



1. Sole scope of application and acknowledgement of our General Terms and Conditions of Business

- 1.1 All deliveries, services and quotations provided by us are subject solely to these General Terms and Conditions of Business. Any general terms and conditions of business stipulated by the customer or third parties and any regulations which deviate from our General Terms and Conditions of Business shall not be applicable, even if we have not specifically objected to their application in individual instances. Any reference by us to a letter containing or referring to terms and conditions of business as stipulated by the customer or a third party shall not be construed as acceptance by us of the applicability of such terms and conditions of business.
- 1.2 Agreements that deviate from our GTC shall only apply if they have been confirmed by us in writing.
- 1.3 Our GTC shall apply equally to any subsequent transactions between our company and the customer, even without specific reference to the same. Upon fulfilment of an order or acceptance of the provision of services, the customer shall be deemed to have acknowledged the applicability of our General Terms and Conditions of Business for both the respective transaction and for all future transactions. For the duration of our business relationship with the customer, any amendments or revisions to our General Terms and Conditions of Business shall automatically become an integral part of the contractual agreement when the order confirmation is despatched, unless objection to them is received immediately and in writing.
- 1.4 Our General Terms and Conditions of Business are only applicable to companies, public-law entities and special funds under public law as defined in Section 310 (1) BGB (German Civil Code).

2. Quotations – Supplementary agreements – Contractual content

- 2.1 Our quotations are non-binding to the extent that a contract shall only be deemed to have been concluded if we accept your order within 4 weeks of receipt by issuing an order confirmation.
- 2.2 The information contained in our catalogues and technical documentation constitutes instructions for use that are not binding; this information should not, however, be construed as providing any guarantees or warranties. Guarantees or warranties with regard to the properties or suitability for use of the merchandise shall only be deemed to have been given if we explicitly designate them as such in writing.
- 2.3 We shall only assemble and/or install machinery if this has been explicitly agreed. The order confirmation contains the final and comprehensive description of the scope to be provided by us; it forms, in particular, the basis for the technical performance characteristics, the technical and commercial details, the conditions for deployment, and the safety regulations.

3. Documentation – Samples – Drawings

- 3.1 We reserve all rights of ownership and copyright to any drawings, specifications, materials, samples, tools, models and similar documentation that are included with our quotations or order confirmations.
- 3.2 We reserve the right to implement design changes and any other amendments to the technical specifications and performance characteristics that reflect technological progress.
- 3.3 We shall not be bound by any obvious mistakes, printing, typing or calculation errors in our illustrations, drawings, calculations and other documentation.
- 3.4 Subject to reservation of all rights of ownership and copyright, we shall make the information and drawings available that the customer needs to commission and utilise the delivered merchandise. We shall not, however, be under any obligation to procure workshop drawings for the delivered merchandise or spare parts.
- 3.5 Illustrations, drawings, calculations and any other documentation to which we reserve rights of ownership and copyright must not be made available to third parties. This shall apply, in particular, to such written documentation as is designated "confidential"; the customer must first obtain our written permission before making such documentation available to third parties. These objects must be returned to us in full at our request and any copies that have been made must be destroyed as soon as the customer no longer needs them for its normal business operations or if our negotiations do not result in the conclusion of a contract.
- 3.6 Any documentation that the customer may provide to us shall remain the customer's property. We shall not be entitled to utilise this documentation without the customer's consent save to draft the quotation, and to develop, build, assemble and commission the object of the contract.

4. Reservation of the right to rescission

We shall be entitled to rescind the contract if the performance of the same encounters technical difficulties or acts of God that are beyond our control and which cannot be overcome or which would require the expenditure of unreasonable time, effort and cost compared with the value of the contractually agreed scope. This shall apply, in particular, to disruptions in operations, strikes, shortages or abnormally soaring prices of raw materials, means of transportation or labour. In addition, we reserve the right to rescind a contract if ordered goods are not supplied, or not supplied in time, by our suppliers for reasons beyond our control. We shall notify the customer immediately of the occurrence of such events and shall immediately reimburse any payments that have already been effected.

