	Wolfener Straße 32 – 34, Gebäude A 12681 Berlin - Germany	Tel. : +49 (0)30 98366680 Mail : info@beanair.com
	General Terms and Conditions of Sale and Delivery	

1. Sales Agreement. The sale of products by **Beanair GmbH** ("**Beanair**") is governed by these terms and conditions ("Terms and Conditions"). **Beanair GmbH's** offer to sell products to the buyer ("Buyer") is expressly limited by Buyer's acceptance of these Terms and Conditions, as evidenced by Buyer's issuance of a purchase order for product(s), or Buyer's acceptance of any product under the purchase order, or Buyer's payment for any product under the purchase order. Terms, if any, included on any Buyer's purchase orders, acknowledgment forms or other documents shall not apply and are hereby voided, except any such terms that are expressly agreed to in writing by **Beanair**.

Any offers to sell products by **Beanair** must be in writing to be valid, and all such offers shall be valid for thirty (30) days from issuance, unless otherwise set forth in such offer. Such offers shall be deemed accepted only upon **Beanair's** receipt of Buyer's written acceptance, provided that **Beanair** receives such acceptance prior to the expiration of such time limit (such accepted offer, an "Order").

Beanair shall not be liable for any errors or miscalculations in Buyer's purchase order.


Buyer may not cancel any Order without **Beanair's** prior written approval, such approval at **Beanair's** sole discretion. In the event **Beanair** expressly agrees in writing to permit Buyer to cancel an Order, Buyer will compensate **Beanair** for all costs and losses attributable to the cancellation. Subject to the warranty set forth in Section 9, products purchased under these Terms and Conditions are not returnable.

2. Prices. All prices include adequate packing, but exclude (and Buyer shall be solely responsible for) costs of loading, shipping, delivery, insurance, installation and commissioning. Prices do not include any fees, taxes or duties relating to the shipment and delivery of any of the products, including without limitation value-added tax (VAT), duty, import and export tariffs and other forms of taxes and excise duties in Germany or the recipient country.

Unless otherwise expressly agreed by the parties, all Orders are accepted on the basis that: (a) the price stated is the net price of the products (after deduction of any discounts) for delivery in accordance with the contract and overrides all previous oral and written representations; and (b) **Beanair** may without prior notice adjust the price stated to take account of any change in specification made at Buyer's request that directly affect the cost to **Beanair** of supplying the products.

3. Time of Delivery. The estimated date of delivery shall be stated in **Beanair's** initial offer to sell products to Buyer or specified in a written acknowledgement given to Buyer within fifteen days after receipt of Buyer's purchase order, as the case may be. **Beanair** will use commercially reasonable efforts to deliver the products within the estimated time to the extent possible. Delivery dates are estimates only and **Beanair** does not guarantee delivery of products on or by any estimated delivery date. In no event shall **Beanair** be liable to Buyer for any costs, fees, penalties or price reductions as a result of any failure to deliver products in accordance with any estimated delivery dates save that in accordance with any guaranteed delivery program that may be in force from time to time. Partial deliveries by **Beanair** are permitted unless otherwise upon agreed in writing by the parties.

4. Delivery. Delivery shall be made Ex Works (EXW) (Incoterms 2010), **Beanair's** shipping point. Unless otherwise agreed upon by the parties in writing, Buyer shall arrange for transportation and transport insurance. If Buyer fails to arrange for transportation, **Beanair** will choose a method of transportation

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that it deems appropriate. In all cases Buyer is responsible for all expenses involved in the shipment and delivery of products (including without limitation loading, freight, shipping, insurance, forwarding and handling charges).

5. Title Transfer. Title to products shall pass to Buyer as soon as the products have been paid for.

6. Drawings. Descriptive Documents, etc. **Beanair** reserves the right to alter measurements and dimensions as well as the design and description of any products. All data included in catalogues, prospects, circulars, advertisements, illustrated matter and price lists are approximate and shall not be binding unless otherwise agreed upon in writing by the parties. Drawings, descriptive documents, parts lists and other documentation (collectively, "Documentation") provided or made available to Buyer by **Beanair** are confidential information of **Beanair** and may be used by Buyer only in connection with the use of the products. Buyer may not copy Documentation or disclose Documentation to any third party.


