§ 1
Scope

(1)
All deliveries, services and offers of the company HOME & MARINE electronic systems GmbH (hereinafter Seller) shall be exclusively carried out owing to these General Business Terms and Conditions. These are part of all contracts, which the Seller concludes with its contractual partners (hereinafter Customer) regarding the deliveries or services offered by the Seller. They shall also apply to all future deliveries, services or offers to the Customer, even if they are not agreed separately once again. The General Business Terms and Conditions shall only apply towards legal entities under public law or special funds under public law within the meaning of Section 310 Para.1 BGB [German Civil Code].

(2)
The General Business Terms and Conditions shall in particular apply to contracts regarding the sale and / or the delivery of movable objects (hereinafter Goods), irrespective whether the Seller has produced the Goods itself or purchased these from component suppliers (Sections 433, 651 BGB). The General Business Terms and Conditions shall also apply in their respective version as a framework agreement for future contracts regarding the sale and / or the delivery of movable objects with the same Customer, without reference having to be made hereto in an individual case; in this case the Customer is to be informed of any changes to the General Business Terms and Conditions without delay.

(3)
The General Business Terms and Conditions shall apply exclusively. Deviating, contradictory or supplementary General Business Terms and Conditions of the Customer will only become a part of the contract to the extent that their validity is explicitly approved in writing. The approval requirement shall apply in any case, for example also if the Seller carries out the delivery to it without reservation in the knowledge of General Terms and Conditions of the Customer.

(4)
All agreements, which are reached between the Seller and the Customer for the purpose of executing the contract, are recorded in writing in the contractual deed.

§ 2
Conclusion of contract

(1)
All offers of the Seller are without obligation and non-binding, in particular the price and technical data, such as e.g. dimensions, weights, etc. in the offer and other printed matter, if they have not been explicitly marked as binding, or contain a certain acceptance deadline. This shall in particular apply to catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates) and other product descriptions and documents – also in an electronic form.

(2)
The orders of the Customer shall be deemed as a binding contractual offer. If not otherwise derived from the order, the Seller is entitled to accept this contractual offer within 3 weeks after its receipt by the Seller.

(3)
The contract will be concluded with the receipt of the written order confirmation of the Seller by the Customer. The contents of this order confirmation are decisive for the contents of the contract.

(4)
Details of the Seller relating to the object of the delivery or service (e.g. weight, dimensions, use values, load-bearing capacity, tolerances and technical data) as well as presentations of the Seller hereof (e.g. drawings and diagrams) are only approximately decisive insofar as the usability for the contractually envisaged purpose does not presume a precise correspondence. They are no guaranteed characteristics, but a description or marking of the delivery or service. Customary deviations and deviations, which are carried out owing to legal regulations or that represent technical improvements as well as the replacement of components by equivalent parts are permitted if they do not impair the usability for the contractually envisaged purpose.

(5)
The Seller reserves the right to the property or copyright to all offers and cost estimates submitted by it, as well as to the drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. The Customer may neither make these objects accessible to third parties as such, nor the contents hereof without the explicit written consent of the Seller, nor announce these, use or reproduce these itself or through third parties. At the request of the Seller these objects are to be returned to the Seller in full and has to destroy any copies made by it if they are no longer required by it in the ordinary course of business, or if negotiations do not lead to the conclusion of a contract.

§ 3
Prices and terms of payment

(1)
The stated prices are deemed in EURO ex works plus packaging, loading, statutory value added tax, with export deliveries customs duties, as well as fees and other public duties, insofar as not otherwise agreed. These items will be disclosed separately in the invoice. The prices shall apply to the scope of services and delivery listed in the order confirmations. Additional or special services will be charged separately.

(2)
Insofar as the agreed prices are based upon the list prices of the Seller and the delivery is only supposed to be carried out more than 4 months after the conclusion of the contract, the list prices of the Seller valid upon delivery shall apply (respectively minus an agreed percentage or fixed discount). The right is also reserved to make reasonable price changes outside of list prices of the Seller owing to changed wage, material and distribution costs for deliveries, which are to be carried out more than 4 months after the conclusion of the contract. For the event that the price increase exceeds 10% of the originally agreed price, the Customer shall be entitled to a right of rescission.

(3)
With a delivery by carrier (§ 5) the Customer will bear the transport costs from the warehouse and the costs of, if applicable, transport insurance requested by the Customer.

(4)
Invoice amounts are to be paid within 14 days after receipt of the invoice without any deduction, if not otherwise agreed in writing. Decisive for the date of the payment is the receipt by the Seller. With the expiry of the deadline the Customer will be deemed in default without any further reminder. The acceptance of cheques or bills of exchange shall only be carried out if agreed and always on account of payment. Expenses shall always be for the account of the Customer and are due and payable immediately.

