General Conditions of Sale and Payment Terms

1. General provisions

1.1 All services will be provided by us solely on the basis of the following business terms. The general terms of business of the client shall only apply if we have expressly agreed to them in writing. Conflicting terms of the client are expressly rejected, even in the event of the conflicting terms being notified in a confirmation document or in some other way.

1.2 These conditions of sale and payment terms shall also apply, to the extent that they are appropriately applicable, to advisory and ancillary services provided in connection with the principal service and also to information provided.

1.3 Unless otherwise agreed or something more specific results from the following General Terms and Conditions of Business, the INCOTERMS in their most up-to-date version for the time being shall apply.

2. Formation of contract

2.1 Our quotations are without obligation. Should the client place a purchase order on the basis of our non-binding quotations, a contract will only be formed following our written order confirmation, where the client desires such confirmation. In all other cases, the contract will be formed by the supply of the goods.

2.2 Documents, drawings, statements concerning weights, samples, etc. enclosed with our quotation are only approximately authoritative.

2.3 We expressly reserve the right to make changes to the construction, design, choice of materials and methods of production, even after the despatch of the desired order confirmation, provided that this does not result in any change to the price, essential function-related data or delivery date and is reasonable from the point of view of the client. Guaranteed qualities are excluded from this right to make changes. We are not obliged to make changes to goods already supplied.

2.4 The pack sizes indicated by us are the smallest sizes available. If different quantities are ordered, the next highest size will be supplied.

2.5 In the event of the goods ordered not being deliverable, we shall be entitled to cancel the contract, provided that we have informed the client in advance and without delay of this non-availability and immediately reimbursed any monies already paid.

2.6 Where unforeseeable events within the meaning of Art. 3, No. 2 substantially alter the economic significance or the content of the supplies or significantly affect our business, the contract shall be amended as appropriate in line with the principles of good faith. Where this is unreasonable in economic terms, we shall have the right to cancel the contract. Before exercising this right to cancel the contract, we must inform the client of this without delay on realising the implications of this event, even if an extension of the delivery period was already agreed with the client.

3. Time set for delivery and performance

3.1 Delivery dates indicated are not binding, unless otherwise agreed in writing.

3.2 We shall endeavour to adhere to the agreed delivery date. We shall not be liable in respect of delays in delivery or performance due to force majeure or events that, on more than a passing basis, significantly hinder the supply or render it impossible – these include in particular strikes, lockouts and official orders, natural catastrophes or deliveries from suppliers that fail to appear, are incorrect or not on time etc., even where these occur in our suppliers or their sub-contractors – even where binding deadlines or dates have been agreed. They will entitle us to defer the supply by the duration of the obstruction plus a reasonable lead- time or to cancel the contract wholly or in part in respect of the unfulfilled portion thereof.

3.3 If the obstacle lasts for longer than three months, the client will be entitled, after the grant of a reasonable period of grace, to cancel the contract in respect of the portion thereof not yet fulfilled. If the delivery date is extended in consequence of the obstacle or we are released from our obligation, the client cannot derive any claims for damages therefrom. On the other hand, we can only invoke the circumstances referred to, provided that we inform the client of them without delay.

3.4 Where we are responsible for the non-compliance with binding deadlines and dates promised or we are in default, the client can claim compensation for delayed performance in the amount of 0.5 % for every full week of default, subject to a maximum of up to 5 % of the invoice value of the supplies and services affected by the default. More far-reaching claims are excluded, unless the default is based on gross negligence on our part at the very least. If the default is based on at least gross negligence on our part, the compensation for delayed performance in accordance with Sentence 1 will be charged against damages claimed by the client. We reserve the right to prove that the client incurred no loss or significantly lower loss.

3.5 Adherence by us to the delivery deadline is conditional on the proper fulfilment in good time by the client of its contractual obligations, in particular its payment obligations.

3.6 We are only entitled to provide partial deliveries where

- the partial delivery is reasonable for the client in the context of the contractual intended purpose,
- the delivery of the remaining goods ordered is guaranteed, and
- the client does not incur any significant additional expenditure or supplementary costs (unless we state that we are prepared to look after these costs).

