General Terms and Conditions of Sale of the Interfloat Corporation

I. General

1. These General Terms and Conditions of Sale – hereinafter also "GTCS" – shall apply to all our business relations between us, i.e. the Interfloat Corporation, and our Customers – hereinafter also "Customer". The GTCS only apply if the Customer is an entrepreneur (according Section 14 BGB / German Civil Code), a legal entity under public law or a special fund under public law.
2. Our deliveries and services are exclusively subject to the following General Terms and Conditions of Sale.
3. Our GTCS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we make delivery to the Customer without reservation in the knowledge of the Customer's general terms and conditions.
4. Individual agreements made with the Customer in individual cases (including ancillary agreements, supplements and amendments) shall take precedence over these GTCS. However, in the event of such agreements any written contract or our written confirmation shall be authoritative.
5. Legally relevant declarations and notifications to be made to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal and reduction) must be made in writing in accordance with Section 126b BGB /German Civil Code in order to be effective.
6. References to statutory provisions only serve as clarification. Thus, even without such clarification, the statutory provisions shall apply insofar as they are not directly amended or expressly excluded in these GTC.

II. Offers and conclusion of contract, service content

1. Our offers to the Customer are subject to change and non-binding.
2. We are a supplier of high-quality solar glass. The glass is sold for the use as highly transparent covering of energy collectors. Our products are therefore not marketed as a building product in the sense of the building regulations list or other country-specific building regulations. For these applications or any applications deviating from the aforesaid intended use, an approval or necessary verifications or permits must be obtained from us in writing in each individual case before the order is placed.
3. The Customer's order is deemed a binding offer. The acceptance of this offer can be accepted by us within three weeks after its receipt.
4. Acceptance can be declared either in writing (e.g. by sending an order confirmation) or by delivering the goods to the Customer.
5. We reserve the property rights and copyrights to cost estimates, drawings, plans and other documents - also in electronic form; these may only be made accessible to third parties with our prior written consent and must be returned to us free of charge on request and any copies made must be returned to us.
6. The documents belonging to our offer, such as in particular illustrations, drawings, weight and dimension specifications, performance and consumption data as well as the technical data and descriptions in the respective product information or advertising materials are only approximately decisive. These do not constitute agreed qualities or guarantees of quality or durability of the goods to be supplied by us or services to be rendered by us. These are approximate descriptions or markings of the performance. Rather, the specifications stipulated in the order confirmation or agreed upon by contract as well as any other explicitly agreed conditions in writing shall be authoritative.
7. We are entitled to change the materials of our goods specified in our offer or agreed with our Customer without our Customer's consent, provided that the change of material does not lead to any change in the characteristics and functionality of the ordered goods.
8. In the case of sales based on samples or specimens merely professional sample conformity is guaranteed; however, such samples/ specimens do not represent any guarantee of quality or durability of the products to be supplied by us.
9. Even in case of manufacture or delivery of the product for use outside Germany, occupational health and safety as well as environmental protection shall be governed by the agreement concluded, if any, and in case of doubt by the regulations applicable in Germany. The Customer is responsible for the observance of statutory or other regulations at the place of delivery/ use.
10. If clauses customary in trade or commerce are agreed on the type of delivery, the Incoterms of the International Chamber of Commerce Paris in the version valid on the day of the conclusion of the contract shall apply for the interpretation.

