Terms and Conditions of Sale and Delivery („TCSD“)

These Terms and Conditions of Sale and Delivery shall apply to all business relations of VEKA AG, Dieselstraße 8, 48324 Sendenhorst with business persons if the contract is part of their commercial business, corporate bodies under public law and special funds subject to public law. They shall be deemed accepted and legally binding by the customer (purchaser) on placing the order. Any deviating terms and conditions of the customer shall require our prior approval in writing to be applicable. Any deviations between these terms and conditions of sale and delivery and those of former contracts shall be inapplicable to this business transaction.

1. Offers
Our offers shall be subject to change without notice and non-binding unless expressly identified as binding or stating a term of acceptance. Any specimens or samples are for information purposes only and shall be provided without obligation on our part.

2. Prices
(1) Our prices are quoted in Euros (exclusive of value added tax) ex works and do not include freight, customs duties, packing and insurance.

(2) In case of long-term supply relationships, permanent supply contracts or contractual relationships lasting longer than nine months any significant changes of cost factors, in particular in case of labour and material costs, shall result in our prices being adjusted on prior notice. These price adjustments shall only correspond to the amount of the respective cost increase or reduction. A fundamental change of a cost factor is given if one of the factors forming the basis for calculation (cost factor) or several factors altogether change by more than 5 % compared to the factors on conclusion of the contract or last amendment. This adjustment shall also apply to orders which have already been confirmed.

3. Delivery
(1) The date of the order confirmation shall be decisive for the delivery period. This shall only commence once all details of the order have been fully clarified and on receipt of all documents required for its execution as well as any agreed payments. In the event of a delivery date or period being specified in advance, this shall be adjusted or postponed correspondingly. The delivery period shall be deemed complied with if by its expiry the delivery items have left the factory or if they have been notified as ready for dispatch.

(2) Reasonable partial deliveries and partial performance shall be permissible. In particular, partial deliveries shall be considered reasonable if they can be used by the customer within the scope of the contractual intended purpose, the delivery of the remaining ordered goods is guaranteed and no significant additional work or extra expenses are incurred for the customer. Each partial delivery shall be considered as a special transaction. Delivery of up to 5 % more or less than the ordered quantity shall be permissible.

(3) Cases of force majeure shall entitle us to extend the delivery period by the duration of the hindrance as well as a reasonable period thereafter or to entirely or partially withdraw from the contract with respect to the part which has not yet been executed. Force majeure includes strike, legitimate lockouts or circumstances which were not foreseeable or are beyond our control such as, for example, breakdown, but also the lack of means of transport as well as lack of raw materials and energy making it impossible for us to deliver on time despite our reasonable efforts. The same shall apply in the event of the hindrances occurring during default or with regard to a sub-supplier. We shall immediately inform the customer if a case of force majeure should occur. In such cases the customer shall be entitled to request us to declare within a period of 2 weeks whether we wish to withdraw from the contract or deliver within a reasonable grace period. Should we not make a declaration, the customer can withdraw from the part of the contract which has not been executed. Furthermore, in particular the right of each contracting party to cancel permanent supply contracts for cause in case of persisting force majeure shall remain unaffected.

4. Return of items
(1) If the customer wishes to withdraw from the contract without being entitled to do so due to contractual or legal provisions and if we should agree to this, the customer shall be obligated to pay 10 % of the purchase price as compensation without our having to submit proof of any corresponding damage. We shall reserve the right to assert claims for compensation in excess thereof.

(2) The return of delivery items on a goodwill basis shall be subject to the condition that they are in perfect condition, in their original packaging and delivered free of charge upon prior arrangement. We shall be entitled to charge reasonable costs incurred by taking back returned items.

5. Dispatch / Transfer of risk
(1) The place of performance shall be our factory in all cases. On leaving the factory the risk shall pass to the customer unless we carry out shipment ourselves or have this done by a freight forwarder designated by us and irrespective of who pays the freight charges. Unless otherwise agreed upon the determination of the mode of shipment and the route – without guarantee of the fastest and cheapest transport – shall be at our discretion.

