

General Terms and Conditions of Sale and Delivery of a + f Pvt. Ltd. company, Würzburg

Status as on: 05.05.2008

a+f GmbH

§ 1 General, Scope

1. All deliveries, services, offers and taking of orders of a + f Pvt. Ltd. (hereafter referred to as the "supplier") in relation to our contracted partners will take place solely on the basis of the following "General Terms and Conditions of Sale and Delivery". They are an integral part of all contracts, which the supplier enters into with his contracted partners (hereafter referred to as the "buyer") regarding deliveries and services offered by the supplier and are also applicable for all future business transactions with the buyer, without the need to make a renewed reference each time to the General Terms and Conditions of Sale and Delivery.
2. Terms and conditions of the buyer or of third parties that conflict with or differ from these General Terms and Conditions of Sale and Delivery are not applicable, unless the supplier has specifically agreed to their validity in writing. The following General Terms and Conditions of Sale and Delivery shall also apply in the event that the supplier, being aware of conflicting or differing terms and conditions of the buyer, provides deliveries and services without reservation or refers to a written document that contains or refers to the business terms and conditions of the buyer or a third party.
3. These Terms and Conditions of Sale and Delivery are only valid for companies in terms of § 14 BGB (Bürgerliches Gesetzbuch, German Civil Code).

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§ 2 Offers and Contract Signing, Specification of Services

1. The offers of the supplier are non-binding and are subject to the written confirmation of the order, unless otherwise specified in writing. The offers of the supplier are especially subject to sufficient delivery facilities and writing, calculation or other errors.
2. Orders or assignments of the buyer are treated as binding. The acceptance of the order takes place, depending on the choice of the supplier, within fourteen days after receipt by sending a confirmation of the order or by providing the ordered supplies or services without reservation.
3. Only the written contract including these General Terms and Conditions of Sale and Delivery is applicable for the legal ties between the supplier and the buyer. This comprehensively contains all agreements between the contracted partners with regard to the subject of the contract. Verbal agreements are binding only if the supplier has confirmed them in writing. The same applies for amendments and additions to the contract, including any amendments or additions to these General Terms and Conditions of Sale and Delivery. Use of fax or e-mail is sufficient to fulfil the criteria of the written form.
4. Advertising statements and documents, especially pictures, drawings, weights and measurements, service data, technical descriptions and data pages that are a part of the offer and technical data and descriptions in the respective product information or advertising material are only approximately representative, unless the application for a contractually determined purpose requires exact conformity. They become an integral part of the contract only on the basis of a specific inclusion in the contract. If nothing has been specifically agreed upon, they represent neither any determined character/configurations nor any character or durability guarantees by the supplier towards the supplied goods. Guarantees

are undertaken by the supplier only through a specific, written agreement with the buyer.

5. Customary trade deviations and other construction, conception or form changes in the goods to be supplied, differences in the design of the goods, format changes and changes in the delivery amount during the delivery time are permissible, as long as the delivered goods are not changed considerably and the changes are reasonable for the buyer. The supplier specifically reserves the right to make reasonable changes on the basis of technical progress, change in legal regulations or for the purpose of making improvements to the delivery.
6. The supplier retains the property rights and copyrights for all offers and cost estimates submitted by him as well as for drawings, pictures, calculations, prospectuses, catalogues, models, tools and other documents and aids made available to the buyer. The buyer is not permitted to make these objects accessible to third parties per se or as contents, to publish them, use them himself or through third parties or make copies of them without the specific written consent of the supplier. He has to return these objects completely if the supplier so demands and destroy any copies made if they are not required any more in the regular course of the business or if the negotiations do not lead to the signing of a contract.

