STAUFF SAS – Vineuil (FRANCE)
General Terms and Conditions of Purchase

I. General – Area of Application

1) Our general terms and conditions of purchase shall apply to all business relations with our business partners and suppliers (hereinafter referred to as seller). The general terms and conditions of purchase shall only apply if the seller is a businessman a corporate body under public law or a special fund under public law.

2) The general terms and conditions of purchase shall apply in particular to contracts regarding the sale and/or the delivery of chattels (hereinafter also referred to as goods) irrespective of whether the seller produces the goods himself or purchases them from sub-contractors. The respective version of the general terms and conditions of purchase shall also apply as a framework agreement for future contracts with the same seller regarding the sale and/or delivery of chattels, without it becoming necessary for us to refer to them again in each individual case; in this case we shall inform the seller immediately of any amendments to our general terms and conditions of purchase.

3) Our general terms and conditions of purchase shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the seller shall only then become an integral part, insofar as we have expressly consented in writing to their validity. This approval requirement shall apply in any event, also for example, if we accept the deliveries of the seller without reservation being aware of his general terms and conditions of business or if we refer to a letter that contains or refers to the general terms and conditions of business of the seller or a third party.

4) Individual agreements that are made with the seller in an individual case, including collateral agreements, additions or amendments shall, in any event, take precedence over these general terms and conditions of purchase. A written contract or our written confirmation shall be decisive for the contents of such agreements.

5) Declarations and notifications of legal relevance that the seller must issue to us after conclusion of contract, (e.g. deadlines, warnings, cancellations), shall be required in the written form to be valid.

II. Orders – Conclusion of Contract

1) Our order shall be regarded as binding at the earliest when it is placed in writing or following confirmation. Before acceptance the seller shall draw our attention to apparent errors (e.g. typing errors and/or calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion; the contract shall otherwise be regarded as not having been concluded.
Forecast delivery schedules can be in text form e.g. via e-mail or by means of data communication.

2) The seller shall be obligated to confirm our order in writing within a time-limit of 72 hours or to execute it without reservation, in particular by means of forwarding the goods (acceptance of contract).
Belated acceptance shall be regarded as a new offer and shall require our acceptance.

3) We shall be entitled to change the time and place of the delivery as well as the type of packaging by means of written notification at any time by observing a minimum time-limit of 3 weeks before the agreed date of delivery.
The same shall apply to amendments to product specifications insofar as they can be implemented within the framework of the supplier's normal production process without significant additional effort. The period of notification in these cases according to the preceding paragraph shall be at least 4 weeks. We shall reimburse the supplier for the substantiated and reasonable additional costs incurred in each case due to the amendment. If the consequence of amendments of this kind should be delays in delivery that cannot be avoided by means of reasonable efforts during the normal production and business operations of the supplier, the originally agreed delivery date shall be postponed accordingly. After careful appraisal, the supplier shall notify us in writing in good time of the expected additional costs or delays in delivery, however no later than within 8 working days after receipt of our notification in accordance with paragraph 1.

4) We shall be entitled to terminate the contract at any time by means of a written declaration and by stating the reason, if we are no longer able to use the ordered products in our business operations on account of circumstances that arise after conclusion of contract. In this case we shall reimburse the supplier for the partial performance provided.

5) The seller shall be obligated to manufacture the goods for us according to the recognized codes of practice and in compliance with the safety regulations and agreed technical data, etc. if applicable and to deliver them to us.

III. Delivery Dates – Default in Delivery

1) The delivery time stated in our order is binding. In case a delivery time is not stated in our order and has also not been agreed otherwise, it shall be approx. 3 weeks as from conclusion of contract. The seller shall be obligated to inform us immediately in writing if circumstances arise or become recognizable, whereby it will presumably not be possible to adhere to the delivery time.
We shall be entitled to reject a premature delivery.

2) If the day on which the delivery must take place at the latest can be determined on account of the contract, the seller shall be in default at the end of this day without it being necessary for us to issue a warning.

3) If the seller fails to perform or fails to perform within the agreed delivery time or is in default, we shall, without restrictions, be entitled to the legal claims, including the right of withdrawal and a claim to compensation for damages instead of performance after fruitless expiry of a reasonable additional respite; number 4 below shall apply additionally.

4) In the event that the seller is in default, we can – in addition to further legal claims - demand lump-sum compensation for our damage caused by default in the amount of 1 % of the net price per complete calendar week, in total, however, not more than a maximum of 5 % of the net price of the goods delivered belatedly. We shall have the right to produce evidence that we incurred greater damage. The seller shall have the right to prove that we did not suffer any damage at all or that we only incurred significantly lesser damage.

5) Without our prior consent, the seller shall not be entitled to make partial deliveries.

