

GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

These general terms and conditions are valid and binding for („WINNING COFO“):

- **Winning CoFo - PWK GmbH, Idastrasse 60, 47809 Krefeld**
- **Winning CoFo - IBEX GmbH, Gewerbepark Am Gründel 11, 09423 Gelenau**
- **Winning CoFo - Räuchle GmbH, Räuchlestrasse 7, 89165 Dietenheim**

§ 1 Applicability of these T&C, Written Form

All current and future deliveries, services and offers of WINNING COFO to customers (non-consumers, „Buyers“) will be effected exclusively subject to these T&C. To the extent that these T&C and the special arrangements with the Buyer do not cover a particular situation, in addition to the mandatory provisions, the non-mandatory provisions of the applicable law, e.g. of the German Civil Code (Bürgerliches Gesetzbuch) and the German Commercial Code (Handelsgesetzbuch), shall be deemed to be agreed upon as binding between the parties. These T&C shall be deemed accepted by the Buyer at the latest upon acceptance of the delivery of WINNING COFO. Contrasting or deviating conditions of the Buyer, irrespective of the time they have been made available or were notified to WINNING COFO, are not accepted by WINNING COFO, and WINNING COFO expressly rejects their applicability, unless WINNING COFO has agreed to them in writing.

The following provisions shall not apply to the extent the parties have entered into written agreements to the contrary. To comply with the written form within the meaning of these T&C, it is sufficient if the corresponding document has been transmitted via fax and/or e-mail.

§ 2 Offer and Validity of Agreement

Offers of WINNING COFO are subject to change and are non-binding. Drawings, pictures, measures, weight and further parameters of the products and services are only binding if this is expressly agreed upon in writing. Binding orders require written confirmation of such orders by WINNING COFO. The same applies to amendments, changes or ancillary agreements to such orders. A confirmation of receipt does not constitute a binding acceptance of the order.

WINNING COFO reserves the title of ownership and copy right in respect of all offers and price quotations made by WINNING COFO as well as all drawings, pictures, calculations, prospectuses, catalogues, models, tools and other documents and auxiliary materials made available to the Buyer. Unless explicitly agreed upon with WINNING COFO, the Buyer shall not customize or disclose to third parties, use by itself or allow the use by a third party, or copy such items as such or as regards their contents. Upon request of WINNING COFO, the Buyer shall completely return such items to WINNING COFO and shall destroy any copies thereof if they are no longer needed by the Buyer in the proper course of business or if the negotiations do not result into an agreement.

§ 3 Time of Delivery and Performance, Force Majeure

Unless delivery and performance dates are expressly agreed upon as „fixed“, the quoted time and date of delivery and/or performance are only indicative, non-binding and subject to proper delivery by WINNING COFO's supplier. WINNING COFO may effect partial deliveries, unless they are not of interest for the Buyer. The date of the bill of delivery is the date of delivery.

WINNING COFO shall not be responsible or liable for any late delivery or late performance due to Force Majeure, e.g., strike, lockout, governmental order, etc., and other circumstances beyond WINNING COFO's reasonable control that impede or prohibit delivery by WINNING COFO in a significant way. This applies also if such circumstances occur with respect to one or more suppliers of WINNING COFO. In such case, WINNING COFO is entitled to withdraw from the contract, unless the impediment is only temporary. In case of temporary impediments the delivery period is extended by the time period of the impediment and an additional appropriate time period.

If the Buyer has set forth an appropriate additional period for delivery or performance after WINNING COFO has been in arrears (Verzug) in delivery or performance, and WINNING COFO has not delivered or performed, as the case may be, until the end of such additional period, the Buyer may rescind the order. In such a case, to WINNING COFO's claim and for the further rights of the Buyer the legal provisions shall apply, limited, however, by the provisions of Section VIII below.

§ 4 Shipment

Shipment shall be effected ex storage or ex the production site or shipping site, as the case may be. Shipment and transportation will be at Buyer's risk and expense. Risk shall pass to the Buyer when the goods are handed over to the carrier, or earlier, if the Buyer is in arrears in accepting the goods. If the goods are not delivered or shipped due to reasons for which WINNING COFO is not responsible, risk shall pass to the Buyer at the time WINNING COFO notifies the buyer that it is ready to deliver or ship, as the WINNING COFO case may be. Shipment will be uninsured and by a carrier chosen in WINNING COFO's discretion (e.g. GLS, Deutsche Post/DHL, couriers, railway or forwarding agent). An agreement for shipment free of charge shall apply only to ordinary freight.

§ 5 Prices and Payment

The prices in Euro quoted in the order confirmation are applicable. VAT shall be paid in addition. They relate to the delivery ex works storage plus freight and packing charges. Unless otherwise explicitly agreed upon, WINNING COFO's invoices shall be paid within 14 days upon receipt without deduction. WINNING COFO may request prior payment or a payment guarantee before delivery. If the Buyer exceeds payment time, the Buyer shall be deemed to be in arrears irrespective of a warning (Mahnung). WINNING COFO may, irrespective of any notice of the Buyer to the contrary, in its discretion allocate payments of the Buyer to the costs, interest, and other obligations of the Buyer, and in such cases will notify the Buyer of the allocation.

The Buyer may set off payments only, if Buyer's claims are finally awarded or undisputed. The same shall apply with respect to retention by the Buyer.

