

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF AOA APPARATEBAU GAUTING GMBH

### **I. Application of the Terms and Conditions of Sale and Delivery**

1. This Contract and all subsequent agreements are exclusively governed by our General Terms and Conditions of Sale and Delivery ("GT") below, unless otherwise agreed in writing in an individual case.
2. Divergent statements and business terms of the customer do not place an obligation on us even if we do not expressly contradict them at the time of the conclusion of the Contract. They are binding on us only if expressly recognised by us in writing.

### **II. Order and Order Confirmation**

1. Our offers are non-binding. Documents (figures, drawings, technical data sheets, etc.), measures and weights which are part of the offer are binding only if expressly designated in writing as binding for the customer. In all other respects, they are non-binding.
2. We retain the copyright to supplied documents; such documents may only be made accessible to third parties with our prior written consent.
3. An order of the customer is deemed accepted by us only if we have confirmed acceptance in writing by an order confirmation. The order confirmation is decisive for the scope of the whole Contract contents. This also applies in case the actual delivery of the ordered goods occurs before transmission of the order confirmation.
4. Side agreements, representations and warranties and all other agreements are only valid with our prior express written confirmation.

### **III. Delivery Period, Default and Other Impediments to Performance**

1. Delivery dates and periods are binding only if agreed with us in writing and if expressly confirmed by us in writing as binding.
2. Agreed delivery deadlines and periods start on the date of our written order confirmation, but not before provision of the documents, permits, releases to be provided by the customer and before receipt of an agreed down-payment on account, if any.
3. If we are prevented from fulfilling our contractual obligations through the occurrence of unforeseen events, which we could not have avoided even with the care and diligence to be employed under the circumstances, such as e.g. war, sovereign acts, internal unrest, Act of God, accident, strike and lock-out (also at our suppliers), shortage of raw materials or delay in the supply of essential operating supplies or raw materials, the delivery period is extended by the time during which the impediment persists and by a reasonable starting period.
4. In the event that the delivery is impossible for us or cannot reasonably be expected of us for the reasons set out in clause III. 3. or if we do not ourselves receive correct and timely supplies through no fault of our own, we will be entitled to rescind the Contract.
5. The customer is aware that many of our products may be supplied abroad only with a permit of the competent authorities of the Federal Republic of Germany. If permits which are necessary for the fulfilment of the Contract entered into with the customer are not issued to us, we are entitled to rescind the Contract.
6. In the case of delay with a delivery date confirmed as binding, the customer may grant us a reasonable additional period of at least four (4) weeks and, if we are still in delay after the expiry of such additional period, the customer may rescind the Contract. Sec. 323 (2) German Civil Code remains unaffected. Damages for default may be asserted by the customer only in accordance with clause VIII. Liability pursuant to Sec. 287 German Civil Code is excluded.
7. We are entitled to make partial delivery to a reasonable extent.

#### **IV. Dispatch and Passing of Risk**

1. Dispatch takes place at the customer's expense. In case there is no written agreement about the method of dispatch, the choice of the method of dispatch and means of dispatch is left up to us.
2. Irrespective of whether the transport of the goods is carried out by us, by the customer or by a third party, the risk passes to the customer as soon as loading of the goods has commenced. This also applies in case dispatch does not take place from the place of performance or within the place of performance pursuant to fig. IX.4.
3. If dispatch is delayed for a reason for which the customer is responsible, the risk passes to the customer upon notification of readiness for dispatch.

#### **V. Liability for Defects in Quality**

1. We provide a warranty to our customer in accordance with the following provisions for defects in quality as well as divergences in type and quantity of the delivery existing at the time risk passes. Insignificant divergences of the goods delivered as regards measures, weights, colours, structures or quality do not give rise to a right to complain to the extent to which the use presupposed by the Contract is not adversely affected in this way.
2. Warranties regarding the quality and durability of the goods desired by the customer must be separately confirmed in writing by us in order to be valid and must be expressly designated as warranties in such confirmation. Our staff members are not entitled to provide warranty declarations. Only our statutory representative can give warranty declarations. The description and specification of the condition of our products as such does not contain any warranty declaration.
3. The customer must inspect the delivered goods for defects without undue delay in the ordinary course of business and must notify us directly in writing of obvious defects without undue delay, but at the latest within one (1) week, stating the precise type and scope of the defect. Hidden defects must be notified to us without undue delay once they are discovered in the way specified above, but at the latest within one (1) week. If the customer breaches its duty of inspection and/or complaint, the goods are deemed to have been accepted.
4. In case of justified complaints about defects which are lodged in good time, we will deliver missing quantities without undue delay and otherwise improve the goods or deliver replacement goods, at our choice. Apart from in cases when this can be dispensed with pursuant to Sec. 281 (2) German Civil Code, Sec. 323 (2) German Civil Code or Sec. 440 sentence 1 German Civil Code, the customer is only entitled to a claim to compensation instead of performance, a right to reduce the purchase price or, if the defect is significant, to withdraw from the Contract if the customer has first given us a reasonable time-limit of at least four (4) weeks for subsequent performance.
5. Claims to compensation for defects in quality are otherwise subject to the restrictions specified in fig. VIII.
6. Claims due to defects become statute-barred in one (1) year after delivery and/or formal acceptance if such formal acceptance is agreed. If the delivery is a built structure or tangible property which has been used for a built structure in accordance with its usual use, the statutory periods of prescription apply. The statutory periods of prescription also apply to compensation claims by reason of defects if these are based on injury to life, body and health or to the extent to which we are responsible for deliberate intent or gross negligence.

