General Terms and Conditions of Sale of PLIXXENT GmbH & Co. KG

1. General Remarks, Scope of Application
1.1 The following General Terms and Conditions of Sale ("GTCS") shall apply to all sale relationships including services associated therewith (supply agreements) between PLIXXENT GmbH & Co. KG ("Seller") as seller and the respective Seller’s customer ("Purchaser") unless, as the Purchaser is a business owner, legal entity under public law or special fund organized under public law.

1.2 These GTCS in their respective version shall also serve as a framework agreement for future agreements on the sale and/or supply of goods or services ("Products") agreed or ongoing with the same Purchaser without Seller having to refer to them again in each individual case. The performance of the agreements may require the processing of personal data, as set forth in the information form.

1.3 These GTCS shall apply exclusively. Any general terms of Purchaser which differ, contradict or supplement these GTCS shall be considered a part of the parties’ contract only if and insofar as Seller has explicitly agreed to their applicability on a case-by-case basis. This consent requirement shall apply in all cases, even if Seller supplies Purchaser in awareness of Purchaser’s general terms without explicitly rejecting such document.

1.4 Material declarations and notices to be provided by Seller to Purchaser after conclusion of the contract (e.g., setting of deadlines, notification of defaults, cancellation of contract or reduction of payments) must be in writing in order to be effective.

1.5 Retrospectively, if a legal provision is not for purposes of clarification only, then, unless they are directly changed or explicitly excluded in these GTCS, legal provisions shall apply even in the absence of such clarification.

2. Offers, Contract Execution
2.1 Seller’s offers are non-binding and subject to change unless they have expressly been labeled as binding with reasonable certainty or they contain a certain term for acceptance.

2.2 The products by Purchaser shall constitute a binding offer to enter into a contract. Unless the order specifies differently, Seller shall have the right to accept this offer within three (3) weeks following its receipt.

2.3 The supply agreement including these GTCS shall only be considered as concluded when Purchaser provides the acceptance of the supply offer of Seller within the specified time limit, or when Seller accepts and provides written acknowledgement of its acceptance of the Purchaser’s order within the time limit. Seller is not required to provide such written confirmation if it is not to be expected under the circumstances or if Purchaser waives it.

2.4 All aspects of the legal relationship between Seller and Purchaser shall be based upon the concluded contract as defined in Section 2.3, which contains the entire agreement between the parties concerning the subject matter of the supply agreement, unless explicitly agreed otherwise or applicable law requires a specific framework agreement. Oral communications between Seller and verbal agreements between the parties shall be replaced and superseded by the written contract unless it can be proven that they were identical to the written version.

2.5 Product descriptions, documents and data (such as weights, dimensions, serviceability, tolerances or technical data) provided by Seller to Purchaser, including those in electronic format, shall not constitute guaranteed compositions of the Product. Customary deviations, deviations resulting from legal regulations, as well as other minor deviations, shall be permitted unless they interfere with the usability of the Product for the purpose as indicated in the supply agreement.

3. Period and Delay of Delivery
3.1 Unless the delivery date has been agreed to in an individual case or has been explicitly stated by Seller upon acceptance of an order, Seller will endeavor to deliver as quickly as possible. If shipment was agreed, the delivery periods and dates shall refer to the date and time of handover to the shipper, carrier or other third party commissioned to provide transportation. This does not apply if Seller has entered into an obligation to deliver to the location of Purchaser (Batteriein). In such cases, if Seller is unable to meet binding delivery dates for reasons beyond its responsibility, Seller will promptly inform Purchaser accordingly and at the same time indicate the new prospective delivery date.

3.2 The date of delivery shall be the day on which the Products leave Seller’s plant or a warehouse or, if such date cannot be ascertained, the day on which the Products are placed at the disposal of Purchaser.

3.3 The occurrence of a default of delivery is governed by the applicable statutory law. In the case of delay, Purchaser shall set a reasonable grace period.

4. Delivery, Place of Performance, Shipping, Transfer of Risk, Default of Payment
4.1 Delivery shall be effected from the respective shipping point in accordance with the general commercial terms and conditions of the contract, the interpretation of which shall be governed by the INCOTERMS applicable on the date the supply agreement is concluded. Unless expressly agreed otherwise, delivery will be made “EXW” (Ex Works).

4.2 Unless otherwise agreed, Seller shall be entitled to select the mode of shipment (especially with regard to country, route of shipment, packaging). Any additional costs incurred as a result of special shipping modes requested by Purchaser shall be borne by Purchaser. Unless a campaign delivery of “Pull” has been agreed, Purchaser shall also bear all increases in shipping rates, any additional costs resulting from re-routing a shipment, storage expenses, etc., occurring after the supply agreement has been concluded.

4.3 Any provision of packaging, including the provision of tank cars and tank container quantities, shall be subject to the general conditions of the contracts, together with the costs for such packaging. The risk of accidental destruction, deterioration or loss of Products shall pass to Purchaser in accordance with the agreed INCOTERM.

5. Force Majeure, Impediments
5.1 Force majeure of any kind, unforeseeable production, traffic or shipping disruptions, natural disasters, flooding or other water levels, unforeseeable shortages of labor, energy, raw material and supplies, strikes, lockouts, war, political unrest, acts of terrorism, acts of government, incorrect or delayed delivery by suppliers or any other hindrances beyond Seller’s control which diminish, delay or prevent production, shipment, delivery or availability of Seller’s agreed-upon Products, if the unreasonable proposition, shall release Seller from its obligation to perform for the duration and to the extent of that such disruption or hindrance prevails.

5.2 In case of a partial or complete shortfall of its then existing sources of supply, Seller may, at its sole discretion, either purchase alternative supplies from other suppliers. Instead, Seller shall have the right to allocate available quantities of Products under consideration of its own requirements as well as other supply obligations.

5.3 If an event pursuant to Section 5.1 lasts longer than six (6) weeks and if the disruption (or default of delivery) is more than insignificant, Seller shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Purchaser will be refunded immediately after the withdrawal. In case of temporary hindrances due to events pursuant to Section 5.1, any delivery or performance periods will be extended or postponed by the duration of the impediment plus a reasonable start-up period.

6. Prices and Calculation
6.1 Seller’s prices apply as in effect at the time of delivery. Value added tax applies in addition, also to pre- and down payments, as legally owed under applicable statutory law.

6.2 The weight to be invoiced shall be determined at the shipping location of the respective Seller plant unless Purchaser, at its own expense, requires a certified weighing at the respective dispatch station.

7. Invoicing, Payments, Set-Off, Rights of Retention and of Refusal to Perform
7.1 The purchase price shall be due upon receipt of the invoice and, unless otherwise agreed or specified in the invoice, within eight (8) days from the date of the invoice. Invoices shall be deemed received at the most recent billing address of the Purchaser no later than three (3) days following the invoice date.

7.2 Payments shall not be deemed effected until the due amount has been definitively cleared with bank accounts.

7.3 Seller reserves the right to apply payments towards the oldest invoices first plus the late interest accumulated on those invoices and the costs of collection in the following order: costs, interest, principal.

7.4 Retention by Purchaser shall be excluded. Purchaser is only entitled to offset if its claims are undisputed or judicially established as final and absolute.

8. Retention of Title
8.1 If the supplier receives full payment of all current and future receivables under the current business relationship between Seller and Purchaser including incidental receivables and claims ("secured Receivables") Seller reserves title in the Products sold ("Products under Title Retention").

8.2 Until the Secured Receivables are fully paid, Products under Title Retention may neither be pledged to third parties nor transferred as securities. Purchaser shall inform Seller immediately in writing in the event of third parties attempting to take possession of the Products under Title Retention.

8.3 If Products under Title Retention are intended for commercial resale by Purchaser, Purchaser is entitled to sell them to its customer as part of its ordinary course of business. With respect to such a resale, the Purchaser hereby assigns to Seller, and Seller hereby accepts, as security all of the future claims, including subsidiary claims, the Purchaser will have against its customer in consideration for the resale of the Products under Title Retention. Seller is entitled to collect the claims so assigned in its own name or as co-owner. Should the Purchaser fail to meet its payment obligation concerning the Products under Title Retention, if a petition for the initiation of insolvency proceedings has been filed or in case of another lack of the Purchaser’s ability to pay, Seller may request that Purchaser executes the necessary formality for debt claim realization of its claims. In such instances, Seller discloses to Seller the assigned debt claims and the respective debtors, provides all necessary information for debt claim recovery, hands over all documents pertaining and notifies the debtors (third parties) of the assignment.

8.4 If Products under Title Retention are not sold, Seller shall be entitled to safeguard the Products under Title Retention. At all times, Seller will keep the Products in its possession, maintain them in unaltered condition and avoid any such action that would diminish the value of the Products or affect Seller’s right to sell the Products. If the disruption or default of delivery is more than insignificant, Seller shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Purchaser will be refunded immediately after the withdrawal. In case of temporary hindrances due to events pursuant to Section 5.1, any delivery or performance periods will be extended or postponed by the duration of the impediment plus a reasonable start-up period.

8.5 Any processing of the Products under Title Retention shall be carried out on behalf of Seller; such processing shall not entitle Purchaser to any claims against Seller.

8.6 In the event of a combination or inseparable commingling of the Products under Title Retention, Seller hereby accepts, as security all of the future claims, including subsidiary claims, the Purchaser will have against its customer in consideration for the resale of the Products under Title Retention. If a petition for the initiation of insolvency proceedings has been filed or in case of another lack of the Purchaser’s ability to pay, Seller may request that Purchaser executes the necessary formality for debt claim realization of its claims. In such instances, Seller discloses to Seller the assigned debt claims and the respective debtors, provides all necessary information for debt claim recovery, hands over all documents pertaining and notifies the debtors (third parties) of the assignment. If Products under Title Retention are not sold, Seller shall be entitled to safeguard the Products under Title Retention. At all times, Seller will keep the Products in its possession, maintain them in unaltered condition and avoid any such action that would diminish the value of the Products or affect Seller’s right to sell the Products. If the disruption or default of delivery is more than insignificant, Seller shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Purchaser will be refunded immediately after the withdrawal. In case of temporary hindrances due to events pursuant to Section 5.1, any delivery or performance periods will be extended or postponed by the duration of the impediment plus a reasonable start-up period.

9. Quality
9.1 Unless otherwise agreed, the quality of the Products shall be exclusively determined in Seller’s product description, fire, explosion, and radiation hazards, label-identified uses for the Products pursuant to the European REACH
9.2 Any technical advice rendered by Seller – whether verbal, in writing or by way of tests – is given to the best of Seller's knowledge but without any warranty; this also applies where proprietary rights of third parties could be involved. It does not release the Purchaser from its obligation to test the Products supplied by Seller as to their suitability for the intended processes and purposes. The application, use and processing of the Products are beyond the control of Seller and therefore the Purchaser bears the entire corresponding responsibility.

9.3 The Purchaser is required to maintain and store the Products, including the software, properly and in accordance with proper technical instructions. The Purchaser shall be held liable for any damage to the Products caused by the Purchaser, its representatives, employees, workers, agents and vicarious agents of Seller arising out of the same cause of action.

10. Period of Notice for Defects

Purchaser must notify Seller in written form, giving an exact description of the defect; for obvious defects, such notification must take place immediately after delivery and, for defects that can be discovered when the Products are properly inspected, no later than two (2) weeks following receipt of the Products. Transport damages are to be noted on the shipment documents. Hidden defects must be notified immediately, but no later than two (2) weeks after their detection; here, too, defects must be notified in written form including supporting documents (e.g. pictures, CMR) of the defect are required for the notification. If Purchaser fails to notify Seller of a defect within the specified time limit, the delivered Products shall be deemed accepted.

11. Claims of Purchaser Due to Defects

11.1 If the Products are defective and Purchaser has fulfilled its duties in accordance with Section 10, Purchaser is entitled to exercise the following rights:

(i) In case of delay, Seller – at its sole discretion – shall be entitled to either cure the defect or supply Purchaser with non-defective Products (extraordinary performance). Product names and specifications shall allow Seller the time and opportunity required for the extraordinary performance, and, in particular, return the Products concerned for testing purposes. If the delay is due to orderly compliance of regulatory and legal requirements, the delay is not to be considered as unaffected. Any claims for damages shall be subject to the provisions of Section 12.

(ii) Seller shall bear the costs necessary for testing and supplementary performance, in particular for shipping and transport as well as for necessary materials, unless Purchaser’s request to have defective Products remedied was unjustified, in which case Purchaser shall bear the costs. Seller shall not bear the increased expenses due to Products being moved to a location other than Purchaser’s place of business, unless this move coincides with the proper intended use. In case of replacement, Purchaser must return the defective Products to Seller upon request. Claims according to Section 438 (1) BGB for expenses for removal and installation shall remain unaffected.

(i) Seller reserves the right to two (2) attempts of supplementary performance. If supplementary performance fails or is unreasonable for Seller, Purchaser may either withdraw from the contract or demand a reduction of the purchase price. However, in case of an immaterial defect, Purchaser shall have no right of withdrawal.

(iii) The claims for damages under Section 12 shall apply to all claims of Purchaser for damages or reimbursement of unavailing expenditures.

11.2 The special regulations regarding the recourse within the supply chain (Section 445a, 446 b) shall apply in its entirety, unless Purchaser’s or Seller’s claim against Seller is a matter of recourse following a successful action against Purchaser under the statutory provisions of the sale of consumer goods, claims for recourse under the statutory provisions for the sale of consumer goods. In this case, all claims for recourse based on the statutory provision for the sale of consumer goods shall remain unaffected. Any claims for damages shall be subject to the provisions of Section 12.1.

11.3 Purchaser must inform Seller without delay of each and every case of recourse within the supply chain. Statutory recourse claims of Purchase to Seller shall only exist if and in so far the choice of law advised against by Seller, then Seller shall have the right to withdraw from the contract.

12. Exclusions and Limitations of Liability

12.1 Irrespective of the legal bases, Seller shall not be liable for loss or damage (including expenses) suffered by the Purchaser as a result of (i) Seller’s slight negligence or the slight negligence of its legal representatives, employees, workers, agents and vicarious agents of Seller arising out of the same cause of action.

12.2 Inssofar as Seller is liable on the merits for damage, Seller’s liability for all damages and reimbursements, whether contractual or extra contractual, shall be limited in terms of amount to foreseeable damages typical for the respective co-contractor.

12.3 The above exclusions and limitations of liability shall not apply to claims relating to death, personal injury and impaired health or for claims under the German Product Liability Act. Mandatory provisions of law shall therefore remain unaffected.

12.4 Seller cannot be held responsible for loss or damage attributable to any of the circumstances identified in Section 5 of these GTCS.

12.5 Seller shall not be liable for loss or damage in case of impossibility or delay in the performance of its supply obligations if the impossibility or the delay is due to orderly compliance of regulatory and legal obligations, including but not limited to Regulation (EC) No 1907/2006 (“REACH Regulation”) or sanctions provisions.

12.6 Any exclusion or limitation of liability in favor of Seller provided under this Section 12 shall also inure to the benefit of the legal representatives, employees, workers, agents and vicarious agents of Seller arising out of the same cause of action.

13. Guarantee

Any agreement on a guarantee must be in writing and shall be effective only if it describes in sufficient detail the substance of the guarantee as well as its duration and the territory in which it applies.

14. Limitation Periods

14.1 Claims for defects described on the basis of Section 438 (1) No. 3 BGB shall be time-barred one (1) year from the beginning of the statutory limitation period. Claims for defects described on the basis of Section 438 (1) No. 2 BGB (building works) shall expire two (2) years from the beginning of the statutory limitation period.