IV. Performance - Delivery – Transfer of Risk – Default of Acceptance

1) Without our prior written consent, the seller shall not be entitled to arrange for third parties (sub-contractors) to provide the performance he owes. The seller shall bear the procurement risk for his deliveries and performance, unless agreed otherwise in an individual case (e.g. sale of goods in stock).

2) Delivery shall be made carriage paid to the place stated in the order. If the place of destination is not stated and no other agreement has been made, delivery shall be made to our place of business. The respective place of destination shall also be the place of performance (obligation to perform at the buyer's location).

3) A delivery note stating the date (issue, dispatch), contents of the delivery (item number, quantity) and our order identification (date and number) must be attached to the delivery. If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting from this.

4) Even if shipment should have been agreed, the risk of accidental loss or accidental deterioration of the object shall not transfer to us until the goods are handed over at the agreed place of destination. Insofar as acceptance is agreed, this shall be decisive for the transfer of risk. Apart from this, the statutory provisions of the law applicable to works and services shall also apply accordingly in the case of acceptance. If we are in default of acceptance, this will be considered as delivery or acceptance.

5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the seller must also expressly offer us his delivery or performance if a certain or definable calendar date has been agreed for action or cooperation on our part (e.g. provision of material). If we should be in default of acceptance, the seller can demand compensation for his additional expenditure according to the statutory provisions (Article 304 German Civil Code). If the contract pertains to an unjustifiable object to be manufactured by the seller, the seller shall only be entitled to further rights if we undertake to cooperate and are responsible for failing to cooperate.

V. Prices – Payment Terms - Packaging - Offset - Retention

1) The prices displayed in the order are binding and, unless agreed otherwise, shall apply in the case of delivery carriage paid. The seller must inform us by written about any price increase at least 2 months before its implementation. In case of disapproval, the former price will remain unchanged for at least 90 days and we will be entitled to put an end to the business relationship without notice or compensation due to substantial modification.

2) Unless agreed otherwise in an individual case, the price shall include all performance and incidental services by the seller (e.g. assembly, installation) as well as all additional charges (e.g. proper packaging, costs of carriage including any cargo insurance and liability insurance). The return of packaging materials shall only be due in the event of a special agreement.
We shall be entitled to make use of re-usable handling aids and storage means. Such aids shall remain our property and must be returned to us.

3) We shall be entitled to rights of retention and rights of set-off to the extent of the law. The same shall apply to the defense of lack of performance of the contract. We shall be entitled to retain due payments as long as we are still entitled to claims against our seller arising from incomplete or faulty deliveries or performance.

4) The seller shall only be entitled to assign his claims against us following our prior written consent. In the event that an extended reservation of title is given for the seller, this consent shall be regarded as given.
The seller shall only have a right of set-off or a right of retention on the basis of res judicata or undisputed counterclaims.

5) We shall not owe any due date interest. The default interest shall amount to 5 % points over and above the base lending rate per annum.
The statutory provisions shall apply should we be in default, whereby deviating from this if applicable, a written warning from the seller shall be necessary in either case.

VI. Ownership Protection - Tools – Manufacturing Equipment

1) We reserve ownership or copyright to the orders and contracts we placed as well as to the drawings, illustrations, calculations, executive instructions, descriptions, product descriptions and other documents placed at the seller's disposal. Without our express consent, the seller must not make them accessible or announce them to third parties or use or duplicate them himself or by third parties. Documents of this kind are to be used exclusively for the contractual deliveries and kept secret vis-a-vis third parties, namely also after termination of this contract. The duty to observe secrecy shall only expire when and insofar as the knowledge contained in the surrendered documents becomes public. At our request he shall return these documents to us in their entirety, if they are no longer required by him in the due course of business or if negotiations do not lead to the conclusion of a contract. Any copies of these documents made by the seller must be destroyed in this case; only the saving of documents within the framework of the legal obligation to retain data and the storage of data for backup purposes within the framework of the normal data backup procedure shall be excluded.

2) The preceding provision shall apply accordingly to materials (semi-finished products, finished products) as well as to tools, guidelines, samples and other objects that we make available to our seller for manufacturing. As long as they have not been processed, such objects must be stored separately at the expense of the seller and safeguarded to a reasonable extent against destruction and loss. The seller shall be obligated to mark such objects as our property.
The seller shall bear the costs of the maintenance and repair of these objects.
The seller shall be obligated to notify us immediately of all damages to objects that have been made available – this does not only refer to significant damages. On request he shall be obligated to surrender these objects to us in an orderly condition, if he no longer needs them to fulfil the contracts concluded with us.

3) Processing, mixing or bonding (further processing) by the seller of objects that have been made available shall be carried out on our behalf. The same shall apply to the further processing of goods we have delivered, so that we are considered to be the manufacturer and acquire ownership of the product according to the statutory provisions at the latest upon further processing.

