise without prior notice. In case of breach of contract by the customer, we are entitled to demand the surrender of the merchandise and to reserve the right of cancellation.

10.3 In case the customer acts in breach of contract, in particular in case of non-payment of the due purchase price, we are entitled, under the statutory regulations, to withdraw from the contract and/or demand the return of the merchandise to us. The customer also not simultaneously notice of cancellation, rather, we are entitled just to demand the surrender of the merchandise and to reserve the right of cancellation.

10.4 The customer is entitled to dispose of, process or combine the merchandise subject to retention of title in the context of its normal commercial operations. In this case the following provisions also apply:

10.4.1 The reservation of title also extends to the full value of the products arising as a result of the processing, mixing or combining of the merchandise subject to retention of title, whereby we are treated as the manufacturer. Where, in the course of our products processed, mixed or combined with goods belonging to third parties the latter’s title right continues to exist, we acquire joint ownership pro rata to the invoice values of the goods that have been processed, mixed or combined. The same shall apply to the resulting product as for the merchandise supplied subject to retention of title.

10.4.2 For security purposes the customer hereby assigns us the claims against third parties arising from the further sale of the merchandise to which title is retained or of the product either in full or in the amount of any share in the joint property under the above paragraph. We accept the assignment. The customer’s duties cited in Clause 10.2 continue to apply in view of the assignment.

10.4.3 In addition to us, the customer also remains authorised to collect the receivables.

10.4.4 The authority to further dispose of the merchandise and the authority to collect receivables may be retransferred by the customer only with reservations.

10.5 The customer must immediately inform us in the event of any payment not being effected in accordance with the obligations under this or another contract, experiences cash flow problems due to a material deterioration in its financial situation, does not properly perform the contractual obligations it otherwise owes to us or our security interests are in any way endangered. Consequently, all the provisions relating to the customer’s assets, any payment be suspended, an affidavit ([Mervännsbo)auslaut] under Section 807 of the ZPO be submitted or a change of ownership of the customer’s enterprise occur as a result of its cash flow difficulties, the authority to freely dispose of the merchandise and to collect from the customer are revoked. In such case we are entitled to demand, the customer is liable for all damages thereby arising.

11. Limitation periods

11.1 The place of performance for all rights and obligations arising from the contractual relations, in particular from our deliveries, is the relevant site from which delivery is made. The courts of Wolfsrathausen, Upper Bavaria have jurisdiction over all disputes concerning rights and obligations arising from the contractual relations. We are, however, also entitled at our discretion to sue the customer at any other general or particular place of jurisdiction.

11.2 The law of the Federal Republic of Germany shall apply exclusively to these general delivery and payment terms and conditions and to the entire legal relations between ourselves and the customer. The application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral or multilateral treaties for the purpose of unifying international sales is excluded.

This is a convenience translation of our German General Terms and Conditions of Delivery and Payment (Allgemeine Liefer- und Zahlungsbedingungen). In cases of divergence between the German version and this version, the German version shall prevail.