General Terms and Conditions of Sale and Delivery

of Surpro GmbH, valid from 1 May 2015

This English version is a convenience translation. In the event of any discrepancy, the German version shall prevail.

Do you have questions about our terms and conditions or other contractual matters? We look forward to talking to you.

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1. General provisions, scope

1.1. All deliveries, services, including advisory services and information, and offers are made exclusively on the basis of these General Terms and Conditions of Sale and Delivery (hereinafter the “Terms”). They form part of all contracts that we conclude with our contractual partners (hereinafter also the “Customer”) for the deliveries and services offered by us. They also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed again. These Terms apply only if the Customer is an entrepreneur (Section 14 of the German Civil Code, BGB), a legal entity under public law or a special fund under public law.

1.2. Terms and conditions of the Customer or of third parties do not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter that contains or refers to terms and conditions of the Customer or of a third party, this does not constitute our agreement to the validity of those terms and conditions.

1.3. References to the applicability of statutory provisions are for clarification only. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded in these Terms.

2. Offer and conclusion of contract, scope of performance

2.1. Our offers are subject to change and non-binding unless they are expressly marked as binding or contain a specific period for acceptance. We may accept orders within 14 days of receipt.

2.2. The written contract, including these Terms, is solely authoritative for the legal relationship between us and the Customer. It fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal commitments made by us before conclusion of this contract are not legally binding, and verbal agreements between the contracting parties are replaced by the written contract unless it is expressly stated in each case that they remain binding.

2.3. Additions and amendments to the agreements made, including these Terms, must be made in writing to be effective. With the exception of managing directors or authorised signatories (Prokuristen), our employees are not entitled to make verbal agreements deviating from this. Transmission by fax or email is sufficient to comply with the written form requirement.

2.4. Insofar as we are to manufacture products according to the Customer's specifications, the Customer must enclose with the order detailed drawings with dimensions and tolerances as well as any execution and inspection specifications and, where possible or if expressly agreed, samples. The manufacture of the products is based on the documents provided to us by the Customer. Unless separately agreed, we do not check whether the products manufactured by us on the basis of the information provided are suitable for the use intended by the Customer.

2.5. Initial samples are only sent to the Customer by express agreement and against separate invoicing. Insofar as we provide the Customer with specimens and other samples, cite analyses, DIN provisions or foreign quality standards received from the Customer, or provide other information about the products, these serve merely as a more detailed description and are only approximately authoritative, unless usability for the contractually intended purpose requires exact conformity.

2.6. Requests for changes made after conclusion of the contract can only be taken into account by us if this is possible in view of our other contractual obligations. The Customer shall bear the additional costs caused by the changes. We are not responsible for delays in the completion of the products resulting from requested changes.

2.7. Residual and waste material from materials and parts sent to us by or on behalf of the Customer for further use or processing may be disposed of or otherwise used by us. Such use does not give rise to any claims by the Customer against us.

2.8. For turned parts or other materials sent to us for processing, it is a prerequisite that they permit processing within the usual scope. Otherwise, we are entitled, at our choice, to demand a price surcharge appropriate to the added difficulty or to withdraw from the contract.

2.9. Customary deviations and other changes in the design, concept or form of the delivery items, deviations in their styling, format changes and changes to the scope of delivery during the delivery period remain reserved, provided the delivery items are not significantly altered and the changes are reasonable for the Customer. We

expressly reserve the right to make reasonable changes due to technical progress, changes in legal requirements and improvements to the delivery. Production-related over- or under-deliveries of up to 10% of the ordered quantity are permissible. In all cases, the quantity actually delivered will be invoiced.

2.10. Insofar as we provide coating services, we have fulfilled our obligation to perform if 95% of the substrates have a coating that meets the contractually agreed specifications and the substrates themselves are undamaged.

2.11. In the case governed by clause 2.10, we are entitled to dispose of all other substrates that have either been damaged during production or have a coating that does not meet the contractually agreed specifications. Such disposal does not give rise to any claims by the Customer against us.