5. Prices – Terms of payment

- 5.1 Unless otherwise agreed, our prices shall be valid "ex factory" and excluding packaging, and excluding insurance and statutory sales tax for all scopes. We shall additionally charge statutory sales tax in all cases at the rate applicable on the day of performance.
- 5.2 If delivery is only to take place more than 4 months after conclusion of contract, we reserve the right to increase our prices accordingly if cost increases occur after conclusion of the contract, in particular as a result of wage agreements or price increases for materials. On request, evidence shall be provided to the customer of such increases. If the price increase exceeds twice the increase in the cost of living, the customer may withdraw from the contract within one week of being informed of the price increase by written declaration.
- 5.3 The customer shall be responsible for any additional costs arising as a result of requests for modifications by the customer. In particular, the customer shall pay for any deviations from the templates that the customer requests; these modifications shall be charged at time and cost.
- 5.4 In the event that we manufacture samples and production equipment (tools, moulds, templates, etc.) at the customer's request for the purpose of executing or preparing an order, the customer shall pay the corresponding production costs at our request, even if the order does not materialise.
- 5.5 We shall be entitled to invoice our deliveries and services as soon as the goods are notified as ready for delivery or, in the event that the goods are despatched, as soon as they are despatched. This shall apply equally to any self-contained partial scopes or deliveries. We shall be entitled to demand partial and advance payments, especially for any material costs that we incur. All invoices shall be payable without any deductions within 10 days of their date to one of the accounts at our registered office. We shall grant a discount of 2% on any payments effected within 7 days of the invoice date unless the customer is late in settling any outstanding claims. Bills of exchange and cheques shall only be accepted by prior agreement and only on condition of payment; in addition, bills of exchange must be issued for payment in Schwerte. The customer shall bear all discounting and collection costs.
- 5.6 Our claims may only be offset against undisputed or legally established counterclaims. The customer's rights of retention are excluded, unless they are asserted on the basis of an undisputed or legally established claim.
- 5.7 In the event that the customer is in default of payment, the company shall be entitled to charge interest at a rate of 8 percent above the base rate in accordance with Section 247 BGB without prejudice to any other rights of the vendor.
- 5.8 In the event that the customer is in default of payment, we shall moreover be entitled to demand immediate payment of all other claims that are outstanding from the respective contractual relationship (including any other individual orders that are covered by the same master agreement). Whilst payment is still outstanding, we shall be entitled to make our further performance conditional upon the receipt of partial payments that reflect the value of the performed scope. We shall be entitled to cease order fulfilment and to make the continuation of the same conditional upon the provision by the customer of sufficient collateral to cover the total order value. To this end we shall give the customer a reasonable period of notice and shall notify the customer of our intention to refuse execution or performance and to demand compensation and/or to withdraw from the contract in the event that the customer does not pay within the period of notice.
- 5.9 The provisions of 5.8 above shall apply equally if, following conclusion of the contract, we become aware of any suspension by the customer of its payment obligations or of any material deterioration in the customer's financial circumstances that poses a serious threat to our rights to payment.

6. Delivery obligations – Shipment – Transfer of risk

- 6.1 Our delivery obligations are defined in the order confirmation. Delivery of up to 5% more or less of the total order value is customary in the trade and permissible.
- 6.2 We shall only be obliged to use raw materials suggested by the customer if we explicitly agree to do so.
- 6.3 As long as we do not deviate from any instructions issued to us, we shall be under no obligation to verify whether orders executed by us infringe the rights (and especially copyrights) of any third parties. The customer shall exempt us from any claims.
- 6.4 We are permitted to have orders performed by third parties. We are also permitted to make partial deliveries if the partial delivery can be used by the customer for the intended purpose under the contract and the customer does not incur significant additional expense or additional costs as a result (unless we expressly declare that we are prepared to accept such costs).
- 6.5 We shall only purchase transport insurance cover for consignments at the express instruction and expense of the customer.
- 6.6 In the absence of any particular shipping specifications, we shall use the mode of despatch that we believe to be the cheapest when shipping the consignment. Goods shall be shipped at the expense and risk of the customer. If carriage-paid delivery is explicitly agreed, we shall bear the costs of shipment to the destination indicated in the order confirmation. If the customer specifies a particular mode of despatch, the difference in the shipment costs shall be invoiced accordingly.
- 6.7 The risk of loss and the risk of deterioration of the merchandise for reasons beyond our control shall be transferred to the customer once the goods are loaded at the factory or despatch warehouse or, if shipment of the goods is not possible or required, once the customer has received notification or has been made aware that we are ready to deliver the order.
- 6.8 We shall assign claims owing to us from a forwarding company that we have commissioned to the customer at the latter's request.



