General Terms and Conditions
for the sale of goods and for deliveries and services performed by

VS GUSS AG
Parallelstraße 17
D-42719 Solingen

§ 1 - Applicability

1. These Terms and Conditions shall only apply to companies as defined in sections 14 and 310 BGB (German Civil Code).
2. These Terms and Conditions apply to all our contracts, deliveries and other services, consultations and proposals unless we have provided our explicit, written consent to their change or removal. In particular, they also apply if we unreservedly supply goods / services in the knowledge that our contractual partner has different Terms and Conditions. The General Terms and Conditions of our contractual partner shall only apply if we have confirmed this in writing.
3. Our Terms and Conditions shall also apply to all future contracts, supplies and services, even if we do not repeatedly send them to our contractual partner when we send our offer or our confirmation of order.

§ 2 - Offer and conclusion of contract

1. Our offers are without obligation. Contracts and other agreements shall only become binding when we provide our written confirmation or our supplies/services.
2. All agreements between us and our contractual partner must be made in writing. Any agreements reached between our employees or representatives and our contractual partner during or after the conclusion of the Contract shall only apply if we have provided our written confirmation. Our employees and representatives shall have limited powers of representation in this respect.
3. Even if we do not express our objection, commercial letters of confirmation provided by our contractual partner do not have the effect that a contract shall be concluded with contents which differ from our order or our other written declarations.

§ 3 - Written form

If these Terms and Conditions require the written form, this requirement shall also be met if the relevant declarations are sent by fax or by email. A written agreement shall also be valid if we and our contractual partner both provide the written statements containing the corresponding content.

§ 4 - Prices, price increases and payment

1. Our prices are quoted in euros. Unless otherwise agreed, our contractual partner shall pay in euros.
2. All prices indicated are net prices. The statutory amounts of value-added tax shall be added to these.
3. Our prices apply to delivery ex-works, and do not include packaging, shipping, tax, insurance, transport, letters of credit or other documents necessary to execute the contract.
4. If our purchase prices should increase with respect to orders that are to be wholly or partly fulfilled more than one month after the contract has been concluded or that can only be fulfilled two months after the contract has been concluded due to reasons for which our contractual partner is responsible and/or if there is an increase in the wage scales that apply for us between conclusion of the contract and the time when we should have executed the contract without any delay on our part, we shall be entitled to proportionally increase the agreed price according to the percentage of the purchase price and/or the wages affected.
5. We reserve the right to deliver only as and when payment of the agreed prices has been made. Moreover, our invoices are to be paid in full within 30 days of the delivery/service and the invoice date.
6. We shall only accept payment by cheque or discountable bills of exchange if there is a corresponding agreement and if we do not need to assume liability for the timeliness or the regularity of their submission and/or protest. Acceptance of cheques or bills of exchange does not mean that our payment claim has been deferred.
7. From the due date, we shall be entitled to 9 percentage points above the respective base interest rate without any requirement for a reminder. Further claims – in particular due to our contractual partner's default – shall remain unaffected.
8. Our contractual partner may not offset against counterclaims that we have contested or that have not been established as valid in law unless the claim to be offset entails a reciprocal arrangement with respect to our claim.
   Our contractual partner is not entitled to assert a right to withhold payment due to claims that are not based on the same contractual relationship if we do not accept these claims or if they have not been established as legally valid and if our claim does not involve a reciprocal arrangement.
9. If one of the following events occurs or if such a situation circumstances were present when the Contract was being concluded but only become known to us after concluding the Contract, we shall be entitled to require our contractual partner to pay the agreed price in advance as well as to revoke any credit agreed or granted or return any outstanding bills of exchange and demand immediate payment. This shall apply to the following events:
   - Our contractual partner files for an opening of jurisdictional or non-jurisdictional insolvency or composition proceedings or if jurisdictional or non-jurisdictional insolvency or composition proceedings have been initiated against our contractual partner's assets or if the opening of such proceedings is declined due to insufficient assets.
   - There is a written credit report from a bank or credit reference agency indicating that our contractual partner is not worthy of credit (for example, Creditreform credit rating index of > 3.0) or that our contractual partner's financial circumstances have deteriorated materially, or if a cheque or bill of exchange received by us from our contracting party is not cleared or is protested.
   - Our contractual partner is in default of payment with respect to this particular transaction or another transaction.
   - Our contractual partner can avert any request from us for payment in advance by providing a deposit as security to cover any possible additional costs according to statutory regulations, or a directly enforceable guarantee without any time limit and issued by a bank or savings bank (Sparkasse) licensed to operate in Germany for the amount concerned plus a 10% surcharge.
10. If we have stipulated a reasonable period of time for advance payments and our contractual partner fails to make these payments within that time despite the fact that we have stated that we will refuse to supply further services to our contractual partner once the period has expired, we shall be entitled to withdraw from the Contract or claim compensation for the service, with respect exclusively to the part of the agreement not yet fulfilled by us.