4. Returns

In principle, the return of goods supplied is excluded. An exception will only apply in cases involving storage goods in their original packaging that meet current design and performance specifications, where the goods are returned within six months of delivery and we have expressly agreed to their return in advance. The return of goods is further conditional on their return on a carriage paid basis and the goods being found to be in perfect condition when inspected by us. We charge a fee of 20 % of the value of the goods to cover the handling costs involved, subject to a minimum of Euro 125.00.

5. Transfer of risk

5.1 The risk is transferred to the client at the latest on the hand-over of the consignment by us or our authorised business agent to the haulier, carrier or other third party engaged to carry out the despatch. This will apply even if partial deliveries are made or we have assumed further additional services (e.g. shipping or installation).

5.2 If the despatch or delivery is delayed due to circumstances, for which the client is responsible, the risk will be transferred to the client on the day on which we are ready to despatch and have notified the client to this effect. In such a case, we shall be entitled to demand compensation for losses incurred by us, including any additional costs.

6. Prices and payment terms

6.1 Prices are in Euro ex-works plus packaging, statutory VAT, duties in the case of export deliveries plus fees and other public taxes. In the case of the sale of goods with a value of least Euro 1,200.00 net, we deliver free within the Federal Republic of Germany, including packaging. Carriage costs arising at the delivery destination must be paid by the client in all cases.

6.2 Our prices for brass cable entries and brass accessories are based on a metal price quotation of Euro 150.00 for MS 58, Processing Stage 1. With every increase of Euro 15.00 in this quotation, our sale price will rise by 5 %. Prices for other brass articles are based on an MS 63 quotation of Euro 195.00; with every rise of Euro 20.00 in this quotation, our sale price will rise by 1 %. Calculation of any supplements due will be based on the quotation on the date of receipt of the order by us.

6.3 We charge a supplement of Euro 10.00 net on orders of less than Euro 100.00 net.

6.4 Unless otherwise agreed, our invoices are payable in full 30 days after issue. If payment is made within 10 days of the date of invoice, we allow a discount of 2 % on home market transactions. Discount is excluded where there are arrears in payment or payment is made by bill of exchange.

6.5 We are entitled, despite any conditions to the contrary on the part of the client, to offset payments firstly against existing outstanding debts. We shall inform the client of the type of apportionment made. If costs and interest have already been incurred, we shall be entitled to offset the payment firstly against the costs, next against the interest and finally against the principal service.

6.6 Payment shall only be deemed to be effected when we have access to the amount. Bills of exchange and cheques will only be accepted for payment purposes; bank, discount and collection costs must be met by the client. Payments by means of bills of exchange or cheques will only be deemed to be completed following final crediting of the relevant amount to our account.

6.7 If the client is in arrears with the payment, we shall be entitled to demand interest at a rate that is 8 percentage points above the base lending rate as lump-sum damages, with effect from the date when default commences. Interest shall be set lower if the client proves that the financial burden was lower. It will be permissible for us to show evidence of higher damages. This does not affect the pursuit of further damages in the event of arrears.

6.8 Should changes occur in the economic circumstances of the client that may raise questions about the fulfilment of its payment obligations, in particular if a cheque cannot be cashed or the client halts its payments, we can make the whole outstanding debt due and payable immediately. In addition, in such a case, we shall be entitled to demand payment in advance or security.

6.9 If the client fails to meet our demands for payment in advance or the provision of security within a reasonable period, we shall be entitled to cancel the contract or and/or demand compensation for non-performance.

6.10 Our agents are not authorised to accept payments or monies, unless they hold collection authorisation.

6.11 The client can only offset on the basis of such claims as are undisputed or have been recognised as final and absolute. The client is also entitled to engage in retention, on the basis of counterclaims arising from the same contractual relationship.

7. Retention of title

7.1 The articles making up the supplies (retained goods) will remain our property pending the satisfaction of all our due claims against the client arising from the business relationship. Where the value of all of our due security interests exceeds the total of all secured claims on a sustained basis by more than 20%, we shall release a corresponding proportion of the security interests, if so desired by the client.

7.2 Processing or transformation of our products that is carried out will always be without liability for us as manufacturer. It is hereby agreed that, should our (joint) ownership cease to exist through being combined with other products, the client's (joint) ownership of the new article so formed shall be transferred to us, proportional to the value. The client shall keep our (jointly owned) property safe, free of charge.

