

General Conditions of Delivery and Payment

Valid as of December 1st, 2018

1. General – Scope of Application

- 1.1 Our terms of delivery and payment (terms) are valid for contractors within the meaning of § 14 BGB (German Civil Code) and for bodies corporate organized under public law as well as for special funds under public law.
- 1.2 Our conditions are valid for contracts concerning the sale and/or the delivery of movable objects (hereinafter called “goods”). The terms shall apply in the current version as framework contract also for future contracts concerning the sale and/or the delivery of movable objects without us having to agree to them once more separately with the purchaser.
- 1.3 Our terms of delivery and payment are valid exclusively. Differing, conflicting or supplementary terms of delivery and payment of the purchaser shall become subject matter of the contract only and insofar as we have expressly consented in writing to their validity. Our terms are valid also if we effect delivery to the purchaser without reservation in full awareness of the terms of delivery and payment of the purchaser.
- 1.4 Contracts agreed on an individual basis, in particular oral ancillary agreements, additions, amendments and assurances shall become binding only with our written confirmation.
- 1.5 Legally relevant declarations to be made and evidence to be provided to us by the purchaser after the conclusion of the agreement (for example fixing of deadlines, notice of defects, declarations of withdrawal or reduction) shall only be effective if made in writing.

2. Offer – Bidding documents

- 2.1 Our offers are free and not binding. The interim sale shall be expressly reserved until the order has been placed. If the order qualifies as an offer according to § 145 BGB (German Civil Code), we may accept this offer within two weeks.
- 2.2 The acceptance may be made either in writing (for example by order confirmation) or by delivery of the goods to the purchaser.
- 2.3 Technical specifications, descriptions or illustrations of the delivery item in bidding documents, prospectuses or other documents – also in electronic form – shall not represent any warranted properties or guaranties. They shall be subject of our reservation of change.
- 2.4 We expressly reserve the right to make changes in colour and design of the articles as well as technical improvements / changes, if reasonable.
- 2.5 We reserve the right of title and copyright to illustrations, drawings, prospectuses, calculations, cost estimates and other documents. Our documents may not be made accessible to third parties, if they are marked “confidential”. The purchaser must obtain our express consent in writing before handing over such documents to third parties.

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3. Prices

- 3.1. The price charged shall be understood without any deduction 'FCA PAUSCH Erlangen' unless otherwise expressly agreed.
- 3.2. We reserve the right to stipulate the type of packaging and the number of package pieces.
- 3.3. We will not take back transportation packaging or any other packaging according to the directives of the packaging regulations, they shall become the property of the purchaser with the exception of pallets.

4. Terms of Payment

- 4.1 Our invoices will be due without deduction upon the delivery of the goods and shall be paid within 30 days from the date of the invoice without any deduction or within 10 days with a discount of two percent. We reserve the right to deviate from the terms in individual cases.
- 4.2 Payments shall be considered received by us on the day the amount of the invoice is irrevocably credited to us on value date. The purchaser will not receive interest on advance payments or payments on account. Payments received will regularly be offset in each case with the oldest debt.
- 4.3 Cheques and bills of exchange will only be accepted after specific agreement in writing, and then only as conditional payment as of the date of the availability. Additional costs caused by this type of payment, in particular costs for cheques and bills of exchange, shall be borne by the purchaser. We cannot be held responsible for the punctual presentation and/or protest in due time of the bills of exchange or the cheques.
- 4.4 If the purchaser participates in a central payment settlement, performance will only be deemed effective upon receipt of the payment by us. A central payment settlement does not involve authorization to collect our receivables for us.

5. Delay in Payment

- 5.1 If the purchaser defaults in payment according to § 286 BGB (German Civil Code), we entitled to demand interest for the delay in the amount of 8 % per year above the base interest rate as well as reminder fees in the amount of € 10.00 for the second reminder and € 15.00 for each further reminder. If we are able to provide evidence of a greater damage due to the default, we shall be entitled to assert claims for such damage. The purchaser shall be entitled, however, to prove to us that no damage was caused to us as consequence of the default in payment or that a considerably lower damage was caused.
- 5.2 If payment in partial amounts is agreed and if the purchaser is in default with two consecutive installments or at least with 10 % of the total purchase price, the total amount of the invoice of the transaction concerned shall become due for payment after the unsuccessful fixing of a deadline of two weeks.

