General Terms of sales and delivery of
INFRATEC Infrarot Strahler GmbH

1. Scope of Application
All of our deliveries, services and offers shall be governed exclusively by these Terms and Conditions, together with any separate contractual agreements that may be concluded. The Purchaser acknowledges these Terms and Conditions as binding for the present contract and for all future business transactions.
Any terms and conditions of the Purchaser that deviate from or supplement these Terms and Conditions shall not be binding upon us unless expressly accepted by us in writing. Such terms shall not become part of the contract by virtue of silence or through the act of delivery.

2. Offers and Conclusion of Contract
Our offers are non-binding and subject to change without notice. Orders and any other assignments shall only be binding upon us to the extent that we have confirmed them in writing. The same shall apply to any amendments, supplements or collateral agreements.
We reserve ownership and copyright in all documents, calculations, drawings, plans, samples and other information and materials, whether tangible or intangible and including those in electronic form. Such materials shall be treated as confidential and may not be disclosed or made accessible to third parties without our prior written consent.
Obvious errors, as well as printing, calculation, typographical or clerical mistakes, shall not be binding upon us and shall not entitle the Purchaser to any claim for performance or damages.

3. Pricing
Prices are quoted in euros (EUR) and are understood to be ex works, excluding freight and packaging costs. The statutory value added tax (VAT) is not included and shall be shown separately on the invoice at the rate applicable on the date of invoicing.

4. Payment
Unless otherwise agreed, our invoices shall be payable within 30 days from the date of invoice without deduction, or within 10 days with a 2% early payment discount.
In the case of payments made by draft or bill of exchange – the acceptance of which we reserve the right to refuse at any time – any discount and collection charges shall be borne by the Purchaser and shall be payable immediately in cash.

5. Deliveries
Shipment shall, in principle, be made at the Purchaser's expense and risk. Unless specific shipping instructions are provided to us prior to dispatch readiness, shipment shall be arranged by us at our reasonable discretion. The risk shall pass to the Purchaser once the goods have been handed over to the carrier or any other person entrusted with transport.
Where an acceptance (inspection) is required, such acceptance shall be decisive for the transfer of risk. It shall be carried out without delay on the agreed acceptance date, or, alternatively, upon our notification of readiness for acceptance. The Purchaser may not refuse acceptance on account of minor defects.
If dispatch or acceptance is delayed or does not take place due to circumstances for which we are not responsible, the risk shall pass to the Purchaser as from the date of notification of readiness for dispatch or readiness for acceptance.

6. Delivery and Performance Period
The dates and periods stated by us are non-binding unless otherwise expressly agreed in writing. The delivery period shall commence on the date on which written agreement has been reached on all essential terms of the order.
Compliance with the delivery period is subject to the timely receipt of all documents, materials and information to be supplied by the Purchaser, as well as compliance with the agreed terms of payment and any other contractual obligations.
We shall not be liable for delays in delivery or performance resulting from events of force majeure, even in the case of binding delivery dates. Such events entitle us to postpone performance for the duration of the impediment, or, if the impediment is expected to continue for an extended period, to withdraw from the contract in whole or in part with respect to the unfulfilled portion.

7. Default of Payment by the Purchaser
The Purchaser shall be deemed to be in default, without the need for a reminder, if the purchase price is not paid within 30 days of the due date and receipt of the invoice or an equivalent statement of account.
In the event of default in payment, we shall be entitled to charge interest from the relevant date at a rate of 5% above the base interest rate of the European Central Bank (ECB). The right to claim further damage remains reserved.
Furthermore, we shall be entitled to suspend the delivery of ordered goods – including those relating to other contracts – in whole or in part until full payment has been received.