7.3 The client shall be entitled to process and dispose of the retained goods in the course of normal business, provided it is not in arrears. Pledging or assignment as security is not permitted. Claims arising from re-sale or other legal grounds (insurance, unauthorised handling) in respect of the retained goods shall be assigned in full to us by the client as of now as security. We authorise the client, on a revocable basis, to collect the claims assigned to us on our account in its own name. This collection authorisation can only be revoked if the client fails to properly fulfil its payment obligations.

7.4 In the event of seizure of the retained goods by a third party, in particular attachment, the client will point out our title and immediately inform us, so that we can enforce our title rights.

7.5 In the event of breaches of its obligations by the client in particular arrears in payment, we shall be entitled to cancel the contract and to reclaim the retained goods.

8. Client's rights arising from defects

8.1 The products will be supplied free of production or material defects. Should the products supplied nevertheless display defects, the client must report this to us immediately in writing, and at the latest within eight days of receipt of the delivery. Defects that cannot be discovered within this time limit even with careful inspection must be notified to us in writing immediately that they are discovered.

8.2 Evident damage attributable to transportation must be confirmed by the agent of the delivery firm at the time of receipt of the delivery by signing the relevant freight document. The client must ensure that a corresponding confirmation follows.

8.3 We are entitled, at our discretion, either to rectify the defective parts or services or to supply or provide them again, within a reasonable period of time, free of charge. For the purpose of rectification, the client shall send the defective part or piece of equipment to us for repair and subsequent return or shall hold the defective part or piece of equipment in readiness so that our service technician can carry out the repair on the spot. If the client demands that the rectification work should be carried out at a location specified by it, we can meet this demand on the basis of replaced parts not being invoiced but labour and travel costs being payable at our standard rates.

8.4 If this subsequent performance is not successful, the client can cancel the contract or reduce the payment.

8.5 In the event of the notification of defects, the client‘s payments may be withheld to an extent that is reasonably in proportion to the material defects occurring. The client may only withhold payments where a defect is being asserted and there can be no doubt as to its justification. If the notification of defect was unjustifiably made, we shall be entitled to demand reimbursement from the client for costs incurred by us.

8.6 If our operating, servicing or fitting instructions are not followed, if changes are made to the products, or parts are replaced or consumable items are used that are not in line with the original specifications, claims based on defects in the products shall not apply.

8.7 In respect of defects occurring in the goods and parts supplied in accordance with reference and cleared samples, we shall only be liable insofar as the parts supplied differ from the reference and cleared samples submitted to and approved by the client. Defective or inadequate function-related checks on such samples by the client are its responsibility and release us from any warranty or liability. This does not apply for example to cases where there is mandatory liability such as personal injury or damages to privately used goods under the Product Liability Act or cases of deliberate intent or gross negligence.

8.8 Claims for defects shall not exist where there is only minor deviation from the agreed quality, or minor impairment of usability, or natural wear and tear or damages that occur following the transfer of risk in consequence of faulty or negligent handling, excessive demand on the product, inappropriate equipment, not assumed under the contract.

8.9 Claims that the client has against us on grounds of defects cannot be transferred.

8.10 The time limit for asserting claims based on defects is one year from the delivery of the products or, if formal acceptance is required, following acceptance.

9. Indemnification

9.1 We shall indemnify the client and its customers in respect of claims arising from violations of copyright, trademarks or patents, unless the client is the source of the design of an article to be supplied. Our indemnification obligation is limited, in terms of amount, to the foreseeable damages. A further condition of the indemnification is that the client informs us immediately in writing of claims being asserted by third parties, does not acknowledge any violation and leaves the conduct of any legal disputes to us. If the client halts the use of the supplies on damage limitation or other important grounds, it shall be obliged to point out to the third party that halting such use does not constitute any acknowledgement of any breach of property rights.

9.2 We have, at our discretion, the right to discharge ourselves from the obligations assumed by us in par. 1 by either

a) procuring the necessary licences having regard to the alleged violated rights, or

b) placing such an amended delivery item or parts thereof at the disposal of the client as will, in the event of exchange for the delivered item or part thereof causing the violation, eliminate the complaint of violation vis-à-vis the delivered item**.**

9.3 If the measures at par. 2 are not possible on reasonable terms, the client will have the statutory rights of cancellation or reduction.