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- 5.3 In case of a purchaser with whom several contractual relationships exist, the total amounts of the invoices from all transactions shall be come due for payment after the unsuccessful fixing of a deadline of two weeks, if he is in delay with two consecutive installments within the scope of one contract or at least in the amount of 10 % of the total purchase price, and this shall apply irrespective of the agreements made for the remaining contracts. In such a case we shall also be entitled to demand advance payment with respect to all contracts not yet concluded as well as to withdraw from the contract after fixing an appropriate term for performance or subsequent performance and to claim damage compensation. In such a case we shall be entitled to demand 20 % of the purchase price as damage compensation without providing evidence of the damage, notwithstanding a higher claim for damage compensation in case of damages for which evidence must be provided. The purchaser shall be free to provide evidence that we incurred no damage or only a considerably minor damage. Offsetting the damage compensation claims against partial payments already effected is permissible. An appropriate compensation for use shall be due for payment until the objects of delivery have been taken back. The same shall apply if we withdraw from the contract due to circumstances which become known to us after the conclusion of the contract and which suggest that the purchaser is less creditworthy than originally believed.
- 5.4 If bills of exchange have been accepted, the letter of respite in this connection shall become invalid in such a case. We shall also be entitled in such a case to demand immediate payment of our claims successively against return of the issued bills of exchange. In such a case we may also demand that any discounts granted or other compensations with respect to the unsettled invoices be considered invalid.
- 5.5 The acceptance of partial payments shall not be considered a waiver of rights in excess thereof.
- 5.6 The purchaser shall only be entitled to offsetting rights if his counter-claims have been determined in a legally valid way, if they are uncontested or if they are acknowledged by us. Furthermore he shall be entitled to exercise a right to refuse performance only to the extent that his counterclaim is based on the same contractual relationship.
- 5.7 If it becomes apparent after the conclusion of the agreement that our claim for the purchase price is endangered by the purchaser's inability to effect performance (for example by a demand for institution of insolvency proceedings), we shall be legally entitled to refuse performance and to withdraw from the contract – if need be after setting a deadline – (§ 321 BGB – German Civil Code). In case of contracts concerning the manufacturing of unwarrantable goods (individual manufacturing) we may immediately declare our withdrawal; the legal provisions concerning the dispensability of setting a deadline shall remain unaffected thereof.

6. Reservation of Title

- 6.1 We will retain ownership of the object of the purchase until the complete payment of all our present and future claims resulting from the purchase contract and from the business relation with the purchaser.
- 6.2 The assertion of our claim for return of the object of the purchase shall include our declaration to withdraw from the contract – without requiring a special declaration. Provided this is permissible, no subsequent term need to be fixed.
- 6.3 The purchaser shall properly store the goods subject to reservation of title, he shall insure them adequately at his expense and provide us with evidence thereof upon our request.

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6.4 **Open Account Clause / Balance of Account Clause (Clause of Business Relation)**

We shall also retain ownership of the goods until the complete payment of all our claims against the purchaser from the business relation including any claims arising in the future from contracts concluded at the same time or later. This shall also apply if individual or all claims were included by us into a current invoice and if the account was balanced and acknowledged.

6.5 **Extended Reservation of Title in Case of Resale with Clause of Advance Assignment**

The purchaser shall be entitled to resell the goods subject to reservation of title in the proper course of business only if he assigns to us already now all claims to which he will become entitled against purchasers or against third parties due to the resale. If goods subject to reservation of title are sold unprocessed or after processing or connecting with objects, which are exclusively owned by the purchaser, the purchaser shall assign to us already now in the full amount the claim arising from the resale. If goods subject to reservation of title are sold by the purchaser – after processing / connecting – together with goods not belonging to us, the purchaser shall assign already now the claims arising from the resale in the amount of the value of the goods subject to reservation of title together with all ancillary rights and priority before the rest. We shall accept the assignment. The obligations of the purchaser specified in paragraph 6.8 shall also apply to the assigned claims. The purchaser shall be entitled to collect these receivables also after the assignment.

Our authorisation to collect the receivables ourselves shall remain unaffected thereof, but we undertake to refrain from collecting the receivables as long as the purchaser properly fulfils his duties for payment and other obligations, as long as no request for the institution of insolvency proceedings is filed and as long as no other fault in his ability to perform is given. We are entitled to demand that the purchaser inform us of the assigned receivables and their debtors, that he provide all information required for the collection, that he hand over the documents pertaining to it and that he inform the debtor of the assignment.

6.6 **Extended Reservation of Title with Processing Clause**

If the purchaser finishes or processes the goods subject to title in any way, this will not entail obligations for us. If these goods are processed, connected, mixed or confused with other goods which do not belong to us, we shall be entitled to the thus resulting share of co-ownership in the new object at the ratio of the goods being subject to reservation of title to the remaining processed goods at the time of such processing, connecting, mixing or confusion. If the purchaser acquires the sole ownership of the new object, the contractual partners agree that the purchaser shall grant to us co-ownership in the new object at the ratio of the value of the processed or connected, mixed or confused goods being subject to reservation of title and that he shall store these for us free of charge.

6.7 **Cheque / Bill of Exchange Clause**

If a mutual liability is caused by us in connection with the payment of the purchase price by the purchaser, the reservation of title as well as the receivables from the delivery of goods being the basis for such reservation of title will not expire before the bill of exchange is honoured by the purchaser as drawee.

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- 6.8 The goods being subject of reservation of title may not be pledged to third parties nor assigned as security before payment in full of the secured claims. If our goods being subject to reservation of title are claimed by third parties, the purchaser shall immediately inform us thereof by registered mail. The purchaser shall immediately inform the third party in writing of our rights of ownership. If the purchaser violates this obligation to provide information to us as well as to the third party and if the third party thereafter proves unable to reimburse to us the court costs as well as the costs caused outside of the court by the enforcement of our rights of ownership, the purchaser shall be liable for the extent of loss caused to us by this.
- 6.9 The complete residual debt shall become due in the event of behaviour not in accordance with the contract, in particular in case of default in payment or violation of an obligation according to paragraph 6.8, institution of insolvency proceedings on his assets or discontinuation of such proceedings due to lack of assets, and we shall be entitled to withdraw from the contract and to demand compensation for damage instead of performance as well as the submission of the goods. After rescission, the purchaser shall submit to us upon demand a list of all goods being subject to reservation of title still at his disposal as well as a list of the claims assigned to us indicating their amount as well as the names and address of the respective debtor.
- 6.10 **Over-Collateralization**
If the value of the existing collateral increases the claims to be secured by more than 20 %, we shall be required at the purchaser's demand to release collateral at our own option.

7. Time for Delivery

- 7.1 The time for delivery indicated shall not be binding for us.
- 7.2 Precondition for the start of the time of delivery or of the time for repair or installation shall be the clarification of all technical questions as well as the receipt of a possible contractually agreed down payment. In addition the compliance with our obligation to effect delivery shall always be contingent upon the proper and punctual fulfilment of the purchaser's obligations. If we are to carry out an installation, the purchaser must notify us that the requirements for a proper installation are given or have been met. We retain the right to the defense of non-performance of the contract. Otherwise, in case of doubt, the term for delivery shall be calculated from the day of the confirmation of the order until the shipment ex factory.
- 7.3 In case of delay in delivery the purchaser shall be entitled to set a new reasonable deadline for us of at least three weeks and to withdraw from the contract after the expiry of this term.
- 7.4 In case of unexpected obstacles on our side or on the side of our previous suppliers such as labour disputes, breakdowns, war, embargos on imports, force majeure and similar events, we shall be entitled at our option to withdraw completely or partly from the contract or to postpone the delivery without the purchaser being entitled to claim damage compensation from us.
- 7.5 We shall be entitled to make partial deliveries.

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7.6 Firm Bargains:

If the contract is a firm bargain in the meaning of § 286 sect. 2 no. 4 BGB (German Civil Code) or of § 376 HGB (Commercial Code) we shall be liable according to the legal provisions. We shall also be liable according to the legal provisions if as a consequence of a delay in delivery for which we are responsible, the purchaser is entitled to assert that he is no longer interested in a further fulfilment of the contract.

7.7 Delay in delivery as for the Rest

The occurrence of our delay in delivery shall require a reminder from the purchaser. If our delivery is delayed for reasons for which we are responsible the liability for damage compensation in case of normal negligence shall be excluded. This shall not apply if the delay in delivery, for which we are responsible, is caused by a culpable breach of an essential contractual obligation, in which case, however, the liability for damage compensation shall be limited to the foreseeable damage which typically occurs. This limitation to the foreseeable, typically occurring damage shall also be applicable if the delay in delivery is not caused by an intentional breach of contract for which we are responsible. In all other respects, we shall be liable in case of delay in delivery for every full week of delay within the scope of a lump sum delay compensation in the amount of 0.5 % of the value of the delivery, at the most, however, not more than 5 % of the delivery value. We shall be entitled to provide evidence that no damage at all or much less damage was caused to the purchaser than the lump sum mentioned above. Additional legal claims and rights of the purchaser shall be reserved.

8. Delivery, Passing of Risk, Acceptance, Delay in Acceptance

8.1 The delivery shall be agreed FCA PAUSCH Erlangen, unless otherwise stated in the order confirmation. The goods will be shipped to another destination (purchase involving the carriage of goods) upon request and at the expense of the purchaser. We shall be entitled to determine ourselves the type of shipment unless otherwise agreed.

8.2 The danger of the chance destruction of the goods or of the chance deterioration of the goods shall pass to the purchaser at the latest at the time of the handing over to the purchaser. If the purchase involves carriage of the goods, however, the danger of the chance destruction or the change deterioration of the goods as well as the danger of delay shall pass already at the time of the delivery of the goods to the carrier, the forwarding agent or to the person or institution otherwise determined for carrying out the shipment. If acceptance is agreed, this shall be decisive for the passing of the risk.

8.3 The acceptance of the object of the delivery shall be made immediately after our notice of availability or delivery, respectively. In the event of non-observance we shall be entitled to refuse further shipments after a reminder and after setting a deadline of two weeks for the performance or for the subsequent performance.

8.4 If the purchaser is in delay in acceptance or if he culpably violates other cooperation obligations, we shall be entitled to demand the damage caused to us including possible additional expenses, with the reservation of claims exceeding this. The damage compensation shall amount to 20 % of the purchase price subject to a higher damage to be proven. The purchaser shall be allowed to prove to us that less damage or no damage at all has been caused. The setoff with received down payments shall be permissible.

8.5 In such a case the danger of a chance destruction or of a chance deterioration of the object of the purchase shall also pass to the purchaser at the time at which he is in delay in acceptance.

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- 8.6 Together with the acceptance the technical acceptance check shall also be made, namely at the site of the goods. Rights with respect to defects recognisable in case of proper inspection can no longer be asserted after acceptance or after dispatch. The goods shall then be considered as delivered according to contract.

9. Transportation

- 9.1 Packaging, consignment and transportation of all goods shipped by us shall be made ex site at the expense of the purchaser.
- 9.2 Transportation insurance shall be contracted only upon express instructions and at the expense of the purchaser.
- 9.3 Transportation, even if carried out by us and with our own transportation means, shall be made exclusively at the risk of the purchaser, i.e. the carrying-out of the transportation ranks *pari passu* to the handing over of the object of the purchase to the carrier, the forwarding agent or to the person or institution otherwise determined for carrying out the shipment as required in § 447 sect. 1 BGB (German Civil Code). If we ourselves transport the goods, we shall only assume liability for damages, for whose occurrence we are responsible, if we can be held responsible for intention or gross negligence.
- 9.4 If shipment is delayed due to the fault of the purchaser by failure to perform an action which he is due to perform, or due to other circumstances for which he is responsible, the risk shall pass to the purchaser already on the day of the notice of availability for shipment. We shall be entitled to store the goods in such a case at the purchaser's expense and risk. The storage costs will amount to at least 0.5 % of the purchase price per each started month.
- 9.5 Specifications of shipment of the purchaser shall only be binding if agreed in writing.

