

General Terms and Conditions of Sale

-August 2019-

1. Application

- 1.1. These General Terms and Conditions of Sale shall apply exclusively to the legal relations between ITT Cannon GmbH (hereinafter: "Supplier", "we", "us", "our") and entrepreneurs (*Unternehmer*), as well as governmental entities (*juristische Personen des öffentlichen Rechts*) (hereinafter: "Purchaser") in connection with our deliveries and/or services (hereinafter: "Supplies").
- 1.2. Deviating terms and conditions of the Purchaser shall not apply. They shall not apply even if we do not object to them separately in individual cases.

2. Offers, Contract Conclusions

- 2.1. Our offers are subject to confirmation (*freibleibend*) and non-binding unless they are marked as binding in individual cases or contain a specific acceptance period (*Annahmefrist*).
- 2.2. All agreements shall only become binding upon written confirmation. This also applies to verbal ancillary agreements and any assurances made by our employees (e.g. salesmen, assembly workers and service technicians).
- 2.3. Supplements and amendments to the agreements made must be made in writing (*Textform*).
- 2.4. The information on the objects of the deliveries (e.g. weights, dimensions, tolerances, technical data, etc.) as well as their representations (e.g. drawings and illustrations) are only approximate unless the usability for the contractually intended purpose presupposes exact conformity; they are not guaranteed characteristics (*Beschaffenheitsmerkmale*), but markings and descriptions of the Supplies. Deviations customary in the trade as well as the replacement of components by equivalent parts are permissible as long as they do not impair the usability for the contractually intended purpose.

3. Deliveries, Delivery Conditions

- 3.1. Our Supplies are delivered in accordance with Ex Works – Weinstadt, Germany (Incoterms 2010).
- 3.2. Our announced deadlines and dates for deliveries and services are always only approximate, unless a

fixed deadline or date has been expressly agreed. If shipment has been agreed, they refer to the time of handover to the third party commissioned with the transport (forwarding agent, carrier).

- 3.3. Notwithstanding our rights arising from default (*Verzug*), we may demand from the Purchaser an extension of delivery periods or a postponement of delivery dates by the period in which the Purchaser fails to meet his contractual obligations towards us.
- 3.4. We shall not be liable if non-compliance with delivery deadlines or the impossibility (*Unmöglichkeit*) of delivery is due to force majeure or other events not foreseeable at the time the contract was concluded (e.g. disruptions of operations of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of workers, energy or raw materials, difficulties in the procurement of necessary official approvals, official measures or the failure of our suppliers to deliver or to deliver timely or correctly) and for which we are not responsible. Insofar as such events make delivery or performance substantially more difficult or impossible for us and the hindrance is not only of a temporary nature, we shall be entitled to withdraw from the contract. In case of hindrances of temporary duration, the delivery or service periods shall be extended, or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the Purchaser, as a result of the delay, cannot reasonably be expected to accept the delayed delivery or service, the Purchaser may withdraw from the contract by immediate written declaration to the Supplier.
- 3.5. We shall be entitled to make partial deliveries if
 - the partial delivery can be used by the Purchaser within the scope of the contractual purpose,
 - the delivery of the remaining ordered goods is ensured and
 - the Purchaser does not incur any significant additional costs or expenses, unless we agree to bear such costs.
- 3.6. If we are in default (*Verzug*) with a delivery or service or if a delivery or service is impossible for us for

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whatever reason, our liability shall be limited in accordance with Clause 10.

4. Place of Performance (*Erfüllungsort*), Transfer of Risk (*Gefahrübergang*)

- 4.1. Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship shall be our registered office.
- 4.2. The risk shall pass to the Purchaser in accordance with Ex Works (Incoterms 2010).

