

# General Terms and Conditions of Gerg Lighthouse GmbH

(as at March 2020)

## 1. General, Scope

- 1.1. The legal relations between Gerg Lighthouse GmbH (hereinafter "**GLH**" or "**we**") and customers (hereinafter "**Buyers**") shall be governed by these General Terms and Conditions (hereinafter "**T&C**"). These T&C shall apply only vis-à-vis natural or legal persons or partnerships with legal capacity who or which are acting in exercise of their commercial or independent professional activity (entrepreneur within the meaning of section 14 (1) of the German Civil Code (BGB)) at the time the contract is concluded or vis-à-vis legal persons under public law or federal special assets.
- 1.2. The T&C shall apply most notably to contracts governing the sale and/or delivery of movable items (hereinafter "**Goods**"), regardless of whether GLH manufactures the Goods itself or purchases them from suppliers (sections 433 and 650 BGB), and to contracts for work and services (section 631 BGB). The T&C as amended shall also apply as a framework agreement for future contracts governing the sale and/or delivery of movable items with the same Buyer, without reference having to be made to them again by GLH in each individual case; in this case we will inform the Buyer without undue delay of any changes to the T&C. Any such changes shall apply between GLH and the customer if the Buyer does not object to their validity within one month of receiving the notification of change and GLH duly advises the Buyer of this consequence of omission of objection in the notification of change.
- 1.3. Any differing, conflicting or supplementary terms of business set out by the Buyer shall only constitute part of the contract if and insofar as GLH has expressly consented to their validity. This requirement for consent shall also apply if GLH unreservedly carries out the delivery to the Buyer in full knowledge of conflicting or differing conditions specified by the Buyer.
- 1.4. Special individual agreements made with the Buyer in single cases (including subsidiary agreements, supplements and amendments) shall take precedence over these T&C in any such event.
- 1.5. In the absence of express written agreement, drawings, costings, specifications, performance indications, time limits, dimensions, tolerances and weights shall not be binding on us. All agreements made by our staff and/or other employees and any deviations from these terms, additions, subsidiary arrangements and warranties shall require the written confirmation of GLH in order to have effect.
- 1.6. Statements and notices of legal relevance which the Buyer is required to submit to GLH after conclusion of the contract (e.g. notice of time limits, notification of defects, notice of withdrawal or reduction) shall require written form in order to have effect.
- 1.7. References to the validity of statutory provisions shall have only clarifying importance. The statutory regulations shall therefore still apply, even without any such clarification, unless they are immediately amended or explicitly excluded in these T&C.

## 2. Quotations and Quotation Documents, Supplements and Termination

- 2.1. Quotations issued by GLH are subject to confirmation and non-binding. This shall also apply if we provide the Buyer with catalogues, illustrations, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents – even in electronic form – to which we reserve title and copyright. Without our express consent, the Buyer is not entitled to make these items themselves or their content accessible to third parties, disclose them, use or reproduce them by GLH itself or through third parties. At our request, the Buyer must return these items to us in full and destroy any copies which may have been made if they are no longer required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- 2.2. The purchase order for Goods submitted by the Buyer shall be considered a binding offer of contract.
- 2.3. Notice of acceptance may be issued either in writing (e.g. by order confirmation) or by delivering the Goods to the Buyer. A lack of communication in response to a purchase order may not under any circumstances be interpreted as confirmation of acceptance.
- 2.4. If GLH is unable to perform services itself, we reserve the right to obtain these from external suppliers without prior agreement with the Buyer/customer. The Buyer/customer hereby waives this prior agreement.
- 2.5. GLH shall be entitled to refuse to accept a purchase order from the Buyer, especially if it becomes apparent that the payment claim of GLH under the individual contract would be jeopardised by the inability of the Buyer to pay in the case of acceptance of the purchase order. This shall most notably apply if the creditworthiness of the customer is assessed as "*high risk*" (credit score of 7 or lower) by Euler Hermes Forderungsmanagement Deutschland GmbH or if there are other pertinent reasons pursuant to section 321 (1) BGB.
- 2.6. Subsequent changes must be ordered and accepted separately by the Buyer. The additional costs arising will be charged separately according to the supplementary order. Any delivery periods that may have been agreed shall be extended by such supplements.
- 2.7. The specifications set out in a purchase order must be checked by the Buyer for infringement of copyright or violation of other property rights. If GLH recognises that the specifications of the Buyer or their implementation infringe third-party property rights, GLH may withdraw from the order or – in the event of a continuing obligation or contract put into effect – terminate the order without notice.
- 2.8. GLH shall be entitled to terminate the contract without notice if it has good cause to do so. Good cause shall most notably exist if it becomes apparent after conclusion of contract that the payment claims of GLH under the contract are jeopardised by the inability of the customer to pay. This shall be without prejudice to statutory rights for refusal of performance, termination and withdrawal.