§ 5 - Transfer of risk, transport and delivery, packaging and insurance

1. The risk is always transferred to our customers when the goods are dispatched, regardless of the place of dispatch, and this is also the case when freight-paid delivery, free delivery to the construction site or free delivery to the place of storage have been agreed in exceptional circumstances. This also applies if we are to provide other services in addition to the delivery (for example, assembly, installation, putting into operation) at our contractual partner's premises. However, this does not apply when goods are transported by our own employees or when our employees are responsible for any loss or for damage to the goods.
2. If we have received no packaging or shipping instructions from our contractual partner or if it is deemed necessary to deviate from such instructions, we shall ship the goods as we see fit and without being obliged to use the cheapest or fastest shipping method.
3. We shall only insure the delivery item against any insurable risk requested by our contractual partner, especially against theft and damage incurred during transportation if our contractual partner has requested this and pays for this.

   If damage is caused during transportation, we must immediately be notified. In addition, the recipient is to ensure that the relevant claims and reservations have been filed with the carrier in good time.
4. If our contractual partner has requested that dispatch be delayed due to reasons attributable to our contractual partner or through no fault of our own, then the risk shall be transferred to our contractual partner when we are ready to dispatch and have provided the corresponding notification. In this case, the contractual partner shall bear the cost and the risk for the storage of the goods.

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5. We are entitled to provide partial deliveries and to invoice for these separately unless partial deliveries are unreasonable or unworkable for our contractual partner.

§ 6 - Deadlines for deliveries and services

1. Delivery and service periods and deadlines shall only be regarded as binding if we have confirmed these in writing. The delivery and service periods shall begin at the end of the day on which all details concerning the contents of the order have been agreed, but not before we have accepted the order or before we have received all the required technical and constructional details and all the documentation, appendices and letters of credit etc. to be supplied by our contractual partner, and not before the contractual partner has settled any payments to be made.
   Agreed periods of time and deadlines and delivery dates/delivery periods that apply without such agreements shall be correspondingly postponed if there has been a delay in meeting one of the above requirements. Our contractual partner shall need to provide evidence that the necessary requirements have been met, and that the necessary documents, plans and specifications have been made available.
2. Agreed periods of time and deadlines and the delivery dates/delivery periods that apply without such agreements shall be appropriately extended or postponed – even during an existing delay – in the event of force majeure or unforeseeable obstacles have occurred after the Contract has been concluded and for which we are not responsible, if it can be proved that these obstacles considerably influence the delivery or the service. In particular, our obligation to deliver is subject to the proviso that we ourselves receive the contractually agreed delivery in good time, unless we are responsible for the delivery that does not conform to the contract or that is delayed.
   Strikes and lockouts are also always to be regarded as force majeure for which we are not responsible within the sense of this paragraph.
   The above regulations shall also apply if circumstances causing delay occur for our suppliers or their subcontractors.
   If delays in the above sense last for more than 3 months, our contractual partner shall be entitled to withdraw from the Contract with the exclusion of all other claims, after having set an additional grace period of at least 4 weeks. The right to withdraw is restricted to the part of the Contract that has not yet been fulfilled, unless our contractual partner no longer has an interest in the part of the Contract that has already been fulfilled.
3. Agreed periods of time and deadlines and the delivery dates/delivery periods that apply without such agreements shall be extended or postponed by the amount of time corresponding our contractual partner's delay – with respect to other contracts within a current contractual relationship as well – in meeting obligations.

§ 7 - Statement about the choice of rights after establishing deadlines for supplementary performance

In all cases in which our contractual partner has stipulated deadlines for supplementary performance as a result of deliveries that have not taken place or that are incorrect, we can require our contractual partner to state within a reasonable period of time whether he shall continue to claim for performance/supplementary performance or intends to exercise other rights available to him at his discretion in spite of the fact that the deadline has expired. If our contractual partner fails to provide clarification within the time that has been reasonably stipulated, this shall preclude the claim for performance/supplementary performance. If our contractual partner notifies us within the reasonable period of time that we have stipulated that he still requires performance/supplementary performance, he shall continue to have the right to stipulate a new period of time and to assert the rights then available to him upon expiry of the unsuccessful deadline.