8. Limitation of Liability
Claims for damages against us shall be excluded to the extent permitted by law, except in the following cases, in which liability shall, however, be limited to the typical and foreseeable damage under the contract:
a) In the event of damage resulting from injury to life, body or health caused by a wilful or negligent breach of duty on our part, or by a wilful or negligent breach of duty by one of our legal representatives or vicarious agents. In such cases, our liability shall be limited to the amount covered by our business liability insurance.
b) In the event of other damage caused by a wilful or grossly negligent breach of duty on our part, or by a wilful or grossly negligent breach of duty by one of our legal representatives or vicarious agents.
c) Where a guarantee has been given.
d) Where an assurance or warranted characteristic has been provided.
e) For claims arising under the German Product Liability Act (*Produkthaftungsgesetz*).
f) For claims resulting from the breach of fundamental contractual obligations (*cardinal obligations*).

9. Retention of Title
Until all claims to which we are entitled against the Purchaser, on whatever legal grounds, have been fully satisfied, the following securities shall be granted to us, which we shall, at our discretion, release upon request to the extent that their value sustainably exceeds our claims by more than 20%.
The goods shall remain our property. Any processing or transformation of the goods shall be carried out on our behalf as the manufacturer, without creating any obligation on our part. If our (co-)ownership ceases through combination or incorporation, it is hereby agreed that the Purchaser's (co-)ownership in the resulting unified item shall pass to us on a proportional basis corresponding to the invoice value. The Purchaser shall store our (co-)owned property free of charge. Goods in which we hold ownership or co-ownership shall hereinafter be referred to as "Reserved Goods".
The Purchaser shall be entitled to process and resell the Reserved Goods in the ordinary course of business, provided that the following conditions are met:
a) the Purchaser is not in default of payment;
b) there are no obstacles preventing the assignment to us of the claims arising from the resale;
c) the Purchaser's customer is not entitled to set off any counterclaims against such claims; and
d) the Purchaser resells the Reserved Goods only subject to retention of title.

Pledging or transfer by way of security of the Reserved Goods shall not be permitted. If, after conclusion of the contract, we become aware of circumstances likely to impair the Purchaser's creditworthiness, we may prohibit the further sale of goods delivered under retention of title at any time.
The Purchaser hereby assigns to us, in full, all claims arising from the resale of the Reserved Goods or from any other legal grounds in connection with the Reserved Goods. We hereby accept such assignment. The Purchaser shall be authorised to collect the assigned claims in its own name; however, such authorisation may be revoked by us at any time.
In the event of third-party interference with the Reserved Goods, the Purchaser shall draw attention to our ownership rights and notify us immediately. In the event of any breach of contract by the Purchaser, we shall be entitled to repossess the Reserved Goods at the Purchaser's expense.

10. Warranty for Defects
Liability for defects in sales between businesses (B2B)
In the event of defects in the goods delivered, our liability shall be governed by the proper fulfilment by the Purchaser of its obligations to inspect and give notice of defects pursuant to Section 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*), as follows:
(1) Where a defect in the goods exists, we shall, at our discretion, be entitled either to remedy the defect or to deliver replacement goods free from defects (*subsequent performance*). Our liability for defects is subject to the condition that the defect is not merely insignificant. Should one or both forms of subsequent performance be impossible or disproportionate, we shall be entitled to refuse them. We may also refuse subsequent performance as long as the Purchaser has not fulfilled its payment obligations to an extent corresponding to the defect-free portion of the performance rendered.
(2) If the subsequent performance referred to in paragraph (1) is impossible or fails, the Purchaser shall be entitled, at its option, either to reduce the purchase price accordingly or to withdraw from the contract in accordance with the statutory provisions. This shall apply in particular where we have culpably delayed subsequent performance or where it fails for a second time.
(3) Unless otherwise provided below in paragraph (4), any further claims by the Purchaser, irrespective of the legal basis, shall be excluded. This applies in particular to claims for damages arising from breach of ancillary contractual obligations, tortious acts or other non-contractual liability, and to claims for reimbursement of expenses, except for those under Section 439 (2) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*). This exclusion shall apply in particular to claims for damage occurring outside the goods themselves and to claims for loss of profit.
(4) The exclusion of liability set out in paragraph (3) shall not apply insofar as exclusion or limitation of liability for damages arising from injury to life, body or health is concerned, where such damage is based on a culpable breach of duty by us, our legal representatives or vicarious agents. The exclusion shall likewise not apply to damages caused by wilful misconduct or gross negligence on our part, or on the part of our legal representatives or vicarious agents.