7. Use of Beanair's Products. Buyer acknowledges and agrees that the products must be used in accordance with all instructions provided by **Beanair** and, where stated, products must be operated only by personnel who have received the appropriate training.

8. Rights and Software. Buyer shall not copy **Beanair's** software or any related documentation, other than as is necessary for back-up copies. Buyer shall not assign any rights in the software. **Beanair** grants to Buyer a limited, non-exclusive license to use the software provided with the products solely for the purpose of operating the products in accordance with **Beanair's** written documentation. Notwithstanding that title to the products may pass to Buyer, **Beanair** shall remain the exclusive owner of all intellectual property rights of whatever nature including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the products (including any software contained therein). Other than as permitted by applicable law, Buyer shall not reverse engineer the products or any part thereof. Buyer shall not remove any proprietary notices and/or branding contained in or otherwise affixed to the products.

9. Warranty, Remedying Defects and Shortcomings, Complaints.

a. Save as otherwise set out herein, **Beanair** warrants that:

- (i) all standard products listed on the Company's website, manufactured by the Company and supplied to the Buyer by or on behalf of the Company, will be free from material defects in workmanship and materials on the date of their first shipment from the Company for a period of 24 months from such date.
- (ii) all other products not covered by the warranty at clause (a)(i) above and manufactured by the Company and supplied to the Buyer by or on behalf of the Company, will be free from material defects

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in workmanship and materials on the date of their first shipment from the Company for a period of 12 months from such date.

b. Subject to clause (c) below, if:


- (i) the Buyer gives notice in writing to the Company during the relevant warranty period set out at clause (a) above within a reasonable time of discovery that some or all of the products do not comply with the warranty set out in clause (a);
- (ii) the Company is given a reasonable opportunity of examining such products;
- (iii) the Buyer (if asked to do so by the Company) returns such products to the Company's place of business at the Buyer's cost. The Buyer shall contact the Company for a Return Material Authorization (RMA) number prior to returning any products to the Company; and
- (iv) proof of purchase is provided (where requested by the Company)

the Company shall, at its option, repair or replace any product (with new or reconditioned products) not operating as warranted with a similar or functionally equivalent product or refund the price of the defective products in full. Where the Company supplies the Buyer with products manufactured by third parties, the Company will use commercially reasonable efforts to pass on to the Buyer the benefit of any warranty issued by the third party manufacturer.

c. The Company shall not be liable for products' failure to comply with the warranty set out in clause (a) in any of the following events:

- (i) the Buyer makes any further use of such products after giving notice in accordance with clause (b);
- (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the products or (if there are none) good trade practice regarding the same;
- (iii) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- (iv) the Buyer alters or repairs such products without the written consent of the Company;
- (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (vi) the products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements and the Company reserves the right to charge reasonable fees for examining and testing products for which no defect can be found and/or where the Company is not responsible for the defect.

d. Any products replaced or repaired by the Company carry either a 30-day limited warranty commencing on the date of delivery of the repaired or replaced product or the remainder of the initial warranty, whichever is longer. Products returned to the Company should have any Buyer-installed accessories or add-on components removed prior to returning the product. The Company is not responsible for these items if they are returned with the product.

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e. The Buyer is responsible for all shipping charges from their facility to the Company. The Company is responsible for return shipping charges from the Company to the Buyer.

f. If the product does not operate as warranted above, the Buyer's sole remedy shall be the repair or replacement of the product in question or refund the price of the defective products in full, at the Company's option. The foregoing warranties and remedies are exclusive and are in lieu of all other warranties or conditions, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or conditions of merchantability and fitness for a particular purpose. The Company neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale, installation, maintenance or use of its products.

g. Where products that are no longer covered by the warranty set out at clause (a) above are returned to the Company for repair or calibration, the Company warrants that such products once repaired and/or calibrated will be free from material defects in workmanship and materials for ninety (90) days from the date of return shipment from the Company.

h. In the event that a Company product requires service outside of the warranty period it should be returned using the RMA procedure. The company will examine and test the product to determine the fault and the required remedy; a charge may be made if the product is found not to be faulty. A quotation will be supplied for the necessary repair. In the event that the cost of repair exceeds 60% of the cost of a new product, the product will be deemed "beyond economic repair" and a quotation will be supplied for the replacement of the defective product with a replacement product. The Company will use commercially reasonable efforts to support the products throughout their design life in respect of repair, maintenance and replacement of the specified product. This period will be no less than 5 years from the date of the first delivery of product to the Buyer.