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§ 3 Prices, Payment Terms and Conditions

1. The prices agreed upon in each contract and especially the prices mentioned in the confirmation of the order are applicable. If the price is not specifically decided upon, the prices according to our price list, valid at the time of signing the contract, are applicable.
2. Unless otherwise specified, the supplier is bound to the prices contained in his offers for 30 days after their date. All prices are in EUROS plus the sales tax amount legally applicable on the day of delivery. In case of export deliveries, customs duties and other country-specific taxes could become additionally applicable and these have to be borne by the buyer.
3. The prices are applicable for the service and delivery amounts mentioned in the confirmation of the order. Extra or special services will be calculated separately.
4. Advance payments of the total price are to be made within 14 days of the relevant event as follows:
 - 30 % at the time of placing the order
 - 40 % at the time of delivery of the assembly parts at the construction site
 - 30 % at the time of acceptance.Photovoltaic modules are to be always paid in advance.
5. Deduction of discounts requires a special written agreement. In case of a delay in payment, the legal rules will apply.
6. Discountable drafts and cheques will be accepted by the supplier only based on a special agreement and on account of performance. There is no commitment undertaken for timely presentation and registering of protest. Discount charges etc. – at least amounting to the charges calculated by private banks – will be borne by the buyer.

7. Setting off of payments against counter claims or the withholding of payments due to such claims is permissible only if the counter claims are undisputed or legally determined.
8. The supplier is entitled to change the agreements made and carry out outstanding deliveries or provide services only against advance payment or a security deposit and to immediately invoice the complete dues of the buyer, if the buyer does not pay outstanding bills, crosses the due date for payment agreed upon or if the supplier gets to know of certain conditions, after entering into a contract, that question the financial solvency and credit-worthiness of the buyer, due to which the payment of the outstanding bills of the supplier by the buyer, based on the relevant contractual agreement, is at risk. This is especially applicable if the buyer stops his payments, if cheques issued by the buyer are not honoured, if drafts issued by the buyer are not paid by the buyer, if insolvency proceedings are opened against the assets of the buyer or if an application is made for opening insolvency proceedings and the insolvency proceedings are not opened due to lack of sufficient assets.
9. In case of exceeding the due date of payment and in the case of default of payment, the amount due will incur an interest rate of 8% over and above the relevant basic interest (§ 247 BGB).

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§ 4 Delivery and Service Period, Delay in Services

1. Time periods and dates agreed upon for deliveries and services are always applicable only approximately, unless it has been otherwise specified and a firm deal has been agreed upon in writing. In case of dispatch, the delivery periods and delivery dates agreed upon refer to the time of handing over the goods to the courier service, cargo handler or other third parties assigned with the transport of these goods.
2. The supplier can – without harming his rights in case of a delay by the buyer – ask for an extension of the delivery and service period or a postponement of the delivery and service dates at least for the period, in which the buyer does not fulfil his contractual commitments towards the supplier. The plea for non-fulfilment of the contract remains with the supplier.
3. The supplier is delayed only after the lapse of a reasonable grace period set by the buyer. In the case of a force majeure or any other conditions that could not be foreseen, were extraordinary and could not be foreseen by the supplier at the time of entering into the contract (for example, disruption of work due to fire, water and similar conditions, earthquakes, failure of production units and breakdown of machinery, exceeding delivery periods or failure of delivery by suppliers as well as disruption of work due to lack of raw materials, energy or workforce, strikes, legal lock-outs, difficulties with procurement of transport services, traffic disruptions, terrorist attacks, sabotage, embargoes, government intervention), the supplier – if he is unable to fulfil his services and duties due to the above mentioned conditions through no fault of his own – is entitled to postpone the deliveries and services for the period of disruption of work and an additional, reasonable start-up time. Due to this, if the delivery or the services are delayed by more than four weeks, both the supplier as well as the buyer are entitled to withdraw from the contract with regard to the amount affected by the disruption of delivery, without any compensation claims being raised.

4. The supplier is entitled to make part deliveries and provide part services within the delivery and service time agreed upon, if this is reasonable for the buyer.
5. If the supplier is late with deliveries or services or if he is unable to provide the deliveries or services, for whatever reason there may be, the liability of the supplier is limited to compensation of damages according to the stipulations of § 8 of these General Terms and Conditions of Sale and Delivery.

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§ 5 Passing of Risk, Transport and Packaging, Default of Acceptance

1. If the objects to be delivered are to be assembled and set up by the supplier, the delivery will take place free site. With the delivery to the construction site, the risk of accidental perishing passes over to the buyer. If the dispatch or the handing over is delayed due to a condition that is represented by the buyer, the risk passes over to the buyer from the day that the supplier is ready to dispatch and has indicated the same to the buyer.
2. The mode of dispatch and the packaging take place according to the free judgement of the supplier and the costs are borne by the buyer, unless a special, written agreement regarding this has been made.
3. If the dispatch or the acceptance of the object to be delivered is delayed due to reasons that are represented by the buyer, the costs arising out of the delay (for example storage costs) are charged to him. In case of storage by the supplier, the storage costs amount to 0.25% of the total bill amount of the delivery objects that are to be stored per week that lapses. The assertion and proof of higher or lower storage costs is expressly reserved.
4. The consignment is insured by the supplier against theft, breakage, damage during transport, damage due to fire and water or other insurable risks only on the specific request of the buyer and at his own cost.

