General Terms and Conditions of Sale of PINK GmbH Thermosysteme

1. General
1.1 Only these General Terms and Conditions of Sale apply to the contract and all business relationships with the Customer. Other conditions of the Customer’s do not become part of the contract, not even if we do not explicitly object to them.
1.2 Any modifications or terms that are not expressly or separately agreed upon shall not be valid and shall only have effect if confirmed in writing by us.

2. Offsets, Retention, Assignments
We are entitled to set off claims against the Customer and to retain payments only if the claims are disputed or have been confirmed by us in writing.

3. Shipments Costs, Passage of Risk
3.1 The Customer bears the costs of transport, insurance and packaging and assumes responsibility for disposal of the packaging when it is no longer needed.
3.2 All risks pass to the Customer when goods to be delivered leave our plant, even if we assume responsibility for shipment, export or setup / installation, or if the Customer is in default of acceptance.

4. Delivery Periods, Default of Delivery, Damages Due to Delay
4.1 If all technical questions that were open when the contract was concluded have been clarified, all documents such as drawings and approvals that the Customer is to provide have been delivered, agreed payment terms have been made, and payment can start (release for production).
4.2 Default of delivery is determined by the lengths of delays for which we are not responsible insofar as these delays were caused by force majeure, strikes, lockouts, disruptions of operations, lack of supplies and/or delayed or omitted deliveries by our suppliers.
4.3 If setup and installation are agreed, the Customer has to provide the following at the agreed time and place: bragging, power, water, sewage, space, additional work and waiting time is charged at our regular rates.
4.4 In respect to the consequences of default of delivery, our liability is limited to the damages which we could have predicted would be sustained for the type of contract in question when the contract was concluded, not more than 10% of the value of the goods. This limitation of liability does not apply in cases of gross negligence, negligence and/or loss of life, injury, or damage to health. If the Customer fears negative consequences of default of delivery, the Customer must inform us about this in writing without undue delay.
4.5 The provisions of this section also apply to agreed installation periods. The installation period does not begin until all preparatory work has been completed.

5. Prices, Payment Conditions, Collateral
5.1 Our prices are prices ex works exclusive of statutory value added tax and of packaging. If setup and installation are agreed, prices also include the costs of transport (if agreed delivery date then, § 315 BGB [German Civil Code] allows us to demand, in our fair judgment, a reasonable surcharge for increases in our costs before delivery).
5.2 If the agreed prices have not been agreed, we charge for installation work at our regular installation rates. Fixed installation prices apply only to the work that has been agreed. Additional work and waiting time is charged at our regular rates.
5.3 In the absence of written agreements to the contrary, invoices are due for payment in euros immediately and without discount. Bills of exchange and cheques are accepted only if the Customer agrees to pay the exchange and bank commission charge.
5.4 In a case of payment default or justified doubts on our part regarding the Customer’s creditworthiness, we can make each individual delivery dependent on advance payment of the invoice amount for the delivery.
5.5 According to the contract, an additional small amount handling fee shall be charged to be paid by the Customer, for or for orders placed by the Customer with an invoice value/order value (net) of up to € 50,00.

6. Setup and Installation
If setup and installation are agreed, the Customer has to provide the following at the agreed times and places: cleaning, power, water, sewage, space, light, ventilation, air conditioning, soundproofing, appropriate sanitary facilities.

7. Retention of Assignment, Assignment of Future Claim
7.1 Rights from us that have been derived from our property (“conditional goods”) until they have been paid for in full and without reservations. If we have further claims against the Customer, we retain ownership until these claims have been paid in full.
7.2 The Customer may resell conditional goods only in the normal course of business and only if the Customer has not assigned or pledged its claims resulting from resales or orders of the Customer.
7.3 Conditional goods may not be combined by the Customer with other things with the exception of the specific purpose for which the conditional goods were acquired, nor may the Customer combine or process the conditional goods. All technical questions that were open when the contract was concluded have to be reported to the Customer at no expense to us.
7.4 We are entitled to withdraw from the contract, to demand surrender of the conditional goods still in the Customer’s possession, and to collect all assigned claims ourselves. In order to ascertain what our rights are, we may have all documents and books of the Customer that pertain to our conditional goods examined by a person who is under a statutory obligation to maintain secrecy in his profession.

8. Material Defects, Exclusion of Liability
8.1 We are liable for ensuring that all goods from us that have been delivered, including agreed installation, are fit for the purpose of which the Customer has chosen them and are free from defects not known to the Customer at the time of delivery, including changes to this clause, must be made in written form. The Customer may invoke side agreements before or during conclusion of the contract only if we confirm them in writing without undue delay.
8.2 Declarations issued by the Customer are not binding on us unless the Customer is acting due to a breach of contract.
8.3 If setup and installation are agreed, we are not liable for the suitability or permissible use of the desired materials or constructions and are not under any special obligation to inspect them.
8.4 We are entitled to use the said constructs, etc. in the manner that has been agreed with us. The Customer is not entitled to make any further claims against the Customer, we retain ownership until these claims have been paid for in full and without reservations. If we have further claims against the Customer, we retain ownership until these claims have been paid in full. Other conditions of the Customer’s do not constitute acknowledgment of any violations of industrial property rights or originators’ rights.

9. Defects of Title
9.1 We are liable only for ensuring that goods from us are not protected by industrial property rights or originators’ rights of third parties in the country of the place where the goods are to be used. The Customer has to check whether the goods have the required rights or orders of the Customer which have not been confirmed by us.
9.2 When we deliver goods in accordance with constructs the Customer prescribes, the Customer is responsible for obtaining the necessary industrial property rights or orders of third parties. The Customer is liable for the condition of title, we are under the obligation to choose between obtaining an appropriate usage right or replacing the goods within the limitations period stated in clause 8.8.
9.3 Liability for defects of title is limited to the case of the usage in question but fails to advise the third party that this discontinuation does not constitute acknowledgment of any violations of industrial property rights or originators’ rights.

10. Industrial Property Rights, Maintenance of Secrecy
10.1 We retain ownership and all industrial property rights and originators’ rights to the delivered goods, samples, drawings and all technical documents, unless exclusively qualified specifications have been stated in the contract.
10.2 We are entitled to transfer to third parties the rights and obligations implied by the contract, in whole or in part, without the Customer’s consent.

11. Spare Parts
If the Customer panel from which to keep a supply of spare parts, this obligation is limited to a period of five years beginning with acceptance of the goods delivered.

12. Place of Fulfilment, Place of Jurisdiction, Choice of Law
The place of fulfilment is our domicile in Wertheim. The place of jurisdiction is either Wertheim / Mosbach or the courts responsible for the Customer’s legal domicile, as we may choose. The applicable law is German law, but application of UN sales law (CISG) is barred.