

Terms and Conditions for Sale and Payment by Erich Rohde GmbH

Version of September 2012

1. SCOPE OF APPLICATION

- 1.1 The following General Terms and Conditions for Sale and Payment ("**Terms of Sale**") apply to, and are an integral part of, all order receipts, deliveries and sales of Erich Rohde GmbH ("**Seller**") regarding shoes and respective parts, e.g. shoe soles, ("**Products**") to customers ("**Buyer**") that are entrepreneurs pursuant to § 14 German Civil Code (*Bürgerliches Gesetzbuch*, "**BGB**"), unless expressly agreed otherwise.
- 1.2 Seller does not agree to any terms and conditions provided or referenced by the Buyer that differ from, or are amendments to, these Terms of Sale, and Seller expressly contradicts their validity and application. Terms and conditions of the Buyer will apply only if the Seller has expressly approved their applicability. These Terms of Sale shall also apply if the Seller effects delivery of the Products without any reservation while being aware of differing terms and conditions of the Buyer, or if the Seller makes reference to a letter or other document that refers to or contains such terms and conditions of the Buyer or a third party.
- 1.3 The Seller retains the right to change these Terms of Sale from time to time with future effect. The Terms of Sale in their current version as applicable at the point in time the respective contract is made apply to and form an integral part of all contracts and agreements in relation to Products as between the Seller and Buyer ("**Parties**"). They apply also to future orders of the Buyer and respective contracts in their current version as applicable at the point in time the respective contract is made, even if the Parties have not expressly agreed on their applicability.
- 1.4 In case of differences between these Terms of Sale and any individual agreements between the Parties in connection with a purchase contract the terms of the purchase contract shall prevail.

2. OFFER, CONTRACT

- 2.1 A binding purchase contract with respect to Products shall be concluded between the Parties if the Seller either expressly confirms acceptance of an order by the Buyer or does not object to an order within ten (10) business days upon receipt of an order from Buyer. If an order is made via telephone, Seller can confirm acceptance of the order also orally (cf. Sec. 18.2).

- 2.2 As a rule an order is placed by the Buyer prior to the start of a season in sufficient time to enable Seller to produce the Products, or arrange production of the Products ("**Initial Order**").
- 2.3 The order and the acceptance confirmation of the Seller are decisive for the content and subject of the purchase contract. Additional agreements shall only take effect if expressly confirmed by the Seller with respect to the respective order.
- 2.4 Any illustrations, drawings, statements or descriptions and other information as to quality and specifications of the Products set forth in samples, catalogues, brochures, price lists, layout and selection programs, quotes or other marketing material (including materials in electronic form) of Seller as well as samples and specimen ("**Documents and Samples**") shall serve for informational purposes only and shall not be binding. They shall not be an agreement or a warranty of a respective characteristic, quality or specification of the Product. They shall only become a binding integral part of the purchase contract if Seller has expressly agreed thereto or if they have been explicitly referred to in the order of Buyer and confirmed in the order acceptance confirmation of Seller. Seller retains title and rights to such Documents and Samples. Without prior consent of Seller, such Documents and Samples may not be used, copied or have their contents disclosed to third parties beyond the parameters necessary for contractual performance. Upon request they shall be returned to Seller without undue delay.

3. **MINIMUM ORDER VOLUME**

- 3.1 The minimum order volume for the Initial Order of a season amounts to 50 (fifty) pairs, whereas with respect to each Product and color at least 6 (six) pairs in this color shall be ordered at once in a single order. Seller may reject any order below the minimum order volume in its sole discretion.
- 3.2 For following orders in a season, i.e. orders on short notice of single Products from the current season, ("**Follow-up Order**"), a minimum order volume of 4 (four) pairs with respect to one delivery date shall apply. Depending on the quantity ordered, the delivery period can be between a few days or a longer, depending on whether the Products are available in stock. For Follow-up Orders below the minimum order volume Seller retains the right to charge a premium per order. Seller will inform Buyer of the relevant premium for Follow-up Orders below the minimum order volume at the time of the Initial Order or prior to or upon placement of the relevant binding Follow-up Order by Buyer.
- 3.3 The minimum order volume shall not be calculated on the basis of the order but on the basis of the number of Products in respect of which the relevant purchase contract is entered into between the Parties. With respect to an order above the minimum order volume, but a relevant acceptance confirmation by Seller below the relevant minimum order volume, for example because the Seller does not have all relevant Products in stock, the premium becomes due and payable. However, in

such a case the Buyer may cancel the order towards the Seller without undue delay after receipt of the respective order acceptance confirmation. In case of an order acceptance confirmation via telephone, the cancellation has to be declared in the same telephone call.