§ 6 Services of the Buyer

1. The buyer has to provide the following services at his own cost for the photovoltaic systems that are to be delivered:
 - Preparation of a flat, uncontaminated area free of pollutants and explosive weapons;
 - Provision of a geological certificate according to which the earth pressure of the free area provided is 100 kN/m²;
 - Possibility of depositing excavation work of approximately 25m³ near the fundament;
 - Preparation of an area of 10x25m near every photovoltaic tracking system to be installed, for its pre-assembly; the underground subsoil must be so firm as to allow a lorry and a cement mixer truck (35 tons) to drive directly up to the installation area. The assembly area should be reachable by a road on which vehicles with heavy equipment can travel.
 - Provision of on-site electricity at the installation area;
 - Provision of water connections and sanitation facilities at the installation area;
 - Provision of an power connection for the basic electric supply of the photovoltaic tracking system;

- Fencing of the construction site before the start of installation or assigning of a security service recognised by insurance law for the protection of the construction site; the buyer is liable for any damage to the equipment, machines and tools as a result of insufficient security.
 - Provision of a suitable, theft-proof and broom-clean room (container) for keeping tools and electrical components during the entire installation period;
 - Disposal of waste products occurring during installation and starting up in accordance with the current laws;
 - Provision of governmental permits and certificates for the construction and working of the unit;
 - Appointment of a Project Head on site, who is legally authorised to represent the buyer in all dealings with the supplier;
 - Organisation of dates for inspections required by the government as well as taking on the costs for such inspections.
2. The supplier has to contract a storage and installation insurance. The insurance cover of the storage insurance has to amount to at least 80% (eighty) of the amount of the total order. The buyer is entitled to check the proof of inventory of the insurance cover on demand.
 3. Provisions and services that are to be provided by the buyer have to be separately insured by him for sufficient amounts for the entire storage and construction phase.

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§ 7 Rights of the Buyer in Case of Defects

1. The buyer has to report to the supplier immediately, latest however within a time period of seven working days after receipt of goods, in writing and with the delivery note date and the order number in the case of obvious defects in goods, wrong deliveries and differences in amounts. Hidden defects have to be reported in writing to the supplier within a time frame of seven working days after their discovery. In case of a delayed or otherwise irregular notification of defects according to the before mentioned regulations, the buyer loses his defect rights, unless the defect has been maliciously and intentionally hidden from the buyer by the supplier.
2. If the supplier so demands, the rejected object has to be sent back to the supplier free of carriage charges. In case of a justified notification of defects, the supplier has to compensate the costs of the cheapest mode of carriage; this is not applicable if the costs increase because the delivered object is at a place other than the place of its delivery.
3. If there is a defect in the goods delivered by the supplier, the supplier is obliged and entitled (supplementary performance), depending on his choice, to at first rectify the defect or to deliver a defect-free object as a replacement within a reasonable time period. In the case of a rectification of the defect, the supplier is obliged to undertake all costs towards the purpose of the rectification of the defect, especially transport, carriage, labour and material costs, if these do not increase due to the fact that the purchased goods were brought to place other than the intended place of usage by the buyer. Delivery objects or parts replaced within the framework of the supplementary performance become the property of the supplier.

