

## GENERAL TERMS AND CONDITIONS A.B.S. FOR FOREIGN COUNTRIES

### I. General

1. All and any deliveries and services are based on these general terms and conditions A.B.S. and any separate contractual agreements. Any contradicting terms and conditions of the purchaser will not become part of the contract, not even by acceptance of the order. If not agreed otherwise, a contract is deemed concluded with the supplier's written order confirmation.
2. The supplier reserves ownership and copyright to samples, proposals, drawings and similar information of physical or immaterial kind – also in electronic form; neither of the foregoing shall be made accessible to third parties. Unless purchaser has given its consent, the supplier shall not make information or documents accessible to third parties which are marked as "confidential" by the purchaser.

### II. Price and payment

1. Unless agreed otherwise delivery is made under the rules and regulations of the International Chamber of Commerce in Paris – the ICC pursuant to Incoterms 2000 Ex Works, prices are to be understood Incoterms 2000 Ex Works, excluding loading, packaging and unloading. All prices are subject to the relevant statutory value added tax.
2. Unless agreed otherwise, payment is to be made in full and net without any deductions prior to any delivery i.e. pick up by the purchaser.
3. The purchaser has no right to retain due and payable payments to supplier by setting off amounts and/or to offset them with counterclaims unless such set off and/or counterclaims are undisputed or confirmed a final court order.

### III. Date of delivery, delay in delivery

1. The contract between the parties clarifies and provides for the date of delivery. The date of delivery agreed upon assumes that certain prerequisites have been met by the purchaser and it is based on the circumstances that all commercial and technical questions have been clarified among the parties and the purchaser has fulfilled any and all its obligations, for example, purchaser has supplied the necessary governmental certifications or permissions or has made the agreed down-payment. If this is not the case, the date of delivery will be extended accordingly until the purchaser has met foregoing prerequisites. This does not apply if the delay is caused by circumstances stemming from the supplier's sphere of influence and if the supplier is responsible for it.
2. Meeting the deadline of the date of delivery depends on proper and timely delivery to the supplier by supplier's own supplier. In the event that supplier's own suppliers are delayed, the supplier will notify the purchaser of any possible delay as soon as possible.
3. Delivery is deemed made timely if the product ordered has left the supplier's site no later than on the date of delivery or if supplier notified purchaser about the readiness for shipment of the delivery. If the delivery i.e. the product ordered by supplier requires an acceptance by the purchaser, the date where purchaser accepted shall be relevant, or the date where supplier notified purchaser about the readiness of the product ordered for acceptance – the latter only in the event that purchaser lawfully refused the acceptance of the delivery.
4. If delivery or acceptance of the delivery is delayed for reasons that are in the responsibility of the purchaser, the purchaser will be charged the costs incurred by such a delay, starting one month after notification of readiness for delivery or acceptance.
5. If the delay in delivery is due to instances of force majeure such as labor disputes or other events that are beyond the supplier's control the delivery date will be extended appropriately. The supplier will notify the purchaser of the beginning and end of such circumstances as soon as possible.
6. The purchaser is entitled to cancel the contract without notice if the supplier is finally unable to make delivery prior to the passing of the risk of loss. Further, the purchaser is entitled to cancel the contract if execution of part of an order becomes for the supplier impossible and the purchaser can show a legitimate interest in rejecting supplier's partial delivery. If purchaser is not entitled to cancel the contract according to the foregoing sentence, the purchaser must pay the pro rated contract price for the partial delivery. The same applies in the event that only supplier cannot deliver. Otherwise, section VII. 2 applies.

If such impossibility (where no one can deliver) or subjective incapacity (where only supplier cannot deliver) of the supplier occurs during a period of time where the purchaser is in default or the purchaser is solely responsible for or contributed to the default, the purchaser's payment obligation remains and purchaser is not discharged for its payment obligation.

7. If the supplier is in default and the purchaser incurs a loss as a result, the purchaser is entitled to demand liquidated damages for such loss. Such liquidated damage compensation shall amount to 0.5 % for each full week of default, but no more than 5 % of the value of such part of the total delivery that cannot be used in time or as agreed by contract due to the delay.