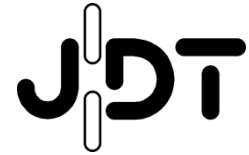
- 6.9 If the customer delays in calling off, taking delivery of, or collecting, the merchandise, or if the customer is responsible for any delay in shipment or delivery, we shall, after giving the customer a reasonable period of notice and without prejudice to any other rights which we might assert, be entitled
- a) to withdraw from the contract in respect of the undelivered quantities, or
 - b) to store the merchandise at the risk and expense of the customer on our or third-party premises and to charge the customer warehousing costs in an amount of at least 0.5% of the invoice amount relating to the undelivered quantities for each week or part thereof of storage – however not more than 5% of the invoice value relating to the undelivered merchandise or non-provided services – subject to the provision of proof of lower storage costs, or
 - c) to dispose of the undelivered quantities as best possible (Section 254 BGB).

7. Delivery dates and periods

- 7.1 Delivery dates and periods shall be construed as approximations unless a fixed period or fixed date has been confirmed or agreed. The delivery period commences on the date of our order confirmation, albeit not before all of the details of the order have been clarified in full and any necessary German and foreign official certifications have been provided. The date of delivery shall be deemed to be the date of despatch from our factory or, if the customer has agreed to collect the merchandise or the consignment is ready for despatch, the date on which the notification of readiness for shipment is despatched.
- 7.2 Delivery dates and periods shall be conditional upon our receiving the correct merchandise on time from our suppliers.
- 7.3 A new delivery date and delivery period shall be agreed if modifications to the contract are subsequently agreed. Adherence to delivery periods shall be conditional upon the customer meeting its contractual obligations and, in particular, its payment obligations, on time and in full. Otherwise, an agreed period shall be extended by the period corresponding to the delay.
- 7.4 Acts of God, unrest, strikes, lockouts and considerable disruptions in operations that are beyond our control shall extend the delivery dates and periods for the duration of the circumstances that hinder our performance on condition that these hindrances demonstrably influence the completion of the object of delivery to a considerable extent.
- 7.5 One week after expiry of a non-binding delivery date or non-binding delivery period, the customer shall be entitled to demand delivery in writing within a reasonable period of at least 2 weeks. The company shall be deemed to be in default once this reminder has been issued. After expiry of the deadline, the customer shall be entitled to cancel the contract in writing or to demand compensation in accordance with the provisions in clause 8.
- 7.6 In the event that parts of an order have already been delivered, the right of rescission and the assertion of claims for compensation in accordance with the provisions in clause 8 shall be restricted to the outstanding part of the order unless such partial delivery is of no interest overall to the customer. This clause shall apply equally in the event that we are not able to complete the delivery. If and to the extent that completion of the delivery proves to be impossible whilst we are in default, we shall be equally liable in accordance with this clause unless the damage would have arisen anyway, even if the delivery had been effected on time.
- 7.7 Unless otherwise agreed, we must be notified of binding quantities at least 2 months prior to the required delivery date in the case of contracts for call-off orders. The customer shall bear any additional costs that are incurred as a result of delayed call-off or subsequent alterations to the call-off in terms of schedule or quantity on the part of the customer.

8. Breaches of obligations by the company

- 8.1 The warranty period is one year from delivery or, if acceptance is required, from acceptance. This shall not apply to claims for a defect in a building, in a thing used for a building and/or for planning or monitoring services relating to a building (Section 438 para. 1 No. 2 and Section 634a para. 1 No. 2 of the Civil Code (BGB)).
- 8.2 The delivered goods must be inspected with care immediately after delivery to the customer or the third party specified by the customer or after completion of assembly performed by us. Such goods shall be considered approved by the customer with regard to obvious defects or other defects that would have been identified from an immediate and careful inspection if we have not received written notice of the defect within seven working days of delivery or completion of assembly undertaken by us. For other defects, the goods shall be considered approved by the customer if we have not received notice of the defect within seven working days of the date on which the defect became apparent; however, if the defect was capable of being identified by the customer at an earlier date during normal use, such earlier date shall apply as the start of the notice period.
- 8.3 We must be given the opportunity to identify the defect that is the subject of the notice on site, either ourselves or via a person appointed by us. If the customer does not give us an opportunity to satisfy ourselves as to the defect, all claims for the defect shall fail.
- 8.4 In the event of material defects in the delivered goods, we shall be obliged and entitled at our choice to remedy the defect or perform replacement delivery within a reasonable period. We must be given the necessary time and opportunity to perform all repairs and replacement deliveries that we consider reasonably necessary. Replaced parts shall become our property. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay in remedying the defect or replacement delivery, the customer may withdraw from the contract or reduce the purchase price proportionately.



