

# General Terms and Conditions of Business of LICHTZENTRALE Lichtgroßhandel GmbH (version dated: January 1, 2018)

## 1. Scope of Application

(1) Unless explicitly agreed otherwise, the following "General Terms and Conditions of Business" shall apply to all contracts, deliveries and other services in business dealings with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities under public law or funds under public law (hereinafter referred to as "Customers"). Within the context of an existing business relationship, these Terms and Conditions of Business shall also become an integral part of the agreement if LICHTZENTRALE Lichtgroßhandel GmbH (hereinafter referred to as the "Company") has not explicitly referred to their inclusion in each individual case and the Customer has not objected to their validity. These "General Terms and Conditions of Business" shall also apply to framework agreements that the Company has concluded with the Customer.

(2) Any terms and conditions of the Customer that conflict with, or deviate from, these General Terms and Conditions of Business, in particular terms and conditions of purchase, shall not become part of the agreement unless the Company explicitly agrees to them in written or electronic form (*Textform*).

(3) In cases of doubt, the latest version of the Incoterms shall be authoritative for the interpretation of commercial clauses.

## 2. Offers and Conclusion of the Agreement

(1) All offers made by the Company are subject to change without notice and are non-binding, unless they are explicitly marked as binding or include a specific acceptance period. They merely constitute an invitation to submit an offer.

(2) An agreement shall only be concluded when the Company issues an order confirmation in written or electronic form, or tacitly by execution of the order, and shall be governed exclusively by the content of the order confirmation and/or these General Terms and Conditions of Business. In the event of tacit acceptance of the offer, the delivery note/invoice for the goods shall be deemed to be the order confirmation.

(3) Verbal commitments made by the Company, its employees or commercial agents prior to the conclusion of the agreement are not legally binding and shall be replaced by the agreement in written or electronic form, unless otherwise agreed. Insofar as the Company, its employees or commercial agents conclude supplements or amendments to the agreement following its conclusion, these must be made in written or electronic form in order to be effective. Verbal declarations made by individuals who are authorized to represent the Company without restriction or who have external representative authority that cannot be limited shall remain unaffected by the above provision.

(4) If, once the agreement has been concluded, the Company becomes aware of facts (e.g. payment default by the Customer with regard to previous deliveries) which, based on its due commercial discretion, indicate that the payment claim is at risk due to the Customer not being able to pay, the Company shall be entitled to exercise the rights set out in section 321 BGB. In particular, the Company shall be entitled, after setting a reasonable deadline, to demand concurrent payment or corresponding securities from the Customer, at the latter's discretion.

(5) The Company's obligation to perform shall be limited exclusively to its obligations as the seller under the purchase agreement. Consultancy or information services do not form part of the subject-matter of the agreement unless they have been explicitly agreed in writing.

(6) By concluding the agreement, the Customer acknowledges that he/she/it has sought information on the type of execution and the scope of performance by consulting existing plans and performance specifications. In the event of obvious errors, spelling mistakes and miscalculations in the documents, drawings and plans, these shall not be binding. The Customer shall notify the Company of such errors so that the order confirmation/execution of the order can be corrected/replaced. This shall also apply if the Customer did not receive the documents in full.

(7) The minimum order value is €100.00. Should an order fall short of this value, a flat-rate fee for additional expenses of €9.50 shall be deemed to have been agreed. (8) Requests made by the Customer for a subsequent reduction in the agreed remuneration or cancellation of the agreement without replacement can only be taken into account on the basis of a special agreement and – insofar as the goods concerned are not warehouse stock – only insofar as the upstream supplier undertakes to accept the return of the goods from the Company. In any case, the Company shall be entitled to deduct from the credit note an appropriate percentage of the net invoice amount for handling costs, inspection and repackaging in respect of goods that are duly returned with its consent. No credit shall be awarded for damaged goods. In cases involving voidability

for mistake (*Irrtumsanfechtung*), the Company is entitled to compensation for the damage it has incurred in accordance with section 122 BGB.