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11. Further Provisions on Liability and Warranty
In the event of culpable breach of a material contractual obligation or a *cardinal obligation*, liability shall not be excluded but shall be limited to the typical and foreseeable damage under the contract.
The exclusion of liability shall also not apply in cases where liability is imposed under the German Product Liability Act (*Produkthaftungsgesetz*) for personal injury or for damage to property used for private purposes.
It shall likewise not apply where a guarantee has been assumed or a particular characteristic has been expressly warranted, insofar as a defect covered by such guarantee or warranty gives rise to liability. A guarantee or warranty in the sense of an enhanced liability or special undertaking shall only be deemed given if expressly designated as a "guarantee" or "warranty". The same shall apply accordingly to claims for reimbursement of expenses.
(1) No warranty shall be assumed for damage arising from the following causes: unsuitable or improper use, incorrect installation or assembly by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, inappropriate operating materials, defective construction work, unsuitable building ground, replacement materials, chemical, electrochemical or electrical influences (insofar as not attributable to us), or unauthorised modifications or repair work carried out by the Purchaser or third parties without our prior consent.

(2) Claims for subsequent performance shall become time-barred one year after delivery of the goods. The one-year limitation period shall not apply to buildings or to goods which, in accordance with their normal use, have been incorporated into a building and have caused its defectiveness; in such cases, the limitation period shall be five years.
Claims for reduction of the purchase price or rescission of the contract shall be excluded once the claim for subsequent performance has become time barred. However, the Purchaser may withhold payment of the purchase price to the extent that he would be entitled to do so by virtue of rescission or reduction.
(3) Claims under the provisions on supplier's recourse (*Herstellerregress*) shall remain unaffected by this Section.

12. Liability for Defects in Consumer Sales
(1) Where a defect in the goods exists, the Seller shall, at the Purchaser's choice and within the bounds of proportionality, be obliged either to remedy the defect or to deliver replacement goods free from defects (*subsequent performance*). A defect shall also be deemed to exist if goods other than those ordered, or a smaller quantity than agreed, have been delivered. If one or both forms of subsequent performance are impossible or disproportionate, the Seller shall be entitled to refuse them.
(2) If subsequent performance is impossible, disproportionate, or refused by the Seller, or if it fails twice, or is unduly delayed for reasons attributable to the Seller, the Purchaser shall be entitled, at his option, either to reduce the purchase price (*reduction*) or to withdraw from the contract (*rescission*).
(3) Any further claims by the Purchaser for damages, irrespective of the legal basis (in particular claims arising from breach of ancillary contractual obligations, tortious acts, or reimbursement of expenses except as provided in Section 439 (2) of the German Civil Code – *Bürgerliches Gesetzbuch, BGB*), shall be excluded.
This exclusion shall not apply in the event of a breach of a material contractual obligation (*cardinal obligation*), nor where the Seller, its legal representatives or vicarious agents have acted wilfully or with gross negligence. The exclusion shall likewise not apply in cases of culpable injury to life, body or health, or where a guarantee has been assumed or a particular characteristic expressly warranted, if a defect covered by such guarantee or warranty gives rise to liability.
In the event of liability for breach of a cardinal obligation, compensation for damages shall not be excluded but shall be limited to the typical, foreseeable damage under the contract.
The limitation of liability shall also not apply to claims under the German Product Liability Act (*Produkthaftungsgesetz*). A guarantee or warranty implying enhanced liability or the assumption of a special obligation shall only be deemed to have been given if expressly designated as a "guarantee" or "warranty".
(4) The statutory limitation periods for claims based on defects shall apply. For used goods, however, the limitation period shall be one year.