- 8.5 With regard to the direct costs that arise as a result of repair or replacement delivery, we shall bear the costs of the replacement and the reasonable costs for removal and installation to the extent that the complaint is found to be justified. Otherwise, the customer shall bear the costs. Replaced parts shall become our property.
- 8.6 Warranty is given for replacement parts or repairs to the same extent as for the delivered item.
- 8.7 If a defect is the result of fault on our part, the customer may demand damages under the conditions set out in section 9.
- 8.8 In the event of defects in components from other manufacturers, which we cannot correct because of licensing or physical constraints, we shall at our choice enforce our warranty claims against the manufacturers and suppliers for the customer's account or assign such claims to the customer. Warranty claims against us for such defects shall only be valid subject to the other conditions and in accordance with these General Terms & Conditions if legal enforcement of the above claims against the manufacturer and supplier has been unsuccessful or has no chance of success, e.g. because of insolvency. The period of limitation for the customer's applicable warranty claims against us shall be suspended for the duration of the legal dispute.
- 8.9 The warranty shall be void if the customer modifies the delivered goods or has them modified by a third party without our consent and it is impossible to correct the defect or such correction is made unreasonably more difficult as a result. In all cases, the customer must bear the additional costs to correct the defect that arise as a result of such modification.
- 8.10 We provide no warranty for defects or loss that arise as a result of the unsuitability of any materials provided by the customer of a designed required by the customer, non-compliance with the operating requirements, unsuitable or inappropriate use or storage, incorrect assembly or commissioning by the customer of a third party, unauthorized attempts at repair or modifications, natural wear, incorrect or negligent handling, excessive load, unsuitable equipment and replacement materials, defective construction, as well as chemical, electro-chemical or electrical influences, unless they are demonstrably caused by fault on our part.
- 8.11 We also provide no warranty for disadvantages that arise because of demands placed on the delivery item, of which we have not been or have been insufficiently informed.
- 8.12 Delivery of used goods, agreed with the customer in a specific instance, shall be performed excluding any warranty for material defects.

9. Claims for damages

- 9.1 The seller's liability for damages on whatever legal grounds, in particular on the basis of impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and in tort is limited in accordance with this section 9 where the claim in each case is based on fault.
- 9.2 In the case of material and financial loss, we shall only be liable for breach of an essential contractual obligation. Essential contractual obligations are obligations, fulfilment of which defines the contract and on which the customer is entitled to rely, in particular the obligation of timely delivery and installation of the delivery item, its freedom from defects that more than insignificantly limit its functionality or usability, as well as duty to advise, duty to protect and duty of care obligations that are intended to permit the customer to use the delivery item in accordance with the contract or are for the purpose of protecting the life and health of the customer's personnel or protecting the customer's property against significant damage or loss.
- 9.3 To the extent that we are liable for damage on an applicable ground in accordance with clause 9.2, our liability shall be limited to losses that we have foreseen on conclusion of contract as a possible consequence of a breach of contract or should have foreseen if we had taken ordinary care. Indirect and consequential loss that is the result of defects in the delivery items are also only recoverable if such loss is typically to be expected from intended use of the delivery item.
- 9.4 The above exclusions and limitations of liability apply to the same extent in favour of the bodies, legal representatives, employees and other agents of the seller.
- 9.5 Where we provide technical information or act in an advisory capacity and such information or advice is not within the scope of performance owed by us and agreed under the contract, such advice and information shall be provided free of charge and excluding any liability.
- 9.6 The limitations in this section 9 do not apply to our liability for intentional or grossly negligent acts, guaranteed quality characteristics, injury to life, body or health or our liability under the Product Liability Act (ProdHaftG).