10. Limitation of Liability. The Company's maximum liability for any loss or damage suffered by the Buyer in contract, common law, tort (including negligence) or otherwise howsoever arising in relation to this agreement or otherwise relating to the products manufactured and supplied by the Company to the Buyer shall not exceed the sums actually paid by the Buyer to the Company for the product and/or products giving rise to such liability. In no event, whether based in contract or tort (including negligence), shall the Company be liable for incidental, consequential, indirect, special, or punitive damages of any kind, or for loss of revenue, loss of business, or other financial loss arising out of or in connection with the sale, installation, maintenance, use, performance, failure, or interruption of its products, even if the Company or its authorised reseller has been advised of the possibility of such damages. Nothing in this or any other provision of these terms and conditions shall limit the liability of the company in relation to death or personal injury caused by the Company's negligence or for fraud or for fraudulent misrepresentation or any other liability, which may not lawfully be excluded. Nothing in these warranty conditions shall be taken to affect any applicable statutory rights of the Buyer.

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11. Payment. Payment shall be due on the date and in the currency indicated in **Beanair's** invoice; provided, however, in the absence of such specified due date and currency indicated, prices are due and payable without set-off or counterclaim, in Euros, in immediately available funds thirty (30) days from the date of delivery or thirty (30) days from when each invoice relating to a contracted stage payment is sent to Buyer, whichever is earlier. Payment by cheque or other negotiable instrument is ineffective until it is honoured and **Beanair's** bank account is credited with the amount due. Time of payment is of the essence for each Order.

For late payments, **Beanair** may, at its sole discretion, charge 8% (eight percent according to EU adopted Directive 2011/7/EU) per annum above the base rate from time to time of European Central Bank accruing from the date the payment was due until payment thereof in full together with such interest. Buyer may not withhold or set off any payment as a consequence of any counterclaims of Buyer.

Any carriage, packing and other charges stated separately from the price are payable by Buyer at the same time, and shall be treated as part of the price. If Buyer pays an amount without apportioning it between specific debts or liabilities it shall be apportioned as **Beanair** thinks fit. **Beanair** may attribute a partial payment to one or more specific items, rather than to all the items, which are the subject of a particular contract.

If Buyer fails to timely pay any amounts due for products sold under any Order, without limitation of any other remedies at its disposal, **Beanair** may: (i) terminate, cancel and/or rescind such Order and any other Order(s); (ii) demand the return of such products or enter Buyer's premises to repossess such products; (iii) resell such products; (iv) accelerate and declare immediately due and payable any amounts owed by Buyer to **Beanair**; (v) suspend any delivered under any other Order(s). In such event, Buyer shall indemnify **Beanair** against any loss, damage or claim resulting from any purported cancellation or failure to take delivery, including the payment of license fees or other fees incurred by it in the course of its business together with the cost of any material, plant or tools used, or intended to be used, for Buyer's Order(s), the cost of labour and other overheads, and redundancy payments primarily attributed to such purported cancellation. **Beanair's** rights shall not be prejudices or restricted by any indulgence or forbearance extended to Buyer and no waiver by such party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

12. Force Majeure. **Beanair** shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, or other labour difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labour, materials, or manufacturing facilities from usual sources, or due to any cause beyond **Beanair's** reasonable control. In the event of a delay in performance due to any such cause, the estimated date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If **Beanair** reasonably determines that any such delay in performance is likely to extend for a period of ninety (90) days or more, **Beanair** shall have the right to cancel the applicable Order upon notice to Buyer with no liability or further obligation to Buyer with respect to such Order.

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13. Venue. These terms and Conditions, including any dispute concerning its existence and validity and including disputes concerning any sales to which they apply, is governed by the laws of GERMANY, excluding its conflict of laws rules. The parties irrevocably agree that the courts of GERMANY shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The application of the Uniform Laws on International Sales shall be excluded.

14. Other Agreements. These Terms and Conditions shall apply to all sales of products by **Beanair** to Buyer and may only be modified or amended by a writing executed by an authorized officer of **Beanair** and Buyer.

Date: 27.05.2020

BeanAir