3. Prices, terms of payment

3.1. The prices agreed at the conclusion of the respective contract, in particular those stated in the order confirmation, apply. Depending on the agreement with the customer, these prices may be stated as base prices with the addition “plus precious metal” or as base prices including precious metal at standard prices according to the valid offer. The precious metal price valid at the time of delivery will actually be charged. All prices are in euros unless another currency has been expressly agreed in writing. Unless otherwise indicated, prices are exclusive of statutory VAT, which is shown separately on the invoice at the statutory rate applicable on the invoice date.

3.2. Prices apply ex works plus packaging and, for export deliveries, customs duties, fees and other public charges. Additional or special services will be invoiced separately.

3.3. Deduction of cash discounts is excluded from the outset unless otherwise agreed in the individual contract.

3.4. We reserve the right to adjust our prices appropriately for those parts of the total delivery that are scheduled for delivery more than 4 months after conclusion of the contract if, between conclusion of the contract and the scheduled delivery date, wage and salary changes of more than 5% and/or price changes for primary materials of more than 5% occur at our company and these price changes affect the total cost of the products. On request, we will provide evidence of this to the customer, taking into account the individual cost elements and their significance for the total price. In the event of a price increase of more than 5%, the Customer is entitled to withdraw from the contract within 2 weeks of receipt of our notification insofar as services are still to be rendered by us.

3.5. For turned parts or materials sent to us, it is a prerequisite that they permit processing in the same way as commercially available competitor products. Otherwise, we are entitled at our discretion to demand a price surcharge

appropriate to the added difficulty or to refuse to execute the order.

3.6. Invoices are payable within 14 days without any deduction unless otherwise agreed in writing. The date of receipt by us is decisive for the date of payment. Cheques are only deemed to be payment once they have been cashed. If the Customer fails to pay when due, the outstanding amounts shall bear interest from the date of default at a rate of 8 percentage points above the base rate pursuant to Section 247 BGB. The assertion of higher interest and further damages in the event of default remains unaffected.

3.7. We are entitled to carry out or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the Customer's creditworthiness and which jeopardise payment of our outstanding claims by the Customer under the respective contractual relationship (including other individual orders covered by the same framework agreement).

3.8. Set-off against counterclaims of the Customer, or the withholding of payments on account of such claims, is only permissible if the counterclaims are undisputed or have been finally established by a court.

4. Tools

4.1. With regard to tools used by us in the manufacture of the products or produced for this purpose, the Customer has no claims or rights, unless otherwise agreed in writing, even if the Customer bears all or part of the related costs.

4.2. Tools within the meaning of clause 4.1 remain our property after completion of the order and may be used by us at our discretion.

4.3. Unless it has been expressly agreed in writing between the parties that the articles produced with the individually manufactured tools pursuant to clause 4.1 may only be supplied to the Customer, we may use the tools for general purposes. If we receive no repeat orders within 3 years of delivery of the last order, we are free to destroy the tools.

5. Delivery and delivery time

5.1. Deliveries are made ex works.

5.2. Periods and dates for deliveries and services indicated by us are always approximate only, unless a fixed period or a fixed date has been expressly promised or agreed. Where shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

5.3. The delivery period begins at the earliest upon receipt of all documents to be provided to us by the Customer for the execution of the order.

5.4. Without prejudice to our rights arising from default by the Customer, we may demand from the Customer an extension of delivery and performance periods, or a postponement of delivery and performance dates, by the period during which the Customer fails to meet its contractual obligations towards us.

5.5. We are not liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events beyond our control that were not foreseeable at the time the contract was concluded, such as acts of violence by third parties against persons or property (including at our suppliers), sovereign interventions including currency and trade policy measures, difficulties in procuring materials or energy and other operational disruptions for which we are not responsible at our premises or those of our suppliers, transport delays, strikes and lawful lockouts at our premises, our suppliers or transport companies, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver, or to deliver correctly or on time. If such events make delivery or performance significantly more difficult or impossible for us and the hindrance is not merely temporary, i.e. lasts more than 90 days, we are entitled to withdraw from the contract. In the case of hindrances of temporary duration, the delivery and performance periods are extended, or the delivery and performance dates are postponed, by the period of the hindrance plus a reasonable start-up period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by written declaration to us without undue delay.