5. Acceptance (*Abnahme*)

As far as an acceptance has to take place, the object of purchase is considered as accepted, if

- the Supply and, if we owe the installation, the installation has been completed,
- we have informed the Purchaser of this with reference to the acceptance fiction (*Abnahmefiktion*) in accordance with this Clause 5 and have requested him to accept,
- twelve working days since Supply or installation or – in case the Purchaser has commenced use of the purchased item (e.g. has put it into operation) – six working days have elapsed since Supply or installation and
- the Purchaser has omitted acceptance within this period for a reason other than a defect notified to the Supplier which makes the use of the purchase object impossible or significantly impairs it.

6. Prices, Payment Conditions and Set-off

- 6.1. Our prices shall apply to the scope of Supply and services specified in the order confirmations. Additional and special services shall be invoiced separately. Prices are quoted ex works, plus costs for packaging and return of packaging and plus statutory value-added tax.
- 6.2. If we have taken over the installation or assembly, the Purchaser shall, unless otherwise agreed, in addition to the agreed payment, bear all necessary ancillary costs, in particular travel and transport costs as well as accommodation allowances.

6.3. Payments shall be made to us or our agent within 30 days of the invoice date without deduction. In the event of default on the part of the Purchaser, the statutory provisions shall apply.

6.4. The Purchaser may only set off such claims which are undisputed or have been legally established or which arise from the same order under which the relevant Supplies are made.

6.5. We shall be entitled to make outstanding deliveries only against advance payment or security if, after conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the Purchaser and which endanger the payment of outstanding claims from the respective contractual relationship - including claims from other orders of the same framework contract.

7. Retention of Title and Rights of Use

7.1. The objects of the Supplies (hereinafter: reserved goods) shall remain our property until all claims to which we are entitled against the Purchaser under the business relationship have been satisfied.

7.2. If the value of all security rights to which we are entitled exceeds the amount of all secured claims by more than 10 %, we shall release a corresponding part of the security rights at the request of the Purchaser; we shall be entitled to choose between various security rights when releasing.

7.3. The Purchaser shall store the reserved goods for us free of charge.

7.4. The Purchaser shall be entitled to process or sell the reserved goods in the ordinary course of business until occurrence of a liquidation event (*Verwertungsfall*).

7.5. If the reserved goods are processed by the Purchaser, it is agreed that the processing shall be carried out in our name and for our account as manufacturer (*Hersteller*) and that we shall directly acquire ownership or – if the processing is carried out with materials of several owners or the value of the processed item is higher than the value of the reserved goods – co-ownership (*Bruchteilseigentum*) of the newly created item in the ratio of the value of

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the reserved goods to the value of the newly created item. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the customer shall transfer to us, to the extent that the main item belongs to him, the proportionate co-ownership of the uniform item in the proportion as stated in sentence 1.

- 7.6. If the Purchaser resells the reserved goods, he hereby assigns to us by way of security his future claims against his customers arising from the resale - in the case of our co-ownership of the reserved goods proportionate to the co-ownership share. The same applies to other claims which take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. If the reserved goods are resold together with other items without an individual price having been agreed for the reserved goods, the Purchaser shall assign to us that part of the total price claim which corresponds to the price of the reserved goods invoiced by the supplier. The Purchaser may collect the claims assigned to us in his own name as long as the event of liquidation (Clause 7.7) has not occurred.
- 7.7. In the event of an important reason, in particular in the event of default in payment (*Zahlungsverzug*), suspension of payments, opening of insolvency proceedings, protest of a bill of exchange or well-founded indications of over-indebtedness (*Überschuldung*) or impending insolvency (*drohende Zahlungsunfähigkeit*) of the Purchaser (hereinafter: event of liquidation), the supplier shall be entitled to revoke the authority to resell in accordance with Clause 7.4 as well as the collection authority of the Purchaser in accordance with Clause 7.6. In addition, we may, after prior warning and subject to a reasonable period of notice, disclose the assignment by way of security pursuant to Clause 7.6, realize the assigned claims and demand that the Purchaser discloses the assignment to his customer.
- 7.8. In the event of seizures, confiscations or other decrees or interventions by third parties against the reserved goods, the Purchaser shall notify us without

any undue delay in order to enable us to enforce his ownership.