(9) The Company is entitled to issue partial/advance invoices to the Customer up to the full value of the goods under the agreement. If the Customer does not make payment to the Company within a reasonable period of time (14 days) following receipt of the partial/advance invoice, the Company shall be released from its delivery obligations, both in *de facto* terms and with regard to the agreed deadlines, until the partial/advance invoice has been settled. Delivery dates that have been promised by the Company shall be postponed accordingly. If the Customer fails to settle the partial/advance invoice even after having being requested to do so again within a reasonable period of time, the Company shall be entitled to rescind the agreement subject to no further requirements. In such cases, claims for damages and/or the reimbursement of expenses by the Customer are excluded. The invoice shall be deemed to have been received as of the second working day following its dispatch.

## 3. Data Protection

The Company shall save and use personal data concerning the Customer for the processing and fulfillment of the agreements concluded. The data will also be used for the further maintenance of the business relationship with the Customer, unless the Customer objects to this in accordance with section 28 IV of the German Federal Data Protection Act (BDSG).

## 4. Additional Services

**Consultancy** and planning services that the Customer has to provide to third parties do not form part of the subject-matter of the agreement. Any information in this regard is always non-binding.

## 5. Delivery, Transfer of Risk and Delay in Delivery

(1) In the absence of any agreement to the contrary, delivery is agreed "EXW Ex Works" (Incoterms 2010). The loading and unloading of the delivery do not – unless agreed otherwise – form part of the subject-matter of the agreement. The risk shall pass to the Customer when the goods are handed over to the latter, to the forwarding agent or to the carrier, but at the latest when the goods leave the Company's premises, even if delivery is made by the Company. The risk shall also pass to the Customer if delivery is made from the premises of a third party at the instigation of the Company ("drop shipments").

(2) Insofar as shipment or delivery "delivered duty paid" has been agreed, this shall be at the Customer's risk. In both cases, the Company shall only bear the costs of freight and insurance. If shipment is delayed at the request, or through the fault, of the Customer, the goods shall be stored at the Customer's expense and risk. The same applies if the shipment or delivery is delayed due to *force majeure* or obstacles that arise following conclusion of the agreement for which the Company is not responsible. In such cases, notification of readiness for dispatch/delivery shall be deemed equivalent to dispatch by the Company. The notification shall be deemed to have been received as of the second working day following its dispatch.

(3) Partial deliveries are permissible to a reasonable extent. In particular, they are permissible if the partial delivery can be used by the Customer in line with its contractual intended purpose and if the delivery of the remaining ordered goods is ensured.

(4) The delivery period shall be reasonably extended – even within a delay – in the event of *force majeure* and any unforeseen obstacles arising following conclusion of the agreement for which the Company is not responsible (including, in particular, interruptions of operations, strikes, lockouts or disruption affecting traffic routes, cyber attacks on the IT system), insofar as these obstacles can be proven to have a significant impact on the delivery. This shall also apply if these circumstances occur at the level of the Company's suppliers and their sub-suppliers, in particular if they are unable to supply the Company in accordance with the agreement and in due time despite a purchase agreement/order being in place. The Company shall notify the Customer of when such obstacles begin and end as soon as possible. The Customer is entitled to require the Company to declare whether it intends to rescind the agreement or deliver within a reasonable period of time. If the Company does not reply without delay, the Customer is entitled to rescind the agreement. Claims for damages and/or reimbursement of expenses are excluded in such cases. The aforementioned provisions shall apply to the Customer accordingly if the aforementioned obstacles arise on the Customer's premises.

(5) In the event of a delay in delivery, the Customer shall be obliged to declare, at the Company's request and within a reasonable period of time, whether it will continue to insist on delivery or whether it will rescind the agreement due to the delay and/or demand damages in lieu of performance. If the Customer does not make a written declaration by the

deadline set, its failure to make a declaration shall be deemed tantamount to a waiver of the obligation to deliver.

