1. SCOPE OF APPLICATION

1.1 The following General Terms of Business of DELO shall apply exclusively. Contradictory General Terms of Business or such deviating from those of DELO shall not be recognized, unless DELO expressly agrees to their validity in writing. DELO’s General Terms of Business shall also apply even if DELO carries out delivery without reservation in knowledge of contradictory terms or such deviating from these General Terms of Business.

1.2 The following General Terms of Business of DELO shall apply exclusively and become an integral part of the contract at the latest on acceptance of means of transport, at the latest when they leave DELO’s warehouse. DELO shall consequently not be liable for transport damage due to a mistake made by Buyer.

2. QUOTATION, CONCLUSION OF CONTRACT

2.1 Quotations from DELO shall be non-committal.

2.2 A Customer’s order shall be a binding offer which DELO can accept within 4 weeks by written confirmation of order or dispatch of the goods.

3. PRICES

3.1 In the absence of specific agreement, the prices shall apply in Yen or Euro. The statutory value added tax shall be added to the price at the time of the question is asked.

3.2 In the event that DELO’s price lists contain sales prices, these shall be recommended prices which are not non-committal until the order is confirmed by DELO. In the event of delivery only taking place more than 3 months after concluding the contract by agreement with Customer or for reasons for which DELO is not answerable, DELO reserves the right to charge Customer the sales prices stated in the DELO price lists, but, instead, the prices increased in accordance with the increase in prices occurring since conclusion of the contract (in particular as a result of tariff agreements and increases in prices of materials).

4. DELIVERY AND FULFILLMENT PERIOD

4.1 Delivery periods shall only be binding upon express agreement and shall commence no earlier than receipt of the written order confirmation from DELO by Customer.

4.2 In delays of delivery and performance on account of obstacles unforeseeable for DELO as a result of force majeure (e.g. strike or legal lock-outs, civil war, acts of terror, unrest, natural catastrophes, shortages, delays in material procurement for reasons for which DELO is not answerable, unjustified delay to customer due to transport) DELO reserves the right to delay delivery and charge an additional charge. DELO shall be entitled to compensate the additional costs of storage for the delay period.

5. DISPATCH, PASSAGE OF RISK

5.1 Delivery shall be FCA DELO 89494 Windschacht, Germany INCOTERMS ® 2020. In dispatch, freight costs shall be charged additionally. DELO reserves the right to charge a low volume surcharge for smaller volumes as determined in the quotation or in the case of simple delivery.

5.2 Risk shall pass to Customer with handing over of the objects of delivery to the forwarder, freight carrier, shipping company or the person deputed for execution. This also includes the risk of damage to the goods in transit.

5.3 If Customer is in arrears with payment, DELO shall be entitled to demand default interest. If a number of claims exist simultaneously, the one for which the least security exists shall be redeemed first, if there are a number equally secured, then the one which is due in arrears first.

5.4 If Customer gets into arrears with payment, DELO shall be entitled to demand default interest. If an object proves to be faulty, Customer can demand subsequent performance, i.e. rectification of the defect or supply of an object free of faults.

6. PAYMENT

6.1 Payment terms from DELO shall become due for payment without deduction upon the invoice reaching Customer. Payment periods specified in the quotation, confirmation of the order and/or in the invoice, in particular for the calculation of time limits for the deduction of discount, may only be extended by agreement. Discount may not be granted in the case of late payments unless expressly agreed and provided that no invoices already payable are outstanding.

6.2 Orders to pay, cheques and bills of exchange shall only be accepted on account of payment, bills of exchange further only after specific agreement and calculation of all collective and discount expenses. Incoming payments from Customer shall be offset against due claims existing against it in the following order: costs, interest, damage, claims from deliveries of goods. If a number of claims exist simultaneously, the one for which the least security exists shall be redeemed first, if there are a number equally secured, then the one which is due in arrears first.

6.3 If Customer gets into arrears with payment, DELO shall be entitled to demand default interest. Default interest is 8% p.a. above the basic interbank rate. DELO reserves the right to charge an additional charge.

6.4 Customer shall not be entitled to withhold payment on account of counter-claims or to offset them against payments due. If the counter-claim is undetermined or has been finally established by a Court of law.

6.5 If the consideration for deliveries is stayed by DELO on the basis of a contractual agreement or if there is an open account agreement, the entire open balance of due claims shall be settled immediately by Customer if default in payment occurs with Customer, there is a culpable breach of contract or counterperformance on the part of Customer or jeopardily or injury of regular conditional commodities, deterioration of the economic situation of Customer, stoppage of the account in case of insolvency or an insolvency measure is defined in the German Insolvency Code.

6.6 Upon DELOs request, the Customer shall be obliged to provide an Entry Certification and other necessary information in writing for tax purposes, in particular the correct tax id.

7. RETENTION OF TITLE

7.1 DELO shall retain a security interest in the goods until the purchase price has been paid in full and until all claims of DELO against the Customer have been satisfied.