(2) In the event of any delays in dispatch caused by the customer, the risk shall already pass to him on notification of the readiness for dispatch.

(3) The insurance of the consignment shall be exclusively up to the customer.

6. Payment
(1) Unless otherwise agreed upon, our invoices shall be due within 30 days of date of invoice irrespective of the receipt of goods and the right of notification of defects. We shall grant a cash discount of 2 % for payments in cash, per bank transfer or cheque within 10 days of date of invoice. However, cash discounts shall be subject to the condition that all payment obligations resulting from previous deliveries have been paid in full.

(2) Cash payments of 10.000 EURO or more will not be accepted. We reserve the right to subject any cash payment offer in the amount of 10,000 EURO or more to an Anti-Money Laundering examination.

(3) Bills of exchange and cheques shall only be accepted upon special agreement and only on account of performance. Collection and discount charges shall be borne by the customer. The invoice shall only be considered settled once any costs incurred by us have been deducted from the invoice amount and this amount plus all incidental charges is available to us and we are released from any endorser’s liability.

(4) Even in case of deviating terms of payment any performance of the customer shall be offset against the oldest due claim unless the customer puts forward legitimate issues which give reason for a different order of payment.

(5) Non-compliance with the terms of payment or the discovery of circumstances which justify serious doubts about the creditworthiness of the customer and which endanger payment of our outstanding receivables resulting from this contractual relationship (including other individual orders placed within the scope of the same framework contract) shall entitle us to declare all our claims due and payable without regard to the term of any bills of exchange accepted.

In the event of the occurrence of one of the conditions according to Section 6, Paragraph 5, Clause 1 we shall be entitled by means of unilateral declaration vis-à-vis the customer to make all deliveries dependent on advance payment of the respective amount for the delivery. Section 6, Paragraph 4 shall remain unaffected. Obtaining the goods alone shall not constitute a legitimate issue on the part of the customer.

(6) Moreover, we shall then be entitled to withdraw from the contract, claim compensation due to non-fulfilment, assert rights of retention of title, take back unpaid goods at the expense of the customer and liquidate any provided security. In case of arrears we are entitled to charge default interest in the amount of 9 percentage points above the base interest rate. The assertion of a further claim for damages by delay remains unaffected.

(7) The customer may only offset counterclaims which are undisputed and have been legally established or assert a right of retention.

7. Credit limit

If a supplier’s credit (credit limit) has been agreed upon for the current purchase of goods, this constitutes a risk upper limit on our part and it is imperative that the customer observes the fixed payment periods.

8. Reservation of title
(1) The delivered goods (reserved goods) shall remain our property until such time as all claims against the customer have been settled to which we are now or in future entitled. Pallets and other load carriers solely remain our property. Upon first request, these are to be returned to us or returned at the expense of the customer. In the event of damage, loss, etc., the customer must pay compensation.

(2) If in conjunction with the settlement of claims liability on a bill of exchange is established, the reservation of title shall not expire before the bill is finally honoured and our liability is terminated.

(3) The customer is to store the delivered goods from the individual orders separately and traceably or identify the delivery processes correspondingly at his own discretion.

(4) In case of breach of contract on the part of the customer – in particular in case of default in settlement of payment claims – we shall have the right to take back the reserved goods after setting a reasonable period for performance. Any transport costs incurred by taking back the goods shall be borne by the customer. Our taking back the reserved goods shall constitute a withdrawal from the contract. We shall be entitled to dispose of these reserved goods. The proceeds of such disposal shall be offset against any amounts owed to us by the customer after a reasonable amount has been deducted for the cost of the disposal.

(5) The customer is obligated to treat the reserved goods with due care. He must insure them sufficiently at his own expense against damage caused by fire, water and theft to the replacement value. Insofar as maintenance or repair work is required, the customer is to carry this out at his own expense.