4. **PRICING**

- 4.1 Pricing in catalogues and price lists or similar documents physical or non-physical (also in electronic form) shall not be binding and are subject to change. Only prices in an order acceptance confirmation respectively prices agreed between the Parties in a purchase contract shall be binding for the relevant order. If the Parties have not expressly agreed on prices for Products of an order, prices quoted in the price lists of the Seller being in effect at the date of delivery shall apply.
- 4.2 Unless otherwise explicitly agreed, prices shall be net *ex works* of production facilities of the Seller, i.e. plus transportation costs and statutory VAT.
- 4.3 Prices include costs and expenses for customary packaging. Buyer shall bear any costs for packaging beyond the customary packaging.
- 4.4 In the case of Initial Orders at the beginning of the season as well as Follow-up Orders during the season exceeding the minimum order volume for Follow-up Orders of four (4) pairs and furthermore a net price for the Products under the relevant purchase contract of EUR 200.00, in the case of delivery within Germany the prices shall - in deviation from Sec. 4.2 - include all transportation costs with respect to the transportation way most economical for Seller, unless Buyer collects the Products. Buyer shall bear any costs for additional transportation arrangements (e.g. express delivery, courier or other transportation beyond the usual, labeling, special commissioning, insurance, etc.). If Seller delivers the Products outside of Germany specific terms or conditions differing from this Sec. 4.4 may apply, and Seller will inform Buyer of such differing terms or conditions in connection with the Initial Order or prior to or at the point in time of a Follow-up Order.
- 4.5 Seller retains the right to amend and reasonably adjust prices if after the conclusion of a purchase contract with respect to a delivery of Products an increase or decrease of costs occurs. If the price for a Product of the Seller has increased at the point in time of the performance by the Seller, i.e. the delivery of the Product, in comparison to the price applicable at the point in time of the respective order respectively the respective purchase contract, the Seller may adjust the price, and the increased price shall be applicable, if and to the extent the price adjustment is based on circumstances that are outside the control of the Seller, the price adjustment was not foreseeable at the point in time of the purchase contract between the Parties for the order, and the increase in price is reasonable. Circumstances outside the control of the Seller in this sense are for example, but not limited to, changes regarding (i) customs duties, taxes or other public charges, (ii) costs for material, labor, ancillary charges to labor, finance or construction, (iii) costs for

transportation, or (iv) costs charged to third parties involved in the performance by Seller. A price adjustment is excluded to the extent the Buyer has already entered into contractual obligations regarding the Products towards consumers. In case of a price adjustment by the Seller, the Buyer may cancel the order and step down from the purchase contract; this right can only be exercised through written declaration towards the Seller without undue delay after communication of the price adjustment.

5. DELIVERY, RISK ALLOCATION

- 5.1 Delivery times and/or periods shall only be binding upon express confirmation by the Seller. Delivery periods start on the date of the order acceptance confirmation respectively date of conclusion of the purchase contract. Delivery times and/or periods are deemed to be met if the notification of availability of the Product to be transported or the handing over to the shipper occur in time.
- 5.2 If Parties have agreed that Buyer will collect the Products or engage a shipper for the collection, Buyer is obliged to collect the Products without undue delay after notification of availability of the Products for collection. If Buyer does not collect the Products without undue delay upon the relevant notification, or if Buyer does not call partial deliveries at the agreed dates, or - in case such dates are not agreed - if Buyer does not call the Products in regular intervals during the delivery period, Buyer shall be in default of acceptance (*Annahmeverzug*).
- 5.3 Unless otherwise agreed, Seller effects delivery *ex works* even if the Seller bears the costs for transportation to Buyer. The risk with respect to the Product and the performance by Seller transfers to Buyer upon the notification of availability for collection of the Product and its readiness for collection, at the latest however upon handing over to the shipper.
- 5.4 Seller retains the right to make, to a reasonable extent, partial deliveries in its sole discretion.
- 5.5 In addition Seller shall be entitled to claim damages arising from a delay in case of a default in acceptance by Buyer, omission of cooperation by Buyer and other delay in the delivery for other reasons for which Buyer is responsible, and in such case the Seller shall be entitled to, at his reasonable discretion, either arrange for transportation of the Products at the risk and expense of the Buyer, or store the Products and immediately charge storage costs in addition to the purchase price of the Products. In case Seller stores any Products in its own premises Seller may claim storage charges in the amount of 0.5% of the price for the affected Products for each started month, at a maximum 5% of the price of the affected Products. In addition, in case of a default of acceptance by the Buyer the Seller shall have the right, upon expiration of a reasonable grace period, as a rule five (5) business days, to withdraw from the purchase contract or demand immediate payment irrespective of delivery of the Products. The demand for immediate payment shall not