## 3. Prices and Payment Terms

- 3.1. Unless agreed otherwise in any given case, the prices listed by GLH at the time of conclusion of the contract shall be valid and shall apply ex works/ex warehouse and exclusive of packaging. The prices are quoted exclusive of statutory value added tax at the prevailing rate.

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- 3.2. In case of sale by delivery to a place other than the place of performance (section 5.1 of these T&C), the Buyer shall also bear the transport or shipping costs ex warehouse and the costs of any cargo insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
- 3.3. The purchase price shall be due for payment within five (5) calendar days of dispatch of the Goods. In the case of contracts with a delivery value of more than EUR 5,000.00, however, GLH shall be entitled to demand a deposit of 1/3 of the purchase price. The deposit shall be due for payment within five (5) calendar days of invoicing.
- 3.4. The Buyer shall be in default of payment after the expiry of the payment term set out in paragraph 3.3 of these T&C. During default the purchase price shall be subject to interest at the applicable statutory interest rate for late payment, but not less than nine (9) percentage points above the respective base rate of the European Central Bank. In the case of merchants, this shall be without prejudice to the claim of GLH to commercial interest from the date due (section 353 of the German Commercial Code (HGB)). GLH reserves the right to assert further losses arising from late payment.
- 3.5. The Buyer shall only have rights of set-off and retention insofar as its claim is established as final and absolute in law or is undisputed. In the case of deficient delivery, this shall be without prejudice to the Buyer's own rights, particularly under the second sentence of paragraph 7.6 of these T&C.
- 3.6. If it becomes apparent after conclusion of the contract that GLH's claim to the purchase price is jeopardised by the inability of the Buyer to pay (e.g. through the filing of a petition to open insolvency proceedings), we shall be entitled to refuse performance and – after setting a time limit, where applicable – to withdraw from the contract (section 321 BGB). In the case of contracts for the manufacture of specific items (made to order), GLH can withdraw immediately without prejudice to the statutory regulations concerning the dispensability of fixing a time limit.
- 4. Delivery Period and Default in Delivery**
- 4.1. The delivery period shall be agreed individually or fixed by GLH at its equitable discretion on acceptance of the order. Delivery will be made "ex works/ex warehouse".
- 4.2. Partial deliveries shall be permitted to such extent as is reasonable. These will be invoiced separately by partial billing.
- 4.3. If we are unable to meet firm delivery periods for reasons beyond our control (non-availability of performance, interruptions of any kind to operations, impossibility of manufacturing the Goods on the commercial machines, difficulties in obtaining materials or energy, transport delays, strikes, lawful lock-outs, lack of manpower, energy or raw materials, difficulties in obtaining the necessary official approvals, official measures or the lack of, incorrect or late deliveries from suppliers), we will inform the Buyer without delay, at the same time giving the expected new delivery period. A case of non-availability of performance within this meaning shall most notably be deemed to apply if we are not supplied on time by our suppliers, if we have agreed a matching cover transaction, neither we nor the supplier is at fault or we are not under any obligation to procure the supply in the individual case. If performance is not available within the new delivery period either, we shall be entitled to withdraw from the contract either wholly or in part if we inform the Buyer of the non-availability without undue delay within the new delivery period; we will refund without delay any consideration already paid by the Buyer.
- 4.4. The date on which GLH enters into default in delivery shall be governed by the statutory regulations. In any event, however, the Buyer shall be required to issue an overdue notice.
- 4.5. Notwithstanding the legal requirements, the Buyer shall only be entitled to withdraw from the contract if GLH is responsible for the failure to meet the delivery deadline and/or the Buyer has set GLH a reasonable period of grace to no avail.
- 4.6. This shall be without prejudice to the rights of the Buyer under paragraph 8 of these T&C and the statutory rights of GLH, particularly in the event that the duty to supply is excluded (e.g. because performance and/or renewed performance is impossible or unconscionable).
- 5. Delivery, Supplements, Place of Performance, Transfer of Risk, Acceptance, Default in Acceptance**
- 5.1. Delivery will be made ex works/ex warehouse. The place of performance shall be the registered office of GLH. The Goods will be sent to a different destination at the Buyer's request and expense (sale to destination according to Buyer's instructions). Unless agreed otherwise, GLH shall be entitled to decide the manner of shipping (especially the carrier, transport route, packaging).
- 5.2. Any tools, moulds, fixture, models, assembly parts and other manufacturing equipment (together "Tools") which are to be provided shall be placed at the disposal of GLH at no cost, free of charges, in due time and duly exempting GLH from any liability for their deterioration or destruction. Any Tools or Goods which have been paid for and which have not been collected, despite a request for their collection having been issued and a reasonable period of time allowed for their collection by GLH, may be destroyed by GLH for a fee.
- 5.3. If an acceptance procedure is necessary under the relevant statutory provisions, the Buyer shall be required to inspect and accept the work which has been completed and is ready for acceptance without undue delay following receipt of a request to this end or a notification of completion by GLH. The Goods shall further be deemed accepted if five (5) working days have elapsed since delivery or the Buyer/customer has started to use the Goods (e.g. has taken them into operation) and in this case two (2) working days have elapsed since the Goods were delivered or installed. Should the Buyer refuse acceptance, it must notify GLH of the defects in writing without undue delay but within not more than fourteen (14) working days following provision of the work. If the Buyer does not refuse acceptance within the aforementioned period, citing at least one defect, the work shall be deemed to have been accepted.

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- This shall also apply when the work is placed into operation or put into service. The Buyer may not refuse acceptance in case of insignificant defects.
- 5.4. If the Goods are prepared by GLH for collection, they shall be deemed accepted by the Buyer/customer if GLH has given notice of their readiness for collection, advising of the notional acceptance pursuant to this paragraph 5.4, and seven (7) working days have elapsed since notification.
  - 5.5. The risk of accidental perishing or accidental deterioration of the Goods shall pass to the Buyer on the handover of the Goods at the latest. Insofar as an inspection and acceptance procedure is agreed, this shall be applicable in respect of the passing of risk. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental perishing or accidental deterioration of the Goods and the risk of delay shall pass on handover of the Goods to the forwarding agent, freight carrier or to the person or body instructed with dispatch (the start of the loading process shall determine the point of transfer of risk). The Goods shall be deemed to have been handed over or accepted if the Buyer fails to take due delivery of said Goods.
  - 5.6. If the Buyer falls behind with acceptance obligations or neglects other duties of cooperation, or if the delivery of GLH is delayed for other reasons for which the Buyer is responsible, then GLH shall be entitled to claim compensation for the losses incurred in this respect, including any additional expenses (e.g. storage costs and insurance). For this GLH will charge a flat fee of 0.25% of the invoiced amount for each full calendar week, beginning from expiry of the delivery period or – if there was no delivery period – from notification that the Goods are ready for dispatch, but not more than 10.00% of the purchase price of the Goods or the remuneration for the work. The fee will not be payable in the case of final non-acceptance.
  - 5.7. This shall be without prejudice to evidence of a greater loss and the statutory claims of GLH (in particular reimbursement for additional expenses, reasonable compensation, termination); however, the flat fee will be credited to claims to damages for further losses or the reimbursement of expenses. The Buyer remains at liberty to demonstrate that GLH did not suffer any loss at all or suffered a much lesser loss than this flat fee (paragraph 5.6).
- 6. Reservation of Title**
- 6.1. GLH reserves title to the Goods until receipt of all current and future claims arising from the purchase contract and from an ongoing business relationship with the Buyer.
  - 6.2. In the case of a breach of contract on the part of the Buyer, especially non-payment of the due purchase price and unjustified refusal of acceptance, GLH shall be entitled, pursuant to the statutory regulations, to withdraw from the contract and/or to reclaim the Goods on the basis of the reservation of title. The request from GLH for surrender of the Goods shall not amount to a notice of withdrawal from the contract unless GLH had expressly stated as such in writing. On the contrary, GLH shall be entitled to merely request the return of the Goods and to reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, GLH will only be entitled to assert these rights if it has first set the Buyer a reasonable time limit for payment and this has passed without result or if statutory provisions allow the setting of such a time limit to be dispensed with.
  - 6.3. The Buyer shall be obliged to treat the Goods subject to reservation of title with due care and must most notably take out and pay for adequate fire, water and theft insurance covering their replacement value. Any servicing and inspection work which may be required must be carried out by the Buyer in due time at its own expense.
  - 6.4. The Goods subject to reservation of title may not be pledged or assigned to third parties by way of security until such time as the secured claims have been settled in full. The Buyer must notify us in writing without undue delay of any case of attachment or seizure or other third-party intervention.
  - 6.5. The Buyer shall be entitled to sell and/or process the Goods subject to reservation of title in the ordinary course of business. In this case the following provisions shall also apply:
    - 6.5.1. The Buyer hereby assigns to GLH all claims which accrue to the Buyer against its customers or third parties through the resale, irrespective of whether the Goods have been resold as purchased or after further processing. GLH hereby accepts the assignment. The Buyer remains authorised to collect this claim even after the assignment. This shall be without prejudice to GLH's power to collect the claim itself. However, GLH undertakes not to collect the claim as long as the Buyer duly discharges the relevant payment obligations to GLH and is not in default of payment, and insofar as no petition for the opening of insolvency proceedings has been filed and there is no other deficiency in its performance. If this is the case, however, GLH may demand that the Buyer disclose details of the assigned claims and their debtors, provide all the information required for collection, deliver the relevant documents and inform the debtors (third parties) of the assignment.
    - 6.5.2. The processing or alteration by the Buyer of the Goods subject to reservation of title shall always be carried out on our behalf in accordance with section 950 BGB. The Buyer's legal future right to the Goods shall continue in the altered item. If the Goods subject to reservation of title are processed with other objects not belonging to GLH, GLH shall acquire a share in ownership of the new item according to the invoice values of the Goods belonging to GLH in proportion to the other objects processed at the time of the processing. In all other respects, the same shall apply to the item resulting from processing as applies to the Goods supplied under reservation of title.
    - 6.5.3. If the Goods subject to reservation of title are inextricably combined, mixed or commingled with other objects not belonging to us, we shall acquire a share in ownership of the new item according to the invoice values of the Goods belonging to GLH in proportion to the other objects combined, mixed or commingled at the time of the combination, mixing or commingling. If the combination, mixing or commingling is performed in such a way that the Buyer's item is to be regarded as the main item, it shall be deemed agreed that the Buyer transfers joint title to us pro rata. GLH accepts this transfer. In all other respects, the

