1. Exclusive validity and acceptance of our General Terms and Conditions

1.1 All our offers and quotations are based on our General Terms and Conditions. We accept orders exclusively on these terms and conditions. General terms and conditions of the Orderer or any conditions of the Orderer deviating from or different to the General Terms and Conditions are invalid and, notwithstanding express written consent or other unconditional performance in face of our knowledge of such deviating terms and conditions, unless we explicitly agree thereto.

1.2 By placing an order or accepting performance the Orderer accepts the validity and applicability of our General Terms and Conditions with regard not only to the respective transaction but also all future business relationships.

2. Offers and quotations - ancillary stipulations - contents of contract - offer documents

2.1 Unless otherwise agreed, the quotations are valid for 30 days from the date of sending. The Orderer’s order is binding on the Orderer and entitles us to accept the order within two weeks by written order confirmation or delivery of the ordered good to the Orderer.

2.2 Ancillary stipulations to our quotations, such as confirmations as well as agreements with our field staff shall only be valid if confirmed by us in writing. In case of doubt or ambiguity regarding the terms of the contract, our written order confirmation shall prevail.

2.3 We will deliver goods in one or more bundles. Each bundle is considered as a separate transaction. In the event of partial delivery, the Agreement shall be divided proportionately. If goods are delivered in single units, the number of units delivered will not be significant.

3. Payment and payment terms

3.1 Unless otherwise agreed, our prices for delivery ex works do not include freight, packaging, insurance costs and turnover tax. In any event, we will additionally charge the statutory turnover tax at the rate in effect at the date of performance.

3.2 The price agreed upon reflects the costs of wages, material and energy in effect at the date of the conclusion of contract. If there is a change in wages, prices or costs, we will charge the agreed-upon price by a commensurable amount proportional to the amount of the agreed-upon price constituting charges for wages, material and energy. Upon request, we will provide evidence of such increase in costs.

3.3 Unless otherwise agreed and subject to the Orderer’s sufficient creditworthiness, payments due to us must be made in full, without any deductions, within 30 days after our performance. The Orderer will be charged default interest of 8% above the official base interest rate of the Federal Republic of Germany (Bundesbank) for any overdue payments. The agreed-upon price is considered as a minimum price if the Orderer is not in delay with respect to the payment. Promises to grant a discount are binding only if the Orderer is not in delay with respect to the settlement of previous invoices.

3.4 We are entitled to demand, at our discretion, advance payment or the furnishing of security if the creditworthiness of the Orderer appears doubtful or if the Orderer fails to meet its payment obligation when payment to us becomes due. The Orderer will bear all costs and expenses in connection with the security. The Orderer’s order is binding on the Orderer and entitles us to accept the order within two weeks by written order confirmation or delivery of the ordered good to the Orderer.

3.5 To the extent we accept checks or bills of exchange, such acceptance is on account of payment, but never with the effect of discharge, and we are not responsible for the timely presentation or protest. Discounting and collection are at the Orderer’s risk. The price agreed upon is reduced by the amount of discount or bank commission. The Orderer must be ready to pay all commissions and expenses to be charged to us, unless the Orderer is not in delay with respect to the payment.

3.6 The Orderer is not entitled to offset any amounts against our claims for payment or to effect a right of retention with respect to amounts due to us. The foregoing does not apply to offsetting with respect to amounts due to the Orderer. We reserve the right to performance with respect to claims brought against the Orderer by its purchasers, and we assume no liability with respect to our products’ fitness for a particular purpose. We reserve the right to perform such contracts on the Orderer’s behalf and represent the Orderer in connection with such information and advice, in particular with respect to performance, are averaged. Such information and advice does not render unessential the observance of the processing instructions and the testing of products supplied with their respect to their particular purpose.

4. Periods for and dates of performance

4.1 Periods and dates of performance are only approximate, unless expressly confirmed by us as binding.

4.2 A period of performance determined only according to its duration begins on the day immediately following the day on which full agreement regarding all specific terms of the order was reached, at the earliest with the acceptance of the order. This is not the case prior to the occurrence of any contingencies, documents, data or other information to be released by the Orderer and the receipt by us of the advance payment, if any, to be made by the Orderer.

4.3 A deadline for delivery is regarded as having been met if the goods left our plant or warehouse before the expiration of such deadline or, in cases where the goods cannot be delivered or shipped to the delivery address, if no complaint is made within two weeks after delivery, assuming that all documents, data or other information to be released by the Orderer and the receipt by us of the advance payment, if any, to be made by the Orderer.

4.4 We are entitled to refuse to perform the performance if we do not receive the security (goods or claims) to which we are entitled to demand. We reserve the right to perform or substitute performance with respect to claims brought against the Orderer by its purchasers, and we assume no liability with respect to our products’ fitness for a particular purpose. We reserve the right to perform such contracts on the Orderer’s behalf and represent the Orderer in connection with such information and advice, in particular with respect to performance, are averaged. Such information and advice does not render unessential the observance of the processing instructions and the testing of products supplied with their respect to their particular purpose.

4.5 If our performance is delayed on account of circumstances or events which are beyond our control (such as war, fire, strike, lack of means of transportation, general lack of supplies, disruption of operations and similar circumstances), such delays are considered as force majeure. We will promptly inform the Orderer of the delay.

4.6 We are entitled to discharge the Orderer from the obligation to keep the goods in custody for us, like a borrower, or, in case the Orderer is not in possession of the goods, to enter the goods on our premises if it is not possible or not possible to the extent necessary for our acquisition of ownership or co-ownership rights. To the extent the handing over to us of the new goods is necessary for our acquisition of ownership or co-ownership rights that might result in the acquisition of such ownership or co-ownership rights by the Orderer, the Orderer shall, and shall cause its purchasers that are entrepreneurs to, inform us immediately if the goods are damaged or destroyed.

4.7 We are entitled to release the securities (goods and claims) to which we are entitled to demand under the laws applicable at the Orderer’s seat and match as closely as possible the legal condition of retention of title under German law.

7. Quality defects - defects of title

7.1 Our performance will reflect the state of the art technology at the time the order is placed, the applicable legal requirements, and our written order confirmation. The assessment of the Orderer’s quality claims is based on the agreed-upon price, the Orderer’s specific requirements, and our advisory services. Claims about our products’ characteristics, quality, or other specifications, including technical and commercial specifications, will only be considered if they are consistent with our advice and such advice is binding only if the Orderer’s specific requirements and the agreed-upon price are explicitly specified or expressly considered as a warranty.

7.2 To the extent the handing over to us of the new goods is necessary for our acquisition of ownership or co-ownership rights, the goods shall be deemed to have been handed over to us by virtue of the Orderer’s agreement to keep the goods in custody for us, like a borrower, or, in case the Orderer is not in possession of the goods, to enter the goods on our premises if it is not possible or not possible to the extent necessary for our acquisition of ownership or co-ownership rights.

9. Place of performance - place of venue - applicable laws

9.1 The place of performance for all transactions, in particular regarding the performance, taking back of packaging material and payment, shall be Remscheid.

9.2 Exclusive venue for disputes relating to the contract, including actions in connection with checks and bills of exchange, shall be in Remscheid. Notwithstanding the foregoing, we shall also be entitled to bring claims against the Orderer at any location where jurisdiction over the Orderer can be obtained.

9.3 In case of foreign country transactions, the entire contractual relationship shall be subject to the laws of the Federal Republic of Germany, unless the application of mandatory laws of another jurisdiction cannot be excluded. The application of the U.N. Convention on the Sales of Goods (CISG) is excluded.