If the purchaser allows the supplier in delay an appropriate grace period for delivery – under consideration of the statutory exceptions – and such deadline is not met, the purchaser will be entitled to withdraw from the contract in accordance with the statutory provisions. The purchaser undertakes, on the supplier's demand, to notify the supplier within an appropriate period of time whether it will exercise its right to withdraw from the contract.

Other claims arising from the delay in delivery are subject to section VII. 2 of these terms exclusively.

#### **IV. Passing of the risk of loss and acceptance**

1. Delivery is made under the rules and regulations of the International Chamber of Commerce in Paris – the ICC pursuant to Incoterms 2000 Ex Works. The risk of loss will pass to the purchaser as soon as the product has been delivered i.e. made ready for shipment on the supplier's site or any other location named by the supplier whereby the supplier does not need to ready the product for customs or load the product onto the transport vehicle; this applies also if partial shipments are made or if the supplier has taken over other costs or services, for example shipping costs, shipping or installation. If acceptance is required, such acceptance procedure will be relevant for the passing of the risk of loss. It must be done immediately on the date of acceptance agreed upon, or alternatively upon the supplier's notification that the product is ready for acceptance. The purchaser must not refuse acceptance if no material defect exists.

2. If delivery or acceptance is delayed or does not take place for reasons that are beyond the supplier's control, the risk of loss will pass to the purchaser on the day notification that the product is ready for pick up respectively the product is ready to become accepted by purchaser. The supplier undertakes to take out such insurance that is demanded by the purchaser, at the purchaser's cost.

3. Supplier can make partial deliveries unless they are unreasonable for the purchaser.

#### **V. Retention of title**

1. The supplier will retain ownership in the product until payment under the supply contract has been received in full – including all amounts due for additional services, if any.

2. The supplier is entitled to insure the product against theft, breakage, fire, water and other damage, at the purchaser's expense, if the purchaser cannot prove to have procured insurance itself.

3. The purchaser must not sell, pledge or otherwise use the product as a collateral. In the event a third party liens the product or attaches the product or effects the product in any manner resulting in the transfer of ownership of the product, purchaser shall notify supplier immediately.

4. In case of a breach of contract through the purchaser, including but not limited to default in payment, the supplier is entitled to repossess the product after notification whereby the purchaser is obliged to return the product.

5. Due to the retention of title, the supplier can only demand return of the product after the supplier has canceled the contract.

6. If insolvency proceedings have been commenced against the purchaser based on a judicial court order, the supplier is entitled to cancel the contract and to demand immediate return of the product.

#### **VI. Warranty claims**

The supplier warrants for defects in quality or title with respect to the product as follows, excluding any further claims – subject to section VII:

##### **Defects in quality**

1. All such parts must be repaired or replaced by non-defective parts free of charge, at the choice of the supplier, that have proved defective due to a circumstance incurred prior to the passing of the risk of loss. If such defects are detected, the supplier must be notified immediately in writing. Replaced parts become the property of the supplier.

2. The purchaser must give the supplier the necessary time and possibility, in consultation with the supplier, to make the repairs or replacements deemed necessary by the supplier; otherwise, the supplier will be released from any liability stemming from the warranty claim or any other consequences thereof. Purchaser can only request payment from supplier for repair expenses by purchaser itself or for a third party in the event of an urgent cases where operational safety is at risk or to prevent a disproportionate damage, whereas the supplier must be notified immediately.

3. If the claim proves justified the supplier will bear the cost of the replacement part, including shipment, of the costs directly incurred by the repair or replacement delivery. The supplier will also bear the cost of removal and installation and the cost of provision of required technicians or helpers including travel expenses, if this does not represent an unreasonable burden for the supplier.

4. The purchaser is entitled cancel from the contract in accordance with the statutory provisions if the supplier – subject to the statutory exceptions – does not meet an appropriate deadline set for repair or replacement delivery for a defect in quality. If a defect is not a material defect, the purchaser is only entitled to reduce the contract price. Otherwise, the right to reduce the contract price remains excluded.

Any further claims are exclusively subject to section VII. 2 of this contract.

5. Including but not limited to, supplier does not accept any liability in the following cases:

Improper or inappropriate use, faulty installation or commissioning through the purchaser or a third party, wear, faulty or careless treatment, improper maintenance, inappropriate equipment or material, poor construction work, inappropriate foundations, chemical, electrochemical or electrical influences – to the extent they are not in the supplier's responsibility.