§ 8 - Delay, exclusion of the obligation to perform

If we deliver late or if our obligation to perform is excluded according to section 275 BGB, then we shall only be liable for compensation according to the provisions and within the scope of § 13 (4) of these Terms and Conditions; however, the following additional provisions shall apply:

1. If we and/or our vicarious agents are only responsible for a case of slight negligence, then our contractual partner's claims for compensation shall be excluded.
2. In the event of a delay on our part, our contractual partner shall only be entitled to a claim for compensation rather than the service if he has previously stipulated a reasonable grace period of at least 4 weeks for the delivery, whereby he shall retain the right to grant us a reasonable time limit of less than 4 weeks if, on a case-by-case basis, a minimum grace period of 4 weeks for the delivery is unreasonable for him.
3. Our contractual partner's right to withdraw and right to claim compensation shall always be restricted to the part of the Contract that has not yet been fulfilled, unless our contractual partner no longer has an reasonable interest in the part of the Contract that has already been fulfilled.
4. Any claims for compensation asserted against us as a result of a delay or the exclusion of the obligation to perform the contract under section 275 BGB shall lapse after one year from the commencement of the statutory period of limitation.
5. These provisions shall not apply if they concern claims resulting from injury to the life, body or health of our contractual partner or if the claims are due to a wilful or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents, and likewise not, in the event of a delay, if a fixed date has been agreed.

§ 9 - Delay in acceptance by our contractual partner

1. If our contractual partner delays in accepting all or part of our deliveries or services, we shall immediately be entitled to the payment for the respective delivery or service. In addition, in this case, if a reasonable period of time stipulated by us has expired without success despite the fact that we have stated that we would refuse to supply further deliveries or services to our contractual partner once the period has expired, we shall be entitled either to withdraw from the Contract or to claim compensation instead of the service, but this shall only be with respect to the part of the agreement that we have not yet fulfilled.
   This shall not affect our statutory rights if our contractual partner delays acceptance.
2. Our contractual partner shall reimburse us for our storage costs, storage-space rental and insurance costs for goods that are due to be delivered but which we have not been able to deliver. However, we are under no obligation to insure goods that we have stored.
3. If, one month after we send the notification that we are ready to deliver, our contractual partner requests a delay in delivery or delays in taking the delivery, we shall be entitled to charge a storage fee of 0.2% of the invoice amount for each started month of the delay and up to a maximum of 5% of the invoice amount. However, we shall retain the right to make a higher claim for damages that have actually occurred unless our contractual partner can prove that he is not at fault.

§ 10 - Cancellation of orders, the return of goods and claims for compensation in place of the service

If we agree to the cancellation of a confirmed order at the request of our contractual partner, or if goods supplied by us are returned to us through no fault of our own and with the contractual partner released from his obligations to accept the delivery and make the payment, or if we are entitled to claim for compensation instead of the service, we can demand a compensation payment amounting to 15% of the value of the contract with respect to the part of the supplied delivery or service concerned, without having to provide evidence, and our contractual partner shall retain the right to prove that no, or only limited, loss or damage has been incurred. This shall not affect our right to make a higher claim for damages that have actually occurred.

§ 11 - The nature of the goods

1. The information we provide about the services and their intended purpose, about dimensions, weight, practical value or other properties contained in our catalogues, price lists, descriptions, illustrations, drawings, sketches, directories or other information are only customary approximate values. They merely describe our products and shall only be binding if this is expressly confirmed by us.
2. We reserve the right to differences in nature, dimensions, weight and other properties if they have no material impact on the usability of the delivered goods and if the differences are not unacceptable to our contractual partner for other reasons.
3. Our products are checked during the manufacture by a simple sampling procedure according to AQL-1.5 and we only assume a warranty that our deliveries do not show an error rate of more than 1.5 %. Additional checks during the manufacture and/or lower error rates have to be agreed in the individual case. The afore-mentioned restrictions of our liability for defects are not valid if in the respective case we caused the defects intentionally or grossly negligent.

§ 12 - Acceptance

If our services need to be accepted when payment is due, this acceptance can take any form provided by law. In addition, our services shall apply as accepted 12 working days after our contractual partner has received our written notification about completion, or if our contractual partner has not written to us stating that he will not accept them.
In addition, acceptance is assumed as having taken place if our contractual partner has used the service and 12 days working days have passed without our contractual partner having provided us with written notification that he will not accept them.