10. Installation and Assembling

If we install or assemble the goods, the following provisions shall apply:

- 10.1 We will install equipment at the purchaser's expenses. The purchaser will bear the costs for work performed in connection with the installation, the travel expenses as well as the allowances including expenses of our staff members for any required overnight accommodation as well as other ancillary costs such as surcharges outside of the regular working hours and surcharges for extra hours. The normal remuneration according to § 632 sect. 2 BGB (German Civil Code) will be considered agreed unless an agreement characterized as "fixed price agreement" was expressly made in writing.
- 10.2 The purchaser shall be obligated to fulfil the conditions necessary for a proper installation at his expense, in particular for making available suitable transportation means ex truck, for laying power supply, water supply and waste disposal lines ready to be connected as well as for the proper disposal of possible residual materials or chemicals, respectively. The purchaser shall be required to name a competent contact person on the site who will be available on call at any time at the agreed term for installation. In the event of failure to perform the above mentioned obligations the purchaser shall be required to pay compensation, in particular for any additionally expenses which may arise.

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- 10.3 If the installation cannot be effected at the agreed time for reasons for which the purchaser is responsible, we shall be entitled to fix an appropriate term for the purchaser to make good for the action offered with the explanation that notwithstanding the continuance of the purchase contract for the equipment, the assembly contract will be terminated if the purchaser fails to cooperate by the time this deadline expires.
- 10.4 If it is agreed that we will be responsible for the assembly or installation the risk for the object of the purchase according to § 447 sect. 1 BGB (German Civil Code), i.e. the risk for the object when we hand over the object to the person in charge of the transportation shall also pass to the purchaser if the object is transported by our staff members.
- 10.5 If the equipment is returned due to default in payment by the purchaser, the purchaser shall take over the costs for the re-transportation of the equipment, in particular the costs for deinstallation, retransportation, cleaning and overhauling of the machine in addition to the lump-sum damage compensation of 20 % according to number 8.1.
- 10.6 Repair and service performances outside the liability for defects as well as the preparation of cost estimations shall be reimbursed. The normal reimbursement according to § 632 sect. 2 BGB (German Civil Code) shall be considered owed unless an “agreement of fixed price” was specifically made in writing.
- 10.7 Cost estimations are never binding unless an “agreement of fixed price” was specifically made in writing. This shall not be apply if the cost overrun exceeds more than 20 %.

11. Liability for Defects

- 11.1 Precondition for claims for defects shall be that the purchaser duly fulfilled his obligations of inspection and objections according to § 377 HGB (Commercial Code). If during inspection or later a defect becomes evident, we shall be informed of this immediately in writing. A notification shall be considered as having been given immediately if it is made within two weeks. Notwithstanding this obligation for inspection and objection the purchaser shall give notice in writing of obvious defects including incorrect delivery and short delivery within two weeks of the delivery. If the purchaser fails to make the proper inspection and /or give notification of defect, our liability for the unnotified defect shall be excluded.
- 11.2 Damages to the delivered goods caused by wear and tear, improper treatment and handling, interferences by third parties, use of different accessories or unsuitable operating means or by chemical, electro-chemical or electric influences which are not provided for according to the contract shall be excluded from any warranty.
- 11.3 If the object of the purchase or our work is defective we shall be entitled at our option to eliminate the defects or to deliver goods free of defects. If the subsequent fulfilment fails, the purchaser at his option shall be entitled to request withdrawal or a reduction. If the defects are only minor, the withdrawal from the contract shall be excluded.
- 11.4 We shall be entitled to make the subsequent fulfilment owed dependent on the fact that the purchaser pays the purchase price due. The purchaser shall be entitled to retain a share of the purchase price commensurate with the defect.

