

General Terms and Conditions ("GTC") of the company RQS Alexander Ruffani ("RQS") in business transactions with entrepreneurs



1. Scope of application

1.1. Entrepreneurial business (B2B)

These General Terms and Conditions ("GTC") apply exclusively to contracts with entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law (Section 310 (1) of the German Civil Code). A contract with consumers within the meaning of § 13 BGB is excluded.

1.2. Exclusive application of our terms and conditions

These T&Cs apply exclusively. Conflicting, deviating or supplementary general terms and conditions of the buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This consent requirement also applies if we execute the delivery without reservation in knowledge of the buyer's terms and conditions or if the buyer refers to his terms and conditions and we do not expressly contradict them.

1.3. Material scope of application

These GTC apply to contracts for the sale and/or delivery of movable goods ("Goods") as well as to the provision of services, in particular service, assembly, installation, project consulting, repair and maintenance services.

Regardless of whether we manufacture the goods ourselves or purchase them from suppliers, the provisions of §§ 433 et seq. of the German Civil Code (BGB) apply to purchase contracts, § 650 of the German Civil Code (BGB) apply to contracts for the supply of work and services, as well as §§ 611 et seq. or §§ 631 et seq. of the German Civil Code (BGB) apply to services and services, unless otherwise stipulated in these GTC.

These GTC shall also apply accordingly to mixed contracts as well as to framework, service and maintenance agreements, unless expressly agreed otherwise.

1.4. Framework agreement for future business

Unless otherwise agreed, these GTC in the version valid at the time of the order shall also apply as a framework agreement for future contracts of the same kind, without the need for further reference.

1.5. Priority of individual agreements

Individual contractual agreements with the buyer (including ancillary agreements, additions and changes) as well as information in our order confirmation take precedence over these GTC. In this respect, the written contract or our written confirmation is decisive.

1.6. Form of declarations

Legally relevant declarations and notifications by the buyer (e.g. notices of defects, setting of deadlines, withdrawal, reduction) must at least be in text form (§ 126b BGB). Statutory formal requirements remain unaffected.

1.7. Relationship to legal regulations

Insofar as statutory provisions are reproduced or mentioned in these GTC, this is only done for clarification. In all other respects, the statutory provisions shall apply in their respective applicable versions, insofar as they have not been effectively amended or excluded by these GTC.

1.8. International applicability

Insofar as contracts are concluded with Buyers outside the Federal Republic of Germany, the Buyer undertakes to take all necessary measures to ensure that the provisions of these GTC, in particular retention of title, transfer of risk, limitations of liability and place of jurisdiction, remain effective and enforceable under local law. Insofar as mandatory provisions of local law conflict with the validity of these GTC, these provisions shall take precedence.

1.9. Terms of delivery and Incoterms

Unless expressly contractually agreed, the terms of delivery according to Incoterms 2020 apply. For deliveries outside the European Union, delivery is made on the basis of DAP (Delivered At Place) in accordance with Incoterms 2020 to the contractually agreed destination. Deviating Incoterms require written agreement.

In the case of deliveries under DAP, the buyer outside the European Union is responsible for import clearance, payment of customs duties, import duties, import VAT and other taxes, fees and public charges incurred in the country of destination.

The buyer is obliged to provide all information and documents required for the import in good time and to carry out all acts of cooperation that are necessary for proper import processing. Delays or additional costs resulting from incomplete, late or inaccurate information provided by the buyer shall be borne by the buyer.

If legal regulations in the country of destination place special requirements on the importer, the buyer must ensure that these are met. If import regulations cannot be complied with for reasons within the sphere of the buyer, we are entitled to demand a reasonable extension of the deadline or to withdraw from the contract.

2. Offer and conclusion of contract

2.1. Non-binding nature of offers

Our offers are generally binding for a period of thirty (30) calendar days from the date of the offer, unless a different commitment period is expressly stated in the offer. Deviating deadlines, in particular in the context of tenders or project-related offers, must be noted separately in the respective offer and take precedence over this regulation.

The provision of catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, DIN standards) as well as other product descriptions or documents – also in electronic form – is non-binding and does not constitute an

independent declaration of quality or warranty, unless expressly agreed otherwise in writing.

2.2. Ownership and copyright of documents

We reserve the right of ownership and copyright to all documents provided to the buyer. They may not be made available to third parties without our prior written consent.

2.3. Order as a binding offer

The order of the goods by the buyer is considered a binding contractual offer (§ 145 BGB). We are entitled to accept this offer within 14 days of receipt.

2.4. Acceptance of the offer

Acceptance takes place by written order confirmation or by delivery of the goods (§ 151 BGB). Our order confirmation is decisive for the content of the contract.