§ 13 - Liability for defects and compensation

1. For purchase contracts and contracts for work and materials, our contractual partner's right to assert claims because an item is defective is subject to the fact that he has met his obligation to duly examine and give notice of a defect according to section 377 HGB, and this notice of defect must be made in writing. If our contractual partner fails to duly give notice of defects in time, he shall no longer be entitled to assert claims concerning the circumstances to be reported unless we have acted fraudulently. If we enter into negotiations about a notice of defect or perform inspections and investigations as a result of a notice of defect, this does not remove the legitimate objection that the notice of defect is/was late, inadequate or unfounded.

2. For purchase contracts and contracts for work and materials, our contractual partner must supply us with a sufficient number of the parts he considers to be defective if we request these, so that we or a third party can inspect these promptly and can investigate and determine any claims pertaining to the defects of the item. We shall pay for the dispatch.
3. Our contractual partner's rights relating to defects in the item supplied or services performed are determined according to statutory regulations, with the precondition that our contractual partner shall grant us an reasonable grace period of at least 4 weeks for supplementary performance; our contractual partner shall, however, retain the right to stipulate a shorter deadline if a minimum 4-week grace period for supplementary performance is unacceptable.

   Our contractual partner's claims for compensation because of defects in the delivery or services shall be limited to the scope of section 4 below.

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4.1 Our liability for claims arising from injury to the life, body or health of our contractual partner or a third party protected by the Contract and that are based on culpable breach of duty is neither excluded nor restricted.

4.2 The following applies to other losses incurred by our contractual partner or third parties protected by the Contract:

   We shall only be liable for any other losses incurred as a result of a wilful or grossly negligent breach of our duties by us, one of our legal representatives or vicarious agents, or a culpable breach of contractual obligations (cardinal duties). If we are in breach of contractual obligations, we shall only be liable for compensating for the damage that would typically be expected.

   Moreover, this excludes compensation claims from our contractual partner or third parties protected by the Contract that are made because of a breach of duties, tort, or any other legal reason.

   The above limitations of liability shall not apply if the agreed properties and characteristics are not present, if and insofar as the aim of the Agreement was to protect our contractual partner and/or third parties protected by the Contract against claims which did not arise as a result of the goods delivered or the service itself and such claims that have arisen for our contractual partner or a third party protected by the Contract and that they shall assert.

   If our liability is excluded or limited, this shall also apply to the personal liability of our employees as a whole and vicarious agents.

   These exclusions to liability shall also always apply to subsequential damage and to our contractual partner's claims for reimbursement of expenses.

5. If a notice of defect submitted by our contractual partner should prove to be unjustified, our contractual partner shall reimburse us for all the necessary and reasonable costs we have incurred as a result of the notice of defect.
6. For purchase contracts and contracts for work and materials, there shall be a two-year warranty starting from the date of the risk transfer, and a one-year warranty starting from the date of the transfer of risk for used items.
   For work contracts, there shall be a two-year warranty starting from the date of acceptance, whether this is a formal or implied acceptance.

§ 14 - Producer liability

Our contractual partner shall indemnify us against all claims for compensation asserted by third parties as a result of legislation on tort, product liability or according to other regulations concerning faults or defects in goods manufactured or supplied by us and/or our contractual partner, if such claims would also be justified against our contracting partner, or would no longer be justified purely because the statute of limitations had lapsed in the meantime. Subject to these conditions, our contracting party shall also indemnify us against the costs of legal proceedings which may be brought against us because of such claims.

If the claims also made against us are substantiated, we are entitled to be proportionately exempted from liability by our contractual partner, the extent and amount of which is governed by section 254 BGB.

These regulations shall not affect our indemnity and compensation obligations according to sections 437 (3), 440, 478, 634 (4) BGB but only exist within the scope of § 13 (4) of these Terms and Conditions.

§ 15 - Retention of ownership

1. Until all present or future outstanding accounts owed to us by our contractual partner have been paid, he shall provide us with the following guarantees, which we may release on request, if their nominal value regularly exceeds our accounts receivable by more than 20 %:

   We shall retain ownership of the goods delivered.

   Processing or alteration shall always be performed on our behalf as the manufacturer, but without any obligation on our part. If the goods delivered by us are processed alongside other items not belonging to us, we shall acquire joint ownership of the new objects in proportion to the value of the invoice for the goods supplied by us and to the value of the invoice of the other goods used at the time of processing.

   If our goods are joined together or mixed with other moveable items to form one unit and if the other item is to be classed as the principal object, our contractual partner must assign to us a proportion of the joint ownership for the principal object if it is his property.

   Any delivery necessary for acquiring ownership or joint ownership is to be replaced by the Agreement that has now been reached, so that our contractual partner shall hold the item for us as if it were on loan, and if he does not actually own the item, the delivery is now replaced by assigning to us the right to claim against the owner for the return of the item.