- prevent Seller to withdraw from the purchase contract if the default of acceptance of Buyer continues, after a withdrawal from the contract by the Seller the obligation of Buyer to pay the purchase price falls away in accordance with the statutory provisions for withdrawals.
- 5.6 Timely delivery to Buyer shall be subject to the correct and timely supply to Seller. If Seller is not able to meet a binding delivery date or deliver within a binding delivery period due to reasons Seller is not responsible for, Seller shall inform Buyer without undue delay and propose a new delivery date or withdraw from the relevant purchase contract. In case Seller names a new delivery date Seller shall only be in default after expiration of the new delivery date and expiration of a further time period of 21 days after the new delivery date.
- 5.7 If Seller does not deliver at agreed delivery dates or within agreed delivery periods due to other circumstances than those described in Sec. 5.6 or without prior informing the Buyer of the delay, the Buyer may request from Seller to name within a period of three (3) business days after the original delivery date a new delivery date. If the new delivery date is later than 21 days after the original delivery date, the Buyer may reject the new delivery date and may set the Seller a reasonable grace period for the delivery, as a rule twenty-one (21) days, unless a grace period is not necessary under the applicable statutory provisions. With respect to Follow-up Orders, a reasonable shorter period of time shall apply. Only after expiration of the new delivery date respectively after expiration of the grace period shall the Seller be in default. The Buyer is entitled to withdraw from the purchase contract if he sets the Seller a reasonable grace period for the delivery and this grace period is expired without the delivery having taken place. If the Buyer has a claim for damages due to the default of the Seller, Buyer shall - unless provided otherwise in Sec. 12 - only be entitled to a lump sum default damage. Such lump sum default damage shall be for each full calendar week of delay a maximum of 0.5% of the net value, up to a total maximum of twenty (20) % of the net value, of the part of the total delivery volume which due to the delay cannot be used in time or cannot be used duly, provided, however, that the Buyer provides proof in each case that he has a default damage claim at least in such amount of lump sum default damage. A claim for damages with respect to indirect or consequential damages shall be excluded unless otherwise provided for in Sec. 12.
- 5.8 Buyer is obliged to put at the disposition of Seller without undue delay all such documents and information, which Seller requires with respect to the fulfillment of its obligations with respect to taxes and export notifications as well as other statutory obligations. With respect to VAT-free deliveries outside Germany this applies in particular with respect to the required confirmation of arrival or other proof regarding the transportation of the Products outside Germany. The Seller is entitled to request from the Buyer the payment of VAT until all required documents, information and proof for the VAT-exemption of the delivery has been received by Seller.

6. **PAYMENT AND INVOICING**

- 6.1 Seller issues an invoice as a rule upon delivery of the Products. Seller retains the right to request payment prior to the delivery of the Products for individual deliveries.
- 6.2 Unless otherwise agreed, invoices of Seller shall be payable immediately and without any deductions. Otherwise, payment terms and times provided in the invoice shall be binding. Any payment or discount period shall start with the receipt of the invoice.
- 6.3 Seller expressly refers to the statutory provisions in Sec. 286 para. 3 German Civil Code according to which the obligor of a payment shall be in default at the latest if payment is not made within a period of 30 days after the due date of the payment and the receipt of an invoice. Payments without reference to an invoice number or other payment order will be first credited against the oldest debts of Buyer. If costs or interests have accrued in connection with debts of Buyer, such payments will be credited first against such costs and interests and at last against the primary debt. Any claims, in respect of which payment has been deferred, shall be due immediately if Buyer comes in default with any payments to Seller or if the financial situation of Buyer deteriorates. Payment will be deemed made only if Seller has the funds available. In case of default of Buyer, interest in the amount of 8 (eight) percentage points above the base rate in accordance with Sec. 247 German Civil Code shall accrue, any higher or further claims or rights arising for Seller from the default shall remain unaffected.
- 6.4 In case of arrangements with purchasing associations (*Einkaufsvereinigungen*) and involvement of purchasing associations in the payment transactions, payments of the purchasing association shall be in the name and on behalf of the Buyer on account of the performance of the Buyer's payment obligations only. For purposes of clarification, Seller notes that any payment by the Buyer to a purchasing association will not free the Buyer from his payment obligations towards the Seller until and unless Seller has received the relevant payment in full from the purchasing association and the payment amount remains with Seller for definite. If Seller has to repay any amount to the purchasing association for any reason whatsoever, the Buyer remains without alteration obliged to make the payment to the Seller.