2.5. International contract acceptance

If the buyer is based outside Germany, the acceptance of international orders is subject to export controls and other country-specific approvals. The fulfilment of the contract is subject to the proviso that there are no obstacles due to German, European, US or other applicable international regulations of foreign trade and export control law, in particular under the Foreign Trade and Payments Act (AWG), the Foreign Trade and Payments Ordinance (AWV), Regulation (EU) 2021/821 (EU Dual-Use Regulation), relevant EU sanctions and embargo regulations and comparable US regulations (in particular Export Administration Regulations – EAR, International Traffic in Arms Regulations – ITAR) or other applicable national export control regulations. This applies in particular to official refusals of required export licenses or statutory export bans. Delays due to export inspections, approval procedures or other foreign trade measures do not entitle the person to withdraw.

The buyer is obliged to provide all information and documents necessary for the export, transfer or import of the goods without delay, in particular end-user declarations, information on the end user and the country of destination.

In the event of a resale of the goods, the buyer must check on his own responsibility whether an export license is required for the respective country of destination and/or the end user, and procure the necessary permits and export documents at his own expense. He also undertakes to comply with the relevant export control regulations for any resale or other transfer of the goods.

3. Prices and payment agreements

3.1. Pricing

Unless otherwise agreed in writing in individual cases, our prices valid at the time of conclusion of the contract apply from warehouse including packaging plus the respective statutory value added tax.

3.2. Additional costs and transport

The buyer bears the transport costs from stock as well as the costs of transport insurance desired by the buyer. In addition, he bears all ancillary costs, in particular travel, assembly, installation and training costs.

3.3. Payment methods

Payments are to be made exclusively to the business accounts designated by us. Discount deductions are only permissible if expressly agreed in writing.

3.4. Maturity

Unless otherwise agreed, the purchase price is due for payment within 10 days of invoicing without deduction (§ 271 BGB). The receipt on our account is decisive for the punctuality of the payment.

3.5. Late payment

Upon expiry of the payment period, the buyer is in default without further reminder (§ 286 para. 2 no. 1 BGB). During the period of default, the buyer owes default interest at the statutory rate in accordance with Section 288 (2) of the German Civil Code. The right to assert further damages for delay is reserved.

3.6. Endangerment of the payment claim

If, after the conclusion of the contract, it becomes apparent that our claim to payment is jeopardized by the buyer's lack of ability to pay (e.g. application for the opening of insolvency proceedings), we are entitled to refuse performance in accordance with Section 321 of the German Civil Code. If the deadline has been set without success, we can withdraw from the contract (§ 323 BGB). In the case of contracts for the production of unjustifiable items, we are entitled to withdraw immediately. Statutory provisions on the dispensability of setting a time limit remain unaffected.

3.7. International Payments

Payments from abroad must be made in euros (€), unless otherwise agreed in writing. Any bank charges or exchange rate differences that may occur are to be borne by the buyer. We reserve the right to make adjustments in the event of significant currency fluctuations.

4. Rights of retention

4.1. Restriction of set-off

The buyer is only entitled to offset if his counterclaims have been legally established, are undisputed or are ready for a decision (§§ 387 et seq. of the German Civil Code).

4.2. Rights of retention

The buyer is only entitled to rights of retention if his counterclaim is based on the same contractual relationship. Statutory defect rights remain unaffected.

4.3. International set-off

Insofar as mandatory foreign law grants rights of set-off, these shall only apply to the extent that they do not materially impair the enforceability of our claims.

5. Delivery time and delay

5.1. Agreement on delivery time

Delivery times are agreed individually or specified by us when accepting the order.

5.2. Unavailability of the service

If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (§ 276 BGB), we will inform the buyer immediately and inform you of an expected new delivery date. If the service is not available within the new period, we are entitled to withdraw from the contract in whole or in part (§ 323 BGB). Consideration already provided will be reimbursed immediately.

An unavailability of the service exists in particular if we are not supplied by our supplier, or are not supplied correctly or not on time, despite the proper conclusion of a congruent hedging transaction on our part, and we are not responsible for the non-delivery. An obligation to procure from another supplier (assumption of the procurement risk) only exists if we have expressly assumed this in writing.

5.3. Prerequisites for delay in delivery

The occurrence of our delay in delivery is determined by the statutory provisions (§ 286 BGB). The prerequisite is generally a reminder from the buyer.

5.4. Lump-sum damage caused by default

In the event of delay, the buyer may demand a lump-sum compensation for delay in the amount of 0.5% of the net delivery value per completed calendar week, but in total no more than 5% of the delivery value of the goods delivered late. We reserve the right to provide proof of lesser damage.

5.5. Further rights

Further claims of the buyer are governed exclusively by the statutory provisions and the contractually agreed liability regulations. Our statutory rights, in particular in the event of exclusion of the obligation to perform (§ 275 BGB), remain unaffected.

5.6. International delivery conditions

For deliveries outside Germany, the buyer is responsible for import regulations, customs duties, taxes and other local charges. Delays due to customs, import controls or legal requirements entitle us to an appropriate extension of the deadline or to withdraw from the contract.

6. Delivery, transfer of risk, acceptance, default of acceptance

6.1. Place of performance, shipping, partial deliveries

Delivery is made from stock. The place of performance for the delivery as well as for any subsequent performance is our warehouse (§ 269 BGB).

By way of derogation from this, in the case of contractually agreed fixed installations, assembly services or delivery with owed installation, the place of performance shall be the contractually agreed installation or installation location. This applies exclusively to the installation or assembly service in question; otherwise, the "ex stock" regulation remains in place, unless otherwise expressly agreed.

If the buyer requests that the goods be sent to another destination (mail-order purchase), he bears the shipping costs. Unless special agreements have been made, we are entitled to determine the manner of dispatch (in particular packaging, shipping route and transport company) at our due discretion.

Partial deliveries are permissible insofar as they are reasonable for the buyer, taking into account his legitimate interests.

6.2. Transfer of Risk

Upon delivery of the goods to the buyer, the risk of accidental loss and accidental deterioration shall pass to the buyer (Section 446 of the German Civil Code (BGB)).

If we ship the goods to a destination specified by the buyer, the risk shall, in deviation from Section 447 BGB, only pass to the buyer upon delivery of the goods to the agreed destination.

If the buyer organizes the transport himself or commissions a carrier, forwarding agent or other person designated for shipment, the risk shall pass to the buyer upon handover of the goods to the carrier designated by the buyer.

The above provisions shall also apply to partial deliveries.

In the case of contractually owed stationary installations, assembly services or delivery with owed installation, the risk shall only pass to the buyer upon acceptance (Section 644 (1) BGB). Acceptance cannot be refused on the grounds of minor defects (Section 640 (1) sentence 2 BGB).

The handover or acceptance shall be deemed to have taken place if the buyer is in default of acceptance (Sections 293 et seq. BGB).

6.3. Default of acceptance and delays for which the buyer is responsible

If the buyer is in default of acceptance (§ 293 BGB) or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage, including any additional expenses (e.g. storage, transport or insurance costs) (§ 304 BGB).

Upon notification of readiness for dispatch, the service shall be deemed to have been offered. From this point on, the buyer bears the risk of accidental destruction and accidental deterioration.

If, at the request of the buyer, the shipment or delivery is delayed by more than one month after notification of readiness for shipment, we are entitled to charge a storage fee of 0.1% of the net value of the goods for each additional month or part thereof, but in total no more than 5% of the net value of the goods. Proof of higher damage is reserved; the buyer is allowed to prove less damage.

6.4. International delivery and transfer of risk

In case of deliveries to countries outside Germany, delivery shall generally be made in accordance with the principles of 'DAP Destination' as defined in the Incoterms of the International Chamber of Commerce in the version valid at the time of conclusion of the contract. In this case, the risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon delivery of the goods to the agreed destination.

The buyer is responsible for all import formalities in the country of destination. This includes, in particular, obtaining the necessary import licenses and paying customs duties, taxes and other import charges.

If the parties expressly agree on a different delivery clause, the transfer of risk shall be determined in accordance with the agreed Incoterms regulation.

7. Retention of title

7.1. Agreement on extended retention of title

We reserve ownership of all delivered goods until full payment of all present and future claims from the ongoing business relationship with the buyer (extended retention of title, § 449 BGB).

The retention of title extends to all claims, even if individual or all claims have been included in a current invoice and the balance has been drawn and acknowledged.

7.2. Inadmissible dispositions; Notification obligations

As long as ownership has not yet passed to the buyer, he is not entitled to pledge the goods subject to retention of title or to transfer them as security (§§ 929, 930 BGB).

In the event of access by third parties to the goods subject to retention of title – in particular seizures or other enforcement measures – the buyer must inform us immediately in writing and inform the third party of our property.

Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a third-party objection action pursuant to Section 771 of the Code of Civil Procedure, the buyer shall be liable for the loss incurred by us, provided that he is at fault (Section 280 (1) of the German Civil Code).

An application for the opening of insolvency proceedings over the assets of the buyer must be notified to us immediately.