4. If the supplier is not ready to undertake a supplementary performance or not able to do so, especially if he delays this longer than a reasonable amount of time due to reasons that are represented by the supplier, or if he fails in any other way in the supplementary performance or if the kind of supplementary performance that the buyer is entitled to is not reasonable for him, the buyer is entitled, depending on his choice, to withdraw from the contract or to demand a reduction in payment. A subsequent improvement is considered to be a failure after the third attempt, if nothing else follows from the kind of object or the other conditions. In case the buyer withdraws from the contract, the delivered goods are to be returned to the supplier by the buyer at the place of delivery according to § 5 paragraph 1. If the delivered goods are at a place other than the place of delivery (at another location), the transport from the other location to the place of delivery is to be carried out by the buyer at his own cost and risk.
5. The rights of the buyer mentioned in § 7 paragraphs 2 and 3 are not applicable in case of minor differences between the specifications/configuration agreed upon, in case of minor impairments to the usability, in case of natural wear and tear or damages that have occurred after handing over of the risk due to faulty or negligent handling, over-usage or due to certain outside influences that are unforeseen according to the contract. They are also not applicable for defects and damages that have resulted from the documents provided by the buyer (drawings, samples etc.). This especially concerns the functioning of objects that were manufactured according to the construction of the buyer or the construction documents provided by him.
6. If the defect was caused due to a fault of the supplier, the buyer can demand compensation for damages only under the conditions determined in § 8.
7. In case of defects in construction parts or goods of other manufacturers, which the supplier cannot rectify due to legal licensing reasons or actual reasons, the supplier either, depending on his choice, asserts his claims against the manufacturer and suppliers for the bill of the buyer or he transfers the same to the buyer. In case of these kind of defects, claims against the supplier exist under the other conditions and in accordance with these business conditions only if the legal proceedings of the above mentioned claims against the manufacturer and suppliers were unsuccessful or are futile, for example due to insolvency. During the duration of the legal battle, the period of limitation of the concerned claims of the buyer against the supplier is suspended.
8. In an individual case, delivery of used objects, agreed upon with the buyer, takes place without any kind of guarantees.

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§ 8 Liability

1. The liability of the supplier for damages or futile expenditure – due to any legal cause whatsoever – is only applicable, if the damage or the futile expenditure
 - a) is caused by the supplier or one of his assistants due to the culpable breach of such an obligation, the fulfilment of which makes the proper implementation of the contract possible in the first place and one which the buyer can regularly trust to be complied with (basic contractual obligation, that is the delivery, installation and working of functional, ready-to-use and operational photovoltaic tracking systems in an open space).

b) can be traced back to a grossly negligent or intentional breach of duty by the supplier or one of his assistants.

Deviating from § 8 paragraph 1 a), the supplier is liable for damages or futile expenditure that is caused by consultation and/or information that is not paid for separately, only in the case of intentional or grossly negligent breach of duty, if this breach of duty does not represent a material defect according to §§ 434, 633 BGB in the goods delivered by the supplier.

2. If the supplier is liable according to § 8 paragraph 1 a) for the breach of a basic contractual obligation without gross negligence or intention being existent, the liability for compensation of damages of the supplier is limited to foreseeable, typically occurring damages. In this case especially, the supplier is not liable for the unforeseeable, not typically occurring lost profit of the buyer and not liable for the unforeseeable, indirect damage resulting from it. The above mentioned liability restrictions according to sentence 1 and 2 are applicable in the same way for damages that are caused due to gross negligence or intentionally by colleagues or representatives of the supplier, as long as they do not belong to the management board or occupy leading executive/managerial positions in the supplier company. The supplier is not liable for indirect damages of the buyer that are caused to the buyer due to the assertion of contractual fine claims by third parties.
3. If the supplier is liable according to § 8 paragraph 1 a) for the breach of a basic contractual obligation without gross negligence or intention being existent, the liability of the supplier is limited to maximum 1,500,000 € per case of damage.
4. The liability limitations mentioned above in § 8 paragraph 1 to 3 are not applicable if the liability of the supplier is compulsory on the basis of other legal conditions or if there is an assertion of claims for an injury to life, bodily injury or an injury to health against the supplier. If there is a guaranteed characteristic missing in the goods delivered by the supplier, the supplier is liable only for those damages caused by the missing element covered by the guarantee.
5. Any further liability of the supplier for compensation of damages, other than the one mentioned in § 8 paragraph 1 to 4, is ruled out – without any consideration of the legal nature of the asserted claim.
6. If the liability for compensation of damages of the supplier towards the buyer is ruled out or limited according to § 8 paragraphs 1 to 5, this is also applicable with regard to the personal liability for compensation of damages of the employees, colleagues, representatives and assistants of the supplier.
7. If the setting up of the usual open space installation deviates from the norm, the supplier is not liable for defects and damages, if they are caused due to the fact that the supplier had set up the plant according to the specifications provided by the buyer.