(6) The customer may use the reserved goods and resell them in the normal course of business provided there is no default in payment. He shall not be entitled to pledge or transfer the reserved goods by way of security. The customer shall already at this stage assign to us by way of security any claims for payment to their full extent on the part of the customer against his own customers resulting from the resale as well as those claims of the customer regarding the reserved goods which have arisen on any other legal grounds against his customers or

third parties (in particular claims for tort and entitlement to insurance benefits) including claims for settlement of any current account balances. We shall accept this assignment.

(7) The customer shall be entitled to collect these assigned claims for us on his own behalf and in his own name until we revoke this authorisation. Our right to collect these claims ourselves shall not be affected by this. However, we shall not assert the claims ourselves and revoke the collection authorisation until such time as the customer has duly fulfilled his payment obligations.

(8) In case of breach of contract on the part of the customer – in particular in case of default in payment – we shall be entitled to require him to inform us of the assigned claims and the respective debtors, inform the respective debtors of the assignment and submit to us all documents as well as any information required for the assertion of claims.

(9) The customer shall not be permitted to have these claims collected by way of assignment on the basis of factoring unless he irrevocably obligates the factor to effect the counter-performance directly to us as long as we still have claims against the customer.

(10) Any processing or transforming of the reserved goods by the customer shall be carried out on our behalf. If the reserved goods are processed together with other items owned by third parties, we shall acquire co-ownership of the new items in proportion of the value of the reserved goods (final invoice amount including VAT) to the value of the other processed goods at the time of processing. The same shall apply for the new items acquired in this way as for the reserved goods.

(11) If the reserved goods are inseparably combined or mixed with items not owned by us, we shall acquire co-ownership of the new items in proportion of the value of the reserved goods (final invoice amount including VAT) to the value of the other combined or mixed goods at the time of combining or mixing. If the reserved goods are combined or mixed in such a way that the goods of the customer can be regarded as the principle items, the customer and we shall already now agree that the customer shall assign co-ownership of these goods to us proportionately. We shall accept this assignment.

(12) The customer shall hold sole ownership or co-ownership of the items acquired in this way for us free of charge.

(13) In the event of seizure of the reserved goods by third parties or other intervention by third parties the customer shall be obligated to inform them of our ownership and immediately notify us in writing so that we can assert our ownership rights. Should any third party not be able to reimburse us for court or out-of-court costs incurred in this respect, the customer shall be liable for these costs.

(14) Should the customer so request, we shall be obligated to release our entitled security to the extent to which their liquidable value exceeds our outstanding claims against the customer by more than 20 %. We shall, however, be entitled to determine the security to be released due to over-collateralisation.

9. Tools

Any moulds and tools we manufacture or procure on behalf of the customer shall still be our property in view of our construction work and maintenance costs even if the costs have been proportionately charged to the customer. The moulds and tools shall be used exclusively for orders of the customer as long as he fulfils his payment and purchase obligations. Our obligation of retention shall expire if the customer places no further orders within 2 years of the last order of parts made with the mould or tool.

10. Warranty

(1) The delivered items are to be examined immediately upon delivery to the customer or third party determined by the customer. They shall be deemed accepted if we have not received a written notification of defects regarding visible defects or other defects which become apparent on immediate and thorough examination immediately, however, at the latest within 7 working days after delivery of the delivery item, otherwise immediately, however, at the latest within 7 working days after detection of the defects or at any earlier time when the customer becomes aware of the defect during normal use of the delivery item without closer inspection. Upon our request the defect item shall be returned to us carriage paid. In case of justified notification of defects we shall reimburse the costs of the cheapest method of dispatch. This shall not apply for increased expenses resulting from the delivery item being moved to a different place than that of the intended use.

(2) In case of justified notification of defect we shall be obligated at our option to rectify the defect or provide a replacement free of charge.

(3) Warranty shall cease to apply if the customer makes modifications to the delivery item or has them made by a third party without our consent making it impossible or unreasonably difficult to rectify the defect. In all cases the customer shall bear the additional costs of rectifying the defect incurred by the modification.

(4) Warranty claims shall expire one year after receipt of goods, unless otherwise prescribed by mandatory statutory provisions or those hereinafter. The same period of limitation for claims for defects not caused to the delivery item or contractual item itself shall apply. Claims for compensation due to physical injuries or damage to health for which the statutory periods of limitation apply shall be excluded from the one-year term of limitation.

11. General limitation of liability

(1) Our liability for compensation, irrespective of the legal grounds, in particular due to impossibility, default, defective or incorrect delivery, breach of contract, infringement of duties and tort, insofar as it is a question of fault, shall be limited in accordance with this provision.

(2) We shall not be liable in case of simple negligence on the part of our managing bodies, legal representatives, employees or other vicarious agents provided that no breach of fundamental contractual obligations is concerned. Fundamental obligations are those relating to timely delivery or the provision of the delivery item free of significant defects as well as consultancy, protection and care duties which are meant to enable the contractual use of the delivery item on the part of the customer or the purpose of which is the protection of life and limb of the personnel of the customer or the protection of his property from considerable damage.

(3) Insofar as we are liable on merit to pay compensation, this liability shall be limited to damage we foresaw on concluding the contract as a possible consequence of breach of contract or which we should have foreseen when exercising due diligence. Moreover, compensation shall only be due for indirect damage and subsequent damage as a result of defects of the delivery item if such damage can be typically expected when the delivery item is used as intended.

(4) The aforementioned exclusions from and limitations of liability shall apply to the same extent to our managing bodies, legal representatives, employees and other vicarious agents.

(5) Insofar as we provide technical information or render advisory services and this information or advice does not belong to the agreed scope of contractual services owed by us, this shall be provided free of charge and to the exclusion of any liability.

(6) These limitations shall not apply for liability for wilful intent or gross negligence, guaranteed characteristics, injury to life, body or health or pursuant to product liability law.

12. Industrial property rights

(1) The customer shall be responsible for ensuring that there is no infringement of industrial property rights of third parties if products are manufactured according to drawings, specifications, samples or using parts provided by the customer. The customer shall indemnify us against any claims by third parties in this respect. If a third party prohibits our manufacture or delivery on the basis of an industrial property right owned by such party, we shall be entitled – without examining the legal situation – to cease work.

(2) Any drawings and samples made available to us but not resulting in an order shall be returned on request, otherwise we shall be entitled to destroy these three months after submission of the offer.

(3) We shall claim the right to sole manufacture regarding drafts, drawings, models, moulds and tools made by us or on our behalf. They may not be made available to third parties.

(4) Our trademarks are attached to the goods delivered by us. They are therefore also to be used by the customer, in particular on those products made out of the goods delivered by us (e. g. windows), for manufacturing documents, know-how and supra-regional advertisements provided by us. The use of our trademarks shall be exclusively and expressly limited to the goods delivered by us, any products made thereof as well as advertising for these products. The right of use or the obligation of use shall end on termination of the business relationship. The customer shall not use our trademarks during the contractual relationship or after termination thereof as part of his company name or register them as his trademark or in any other way of commercial identification (such as internet address and such like).

13. Place of performance / place of jurisdiction / applicable law

The place of performance shall be the place of the factory. The place of jurisdiction shall be at our option, either our domicile or that of the customer, also in case of disputes regarding documents, bill of exchange and cheque transactions. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the international Sale of Goods.

14. Data Protection

Personal data that we acquire within the scope of the business relationship, are processed in accordance with the provisions of the Federal Data Protection Act and the General Data Protection Regulation. Information on data protection is available at https://www.veka.de/data-protection-information/.

15. Miscellaneous

(1) The customer may not assign his contractual rights to any third parties without our express approval.

(2) Our profile systems are exclusively intended for processing in window and door manufacturing. The active sale of unprocessed semi-finished products to third parties shall require our express approval.

(3) Should a provision in these terms and conditions of business or a provision within the framework of any other agreement be or become fully or partially invalid, this shall not affect the validity of the other provisions or agreements.