(6) With regard to timely delivery, the Company shall only be liable for its own fault and that of its vicarious agents. The Company shall, however, be obliged to assign any claims it may have against its upstream supplier to the Customer upon request.

(7) The Customer is aware that the export of certain goods may give rise to approval requirements (e.g. due to the intended use or final destination) and that the relevant national and international export regulations must be observed.

(8) Deliveries to the Customer are subject to national or international provisions of foreign trade law, an embargo or other statutory prohibitions.

## 6. Packaging

(1) Packaging shall be charged separately.

(2) The return of packaging material shall be excluded if a suitable disposal company is commissioned by the Company for disposal in accordance with the German Packaging Ordinance (*Verpackungsverordnung*) as amended or, as of January 1, 2019, in accordance with the German Packaging Act (*Verpackungsgesetz*). In such cases, the Customer shall be obliged to keep the packaging material ready and to hand it over to the disposal company. Insofar as the Company agrees with the Customer that the latter shall waive its right of return in return for the granting of a flat-rate disposal fee, the Customer shall be obliged to hand over the used packaging to a recognized disposal company that ensures due and proper disposal in accordance with the provisions set out in the German Packaging Ordinance.

(3) Reusable packaging shall only be made available to the Customer on loan. The Customer must inform the Company of the return of the packaging unit in written or electronic form within 14 days, and the packaging must be made available. If the Customer fails to meet this obligation, the Company is entitled to demand 20% of the purchase price (but no more than the full purchase price) for each week after the 3rd week as a loan fee after issuing a reminder, or to invoice the value of the packaging, which falls due for payment immediately after receipt, without delay.

(4) The following shall also apply vis-à-vis merchants, legal entities under public law and funds under public law: cable drums owned by Kabeltrommel GmbH & Co. KG (KTG), Cologne, or other third parties shall be delivered in the name, and on behalf, of these owners and in accordance with their terms and conditions – in particular in accordance with the valid KTG terms and conditions for the provision of cable and wire spools. These terms and conditions can be consulted and downloaded from the KTG website at [www.kabeltrommel.de/download.html](http://www.kabeltrommel.de/download.html) [*translator's note: available in German only*]. The KTG terms and conditions can also be sent out upon written request. It is pointed out that the suppliers of cable drums shall charge rental fees in the event of non-timely return. These are to be borne by the Customer if the latter is responsible. In cases involving plastic cable drums up to 600 mm in diameter manufactured by KTG, the terms and conditions of KTG shall apply in this respect, unless a return obligation extending beyond this applies vis-à-vis the Customer in accordance with the Packaging Ordinance as amended or, as of January 1, 2019, in accordance with the German Packaging Act. Section 6.2. sentences 1 and 2 shall apply accordingly.

## 7. Prices and Payment

(1) The prices are always exclusive of the value added tax owed by law.

(2) Unless otherwise agreed, payment shall be due immediately upon receipt of the goods and invoice subject to no deductions. The same applies to repair invoices. (3) The Company explicitly reserves the right to accept checks as payment in lieu of performance. There shall be no performance without its consent. Rather, payment by check shall be made in lieu of performance. Insofar as the Company accepts payment by check as performance in individual cases, credit notes in this regard shall be issued, subject to receipt of the corresponding amount, less expenses with a value date corresponding to the date on which the Company can dispose of the countervalue. (4) Payment by bill of exchange is explicitly excluded and shall not be accepted. (5) The statutory provisions shall apply in the event of default in payment. In particular, in the event of default, the Company shall be entitled to charge interest at a rate that is 9 percentage points above the base interest rate, as well as a lump sum of EUR 40.00, for claims for payment. Any agreed discounts shall not be granted if the Customer is in default on payment obligations from previous deliveries.

