General Terms and Conditions

priomold GmbH

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1. General Provisions; Scope of Application

1.1. These General Terms and Conditions (“GTC”) apply to all transactions of priomold GmbH, Gewerbestraße 6, 75328 Schömberg, registered in the Commercial Register of the Local Court of Stuttgart under HRB 769518 (“priomold”), arising from orders placed by its customers, provided that such customers are traders within the meaning of section 14 of the German Civil Code (Bürgerliches Gesetzbuch – “BGB”), legal persons under public law or special funds under public law (“Customers”). priomold and the Customer are hereinafter each also referred to as a “Contracting Party” and jointly as the “Contracting Parties”.

1.2. These GTC apply in particular to contracts concerning the sale and/or delivery of movable items, e.g. injection-moulded prototypes and small series produced by injection moulding (“Goods”), irrespective of whether priomold manufactures the Goods itself or purchases them from suppliers, and to services connected with the delivery of such Goods, such as consultancy services.

1.3. Subject to sentence 3, these GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions or purchasing conditions of the Customer shall not apply unless expressly recognised by priomold in writing. Individual agreements made between the Contracting Parties in a particular case (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GTC.

1.4. These GTC shall also apply to similar future transactions between priomold and the Customer without any renewed reference to these GTC being required.

2. Conclusion of Contract; Subject Matter of the Contract

2.1. Offers made by priomold are subject to change and non-binding unless expressly designated as binding. This also applies where priomold has provided the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents, including in electronic form. The Customer’s order for Goods or services from priomold constitutes a legally binding offer to enter into a contract, which priomold may accept by sending an order confirmation (“Order Confirmation”). Collectively, the order, the Order Confirmation and these GTC are also referred to as the “Contract”.

2.2. The performance owed by priomold shall be determined by the agreements contained in the Contract. Insofar as the performance contractually owed by priomold is intended to serve a purpose of use desired by the Customer, such purpose shall only be binding on priomold if it was communicated to priomold in writing before conclusion of the Contract and priomold expressly confirmed to the Customer in writing that the performance is suitable for such purpose.

2.3. An agreement concerning a guarantee or a particular quality shall only be effective if made in writing. Illustrations, drawings, information on weight and dimensions, material quality, cutting data and other descriptions of the Goods contained in documents forming part of priomold’s offers are only approximate unless expressly designated as binding or unless use for the contractually intended purpose requires exact conformity. They do not constitute an agreement or guarantee as to the corresponding quality or durability of the Goods unless expressly agreed as such. The same applies to the specification of a purpose of use in our catalogues and on our website. Expectations of the Customer regarding the Goods or their use likewise do not constitute an agreement or guarantee.

2.4. priomold reserves all ownership rights, copyrights, patent rights and other intellectual property rights in catalogues, technical documentation (e.g. drawings, plans, calculations, costings), samples, models, documents and other materials handed over to the Customer. Unless expressly agreed otherwise, the mere provision of performance by priomold does not grant the Customer any rights of use or other rights in components capable of intellectual property protection.

3. Customer Requirements and Specifications

3.1. priomold generally supplies Goods manufactured in accordance with certain specifications and requirements of the Customer. Such specifications and requirements may, for example, result from drawings, CAD data, models or samples. The Customer must provide these specifications and requirements to priomold before conclusion of the Contract.

3.2. Drawings, samples, models and similar items provided by the Customer to priomold shall, upon request and at the Customer's expense, be returned to the Customer. If the Customer does not request the return of such drawings, samples, models and similar items within three months after delivery of the Goods, priomold shall be entitled to destroy them. The same shall apply if no Contract is concluded between the Contracting Parties, in which case the three-month period shall begin upon receipt of the offer by the Customer.

3.3. If the Customer specifies to priomold which raw material is to be used for manufacture, priomold shall not be liable for the suitability of the raw material used for the intended purpose. Upon request, priomold shall provide the Customer with the data sheets of the raw material supplier.

