1. GENERAL SCOPE OF APPLICATION

These General Terms and Conditions (GTC) shall apply to all business relations between Kugelhahn Müller GmbH, Halskestraße 14, 47877 Willich, Germany (hereinafter referred to as “Seller”) and the Purchaser (Seller and Purchaser hereinafter jointly the “Parties” or individually the “Party”), which involve the sale and/or other delivery of chattels (“Goods”) to the Purchaser, irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (§ 443, BGB German Civil Code (BGB)). These GTC shall only apply if the Purchaser is an entrepreneur for the purpose of commercial activity, which is the case if the Purchaser is a legal entity under public law or a special fund under public law.

2. CONCLUSION OF CONTRACT

2.1 The offers of the Seller are subject to change and non-binding. This shall also apply to the form of the offer (e.g. drawings, plans, calculations, references to DIN standards, etc.), other product descriptions or documents – also in electronic form - to which the Purchaser has been informed. The Purchaser’s GTC, which have been included by an appropriate, express written agreement, are not binding.

2.2 The order of the Goods by the Purchaser is considered a binding offer of contract. Unless otherwise agreed in the order, the Seller shall be entitled to accept the Purchaser’s order within 30 days after the date of its receipt.

2.3 The Seller’s acceptance shall either be declared in writing (e.g. by order confirmation), in text form (e.g. e-mail) or through delivery of the Goods to the Purchaser.

2.4 The assignment of the Purchaser’s claims against the Seller is excluded.

2.5 In the event of cancellations after receipt of order, the following cancellation fees will apply based on the order price:

- 20%: 30 days
- 40%: 60 days
- 60%: 90 days
- 90%: 120 days

3. DELIVERY TIME AND DELAY IN DELIVERY

3.1 The delivery period shall be individually stipulated or specified by the Seller when accepting the order.

3.2 If the Seller is unable to meet individually agreed binding delivery periods for reasons for which it is not responsible (in particular, but not exclusively, in the event of disruptions in operation of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs (“Aussperrungen”), shortages of labour, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure of suppliers to correctly deliver or deliver on time), the Seller shall inform the Purchaser without undue delay. Non-availability of performance shall in particular be deemed in the case of default of delivery by the Seller’s suppliers; if the Seller has concluded a congruent covering transaction, if neither the Seller nor its suppliers are at fault or if the Seller is not obliged to procure in individual cases.

3.3 The occurrence of the delay in delivery by the Seller is determined in accordance with the statutory provisions.

3.4 The rights of the Purchaser according to Section 7 these GTC and the statutory rights of the Seller, in particular if the obligation to perform is excluded (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

4. DELIVERY, TRANSFER OF RISK, ACCEPTANCE, DEFAULT OF ACCEPTANCE

4.1 The delivery is always FCA, Halskestraße 14, 47877 Willich, Germany, in the sense of an equivalent to handover or acceptance.

4.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Parties for individual purchases of Goods shall apply. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only apply if and to the extent the Parties have expressly agreed their validity in writing. This requirement shall apply in any event, even if, for example, the Seller delivers the Goods without reservation in the knowledge of the Purchaser’s general terms and conditions.

4.3 If any individual provision mentioned in 12 of these GTC are contradictory, the following order of precedence shall apply, whereby the provisions of the higher-ranking contractual agreements shall prevail over the lower-ranking ones:

1. In case of individual purchases of Goods, individually agreed contractual provisions between the Parties;
2. These GTC of the Seller.
3. In exceptional cases, the Purchaser’s GTC which have been included by an appropriate, express written agreement.

4.4 Legally significant declarations and notifications which are to be made by the Purchaser to the Seller after the conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing.

15. References to the validity of statutory provisions within these GTC only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTC.

6. RETENTION OF TITLE

6.1 The Seller shall retain the title to the sold Goods until full payment of all present and future claims under the purchase contract and of those resulting from a continuous business relationship (secured claims).

6.2 The Goods subject to retention of title may neither be pledged to third Parties nor assigned by way of collateral security, before the entire payment is made. The Purchaser shall notify the Seller immediately in writing if an application for the opening of insolvency proceedings is intended or if the Seller has the right to demand the return of the Goods. The Seller shall be entitled to assert a claim to the contractual maturity or to withdraw from the contract in accordance with the statutory provisions and then demand the return of the Goods. If the Purchaser does not pay the due purchase price, the Seller may only assert these rights if the Seller has unsuccessfully set a reasonable deadline for payment in advance or if such setting of a deadline is dispensable under the statutory provisions.

6.3 If by breach of contract by the Purchaser in particular in the event of non-payment of the due purchase price, the Seller shall be entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business, be entitled to deliver in whole or in part only against prepayment.

6.4 In all other respects § 300 BGB shall apply.

7. RISK OF LOSS AND RISK OF DETERIORATION OF THE GOODS

7.1 Unless otherwise agreed, Seller shall be entitled to determine the type of shipment (in advance or if such setting of a deadline is dispensable under the statutory provisions).

