**General Terms and Conditions of Sale (GTC)**

**1 General Provisions**

1.1 Our (Ezm GmbH, registered in the Commercial Register of the Local Court of Hagen under HRB 13554) General Terms and Conditions of Sale ("GTC") shall apply to all – including future – contracts for the sale and/or delivery of movable goods (hereinafter referred to as "*Goods*"), including design services, and other legal relationships with entrepreneurs ("*Unternehmern*") (Section 14 German Civil Code (BGB)), legal entities under public law or special funds under public law (hereinafter referred to as "*Customer*"). We do not recognize any conflicting or deviating General Terms and Conditions of Purchase or similar terms of the Customer, such that these shall only become part of the contract if we have expressly consented to their validity in writing in each case.

1.2 Our GTC shall also apply if we carry out the delivery to the Customer without reservation with knowledge of conflicting or deviating terms and conditions of the Customer.

1.3 All agreements made between us and the Customer for the purpose of executing this contract are set out in writing in this contract. Unless deviations arise from the following provisions, the legal relationships with the Customer shall be governed exclusively by the statutory provisions.

1.4 Our terms and conditions of Sale shall also apply to all future business transactions with the Customer without the need for separate reference or citation thereof.

1.5 At the latest upon acceptance of our delivery by the Customer, these terms and conditions shall be deemed accepted, even if the Customer has previously referred to its own terms and conditions.

1.6 Individual agreements (e.g. framework supply contracts, quality assurance agreements) and information contained in our order confirmation shall take precedence over the GTC. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

1.7 Legally relevant declarations and notifications by the Customer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, e-mail, fax). Statutory form requirements and further evidence, particularly in case of doubts about the legitimacy of the person making the declaration, remain unaffected.

1.8 These GTC are available in German and English. In the event of discrepancies or contradictions between the different language versions, the German language version shall be exclusively decisive and binding.

1.9 Where a German term has been inserted in quotation marks and/or italics, such term alone (and not the English term to which it relates) shall be authoritative for the interpretation of the respective provision

**2 Offer and Conclusion of Contract**

2.1 Our offers are subject to change and non-binding. The order of the Goods by the Customer shall be deemed a binding contractual offer. Orders by the Customer shall only become binding upon our order confirmation in text form. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 banking days of its receipt by us. Oral agreements, in particular collateral agreements and/or other commitments made by our employees, shall only become legally binding upon our written confirmation.

2.2 Orders and order confirmations shall only be legally binding if made in writing.

2.3 Documents accompanying the offer/order confirmation, such as drawings, plans, calculations, cost estimates, references to (DIN) standards or European Standard (*Europäische Normen*) ("EN)) standards, technical data and statements in advertising materials do not constitute quality specifications, warranties of characteristics or guarantees, unless they are expressly and in writing designated as such in an individual contract.

2.4 Deviations of the delivery item from offers and order confirmations, samples, trial and advance deliveries are permissible subject to the Customer's prior consent and in accordance with the applicable DIN/EN standards or other relevant technical standards. Deviations that represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

2.5 Unless otherwise agreed in writing, any requests for changes after conclusion of the contract can no longer be taken into account.

2.6 We reserve property rights and copyrights in illustrations, drawings, calculations and other documents individually prepared by us (*Eigentums- und Urheberrechte*). In particular, they may not be made accessible to third parties without our express written consent.

**3 Delivery and Transfer of Risk**

3.1 Delivery and transfer of risk shall be made ex warehouse - FCA ("free carrier" - Incoterms©2020) - at the location Auf der Bleiche 26, 58300 Wetter, unless otherwise agreed in individual cases at least in text form. Our plant shall also be the place of performance for delivery and for any subsequent performance. If we also owe the installation, the place of performance shall be the place where the installation is to be carried out. At the request and expense of the Customer, the Goods shall be shipped to another destination (dispatch sale) (*Versendungskauf*). Unless otherwise agreed, we shall be entitled to determine the method of dispatch (in particular the transport company, the shipping route, the packaging) ourselves.

3.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer at the latest upon handover. In the case of dispatch sale, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall already pass upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the dispatch. For international deliveries, the place of delivery shall be Auf der Bleiche 26, 58300 Wetter, unless otherwise stated on the order confirmation, Incoterms© 2020. The above shall apply regardless of whether only partial deliveries are made. If acceptance has been agreed in an individual case, this shall be decisive for the transfer of risk and, for the rest, the statutory provisions of the law on contracts for work and services (*Werkvertragsrecht*) shall apply accordingly to acceptance. Handover or acceptance shall be deemed equivalent if the Customer is in default of acceptance (*Annahmeverzug*).

3.3 If the Customer is in default of acceptance, fails to perform an act of cooperation or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to claim compensation for the damage incurred as a result, including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation of 0.25% of the net invoice amount of the Goods to be stored per elapsed week plus statutory VAT, commencing with the delivery period or, in the absence of a delivery period, with notification that the Goods are ready for dispatch. We reserve the right to assert further storage costs and the Customer is permitted to prove that lower or no storage costs have been incurred.

3.4 The transport company shall be responsible for transport damage and loss of the Goods. Damage must be determined in the presence of the transport company and communicated immediately in writing to both the transport company and to us.

3.5 If we owe divisible services, partial services are permissible to a reasonable extent and may be invoiced separately by us. A right of retention (*Zurückbehaltungsrecht*) in respect of the part of the order not yet delivered cannot be asserted against the claim for payment.

3.6 For Goods manufactured to Customer specifications, excess and short deliveries of up to 10% of the order quantity are permissible. In the case of excess delivery, the actual delivery quantity, but at most the reasonable delivery quantity, shall be remunerated. In the case of short delivery, the Customer shall remunerate the actual delivery quantities.

**4 Pricing and Terms of Payment**

4.1 Unless expressly agreed otherwise, our stated prices are understood to be current prices at the time of conclusion of the contract. The prices stated in the order shall be decisive.

4.2 4.2 Unless otherwise agreed in an individual case, prices are in EURO, ex works, plus statutory value added tax and packaging. Packaging materials are charged at cost price and are not taken back. In the case of dispatch sales (Section 3.1) the Customer is responsible for transport costs from the warehouse and the costs of any transport insurance requested by the Customer.

4.3 Our invoices are due and payable within 14 days of invoicing and delivery or acceptance of the Goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

4.4 If, in deviation from Section 4.3, a payment term has been agreed that can be calculated according to the calendar, default of payment shall occur upon expiry of the payment period without the need for a reminder or other requirements. In no case shall default occur in accordance with the above provisions before the claim falls due. Outstanding amounts shall bear interest during the period of default at the applicable statutory default interest rate. We reserve the right to assert further damages for default. In relation to merchants, our claim to commercial maturity interest (Section 353 German Commercial Code (HGB)) remains unaffected.

4.5 If it becomes apparent after conclusion of the contract (e.g. by application for the opening of insolvency proceedings) that our claim for remuneration is jeopardized by the Customer's lack of ability to perform, we shall be entitled in accordance with the statutory provisions to refuse performance and - if necessary after setting a deadline - to withdraw from the contract (Section 321 German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible Goods (custom-made items), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

4.6 In the event of default of payment by the Customer, we may, after notification to the Customer, suspend the fulfilment of further obligations, including from other contracts with this Customer or with a company affiliated with this Customer within the meaning of Sections 15 et seq. German Stock Corporation Act (AktG), until receipt of the payments owed.

4.7 Set-off against counterclaims of the Customer or the retention of payments on account of such claims shall only be permissible to the extent that the counterclaims are undisputed or have been finally determined by a court or arise from the same contract under which the delivery in question was made.

4.8 We shall be entitled at any time to assign, pledge or otherwise transfer to third parties any and all claims arising from the business relationship with the Customer, including all ancillary rights, in particular within the framework of factoring or refinancing transactions. The Customer hereby consents to such assignment, pledge or transfer. The Customer may discharge its payment obligations with releasing effect only by making payment to the creditor notified to it from time to time. Any statutory defenses, objections and rights of set-off available to the Customer shall remain unaffected.

**5 Delivery Periods and Performance Time**

5.1 Unless otherwise expressly agreed in writing, the delivery periods and dates we specify for deliveries and services are not firm dates (*Fixtermine*). With the exception of validly agreed firm dates, the agreed delivery times are subject to teimley delivery by our suppliers.

5.2 For compliance with delivery times, the time of dispatch ex works shall be decisive. If the Goods are not dispatched on time through no fault of our own, the delivery times shall be deemed to have been met upon notification that the Goods are ready for dispatch.

5.3 We shall not be liable for impossibility of delivery or for delays in delivery to the extent that these have been caused by force majeure (*höhere Gewalt*) or other events not foreseeable at the time of conclusion of the contract (e.g. failure of timely self-supply by our supplier if we have concluded a congruent hedging transaction, other disruptions in the supply chain, strikes, lawful lockouts, enforceable official measures impeding operations for which we are not responsible) for which we are not responsible.