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§ 9 Period of Limitation

1. Claims of the buyer regarding defects in the goods delivered by the supplier or regarding services rendered contrary to duty – including claims for compensation of damages and claims for compensation of futile expenditure – expire within a year after the beginning of the legal limitation period, unless something else occurs from the following regulations.

2. If the buyer is a contractor and if he or another purchaser in the supply chain as a contractor, on the basis of defects in newly manufactured goods delivered by the supplier that were also delivered as newly manufactured goods to a consumer, satisfies the requirements of the consumer, the period of limitation of claims of the buyer against the supplier from §§ 437 and 478 paragraph 2 BGB commences two months, at the earliest, after the time that the buyer or the other purchaser in the supply chain as a contractor satisfied the requirements of the consumer, unless the buyer has been able to successfully invoke the plea that the claim is statute-barred to his customers/contracted partners. The limitation of claims of the buyer against the supplier due to the defective goods delivered by the supplier commences in any case, if the claims of the customers/contracted partners of the buyer, due to defects in the goods delivered by the supplier to the buyer, against the buyer have expired, at the latest however 3 years after the time that the supplier has delivered the concerned goods to the buyer.
3. In the case of plants manufactured by the supplier and goods manufactured by the buyer that were used for a plant according to their habitual usage norms and have caused defects in this plant, the claims of the buyer expire within 3 years after the beginning of the legal period of limitation.
4. If the supplier has provided a consultation that is not reimbursed separately and/or provided information contrary to duty without having delivered goods in connection with the information or the consultation or without the contrary to duty consultation or information representing a material defect according to §§ 434, 633 BGB in the goods delivered by the supplier, the claims based on that against the supplier will expire within a year after the beginning of the legal limitation period. Claims of the buyer against the supplier for the breach of contractual, pre-contractual or legal duties that do not represent any material defects according to §§ 434, 633 BGB in the goods to be delivered or already delivered by the supplier also expire within a year after the beginning of the legal period of limitation. If the aforementioned breach of duties represent a material defect according to §§ 434, 633 BGB in the goods delivered by the supplier in connection with the consultation or information, the regulations made in § 9 paragraphs 1, 2, 3 and 5 are applicable for the period of limitation of the claims based on that.
5. The aforementioned regulations are not applicable for the period of limitation of claims due to injury to life, bodily injury or injury to health and also not for the period of limitation of claims according to the product liability law and due to defects of title in the goods delivered by the supplier that are within the property rights of a third party, due to which the handover of the goods delivered by the supplier can be asked for. Further they are not applicable for the period of limitation of claims of the buyer that are based on the supplier maliciously concealing defects in the goods delivered by him or the breach of duty by the supplier intentionally or due to gross negligence. In these cases mentioned in § 9 paragraph 5, the legal periods of limitation are applicable for these claims.

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§ 10 Retention of Title

1. The supplier retains the title of all the goods delivered by him right up to the complete payment of the purchase price and all other current and future receivables due to the supplier in the business relationship with the buyer. This is also applicable if the purchase price for a certain goods delivery, identified by the buyer, has been paid, as the reserved title serves as a guarantee for the outstanding balance payment request of the supplier.
2. The goods under retention of title are to be handled carefully and well-maintained. The buyer is especially obliged to insure the goods sufficiently at current replacement value at his own cost against loss, damage and destruction, for example against damage through fire, water and theft and should be able to prove this to the supplier on demand. The buyer has to transfer the title of insurance benefits in the insurance contracts to the supplier at this point itself. The supplier has to accept this transfer.
3. The buyer may not mortgage or assign by way of collateral the goods that retain the title of the supplier. However he is entitled to further sell the delivered goods in a proper business transaction. This aforementioned entitlement does not apply if the buyer has transferred the claim arising from the sale against his contracted partner – currently effective - in advance to a third party or mortgaged it or made a ban of assignment agreement with him.
4. In the case of attachment or other interventions from third parties in the delivered goods, the buyer is obliged to immediately inform the supplier about the same in writing. The supplier can demand a compensation of any costs of interventions from the buyer against the surrender of his cost reimbursement claims against the third party.
5. The development and processing of the goods delivered by the supplier under retention of title is carried out by the buyer always for the supplier, without any liabilities arising for the supplier from it. If the goods delivered by the supplier under retention of title are processed with other objects not belonging to the supplier, the supplier obtains the co-ownership of the new object in the ratio of the value of the goods delivered by the supplier (final invoice amount including VAT) to the other goods processed at the time of processing. For the object resulting from the processing the same applies as for the goods delivered under retention of title. If the goods delivered by the supplier under retention of title are inseparably combined with objects not belonging to the supplier, the supplier obtains the co-ownership of the new object in the ratio of the value of the goods delivered by the supplier (final invoice amount including VAT) to the other goods combined at the time of combination. If the combination takes place in such a way that the goods of the buyer are to be seen as the main component, then it is applicable as agreed upon that the buyer will transfer the supplier's share of the co-ownership accordingly. The buyer has to store the sole ownership or co-ownership goods that have been so created for the supplier. The buyer is entitled to dispose of the new products created through development, processing, modifications or combinations within the framework of a proper business transaction, as long as he fulfils his obligations in the business relationship with the supplier on time. The buyer is however not entitled to, under any circumstances, further sell or utilise these new products under a ban of assignment agreement with his customers, mortgage them or assign them by way of collateral. The buyer has to transfer his claims from the sale of these products, in which the supplier also has ownership rights, at this point itself to the extent