10. Reservation of title

- 10.1 The following reservation of title serves to protect all of our respective existing and future claims against the customer based on the supply relationship existing between us as contract partners, including any balances outstanding on a current account relationship that is restricted solely to this supply relationship.
- 10.2 The merchandise delivered by us to the customer remains our property until all secured claims have been paid in full. The merchandise and the goods that are subject to reservation of title and which, pursuant to this clause, take the place of the merchandise are referred to as reserved goods below.
- 10.3 The customer shall safeguard the reserved goods at no charge on our behalf. The customer shall insure them against fire, theft and water damage.



- 10.4 Until such time as the enforcement event occurs (clause 10.9), the customer shall be entitled to process the reserved goods in the course of its normal business operations and to sell them. The goods may not be pledged nor transferred by way of security.
- 10.5 In the event that the customer processes the reserved goods, the parties agree that they are processed on our behalf and for our account as manufacturer and that we acquire direct title or – if the processing involves materials from several owners or the value of the processed object is higher than the value of the reserved goods – co-title (fractional title) to the newly created product in the ratio of the value of the reserved goods to the value of the newly created product. In the event that no such acquisition of title in our favour occurs, the customer hereby transfers its future title or co-title (in the ratio outlined above) to the newly created product to us as collateral. In the event that the reserved goods are joined or inseparably mixed with other products to create a uniform product and that one of the other products constitutes the main product, the customer hereby transfers to us proportionate co-title to the uniform product in the ratio indicated in sentence 1 above, provided that the main product actually belongs to the customer.
- 10.6 In the event that the customer sells the reserved goods, it hereby assigns to us the resulting claim against the purchaser – or the corresponding proportionate claim in the ratio of our co-ownership of the reserved goods – for security purposes. The same shall apply to any other claims that take the place of the reserved goods or otherwise arise in respect of the reserved goods, such as insurance claims or claims based on impermissible actions in the case of loss or destruction. We revocably authorise the customer to collect in its own name the claims assigned to us. We shall only be entitled to revoke this collection authorisation in the case of an enforcement event.
- 10.7 In the event that third parties seize the reserved goods, especially through garnishment, the customer shall notify them immediately of our ownership and shall inform us accordingly to enable us to assert our rights of title. If and to the extent that the third party is not able to reimburse the legal or out-of-court costs that we incur in this connection, the customer shall be liable for them.
- 10.8 We shall release the reserved goods and the property or claims that take their place at our discretion and on request if the value of the reserved goods exceeds the amount of secured claims by more than 20%.
- 10.9 In the event that we rescind the contract on grounds of actions by the customer that constitute a breach of contract – in particular, payment default – we shall be entitled to demand the return of the reserved goods (enforcement event).

11. Special regulations governing the provision of software

- 11.1 Unless otherwise stipulated below, the provisions of these General Terms and Conditions of Business shall apply to software that is transferred or provided to the customer on its own or as part of other deliveries and services.
- 11.2 The software shall be transferred and made available in accordance with the provisions of Sections §§ 69 a et seqq German Copyright Act (UrhG). Unless explicitly agreed otherwise, we shall not transfer any rights of utilisation and exploitation to the customer that extend beyond the utilisation of the provided software package within the framework of the deliveries and services that we have rendered. The customer shall be entitled to use the existing software functions without restriction and to adjust them to its specific operational circumstances. Any programming of any nature that extends beyond the limits permitted in Sections 69 a et seqq UrhG, such as the further adaptation of the software data to the customer's needs and the further development of the software, shall be performed solely by the manufacturer of the software.
- 11.3 The customer must obtain our express written consent before selling the software to any third parties.
- 11.4 Unless explicitly agreed otherwise, the customer shall not be entitled to provision of the software source code.
- 11.5 Rights of utilisation and exploitation that are subject to copyright laws and are granted for an indefinite period (once-paid permanent provision of the software) may be freely revoked until such time as the purchase price, licence fee and any other claims that may be owing to us in connection with the order and the entire business relationship have been paid in full. Notwithstanding 11.3, the customer shall be entitled to sell our software in the course of its normal business operations. In this case, the customer shall be authorised to grant the purchaser the same rights of utilisation and exploitation to which the customer would be entitled upon payment in full of the purchase price, licence fee and other claims owing to us in connection with our business relationship. The customer hereby assigns all claims to which it would become entitled against its purchasers through selling the software, irrespective of whether the delivered merchandise is sold on without or following further processing. The customer shall retain the authorisation to collect these claims even after the assignment. In all instances, the provisions of clause 11 shall apply mutatis mutandis.
- 11.6 The customer is aware that no software program can be completely free of errors. With regard to the delivery of the software, we accept no warranty that the software will function without interruption or error in every respect and that it will be possible to execute all of the software functions in all conceivable combinations, provided that these limitations only impair the suitability of the software for normal or the contractually envisaged use to an insignificant extent. In the case of software errors that only impair the contractually agreed utilisation to an insignificant extent, the remedy of the defect can take the form of instructions for eliminating or avoiding the impacts of the error. The warranty does not cover the elimination of errors caused by external influences or operating or maintenance errors.
- 11.7 We accept no liability for damages to the software or to any other objects of delivery and performance that are caused by any modifications to or work on the source code or the software itself that are initiated by the customer or performed by a third party that we have not commissioned.