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- 11.5 If a compensation delivery is made, the defective delivery shall be sent back to us upon our request.
- 11.6 The expenses necessary for the purpose of inspection and sub-sequent fulfilment, in particular costs for transportation, travelling, work and material will be borne by us, if there is in fact a defect. If, however, the request for elimination of defect by the purchaser proves justified, we may request compensation for the costs caused by this.
- 11.7 If only a partial shipment or performance is concerned or if the defect concerns only parts of a functional unit, the purchaser's right of withdrawal shall be restricted to the part concerned.
- 11.8 Our liability shall be excluded, unless otherwise agreed above or unless we have issued a guarantee according to § 443 BGB (German Civil Code).
- 11.9 Claims for compensation for damage or compensation for fruitless expenses shall be acknowledged only according to the directive of section 13 and otherwise shall be excluded.
- 11.10 The period of limitation for claims for defects shall be 24 months from the day of the passing of the risk or of the acceptance of the object of repair. This term shall also apply for claims for compensation for subsequent damages due to defects unless claims for unlawful acts are asserted.
- 11.11 No guarantee shall be issued for used goods.
- 11.12 The period of limitation in case of delivery regress according to §§ 478, 479 BGB (German Civil Code) shall remain unaffected. The period will be five years from the delivery of the defective object. In the event of a delivery regress, however, the purchaser shall be obligated to inform us immediately, if a consumer asserts rights based on defects with respect to an object forwarded by transit shipment from him. In addition the assumption of § 476 BGB (German Civil Code) shall apply only if the object forwarded by transit shipment was not stored for more than 12 months with the purchaser.

12. Guarantee

A liability for a guarantee according to § 443 BGB (German Civil Code) shall be taken over only if the guarantee was given by us in writing.

13. Total Liability

- 13.1 Our liability for compensation shall be restricted to gross negligence and intent. In case of simple negligence we shall be liable only ...
 - 13.1.1 for damages from the violation of life, body or health.
 - 13.1.2 for damages from the breach of an essential contractual obligation (an obligation, the fulfilment of which only makes possible to duly carry out the contract and on the observation of which the contractual partner trusts regularly and may trust; in such a case our liability shall however be restricted to the compensation for foreseeable, typically occurring damage.

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- 13.2 Further liability for damage compensation due to only minor negligence – without taking into account the legal nature of the asserted claim, thus also for all claims due to default at the time of the conclusion of the contract, violation of secondary obligations, in particular for claims from liability of the manufacturer according to § 823 BGB (German Civil Code) – shall be excluded.
- 13.3 The provision according to the above paragraph shall not apply to claims according to §§ 1. 4 of the Product Liability Act. The same shall apply in case of initial incapability or warrantable impracticality.
- 13.4 The purchaser may only withdraw or give notice of termination due to a breach of duty which does not consist in a defect if we are responsible for the breach of duty. A free right of the purchaser to give notice of termination (in particular acc. to §§ 651, 549 BGB/German Civil Code) shall be excluded. In all other respects the legal preconditions and legal consequences will apply.
- 13.5 To the extent that our liability is excluded or restricted, this shall also apply for the personal liability of our employees, workers, staff members, representatives or other persons assisting in the performance of our obligations. Beyond that we shall not be liable for the default of our other persons assisting in the performance of our obligations, unless this refers to obligations essential for the contact.
- 13.6 Claims of the purchaser shall be barred after one year from the passing of the risk on, unless claims for liability of the manufacturer according to § 823 ff. BGB (German Civil Code) are in dispute.

14. Credit Memo / Exchange

- 14.1 A credit memo shall be issued or an exchange shall be made only if the goods are returned in perfect, unused condition and in original packaging within 14 days following reception of goods. Goods manufactured according to order and / or goods, which we have marked as excluded from the right to exchange may not be credited or exchanged.
- 14.2 We will only accept returned goods in exceptional cases and only with a properly completed return voucher.
- 14.3 If goods are returned for which we are not responsible, a processing fee in the amount of 20 % of the net value of the goods, at least however € 10.00, will be deducted from the credit amount in order to cover any internal expenses and shipment costs.

15. Place of Jurisdiction and Place of Fulfilment

- 15.1 If the purchaser is a merchant, a legal body organised under public law or a special fund under public law, our place of business shall be the exclusive place of jurisdiction (also international) for all litigation arising directly or indirectly from the contractual relationship. We shall be entitled, however, to file legal action against the purchaser at the court of his residence as well.
- 15.2 If nothing different results from the order confirmation, our place of business shall be the place of fulfilment for delivery and payment.
- 15.3 German law shall be the applicable law. If the uniform law on the European sale of goods and the uniform law on UN sale of goods includes differing provisions, they shall be considered excluded.

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