13. Liability for Ancillary Obligations
If, as a result of the Seller's fault, the goods delivered cannot be used by the Purchaser in accordance with the contract due to omitted or faulty execution of proposals, advice or other ancillary contractual obligations – in particular instructions, operating or maintenance guidance – whether provided before or after conclusion of the contract, the provisions set out above regarding liability for defects shall apply accordingly, to the exclusion of any further claims by the Purchaser.
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14. Withdrawal by the Purchaser and Other Liability
(1) The following provisions apply to breaches of duty not relating to defects in the goods (*non-conformities*). They are not intended to exclude or limit any statutory rights of withdrawal, nor to exclude or limit any statutory or contractual rights and claims to which the Seller is entitled.
(2) The Purchaser may withdraw from the contract if performance in its entirety becomes finally impossible; the same shall apply in the event of incapacity.
Where an order concerns goods of the same type and part of the delivery becomes impossible due to reasons attributable to us, and the Purchaser has no interest in partial performance, he shall be entitled to withdraw from the entire contract. If this is not the case, the Purchaser may reduce the consideration proportionately. The right of withdrawal shall not apply in cases of insignificant breaches of duty.
(3) If there is a delay in performance and the Purchaser grants the Seller a reasonable additional period for performance after default has occurred, and such additional period expires without result, the Purchaser shall be entitled to withdraw from the contract.
In the event of partial delay, sentence 2 of paragraph (1) shall apply accordingly.
If, prior to delivery, the Purchaser requests a modification to the design or execution of the goods, the delivery period shall be suspended until agreement is reached on the modification and shall, if necessary, be extended by the time required to implement the change.
(4) The right of withdrawal shall be excluded if the Purchaser alone, or to a predominant extent, is responsible for the circumstance giving rise to the right of withdrawal, or if the circumstance for which the Seller is responsible occurs during the Purchaser's delay in acceptance.
In the event of impossibility, the Seller shall retain the right to payment in accordance with Section 326 (2) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).
(5) Any further claims by the Purchaser, irrespective of their legal basis (in particular claims arising from breach of ancillary contractual obligations, delay, impossibility or tortious acts), shall be excluded. This exclusion shall apply in particular to claims for damage occurring outside the goods themselves and to claims for loss of profit, including claims not arising from defects in the goods.
This exclusion shall not apply to damages arising from culpable injury to life, body or health. Nor shall liability be excluded where a guarantee has been assumed and a breach covered by such guarantee gives rise to liability.
Where a material contractual obligation or *cardinal obligation* has been culpably breached, liability shall not be excluded but shall be limited to the typical, foreseeable damage under the contract.
A guarantee or warranty implying enhanced liability or the assumption of a special obligation shall only be deemed to have been given if expressly designated as a "guarantee" or "warranty".

15. Supplementary Conditions for the Supply of Complete Systems
(1) The contract price includes the preparation of standard documentation in a single copy and in the German language.
(2) The contract price covers all works specified in the preliminary planning stage. Unless otherwise agreed, the Purchaser shall, at its own expense and upon request, provide and make available in good time all services and facilities required for installation and assembly which have not been expressly assumed by us.
These include, but are not limited to: preparation and provision of the installation site, energy supply, provision of auxiliary personnel, assembly materials, support and mounting structures of any kind, static calculations and design work, as well as any modifications to buildings or existing installations.
Should any changes become necessary during the execution of the order or at a later stage, we reserve the right to make an appropriate adjustment to the price.
(3) The systems shall be delivered complete as specified in the text of the order confirmation, provided that dispatch in this form is feasible. If it becomes necessary to dismantle bulky parts for shipment, the costs of reassembly at the installation site shall be borne by the recipient.
If installation and commissioning by us are requested, the corresponding costs shall be charged according to our applicable labour and service rates.

16. Place of Performance and Jurisdiction
The place of performance for all mutual obligations shall be Altensteig.
The place of jurisdiction shall be Stuttgart.
This agreement on jurisdiction shall apply only to commercial transactions, i.e. where the contracting parties are merchants (*Kaufleute*), legal entities under private or public law, or special funds under public law.

17. Severability
In the event that any provision of these Terms and Conditions of Sale and Delivery is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby.