



Sales Agency Agreement

ANNEX AGENCY D

General conditions of sale of YAMAHA Music Europe GmbH

§ 1

Validity of these General conditions of Sale (GCS); Protective Clause

- (1) These General Terms and Conditions of Sale (GCS) apply to sales contracts for Products which a commercial agent (hereinafter referred to as the "**Agent**") concludes in the name and for the account of us, Yamaha Music Europe GmbH, with you, an entrepreneur (§ 14 of the German Civil Code (BGB)) or a consumer (§ 13 BGB) (hereinafter referred to as the "**Customer**"). A consumer is any natural person who concludes a legal transaction for purposes which cannot predominantly be attributed to either his commercial or his self-employed professional activity (§ 13 BGB). Entrepreneur is a natural or legal person or a partnership with legal capacity which acts in the exercise of its commercial or independent professional activity when concluding a legal transaction (§ 14 BGB).
- (2) Our GCS apply exclusively, even if (with knowledge of the Customer's terms and conditions) we unconditionally accept orders, render services or directly or indirectly refer to letters, etc. containing his or third party terms and conditions. We do not accept conflicting, deviating or supplementary terms and conditions of the Customer unless we expressly agree to their validity in writing.
- (3) Information on data protection is provided in our separately regulated data protection regulations.

§ 2

Conclusion of the contract and content; Written form; Reservation of rights; Confidentiality

- (1) The Agent's (online) shop is operated by the Agent, not by us, Yamaha Music Europe GmbH. If registration is necessary for the use or ordering of Products, the Agent's terms and conditions shall apply.
- (2) The presentation of the Products in the Agent's (online) shop does not constitute a legally binding offer, but merely an invitation to submit an offer (*invitatio ad offerendum*).
- (3) The order by the Customer is considered as a legally binding offer to conclude a contract. Our acceptance shall be effected by written declaration (e.g. by our order confirmation or our dispatch/collection readiness notice) or by dispatch of the goods. If an acknowledgement of receipt is sent to the Customer, in which the receipt of the Customer's order is documented, this is not yet an acceptance of the Customer's offer.
- (4) We reserve the right to sell goods elsewhere in the meantime between the Customer's offer and acceptance by us.
- (5) Legally relevant declarations and notifications which the Customer makes to us after conclusion of the contract (e.g. setting of deadlines, reminders, notifications of defects) must be made in writing in order to be effective. In these GCS, any references to "in writing", "written form" or similar shall be deemed satisfied by the Customer's use of the statutory text form (e.g. email), provided that the Customer is a consumer (§ 13 BGB). For the avoidance of doubt, such references shall not be deemed to be fulfilled by the Customer's use of the statutory text form if the Customer is an entrepreneur (§ 14 BGB).
- (6) Individual contractual agreements (including those agreed verbally) take precedence over these GCS. A written agreement or our written confirmation shall be decisive for proof of what has been agreed between the parties.

§ 3

Delivery modalities; Default of acceptance, collaborative actions etc.; Acceptance

- (1) The parties agree that the place of performance is the Agent's point of sale where the customer purchases the product.
- (2) Any delivery of a Product to the Customer (except for cases where the Agent hands over a Product to the Customer at the Agent's shop) is a sales shipment in the sense of § 447 BGB. Upon the Customer's request we are obligated to send the goods to the address indicated by the Customer when purchasing the Product. With the transfer of the goods to the person specified for the execution of the shipment the risk of accidental loss and accidental deterioration transfers to the Customer. We will bear the costs of transport and will provide transportation insurance. This, however, has no effect on the place of fulfilment of the delivery.
- (3) If the Customer is a consumer (§ 13 BGB), the above paragraph 2 shall apply with the proviso that the risk of accidental loss and accidental deterioration shall only pass to the Customer if the Customer has commissioned the person designated to carry out the shipment with the execution and we have not previously named this person to the Customer. Otherwise, § 446 BGB shall apply, according to which the risk of accidental loss and accidental deterioration shall not pass to the Customer until the sold Product has been handed over.
- (4) Generally, the standard transportation packaging is included in the purchase price of the respective Product. If the Customer's wishes necessitate special packaging, different from the standard packaging for the goods, the Customer must bear the expense therefore.
- (5) We will insure the goods against damage during transportation at our own expense. In the event of damage the Customer is obligated to make all necessary documents available to us and to ensure other necessary support in order to make the claim brought against the insurer valid.
- (6) If the Customer is in default of acceptance, neglects a requested collaborative action, or our delivery is delayed for other reasons attributable to the Customer, we are entitled to charge for the damages resulting from this including our additional expenses (e.g. in particular, storage costs).