§ 6 Retention of Title

The transfer of title pertaining to the delivered goods shall be effected only upon full payment of all claims of WINNING COFO vis-à-vis the Buyer, irrespective of the legal reason of such claims and including claims out of the open accounts as payable at the time of transfer of title. As long as the Buyer is not in arrears with its payments, the Buyer shall be authorised to sell and transfer these goods to third parties or to process them in the ordinary course of business. The Buyer shall not encumber these goods or transfer them by way of security.

The Buyer hereby transfers all claims from the sale of or otherwise relating to these goods (including all claims from an open account) fully to WINNING COFO. WINNING COFO authorises the Buyer

(subject to cancellation) to collect the claims transferred to WINNING COFO in the Buyer's name and for the account of WINNING COFO. This authorisation may only be cancelled if the Buyer does not fully comply with its payment obligations.

To the extent the value of the security mentioned above exceeds in a lasting way the amount of WINNING COFO's claims by more than 20%, WINNING COFO will return the excessive securities upon request.

If third parties try to access these goods, the Buyer shall immediately notify them of WINNING COFO's ownership and notify WINNING COFO of such an attempt. In case of breach of agreement, in particular if the Buyer is in arrears, WINNING COFO may repossess these goods and, as the case may be, request the transfer of the Buyer's claims for return of these goods vis-à-vis third parties.

The repossession or encumbrance of these goods alone in principle shall not constitute rescission from the agreement.

§ 7 Warranty

WINNING COFO will perform and deliver with the diligence of a proper merchant pursuant to the applicable technical standards and legal provisions. The Buyer shall examine every delivery without delay for cognizable defects; should any defects be discovered during such examination or later, the Buyer shall notify WINNING COFO without delay but in no event later than two weeks after discovery. If the Buyer does not comply with its obligations to examine and/or to notify without delay any defects discovered, the Buyer will forfeit its warranty rights with respect to the goods concerned.

Claims in respect of defect of the delivered goods including any defects in title and quality do not exist if the buyer makes the removal of the defect considerably difficult and if the performance was made in accordance with input requirements of the buyer and if the defects of the performers or delivery are based on such input requirements or if the removal of the defects is made difficult due to the improper change of our delivery or performance.

The warranty period is one year commencing with the delivery of the goods to the Buyer.

Apart thereof, the legal provisions regarding warranty shall apply, however with the proviso that WINNING COFO may in its discretion repair or replace defective products or services. Only if two corresponding attempts of WINNING COFO fail or if WINNING COFO does not effect the replacement or repair at all, or in an appropriate time, then the Buyer may claim the further warranty rights under the law, subject to the limitations of Section VIII below.

§ 8 Liability

The limitations of liability herein shall not affect any claims due to death or personal injury or due to mandatory provisions of product liability law or for guarantees. WINNING COFO shall be liable for (i) intentional or grossly negligent infringements of obligations and (ii) slight negligent infringement of obligations that are of cardinal importance for the agreement, by being of paramount importance for reaching the aims of the agreement, or whose infringement could endanger that the aims of the agreements could be reached (Kardinalpflichten), by WINNING COFO. The preceding sentence also applies to infringement of obligations by WINNING COFO, its officers, executive employees and/or its vicarious agents (Erfüllungsgehilfen). The delivery of defective products itself does not constitute a breach of such obligations of paramount importance.

Apart therefrom, all contractual, quasi-contractual and extra-contractual (tort) liability of WINNING COFO shall be excluded, irrespective of the legal reason for such liability and irrespective of the legal nature of the claim. To the same extent that WINNING COFO's liability is excluded or limited, the liability of WINNING COFO's employees, partners, representatives and vicarious agents shall be excluded or limited.

To the extent WINNING COFO is liable for reasons other than according to sentence 1, WINNING COFO's liability for slight or normal negligence shall be limited in each case to a maximum of EUR 2 million. In any circumstance other than for cases under sentence 1 or in the event of intentional (vorsätzlich) behaviour, WINNING COFO's liability shall be limited to the typical foreseeable damage, even if this leads to a lower amount than according to the former sentence. WINNING COFO is not liable for consequential damages, in particular due to loss of profit or immaterial losses.

Liability claims vis-à-vis WINNING COFO lapse within a time period of one year after delivery of the products or services by WINNING COFO, unless WINNING COFO acts intentionally or gross negligently. However, the statute of limitation for torts hereby remains unaffected.

§ 9 Production Facilities, Samples

The manufacturing costs for production facilities (tools, devices etc.) and samples will be invoiced separately from the goods to be delivered. The Buyer will be charged with all incurred manufacturing costs should he cease the cooperation or defer the same during production of the samples or production facilities. WINNING COFO's manufactured production facilities will stay in WINNING COFO's title of ownership unless otherwise agreed.

§ 10 Governing Law, Venue, Severability

These T&C and the contractual relation to the Buyer shall be governed by and be subject to the law of the Federal Republic of Germany, except for the UN Contract on the International Sale of Goods. The registered office of the respective company is the place of performance and fulfilment for deliveries and payments. To the extent the Buyer is full merchant according to the German Commercial Code, legal person of public law or a separate estate under public law, for all disputes under or in connection with the legal relation between WINNING COFO and the Buyer the registered office of the respective company shall be the exclusive forum (venue). This does not apply to the forum for debt payments orders (Mahngerichtsstand).

If a provision of these T&C or of the other contractual arrangements with the Buyer is or becomes invalid, the validity of the remaining provisions in principle shall remain unaffected.