5.6. We are entitled to make partial deliveries if

– the partial delivery can be used by the Customer within the scope of the contractual purpose,

– delivery of the remaining ordered goods is ensured, and

– this does not result in significant additional work or costs for the Customer (unless we agree to bear these costs).

5.7. The occurrence of a delay in delivery is determined by the statutory provisions, unless otherwise provided above. In any case, however, a reminder from the Customer is required.

5.8. If we are in default with a delivery or service, or if a delivery or service becomes impossible for us for whatever reason, our liability for damages is limited in accordance with clauses 5.9 and 10 of these Terms.

5.9. In the event of a delay in delivery, the Customer can only claim lump-sum compensation for the damage caused by the delay. The lump sum amounts to 0.5% of the net price (delivery value) for each full calendar week of delay, but in total no more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Customer has suffered no damage at all or significantly less damage than the above lump sum.

6. Place of performance, shipment, packaging, transfer of risk, acceptance

6.1. The place of performance for all obligations arising from the contractual relationship is 25554 Wilster, unless otherwise specified. If we are also responsible for installation, the place of performance is the place where the installation is to take place.

6.2. The method of shipment and the packaging are at our reasonable discretion unless otherwise agreed in the individual contract.

6.3. Risk passes to the Customer at the latest upon handover of the delivery item (the start of the loading process being decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This also applies if partial deliveries are made or if we have assumed other services (e.g. shipment or installation) in individual cases. If shipment or handover is delayed due to a circumstance for which the Customer is responsible, risk passes to the Customer from the day on which the delivery item is ready for dispatch and we have notified the Customer accordingly. The same applies if an agreed quantity has not been called off, or not called off in full, by the Customer within the agreed call-off period. If no call-off period has been agreed for a delivery on call, call-off orders for delivery must be placed by the Customer within one year of conclusion of the contract.

6.4. Storage costs after the transfer of risk are borne by the Customer. In the case of storage by us, the storage costs amount to 0.5% of the invoice amount of the delivery items to be stored per elapsed week, but in total no more than 5% of the invoice amount. We reserve the right to assert and prove further or lower storage costs.

6.5. The consignment will only be insured by us against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at its expense.

6.6. Where acceptance is to take place, the purchased item is deemed to have been accepted if

– the delivery has been completed,

– we have informed the Customer of this with reference to the deemed acceptance under this clause 6.6 and have requested acceptance,

– 12 working days have passed since delivery or installation, or the Customer has started using the purchased item and in this case 6 working days have passed since delivery or installation, and

– the Customer has failed to accept within this period for a reason other than a defect notified to us which makes use of the purchased item impossible or significantly impairs it.

7. Industrial property rights

7.1. Insofar as we manufacture delivery items according to the Customer's specifications, in particular according to drawings or samples, we accept no liability for the delivery items not infringing industrial property rights or copyrights of third parties. Should a third party make a claim against us for such an infringement with regard to goods manufactured by us pursuant to sentence 1, the Customer is obliged to indemnify us against all third-party claims arising from this infringement.

7.2. Apart from the case described in clause 7.1, we warrant, in accordance with clauses 7.2 to 7.5, that the delivery items are free from industrial property rights or copyrights of third parties.

7.3. The Customer is obliged to notify us in writing without undue delay if claims are asserted against it for infringement of the rights referred to in clause 7.2. Without our prior written consent, the Customer is not entitled to acknowledge such claims, to settle them, to waive legal remedies or to make other declarations terminating proceedings. If we dispute the claim asserted on the merits and/or in amount, the Customer is obliged to defend itself in accordance with our instructions and at our expense.

7.4. In the event that the delivery items infringe an industrial property right or copyright of a third party, we will, at our choice and expense, modify or replace the delivery item in such a way that no third-party rights are infringed but the delivery items continue to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licence agreement. If we do not succeed in doing so within a reasonable period, the Customer is entitled to withdraw from the contract or to reduce the purchase price appropriately. The Customer is only entitled to claims for damages within the limits set out in clauses 9 and 10 of these Terms.