§ 4

Right of Withdrawal

- (1) A Customer who is a consumer (§ 13 BGB), may be entitled to withdraw from a sales contract in accordance with applicable statutory provisions. The sales contracts for Products are concluded between the Customer and us, Yamaha Music Europe GmbH, while the Agent acts in the name and for the account of us and is also responsible for processing withdrawals in the same capacity. If the Customer is entitled to withdraw from a sales contract pursuant to applicable statutory provisions, the following withdrawal instructions addressed to the Customer shall apply. Solely within these withdrawal instructions, the terms "we" and "us" shall refer to the Agent handling the withdrawal on our behalf.
 - a) **If you order a single good or multiple goods that are delivered together, and if they can be returned via standard postal services, the following withdrawal instruction applies:**

Withdrawal Instruction

Right of Withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reasons.

The withdrawal period shall be fourteen days from the day on which you or a third party named by you, who is not the carrier, took possession of the goods.

In order to exercise your right of withdrawal, you shall notify us (name, address, telephone number, and e-mail address of the Agent) of your decision to withdraw from this contract by means of a clear statement (e.g. a letter sent by post or an e-mail). You may use the enclosed sample withdrawal form, but it is not mandatory.

To meet the withdrawal deadline, it is sufficient for you to send the notification of exercising the right of withdrawal before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this contract, we shall reimburse to you all payments we have received from you, including delivery charges (with the exception of additional charges resulting from your choice of a method of delivery other than the least expensive standard delivery offered by us), immediately and no later than fourteen days from the day on which we receive notice of your withdrawal from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

We may withhold reimbursement until we have received the goods back or until you have provided evidence of having sent back the goods, whichever is the earlier.

You shall send back the goods or hand them over to ... us or immediately and in any event no later than fourteen days from the day on which you communicate your withdrawal from this contract. The deadline is met if you send back the goods before expiry of the period of fourteen days.

You will have to bear the direct cost of returning the goods.

You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

- b) **If you order a single good or multiple goods that are delivered together, and if they cannot be returned via standard postal services due to their nature (for example, the return shipment may require a freight carrier due to the size or weight of the goods), the following withdrawal instruction applies:**

Withdrawal Instruction

Right of Withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reasons.

The withdrawal period shall be fourteen days from the day on which you or a third party named by you, who is not the carrier, took possession of the goods.

In order to exercise your right of withdrawal, you shall notify us (name, address, telephone number, and e-mail address of the Agent) of your decision to withdraw from this contract by means of a clear statement (e.g. a letter sent by post or an e-mail). You may use the enclosed sample withdrawal form, but it is not mandatory.

To meet the withdrawal deadline, it is sufficient for you to send the notification of exercising the right of withdrawal before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this contract, we shall reimburse to you all payments we have received from you, including delivery charges (with the exception of additional charges resulting from your choice of a method of delivery other than the least expensive standard delivery offered by us), immediately and no later than fourteen days from the day on which we receive notice of your withdrawal from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

We will collect the goods.

You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately 500.00 EUR.

You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

Notice on the Return Process

In cases where goods cannot be returned via standard postal services due to their nature, we will arrange the return transport through a designated freight carrier. We recommend that you keep the original packaging of the goods, including all accessories and packaging components. Any damage or soiling of the returned goods should be avoided. You must ensure that the goods are available for pickup at the pre-arranged collection date. Any additional costs incurred due to your absence at the agreed pickup time will be at your expense. The return shipping costs may vary depending on the weight, size, and distance to the return location. However, we limit the maximum cost for consumers to 500.00 EUR per shipment, which also includes any necessary disassembly costs. After your withdrawal from the contract, you will be informed of the exact shipping costs. The return shipping costs must be paid in full when the actual collection takes place. Please note that your right of withdrawal and its legal consequences remain unaffected by compliance with this notice. This notice is provided solely to facilitate the return process.

- c) **If you order multiple goods in one order, which are delivered separately and can be returned via standard postal services, the following withdrawal instruction applies:**

Withdrawal Instruction

Right of Withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reasons.

The withdrawal period shall be fourteen days from the day on which you or a third party named by you, who is not the carrier, took possession of the last good.

In order to exercise your right of withdrawal, you shall notify us (name, address, telephone number, and e-mail address of the Agent) of your decision to withdraw from this contract by means of a clear statement (e.g. a letter sent by post or an e-mail). You may use the enclosed sample withdrawal form, but it is not mandatory.

To meet the withdrawal deadline, it is sufficient for you to send the notification of exercising the right of withdrawal before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this contract, we shall reimburse to you all payments we have received from you, including delivery charges (with the exception of additional charges resulting from your choice of a method of delivery other than the least expensive standard delivery offered by us), immediately and no later than fourteen days from the day on which we receive notice of your withdrawal from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

We may withhold reimbursement until we have received the goods back or until you have provided evidence of having sent back the goods, whichever is the earlier.

You shall send back the goods or hand them over to ... us or immediately and in any event no later than fourteen days from the day on which you communicate your withdrawal from this contract. The deadline is met if you send back the goods before expiry of the period of fourteen days.

You will have to bear the direct cost of returning the goods.

You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

Notice on the Return Process

The goods should ideally be returned in their original packaging, including all accessories and packaging components. If the original packaging is no longer available, please use protective outer packaging to ensure adequate protection against potential transport damage. Any damage or soiling of the returned goods should be avoided. Please note that your right of withdrawal and its legal consequences remain unaffected by compliance with this notice. This notice is provided solely to facilitate the return process.

- d) **If you order multiple goods in one order, which are delivered separately and cannot be returned via standard postal services due to their nature (for example, the return shipment may require a freight carrier due to the size or weight of the goods), the following withdrawal instruction applies:**

Withdrawal Instruction

Right of Withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reasons.

The withdrawal period shall be fourteen days from the day on which you or a third party named by you, who is not the carrier, took possession of the last good.

In order to exercise your right of withdrawal, you shall notify us (name, address, telephone number, and e-mail address of the Agent) of your decision to withdraw from this contract by means of a clear statement (e.g. a letter sent by post or an e-mail). You may use the enclosed sample withdrawal form, but it is not mandatory. To meet the withdrawal deadline, it is sufficient for you to send the notification of exercising the right of withdrawal before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this contract, we shall reimburse to you all payments we have received from you, including delivery charges (with the exception of additional charges resulting from your choice of a method of delivery other than the least expensive standard delivery offered by us), immediately and no later than fourteen days from the day on which we receive notice of your withdrawal from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

We will collect the goods.

You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately 500.00 EUR.

You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

Notice on the Return Process

In cases where goods cannot be returned via standard postal services due to their nature, we will arrange the return transport through a designated freight carrier. We recommend that you keep the original packaging of the goods, including all accessories and packaging components. Any damage or soiling of the returned goods should be avoided. You must ensure that the goods are available for pickup at the pre-arranged collection date. Any additional costs incurred due to your absence at the agreed pickup time will be at your expense. The return shipping costs may vary depending on the weight, size, and distance to the return location. However, we limit the maximum cost for consumers to 500.00 EUR per shipment, which also includes any necessary disassembly costs. After your withdrawal from the contract, you will be informed of the exact shipping costs. The return shipping costs must be paid in full when the actual collection takes place. Please note that your right of withdrawal and its legal consequences remain unaffected by compliance with this notice. This notice is provided solely to facilitate the return process.

(2) Sample Withdrawal Form

The following form may be used for withdrawal:

Sample Withdrawal Form (If you want to withdraw from the contract, please fill out this form and send it back) - To: [Add name, address, and e-mail address of the Agent] - I/We (*) hereby withdraw from the contract concluded by me/us (*) for the purchase of the following goods (*)/the provision of the following services (*) - Ordered on (*)/received on (*) - Name of Consumer(s) - Address of Consumer(s) - Signature of Consumer(s) (only for paper communication) - Date (*) Delete as applicable.
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(3) Notice on the Exclusion of the Right of Withdrawal

No right of withdrawal shall apply to sales contracts for the delivery of goods which are not prefabricated and the manufacture of which is governed by your individual choice or decision, or which are clearly tailored to your personal needs.

§ 5

Voluntary 30-Day Return Right

- (1) Without prejudice to the Customer's statutory right of withdrawal, we grant the Customer a voluntary right of return, solely for sales contracts concluded through the Agent's online shop, extending the period for the statutory right of withdrawal to 30 days under the terms set out in this clause ("**Right of Return**"). Under this Right of Return, the Customer, provided they meet the requirements set out in paragraph 2 below, may cancel the contract without providing any reasons, even after the statutory fourteen-day withdrawal period has expired (see § 4 of these GCS). The extended return and cancellation period under the Right of Return shall commence immediately after the expiration of the statutory withdrawal period and shall terminate 16 days thereafter ("**Return Period**").
- (2) The Right of Return is available only to Customers who have a statutory right of withdrawal under applicable statutory provisions (see § 4 of these GCS).
- (3) To exercise the Right of Return, the Customer must notify the Agent (**Add name, address, telephone number, and e-mail address of the Agent**) of the decision to cancel the contract by means of a clear statement. The notice must be sent before the Return Period referred to in paragraph 1 above expires.
- (4) The return process depends on the type of delivery:
 - a) For Products that can be returned via standard postal shipping: The Customer shall send back the Products or hand them over to the Agent immediately and in any event no later than ten days from the day on which the Customer provides notice of the exercise of the Right of Return and the cancellation of the contract in accordance with the preceding paragraph 3. This deadline is met if the Customer dispatches the Products before the end of the ten-day period. The Customer bears the direct cost of returning the products.
 - b) For Products that can only be returned by a freight carrier: As soon as the Customer provides notice of the exercise of the Right of Return and the cancellation of the contract in accordance with the preceding paragraph 3, we will arrange for the return shipment and collection of the Product via a designated freight carrier. Freight returns are subject to return shipping costs, which may vary depending on the weight, size and distance to the return location. Additional costs may be incurred if professional disassembly is required for transport. The Customer is responsible for all costs associated with the return of the Products, which will be communicated prior to collection. All relevant fees must be paid in full by the Customer before the actual collection. The Customer must ensure that the Products are available for collection at the pre-arranged collection date. Any additional costs incurred due to the Customer's absence at the agreed pickup time will be at the Customer's expense.
- (5) After inspecting the returned Product, we or the Agent will issue a refund using the same payment method that was used for the purchase.
- (6) The Products must be returned or made available for collection complete, in their original condition, undamaged, and in their original sales packaging, including any instructions. If these conditions are not met, we reserve the right to refuse refund or to deduct compensation for any loss in value caused by handling beyond what is necessary to inspect the goods.
- (7) The Right of Return does not apply to Products that are prefabricated and have been manufactured according to the Customer's individual specifications or that are clearly tailored to the Customer's personal needs. For the avoidance of doubt, the Right of Return does not apply to Products purchased in a physical store, unless otherwise agreed upon.
- (8) The Customer's statutory warranty rights remain unaffected by this voluntary Right of Return. The Right of Return is a voluntary customer service offered by us in addition to the right of withdrawal under statutory provisions. Until the expiry of the statutory withdrawal period, the statutory provisions and provisions of § 4 of these GCS apply exclusively.

§ 6

Payment modalities, Retention of goods, Exclusion of right of compensation and retention; Customer's inability to perform

- (1) Unless otherwise agreed, our invoices are to be paid immediately and prior to the delivery of a Product to a Customer. The date of receipt of payment shall be decisive.