3.4. If the Customer specifies that certain blanks or other accessories are to be used for manufacturing the Goods, the Customer shall supply such blanks and other accessories to priomold in good time, in sufficient quantities and at its own expense. If the Customer does not supply the blanks or other accessories in good time or in sufficient quantities, priomold shall not be liable for any resulting delays. In such cases, priomold shall in particular be entitled to interrupt manufacture of the Goods until the required blanks and other accessories have subsequently been supplied. If the Customer does not supply the blanks or other accessories in good time or in sufficient quantities, priomold shall furthermore be entitled to demand reimbursement from the Customer of any resulting additional costs, unless the Customer is not responsible for the late or insufficient delivery.

For production-related reasons, scrap may arise during manufacture of the Goods. Any scrap arising during manufacture must therefore be replenished by the Customer at its own expense.

priomold shall be entitled to dispose of surplus raw material and other accessories one year after delivery of the Goods manufactured using the raw material or other accessories provided by the Customer. priomold shall notify the Customer of the disposal no later than two weeks before expiry of this one-year period. Upon request and at the Customer's expense, priomold shall return surplus raw material and other accessories to the Customer.

4. Tool Inserts and Other Means of Production

4.1. All rights, in particular ownership rights and copyrights, in design and other proposals, drafts, software, drawings, tool inserts and other means of production which priomold produces for the manufacture of the Goods (hereinafter "Tool") shall belong exclusively to priomold. This shall also apply if the Customer bears the manufacturing costs in whole or in part.

4.2. priomold shall therefore in particular be entitled to dispose of such Tool three years after the last delivery of Goods manufactured using that Tool. priomold shall notify the Customer of the disposal no later than one month before expiry of this three-year period. If, before expiry of the three-year period, the Customer orders further Goods manufactured using the Tool, the period shall be extended accordingly by a further three years.

4.3. Insofar as priomold produces Tool specifically for the manufacture of Goods ordered by a particular Customer, priomold shall use the Tool only for that Customer and shall not make it accessible to unauthorised third parties.

4.4. Insofar as priomold produces tool inserts specifically for the manufacture of Goods ordered by a particular Customer, these do not constitute complete tools, but only tool inserts adapted to priomold's master tools and used in conjunction with such master tools to manufacture the ordered Goods.

5. Third-Party Intellectual Property Rights

5.1. The Customer shall ensure that drawings, models, samples, designs or other documents and items provided by it for the manufacture of the ordered Goods do not infringe any third-party intellectual property rights.

5.2. priomold shall not be liable to the Customer for infringement of third-party rights, such as copyrights or industrial property rights, insofar as the infringement results from the Customer having provided priomold with drawings, models, samples, designs or other documents and items for the manufacture of the Goods. In this respect, the Customer undertakes to indemnify priomold against third-party claims unless the Customer is not responsible for the infringement.

5.3. If priomold is prohibited by a third party, on the basis of an intellectual property right belonging to that third party, from manufacturing and delivering Goods, priomold shall be entitled, without being obliged to examine the legal position, to discontinue the work and demand reimbursement of the costs incurred.

6. Delivery Periods; Delay in Delivery; Partial Delivery

6.1. Periods and dates stated by priomold for deliveries shall always be approximate only, unless periods or dates stated in the Order Confirmation have expressly been agreed as binding. In the case of a sale involving carriage, delivery periods and delivery dates shall, unless expressly stated otherwise by priomold, refer to the time at which the Goods are handed over to the forwarding agent, carrier or other third party commissioned with transportation.

6.2. If priomold is unable to comply with binding delivery periods for reasons for which priomold is not responsible (unavailability of performance), priomold shall inform the Customer thereof without undue delay and at the same time notify the Customer of the expected new delivery period. If performance is also unavailable within the new delivery period, priomold shall be entitled to rescind the Contract in whole or in part; any consideration already provided by the Customer shall be reimbursed by priomold without undue delay. Unavailability of performance shall exist, for example, in the event of late delivery to priomold by its suppliers where priomold has entered into a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or where priomold is not obliged to procure in the individual case.

6.3. The statutory provisions shall apply to delay in delivery, with the deviation that a warning notice by the Customer shall be required in every case.

6.4. Delivery in parts shall be permissible unless, taking into account priomold's interests, partial delivery is unreasonable for the Customer.

7. Delivery; Passing of Risk; Default of Acceptance

7.1. Deliveries shall be made ex works, which shall also be the place of performance for delivery and any subsequent performance. At the Customer's request and expense, the Goods shall be shipped to another destination (sale involving carriage). Unless otherwise agreed, priomold shall be entitled to determine the method of shipment itself (in particular the transport company, shipping route and packaging). The Incoterms in the version valid on the date of the Order Confirmation shall apply to the interpretation of delivery clauses used in the Contract in an individual case.

7.2. The risk of accidental destruction and accidental deterioration of the Goods shall pass to the Customer no later than upon handover. In the case of a sale involving carriage, the risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delay shall pass to the Customer no later than upon handover of the Goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment. This shall apply irrespective of who bears the transport costs.

In the case of a contract to produce a work or insofar as acceptance has been agreed, section 644 (1) and (2) BGB shall apply. In all other respects, where acceptance has been agreed, the statutory provisions governing contracts to produce a work shall apply accordingly. Handover or acceptance shall be deemed to have occurred if the Customer is in default of acceptance.

7.3. If the Customer collects the Goods, the risk shall pass to the Customer upon notification that the Goods are ready for collection.

7.4. If shipment, handover or acceptance is delayed as a result of a circumstance caused by the Customer, the risk shall pass to the Customer at the time when the Goods are ready for shipment and priomold has notified the Customer thereof.

7.5. If the Customer is in default of acceptance, fails to perform an act of cooperation or if delivery is delayed for other reasons for which the Customer is responsible, priomold shall be entitled to demand compensation for the resulting loss, including additional expenses (e.g. storage costs). For this purpose, priomold shall charge lump-sum compensation of 0.5% of the purchase price or the purchase price of the partial delivery per calendar week, commencing upon expiry of the delivery period or, in the absence of a delivery period, upon notification that the Goods are ready for shipment, but in total no more than 5% of the purchase price or the purchase price of the partial delivery.

8. Prices; Terms of Payment

8.1. The prices payable by the Customer shall be agreed by the Contracting Parties in the individual Contract.

8.2. Unless otherwise agreed, the agreed price shall be payable within 14 days after receipt of the invoice and delivery to the Customer. However, even within an ongoing business relationship, priomold shall at any time be entitled to make delivery in whole or in part only against advance payment. Payment shall be made to the account specified in the invoice, quoting the payment reference stated in the invoice.

8.3. All prices are stated in euros plus statutory value added tax.

8.4. In the case of a sale involving carriage, the Customer shall bear the transport costs from the warehouse and the costs of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

9. Retention of Title

9.1. Until full payment of all present and future claims arising from the Contract and an ongoing business relationship (“Secured Claims”), priomold retains title to the Goods sold (“Goods Subject to Retention of Title”).

9.2. Before full payment of the Secured Claims, the Goods Subject to Retention of Title may neither be pledged to third parties nor transferred by way of security. The Customer shall notify priomold in writing without undue delay if an application for the opening of insolvency proceedings is filed or insofar as third parties gain access to the Goods Subject to Retention of Title (e.g. seizures).

9.3. In the event of conduct by the Customer in breach of the Contract, in particular non-payment of the purchase price when due, priomold shall be entitled, in accordance with the statutory provisions, to rescind the Contract and/or demand surrender of the Goods Subject to Retention of Title on the basis of the retention of title. A demand for surrender shall not at the same time constitute a declaration of rescission; rather, priomold shall be entitled merely to demand surrender of the Goods and reserve the right to rescind. If the Customer does not pay the purchase price when due, priomold may exercise these rights only if priomold has previously unsuccessfully set the Customer a reasonable period for payment or if setting such a period is dispensable under the statutory provisions.

9.4. Until revoked in accordance with (c) below, the Customer is authorised to resell and/or process the Goods Subject to Retention of Title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products created by processing, mixing or combining the Goods at their full value, with priomold being deemed the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their ownership rights remain in existence, priomold shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the Goods Subject to Retention of Title.

(b) The Customer hereby assigns to priomold by way of security, in total or in the amount of any co-ownership share of priomold pursuant to the preceding paragraph, the claims against third parties arising from the resale of the Goods Subject to Retention of Title or the resulting product. Priomold accepts the assignment. The Customer's obligations referred to in clause 6.2 shall also apply with regard to the assigned claims.