- 7.9. If we withdraw from the contract in the event of the Purchaser's default, we shall be entitled to demand the return of the reserved goods.

8. Warranty

- 8.1. The statutory provisions shall apply to the Purchaser's rights in the event of material defects (*Sachmängel*) and defects of title (*Rechtsmängel*) (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise specified below. In all cases, the statutory special provisions on final delivery of the unprocessed goods to a consumer remain unaffected, even if the consumer has processed such goods (supplier recourse [*Lieferantenregress*] according to §§ 445a, 445b, 478 German Civil Code [BGB]). Claims from supplier recourse in other respects are excluded if the defective goods have been further processed by the purchaser or another entrepreneur (*Unternehmer*), e.g. by installation in another product.
- 8.2. The delivered items shall be carefully examined (*Untersuchungs- und Rügepflicht*) without undue delay after delivery to the Purchaser or to the third party designated by the Purchaser. With regard to obvious defects or other defects which would have been recognisable in an immediate, careful inspection, they shall be deemed to have been approved by the Purchaser if we do not receive a written notice of defect within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Purchaser if the notice of defect is not received by the Supplier within seven working days of the time at which the defect became apparent; if the defect was already apparent at an earlier point in time with normal use, this earlier point in time shall, however, be decisive for the commencement of the complaint period. At our request, a rejected delivery item shall be returned to us carriage paid. In the event of a justified notice of defects, we shall reimburse the costs of the cheapest shipping route; this shall not

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- apply insofar as the costs increase because the delivery item is located at a place other than the place of intended use.
- 8.3. In the event of material defects of the delivered goods, we shall initially be obliged and entitled to repair (*nachbessern*) or replace (*nachliefern*) them at our discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonability, refusal or unreasonable delay of the repair or replacement delivery, the Purchaser may withdraw from the contract or reduce the purchase price accordingly.
- 8.4. In the event of defects in components of other manufacturers which we cannot remedy for licensing or factual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the Purchaser or assign them to the Purchaser. Warranty claims against us for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Sale if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, e.g. due to insolvency, has no prospect of success. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the Purchaser against us shall be suspended.
- 8.5. The warranty shall lapse if the customer changes the delivery item or has it changed by third parties without our consent and if this makes it impossible or unreasonably difficult (*unzumutbar*) to remedy the defect. In any case, the Purchaser shall bear the additional costs of remedying the defect resulting from the change.
- 8.6. We are entitled to make the subsequent performance (*Nacherfüllung*) owed dependent on the Purchaser paying the due purchase price. However, the Purchaser shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.
- 8.7. If a defect is due to our default, the customer may claim damages pursuant to Clause 10.
- 9. Intellectual Property Rights and Copyrights**
- 9.1. In accordance with this Clause 9, we guarantee that the delivery item is free from intellectual property rights or copyrights of third parties. Each contracting party shall without undue delay notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- 9.2. In the event that the delivery item infringes an intellectual property right or copyright of a third party, we shall, at our option and expense, modify or exchange the delivery item in such a way that no further rights of third parties are infringed, but the delivery item continues to fulfil the contractually agreed functions, or provide the customer with the right of use by concluding a license agreement with the third party. If we do not succeed in this within a reasonable period of time, the Purchaser is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages part of the Purchaser shall be pursuant to the restrictions set out in Clause 10 of these General Terms and Conditions of Sale.
- 9.3. In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and sub-suppliers for the account of the Purchaser or assign them to the Purchaser. In these cases, claims against us in accordance with this Clause 9 shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and sub-suppliers was unsuccessful or, for example due to insolvency, has no prospect of success.
- 9.4. Claims of the Purchaser shall be excluded insofar as Purchaser is responsible for the infringement of property rights. Claims of the Purchaser shall also be excluded insofar as the infringement of the intellectual property right is caused by particular specifications of the Purchaser, by a usage not foreseeable by us by the fact that the delivery is modified by the customer or used together with products not delivered by the supplier.