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- same shall apply to the item resulting from combination, mixing or commingling as applies to the Goods supplied under reservation of title.
- 6.5.4. The Buyer shall hold the sole ownership or co-ownership of an item created pursuant to paragraphs 6.5.2 and 6.5.3 free of charge for us as the indirect owner.
- 6.6. The Buyer undertakes to release the securities due to GLH at our demand to the extent that the realisable value of the securities of GLH exceeds the claims to be secured by more than 10.00%; GLH shall be entitled to choose the securities to be released.
- 7. Warranty for Defects**
- 7.1. Unless specified otherwise below, the statutory provisions shall apply in respect of the rights of the Buyer in case of material defects and deficiencies in title (including incorrect delivery, short delivery, incorrect assembly or deficient assembly instructions). In all cases this shall be without prejudice to the statutory special provisions applicable in the case of final delivery of the Goods to a consumer (supplier's recourse pursuant to sections 445a, 445b, 477, 478 BGB) unless the right to compensation is affected.
- 7.2. The agreed specification of the properties and condition of the Goods shall be the primary basis of GLH's liability for defects. The product descriptions designated as such (including those of the manufacturer) which have been issued to the Buyer or included in the contract prior to the purchase order shall be deemed to be an agreement on the quality of the Goods.
- 7.3. If no agreement has been made on the properties and condition, a judgement shall be made according to the statutory ruling as to whether a defect is present or not (section 434 (1) 2nd and 3rd sentences BGB). However, GLH does not accept any liability for public statements of the manufacturer or other third parties (e.g. advertising statements). GLH also does not accept any liability for defects arising through unsuitable or improper use, deficient assembly or start-up by the Buyer or third parties, normal wear and tear, deficient or negligent treatment. Furthermore, GLH does not accept liability for defects resulting from improper modifications or repair work carried out by the Buyer or third parties without our consent.
- 7.4. The warranty rights of the Buyer require that it has duly discharged its obligation to inspect and give immediate notice of defects under sections 377 and 381 HGB. GLH must be notified without delay in writing of any defect which is discovered during the inspection or at a later date. Notification will be deemed given without delay if it is made within two (2) weeks of appearance of the defect, whereby the time limit will be deemed observed if the notification is sent in time. If the Buyer fails to give notice of defects, the Goods shall be deemed to have been approved. Notwithstanding this duty to inspect and give notice of defects, the Buyer must notify obvious defects, i.e. defects identifiable in a due inspection (including wrong and short delivery), in writing within two (2) weeks of delivery, whereby the time limit will likewise be deemed observed if the notification is sent in time. If the Buyer fails to carry out a due and proper inspection and/or report any defect by the specified deadline, GLH shall not be liable for any defects not notified or not notified in due time. The Goods shall then be deemed to have been approved.
- 7.5. If the delivered item is defective, GLH may in the first instance choose whether to redress the situation by correcting the defect (rectification) or by supplying a flawless item (replacement). This shall be without prejudice to GLH's right to refuse supplementary performance subject to statutory requirements.
- 7.6. GLH shall be entitled to make the supplementary performance owed subject to due payment of the purchase price by the Buyer. However, the Buyer will have the right to withhold a reasonable part of the purchase price in proportion to the defect.
- 7.7. The Buyer shall allow GLH sufficient time and opportunity for supplementary performance, in particular duly providing the rejected Goods for inspection. In the case of replacement, the Buyer shall return the defective item to us in accordance with the statutory provisions. The supplementary performance shall include neither removal of the defective item nor its renewed installation if GLH was not originally bound to install, unless GLH is responsible for the defect.
- 7.8. Should a fault actually exist, we will bear the expenses incurred for the purposes of inspection and supplementary performance, in particular the costs of transportation, travel, labour and materials. Should the request of the Buyer for remedial action prove to be unjustified, however, we may demand reimbursement from the Buyer for the costs incurred as a result. We will only bear the costs of removal and installation if and insofar as we are liable for damages for the defect.
- 7.9. In urgent cases, e.g. if operating safety is jeopardised or to avert disproportionate damage, the Buyer will be entitled to remedy the defect itself and to demand reimbursement from GLH of the objectively necessary expenses incurred. GLH must be notified without delay, in advance where possible, of any such remedial action taken by the Buyer. The right of the Buyer to take remedial action shall not apply if GLH would have been entitled to refuse supplementary performance under the statutory provisions.
- 7.10. If the supplementary performance has failed, or if a time limit set for the supplementary performance by the Buyer has expired to no avail or can be dispensed with under the statutory provisions, the Buyer may choose to withdraw from the purchase contract or to ask for an appropriate decrease in the purchase price (reduction). However, the right of withdrawal shall not apply in the case of a minor defect.
- 7.11. The Buyer may only assert claims for damages or claims for reimbursement of expenses incurred in vain in accordance with paragraph 8 of these T&C and may not make claims in other respects.
- 8. Other Liability**
- 8.1. Unless otherwise determined in these T&C including the following provisions, GLH will be liable in accordance with the relevant statutory provisions in the case of a breach of contractual and non-contractual duties.
- 8.2. GLH shall only be liable for damages – irrespective of legal grounds – in the case of deliberate intent and gross negligence. In the case of ordinary negligence GLH shall only be liable for the following:
- 8.2.1. a) damages arising from injury to life, limb or health;

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- 8.2.2. b) losses arising from neglect of a fundamental contractual duty (a duty which actually enables due fulfilment of the contract and upon compliance with which the other party may and does routinely rely); in this case, however, the liability of GLH shall be limited to such losses as are reasonably foreseeable or typical under such contracts.
- 8.3. The limitations of liability according to paragraph 8.2 shall not apply if GLH has concealed a defect with intent to deceive or caused it intentionally or if it warranted the quality of the Goods. The same shall apply to the Buyer's claims under the German Product Liability Act. The Buyer may only withdraw from or cancel the contract for a breach of duty not involving a defect if GLH is responsible for the breach of duty. The Buyer shall have no free right of termination (most notably under sections 650 and 648 BGB). The statutory preconditions and legal consequences shall apply in other respects.
- 8.4. The exclusions or limitations of liability on the part of GLH shall also apply to the personal liability of employees, workers, members of staff, legal representatives and vicarious agents of GLH.
- 8.5. The Buyer shall bear the full burden of proof for the existence of the defect. Sections 477 and 478 (1) BGB shall remain unaffected in the event of a final sale in the supply chain to a consumer.
- 8.6. The Buyer shall be obliged – including above and beyond the legal obligations under section 254 BGB – to advise GLH of the risk of an exceptionally high loss and to make all reasonable efforts to avert and reduce losses.