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6. If the purchaser or a third party carries out improper repair work, the supplier will not be responsible for any resulting damage. The same applies for changes to the product that are made without the prior consent of the supplier.

#### **Defects in title**

7. If use of the product results in a violation of proprietary rights or copyrights in Germany, the supplier, at its own cost, will basically provide the purchaser with the right to further use the product or modify the product in a way that is reasonable for the purchaser so that a violation of proprietary rights no longer exists.

If this cannot be achieved in an economically reasonable way or within a reasonable period of time, the purchaser is entitled to cancel the contract. Under above conditions, the supplier is also entitled to withdraw from the contract.

In addition, the supplier will indemnify the purchaser from undisputed claims or claims that have been confirmed by court asserted by the relevant owners of the proprietary rights.

8. The supplier's obligations mentioned in section VI. 7 are final and exclusive in case of a violation of proprietary rights or copyrights, unless the provisions in section VII. 2 provide form otherwise.

Supplier's obligations mentioned in section VI. 7 exist only if:

- The purchaser has notified the supplier immediately of any claims asserted for violation of proprietary or copyrights;
- The purchaser assists the supplier reasonably in its defense against any asserted claims or allows the supplier to carry out the modifications in accordance with section VI. 7.
- The supplier retains the right to any defense measure, including out-of-court settlement.
- The defect in title is not based on an instruction of the purchaser; and
- The violation of the law has not been caused by the fact that the purchaser has changed the product without authority or has used it in a way that is outside of the scope of contractual usage agreed upon.

#### **VII. Supplier's liability, exclusion of liability**

1. If the product cannot be used by the purchaser as specified in the contract due to the supplier's fault, as a consequence of faulty or non-execution of suggestions or consultations prior to or after entering into the contract or due to a violation of other additional contractual obligations – including but not limited to instructions for operation or maintenance of the product – the regulations of sections VI and VII. 2 apply accordingly, excluding any further claims of the purchaser.

2. The supplier will be liable for damage other than damage to the product itself – regardless of any other legal causes of action/claims - only

- a) In case of intent;
- b) In case of gross negligence of the owner / any other corporate constituents or senior officers;
- c) In case of intentional or negligent caused injury to life, body and health;
- d) In case of malicious nondisclosure of defects;
- e) If subject to a guarantee;
- f) In case of defects of the product where the supplier is liable for personal injury or property damage even for privately used objects under the applicable product liability act.

In cases of an intentional or negligent violation of material contract obligations, the supplier will also be liable for gross negligence of any employee and for ordinary negligence; for the latter however, negligence is limited to damage that is characteristic for such type of contract and reasonably foreseeable.

Any other claims shall be excluded.

#### **VIII. Period of limitation**

All claims of the purchaser – regardless of any other legal causes of action/claims – will become barred after 12 months. For any damage claims, however, pursuant to section VII. 2 a-d and f, the statutory period of limitations shall apply. The foregoing sentence shall also apply for defects on constructions and products that are usually used for constructions and that have caused the defect in the construction.

#### **IX. Use of software**

If the scope of delivery includes software the purchaser is granted a non-exclusive limited right to use the supplied software and its documentation. The software is provided to purchaser in order to enable the purchaser to use the product. The software license can be used on one system only but not on more than one system.

The purchaser may copy, adapt, translate or convert the object code into source code to the extent allowed by the law only (§§ 69 a et seq. UrhG [German Copyright Act]). The purchaser undertakes not to remove or change manufacturer information without the supplier's prior written consent, including but not limited to copyright notes.

All other rights to the software and its documentation, including copies, will remain with the supplier or the software supplier. Granting of sublicenses is not allowed.

#### **X. Applicable law and venue**

1. These general terms and conditions A.B.S., and any claims arising hereunder or in connection herewith, shall be exclusively governed by and construed in accordance with the laws of Federal Republic of Germany, without regard to the conflicts of law provisions or choice of law principals.

2. Exclusive venue lies with the Courts of supplier's place of incorporation, Osterburken, Germany. Supplier, however, is entitled to bring suit at the purchaser's main place of business.



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