7.3. Rights in the event of conduct in breach of contract

In the event of breach of contract by the buyer, in particular in the event of default of payment (§ 286 BGB), we are entitled:

- withdraw from the contract in accordance with the statutory provisions (§ 323 BGB) and/or
- demand the return of the reserved goods in accordance with Section 449 (2) of the German Civil Code (BGB).

The request for surrender does not also constitute a declaration of withdrawal, unless we expressly declare this.

Before asserting these rights, the buyer must in principle be given a reasonable period of time for payment (Section 323 (1) of the German Civil Code), unless a deadline is not necessary under Section 323 (2) of the German Civil Code.

7.4. Resale and processing (extended retention of title)

Until further notice, the buyer is entitled to resell or process the goods subject to retention of title in the ordinary course of business. In particular, the entitlement does not apply in the event of default of payment or a significant deterioration in the buyer's financial situation.

- a) If the goods subject to retention of title are processed or transformed, this is always done for us as the manufacturer within the meaning of § 950 BGB, without us incurring any obligations.

In the event of combination or mixing with third-party items, we acquire co-ownership in the ratio of the invoice

value of the goods subject to retention of title to the value of the other processed or combined items (§§ 947, 948 BGB).

The resulting sole or joint ownership shall be deemed to be reserved goods within the meaning of these provisions.

- b) The buyer assigns to us by way of security all claims in the amount of the respective final invoice amount (including VAT) that arise from the resale of the reserved goods or the resulting product against third parties.

This also applies to claims arising from contracts for work or services as well as to claims against third parties that the buyer incurs as a result of the combination of the goods subject to retention of title with a piece of land.

We hereby accept the assignment.

- c) The buyer remains authorized to collect the assigned claims alongside us (§ 185 BGB). Our authority to collect the claim ourselves remains unaffected by this.

However, we undertake not to collect the debt as long as:

- the buyer duly meets his payment obligations,
- no application for the opening of insolvency proceedings has been filed,
- there is no other defect in his ability to pay.

In the event of revocation, the buyer is obliged to provide us with all information necessary to enforce the claims, to hand over documents and to inform the debtors of the assignment.

- d) If the realizable value of the collateral exceeds our receivables by more than 10%, we are obligated to release collateral at our discretion at the request of the buyer.

7.5. International implementation of retention of title

If the goods subject to retention of title are sent abroad, the buyer undertakes to take all necessary measures in accordance with local law to ensure that the retention of title remains effective and enforceable. He must inform us immediately of any seizures, seizures or insolvency proceedings abroad.

7.6. Due diligence and insurance obligations

The buyer is obliged to treat the reserved goods with care.

If the goods are of high quality, the buyer is obliged to insure the goods appropriately at his own expense against theft, fire and water damage at replacement value.

Necessary maintenance and inspection work must be carried out in good time at your own expense.

8. Buyer's claims for defects

8.1. Scope of application and legal starting point

The rights of the buyer in the event of material defects and defects of title of the delivered goods are determined exclusively in accordance with §§ 433, 434–435, 437 et seq. of the German Civil Code (BGB) in conjunction with the following modifications.

The provisions on the sale of consumer goods (Sections 474 et seq. of the German Civil Code) and on contracts for digital products (Sections 327 et seq. of the German Civil Code), insofar as they are designed to protect consumers, do not apply.

The following regulations represent a conclusive agreement on the liability regime for defects in business transactions.

8.2. Relevant quality and contractual target agreement

The existence of a material defect is primarily assessed according to the quality agreed between the parties within the meaning of § 434.2 sentence 1 no. 1 of the Civil Code.

A quality agreement only exists if certain properties, performance characteristics, possible applications or specifications have been expressly agreed in writing or in text form (§ 126b BGB).

Product descriptions, technical data sheets or other information only become part of a quality agreement if they have been expressly included in the contract. Public statements by third parties, in particular by the manufacturer or other distribution partners (Section 434 (3) sentence 1 no. 2 (b) of the German Civil Code), are not considered to be agreed properties unless they have expressly become part of the contract.

If there is no agreement on the quality of the defect, the existence of a defect is determined exclusively in accordance with Section 434 (3) of the German Civil Code (BGB), taking into account the expectations customary in commercial transactions as well as the objectively justified buyer expectations.

A guarantee within the meaning of § 443 BGB is only assumed if it has been expressly designated as such and given in writing.

8.3. Goods with digital elements

In the case of goods with digital elements (Section 327a (3) of the German Civil Code), our obligation to provide digital content or services and to update them (Section 475b of the German Civil Code) is limited to the expressly agreed scope of services.