(c) The Customer shall remain authorised, alongside priomold, to collect the claim. Priomold undertakes not to collect the claim as long as the Customer meets its payment obligations towards priomold, there is no deficiency in its ability to perform and priomold does not enforce the retention of title by exercising a right pursuant to clause 6.3. If this is the case, however, priomold may require the Customer to disclose to priomold the assigned claims and the respective debtors, provide all information necessary for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment. In addition, priomold shall in this case be entitled to revoke the Customer's authority to further resell and process the Goods Subject to Retention of Title.

(d) If the realisable value of the securities exceeds priomold's claims by more than 10%, priomold shall, at the Customer's request, release securities of priomold's choice.

10. Customer's Rights in the Event of Defects

10.1. The statutory provisions shall apply to the Customer's rights in the event of material defects and defects of title unless otherwise provided below. In all cases, the statutory provisions governing the sale of consumer goods (sections 474 et seq. BGB) and the Customer's rights arising from separately given guarantees, in particular by the manufacturer, shall remain unaffected.

10.2. priomold shall not be liable for defects of which the Customer is aware at the time the Contract is concluded or of which it is unaware due to gross negligence.

10.3. The Customer's rights in respect of defects require that the Customer inspect the delivered Goods upon delivery, insofar as reasonable also by trial use, and notify priomold in writing of obvious defects without undue delay and no later than two weeks after delivery of the Goods. In the case of building materials and other Goods intended for installation or other further processing, an inspection must in all cases be carried out immediately before processing. Hidden defects must be notified to priomold in writing without undue delay after discovery. The Customer shall describe the defects in its notification to priomold. If the Customer fails to carry out the proper inspection and/or give notice of defects, priomold's liability for the defect not notified, or not notified in due time or properly, shall be excluded

in accordance with the statutory provisions. In the case of Goods intended for installation, attachment or fitting, this shall also apply if the defect only becomes apparent after the relevant processing as a result of a breach of one of these obligations; in this case, the Customer shall in particular have no claims for reimbursement of corresponding costs (“Removal and Installation Costs”).

10.4. In the event of defects in the Goods, priomold shall, at its option, be entitled to subsequent performance by remedying the defect or delivering defect-free Goods.

10.5. priomold shall be entitled to make the subsequent performance owed conditional upon the Customer paying the price due. However, the Customer shall be entitled to retain a portion of the agreed price that is reasonable in relation to the defect.

10.6. The Customer shall give priomold the time and opportunity required for subsequent performance, in particular by handing over the Goods complained of for inspection purposes. In the event of replacement delivery, the Customer shall, at priomold’s request, return the defective Goods to priomold in accordance with the statutory provisions; however, the Customer shall have no right to return them. Subsequent performance shall include neither the dismantling, removal or deinstallation of the defective Goods nor the installation, attachment or fitting of defect-free Goods if priomold was not originally obliged to provide such services; the Customer’s claims for reimbursement of corresponding costs (“Removal and Installation Costs”) shall remain unaffected.

10.7. The expenses necessary for inspection and subsequent performance, in particular transport, travel, labour and material costs and, where applicable, Removal and Installation Costs, shall be borne or reimbursed by priomold in accordance with the statutory provisions and these GTC if a defect actually exists. Otherwise, priomold may demand reimbursement from the Customer of the costs arising from an unjustified request to remedy a defect if the Customer knew or could have recognised that no defect actually existed.

10.8. The Customer’s claims for reimbursement of expenses pursuant to section 445a (1) BGB are excluded unless the last contract in the supply chain is a sale of consumer goods (sections 478, 474 BGB) or a consumer contract concerning the provision of digital products (sections 445c sentence 2, 327 (5), 327u BGB). Claims by the Customer for damages or reimbursement of futile expenses (section 284 BGB), including in the event of defects in the Goods, shall exist only in accordance with clauses 11 and 12 below.