## 9. Property Rights

- 9.1. Subject to this paragraph 9, GLH shall be responsible for ensuring that the Goods are free of third-party commercial property rights or copyrights insofar as they were not manufactured according to the Buyer's specifications (drawings, designs, plans or other). Each contracting party shall notify the other party in writing without undue delay of any claims asserted against it for the infringement of such rights.
- 9.2. In the case that Goods infringe the commercial property rights or copyright of a third party, GLH will at its option and expense modify the Goods or replace them such that third-party rights are no longer infringed but the Goods continue to fulfil the purpose contractually agreed, or procure right of use for the Buyer through the conclusion of a licensing agreement. If we are unable to do so within a reasonable period of time, the Buyer will be entitled to withdraw from the contract or to seek an appropriate reduction in the purchase price. Any claims for damages asserted by the Buyer shall be subject to the restrictions set out in paragraph 8 of these T&C.
- 9.3. In the case that products of other manufacturers that are supplied by GLH infringe rights, GLH will at its option assert its claims against the manufacturer and upstream suppliers for the account of the Buyer or assign them to the Buyer. In these cases, claims may only be made against GLH in accordance with the terms set out in this paragraph 9 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers has been unsuccessful or has no prospect of success, e.g. due to insolvency. However, GLH shall only be liable for damages or the reimbursement of expenses pursuant to paragraph 8 of these T&C if GLH is also responsible for the deficiency in title.