(6) In the event of default by the Customer, the Company is entitled to revoke the direct debit authorization (section 8.6) and demand concurrent payment for outstanding deliveries. The Customer can, however, avert these legal consequences by furnishing security in the amount of the payment claim that is at risk.

(7) Refusal to pay or retention of payment shall be excluded if the Customer was aware of the defect or other reason for its complaint at the time the agreement was concluded. This shall also apply if the Customer remained unaware of the defect or reason as a result of gross negligence, unless the Company fraudulently concealed the defect or other reason for the complaint or gave a guarantee regarding the quality of the item. Otherwise, payment may only be withheld to a reasonable extent on the basis of defects or other complaints.

(8) The Customer shall only have a right of set-off to the extent that its/his/her counterclaims are undisputed or have been established in a non-appealable judgment, if they are based on the same contractual relationship with the Company and/or they would entitle the Customer to refuse performance pursuant to section 320 BGB. The mere failure of the Company to respond to the assertion of such counterclaims shall not be deemed an acknowledgment. This shall apply accordingly to any right of the Customer to refuse performance. Sections 7.8. and 7.9. shall not apply to agreements with consumers within the meaning of section 13 BGB. (9) If the Customer does not accept the goods within four months of the conclusion of the agreement, in the absence of any contractual agreement to the contrary, the Company shall be entitled to pass on to the Customer any price increases of the manufacturer/upstream supplier that have materialized in the meantime.

## 8. Retention of Title

(1) The Company shall retain title to the goods until the purchase price has been paid in full. In cases involving goods purchased by the Customer as part of an ongoing business relationship, the Company shall retain title until all of its claims against the Customer arising from the business relationship, including future claims, and also including those arising from agreements concluded at the same time or at a later date, have been settled (title retention until outstanding accounts have been paid (*Saldovorbehalt*)). This shall also apply if individual or all claims of the Company have been included in a running account and the balance has been calculated and acknowledged. The title retention until outstanding accounts have been paid does not, however, apply to advance payment or cash transactions that are processed concurrently.

(2) If the goods subject to retention of title are processed by the Customer, it is agreed that the processing shall be carried out in the name, and for the account, of the Company as manufacturer within the meaning of section 950 BGB and that the latter directly acquires ownership or – if the processing step uses materials of several owners or the value of the processed item is higher than the value of the goods subject to retention of title – co-ownership of the newly created item based on the ratio of the value of the goods subject to retention of title to the value of the newly created item at the time of processing. In the event that the Company does not acquire ownership in this manner, the Customer hereby already transfers its future ownership or – based on the aforementioned ratio – co-ownership of the newly created item to the Company by way of security. If the goods subject to retention of title are combined or inseparably mixed with other items to create a single item (sections 947, 948 BGB), the Company shall acquire co-ownership of the newly created item in accordance with the statutory provisions. If, as a result of the combination or mixing, one of the other items is to be regarded as the main item, then the Customer, insofar as the main item belongs to it, hereby assigns co-ownership thereof to the Company based on the ratio of the value of the goods subject to retention of title to the value of the newly created item at the time of the combination or mixing. In such cases, the Customer shall store the item owned or co-owned by the Company free of charge. The item shall also be deemed to constitute goods subject to retention of title within the meaning of the conditions set out above.

(3) If goods subject to retention of title are sold alone or together with goods that do not belong to the Company, the Customer hereby already assigns, i.e. at the time the agreement is concluded, the claims arising from resale in the amount of the value of the goods subject to retention of title, with all ancillary rights and priority over the rest; the Company accepts the assignment. The value of the goods subject to retention of title is the invoice amount of the Company, which, however, shall not be applied to the extent that the rights of third parties are enforceable against it. If the resold goods subject to retention of title are co-owned by the Company, the assignment of the claims shall extend to the amount corresponding to the Company's pro rata value of the co-owned goods.