7.2 Unless otherwise agreed, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of destruction of the Goods shall pass to the Purchaser at the latest upon delivery. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the Goods shall pass to the Purchaser, irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (§ 443, BGB German Civil Code (BGB)). These GTC shall only apply if the Purchaser is an entrepreneur for the purpose of commercial activity, which is the case if the Purchaser is a legal entity under public law or a special fund under public law.

7.3 If the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods. In the event of final non-acceptance of the Goods (including unjustified delay in acceptance), the Seller is entitled to demand the due purchase price in accordance with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods.
7. CLAIMS OF THE PURCHASER FOR DEFECTS

7.1 The statutory provisions shall apply with regard to the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions) unless otherwise stipulated below. Special statutory provisions on final deliveries of products to a consumer shall in all cases remain unaffected (supplier recourse according to §§ 478, 445a BGB).

7.2 The principal basis for the Seller’s liability for defects shall be the agreement made on the condition of the Goods. All product descriptions which are subject of the individual order shall be deemed an agreement on the condition of the Goods; it does not make a difference whether the product specification originates from the Purchaser, the manufacturer or the Seller.

7.3 As far as the quality has not been agreed upon, the statutory provisions shall be used to determine whether a defect is present or not (§ 434 para. 1 p. 2 and § 8 BGB). However, the Seller does not assume any liability for public statements made by the manufacturer who is independent from the Seller or any third party (e.g. advertising statements) which the Purchaser has not indicated as being decisive for the purchase.

7.4 The Purchaser’s claims for defects presuppose that the Purchaser has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB – ‘kaufmännische Untersuchungs- und Rügepflicht’). Should any defect be discovered during the inspection or later, the Seller must be notified of this without undue delay in writing. The notification shall be deemed to be without undue delay if it is made within two weeks of the discovery of the defect, whereby the timely dispatch of the notification shall be sufficient to meet the deadline. Irrespective of this obligation to inspect and give notice of defects, the Purchaser shall notify the Seller in writing of obvious defects (including wrong and short delivery) within two weeks of delivery, whereby the timely dispatch of the notification shall be sufficient to meet the deadline.

7.5 If the Purchaser fails to carry out the proper inspection and/or notification of defects, the Seller’s liability for the unreported defect is excluded.

7.6 If the delivered Goods are defective, the Seller may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). The Seller’s right to refuse subsequent performance under the statutory requirements shall remain unaffected.

7.7 The Seller is entitled to make the subsequent performance owed dependent on the Purchaser paying the due purchase price. However, the Purchaser shall be entitled to withhold a reasonable part of the purchase price in relation to the defect.

7.8 The Purchaser shall give the Seller the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Purchaser has to return the defective Goods to the Seller in accordance with the statutory provisions. Any subsequent performance does not include either the disassembly or the reassembly of the defective item, if the Seller was not initially obliged to assemble the item.

7.9 The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any assembly and disassembly costs shall be borne or reimbursed by the Seller in accordance with the statutory provisions if a defect is actually present. Otherwise, the Seller can demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified demand for the removal of defects (in particular testing and transport costs) unless the lack of defect was not recognisable to the Purchaser.

7.10 In urgent cases, e.g., if operational safety is endangered or in order to prevent any excessive damage, the Purchaser shall have the right to remedy the defect himself and to demand compensation from the Seller for the expenses objectively required for this purpose. The Seller shall be notified of any such self-remedy without undue delay and shall give its approval. The right to self-remedy does not exist if the Seller would be entitled to refuse the corresponding subsequent performance in accordance with the statutory provisions.

7.11 The Purchaser’s claims for damages or reimbursement of unsuccessful expenses shall only exist in accordance with Sec. 7 of these GTC, even in the case of defects, and shall be excluded beyond that.

8. OTHER LIABILITY

8.1 Unless otherwise provided for in these GTC including the following provisions, the Seller shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

8.2 Within the scope of the liability for culpability, the Seller shall be liable for damages in the event of intent and gross negligence. In a case of ordinary negligence, the Seller shall only be liable, subject to a lower standard of liability in accordance with statutory provisions (e.g. for diligence in his own affairs)

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the not insignificant breach of a material contractual obligation (obligation whose fulfillment enables the due execution of the contract in the first place and on which the contractual partner regularly relies and may rely on); in such a case, the Seller’s liability is limited to the compensation of a foreseeable, typically occurring damage.

8.3 The limitations of liability resulting from Section 8.2 of these GTC shall also apply to breaches of duty by or in favour of persons whose fault the Seller is responsible for according to statutory provisions. The limitations as stated in Section 8.2 shall not apply if the Seller has fraudulently concealed a defect or has assumed a guarantee of the quality of the Goods as well as for claims of the Purchaser under the Product Liability Act (Produzenthaftung).

9. LIMITATION

9.1 Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year after installation, max. 18 months from delivery.