- (2) Unless otherwise contractually agreed, the following means of payment are generally available to the Customer: Cash payment (on site in the shop or on delivery), debit card, credit card, prepayment. In some countries, additional means of payment (e.g. cheque) may be available. The Customer shall make payment directly to us, unless exceptional circumstances require payment to the Agent. The Agent is obliged to offer to the Customer by default such payment methods that ensure direct payment to us.
- (3) The Customer shall be in default if he fails to pay following a reminder from us issued after the due date for payment. If the payment is made within a certain period of time according to the calendar (e.g. "payment within X days after receipt of the invoice") or if a reminder is not required due to other circumstances regulated by law, the Customer shall be in default without further ado in the event of late payment, in particular without a reminder. The purchase price will be subject to interest in accordance with the respective legal default interest rate during the time of default. We retain the right to claim further damages caused by default. If the Customer is an entrepreneur (§ 14 BGB), our claim to commercial maturity interest (§ 353 HGB, German Commercial Code) remains untouched.
- (4) The Customer shall only be entitled to offset if his counterclaim is synallagmatic (i.e. originates from the same contractual relationship) or undisputed, ready for decision or legally binding.
- (5) The Customer shall only be entitled to a right of retention if his counterclaim originates from the same contractual relationship. If the Customer is an entrepreneur (§ 14 BGB), the Customer is additionally only entitled to assert a right of retention if his counterclaim is undisputed, ready for decision or has been legally established.
- (6) We are entitled to refuse our outstanding services within a contractual relationship if it becomes apparent after conclusion of the contract that our payment claim from the respective contractual relationship is endangered as a result of the Customer's inability to perform (§ 321 Par. 1 BGB). Our right to refusal of services does not apply if the payment is effected or security for payment is provided. We are entitled to specify a reasonable deadline for the Customer within which the Customer must either effect payment or provide security against our service, matching payment with delivery or else we may withdraw from the contract. The statutory provisions on the dispensability of setting deadlines remain unaffected.
- (7) If the Customer is an entrepreneur (§ 14 BGB), the following shall apply: If the Customer defaults on a payment obligation under the provisions in the preceding paragraph (6) we are entitled to withdraw not only from the agreement affected, but also from additional agreements made with the Customer that have not yet been fulfilled by both sides.

§ 7

Delivery deadlines, any extension; Provisos for acts of God, self-delivery etc.; Partial services; inspection and/or test on our premises

- (1) Terms and deadlines for deliveries and services (delivery deadlines) announced by us in advance are always only approximate unless a fixed term or a fixed deadline is expressly promised or agreed.
- (2) If we foresee that a delivery deadline cannot be met we will immediately inform the Customer and inform them of the anticipated new delivery time.
- (3) We are not liable for the impossibility or delay in our services if these circumstances result from force majeure. Force majeure shall be deemed to be an external event caused by elementary natural forces or actions of third parties, which is unforeseeable according to human judgment and experience, cannot, even with the utmost care reasonably expected under the circumstances, be prevented or rendered harmless by economically reasonable means, and need not be accepted because it is frequent (e.g., without limitation, interruptions in operation of all kinds, fire, natural disasters, weather, floods, war, uprisings, terrorism, transportation delays, strikes, legal lockouts, labour, energy, or raw materials shortages, delays in the issuing of any necessary official permits, official/sovereign measures).

Such an event also represents missing, incorrect, or late delivery of our preliminary suppliers if we are not responsible for these respectively and at the time of the conclusion of the contract with the Customer a congruent hedging transaction with the respective preliminary supplier was concluded; this also applies if we complete the hedging transaction immediately after the transaction with the Customer.

In the case of such events the delivery deadlines shall be automatically extended by the duration of the event plus a reasonable period.

- (4) Delivery deadlines shall be automatically extended by a reasonable amount if the Customer does not fulfil his/her contractual duties or obligations.
- (5) We are entitled to partial performance if (a) partial performance can be used by the Customer within the scope of the contractually intended purpose, (b) the rendering of the remaining services is ensured, and (c) the Customer is not subject to significant additional expense or extra costs as a result of partial performance (unless we agree to bear such costs).
- (6) Our legal rights, in particular with regard to any exclusion to our obligation to perform (e.g., without limitation, based on impossibility or unacceptability of the service and/or the supplementary performance and due to default of acceptance or delay in performance by the Customer), remain unaffected.
- (7) If we default on a delivery or service or if it becomes impossible for us to perform, regardless of the reason, any liability for compensation for damages is limited in accordance with § 11 of these GCS.

§ 8 Retention of title

- (1) Unless otherwise agreed, any delivery of a Product to a Customer requires prior payment by the Customer or, in the case of a third-party financing, prior payment by that third party of the full purchase price. If delivery of a Product to a Customer occurs prior to such payment, the following paragraphs (2) to (9) shall apply, provided that these paragraphs apply only to Customers who are entrepreneurs within the meaning of Section 14 BGB.
- (2) The here agreed upon retention of title serves to secure all our currently existing and future claims against the Customer due to deliveries and services rendered for the Customer, including related outstanding balance claims from the current account ("secured claims"). The goods delivered by us to the Customer remain our property until payment in full of all secured claims. These goods and the items also covered by the retention of title in their place, in accordance with the following provisions, will hereinafter be referred to as "reserved goods". If the Customer intends to transfer the reserved goods to a location outside of Ireland, the Customer is obligated to fulfil the local legal requirements for the establishment and maintenance of our retention of title at the Customer's expense and to immediately inform us after completion of his aforementioned intention.
- (3) The Customer shall store the reserved goods for us at no charge to us. The Customer must act with care and sufficiently insure the reserved goods against damage from fire, water, and theft at the original value at the Customer's own expense. If maintenance, service, or inspection work is necessary (however this does not include any (subsequent) fulfilment actions to be rendered by us) the Customer must conduct these in a timely manner at the Customer's own expense.
- (4) The Customer is not entitled to put in pawn the goods subject to retention of title or to place these goods in escrow. In the event of third parties putting in pawn the goods subject to retention of title, or in the event of other access by third parties, the Customer must clearly point out our property and inform us immediately in writing so that we may pursue our retention of title. If the third party cannot reimburse us for the costs arising from the judicial and extrajudicial costs, the Customer is liable if and insofar as the Customer is responsible for these costs.
- (5) After prior notification, the Customer is obligated to provide us access to his business and storage places during normal business hours in order to inform us about the condition of the goods subject to retention of title.
- (6) Until occurrence of an enforcement event (paragraph (9)) the Customer may use the goods subject to retention of title in the regular course of business. However, the Customer shall not be entitled to process, transform, combine, mix and/or sell the reserved goods.
- (7) By way of security, the Customer will already now assign to us the Customer's payment claim towards his buyer resulting from a resale of the goods subject to retention of title, which the Customer executed contrary to paragraph (6), as well as the Customer's claims towards his buyer, or third parties, with regard to the goods subject to the retention of title which result from other legal grounds (in particular claims from prohibited acts and claims for insurance benefits), including all outstanding balances from the current account; in the event of proportional joint property of ours in the goods subject to retention of title, in accordance with our share of the joint ownership. We herewith accept these assignments.

We herewith grant the Customer revocable authorization to collect the receivables assigned to us in his own name on our behalf. Our right to collect these receivables ourselves will not be affected. However

we will not collect them ourselves and revoke the authorization to collect the receivables as long as the Customer properly fulfils his payment obligations towards us (in particular does not fall into arrears), as long as no application for opening insolvency proceedings on the Customer's assets is made and as long as the Customer does not display insufficient capacity (§ 321 subsection 1 Sentence 1 BGB) Should one of the above described events occur we may request that the Customer inform us of the assigned receivables and the respective debtors, inform the respective debtors of the assignment, and provide us with all documents and information which we require for claiming the debt.

- (8) At the Customer's request, we are obligated to release the goods subject to retention of title, the items that take their place, and receivables, in so far as their estimated value exceeds the amount of the secured receivables by more than 50%. We shall reserve the right to select the items to be provided.
- (9) If we withdraw from the contract, in accordance with the legal provisions, due to the Customer's breach of the contract (enforcement event) – in particular due to failure to pay – we are entitled to request return of the goods subject to retention of title from the Customer. Our declaration to withdraw will be included in our demand for return of goods at the latest. The transportation costs resulting from the return will be borne by the Customer. In the event that the Customer puts in pawn any goods subject to retention of title by us, this shall also be deemed as a declaration of withdrawal.

§ 9

Warranty for defects

- (1) The Customer's rights in the event of defects of material and defects of title are governed by the legal guidelines provided nothing to the contrary, or in addition, is stipulated in these GCS. In every case the special legal provisions for final delivery of the goods to a consumer remain unaffected (supplier regress in accordance with § 478 BGB).
- (2) If the Customer is an entrepreneur (§ 14 BGB), we are not subject to any warranty obligation for defects of material for any agreed upon delivery of used Products unless we act with intent or fraudulently conceal the defect.
- (3) If not otherwise expressly agreed, our Products and services must only comply with the legally applicable requirements in Germany.
- (4) If the Customer is an entrepreneur (§ 14 BGB), the Customer is obligated to inspect, or have the third party specified by him inspect, the delivered goods immediately after delivery and immediately inform us of any defects, if an acceptance is not expressly agreed. §§ 377, 381 HGB and the provision in this paragraph apply. The immediacy of the notice of defects assumes that it will be sent within seven (7) business days after delivery, or in the event there is a defect that could not be detected during the inspection (§ 377 subsections 2 and 3 HGB), within three (3) business days after detection of the defect, at the latest.

If the Customer neglects to conduct a proper inspection and/or raise complaint our warranty obligation and other liability for the defect concerned is excluded.

- (5) The expenses required for the purpose of the inspection and subsequent fulfilment, in particular transportation, road, labour, and material costs, will be borne by us if a defect actually exists. If, however, a request for remedying a defect from the Customer is determined to be unjustified we are entitled to demand that the Customer reimburse us for the resulting expenses. The statutory provisions shall apply with regard to the expenses for the removal of the defective Product and the installation or attachment of the repaired or delivered defect-free Product.
- (6) If the delivered Product is defective, we shall be entitled and obligated, at the Customer's option, first to subsequent performance in the form of remedying the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery). In the event of a replacement delivery, the Customer shall return the Product to be replaced to us in accordance with the statutory provisions.
- (7) We are entitled to make the supplementary performance owed by us dependent on the Customer paying the purchase price due, or if applicable, the current instalment due, whereby the Customer is, however, entitled to retain a reasonable amount in proportion to the defect.
- (8) If supplementary performance is impossible, or has failed, or a reasonable deadline set by the Customer for supplementary performance has expired, or is unnecessary according to the legal guidelines, the Customer may, at his discretion, withdraw from the purchase contract, or reduce the purchase price. However, the right to withdrawal does not exist with insignificant defects.

- (9) If the Customer is an entrepreneur (§ 14 BGB), the Following shall apply: In the event of defects in third party products delivered by us (in particular building components) which we cannot remedy for reasons of licensing law, or for factual reasons, we will, at our discretion, assert our claim of warranty against this third party for Customer's account, or assign it to him. Claims of warranty against us exist for such defects (under the other requirements and in accordance with these GCS), only if the legal enforcement of the above mentioned claims against third parties were unsuccessful or (e.g. due to insolvency) pointless, or (e.g. for reasons of time) were otherwise unreasonable to the Customer. During the period of our assertion of claims against the third party the statute of limitations of the claims for warranty by the Customer against us is suspended.
- (10) Any claims for compensation for damages exist only in accordance with § 11 of these GCS.

§ 10

Warranty of property rights of third parties

- (1) In accordance with this § 10 we warrant that the goods are free from industrial property rights or copyrights of third parties in the countries of the European Union or other countries in which we manufacture Products, or have Products manufactured. Each party will immediately inform the other in writing should any claims be asserted against them due to a violation of such rights.
- (2) Claims due to a violation of industrial property rights or copyrights of third parties are excluded if this violation is based on an unauthorised modification or use of the goods by the Customer that is not in accordance with the contract. If the Customer is an entrepreneur (§ 14 BGB), claims for infringement of industrial property rights or copyrights of third parties are also excluded if this infringement is based on an instruction of the Customer.
- (3) In the event that the goods violate an industrial property right or copyright of a third party we will, at the Customer's discretion and at our expense, change, or exchange, the goods in such a way that no third party rights continue to be violated, but the goods will still continue to fulfil the contractually agreed upon functions, or we will obtain the right of use for the Customer by concluding a licensing agreement. If we do not succeed in doing this within a reasonable amount of time, the Customer is entitled to withdraw from the contract or to reasonably reduce the purchase price.
- (4) If the Customer is an entrepreneur (§ 14 BGB), we will in the event of legal violations by Products from other manufacturers or suppliers delivered by us, at the Customer's discretion, assert our claims of warranty against these manufacturers and suppliers for the Customer's account, or assign them to the Customer; § 9 (9) shall apply accordingly (in particular with regard to our secondary liability).
- (5) Any claims for compensation for damages exist only in accordance with § 11 of these GCS.