(4) If goods subject to retention of title are installed by the Customer as an integral component of the real property, ship, ship under construction or aircraft of a third party, the Customer hereby already assigns the assignable claims arising against the third party or the party to whom the claim relates in the amount of the value of the goods subject to retention of title with all ancillary rights, including a right to the granting of a debt-securing mortgage, with priority over the rest; the Company accepts the assignment. Section 8.3 sentences 2 and 3 shall apply accordingly.

(5) The Customer shall only be entitled and authorized to resell, use or install the goods subject to retention of title in the ordinary course of business and only on condition that the claims within the meaning of sections 8.3. and 8.4. are actually transferred to the Company. Insofar as

the Customer has agreed on a prohibition of assignment with his/her/its contractual partners with regard to this claim, the authorization to resell shall cease to apply. The Customer shall not be entitled to dispose of the goods subject to retention of title in any other way, in particular by pledging them or assigning them by way of security. Assignment by way of non-recourse factoring is only a permitted option for the Customer subject to the condition that the Company is notified thereof, with such notification disclosing the factoring bank and the Customer's accounts with that bank, and provided that the factoring proceeds exceed the value of the secured claim of the Company. When the factoring proceeds are credited, the Company's claim shall fall due immediately.

(6) The Company authorizes the Customer, subject to revocation, to collect the claims assigned pursuant to sections 8.3. - 8.5. The Company shall only make use of its own authority to collect claims if the Customer does not meet its payment obligations, including those vis-à-vis third parties, or if their fulfillment appears to be at risk. At the Company's request, the Customer shall immediately disclose the business and private addresses of his/her/its contractual partners to which he/she/it has delivered the goods subject to retention of title/goods into which the Company's goods subject to retention of title have been incorporated as an integral component. The notification shall also include the Customer's obligation to list the extent to which these deliveries have already been settled by his/her/its contractual partners and which claims are still outstanding in this respect in detail.

(7) The Customer shall notify the Company without delay of any enforcement measures taken by third parties with regard to the goods subject to retention of title or the assigned claims, handing over the documents required for the objection.

(8) In the event that payments are ceased and/or an application is filed for the opening of insolvency proceedings in respect of the Customer's assets, the rights to resell, use or install the goods subject to retention of title, as well as the authorization to collect the assigned claims, shall lapse; in the event that a check is protested, the authorization to collect shall also expire. Any mandatory rights of the insolvency administrator shall remain unaffected.

(9) If the value of the securities granted exceeds the claims (reduced by down payments and partial payments, where applicable) by more than 20%, then the Company shall be obliged to transfer these amounts back or release them at its own discretion. Upon settlement of all claims of the Company arising from the business relationship, ownership of the goods subject to retention of title and the assigned claims shall pass to the Customer.

### 9. Notice of Defects, Warranty and Liability

(1) The Company shall only be liable for defects within the meaning of section 434 BGB as follows: The Customer shall immediately inspect the goods received with regard to their quantity and condition. Obvious defects must be reported to the Company in written or electronic form within 7 days of receipt of the goods. Notification of defects that are not obvious shall be deemed to have been made in a timely manner if it is received by the Company in written or electronic form within 7 days of discovery of the defects by the Customer.

(2) If the Customer identifies a defect, he/she/it shall be obliged to provide the Company with the item to which the complaint relates or samples thereof for the purpose of allowing the complaint to be investigated, and shall grant a reasonable period of time for the investigation. If the Customer refuses to do so, the warranty is null and void. Until the Company has completed its investigation, the Customer is prohibited from disposing of the item to which the complaint relates, i.e. it must not be divided, resold or processed further.

(3) In the event that there are plans to install or affix the goods, the Customer shall, without prejudice to the provision set out in sub-section 1, already be obliged, upon receipt of the goods, to check the properties of the goods that are relevant for the purposes of installing or affixing them and for their subsequent intended use and to notify the Company of any defects in written or electronic form without undue delay, provided that the Customer can be reasonably expected to check these properties at this time based on the type and condition of the goods. If no notification of defects relating to the properties mentioned in sentence 1 is made, despite it being possible to reasonably expect the Customer to check them, the goods shall be deemed approved to that extent. In such cases, the Customer shall not be entitled to any rights based on such defects.