4) The assignment of the goods to us must be carried out without fail and regardless of the payment of the price. However, in the event that we accept an offer of the seller in consequence of the purchase price payment in an individual case, the reservation of title of the seller shall expire at the latest upon payment of the purchase price for the delivered goods. We shall also continue to be authorized to resell the goods during the due course of business before payment of the purchase price under assignment in advance of the claim arising from this. In any case, all other forms of reservation of title shall be excluded, in particular the enhanced and the forwarded reservation of title and the reservation of title extended to further processing.

5) The seller shall be obligated to insure at replacement value (against water, fire, theft) and at his expense materials, tools etc. and other objects belonging to us that we have made available (comp. preceding 1st line of the 1st paragraph). The seller shall already now assign to us all possible claims to compensation arising from the insurance. We already now accept the assignment.

VII. Defects - Warranty

1) Unless specified otherwise below, the statutory provisions shall apply to our rights in the case of defects as to quality and defects of title of the goods (including wrong deliveries and short deliveries as well as improper assembly and faulty assembly instructions, manuals or operating instructions) and other breaches of duty by the seller.

2) The seller shall, in particular, be liable according to the statutory provisions for the goods having the agreed properties and condition when the risk is transferred to us. Those product descriptions that are the subject matter of the respective contract – in particular due to the designation or reference in our order – shall be valid as an agreement regarding the properties and condition or in the same way in which these terms and conditions of purchase were included in the contract. In the process, it does not make any difference whether the product description originates from us, from the seller or from the manufacturer.

3) We shall also be entitled to unrestricted claims for defects if the defect remains unknown to us upon conclusion of the contract in consequence of gross negligence.

4) The statutory provisions shall apply to the commercial obligations to inspect and make a complaint in respect of a defect immediately on receipt of the goods with the following provision: our obligation to inspect shall be restricted to defects that are clearly obvious upon external appraisal during our incoming goods inspection (rough incoming inspection) (damages in transit, wrong deliveries and short deliveries). An obligation to inspect shall not exist insofar as acceptance has been agreed. Apart from that it depends on the extent to which it is possible to carry out an examination according to the general course of business in due consideration of the circumstances of the individual case.
Our duty to make a complaint in respect of defects discovered at a later point in time shall remain unaffected.
Our complaint (notice of defects) shall be regarded as immediate and in good time if it is made within 8 calendar days after receipt of the goods insofar as defects are discovered during a rough incoming inspection or apart from that if the notice of defects is made within 8 days after discovery of the defect.

5) The seller shall also bear the costs involved for the purpose of examination and rectification, including any disassembly and assembly costs, even if it turns out that a defect did not actually exist. Our liability for damages in the case of an unrestricted demand for rectification of a defect and a restricted demand for rectification of a defect remain unaffected; however, we shall only be liable in this respect if we recognized or did not recognize due to gross negligence that a defect did not exist.

6) In the event that the seller does not comply with his duty to provide supplementary performance – at our option by rectification of the defect (rectification) or by delivery of a flawless item (replacement delivery) – within a reasonable time-limit as set by us, we shall be able to rectify the defect on our own and demand compensation from the seller for the necessary expenditure for this or an appropriate advance payment. A deadline shall not be necessary if supplementary performance by the seller has failed or if it is not reasonable for us (e.g. on account of special urgency, a threat to operating safety or the imminent occurrence of unreasonable damages); we shall inform the seller immediately, or in advance if at all possible, of such circumstances.

7) Apart from this, in the case of a defect as to quality or defect of title we shall be entitled to diminution of the purchase price or withdrawal from the contract according to the statutory provisions. Furthermore, we shall have a claim according to the statutory provisions to compensation for damage and expenditure.

8) In the absence of a deviating agreement, our place of business shall be the place of performance for rectification of defects by the seller, provided that the goods are located there. If the goods delivered as intended by the seller have arrived at another location, the place of performance for rectification of defects shall in this case be the place where the goods are located.

9) The limitation of warranty claims shall be held in check following receipt by the seller of our notice of defects. In the case of a replacement delivery and rectification of defects the warranty period for replaced and/or rectified parts shall begin again, unless the behavior of the seller caused us to assume that he did not regard himself as obliged to take this measure, and only carried out the replacement delivery or rectification of the defects as a gesture of goodwill or for other reasons.

10) We shall not dispense with warranty claims on the grounds of acceptance or approval of submitted samples or specimens.

VIII. Supplier Recourse

1) We shall, without restrictions, be entitled to our statutory claims for recourse within a supply chain in addition to the claims for defects. We shall, in particular, be entitled to demand exactly that kind of supplementary performance from the seller (rectification of a defect or replacement delivery) that we owe to our buyer in an individual case. Our statutory right of choice shall not be restricted by this.