§ 11

Liability for compensation of damages etc.

- (1) Our liability for compensation of damages - regardless of the legal grounds, in particular for compensation of damages instead of, or in addition to, the service due to debt during contract negotiations, impossibility, default, defectiveness, unauthorized action and for other direct or indirect damages - is excluded, unless one of the following circumstances arises:
- a) we fraudulently concealed a defect;
 - b) we assumed a guarantee for the quality of the goods or the risk of procurement;
 - c) the violation leads to damage from injury to life, body, or health which rests on a deliberate or negligent violation of duty by us, or by one of our legal representatives, or agent;
 - d) the violation leads to damage which rests on a deliberate or grossly negligent violation of duty by us, or by one of our legal representatives, or agent
 - e) the violation leads to damage from the negligent violation of essential contractual duties which do not already fall under lit. a), lit. d) or lit. f) above. Essential contractual duties are all those obligations, the fulfilment of which is a prerequisite for enabling the proper fulfilment of the contract in the first place and upon their compliance the Customer may normally trust. In this case our liability for the violations which rest on slight negligence is, however, limited to typical foreseeable damage at the time of the conclusion of the sales contract hereunder; or

- f) we are subject to a mandatory legal liability, in particular liability in accordance with the Product Liability Act or data protection regulations.
- (2) If our liability is excluded, or limited, according to the above provisions this also applies to the personal liability of our agents, legal representatives, employees, staff, and proxies.
- (3) Due to a violation of an obligation by us which is not a result of a defect in the goods the Customer may only withdraw or terminate if we are responsible for the violation of the obligation; apart from that the legal provisions for this apply.

§ 12

Statute of limitations of claims for defects

The statutory limitation period shall apply with regard to the limitation of claims based on material defects and defects of title, provided nothing to the contrary, or in addition, is stipulated in these GCS. In deviation from § 438 subsection 1 No. 3 BGB, the limitation period for claims based on material defects and defects of title shall be three years from the delivery of the Product.

§ 13

Special right of withdrawal in the event of suspension of payments, etc.

In the following circumstances we have a special right of withdrawal from a sales contract hereunder: (a) the Customer suspends payments to us or the Agent; (b) the Customer applies for insolvency proceedings; (c) we or another creditor apply permissibly for the Customer's insolvency; (d) insolvency (including preliminary insolvency) proceedings are ordered against the Customer's assets; or (e) an application for insolvency proceedings against the Customer's assets is denied for lack of assets.

§ 14

The duty to provide information by official or one's own measures

In the event that official measures take place at the Customer's or against the Customer in conjunction with our Products (i.e., ordering a withdrawal or recall or other measures for monitoring the market), or the Customer intends to do measures of this type on his own, he will immediately inform us in writing.

§ 15

Choice of Law and Jurisdiction

- (1) These GCS and all sales contracts between us and the Customer are governed by and construed in accordance with the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply. If the Customer is a consumer (§ 13 BGB), the mandatory consumer protection regulations of the country in which the Customer has his habitual residence are excluded from this choice of law.
- (2) If the Customer is an entrepreneur (§ 14 BGB), a legal entity under public law, or a separate estate under public law, or he has no general place of jurisdiction in the Federal Republic of Germany, then the exclusive place of jurisdiction, also internationally, for all disputes between us and the Customer arising from the business relationship shall be Hamburg. Mandatory legal provisions about exclusive jurisdiction remain unaffected.

§ 16

Alternative dispute resolution under the German Consumer Dispute Settlement Act

We are not willing or obliged to participate in any dispute resolution proceedings before a consumer arbitration body.

§ 17
Severability clause

If any provisions of these GCS is, or shall be, wholly or partially invalid or void, or unenforceable then the validity of the remaining provisions of these GCS shall not be affected. To the extent invalid, void or unenforceable provisions of these GCS have not become part of a sales contract between the Customer and us, they will be replaced by the applicable statutes (§ 306 Par. 2 BGB). The foregoing shall apply *mutatis mutandis* if provisions of a sales contract or these GCS prove to be incomplete.