(4) If, in the event that the goods are to be installed or affixed, the Customer fails to check the external and internal properties of the goods that are relevant either in this regard or for their subsequent intended use before installing or affixing them, the Customer shall be deemed to have acted with gross negligence. In such cases, he/she/it can only assert rights based on defects with regard to these properties if the defect in question has been fraudulently concealed or if a guarantee regarding the quality of the item has been provided by the Company.

(5) In the event of justified notices of defect, the Company shall be entitled to determine the type of subsequent performance (replacement delivery or rectification), taking into account the type of defect and the justified interests of the Customer. If supplementary performance fails, the Customer shall be entitled – without prejudice to any claims for damages pursuant to section 10. – at the Customer's discretion, to rescind the agreement or demand a reduction in the purchase price.

(6) If the Customer has installed the goods that were defective at the time of the transfer of risk in another item, or has affixed them to another item, in accordance with their nature and intended use, he/she/it is only entitled to demand reimbursement of expenses from the Company pursuant to section 439 (3) BGB for the removal of the defective goods and the installation or affixing of the repaired or delivered non-defective goods (removal and installation costs) in accordance with the provisions set out below.

(7) Necessary costs within the meaning of section 439 (3) BGB only include those removal and installation costs that relate to the removal and installation/affixing of identical products, that have been incurred on the basis of standard market conditions and that the Customer substantiates vis-à-vis the Company by submitting suitable receipts at least in electronic form. The Customer's right to advance payment for removal and installation costs is excluded. The Customer is also not permitted to unilaterally offset claims for the reimbursement of expenses for removal and installation costs against purchase price claims or other payment claims of the Company without the latter's consent. Section 7.9 remains unaffected. Any claims of the Customer extending beyond the necessary removal and installation costs, in particular costs for consequential damage caused by defects, such as loss of profit, costs of business interruption or additional costs for replacement purchases, shall not be considered removal and installation costs, meaning that they shall not be reimbursed in the context of subsequent performance pursuant to section 439 (3) BGB.

(8) If the expenses claimed by the Customer for subsequent performance within the meaning of section 439 (3) BGB are disproportionate in the specific case, in particular in relation to the purchase price of the goods in a defect-free condition and taking into account the significance of the violation of the agreement, the Company shall be entitled to refuse to reimburse the expenses. Expenses shall always be deemed to be disproportionate if the expenses claimed within the meaning of section 439 (3) BGB exceed a value of 150% of the purchase price of the goods in a defect-free condition or 200% of the reduced value of the goods due to the defect.

(9) Customer claims pertaining to expenses incurred due to subsequent performance, in particular transport, travel, work and material costs, shall be excluded to the extent that these expenses are increased due to the goods being subsequently taken to a location other than the Customer's branch office or the contractually agreed location, except where this is in compliance with the use of the goods in accordance with their intended purpose.

(10) The Customer shall inform the Company of any warranty case arising at a contractual partner without undue delay.

(11) Insofar as the Company has provided the planning/programming for the installation of complex control and network systems in the construction sector (e.g. EIB), the Customer, as the installer, shall be obliged to adhere to these plans and only to make changes to them, including minor deviations – both during installation and at the time of subsequent repairs – with the Company's consent. Compensation for damages – of any kind whatsoever – which can be traced back to an unauthorized deviation from the specifications on the part of the Customer shall not be assumed by the Company.

(12) In the event of unjustified notices of defects, the Customer shall reimburse the costs incurred by the Company as a result, provided that the Customer has recognized, or negligently failed to recognize, that the goods are not, in fact, defective, but rather that the cause of the phenomenon to which the Customer's complaint relates lies within the Customer's sphere of responsibility.