III. Prices, terms of payment, default of payment

1. The prices agreed upon conclusion of the respective contract, in particular those stated in the delivery agreement or in the order confirmation, shall apply. The prices are in EURO and apply, in the absence of a special agreement, ex works including loading at the factory, but excluding other ancillary costs. All prices are net prices plus the statutory value added tax, if applicable. All public charges outside Germany (taxes, fees, customs duties, etc.) arising from or in connection with the conclusion or execution of the contract shall be borne by the Customer.
2. Our invoices are to be paid within ten days of the invoice date without deduction - unless a different payment term has been specified in the invoice or agreed upon. The Customer is in default of payment from the day on which the payment deadline is exceeded. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by the default. With respect to Customers who are entrepreneurs (according to Section 14 BGB / German Civil Code), our right to claim a default interest rate applicable in case of mutual commercial transactions among businessmen (Section 352 German Commercial Code - HGB) shall remain unaffected.
3. We are entitled to set off incoming payments first against older claims, then against costs and interest of the main contractual performance and only thereafter against the main contractual performance itself. The Customer shall only be entitled to the right of set-off or retention, if his counterclaims have been legally established as final and absolute, are not disputed by us or have been acknowledged by us. Furthermore, the right of retention shall only exist if the counterclaim asserted is based on the same contractual relationship as our claim.
4. If the Customer is in default of payment exceeds granted credit limit or suspends payments, or if cheques issued by the Customer cannot be cashed, bills of exchange issued by the Customer are not paid, or if the financial circumstances of the Customer deteriorate after conclusion of the contract in such a way that the solvency or creditworthiness of the Customer is endangered, we shall be entitled to declare the entire remaining debt of the Customer due and payable and, in amendment of the agreements made, to demand advance payment or provision of security or, after delivery has been made, immediate payment of all our claims based on the same legal relationship. Alternatively, in this case we are also entitled to withdraw from the contract or to refuse performance until all outstanding payments have been settled in full.

IV. Time of delivery and performance, delay in performance; partial deliveries

1. The delivery period shall be agreed individually or stated by us in connection with the acceptance of the order.
2. Agreed delivery periods are only approximate, unless a fixed date has been expressly promised or agreed upon in writing. The delivery period shall be deemed to be met with if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the stated delivery period expires.
3. Compliance with our delivery and performance obligations requires the timely and proper fulfilment of the Customer's obligations. If a down payment has been agreed or if the provision of our services requires that documents, approvals or releases are procured on the part of the Customer, the delivery period shall not commence until all the aforementioned prerequisites have been fulfilled. We reserve the right to plead non-performance of the contract in such cases.
4. If agreed delivery periods are exceeded due to circumstances for which we are responsible, the Customer may withdraw from the contract by written declaration after the fruitless expiry of a reasonable grace period set by him. However, already produced made-to-measure products are to be accepted and paid for by the Customer, unless the Customer has a justified interest in refusing acceptance.
5. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. We shall only be in default after the expiry of a reasonable grace period set by the Customer.
6. We shall not be liable for impossibility of delivery or delays in delivery if/ insofar as these are caused by force majeure or other events unforeseeable at the time of the conclusion of the contract (e.g. operational disruptions caused by fire, water and similar circumstances, failure of production plants and machinery, delivery delays or delivery failures on the part of our suppliers as well as business interruptions due to shortages of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, official interventions) for which we are not responsible. In these cases we are entitled, insofar as we are prevented through no fault of our own from the timely fulfilment of our performance obligations, to postpone the delivery or performance for the duration of the hindrance plus a reasonable start-up period. If – as a consequence – delivery or performance is unreasonably delayed, both we and the Customer shall be entitled to withdraw from the contract with regard to the quantity affected by the disruption in delivery – to the exclusion of any claims for damages. Made-to-measure Products that have already been produced must be accepted and paid for by the Customer, unless the Customer has a justified interest in refusing acceptance.
7. In any case of delay, our liability for damages shall be limited to a maximum of 5% of the delivery value of the delayed goods in accordance with the provisions of Section VIII. We reserve the right to prove that the Customer has suffered no damage at all or only a significantly less damage than the aforementioned lump sum; in consequence the liability for damages is excluded or limited correspondingly.
8. We are entitled to make partial deliveries and render partial services within the agreed delivery and performance times if/ to the extent this is reasonable for the Customer.