7.5. In the event of infringements caused by products of other manufacturers supplied by us, we will, at our choice, assert our claims against the manufacturers and upstream suppliers for the account of the Customer or assign them to the Customer. In these cases, claims against us under this clause 7 only exist if judicial enforcement of the aforementioned claims against the manufacturer and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

7.6. Drawings, technical data sheets or other confidential information that we make available to the Customer may not be made accessible to third parties, in particular competitors, without our prior written consent.

8. Retention of title

8.1. The retention of title agreed in this clause 8 serves to secure all our existing current and future claims against the Customer arising from the supply relationship between the contracting parties (including balance claims from a current account relationship limited to this supply relationship).

8.2. The goods delivered by us to the Customer remain our property until all secured claims have been paid in full. The goods, together with the goods covered by the retention of title that take their place under this clause, are hereinafter referred to as “reserved goods”.

8.3. The Customer holds the reserved goods in safe custody for us free of charge.

8.4. The Customer is entitled to process and sell the reserved goods in the ordinary course of business until the realisation event occurs (clause 8.9). Pledges and transfers by way of security are not permitted.

8.5. If the reserved goods are processed by the Customer, it is agreed that processing is carried out in our name and for our account as manufacturer and that we directly acquire ownership or, if processing is carried out using materials of several owners or if the value of the processed item is higher than the value of the reserved goods, co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership occurs on our part, the Customer hereby transfers to us as security its future ownership or, in the ratio stated above, co-ownership of the newly created item. If the reserved goods are combined with other items to form a single item or are inseparably mixed, and one of the other items is to be regarded as the main item, we transfer to the Customer, insofar as the main item belongs to us, proportionate co-ownership of the single item in the ratio stated in sentence 1.

8.6. In the event of resale of the reserved goods, the Customer hereby assigns to us by way of security the resulting claim against the purchaser (in the case of our co-ownership of the reserved goods, in proportion to our co-ownership share). The same applies to other claims that take the place of the reserved goods or otherwise arise in respect of the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. We revocably authorise the Customer to collect the claims assigned to us in its own name. We may only revoke this collection authorisation in the event of realisation.

8.7. If third parties access the reserved goods, in particular by way of seizure, the Customer will immediately draw their attention to our ownership and inform us in order to enable us to enforce our ownership rights. If the third party is unable to reimburse us for the judicial or extrajudicial costs incurred in this connection, the Customer is liable to us for these costs.

8.8. On request, we will release the reserved goods as well as the items or claims taking their place at our choice, insofar as their realisable value exceeds the amount of the secured claims by more than 10%.

8.9. If we withdraw from the contract due to conduct of the Customer in breach of contract, in particular default in payment (realisation event), we are entitled to demand the return of the reserved goods.

8.10. We reserve ownership and copyright in offer documents, drawings, illustrations, calculations, descriptions and other documents made available to the Customer by us. The Customer may not make them accessible to third parties, disclose them, use them itself or through third parties, or reproduce them without our express consent. At our request, the Customer must return these documents to us in full if it no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Any copies made by the Customer must be destroyed in this case, with the sole exception of retention within the scope of statutory retention obligations and the storage of data for backup purposes within the scope of normal data backup.

9. Warranty, material defects

9.1. The delivered items must be carefully inspected immediately after delivery to the Customer or to a third party designated by the Customer. They are deemed approved unless we receive written notice of obvious defects, or of other defects that would have been recognisable in an immediate, careful inspection, within 7 working days after delivery of the delivery item, unless otherwise agreed in the individual contract, or otherwise within 7 working days after discovery of the defect or any earlier point in time at which the defect was recognisable to the Customer during normal use of the delivery item without closer examination. At our request, the rejected delivery item must be returned to us carriage paid. In the case of a justified notice of defects, we will reimburse the costs of the most favourable shipping route; this does not apply if the costs increase because the delivery item is located at a place other than the place of intended use.

9.2. In the event of material defects in the delivered items, we are initially obliged and entitled, at our choice to be made within a reasonable period, to remedy the defect or to deliver a replacement. The Customer may only withdraw from the contract or reduce the purchase price appropriately if subsequent performance has failed. This is only the case if two attempts at subsequent performance have been unsuccessful or if subsequent performance is impossible or unreasonable for the Customer.