5.4 If such events make delivery or performance substantially more difficult or impossible for us and the impediment is not merely of temporary duration, the Customer shall be entitled to withdraw (*zurücktreten*)from the contract. In the case of impediments of temporary duration, the delivery periods or performance periods shall be extended or the delivery dates or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. To the extent that acceptance of the delivery or service cannot reasonably be expected of the Customer as a result of the delay, the Customer may withdraw from the contract by means of an immediate written declaration to us.

5.5 The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Customer is required.

5.6 The rights of the Customer pursuant to this Section 5 and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

**6 Retention of Title/Extended Retention of Title**

6.1 Until full payment of all our present and future claims arising from the respective contract and an ongoing business relationship (secured claims), we reserve title to the Goods sold (*Eigentumsvorbehalt*).

6.2 The Goods subject to retention of title (*Sicherungsübereignung*) may neither be pledged to third parties nor transferred by way of security before full payment of the secured claims. The Customer must notify us immediately in writing if an application for the opening of insolvency proceedings is filed or to the extent that third parties access (e.g. attachments) the Goods belonging to us.

6.3 In the event of conduct by the Customer contrary to the contract, in particular in the event of non-payment of the remuneration due, we shall be entitled in accordance with the statutory provisions to withdraw from the contract and/or to demand return of the Goods on the basis of the retention of title. The demand for return does not at the same time constitute a declaration of withdrawal; rather, we are entitled merely to demand return of the Goods and to reserve the right to withdraw. If the Customer does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set the Customer a reasonable deadline for payment or if such setting of a deadline is dispensable in accordance with the statutory provisions.

6.4 The Customer is authorized, subject to revocation pursuant to Section 6.4.3, to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

6.4.1 The retention of title extends to the products resulting from the processing, mixing or combination of our Goods to their full value, whereby we shall be deemed the manufacturer. If, in the case of processing, mixing or combination with Goods of third parties, their title remains, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined Goods. For the rest, the same shall apply to the resulting product as to the Goods delivered subject to retention of title.

6.4.2 The Customer hereby assigns (*Abtretung*) to us by way of security, in their entirety or in the amount of our possible co-ownership share pursuant to the above Section 6.4.1, the claims against third parties arising from the resale of the Goods or the product. We accept the assignment. The obligations of the Customer stated in Section 6.2 shall also apply with regard to the assigned claims.

6.4.3 In addition to us, the Customer remains authorized to collect the claims. We undertake not to collect the claims as long as the Customer meets its payment obligations towards us, there is no deficiency in its ability to perform and we do not assert the retention of title by exercising a right pursuant to Section 6.3. If this is the case, however, we may demand that the Customer discloses to us the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Customer's authority to further resell and process the Goods subject to retention of title.

6.4.4 If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the request of the Customer.

**7 Customer Claims for Defects**

7.1 The statutory provisions shall apply to the rights of the Customer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the statutory provisions on consumer Goods purchases (*Verbrauchsgüterkauf*) (Sections 474 et seq. German Civil Code (*BGB*)) and the rights of the Customer arising from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.

7.2 The basis of our liability for defects is primarily the agreement reached regarding the quality and the intended use of the Goods (including accessories and instructions). To the extent that the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (Section 434 (3) German Civil Code (BGB)).

7.3 We shall not be liable in principle for defects which the Customer knows or does not know due to gross negligence (*grobe Fahrlässigkeit*) at the time of conclusion of the contract (Section 442 German Civil Code (BGB)). Furthermore, the Customer's claims for defects presuppose that it has complied with its statutory duties of inspection and notification (Sections 377, 381 German Commercial Code (HGB)). In the case of building materials and other Goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified of this immediately at least in text form. In any case, obvious defects must be notified at least in text form within seven working days of delivery and defects not recognizable during inspection within the same period from discovery. If the Customer fails to carry out the proper inspection and/or notification of defects, our liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions. In the case of Goods intended for installation, attachment or installation, this shall also apply if the defect only became apparent as a result of the breach of one of these obligations after

the corresponding processing; in this case, in particular, the buyer shall have no claims for reimbursement of corresponding costs ("removal and installation costs") (*Aus- und Einbaukosten*).

7.4 If the delivered item is defective, we may initially choose whether to provide subsequent performance (*Nacherfüllung*) by remedying the defect (rectification) (*Nachbesserung*) or by delivering a defect-free item (replacement delivery) (*Ersatzlieferung*). If the type of subsequent performance chosen by us is unreasonable for the Customer in an individual case, the Customer may refuse it. Our right to refuse subsequent performance under the statutory requirements remains unaffected.

7.5 We are entitled to make the subsequent performance owed dependent on the Customer paying the purchase price due. However, the Customer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.