V. Transfer of risk, place of performance, transport and packaging, acceptance; default of acceptance by the Customer

1. Unless otherwise expressly agreed in writing between us and the Customer, delivery shall be made ex factory or warehouse of Glasmanufaktur Brandenburg GMB in Tschernitz – jointly hereinafter also "Factory" –, which is also the place of performance.
2. The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer or a third party commissioned by him at the latest upon handover.
3. In addition, in the event that the goods are transported by the Customer or dispatched by a third party commissioned by the Customer, the following shall apply if the goods are shipped outside Germany to a member state of the European Union:

a. If the Customer commissioned a third party (e.g. a transport company) for the purpose of dispatching the goods from the factory, he is obliged to send a copy of the duly completed (cf. Sections 17a, 10 UStDV / German Turnover Tax Implementing Regulation) CMR waybill in the sense of Art. 4 ff. CMR electronically to info@interfloat.com within two weeks after collection of the goods.

b. If the Customer arranges for the transport of the goods from the Factory by himself, the Customer is obliged to send a confirmation of receipt in the sense of Section 17a para. 2 UStDV / German Turnover Tax Implementing Regulation in German, English or French language in electronic form to info@interfloat.com within two weeks after collection of the goods. By means of the confirmation of receipt, the Customer must prove that the goods collected have actually been transportedCustomer into a member state of the European Union. The Customer can use the form of the BMF v. 16.09.2013, BStBl I 13, 1192, Annex 1-3 for this purpose.

c. The Customer is furthermore obliged to inform us of his Value Added Tax (VAT) ID.

d. If the time limit set forth under a) and b) above is missed, we shall be entitled to charge the VAT applicable in Germany. If the invoice has already been issued with reference to an exemption from VAT, the Customer may be subsequently charged with the VAT by means of a supplementary invoice. The due date of the value added tax is determined in accordance with III. No. 2 of these GTCS.

4. In the case of transport of the goods by a non-domestic Customer within the meaning of Section 1 para. 2 UStG / German Turnover Tax Act or dispatch by a third party commissioned by him to a third country territory in accordance with Section 1 para. 2, 2a UStG / German Turnover Tax Act, the following shall apply in addition:

a. If the Customer commissions a third party (e.g. a transport company) for the purpose of transport of the goods from the Factory and an electronic outgoing goods note or an alternative outgoing goods note is not existent, he is obliged to return to us within 2 weeks after the collections the goods the documents handed over to him, which are necessary to provide proof of tax exemption (in particular dispatch documents and forwarding agent's certificates), labeled/ together with a transfer note.

b. If the Customer arranges the transport of the goods from the factory by himself and an electronic exit note or an alternative exit note is not existent, he is obliged to send to us within 2 weeks after collection of the goods the documents required for the proof of the tax exemption (in particular invoices, delivery notes, copy no. 3 or no. 5 of the single administrative document, separating section) together with the corresponding export note of the border customs office.

c. If the Customer is in possession of the the electronic outgoing note/ the alternative outgoing note, he is obliged to send the same to us electronically to info@interfloat.com within 2 weeks after collection of the goods.

5. At the Customer's request, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance) at his expense. Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves. In the event of delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Customer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. The Customerdefault of acceptance by the Customer shall be deemed equivalent to (i.e. has the same legal effect as) the handover or acceptance of the goods by him.
6. The risk of accidental loss and accidental deterioration of the delivery items shall be borne by the Customer even if partial deliveries are made or if we have exceptionally accepted other services, such as in particular the costs of shipment.
7. At the Customer's request, we will insure the shipment at the Customer's expense against theft, breakage, transport, fire and water damage as well as other insurable risks.
8. If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. usual storage costs during the period of delay). For this purpose, we shall charge a lump-sum compensation of 0.5% of the value of the goods per calendar day, beginning with the planned delivery date or, in the absence of such delivery date, with the notification that the goods are ready for shipment. In total, the lump-sum compensation is limited to 10% of the purchase price. We reserve the right to prove and consequently claim a higher damage and to assert statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) remains unaffected We reserve the right to prove and consequently claim that the Customer has suffered no damage at all or only a significantly less damage than the aforementioned lump sum; in consequence the liability for damages is excluded or limited correspondingly; however, the lump sum is to be credited against further monetary claims. The Customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum. In addition, in the event of default in acceptance, we shall be entitled to demand – in deviation of the originally agreed terms – advance payment or the provision of securities, in the event of partial performance of the contract also for the remaining services..
9. We are not obliged to take back disposable packaging. Used Steel racks are the property of GMB - Glasmanufaktur Brandenburg GmbH and are made available to the Customer free of charge for the safe and economical transport of solar glass for a period of 6 weeks. These racks are to be handled with care and released for collection clean and without residues at the latest after the aforesaid period of use. Any stickers, barcodes or markings applied must be removed without leaving any residue before the racks are returned. If the steel racks are released after the aforesaid period, a rental fee of 100€ per commenced week will be charged. The following costs will be charged as a lump sum in the event of the need of replacement or damage, in the event that the damage impairs the reuse or is not insignificant for the rack as a whole:

- Damage or non-return of an L-frame 1800: 450 €
- Damage or non-return of an L-frame 2400: 500 €
- Damage or non-return of an S-frame: 550 €

In the event of damage to individual components, if repair by us is possible:

- for damage to the rubber: 50 €
- for damage to the stacking equipment: 100 €
- for damage to the side fixation : 150 €
- for damage to the safety bar: 150 €
- for a damage of the lashing strap & hook : 50 €

10. Delivered items are to be accepted by the Customer, in case these have insignificant defects, without prejudice to the rights under Section VII.

VI. Retention of title

1. The delivered goods remain our property until full payment of the purchase price and all other present or future claims to which we are entitled against the Customer from the business relationship. The inclusion of the purchase price claim against the Customer in a current invoice or the recognition of a balance shall not affect the retention of title.
2. The Customer is obligated to treat with care the goods, which are delivered by us and subject to the retention of title; in particular, he is obligated to insure them at his own expense against loss and damage and destruction, e.g. against damage by fire, water and theft, sufficiently at replacement value insure. The Customer already now assigns his claims under the insurance contracts to us. We accept this assignment.
3. The Customer may neither pledge nor assign by way of security the goods which are our property. The Customer must inform us immediately in writing if and insofar as third parties seize the goods which are our property.
4. In accordance with the following provisions, the Customer is entitled to resell the delivered goods in the ordinary course of business and – for this purpose – to process the goods. The

aforementioned entitlement does not exist insofar as the Customer has assigned or pledged the claim against its contractual partner arising from the resale of the goods - in each case effectively - to a third party in advance or has agreed a prohibition of assignment with the third party.
5. In order to secure the fulfilment of all our claims referred to in clause VI. 1, the Customer hereby assigns to us all claims - including future and conditional claims - arising from a resale of the goods delivered by us, with all ancillary rights, in the amount of the value of the delivered goods with priority over the remaining part of his claims. We hereby accept this assignment.
6. As long as and insofar as the Customer meets his payment obligations towards us, he shall be authorised to collect the claims against his customers assigned to us within the scope of ordinary course of business. However, he is not entitled to agree to a current account relationship or a prohibition of assignment with his customers with regard to these claims or to assign or pledge these to third parties. If, contrary to sentence 2, a current account relationship exists between the Customer and the purchasers of our reserved goods, the claim assigned in advance shall also relate to the recognised balance and, in the event of the purchaser's insolvency, also to the balance then existing.
7. At our request, the Customer must - for every individual case - provide evidence of the claims assigned to us and inform his debtors of the assignment with the request to pay to us directly up to the amount of our claims against the Customer. We are entitled to - at any time - notify the Customer's debtors of the assignment by ourselves and to collect the claims. However, we will not make use of these powers as long as the Customer duly and without delay meets his payment obligations, an application for the opening of insolvency proceedings by the Customer has not been filed and the Customer does not cease his payments. If, on the other hand, one of the aforementioned event occurs, we may demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for the collection of the claim and hands over the associated documentation.
8. The processing or transformation of the goods delivered by us under reservation of title shall always be carried out by the Customer on our behalf, without any liabilities accruing to us as a result. If the goods delivered by us under retention of title are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the goods delivered by us (final invoice amount, including VAT) to the other processed objects at the time of processing. The same shall apply for the object created by processing the goods delivered by us under reservation of title.
If the goods delivered by us under reservation of title are inseparably mixed or combined with other items not belonging to us, we shall acquire co-ownership of the newly created item in the ratio of the value of the goods delivered by us (final invoice amount, including VAT) to the other mixed or combined items at the time of mixing or combining. If the mixing or combining is carried out in such a way that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer transfers co-ownership to us on a pro rata basis, i.e. up to the amount of the value of the good delivered by us under reservation of title. The Customer shall hold the sole ownership or co-ownership thus created in safe custody for us. The Customer shall be entitled to dispose of the newly created products by processing or transformation or combination or mixing in the ordinary course of business, as long as he meets his obligations from the business relationship with us in due time. However, under no circumstances shall the Customer be entitled to resell or otherwise dispose of the new products when agreeing/ having agreed to a prohibition of assignment in relation to his Customer/ the purchaser, or to pledge or to assign the new products as security. The Customer hereby assigns to us by way of security his claims arising from the sale of these new products, to which we are entitled to ownership rights, pro rata to the extent of our ownership share in the new product. If the Customer combines or mixes the delivered goods with a main item, he hereby assigns to us his claims against the third party up to the value of our goods. We hereby accept these assignments.
9. We undertake to release the securities, to which we are entitled, at the Customer's request to the extent that the realisable value of our securities exceeds our claims against the Customer, which are to be secured, by more than 10%; we shall be entitled to choose the securities to be released accordingly.

VII. Rights of the Customer in case of defects
1. CustomerIn the event of material defects and defects of title, the statutory provisions shall apply to the Customer's rights, unless otherwise stipulated in the following. In all cases, the statutory provisions for final delivery of the goods to a consumer (Sections 478, 479 German Civil Code - BGB) remain unaffected as special provision.
2. The basis of the liability for defects is primarily the parties' agreement made on the quality of the goods. The agreement on the quality of the goods is based on the contractually agreed specifications of the glass.
3. In the event that specifications have not been agreed upon, it is to be assessed in accordance with the statutory regulation whether a defect is present or not. However, we do not assume any liability for an accordance of our products with public statements made by the Customer or third parties (e.g. advertising statements).
4. Any Customer's claim for defects is subject to the proof that he has fulfilled his statutory obligations to inspect and give notice of defects (Sections 377, 381 German Commercial Code - HGB). Upon receipt of the goods, the Customer shall carry out a visual inspection for externally visible transport damage as well as a verification of the quantity and specifications of the ordered products at least on the basis of the delivery documents. Any defects discovered in the course of such inspection/ verification shall be notified in writing without delay. Due to the usual practice in the respective industry that the packaging units are not opened until they are installed, the Customer must notify us in writing without delay of any recognisable defects that have not been detected until the packaging is opened. We waive the objection of delayed notification of defects (only) with regard to these defects which are not recognisable due to the usual procedure in the industry, provided that we are notified of these defects immediately after the detection and that the delivery of the respective goods has not taken place more than 3 months ago. So-called open defects, i.e. visible defects, must be identified and reported before installation. Open defects which are notified more than 3 months after the date of delivery will not be accepted. So-Call hidden defects, i.e. defects not visible, must be notified by the Customer immediately after they have been discovered. If the Customer fails to give proper notice of defects in time, our liability for the respective defect is excluded.
5. If the delivered item is defective, we may initially choose whether to provide supplementary performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse supplementary performance under the statutory conditions remains unaffected.
6. We are entitled to make the owed supplementary performance subject to the Customerpayment of the due purchase price by the Customer.
7. The Customer shall allow us the time and opportunity required for the owed supplementary performance, in particular for the return of the defective item to us for inspection purposes. In the event of a replacement, the Customer shall return the defective item to us in accordance with the statutory provisions. The supplementary performance shall neither include any removal of the defective item nor the renewed installation, as long as we were not initially obliged to install the item.
8. We shall bear the expenses necessary for the aforesaid inspection and supplementary performance, in particular transport, travel, labour and material costs (not: removal and installation costs, cf. obove), if it is determined that a defect is existent. However, if a request by the Customer to remedy a defect turns out to be unjustified, we may demand from the Customer reimbursement of the costs incurredCustomer.
9. If the supplementary performance has failed or a reasonable deadline to be set by the Customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price accordingly. In the case of an insignificant defect, however, the Customer has no right of withdrawal. Already produced, made-to-measure goods free of defects are to be accepted and paid for by the Customer, unless the Customer has a justified interest in refusing acceptance.
10. Claims by the Customer for damages or reimbursement of futile expenses exist only in accordance with VIII. and are otherwise excluded.