An obligation to update within the meaning of § 327f BGB only exists if it has been expressly contractually agreed. In all other respects, an obligation to provide updates, functional adjustments or further developments is excluded.

8.4. Knowledge and grossly negligent ignorance

Claims for defects are excluded if the buyer is aware of the defect at the time of conclusion of the contract or is not aware of it as a result of gross negligence (Section 442 (1) of the German Civil Code).

8.5. Obligation to inspect and complain (§§ 377, 381 HGB)

The buyer is obliged to properly inspect the goods immediately after delivery (§ 377 para. 1 HGB).

Recognizable defects must be reported immediately in writing (§ 377 paras. 1, 3 HGB). Unrecognizable (hidden) defects must be reported in writing immediately after discovery (Section 377 (3) of the German Commercial Code).

A notification within ten (10) working days shall be deemed to be immediate.

If the buyer fails to carry out a proper inspection or report defects in good time, the goods are deemed to have been approved (Section 377 (2) of the German Commercial Code (HGB)). All rights of defects according to § 437 BGB are excluded in this case.

In the case of goods intended for installation or further processing, the examination must in any case be carried out before processing. If this is not done, claims for reimbursement of removal and installation costs (Section 439 (3) of the German Civil Code) are excluded.

8.6. Supplementary performance

If there is a defect within the meaning of §§ 434, 435 BGB, we are entitled and obliged to provide supplementary performance in accordance with § 439 (1) BGB. Subsequent performance shall be carried out at our discretion by repair or replacement delivery.

The right to refuse subsequent performance under the conditions of § 439 (4) BGB is reserved.

We are entitled to refuse subsequent performance in accordance with § 320 of the German Civil Code (BGB) until the purchase price due has been paid in full. A right of retention of the buyer pursuant to § 273 BGB exists only to an appropriate extent and is limited to a part of the purchase price corresponding to the defect.

The buyer must grant us the time and opportunity necessary for subsequent performance (§ 439 para. 5 BGB analogously) and make the complained goods available for inspection purposes or, in the case of stationary installations, make them accessible.

8.7. Removal and installation costs

An obligation to bear removal and installation costs pursuant to Section 439 (3) of the German Civil Code only exists if:

- there is a defect in the legal sense,
- we are responsible for the defect (§ 276 BGB), and
- the buyer has duly complied with his duties to inspect and complain (§ 377 HGB).

Further costs, in particular production downtime, downtime costs or consequential damage, are excluded, unless mandatory statutory provisions to the contrary.

However, we can demand reimbursement from the buyer for costs incurred due to an unjustified demand for the remedy of defects in the event that the buyer knew or could have recognized that there was actually no defect.

8.8. Self-performance

Self-performance is only permissible after a prior unsuccessful deadline has been set for subsequent performance (Section 323 (1) of the German Civil Code) or if the requirements of Section 323 (2) of the German Civil Code are met.

A claim for reimbursement of expenses exists exclusively within the framework of §§ 437 no. 1, 439 BGB and only to the extent that the measures were objectively necessary and proportionate.

The buyer must inform us immediately in the event of a self-performance. In the event that we would be entitled to refuse supplementary performance in accordance with the statutory

provisions, the buyer has no right to carry out the performance itself.

8.9. Recourse by resellers

Claims by the buyer for reimbursement of expenses pursuant to Section 445a (1) of the German Civil Code (BGB) are excluded, unless the last contract in the supply chain is a purchase of consumer goods (Sections 478, 474 of the German Civil Code) or a consumer contract for the provision of digital products (Sections 445c sentence 2, 327 (5), 327u of the German Civil Code).

8.10. Damages and reimbursement of expenses (§§ 280 et seq., 284 BGB)

Claims for damages due to a defect exist exclusively in accordance with §§ 280 et seq., 281, 283, 311a of the German Civil Code (BGB) and taking into account § 276 of the German Civil Code.

A claim for reimbursement of futile expenses (§ 284 BGB) exists only under the statutory conditions.

In all other respects, the separate limitations of liability in these General Terms and Conditions apply.

8.11. International Defect Claims

For buyers outside Germany, defect rights are only enforceable within the framework of the contractually agreed service description and according to local law. Delays, local testing and certification requirements or export restrictions extend deadlines for complaint and subsequent performance appropriately. Removal and installation costs outside Germany shall be borne by the buyer to the extent permitted by law.

9. Statute of limitations

9.1. General limitation period for claims for defects

In deviation from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims by the buyer arising from material defects or defects of title in business transactions is one year from the delivery of the goods.