12. Take back obligation pursuant to the German Electrical and Electronic Equipment Act (ElektroG)

- 12.1 The following shall apply if and to the extent that an obligation to take back and dispose of the supplied products can be derived from the German Electrical and Electronic Equipment Act (ElektroG):
- 12.2 The customer shall assume responsibility for the proper disposal of the delivered merchandise when it reaches its end of life at its own expense and in compliance with statutory regulations.
- 12.3 The customer shall exempt us from the obligations pursuant to Section 10 (2) ElektroG (manufacturer's take back obligation) and from any related third-party claims.
- 12.4 In the event that the customer omits to contractually obligate any third parties to which it forwards the delivered merchandise to assume responsibility for disposal and for passing on the obligation, the customer shall be obliged to take back the delivered goods at their end of life and to ensure their proper disposal at its own expense and in compliance with statutory regulations.
- 12.5 Our right to assumption of responsibility/exemption by the customer shall not lapse until two years have passed since the final end of life of the merchandise. This period shall not commence until the customer has notified us in writing that the merchandise has reached its end of life.

13. Other copyrights and rights of utilisation

- 13.1 Drafts and templates that are prepared by us are protected by copyright and belong to us. They may not be duplicated or made available to third parties unless this is absolutely essential for the execution of the order.
- 13.2 The customer guarantees that any reports, plans, concepts, drawings, lists, analyses and calculations produced by us in connection with the order shall only be used for the customer's own and the contractually agreed purposes and shall not be disclosed save to the extent provided for in the contract. We remain the authors of any work results that are subject to copyright protection.
- 13.3 If and to the extent that our deliveries and services include the provision of rights of utilisation and exploitation, these rights are only granted to the extent necessary to permit the use of our work for the specifically intended purpose, unless explicitly agreed otherwise.
- 13.4 If and to the extent that third party scope is necessary for our deliveries and services, we shall acquire their rights of utilisation in the scope outlined in the aforementioned paragraph and transfer them to the customer for ordering purposes, if necessary. We shall notify the customer accordingly in the event that the acquisition of the utilisation rights is not possible to this extent, or that restrictions have been imposed on the utilisation rights or other third party rights. The customer shall be bound by these restrictions. We are under no obligation to secure the rights to utilise and exploit any services and work provided by the customer nor any services and deliveries created on the basis of drawings, models or other information by or from the customer, nor do we accept any liability for any infringement of third party property rights. The customer is obligated to exempt us from any third party claims in this respect.

14. Confidentiality

The customer is obligated to treat any and all information, expertise and other business secrets which it learns from or about us in the strictest confidence and not to disclose or otherwise make available to third parties any information, documents/documentation, program descriptions, drawings, sketches or other materials without our express permission.

15. Place of performance, court of jurisdiction and applicable laws

- 15.1 Our registered office in Schwerte is the place of performance for all obligations arising from the contractual relationship.
- 15.2 Hagen is the court of jurisdiction for all disputes arising from the contractual relationship, including proceedings relating to bills of exchange and cheques. We are, however, entitled to take legal action against the customer at any other court of jurisdiction to which the customer is subject.
- 15.3 This contractual relationship is governed solely by the laws of the Federal Republic of Germany; the provisions of the United Nation Convention on Contracts for the International Sale of Goods are explicitly excluded.