VIII. Liability
1. Insofar as nothing to the contrary is set forth within these GTCS, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
2. We shall be liable for damages - for whatever reason - in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable
a. for damages resulting from injury to life, body or health,

b. for damages resulting from the breach of an essential contractual obligation (i.e. obligation, the fulfilment of which is a prerequisite for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.

3. The limitations of liability resulting from para. 2. above shall not apply if/ insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. Claims of the Customer under the Product Liability Act shall also remain unaffected.
4. Due to a breach of duty that is not constituted on a defect in goods, the Customer may only withdraw from or terminate the contract if we are responsible for the breach of duty. In addition, the statutory requirements and legal consequences shall apply.
5. The above exclusions and limitations of liability shall apply to the same extent in favour of our organs, legal representatives, employees and other vicarious agents.

IX. Limitation of claims
1. Claims of the Customer due to defects in goods delivered by us or due to services rendered by us in breach of duty - including claims for damages and claims for reimbursement of futile expenses - shall become statute-barred within one year from the statutory commencement of the limitation period, unless otherwise stipulated in the following clauses 2. to 6.
2. If the Customer is an entrepreneur and if he or another buyer in the supply chain as an entrepreneur has fulfilled claims of the consumer due to defects in newly manufactured items delivered by us, which were also delivered to a consumer as newly manufactured items, the statute of limitations of claims of the Customer against us under Sections 437 and 478 (2) BGB / German Civil Code shall commence at the earliest two months after the point in time at which the Customer or the other buyer in the supply chain as an entrepreneur has fulfilled the existing and not yet statute-barred claims of the consumer. The suspension of expiry according to sentence 1 ends at the latest five years after the time at which we have delivered the respective item to the Customer.
3. In the case of newly manufactured items delivered by us, which have been used for a building in accordance with the customary purpose of use and have caused a defectiveness of the building, the Customer's claims shall become statute-barred within 5 years from the statutory commencement of the limitation period. In deviation from sentence 1, a limitation period of two years shall apply if/ insofar as the Customer has used the item delivered by us for the fulfillment of contracts, in which Part B of the Verdingungsordnung für Bauleistungen / German Construction Contract Procedures has been included in its entirety. The limitation period pursuant to the sentence 2 above shall commence at the earliest two months after the date on which the Customer has fulfilled the claims against its contractual partner arising from the defectiveness of the construction work caused by the item delivered by us, unless the Customer could have successfully invoked the defence of limitation against his customer/contractual partner. The statute of limitations for the Customer's claims against us due to defective goods delivered by us shall in any case come into effect as soon as the claims of our Customer's Customer/ contractual partner against our Customer due to defects in the goods delivered by us Customerhave become statute-barred, but no later than five years after the date on which we delivered the respective goods to our Customer.
4. If we have provided advice and/ or information, which is not invoiced/ to be remunerated separately, in breach of duty without having supplied goods in connection with the information or advice, or without the advice or information, which is provided contrary to our duty, constituting a material defect of the goods supplied by us pursuant to Section 434 BGB / German Civil Codeo, claims against us based thereon shall become statute-barred within one year from the statutory commencement of the limitation period. Claims of the Customer against us arising from the breach of contractual, pre-contractual or statutory obligations, which do not constitute a material defect of the goods delivered or to be delivered by us pursuant to Section 434 BGB / German Civil Code of , shall also become statute-barred within one year from the statutory commencement of the limitation period. Insofar as the aforementioned breaches of duty constitute a material defect of the goods delivered by us in connection with the advice or information pursuant to Section 434 BGB / German Civil Code, the provisions set out in para 1 to 4 above shall apply to the limitation of claims based thereon.
5. The provisions set out in para. 1 to 4 above shall not apply to the limitation of claims based on injury to life, body or health, nor to the limitation of claims under the Product Liability Act or based on a defect in title in the goods delivered by us, which defect consists in a right in rem of a third party on the basis of which the return of the goods delivered by us can be demanded. Furthermore, they do not apply to the limitation of claims of the Customer which are based on the fact that we fraudulently concealed defects in goods delivered by us or that we intentionally or grossly negligently violated an obligation. In these cases, the statutory limitation periods shall apply.