If a contractually agreed acceptance takes place, the limitation period begins with the acceptance of the goods (§ 438 para. 1 sentence 1 BGB analogously).

For claims arising from hidden defects that the buyer was aware of at the time of conclusion of the contract in accordance with Section 442 of the German Civil Code (BGB) or was not aware of due to gross negligence, the limitation periods shall apply accordingly to the exclusion of claims pursuant to Sections 474 et seq. of the German Civil Code (sale of consumer goods).

9.2. Extended limitation period for buildings and building materials

For goods that are used as part of a building or are used for buildings in accordance with their usual use (building materials), the limitation period is five years from delivery in accordance with Section 438 (1) No. 2 of the German Civil Code.

This does not affect mandatory special regulations, in particular:

- Section 438 (1) no. 1 of the German Civil Code (BGB) (regular 2-year limitation period for movable property, unless otherwise stipulated),
- Section 438 (1) no. 3 of the German Civil Code (regular 3-year limitation period),
- §§ 444, 445b BGB (shortening or exclusion of the warranty in the event of fraudulent concealment or defect rights).

9.3. Statute of limitations for claims for damages and reimbursement of expenses

Claims by the buyer for damages or reimbursement of futile expenses resulting from a defect in the goods shall become time-barred in accordance with the above periods, unless mandatory statutory provisions to the contrary.

Regular statutory limitation periods pursuant to §§ 195, 199 BGB apply if they provide for a shorter period in the individual case.

Claims for damages according to number 10. of these GTC as well as under the Product Liability Act (ProdHaftG) shall be time-barred exclusively in accordance with the statutory provisions (§§ 1 et seq. ProdHaftG).

9.4. International statute of limitations

For international buyers, the statute of limitations is also subject to the time limits of local law. If mandatory local law provides for longer deadlines, these must be observed. Delays due to customs or transport formalities are considered a reasonable extension.

10. Other liability

10.1. Principle of liability

Unless otherwise provided for in these General Terms and Conditions, including the following provisions, we shall be liable for breach of contractual and non-contractual obligations in accordance with the statutory provisions (§§ 280 et seq., 311 (2), 241 (2) of the German Civil Code (BGB)).

The following limitations of liability apply exclusively in business transactions (§ 14 BGB).

10.2. Criterion of fault

In the context of fault liability, we are liable for damages – regardless of the legal basis – exclusively

- in the case of intent (§ 276 para. 1 BGB) and
- in the event of gross negligence.

In the event of simple negligence, we are only liable – subject to statutory liability – to:

- a) for damage resulting from injury to life, limb or health,
- b) for damages resulting from the breach of a material contractual obligation (cardinal obligation).

Essential contractual obligations are those obligations whose fulfilment is essential for the proper performance of the contract in the first place and on the compliance with which the contractual partner may regularly rely.

10.3. Amount of liability

Insofar as our liability for damages according to number 10.2 is limited to simple negligence, it is limited in amount to the

damage typically foreseeable at the time of conclusion of the contract.

The maximum liability amount is agreed to be the applicable contract amount.

Mandatory statutory liability provisions remain unaffected.

Liability for indirect damages, consequential damages, loss of profit, loss of production or other financial losses is excluded in the event of simple negligence.

10.4. Liability for vicarious agents (§ 278 BGB)

The above limitations of liability apply to the same extent in favor of our legal representatives, organs, employees and other vicarious agents and vicarious agents (§§ 278, 831 BGB).

10.5. Mandatory liability

The above limitations of liability do not apply:

- a) in the case of the assumption of a guarantee (§ 443 BGB),
- b) in the event of fraudulent concealment of a defect (§ 444 BGB),
- c) in the event of damage resulting from injury to life, limb or health,
- d) for claims under the Product Liability Act (ProdHaftG),
- e) in the case of mandatory statutory liability.

10.6. International liability

For international deliveries, the limitations of liability of these GTC generally also apply abroad, unless mandatory local law provides for higher liability. The buyer undertakes to observe local liability risks and to take out necessary insurance.

10.7. Withdrawal and termination in the event of breaches of duty

Due to a breach of duty that is not based on a defect in the purchased item, the buyer is only entitled to withdraw (§ 323 BGB) or to terminate the contract if we are responsible for the breach of duty (§ 280 para. 1 BGB).

A free right of termination of the buyer, in particular according to §§ 648, 650 BGB, is excluded – as far as legally permissible.

In all other respects, the legal requirements and legal consequences apply.

11. Data protection

11.1. Applicable regulations

We process personal data of the buyer and the contact persons designated by the buyer in accordance with the applicable data protection regulations, in particular Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR), the German Federal Data Protection Act (BDSG) and other applicable national data protection regulations.