   Items for which we have (joint) ownership according to these regulations, are referred to as goods subject to retention of title.

2. Our contractual partner is entitled to sell the goods subject to retention of title as part of a proper business transaction or to combine, process or mix them with goods owned by third parties. Our contractual partner shall now assign claims either wholly or partly arising from the sale, combination, processing or mixture to us in proportion to our level of ownership of the item sold, combined, process or mixed. When transferring such accounts receivable to current invoices, this transfer shall also include all outstanding balances. This transfer shall have priority over any other claims.

   We authorise our contractual partner subject to the recall, to withdraw the assigned claims. Our contractual partner shall immediately transfer recovered amounts to us if and as soon as our claims are due. If our claims are not yet due, our contractual partner is to record the recovered amount separately.
   Our authority to collect the claim ourselves remains unaffected. However, we undertake not to collect the claims whilst our contractual partner meets his payment obligations arising from revenues received, is not in default of payment, and in particular, if there is no application for insolvency or composition proceedings or payments have not stopped. Our contractual partner shall disclose to us the assigned claims and their debtors, provide us with the accompanying documents and all the information required for collection. If we are entitled to collect the claims, our contractual partner shall additionally notify debtors of the assignment, but we are also entitled to do this ourselves.

   If payments have been stopped, an application is filed for insolvency proceedings or if they are opened, and in case of judicial or extrajudicial composition proceedings, this will exclude the right to resell, process, combine, mix and the authorisation to claim the assigned claims.

3. Our contractual partner must immediately notify us about third party access to the goods subject to retention of title and to the assigned claims. Our contractual partner shall bear the cost of interventions or their defence.
4. Our contractual partner shall handle the goods subject to retention of title with care, and shall pay to adequately insure the goods against fire, water and theft in particular for the value of their replacement.
5. If our contractual partner is in breach of Contract – especially in terms of late payments – we are entitled to take back the goods subject to retention of title or require our contractual partner to assign the rights to recovery from third parties without any need for us to previously or simultaneously state that we have withdrawn from the Contract. In particular, our removal or the seizure of the goods subject to retention of title does not constitute withdrawal from the contract, unless expressly indicated by us in writing.
6. If our retention of title becomes invalid upon delivery abroad or for some other reason, or if we should lose ownership of the goods subject to retention of title for any other reason, our contractual partner is obliged to immediately provide us with another guarantee against the goods subject to retention of title or some other guarantee for our accounts receivable which is legally effective according to the regulations which apply at the location where the goods are intended to remain and which comes closest to the retention of title according to German law.

§ 16 - Ownership of documents and confidentiality

1. We shall retain the unrestricted rights to the ownership and copyright for all cost estimates, calculations, drawings, designs, profiles, patterns, models, copies, tools, simulations and other documents or information that the customer has directly received from us or a third party at our request.
   Our contractual partner has no right of retention with respect to such items.
2. The parties to the Contract shall mutually undertake to treat all commercial and technical details of which they become aware as a result of their collaboration and which are not in the public domain as if they were their own commercial secrets and to treat these as absolutely confidential with respect to third parties. The parties to the Contract may only use their business relationship for advertising purposes if the respective other party has provided prior written consent. For any instance of culpable violation of the above obligations, the parties to the Contract shall make a commitment towards each other to pay a contractual penalty of €6,000 for each individual case.

§ 17 - Property rights

1. If the goods are to be manufactured according to our contractual partner's drawings, patterns or other information, our contractual partner shall be responsible for ensuring that these are not in breach of any third party rights, especially with respect to patents, registered designs, industrial property rights or copyrights. Our contractual partner shall indemnify us against all third party claims arising from any breach of such rights. In addition, our contractual partner shall assume all costs that we incur as a result of third-party claims due to the infringement of such rights and our defence against these.
2. If our development work should result in findings, solutions or technology that may in any way be subject to intellectual property protection, then we are the sole owners of the resulting ownership rights, copyright, and user rights and we reserve the right to apply for the corresponding property rights on our own behalf and to negotiate in our own name.

§ 18 - Place of jurisdiction, place of performance and applicable law

1. Solingen shall be the place of performance and the sole legal venue for deliveries, services and payments including actions involving cheques or bills of exchange, as well as all disputes between the Parties. However, we are also entitled to bring an action against our contractual partner at any other court deemed to be competent according to sections 12 ff. ZPO (German Act on Civil Procedure).
2. The business relationship between us and our contractual partner is solely regulated according to the law which is applicable in the Federal Republic of Germany under exclusion of international sales law, in particular the United Nations Convention on Contracts for the International Sale of Goods and other international agreements regulating the standardisation of the sales law.