## 10. Confidentiality

- 10.1. Each contracting party shall take due care of all the documents (including samples, models and data) and knowledge obtained in the business relationship, restricting their use only to the purposes jointly pursued and refraining from disclosing them to third parties, duly exercising the same level of care as would apply in respect of their own classified documents and knowledge, if the other contracting party indicates that they are confidential or has an obvious interest in their secrecy.
- 10.2. This obligation shall apply on initial receipt of the documents or knowledge and shall cease to apply 36 months after the end of the business relationship.
- 10.3. The obligation shall not apply to documents and knowledge which are in the public domain or which were already known to the contracting party on their receipt in the absence of any duty of confidentiality, or which are subsequently transmitted by a third party authorised to pass them on, or which are developed by the receiving contracting party without exploitation of any confidential documents or knowledge belonging to the other contracting party. Disclosure in the case of statutory or official duties of disclosure is also permitted, whereby in this case the other contracting party must be informed without delay, preferably prior to disclosure, of the reason for and extent of the disclosure, insofar as legally permissible.

## 11. Limitation Period

- 11.1. Derogating from section 438 (1) no. 3 and section 634a (1) no. 3 BGB, claims for material defects and deficiencies in title shall be subject to a general limitation period of one year after delivery. The limitation period shall begin from the point of acceptance in cases where an inspection and acceptance procedure is agreed or provided for by law. In the event of claims due to injury to life, limb or health and in cases of deliberate intent and gross negligence, the statutory limitation period shall remain in effect.
- 11.2. However, if the Goods in question are building structures or items which have been used for buildings as intended (construction materials) and have caused the building to be defective, the statutory limitation period shall be five (5) years from delivery (section 438 (1) no. 2 and section 634a (1) no. 2 BGB). This shall be without prejudice to statutory special regulations for third-party rights in rem (section 438 (1) no. 1 BGB), fraudulent concealment by GLH (section 438 (3) BGB) and claims in supplier recourse in the case of final delivery to a consumer (sections 445b, 478 (2) BGB). Instead of the limitation periods pursuant to section 445b BGB, however, only the limitation period pursuant to paragraph 11.1 above shall apply if the last sale in the supply chain is not a sale of consumer goods.
- 11.3. The above limitation periods shall also apply to claims for contractual and pre-contractual or non-contractual damages asserted by the Buyer on the basis of a defect with the Goods, unless the routine statutory period of limitation would be shorter in the given case (sections 195 and 199 BGB). This shall in all cases be without prejudice to the limitation periods under the German Product Liability Act. The statutory

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limitation periods shall apply exclusively to other claims for damages asserted by the Buyer pursuant to paragraph 8 of these T&C.

### **12. General Provisions**

- 12.1. Unless otherwise agreed, these T&C and the legal relations between us and Buyer shall be governed exclusively by the law of the Federal Republic of Germany. International uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, shall not apply. The conditions and effects of the reservation of title pursuant to paragraph 6 of these T&C shall be subject to the law in force in the location where the respective item is stored, insofar as the choice in favour of German law is inadmissible or invalid under said law.
- 12.2. The sole place of jurisdiction for all disputes arising directly or indirectly from these T&C and/or the contractual relationship with us shall be the court having local competence for the registered office of GLH if the contracting party is a merchant, a public corporation or a federal special asset. We shall also have the right to pursue the supplier at its general place of jurisdiction.
- 12.3. Should individual provisions of these T&C be or become ineffective, this shall be without prejudice to the effectiveness of the remaining provisions.

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