11.2. Type of data processed

Personal data within the meaning of these provisions are, in particular, master and contact data (e.g. name, function, address, telephone number, e-mail address), contract and billing data as well as other information that is provided to us or becomes known to us in the course of the business relationship.

11.3. Purposes and legal bases of the processing

The processing is carried out on the basis of Art. 6 (1) (b) GDPR for the implementation of pre-contractual measures and for the performance of the contract, on the basis of Art. 6 (1) (c) GDPR for the fulfilment of legal obligations and on the basis of Art. 6 (1) (f) GDPR for the protection of legitimate interests. This also applies to personal data of employees or other agents of the buyer.

Legitimate interests are, in particular, the maintenance and continuation of the business relationship, communication with designated contact persons, internal organisation, IT security, the assertion, exercise or defence of legal claims and the initiation of future business relationships.

11.4. Storage period and deletion

The data is stored for the duration of the business relationship. In addition, personal data is stored in accordance with the statutory retention periods, in particular in accordance with §§ 238, 257 HGB and §§ 140, 147 AO.

Documents relevant to commercial and tax law (e.g. invoices, accounting documents, commercial letters, contract documents) are generally retained for a period of up to ten (10) years from the end of the calendar year in which they were created; other commercial or business letters received or sent regularly for up to six (6) years.

Insofar as personal data is not subject to statutory retention obligations, it will be deleted as soon as it is no longer required for the performance of the contract or for the protection of legitimate interests.

Storage for the purpose of initiating or continuing future business relationships takes place at the latest until an objection or revocation by the data subject, unless this is contrary to mandatory statutory retention obligations (Art. 17 GDPR).

Data that is necessary for the assertion, exercise or defence of legal claims may also be stored until the expiry of the respective statutory limitation periods; these are usually up to three (3) years (§§ 195, 199 BGB), in individual cases up to thirty (30) years (§ 197 BGB).

11.5. Principles of processing

The processing is carried out in compliance with the principles of Art. 5 GDPR, in particular purpose limitation, data minimization, accuracy, integrity, confidentiality and storage limitation.

11.6. Technical and organizational measures

The data is stored on servers within the Federal Republic of Germany. We take appropriate technical and organizational measures within the meaning of Art. 32 GDPR to ensure a level of protection appropriate to the risk.

These include, in particular, measures for access restriction, access and access control, data backup and protection against unauthorized disclosure, modification or loss of data. Access to personal data is limited to those persons who are involved in the performance of the contract or who are required to access it due to legal obligations.

11.7. Use of service providers

If we use external service providers in individual cases, this is done in compliance with Art. 28 GDPR within the framework of order processing.

11.8. Documentation of medical device briefings

Insofar as medical devices are supplied within the framework of the business relationship, we document and store evidence of instructions, training courses or other instructions provided by users, operators or designated contact persons, insofar as such documentation is required by law or becomes necessary to fulfil regulatory obligations. This may include, in particular, the name of the person instructed, the date of instruction, the name of the product, the serial or batch number and confirmation of participation.

The storage is carried out for the duration of the relevant statutory documentation and retention periods, but at least for the duration of the intended purpose and market availability of the respective product as well as beyond that in accordance with the product safety and liability limitation periods.

a) German market

For deliveries within the Federal Republic of Germany, processing and storage is carried out in compliance with Regulation (EU) 2017/745 (Medical Devices Regulation – MDR) and the supplementary national regulations, in particular the Medical Devices Law Implementation Act (MPDG).

Insofar as instruction is required in accordance with the relevant legal provisions, appropriate evidence will be documented and stored. Forwarding to the manufacturer or his authorised representative takes place on request, if this is necessary for the fulfilment of regulatory obligations, market surveillance or traceability.

b) European market (outside Germany)

For deliveries to other member states of the European Union or the European Economic Area, processing and documentation shall be carried out in compliance with Regulation (EU) 2017/745 (MDR) and the applicable national implementing regulations of the Member State concerned, insofar as these are binding on us as an economic operator.

The storage of the evidence of instruction or training is carried out in accordance with the statutory storage regulations applicable in the Federal Republic of Germany.

If there are longer statutory retention periods in the respective country of destination or further documentation obligations are provided, compliance with these is the responsibility of the respective buyer or operator in accordance with the national regulations applicable there.

Evidence is transmitted to manufacturers, authorised representatives or competent authorities upon justified request, insofar as this is required by law or regulation.

c) International market (outside the European Union / EEA)

For deliveries to countries outside the European Union or the European Economic Area, the documentation of admissions takes into account the regulatory requirements

of the country of destination, which are directly binding on us.