7. **WARRANTIES**

- 7.1 With respect to warranties in title and quality for the Products statutory provisions shall apply unless the following provisions expressly state otherwise.
- 7.2 A Product shall be considered having a defect if the Product does not have the agreed properties and conditions, in particular any specifications of Buyer in case of special manufacture on request. Deviations in structure and color shall not con-

stitute a defect as far as this is due to the nature of the materials used (leather, textiles) and is usual and customary in trade. Buyer acknowledges that during production of the Products for example due to quality deviations with respect to material supply, supply bottlenecks or changes in quality assurance processes as well as material increases in prices for material and manufacturing costs Seller may make changes in the materials, processing or production processes and these may result in changes to the Products. These changes may result in deviations of the Products delivered, e.g. changes in color, material used or details such as inner soles, staples, eyelets, fasteners, shoelaces, stitches or other details. In this respect, the Buyer acknowledges that any such changes in color, materials or details resulting from the aforementioned circumstances are usual and customary, and shall be acceptable and not constitute a defect in the Product, unless Seller has expressly guaranteed any specific quality or characteristic of the Product. Otherwise, the statutory provisions shall apply with respect to the determination of a defect in the Product.

- 7.3 In particular, but not limited to, Seller does not assume any warranty for damages in the Product occurring after the risk has transferred to the Buyer due to transportation, inappropriate or improper use by the Buyer or the Buyer's customers, changes to the Product without prior consent of Seller, wear and tear, incorrect or negligent use, treatment, maintenance or storage of the Product, chemical, electrochemical or electrical influences, unless Seller is responsible for such influences, as well as improper rectification attempts of defects by Buyer or any third party, including Buyer's customers.
- 7.4 Buyer shall be obliged to examine Products without undue delay after delivery of the Products in accordance with Sec. 377 German Commercial Code and shall notify Seller of any open defects in the Products without undue delay, at the latest within three (3) business days. Buyer shall notify the shipper of any damages during shipment (*Transportschäden*) without undue delay at delivery and shall document such damages on the delivery note. If Buyer does not make the relevant notices in due time, the relevant Products shall be deemed accepted and Buyer shall not be entitled to make any claims in connection with defects of such Products unless a defect was not obvious in the examination. In case a defect reveals itself later in time Buyer shall notify Seller without undue delay upon identification of such defect, at the latest within five (5) business days after the identification of the defect.
- 7.5 The Buyer shall only return any rejected Products to Seller with the approval of the Seller and free of costs for Seller by using the mailing labels for free shipping provided by Seller to Buyer, unless Seller has not reacted in any way within ten (10) business days upon receipt of a notification and objection of the Buyer with respect to defects in the Products. In case of legitimate objections with respect to defects Seller shall bear the necessary transportation costs incurred by Buyer for the return of the Products with respect to a pre-paid transportation. In case of a return of the Products not pre-paid, the Buyer shall bear the additional costs in comparison to a

pre-paid transportation. Seller shall be entitled to remedy the defects in its own discretion by either supplementary performance or rectification of a defect. Seller will try to attend to and remedy a defect within twenty (20) business days after receipt of the notification of such defect, whereas such period shall not be binding and can be longer or shorter depending on the work load at a certain time. In case of defects revealed after the sale to a consumer and in case of Products that have already been in use Seller may waive the return of the defect Products and request a written confirmation and proof from the Buyer with respect to the affected Products and the relevant defect.