8. RIGHTS OF CUSTOMER IN DEFECTS

8.1 As a result of its own inspection and experience according to the following provisions, DELO assures that the products fulfil the contractual requirements and statements of the QA test protocols transported to Customer and are free of defects to this extent. DELO’s individual specifications shall be applicable, provided that DELO and the Customer mutually agreed on the specifications in writing. If no specification is mutually agreed in writing, the DELO standard specification shall be applicable. Oral side agreements are not permitted.

8.2 In particular, before the first use of new products, in particular adhesives, Customer shall regularly hold adequate tests and trial processing in order to monitor and to ensure the suitability of the products supplied for the processes and processing and use purposes intended. Any defects established in application or trial processing shall be notified to DELO without delay. At the same time, a sample of the goods giving rise to complaint shall be sent to DELO. If the Customer fails to make the examinations and – if need be – the notifications to DELO, it shall lose the rights according to Sections 8.3 and 8.4 on account of such defects which could have been established through such examinations. No rights shall accrue to Customer for defects caused by deviation from the DELO product specifications or product directives by Customer or third parties. The same shall apply for a processing or application of the products outside the application parameters stipulated by the contract, the product directives or manuals. The verbal and written advice given by the Seller on application techniques is without obligation and does not release the Customer form its own duty to examine the product for its suitability. The same applies if the product is generally recommended for a specific purpose: this does not constitute any assurance and does not found any warranty claim. If liability on the part of DELO should nevertheless lie under consideration, the terms agreed on liability for defects apply mutatis mutandis.

8.3 To establish any defects, Customer shall examine the object without delay following delivery and, if an apparent defect is seen, notify DELO thereof in writing within one week. Customer shall advise DELO of hidden defects within one year of delivery at the latest. If Customer fails to comply with the above mentioned exclusion periods, the object shall be deemed accepted, with the consequence that Customer loses its rights for defects pursuant to Sections 9.4 and 9.6.

8.4 If an object proves to be faulty, Customer can demand subsequent performance, i.e. rectification of the defect or supply of an object free of faults.

8.5 DELO can make subsequent performance dependent upon the fact that Customer pays a suitable part of the purchase price, taking the defect into account. DELO can reject the selected form of subsequent performance if it is only possible with disproportionate costs.

8.6 If rectifying by DELO fails twice, if DELO rejects the subsequent performance or if DELO does not complete the subsequent performance within a suitable period set by Customer, Customer may reduce the purchase price or withdraw from the contract and demand payment of the difference in value in vain or damage in kind and in full performance. The rights of Customer to withdraw and to damage in lieu of performance shall be ruled out if the defect is only inconsequential.

8.7 The rights of Customer on account of the rectification of the defect or of the delivery of the object, unless otherwise determined in DELOs quotations or user manual.

8.8 Nothing contained in DELOs product specifications or product directives by DELO shall be construed to indicate the non-existence of any relevant patents or to constitute a permission, encouragement or recommendation to practice any development covered by any patents, without permission of the owner of this patent.

9. LIABILITY

9.1 Liability shall be liable without limitation for intent and gross negligence.

9.2 DELO shall only be liable for simple negligence – except in cases of injury to life, limb or health – as an essential contractual obligation. Customer’s claim for liability dependent on culpability is limited to the amount of the insurance or guarantee for the product or the special insurance or guarantee for the product. Customer’s claim for liability dependent on culpability pursuant to Sections 9.2, 9.3 and 9.4 shall not apply for liability dependent on culpability provided by law (e.g. according to the Product Liability Act) or from a guarantee dependent upon culpability taken on contractually.

9.3 Liability for direct and unforeseeable damage, loss of production and use as well as loss of income, impossibility of savings and damage to assets on account of claims of third parties shall be limited to the payment of the respective claim.

9.4 Liability extending further than provided for in these General Terms of Business shall be ruled out – without regard for the legal nature of the claim being made.

9.5 The limitations and exclusions of liability pursuant to Sections 9.2, 9.3 and 9.4 shall not apply as of 1 January 2022.

9.6 DELO’s liability is ruled out if it has been exclusively governed by the law of Japan, excluding the provisions of the Convention on Contracts for the International Sale of Goods (CISG).

10. APPLICABLE LAW, PLACE OF PERFORMANCE, VENUE, SEPARABILITY CLAUSE

10.1 The legal relationships between DELO and its Customers will be the basic interest of the parties be exclusively governed by the law of Japan, excluding the provisions of the Convention on Contracts for the International Sale of Goods (CISG).

10.2 Exclusive place of performance for delivery and payment obligations shall be the registered office of DELO.

10.3 Exclusive venue for all disputes arising from the business relationship shall be the competent court of jurisdiction in Tokyo.

10.4 The individual provisions of the General Terms of Business or parts thereof be or become totally or partly ineffective, the effectiveness of the remainder of the General Terms of Business shall not be affected. The ineffective and non-aplicable parts of bills of exchange, prents on cheques or bills or enforcement measures against Customer exist.

10.5 Upon DELOs request, the Customer shall be obliged to provide an Entry Certification and other necessary information in writing for tax purposes, in particular the correct tax id.