(5)
The Seller is entitled to request down payments in the amount of 50% of the purchase price and to render its services and deliveries dependent on such advance payments. The down payment is due and to be paid within 14 days from receipt of the invoice.

(6)
The Seller is entitled to only carry out or provide still outstanding deliveries or services against advance payment or provision of collateral if it becomes aware of circumstances after conclusion of the contract, which are suitable for substantially reducing the creditworthiness of the Customer and through which the payment of the outstanding receivables of the Seller by the Customer from the respective contractual relationship (including from other individual orders, for which the same framework contract applies) is jeopardised.

(7)
Offsetting against counter-claims of the Customer or the retention of payments owing to such claims are only permitted if the counter-claims are undisputed or have been declared final and binding.

§ 4
Deliveries and delivery deadline

(1)
Insofar as not otherwise derived from the order confirmation, delivery “ex works” is agreed.

(2)
Prospective deadlines and dates stated by the Seller for the deliveries and services shall always be deemed as approximate unless a fixed deadline or a fixed date has been explicitly promised or agreed. If delivery by carrier was agreed delivery deadlines and dates shall refer to the time of the hand-over to the carrier, freight forwarder or other third party commissioned with the transport.

(3)
The delivery time shall be calculated from the day of the agreement of the contractual parties regarding all conditions of the business. If subsequent changes are requested by the Customer the delivery time shall be extended accordingly.

(4)
The Seller can – irrespective of its rights from default of the Customer – request from the Customer an extension to the delivery or service deadlines or a postponement of delivery and service dates by the period of time in which the Customer does not satisfy its contractual obligations towards the Seller.

(5)
The Seller shall not be liable for impossibility of the delivery or for delays in delivery insofar as these were caused by force majeure or other events not foreseeable at the time when the contract was concluded, e.g. interferences to operation of all kinds, Difficulties in the procurement of materials or energy, transport delay, strikes, lawful lock-outs, deficiency of workers, energy or raw materials, difficulties with the procurement of necessary official approvals, official measures or the nondelivery, incorrect or late delivery by suppliers, for which the Seller is not responsible. Insofar as such events render the delivery or service substantially more difficult or impossible for the Seller and the impediment is not temporary, the Seller is entitled to rescind the contract In case of temporary impediments the delivery or service deadlines will be extended or the delivery or service dates will be postponed by the period of time of the impediment plus a reasonable start-up period. Insofar as the acceptance of the delivery or service is not deemed reasonable for the Customer as a result of the delay, it can rescind the contract by a written declaration towards the Seller without delay. The Seller undertakes to inform the Customer without delay after it becomes known of the aforementioned circumstances and the expected extension of the delivery and service deadline, or the expected new delivery or service dates.

(6)
The occurrence of the delay of the Seller with the delivery or service shall be determined according to the statutory regulations, however with the condition that in any case that it is necessary for the Customer to set a reasonable final deadline. The liability of the Seller for damages is limited according to §§ 7, 8 of these General Business Terms and Conditions.

(7)
If the Goods or the object of service are not picked up by the Customer as of the agreed date, the shipment will be postponed at the Customer’s request or if the Customer does not collect the goods or the object of service after notification of the readiness for shipment including a reminder, the costs incurred by the storage or financing will be charged to the Customer, beginning with the expiry of the agreed date or report of the readiness for shipment, or the receipt of the reminder, at least however 0.5% of the invoice amount for each started month of the delayed acceptance, a maximum total however of 5% of the invoice amount. The Customer reserves the right to prove that no damages were suffered at all or less damage were suffered. The Seller is, however, also entitled to concretely assert further damages. The Seller is further entitled, after the setting and unsuccessful expiry of a reasonable deadline to dispose otherwise of the object of delivery and to deliver the Customer another object of delivery with a reasonable, extended deadline. In case of an agreement of additional or addendum orders, which lead to a delay in delivery of the object of delivery, the aforementioned provisions shall apply accordingly.

§ 5

Place of performance, passing of risk, acceptance

(1)
The place of performance for all obligations from the contractual relationship is, insofar as not otherwise determined, the registered seat of the Seller.

(2)
At the request of and costs of the Customer the Goods will be shipped to another destination. Insofar as not otherwise agreed, the Seller is entitled to determine the type of the shipment (in particular transport company, despatch route, packaging) itself at its dutiful discretion.