- 7.6 If a defect is rejected in case of unjustified claims of defects and reclamations, or if unjustified claims of defects and reclamations are attended to, the Seller is entitled to claim damages from Buyer, and in particular to charge compensation with respect the additional costs for the administration and handling of objections and restoration of the original condition of the Products for sale, i.e. removing labels from Products and packaging, cleaning, re-packaging, potential repairs or alike, at a minimum 5% of the price of the unjustifiedly objected Products, unless Buyer can provide proof that Seller had less expenses, damages and costs.
- 7.7 Only in urgent cases of threats to the safety of operations or in order to defend against disproportionate damages, Buyer shall be entitled to remedy a defect on its own or by a third party and claim reimbursement of the associated necessary costs from Seller. Buyer shall notify Seller of such remedy without undue delay, if possible prior to the remedy action. Buyer shall not be entitled to remedy defects on its own or by a third party in other cases, and Seller shall not be liable for any costs that Buyer or its customers incur without the aforementioned requirements or without the prior written approval of the Seller. If Buyer claims reimbursement of costs for remedy actions imitated by Buyer or a third person, Buyer shall provide Seller with a protocol specifying the relevant Product, including article number, color, defect, type of remedy action and associated costs and shall provide Seller with proof of the defect, the remedy actions and associated costs upon request of the Seller.
- 7.8 In accordance with the statutory provisions Buyer shall be entitled to withdraw from a purchase contract if the remedy has definitely failed, Seller has not used a reasonable grace period for the rectification or supplementary performance regarding the defect, or such grace period is dispensable pursuant to the statutory provisions. If the Product only has an immaterial defect, Buyer shall only have the right to reduce the price. Other than that the right to reduce the price shall be excluded. The aforementioned shall not apply if Seller has fraudulently concealed the defect or assumed a guarantee regarding the absence of the defect.

8. **FORCE MAJEURE**

- 8.1 Seller shall not be liable for non-performance or late performance of duties under any purchase contract if this is due to events that fall outside the Seller's reasonable sphere of influence and Seller is not responsible therefor, e.g. illegal strikes,

unrest, uprisings, fire, floods, storms, explosions, natural events, war, terrorism or earthquake (in each case, a "**Force Majeure**"). This does not apply if the Seller has assumed a respective guarantee. Should an event of Force Majeure occur, Seller shall be discharged from its duty to render performance for the duration of the event, provided Seller continues to make reasonable economic efforts to render performance. Seller shall be entitled to withdraw from a purchase contract if the event of Force Majeure exists for more than thirty (30) days.

9. **RETENTION OF TITLE**

- 9.1 Seller retains ownership in and title to the Products until the purchase price for the respective Products has been paid (fulfilled) in full.
- 9.2 This retention of title applies furthermore also to all other of Seller's unpaid receivables arising from the business relationship with Buyer; this means that Seller retains ownership in and title to the Products until all of its receivables arising from the business relationship with Buyer have been paid (fulfilled). If payment by way of cheque or bills of exchange has been agreed with Buyer, the retention of title shall also extend to cashing of cheques/bills of exchange from Buyer accepted by Seller and shall not lapse as a result of crediting of the cheques/bills of exchange received.
- 9.3 Buyer may resell the delivered Products in the ordinary course of business unless the receivables resulting from such resale have already been assigned to another party. Should the Products not immediately be paid, Buyer shall resell the Products only subject to retention of title. The right of resale shall lapse upon default in payment by the Buyer.
- 9.4 In order to secure Seller, Buyer hereby assigns to Seller all receivables to which the Buyer is entitled from resale in an amount equivalent to the final invoice amount including VAT based on the delivery transaction between the Seller and the Buyer, irrespective of whether the Products have been resold prior to or following processing, mixing or combination.
- 9.5 Seller revocably authorizes the Buyer to collect the assigned receivables in its own name. Upon request, the Buyer shall notify the Seller of the names of the debtors for the assigned receivables and the relevant amounts. Seller may notify the debtors of the assignment.
- 9.6 Buyer may not pledge the Products nor transfer them by way of security. Buyer shall notify the Seller without undue delay in the event of attachment, seizure or other third party dispositions or respective attempts, and shall take all actions and measures to secure the rights of the Seller. Buyer shall bear any costs for intervention by Seller.