X. Confidentiality clause
1. In the course of the contractual relationship, the Customer may intentionally or unintentionally gain knowledge of trade and business secrets as well as know-how that is not necessarily protected by industrial property rights (hereinafter jointly “confidential information”). Confidential information includes in particular all information about manufacturing processes, scientific/technical know-how, distribution channels, Customers, suppliers, calculations, machines and materials used, packaging material (in particular drawings of the racks), software and data, specific orders as well as all information about economic, employee-related and tax-related circumstances of the contractual partner.
2. The Customer undertakes to keep any confidential information, which is accessible to him, disclosed to him or otherwise becoming known to him, confidential, not to disclose the confidential information to third parties without our prior consent of IF and to protect it from access by third parties and not to use the confidential information or make it usable for his own purposes or for third parties. Customer
3. The aforesaid Customer's obligation to maintain confidentiality does not apply if:
- the confidential information was already in the public domain at the point of time it was disclosed to the Customer;
- the confidential information becomes public after it has been disclosed to the Customer, as long as the publication has not been made public in breach of contractual or legal provisions;
- the Customer was already aware of the confidential information before it was disclosed to him and he has the right to freely dispose this information;
- the confidential information is disclosed to the Customer by a third party without any restrictions on disclosure and without breach of contractual or legal provisions;
- the confidential information is ordered to be disclosed to third parties (in particular to courts and tax authorities) on the basis of official or statutory orders.

The plaintiff bears the burden of proving that the foregoing exceptions apply and are met respectivly.

4. The Customer is liable to us for damages caused by the disregard of the aforesaid obligation to maintain confidentiality and has to compensate any damage in accordance with the statutory provisions.
5. This clause shall not affect the obligations arising from any further confidentiality agreement agreed between us and the Customer.

XI. Place of jurisdiction, applicable law
1. The place of jurisdiction for all claims between us and any costumer, who is an entrepreneur (according Section 14 BGB / German Civil Code) or a legal entity under public law or special funds under public law shall be Hamburg, district Hamburg-Center (Bezirk Hamburg-Mitte), Germany, unless mandatory statutory provisions provide otherwise/ preclude this choice of forum. However, we shall have the right to also bring legal action against a Customer at the Customer's own general place of jurisdiction designated by law.
2. In the event that the agreement on the place of jurisdiction according to para 1. above should be ineffective and no place of jurisdiction within the Federal Republic of Germany results from the contractual relationship or the statutory provisions either, contractual disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The place of arbitration shall be Zurich, Switzerland, unless otherwise agreed by the parties to the dispute. The language of the arbitration shall be English. The Disputing Parties shall keep confidential all information received with respect to arbitration under this provision, including the existence of arbitration proceedings. In court and/or arbitration proceedings, they will disclose such information only to the extent necessary to protect their rights. The chairperson or sole arbitrator must be of a nationality different from that of the parties to the dispute. Subject to any other decision of the arbitral tribunal, the parties to the dispute shall continue to perform the contracts affected by the dispute.
3. The legal relationship between us and the Customer or between us and third parties shall be governed exclusively by the law of the Federal Republic of Germany and in particular the German law as it applies between German businessmen (in the sense of Section 352 German Commercial Code – HGB). The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and provisions of the German private international law are expressly excluded.

XII. Final provisions
1. Should any of the above provisions be invalid or excluded by a separate agreement, this shall not affect the validity of the remaining provisions of these GTCS.
2. We store data of our Customers in the context of our mutual business relations in accordance with the Federal Data Protection Act.
3. We are entitled to assign the claims arising from the application of these GTCS.
4. The authoritative terms and conditions are those that are written in the German language. In the event of a different interpretation, discrepancies or doubts - in particular in the event of translation errors - the German-language text shall prevail.