9.4 Claims by the client are excluded where it is responsible for the violation of property rights.

9.5 Claims by the client are further excluded where the violation of property rights was caused by special requirements of the client, by use that was unforeseeable by us or caused by the supplies being altered by the client or used with products not supplied by us.

9.6 For the purposes of the client‘s claim to indemnification under par.1, the provision at Art. 8 No. 4 shall also apply as appropriate.

9.7 If other defects of title exist, the provisions of Art. 8 shall apply as appropriate.

9.8 More far-reaching claims by the client or claims other than those governed by this Art. 9 against us and our vicarious agents based on defect of title are excluded.

10. Confidentiality / Industrial property rights

We reserve our property and copyright exploitation rights in respect of quotations and estimates as well as to drawings, illustrations, computations, brochures/leaflets, catalogues, models, tools and other documents and aids). The client may not give third parties access to these items, as such or in terms of content, without our specific consent, or disclose them use them itself or have them used by a third party or copy them. On request, it must return them in full to us and destroy any copies that may have been made, if they are no longer needed by it in the proper course of business or if negotiations do not lead to the conclusion of a contract.

11. Liability

11.1 Our liability for compensation, regardless of the legal grounds thereof, in particular impossibility, delay, defective or incorrect supply, breach of contract, breach of obligations with respect to contract negotiations and unauthorised action, is limited in line with this § 11, to the extent that fault is involved.

11.2 We shall not be liable
a) in the event of straightforward/elementary negligence on the part of our breach of our agencies/bodies, statutory representatives, employees or other vicarious agents;
b) in the case of gross negligence on the part of non-managerial employees or other vicarious agents, where no breach of material contract obligations is involved. Material in contract terms means the obligation to supply and install on-time, free of defects, and also advisory and protection obligations and the duty of care, that should facilitate the use of the consignment in line with the contract or have as their object the life and limb protection of the personnel of the client or third parties or the property of the client from significant damages.

11.3 To the extent that we are liable for compensation under § 11.2 on the basis of the grounds, this liability shall be limited to damages that we foresaw as possible consequence of breach of contract when the contract was entered into or having regard to the circumstances what were known to us or that we ought to have known, or through the application of due care ought to have foreseen. Indirect damages and consequential damages, that are the consequence of defects in the goods supplied are additionally only replaceable, to the extent that such damages can typically be anticipated with the use of the goods delivered as agreed.

11.4 In the event of liability for simple/elementary negligence, our compensation obligations for material and personal damages shall be limited to the sum of Euro 10 million per incident, even if a breach of a material contract condition is involved.

11.5 The above exclusions and limitations of liability apply to the same extent in favour of our bodies/agencies, statutory representatives, employees and other vicarious agents.

11.6 To the extent that we give technical information or act in an advisory manner and this information or advise is not part of the contractually agreed scope of services due by us, this takes place free of charge and excluding all liability.

11.7 The limitation of liability in § 11 herein do not apply to our liability in respect of deliberate behaviour, guaranteed qualities, on account of injury to life and limb or health or under Product Liability Act.

11.8 If the client has claims for compensation under this No. 11, these will lapse on the expiry of the limitation period for claims arising from the warranty for defects in accordance with Art. 8. No. 10. In the case of claims for damages under the Product Liability Act or the event of liability on account of deliberate intent, the statutory periods of limitations will apply.

12. Law applicable, venue, court of jurisdiction, partial invalidity

12.1 Legal relations connected with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

12.2 The place of performance for all obligations under this contract, including any claims arising from cancellation, is Kaltenkirchen.

12.3 The court of jurisdiction shall be Hamburg or Norderstedt. This also applies to bills of exchange or cheques. We are also entitled to sue the client at the court of jurisdiction for its registered office.

12.4 Should any provision of these terms of business or some provision within the terms of reference of other agreements be null and void or become so, the validity of all other provisions or agreements shall not be affected.

Note:
We are obliged, under the terms of the Recycling and Refuse Act and the Batteries Order, to take back end-user packaging and batteries. Please consult our Sales staff about returns/addresses.

The client takes cognisance of the fact that we store data arising from the contractual relationship in lines with § 28 of the Federal Data Protection Act for data processing purposes and we reserve the right to transmit the data, to the extent necessary for the performance of the contract, to third parties (e.g. insurance companies).