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of the ownership share of the supplier in the goods, as a guarantee. If the buyer combines the delivered goods with a main element, he transfers his claims against the third party at this point itself for the amount of the value of the goods to the supplier. The supplier hereby accepts this transfer.

6. The buyer has to transfer all the receivables – even the ones arising in the future and the conditional ones - from a further sale of the goods delivered by the supplier, along with all the ancillary rights, to the amount of the value of the delivered goods as a priority before the rest of his receivables to the supplier, as a security for the fulfilment of all the mentioned claims in § 10 paragraph 1 of the supplier. The supplier has to accept this transfer.
7. As long and if the buyer fulfils his payment obligations towards the supplier, he is authorised to collect the receivables transferred to the supplier from his customers within the framework of proper business transactions. However, with respect to these receivables, he is not entitled to have a current account relationship or make a ban of assignment agreement with his customers or transfer them to third parties or mortgage them. If the marketable value of the securities granted to the supplier exceeds the receivables to be guaranteed by more than 10%, the supplier will have to release securities depending on his choice, on the request of the buyer.
8. If the buyer defaults on the payment, the supplier is entitled – after the unsuccessful lapsing of a reasonable grace period granted to the buyer to perform and without any disturbance of the further claims (of compensation for damages) available to the supplier – to label the goods delivered under retention of title as the property of the supplier or to get them so labelled, to disallow further usage as well as to withdraw from the contract and take back the goods. The buyer is obliged to return the goods. The legal regulations regarding the dispensability of setting a time limit remain unaffected. In case of other breaches of duty, especially those which endanger the inventory of the goods under retention of title, the supplier is entitled to demand the return of goods even without withdrawing from the contract.
9. After taking back the delivered goods, the supplier is authorised to liquidate them. The proceeds of the liquidation are to be credited against the liabilities of the buyer – with the deduction of reasonable liquidation costs. The liquidation costs amount to 10% of the proceeds of the liquidation, unless the supplier proves that they were higher or the buyer that they were less than that

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§ 11 Final Clauses

1. These business terms and conditions and all legal ties between the supplier and the buyer are governed by the law of the Federal Republic of Germany, as it stands between German businessmen. The rules and regulations of the international purchase of goods (CISG – Viennese UN-Purchase Law) are not applicable.
2. The place of fulfilment of duties and sole court of jurisdiction for any claims between the supplier and the buyer is Würzburg, if the buyer is a businessman, a legal entity or special asset under public law and it does not conflict with any compulsory statutory provisions. The supplier however has the right to institute legal proceedings against the buyer at his legal court of jurisdiction.
3. If certain parts of these terms and conditions are ineffective or impracticable, or become so, or if they are incomplete, the effectiveness of the rest of the terms and conditions remain unaffected. The ineffective or impracticable or incomplete regulation shall be replaced by a complete and acceptable regulation that would come closest to what the two parties would have agreed upon if they had known about the ineffectiveness, impracticability and incompleteness of the regulation.

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