2) We will inform the seller before we acknowledge or satisfy a claim for defects (including reimbursement of expenses) from our buyer, and ask for a written statement while providing a brief explanation of the circumstances. If a statement is not provided within a reasonable time-limit and if an amicable solution is also not brought about, the supplementary performance we actually granted shall be deemed owed to our buyer; evidence to the contrary shall be incumbent upon the seller in this case.

3) Our claims arising from supplier recourse shall also be valid if the goods were processed by us or one of our buyers, e.g. due to installation in another product, before they were sold to a consumer.

IX. Product Liability – Insurance

1) The seller shall be obligated to indemnify us from claims by third parties to compensation for damages according to the Product Liability Act, provided that the cause is seeded in his domain and organizational area and that he is liable himself in relation to third parties.
In such cases of loss the seller shall be obligated to reimburse us for any expenditure that arise from or in connection with a claim by a third party including any product recalls we carried out and to which we are obliged. In as far as possible, we shall be at pains to coordinate such product recalls in advance with our supplier with regard to content and extent. Further legal claims on our part shall remain unaffected.

2) The seller shall undertake to take out and maintain product liability insurance with a flat-rate insured sum of at least € 10 million per injury to persons/damage to property. On demand he shall provide us with proof of this insurance. In the event that we are entitled to further claims, they shall remain unaffected.

X. Trade Mark Rights

1) The seller shall avouch that there will be no claims against us following use of the delivery items as provided in the contract arising from the infringement of any trade mark rights and patent applications, in particular third-party claims to compensation for damages, provided that an application for a patent for such trade mark rights has been made at the German or European Patent Office or that they are registered. The same shall apply if the products are manufactured in North America or other countries. Our supplier shall indemnify us from any claims to compensation for damages.

2) The liability for damages or the indemnity obligation of our supplier shall also extend to such expenditure that we necessarily incur arising from and in connection with a claim by third parties.

3) The preceding regulations shall not take effect if our supplier has manufactured delivery items for us according to our specifications, in particular drawings, models and other descriptions and he does not know or does not need to know that trade mark rights of third parties are infringed by this.

4) Our supplier shall be obligated to immediately notify us of the risks of trade mark right infringements, in particular alleged cases of infringement.

XI. Spare Parts

1) The supplier shall be obligated to have spare parts available for the products delivered to us for a period of at least 10 years after delivery.

2) In the event that the supplier intends to discontinue production of the spare parts for the products delivered to us, he will inform us immediately after the decision is made regarding discontinuation. Subject to paragraph 1), this decision must be made at least 6 months before discontinuation of production.

XII. Secrecy

1) The seller shall be obligated to maintain secrecy for a period of 24 months after conclusion of contract regarding the conditions of our order and all information and documents provided for this purpose (with the exception of publicly available information) and to only use them for the execution of the order. He shall, on demand, return them to us immediately after handling enquiries or after completion of orders.

2) Furthermore, the seller shall be obligated to keep secret all commercial and technical information and knowledge that are not obvious and that become known due to our business relationship; in particular models, templates, samples, tools and similar items must not be entrusted to unauthorized third parties or made otherwise accessible. Unless provided otherwise by deviating regulations, the duplication of such items is also prohibited except within the framework of operational requirements.

3) Any sub-contractors, who are permissibly appointed by our supplier, shall be obligated accordingly.

4) Our supplier must only advertise the mutual business relationship after obtaining our prior written approval.

XIII. Statute of limitations

1) The respective reciprocal claims of the contracting parties shall fall under the statute of limitations according to the statutory provisions, insofar as not agreed otherwise below for an individual case.

2) The general limitation period for claims for defects amounts to three years (36 months) as from transfer of risk. Insofar as acceptance has been agreed, the statute of limitations shall begin upon acceptance. The three-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims by third parties for restitution in rem shall remain unaffected; in addition, claims on the grounds of defects of title shall, on no account, fall under the state of limitations as long as the third party is still able to assert the right against us, in particular in the absence of statute of limitations.

3) The limitation periods of the Sale of Goods Law including the preceding extension shall apply to the legal extent to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims to compensation for damages on the grounds of a defect, the regular statutory statute of limitations shall apply to this, if the Sale of Goods Law does not lead to a longer limitation period in an individual case for the application of limitation periods.

XIV. Jurisdiction – Choice of Law etc.

1) Our place of business shall be the exclusive place of jurisdiction. However, we shall also be entitled to bring suit at the domicile of the seller.

2) The French law shall apply to these general terms and conditions of purchase and all legal relations between us and the seller to the exclusion of international uniform law (United Nations Convention on Contracts for the International Sale of Goods – CISG). Requirements and effects of the reservation of title shall be subject to the law of the respective storage location of the goods, insofar as according to this the decision made with regard to the choice of law should be inadmissible or invalid in favor of France.