(3)
Insofar as an acceptance has been agreed this is decisive for the passing of the risk. It is deemed equivalent to the hand-over or acceptance if the Customer is in default with the acceptance.

(4)
The statutory regulations of the law governing contracts for work and services of the BGB shall apply to the acceptance, insofar as not otherwise agreed, In addition, the service shall be deemed as accepted if the Customer does not request an acceptance, with the expiry of 12 workdays after a written notification of the Seller to the Customer regarding the completion of the service and for the event that the Customer has begun to use the service or a part of the service, with the expiry of 6 workdays after the commencement of the use.

(5)
The shipment will only be insured by the Seller at the explicit request of the Customer and at its costs against theft, breakage, transport, fire and water damages or other insurable risks.

§ 6

Reservation of title security

(1)
The reservation of title agreed below serves to secure all respectively existing current and future claims of the Seller against the Customer from the contract of purchase and a regular business relationship.

(2)
The Goods delivered to the Customer by the Seller (hereinafter reserved goods) shall remain the property of the Seller until the full payment. In addition, the property shall remain reserved until the fulfilment of all claims from the business relationship with the Customer, including possible refinancing or reverse bills, to which the Seller is entitled for all legal grounds against the Customer at the time when the contract is concluded or in future. The transfer of individual claims into a current account as well as the drawing of a balance and their recognition shall have no effect on the reservation of title.

(3)
The Customer shall hold the reserved goods in safekeeping free of charge for the Seller.

(4)
The Customer is entitled to process and sell the reserved goods until the occurrence of the sale event in proper business transactions. Pledges and assignments as collateral are not permitted.

(5)
If the reserved goods are processed by the Customer then it is agreed that the processing shall be carried out in the name and for the account of the Seller as manufacturer and the Seller shall acquire the ownership directly – if the processing is carried out by using materials of several owners, or the value of the processed object is higher than the value of the reserved goods – the co-ownership (fraction ownership) to the newly created object in the ratio of the value of the reserved goods to the value of the newly created object. For the event that no such property value should occur at the Seller, the Customer

hereby now already assigns its future ownership, or – in the aforementioned ratio – co-ownership to the newly created object as security to the Seller. If the reserved goods are connected with other objects to form a uniform object or are inseparably mixed with other objects and if one of the other objects is to be seen as the main object, the Seller hereby assigns, insofar as this main object belongs to it, the pro rata co-ownership to the uniform object to the Customer in the ratio as stated in Sentence 1.

(6)
In the event of the resale of the reserved goods the Customer hereby now already assigns, as a precautionary measure, the thus established claims against the buyer – with the co-ownership of the Seller to the reserved goods pro rata in line with the co-ownership share – to the Seller. The same shall apply to other claims, which replace the reserved goods or are otherwise established with regard to the reserved goods, such as e.g. insurance claims or claims from illicit act in case of loss or destruction. The Seller hereby revocably authorises the Customer to collect the claims assigned to the Seller in its own name. The Seller may only revoke this collection authorisation in the event of a sale. If the contractual provisions of the third party debtor with the Customer contain an effective restriction to the assignment authorisation, or if the third party renders the assignment dependent on its approval this is to be communicated to the Seller in writing without delay. For this case the Seller will be irrevocably authorised to collect the claim to which it is entitled in the name and for the account of the Customer. The Customer hereby at the same time irrevocably issues a payment instruction to the third party debtor for the benefit of the Seller.

(7)
If third parties access the reserved goods, in particular by an attachment, the Customer will notify said third parties without delay about the ownership of the Seller and inform the Seller hereof in order to enable it to assert its property rights. Insofar as the third party is not in the position to reimburse the Seller the court or out-of-court costs incurred in this context the Customer will be liable for these towards the Seller.

(8)
The Seller will release the reserved goods as well as the objects or claims that replace these insofar as their value exceeds the amount of the secured claims by more than 20%. The selection of the objects that are accordingly to be released lies with the Seller.

(9)
In case of conduct of the Customer in breach of the contract, in particular with the non-payment of the due purchase price, the Seller is entitled, according to the statutory regulations, to rescind the contract and / or to request that the Goods are handed over owing to the reservation of title. (enforcement event) The request for hand-over shall not as the same time include the declaration of the rescission, the Seller is rather entitled to merely request that the Goods are handed over and to reserve the right of rescission. If the Customer does not pay the due purchase price the Seller is only entitled to assert these rights if it has previously unsuccessfully set the Customer a reasonable deadline for payment, or the setting of such a deadline is dispensable according to the statutory regulations.