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10. Damage Claims

- 10.1. Our liability for damages, for whatever legal reason, in particular impossibility, default (*Verzug*), defective or incorrect delivery, violation of contract, violation of obligations in contract negotiations and tort (*unerlaubte Handlung*), shall be limited in accordance with this Clause 10 as far as it depends on fault.
- 10.2. We shall not be liable in the event of ordinary negligence (*einfache Fahrlässigkeit*) on the part of our executive bodies, legal representatives, employees or other vicarious agents (*Erfüllungsgehilfen*), insofar as this is not a violation of essential contractual obligations (*vertragswesentliche Pflichten*). Essential to the contract are the obligation to deliver the Supplies on time that are free from defects of title and material defects which more than insignificantly impair its functionality or fitness for use, as well as obligations to provide advice, protection and care, which are intended to enable the Purchaser to use the delivery item in accordance with the contract or are intended to protect the life and limb of the Purchaser's personnel or to protect the Purchaser's property from considerable damage.
- 10.3. Insofar as we as the Supplier are liable for damages in accordance with Clause 10.2, this liability shall be limited to damages which we foresaw at the time of conclusion of the contract as a possible consequence of a violation of the contract or which we should have foreseen using customary care. Indirect damages and consequential damages resulting from defects of the delivery item are also only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.
- 10.4. The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.
- 10.5. Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and with the exclusion of any liability.

- 10.6. The limitations of this Clause 10 shall not apply to our liability for willful or grossly negligent conduct, for guaranteed characteristics (*Beschaffenheitsmerkmale*), for injury to life, limb or health or under the German Product Liability Act.

11. Limitation

- 11.1. Notwithstanding § 438 para. 1 no. 3 BGB (German Civil Code), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance (*Abnahme*) has been agreed, the statute of limitations shall commence with acceptance. This period shall not apply to claims for damages by the Purchaser arising from injury to life, limb or health or from willful or grossly negligent default by us or our vicarious agents (*Erfüllungsgehilfen*), which shall in each case become time-barred in accordance with the statutory provisions.
- 11.2. The statutory limitation period for building materials (§ 438 para. 1 no. 2 BGB) as well as other special statutory provisions on limitation (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall remain unaffected.
- 11.3. The aforementioned limitation periods of the purchase law (*Kaufrecht*) also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages on the part of the Purchaser due to willful intent or gross negligence or pursuant to Clause 10.6 shall become statute-barred exclusively in accordance with the statutory limitation periods

12. Non-Disclosure

- 12.1. We reserve the ownership or copyright to all offers and cost estimates made by us as well as to all documents and aids made available to the Purchaser (e.g. drawings, calculations, models, tools). These may not be made accessible, used or reproduced by the customer without our express consent, neither as such nor as regards content. They must be returned at our request and any copies made must

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be destroyed if they are no longer required in the ordinary course of business or if the negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of customary data security.

- 12.2. The above shall apply mutatis mutandis to the Purchaser's documents; these may, however, be made accessible to third parties to whom we have permissibly assigned Supplies.
- 12.3. A non-disclosure agreement concluded between the parties shall remain unaffected.

13. Final Provisions

- 13.1. The legal relations in connection with this contract shall be governed by substantive German law excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.2. If the Purchaser is a merchant (*Kaufmann*), a governmental entity (*juristische Person des öffentlichen Rechts*) or a special governmental estate (*öffentlich-rechtliches Sondervermögen*) or has no general place of jurisdiction in the Federal Republic of Germany, the agreed place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in D-71384 Weinstadt. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or a prevailing individual agreement, or at the registered office of the Purchaser, or in front of other competent courts. Mandatory statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.