(13) The Customer's claims for defects shall become statute-barred 12 months after delivery. This shall not apply insofar as the law provides for longer periods in accordance with section 438 (1) no. 2 BGB (buildings and items for use in buildings), section 438 (3) BGB (fraudulent concealment), section 479 (1) BGB (recourse claims) and section 634a (1) no. 2 BGB (construction defects). Recourse claims pursuant to sections 476 and 479 BGB shall only arise if the consumer's claim was justified and also only to the extent determined by law, but not for goodwill provisions that have not been agreed with the Company. Recourse claims also require that the party entitled to recourse has complied with its own obligations, in particular its obligations to inspect the goods and to give notice of defects.

(14) In cases involving the purchase of used goods, warranty claims of the Customer are excluded as a whole in accordance with section 437 BGB.

(15) The Company shall be liable for damages or for reimbursement of expenses incurred in vain for material defects in accordance with section 10 of these Terms and Conditions of Business.

#### **10. General Limitation of Liability**

(1) The Company shall be liable in accordance with the statutory provisions if the Customer asserts claims for damages based on willful intent or gross negligence, including willful intent or gross negligence on the part of his/her/its representatives or vicarious agents. Furthermore, the Company shall be liable for culpable breaches of cardinal contractual obligations in accordance with the statutory provisions. Cardinal obligations are those whose fulfillment is crucial for the due performance of the agreement in the first place and in whose fulfillment the contractual partners can generally be expected to trust. Insofar as the Company can be accused of neither willful intent nor gross negligence, liability for damages shall be limited to the foreseeable damage typically occurring in agreements of this type. Indirect damage or consequential damage shall only be eligible for compensation insofar as it is typically to be expected when using the item as intended. This shall not reverse the burden of proof to the detriment of the contractual partner. Liability for culpable injury to life, limb or health shall remain unaffected. Liability under the German Product Liability Act (*Produkthaftungsgesetz*) shall also remain unaffected.

(2) Any further-reaching claims for damages, irrespective of their legal basis, are excluded. This shall also apply if the Customer asserts claims for the reimbursement of expenses incurred in vain in lieu of claims to compensation for damages. (3) Any liability for technical information or purely advisory activities is excluded if this is not contractually owed. (4) The statutory limitation provisions shall apply to liability for gross negligence and to claims for damages based on injury to life, limb or health.

(5) In all other respects, the limitation periods pursuant to section 9.9 of these Terms and Conditions of Business shall apply to claims based on defects.

#### **11. Place of Performance, Place of Jurisdiction and Applicable Law**

(1) The place of performance and place of jurisdiction for all claims and disputes arising from, or in connection with, the contractual relationship shall be the administrative headquarters of the Company, provided that the Customer is a merchant, a legal entity under public law or a fund under public law. The Company shall also, however, be entitled to bring action against the Customer in the place where he/she/it is based.

(2) The legal assessment of the relationships between the contracting parties shall be governed exclusively by the formal and substantive law applicable in the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods and international trade provisions (CISG). Furthermore, reference provisions of German private international law which would lead to the application of foreign legal norms/foreign places of jurisdiction are excluded.

#### **12. Request to Submit a Declaration**

Insofar as the Company asks the Customer to submit declarations, e.g. approval, and sets the Customer a reasonable deadline for this, the declaration shall be deemed to have been issued upon expiry of the deadline if the Customer fails to respond. The request shall be deemed to have been received on the second working day following its dispatch.

#### **13. Severability Clause**

Should any individual provision of this Agreement be or become invalid, either in full or in part, or unenforceable, this shall not affect the validity of the other provisions. In place of the invalid, partially invalid or unenforceable provision, the Parties agree to define a provision that comes closest to the meaning and purpose of the invalid, partially invalid or unenforceable provision. If the Parties fail to reach such an agreement, the invalid, partially invalid or unenforceable provision shall be replaced, as the Parties request, by the statutory provision that comes closest to the meaning and purpose of the invalid, partially invalid or unenforceable provision.