§ 7
Liability for defects

(1)
Claims of the Customer due to defects shall presume that it has properly satisfied its responsibilities for inspection and to report a complaint owed according to Section 377 HGB [German Commercial Code].

(2)
Insofar as there is a defect to the object of purchase the Seller is, at its choice, entitled to the subsequent fulfilment in the form of the remedy of defects or to the delivery of a new faultless object. In the event of the remedy of defects or the substitute delivery the Seller undertakes to bear all expenses that are necessary for the purpose of the subsequent fulfilment, in particular transport, route, labour and material costs, insofar as these are not increased by the fact that the object of purchase was taken to another location than the place of performance. If a request of the Customer for the remedy of defects proves to be unjustified the Seller can request refund of the costs incurred hereby from the Customer.

(3)
If the subsequent fulfilment fails the Customer shall be entitled, at its choice, to request rescission or reduction.

(4)
The Buyer is entitled to render the owed subsequent fulfilment dependent on the fact that the Customer pays the due purchase price. The Customer is, however, entitled to withhold a part of the purchase price that is reasonable in relation to the defect.

(5)
The Customer has to give the Seller the time and opportunity that is required for the owed subsequent fulfilment, in particular to hand over the Goods for which a complaint was made for purposes of inspection. In the event of the substitute delivery the Customer has to return the defective object to the Seller according to the statutory regulations. The subsequent fulfilment shall neither include the disassembly of the faulty objects, nor the renewed installation if the Seller was originally not obligated to the installation.

(6)
In urgent cases, e.g. with a danger to the operational safety or for the defence of disproportionate damages, the Customer has the right to remedy the defect itself and to request reimbursement of the objectively necessary expenses in this respect from the Seller. The Seller is to be notified of such a self-execution, without delay, if possible in advance. The self-execution shall not exist if the Seller were entitled to refuse a corresponding subsequent fulfilment according to the statutory regulations.

(7)
The Seller shall be liable according to the statutory provisions, if the Customer asserts claims for damages, which are due to wilful intent or gross negligence, including wilful intent or gross negligence of the representatives or vicarious agents of the Seller. Insofar as the Seller is not accused of any wilful breach of contract the liability for damages is limited to the foreseeable, typically occurring damages.

(8)
The Seller shall be liable according to the statutory provisions if it culpably breaches an essential contractual obligation; in this case however the liability for damages is also limited to the foreseeable, typically occurring damages.

(9)
Insofar as the Customer is incidentally entitled to a claim for compensation of the damages instead of the performance owing to a negligent breach of obligations, the liability of the Seller is limited to compensation of the foreseeable, typically occurring damages.

(10)
The liability owing to a culpable injury to life, the body or the health shall remain unaffected; this shall also apply to the essential liability according to the German Product Liability Act.

(11)
In case of defects to components of other manufacturers, which the Seller cannot remedy due to reasons under licensing law or for factual reasons, the Seller will, at its choice, assert its warranty claims against the manufacturers and suppliers for the account of the Customer, or assign these to the Customer. Warranty claims against the Seller shall only exist with such defects under the other prerequisites and according to the General Business Terms and Conditions if the assertion of the aforementioned asserted claims in court against the manufacturer and the supplier was unsuccessful or, for example, has no prospects for success owing to insolvency. During the lawsuit the statute-of-limitations of the relevant warranty claims of the Customer against the Seller shall be inhibited.

(12)
We do not assume any liability for the fact that the object of delivery complies with regulations outside of the territory of the Federal Republic of Germany, which go beyond the German regulations.

(13)
A delivery of used objects that is agreed with our customer in an individual case shall be carried out under the exclusion of all warranty.

(14)
The Seller shall not be liable for simple negligence. Insofar as not regulated otherwise above the liability shall otherwise be excluded.

§ 8
Joint and several liability

(1)
A further liability for damages than envisaged in § 7, is – irrespective of the legal nature of the asserted claims – excluded. This shall in particular apply to claims for damages owing to fault upon conclusion of the contract, owing to other breaches of obligations or owing to the in tort claims for compensation of property damages pursuant to Section 823 BGB.

(2)
The limitation according to Par. (1) shall also apply insofar as the Customer requests reimbursement of fruitless expenses instead of a claim for compensation of the damages, instead of the performance.

(3)
Insofar as the liability for damages against the Seller is excluded or limited, this shall also apply with regard to the personal liability for damages of the employees, workers, representatives and vicarious agents of the Seller.

(4)
Owing to a breach of obligation, which does not exist due to a defect, the Customer can only rescind or terminate if the Seller is responsible for the breach of obligation. A free right of termination of the Customer (in particular Sections 651, 649 BGB) is excluded. Incidentally, the statutory prerequisites and legal consequences shall apply.