- 9.7 Should Seller withdraw from a contract in the event of breach of contract by the Buyer, in particular, default in payment, Seller can demand return of the Products. The assertion of the retention of title and the pledge of the Products by Seller shall not be deemed withdrawal from a contract by Seller.
- 9.8 Should the recoverable amount of all liens of the Seller in the business relationship with the Buyer exceed the total amount of all secured claims by more than 10%, the Seller shall, at the Buyer's request, release an amount equivalent to the excess over 110% of the liens. The Seller shall be entitled to select the security to be released.
- 9.9 In case Buyer processes the Products, it is agreed that the processing is carried out in the name and for the account of Seller as processor (*Hersteller*) and that the Seller acquires directly the ownership, or - if the processing is carried out using assets of several owners and the value of the newly created asset is higher than the value of the Products - the co-ownership (*Bruchteilseigentum*) to the newly created asset in the ratio of the value of the Products to the value of the newly created asset. In case that no such acquisition of ownership of Seller should take place, Buyer transfers herewith already his future ownership or co-ownership to the newly created asset as security to Seller. If the Products are combined to another single asset or if the Products are inseparably mixed with other assets, and if one of the other assets is considered to be the main asset, Seller transfers - to the extent the main asset is in his ownership - the partial co-ownership to the single new asset to Seller in the ratio mentioned in sentence 1.

10. **CHANGES IN THE CREDITWORTHINESS OF THE BUYER**

- 10.1 Seller may at Seller's discretion either withdraw from a purchase contract or request advance payment if Buyer has provided incorrect or incomplete information relevant with respect to his creditworthiness. Seller shall have these rights also if the prerequisites for the application for the opening of an insolvency proceeding regarding the Buyer are met, if such application is filed, if the insolvency proceeding regarding the Buyer is opened, if the opening is rejected due to insufficient assets, or if the Buyer has within the last twelve (12) months made an oath of disclosure.
- 10.2 If after the entering into of the purchase contract circumstances occur, or if circumstances present at the point in time of the entering into of the purchase contract only subsequently become known to Seller, and if such circumstances are capable of materially reducing the creditworthiness of the Buyer and as a consequence the payment of any claims of Seller by the Buyer from the purchase contract appear at risk, the Seller may set a reasonable time period towards Buyer, within which Buyer has to effect payment or provide respective security for payment. After fruitless expiration of such time period, Seller may withdraw from the purchase contract. Circumstances which are capable of materially reducing the creditworthiness of the Buyer for this purpose are in particular, but not limited to, if after the entering into of

the purchase contract an information of a credit insurance is received by the Seller regarding a reduced creditworthiness of the Buyer and a reduced credit limit and the total sum of all present and future claims of the Seller against the Buyer for deliveries made but not yet paid and for orders placed but not yet delivered increases the reduced credit limit of the credit insurance regarding the Buyer, and if such reduction of the credit limit is not taken back within two weeks after the Buyer has been informed of the reduction. The same shall apply if the Buyer is in default with payment of more than 20% of an invoice amount for an order. Further claims of the Seller remain unaffected. Other claims and rights of Seller shall remain unaffected.

11. OFFSET, DEFERRAL, STATUTE OF LIMITATION

11.1 Buyer shall not be entitled to offset any claims against Seller unless such claims of the Buyer are undisputed or have been finally and bindingly established by the courts. The Buyer shall not be entitled to the retention of goods unless the claim of the Buyer results from the same contractual relationship and is undisputed or finally and bindingly established by the courts.

11.2 Warranty claims shall become time barred in accordance with Secs. 478, 479 German Civil Code. Seller notes to Buyer that Buyer shall only be entitled to claim damages and expenses from Seller in connection with warranty claims and take recourse against Seller on the basis of Secs. 478, 479 German Civil Code if Buyer has sold the Product to an end client within the period defined in Sec. 438 para. 1 no. 3 German Civil Code, i.e. within a period of two years following the delivery of the Products by the Seller to the Buyer. If the Buyer has sold a Product after the expiration of such statute of limitation period pursuant to Sec. 438 para. 1 no. 3 German Civil Code Seller shall not be liable for any claims and recourse from Buyer in connection with customer warranty claims. Seller clarifies that the point in time as to when warranty claims are legally existent or exercised by end clients towards Buyer shall not be relevant for the recourse, but that in this respect only the point in time of the sale of the Products by the Buyer shall be decisive, and that after expiration of the period defined in Sec. 438 para. 1 no. 3 German Civil Code the Buyer may only make claims if and to the extent that an end client as such has also actually made such claims in respect of the Products, the Buyer has actually fulfilled such claims and the warranty claims of the end client against the Buyer are at that point in time not yet time-barred. If the Buyer raises claims against the Seller after the expiration of the period defined in Sec. 438 para. 1 no. 3 German Civil Code, Buyer shall provide proof to Seller regarding the point in time at which the Products were sold to end client as well as the raising and fulfillment of warranty claims of the end client. Buyer shall provide a copy of the sales slip for the Products and a declaration by the end client regarding the raising and fulfillment of the warranty claims.