7.6 The Customer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the Goods complained of for inspection purposes. In the case of replacement delivery, the Customer must return the defective item to us upon our request in accordance with the statutory provisions; however, the Customer shall have no right of return. Subsequent performance does not include the removal, detachment or uninstallation of the defective item nor the installation, attachment or installation of a defect-free item if we were not originally obliged to provide these services; claims by the Customer for reimbursement of corresponding costs remain unaffected.

7.7 We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as any removal and installation costs, in accordance with the statutory provisions and these GTC, if a defect actually exists. Otherwise, we may demand reimbursement from the Customer for the costs arising from the unjustified request for remedy of defects if the Customer knew or should have been able to recognize that no defect actually exists.

7.8 In urgent cases, e.g. in the event of a risk to operational safety or to avert disproportionate damage, the Customer shall have the right to remedy the defect itself (*Selbstvornahmerecht*) and to demand reimbursement from us for the expenses objectively necessary for this purpose. We must be notified immediately, if possible beforehand, of such self-remedy. The right to self-remedy does not exist if we would be entitled to refuse corresponding subsequent performance in accordance with the statutory provisions.

7.9 If a reasonable period to be set by the Customer for subsequent performance has expired without success or is dispensable in accordance with the statutory provisions, the Customer may withdraw from the respective contract or reduce the purchase price in accordance with the statutory provisions. However, there shall be no right of withdrawal in the case of an insignificant defect.

7.10 Claims by the Customer for reimbursement of expenses pursuant to Section 445a (1) German Civil Code (BGB) are excluded unless the last contract in the supply chain is a consumer Goods purchase (Sections 478, 474 German Civil Code (BGB)). Claims by the Customer for damages or reimbursement of futile expenses (Section 284 German Civil Code (BGB)) shall also exist in the event of defects in the Goods only in accordance with the following Section 8.

**8 Other Liability and Statute of Limitations**

8.1 Unless otherwise provided in these GTC, including the following provisions, we shall be liable for breach of contractual and non-contractual obligations in accordance with the statutory provisions.

8.2 We shall be liable for damages – irrespective of the legal grounds – within the framework of liability based on fault in the event of intent and gross negligence. In the case of simple negligence (*einfache Fahrlässigkeit*), we shall be liable, subject to statutory limitations of liability (e.g. care in one's own affairs; insignificant breach of duty), only

8.2.1 for damages arising from injury to life, body or health,

8.2.2 for damages arising from the breach of a material contractual obligation (obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

8.3 The limitations of liability arising from Section 8.2 shall also apply vis-à-vis third parties and in the event of breaches of duty by persons (also for their benefit) whose fault we are responsible for in accordance with statutory provisions. They shall not apply to the extent that a defect was fraudulently concealed or a guarantee for the quality of the Goods was assumed and for claims by the Customer under the Product Liability Act.

8.4 Due to a breach of duty that does not consist of a defect, the Customer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the Customer (in particular pursuant to Sections 650, 648 German Civil Code (BGB)) is excluded. For the rest, the statutory requirements and legal consequences shall apply.

8.5 Notwithstanding Section 438 (1) No. 3 German Civil Code (BGB), the general statute of limitations period for claims arising from material defects and defects of title shall be one year from delivery. To the extent that acceptance has been agreed, the state of limitations period shall commence upon acceptance.

8.6 If the Goods are a building or an item that has been used for a building in accordance with its usual use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provisions (Section 438 (1) No. 2 German Civil Code (BGB)). Further statutory special provisions on limitation shall also remain unaffected (in particular Section 438 (1) No. 1, Section 76 (3), Sections 444, 445b German Civil Code (BGB)).

8.7 The above limitation periods of sales law shall also apply to contractual and non-contractual claims for damages by the Customer based on a defect in the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 German Civil Code (BGB)) would lead to a shorter limitation period in an individual case. Claims for damages by the Customer pursuant to Section 8.2 sentence 1 and Section 8.2.1, 8.2.2 as well as under the Product Liability Act shall be subject to limitation exclusively in accordance with the statutory limitation periods.

**9 Place of Performance, Place of Jurisdiction, Applicable Law**

9.1 The place of performance for the contractual obligations of both contracting parties shall be our registered office (Wetter).

9.2 If the Customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction, including international jurisdiction, for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Wetter. The same shall apply if the Customer is an entrepreneur within the meaning of Section 14 German Civil Code (BGB). However, in all cases we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these Terms and Conditions or a prior individual agreement or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdictions, remain unaffected.

9.3 German law shall apply to all claims in connection with the performance of this contractual relationship, to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.