§ 9
Statute-of-limitations

(1)
Notwithstanding § 438 Par. 1 No. 3 the general statute-of-limitations for claims from material defects and defects of title is 1 year from the delivery, insofar as an acceptance has been agreed, the statute-of-limitations shall begin with the acceptance.

(2)
If, however, the goods concern a building structure or an object, which has been used in line with its customary intended use for a building structure, and caused its faulty condition (building material), the statute-of-limitations of the statutory regulation is 5 years from delivery (Section 438 Para. 1 No. 2 BGB). This shall also have no effect on the special statutory regulations for in rem hand-over claims A third party (Section 438 Para. 1 No. 1 BGB), in case of fraudulent intent of the Seller (Section 438 Para. 3 BGB) and for claims in the supplier recourse with the final delivery to a consumer (Section 479 BGB). This shall furthermore have no effect on the liability for damages, which are due to a wilful or grossly negligent breach of obligations of the Seller or to a wilful or grossly negligent breach of obligation of its legal representative or vicarious agents, as well as the liability for damages from the injury to life, the body or the health.

(3)
The aforementioned statutes-of-limitations of the law governing purchases shall also apply to contractual and noncontractual claims for damages of the Customer, which are due to a defect to the Goods, unless the application of the regular legal statute-of-limitations (Sections 195, 199 BGB) would in an individual case lead to a shorter statute-of-limitations. The

statutes-of-limitations of the German Product Liability Act shall remain unaffected in any case. Otherwise the legal statutes of-limitations shall exclusively apply to claims for damages of the Buyer pursuant to § 8.

§ 10
Property rights

(1)
The Seller shall assume responsibility according to this paragraph for the fact that the object of delivery is free of industrial property rights and copyrights of third parties. Each contractual partner will be notified by the respective other contractual partners in writing without delay, if claims are asserted against it owing to the infringement of such rights.

(2)
In the event that the object of delivery infringes an industrial property right or copyright of a third party the Seller will, at its choice and at its costs, modify or exchange the object of delivery to the extent that no rights of third parties are infringed any more, however that the object of delivery continues to fulfil the contractually agreed function, or procure the right of use for the Customer by conclusion of a licence agreement. If it does not succeed in this within a reasonable period of time, the Customer is entitled to rescind the contract or to reasonably reduce the purchase price. Possible claims for damages of the Customer are subject to the provisions of §§ 8 and 9 of these General Business Terms and Conditions.

(3)
In case of infringements of rights by products of other manufacturers delivered by the Seller the Seller will, at its choice, assert the claims against the manufacturers or sub-suppliers for the account of the Customer, or assigns these to the Customer. Claims against the Seller shall only exist in this case according to this paragraph if the assertion in court of the aforementioned claims against the manufacturer or sub-suppliers was unsuccessful or, for example, has no prospects for success owing to insolvency.

§ 11
Assignment

The Customer is not entitled to assign its claims from the contractual relationship with the Seller to third parties. This shall not apply if it concerns monetary claims.

§ 12
Choice of law and place of jurisdiction

(1)
The law of the Federal Republic of Germany shall apply to these General Business Terms and Conditions and all legal relationships between the Seller and the Customer under the explicit exclusion of the International Uniform Law, in particular the UN Convention on Contracts for the International Sale of Goods. The negotiation and contractual language is German.

(3)
The prerequisites and effects of the reservation of title according to § 6 are subject to the law of the respective storage location of the object, insofar as accordingly the choice of law made is inadmissible or invalid for the benefit of German law.

(4)
If the Customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered seat of the Seller. The Seller is however also entitled to file actions at the general place of jurisdiction of the Customer.

§ 13
Final provisions

(1)
Should one or several provision of the respective contract or these General Business Terms and Conditions be or become invalid or null and void in full or in part, or the respective contract or these General Business Terms and Conditions feature a loophole in the regulations this shall have no effect on the validity of the other provisions of the contract or these General Business Terms and Conditions. A reasonable regulation shall apply to replace the invalid provisions or the loophole that is to be fulfilled, which as far as legal possible shall correspond with that which the contractual parties intended from a commercial point of view or would have intended according to sense and purpose of the respective contract and these General Business Terms and Conditions, if they had been aware of the loophole in the regulations, or the invalidity.

(2)
The Customer acknowledges that the Seller stores data from the contractual relationship according to Section 28 Federal Data Protection Act for the purpose of data processing. The Seller reserves the right to transmit these data, insofar as necessary for the fulfilment of the contract, to third parties (e.g. insurances).