14.2 The regular limitation period (Section 195 BGB) for other contractual and non-contractual claims against Seller shall be two (2) years from the beginning of the statutory limitation period.

14.3 Mandatory limitation periods of law shall remain unaffected. Therefore, the reduced limitation periods described above shall not apply to claims based on the acceptance of a guarantee, claim-based on withdrawal misconduct or gross negligence, claims under the German Product Liability Act, recourse claims based on the regulations on the sale of consumer goods, claims relating to death, personal injury or impaired health, or to claims relating to breaches of cardinal duties as defined in Section 12.

14.4 If in an individual case the application of the statutory limitation regulations would lead to an earlier limitation of Purchaser’s claims against Seller than would be the case according to the preceding provisions, the shorter statutory limitation period shall apply.

15. Trademarks

15.1 The offer or supply of substitute goods to third parties instead of the Products of Seller while referring to the Seller Products, or the association in price lists and similar business documents of product names of Seller (whether trademarked or not) with the word “substitute” or similar words that convey the same meaning or juxtaposition of Seller product names with wordings typical for the respective co-contractor shall not apply.

15.2 It is also not permitted, when using Seller’s Products for manufacturing purposes or in processing, to use product names of Seller, especially its trademarks. Seller’s mark or name must not be used in advertising, packaging or in related printed and advertising materials without the prior written consent of Seller. The supply of Products under a trademark shall not be construed as an agreement on the use of this trademark for the goods manufactured from it.

16. REACH Regulation

If Purchaser communicates to Seller a use under Article 37.2 of the Regulation (EC) No 1907/2006 of the European Parliament and of the European Council of 18 December 2006 on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (the “Restriction of Hazardous Substances” or “RoHS Directive” or “REACH Regulation”) which makes an update of the registration of or of the chemical safety report necessary, or initiates any other obligation under the REACH Regulation, Seller shall receive from Purchaser a reimbursement of all verifiable expenses incurred. Seller shall not be liable for any delay in delivery caused by the announcement of that use and the compliance by Seller with the respective obligations under the REACH Regulation. If Seller, for reasons of protection of human health or the environment, is unable to include the use as an identified use and if Purchaser nonetheless intends to use the Products in the way advised against by Seller, then Seller shall have the right to withdraw from the contract.

17. Governing Law, Jurisdiction

17.1 These GTCS and all legal relationships between Seller and Purchaser shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, if the parties expressly agree otherwise, they may be governed by the law of the respective location of the Product and if inscissible the choice of governing law in favor of German law is not permitted or invalid.

17.2 The venue for all disputes, including international ones, arising directly from or in connection with this contractual relationship shall be Oldenburg, Germany. Here, sections 12 shall apply accordingly. The venue for all disputes, including international ones, arising directly from or in connection with this contractual relationship shall be Oldenburg, Germany. Here, Sections 12 shall apply accordingly. The venue for all disputes, including international ones, arising directly from or in connection with this contractual relationship shall be Oldenburg, Germany. Here, Sections 12 shall apply accordingly.

18. Compliance with Foreign Trade Law

18.1 If and insofar the choice of law advised against by Seller, then Seller reserves the right to cancel any accepted order for Products for manufacturing purposes if or in connection with international transactions for the sale of consumer goods, claims relating to death, personal injury or impaired health, or to claims relating to breaches of cardinal duties as defined in Section 12.

18.2 Seller may from time to time request from Purchaser information or confirmation of certain facts relevant for compliance with Foreign Trade Law Requirements with respect to Seller’s products, services or technology.

18.3 Seller reserves the right to change or cancel any accepted order for Products or services based on Foreign Trade Law Requirements, and to terminate the business relationship in case of non-compliance with applicable Foreign Trade Law Requirements.

18.4 Seller reserves the right to claim damages in case of Purchaser’s non-compliance with applicable Foreign Trade Law Requirements.