11. Limitation Periods

11.1. In deviation from section 438 (1) no. 3 BGB, the general limitation period for claims arising from material defects and defects of title under contracts of sale and contracts for the supply of goods to be manufactured or produced shall be one year from delivery. In deviation from section 634a no. 1 and no. 3 BGB, the limitation period for claims arising from material defects and defects of title under contracts to produce a work shall be one year.

11.2. If the Goods are a building, an item which has been used for a building in accordance with its customary manner of use and has caused the building to be defective (building material), or a work whose result consists in the provision of planning or monitoring services for a building, the limitation period shall, in accordance with the statutory provisions, be five years from delivery or acceptance (section 438 (1) no. 2 BGB, section 634a (1) no. 2 BGB). Other special statutory provisions on limitation shall also remain unaffected.

11.3. The above limitation periods under the law governing contracts of sale and contracts to produce a work shall also apply to contractual and non-contractual claims for damages by the Customer based on a defect in the Goods, unless application of the regular statutory limitation period (sections 195, 199 BGB) would result in a shorter limitation period in the individual case. The Customer’s claims for damages in the cases set out in clause 12.1 shall become statute-barred exclusively in accordance with the statutory limitation periods.

12. Liability

12.1. priomold's liability shall be unlimited
• in the event of a grossly negligent or intentional breach of duty;
• in the event of injury to life, limb or health;
• under the provisions of the German Product Liability Act (Produkthaftungsgesetz);
• to the extent of a guarantee assumed; and
• in the event of fraudulent concealment of a defect.

12.2. In all other respects, priomold's liability is excluded or limited in accordance with the following provisions.

12.3. priomold shall be liable for damages of any kind resulting from simply negligent breaches of material contractual obligations (i.e. obligations the breach of which would frustrate or jeopardise achievement of the purpose of the Contract or use of the performance in accordance with the Contract) only insofar as such damages are typical for the Contract and foreseeable for priomold.

12.4. The above liability provisions shall also apply to claims in tort and to fault on the part of priomold's persons employed in performing an obligation and legal representatives.

13. Confidentiality; Naming in a Reference List; Data Protection Information

13.1. The Contracting Parties are obliged to keep confidential all information becoming accessible to them which is marked as confidential or is recognisable from other circumstances as a business or trade secret and, except insofar as required or necessary for performance of the Contract, neither to record nor disclose nor exploit such information. The confidentiality obligation shall cease to apply insofar as the receiving Contracting Party can prove that the information was already known to it before commencement of the contractual relationship, was generally known or generally accessible before commencement of the contractual relationship, or becomes generally known or accessible without fault on the part of the receiving Contracting Party.

13.2. priomold is entitled to name the Customer's company name as a reference on its website and in quotation documents. Any advertising use going beyond naming the Customer, in particular using logos, trademarks, images or specific project data, shall take place only with the Customer's prior express consent. The Customer shall be entitled at any time to object to being named as a reference with effect for the future. In such a case, priomold shall remove the reference without undue delay.

13.3. Information pursuant to Articles 13 and 14 GDPR concerning the processing of the Customer's data can be found in the information provided on priomold's website under https://www.priomold.de/datenschutz.

14. Applicable Law; Place of Jurisdiction

14.1. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the relevant conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.2. The place of jurisdiction for all disputes arising out of and/or in connection with these GTC shall be Stuttgart. priomold shall also be entitled to bring an action at the Customer's registered office and at any other permissible place of jurisdiction.

Overriding statutory provisions, in particular concerning exclusive jurisdiction, shall remain unaffected.

15. Miscellaneous

15.1. The transfer of the Customer's rights and obligations to third parties shall be permissible only with priomold's prior written and express consent.

15.2. Set-off against counterclaims of the Customer or withholding of payments on account of such claims shall be permissible only insofar as the counterclaims are undisputed or have been finally adjudicated or arise from the same order under which the relevant performance was rendered.

15.3. Deviating agreements or ancillary agreements made before or upon conclusion of the Contract shall only be effective if made in writing. This shall also apply to any waiver of this written-form requirement.

15.4. Should individual provisions of these GTC be invalid, this shall not affect the validity of the remaining provisions. The Contracting Parties shall without undue delay replace the invalid provisions with valid provisions that come as close as possible to the meaning and purpose of the invalid provisions.