12. EXCLUSION AND RESTRICTION OF LIABILITY

- 12.1 The liability of Seller for gross negligence shall be limited to damages typically foreseeable at the date of conclusion of a contract. The aforementioned limitation shall not apply if damages have been caused by Seller (i.e. Seller's statutory representatives), Seller's executive management staff or parties involved in the performance of the contract by Seller or result from a severe failure to set up or supervise the organization of Seller. The limitation shall furthermore not apply in the case of gross negligent breach of any obligations under a contract if (i) the fulfillment of such obligations is required for the execution and performance of the contract, (ii) the violation compromises the fulfillment of the purpose of the contract, and (iii) a buyer usually can rely on the compliance with such obligations ("**Material Obligations**").
- 12.2 In case of slight negligence Seller shall be liable only for the violation of Material Obligations. If Seller violates any Material Obligations liability of Seller shall be limited to such damages and losses typically foreseeable with respect to the delivery of the Products.
- 12.3 Seller shall be liable for (i) willful misconduct, (ii) claims resulting from the German Products Liability Act, (iii) fraudulent concealment of a defect of a Product, (iv) assumption of a guarantee for the specifications of a Product as well as (v) injury to life, health or body in accordance with the statutory provisions and none of the limitations in these Terms of Sale, in particular Secs. 5, 12.1, and 12.2 shall apply. The aforementioned shall apply to parties involved in the performance of the contract by Seller.

13. **DATA PROTECTION**

In relation to personal data which is collected and processed in connection with the business relationship between the Parties, the provisions of the German Federal Data Protection Act shall apply. The Parties acknowledge that for the protection of legitimate interests of the Seller it may be required that personal data collected by the Seller is forwarded in particular to licensors, businesses within the group of businesses of the Seller as well as business partners of the Seller or the Buyer, in particular purchasing associations where the Buyer is a member, and factoring banks and credit insurances, which Seller involves in the fulfillment of the purchase contract with Buyer, for the purposes of the fulfillment of the contract or the financing of the Seller, if there is no reason for the assumption that the person concerned has a legitimate interest in the exclusion of the transmission or use.

14. **Salvatory Clause**

- 14.1 As far as these Terms of Sale or a purchase contract are not comprehensive and contain gaps, such gaps shall be filled with such legally valid provisions which the contractual parties in accordance with their economic intentions under the contract and in accordance with the purposes of these Terms of Sales would have agreed on had they been aware of the gaps.

14.2 Any ineffective or invalid parts or provisions of these Terms of Sale shall not affect the other parts and provisions of these Terms of Sale and such other provisions shall remain binding.

15. **APPLICABLE LAW**

These Terms of Sale and the contractual relationships between the Parties shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16. **JURISDICTION**

Exclusive place of jurisdiction shall be the seat of the Seller. The Seller shall also be entitled to initiate proceedings at the seat of the Buyer. The right to initiate proceedings with respect to immediate legal protection in front of the courts competent in accordance with statutory provisions shall remain unaffected.

17. **MISCELLANEOUS**

17.1 Any conflicting agreements or deviations from these Terms of Sale including this clause must be in writing.

17.2 Notifications in accordance with these Terms of Sale shall be made in text form. Orders and order acceptance confirmations, in particular with respect to Follow-up Orders, may also be made via telephone and shall be confirmed in writing upon request of either Party.

17.3 The assignment of rights and/or the assignment of the Buyer's obligations under any contract with the Seller shall require the Seller's prior written consent.

17.4 These Terms of Sale are drafted in German and English. In the event of doubts about interpretation, the German version shall be deemed binding.