The storage of corresponding evidence is carried out exclusively in accordance with the statutory retention periods applicable in the Federal Republic of Germany.

If there are longer retention periods or more extensive regulatory obligations in the country of destination, compliance with them is the responsibility of the buyer, importer or operator in accordance with the national regulations applicable there.

Evidence will only be passed on to manufacturers, authorised representatives or competent authorities if this is required by law or necessary to meet regulatory requirements.

The processing of personal data in connection with the documentation of instructions is carried out on the basis of Art. 6 (1) (c) GDPR to comply with legal obligations and, in addition, on the basis of Art. 6 (1) (f) GDPR to safeguard legitimate interests, in particular to ensure product safety, traceability and regulatory compliance.

Legal obligations may arise in particular from Regulation (EU) 2017/745 on Medical Devices (MDR), the Medical Devices Law Implementation Act (MPDG), the Medical Devices Operator Ordinance (MPBetreibV) and – insofar as applicable to end-of-life products or transitional situations – the Medical Devices Act (MPG).

Insofar as other national or international medical device regulations are relevant, the processing is also carried out to comply with the resulting legal obligations.

11.9. Data transfer to third countries

Personal data will only be transferred to entities in countries outside the European Union (EU) or the European Economic Area (EEA) if this is necessary for the performance of the contract, if it is required by law or if the buyer or the data subject has consented.

If a transfer to a third country takes place, an adequate level of data protection within the meaning of Art. 44 et seq. GDPR is ensured. This is done in particular by means of an adequacy decision by the European Commission pursuant to Art. 45 GDPR or by appropriate safeguards pursuant to Art. 46 GDPR, in particular the conclusion of standard contractual clauses by the European Commission.

If required by law, supplementary technical and organizational measures are taken to ensure an adequate level of protection within the meaning of Art. 32 GDPR.

A transfer will not take place if the requirements of Art. 44 et seq. GDPR are not met.

11.10. Rights of data subjects

Within the framework of the statutory provisions, data subjects have the following rights in particular:

- Right to information in accordance with Art. 15 GDPR,
- Right to rectification of inaccurate or incomplete data in accordance with Art. 16 GDPR,
- Right to erasure in accordance with Art. 17 GDPR,
- Right to restriction of processing in accordance with Art. 18 GDPR,

- Right to data portability in accordance with Art. 20 GDPR,
- Right to object to processing pursuant to Art. 21 GDPR.

If the processing is based on consent, there is the right to revoke this consent at any time with effect for the future (Art. 7 para. 3 GDPR).

To exercise the rights, the data subject may contact the general contact address or directly the management.

In addition, there is the right to complain to a data protection supervisory authority (Art. 77 GDPR), in particular in the Member State of habitual residence, place of work or place of the alleged infringement.

12. Final Regulations

12.1. Severability clause

Should individual provisions of these GTC be invalid in whole or in part, the validity of the remaining provisions shall remain unaffected.

12.2. Choice of law

These General Terms and Conditions and the contractual relationship between us as the seller and the buyer are governed by the law of the Federal Republic of Germany to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

German law applies to international treaties, unless it is necessarily excluded by local legislation. Conflicts with mandatory local law are reconciled by adapting the T&Cs without the remaining provisions losing their effectiveness.

The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Dresden, insofar as the buyer is a merchant. Alternatively, an arbitration tribunal can be agreed.

12.3. Force majeure

In the event of force majeure, we are released from the obligation to deliver or perform for the duration and to the extent of the effects (§ 275 para. 1, 2 BGB).

Force majeure is considered to be any external event that has no operational connection and cannot be averted even by the utmost reasonable care.

This includes, in particular:

- natural disasters (e.g. floods, storms, earthquakes),
- fire and explosion damage,
- labour disputes (strikes, lawful lockouts),
- official orders or lawful business closures,
- warlike events, terrorist attacks or massive unrest,
- Cyberattacks of significant intensity (e.g. hacker attacks),
- epidemics or pandemics, provided that a significant level of danger has been determined by a competent authority – in particular the Robert Koch Institute.

If the event lasts longer than three months, both parties are entitled to withdraw from the contract.

12.4. Language version

If these General Terms and Conditions are available in several language versions, only the German version shall prevail in case of doubt.

12.5. International communication

For international business relationships, the underlying main contract can be concluded in English. In addition, the use of another language is permissible, provided that both parties agree to this mutually agreed in writing. However, these General Terms and Conditions apply exclusively in their German version. The German version therefore remains decisive for the interpretation and enforcement of the GTC, even if the underlying contract was concluded in English or another mutually agreed language.