9.3. If a defect is due to our fault, the Customer may claim damages under the conditions set out in clause 10.

9.4. In the case of defects in components from other manufacturers which we cannot remedy for licensing or factual reasons, we will, at our choice, assert our warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against us for such defects only exist under the other conditions and in accordance with these Terms if judicial enforcement of the aforementioned claims against the manufacturer and suppliers was unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the limitation period for the Customer's relevant warranty claims against us is suspended.

9.5. The warranty lapses if the Customer modifies the delivery item or has it modified by third parties without our consent and this makes remedying the defect impossible or unreasonably difficult. In any case, the Customer must bear the additional costs of remedying the defect resulting from the modification.

9.6. A delivery of used items agreed with the Customer in individual cases is made to the exclusion of any warranty for material defects.

10. Liability for damages due to fault

10.1. Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, is limited in accordance with this clause 10 insofar as fault is relevant in each case.

10.2. We are not liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, unless this concerns a breach of material contractual obligations. Material contractual obligations are the obligation to deliver the delivery item on time and free of material defects, as well as advisory, protective and custodial duties intended to enable the Customer to use the delivery item in accordance with the contract, or to protect the life and limb of the Customer's personnel or to protect the Customer's property against significant damage.

10.3. Insofar as we are liable for damages in principle pursuant to clause 10.2, this liability is limited to damage that we foresaw as a possible consequence of a breach of contract at the time the contract was concluded, or that we should have foreseen by applying customary care. Indirect damage and consequential damage resulting from defects in the delivery item are also only recoverable insofar as such damage is typically to be expected when the delivery item is used as intended.

10.4. In the event of liability for simple negligence, our obligation to pay compensation for property damage and resulting further financial losses is limited to an amount of €2,000,000.00 per claim, even if this concerns a breach of material contractual obligations.

10.5. Insofar as we are to coat substrates of the Customer and damage to the substrate occurs during processing, or the coating does not have the contractually agreed specifications, we are entitled to dispose of the affected substrates. Claims for damages by the Customer are excluded in this respect, unless the substrates have become unusable due to an intentional or grossly negligent breach of duty on our part.

10.6. The above exclusions and limitations of liability apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

10.7. Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this is done free of charge and to the exclusion of any liability.

10.8. The limitations of this clause 10 do not apply to our liability for intentional conduct, for guaranteed characteristics, for injury to life, body or health, or under the Product Liability Act (ProdHaftG).

11. Limitation

11.1. Notwithstanding Section 438(1) no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period begins with acceptance.

11.2. However, if the goods are a building or an item that has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period is 5 years from delivery in accordance with the statutory provisions (Section 438(1) no. 2 BGB). Special statutory provisions for third-party claims in rem for surrender (Section 438(1) no. 1 BGB), for fraudulent conduct on our part (Section 438(3) BGB) and for claims in supplier recourse in the case of final delivery to a consumer (Section 479 BGB) also remain unaffected.

11.3. The above limitation periods under the law on sales also apply to contractual and non-contractual claims for damages by the Customer based on a defect in the delivery item, unless application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods under the Product Liability Act remain unaffected in any case.

Otherwise, only the statutory limitation periods apply to claims for damages by the Customer pursuant to clause 10.

12. Final provisions

12.1. If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction, including international jurisdiction, for all disputes arising directly or indirectly from the contractual relationship is our registered office in Wilster. However, we are also entitled to bring an action at the Customer's general place of jurisdiction.

12.2. Unless otherwise provided in these Terms, the Customer may only assign its contractual claims against us to a third party with our consent.

12.3. The relationship between us and the Customer is governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

12.4. Insofar as the contract or these Terms contain gaps, those legally effective provisions shall be deemed agreed to fill these gaps which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Terms had they been aware of the gap.

12.5. We point out that we store data from the contractual relationship in accordance with Section 28 of the German Federal Data Protection Act (BDSG) for the purpose of data processing, and reserve the right to transmit the data to third parties (e.g. insurers) insofar as this is necessary for the performance of the contract.

Do you have questions about our terms and conditions or other contractual matters? We look forward to talking to you.

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