#### **VI. Liability for Breaches of Industrial Property Rights (Patents, etc.)**

1. We are not liable for infringements of industrial property rights which result by reason of instructions by the customer or use of the goods which we could not have foreseen. Unless something different is agreed, our duty is restricted to creating the goods in such a way that industrial property rights of third parties are not infringed by the use in accordance with the intended purpose of the goods in the country of supply.
2. If an industrial property right of a third party constitutes an obstacle to the use of the goods in accordance with their intended purpose at the time risk passes, then notwithstanding para. 1 we provide the warranty that we will alter the goods by subsequent performance in such way that an

industrial property right is no longer infringed or we will procure for the customer the corresponding right of use at our expense. Fig.V. also applies by analogy.

3. The customer has an obligation to inform us in writing at the earliest possible time if a third party asserts an industrial property right with regard to the goods delivered or asserts such a right in or out of court. We must be given the opportunity to make our opinion known before acknowledgement of a claim resulting from an alleged infringement of industrial property rights. Upon request, we must be given the authority to conduct the negotiations or the legal proceedings with the third party at our own responsibility and our own expense.

4. If a customer culpably breaches its duty set forth in para. 3 above, the customer is liable to us for the damage/loss resulting from this. Claims and rights pursuant to para. 2 are excluded to this extent.

#### **VII. Withdrawal for Other Breaches of Duty**

1. The customer cannot withdraw due to a breach of duty which does not consist of a defect in the supplied goods if we are not responsible for the breach of duty, even if the other statutory preconditions exist.

2. Withdrawal is excluded if the breach of duty is insignificant.

#### **VIII. Compensation**

1. We are only liable for compensation, apart from in case of breach of significant contractual obligations, if we ourselves, our statutory representatives or persons employed by us in the fulfilment of our duties are responsible for wilful intent or gross negligence.

2. Unless we ourselves, our statutory representatives or management employees are responsible for wilful intent or gross negligence, liability is restricted to damage/loss which is typically foreseeable at the time of the conclusion of the Contract.

3. In case of doubt, the amount of the order value is deemed to be typically foreseeable damage/loss.

4. The limitations of liabilities specified above also apply to competing claims from torts and personal liability of our statutory representatives and persons employed by us in the fulfilment of our duties.

5. Compensation claims resulting from injury to life, body and health and those resulting from a warranty or pursuant to the Product Liability Act remain unaffected.

6. The customer decides on the use of the goods at its own responsibility. Unless we have confirmed in writing to the customer specific characteristics and suitability of the goods for a contractually determined purpose of use, any advice about the technical application thereof, even if provided to the best of our knowledge, is in any case non-binding.

#### **IX. Prices, Conditions of Payment**

1. The prices we have confirmed in writing apply exclusively; in the absence of written agreements to the contrary, they apply in cash ex works, including transport insurance, excluding packaging. The statutory value added tax to be charged on the goods will be invoiced separately and must be paid by the customer in addition. In case of export deliveries, the customer must also bear all costs and levies connected with crossing borders, and must make advance payments of these, and must ensure the conduct of all formalities in good time.

2. Our claim to payment arises upon conclusion of the Contract and falls due for payment on the date specified in our order confirmation, irrespective of the fulfilment of the performance incumbent upon us. Invoice amounts are payable at the latest within thirty (30) days after receipt of the invoice without deduction, and less a 2% discount in case of payment within fourteen (14) days of receipt of the invoice. Discounts granted in addition to this only apply subject to the precondition of the written grant of the commitment to give a discount and payment in full in good time and do not contain any agreement on deferral changing the date on which our claim to payment falls due.

3. For orders whose total value exceeds an amount of € 25,000.00, the customer must make a non-interest-bearing down-payment of one third (1/3) of the entire value of the order within one (1) month after the order is placed.
4. The acceptance of bills of exchange or cheques is only made on account of performance. All expenses in this context must be borne by the customer.
5. The customer waives the assertion of a right of retention out of earlier or other transactions in the course of the current business relationship. Set-off with counter-claims is only permissible to the extent to which these are undisputed or have been finally and bindingly decided in law.
6. If the customer is in delay with a due payment, if bills of exchange or cheques are not punctually redeemed or if other justified doubts about the solvency or credit-worthiness of the customer arise after the conclusion of the Contract, we can require advance payment or security for goods deliveries still outstanding, disregarding the payment target. In such a case, we are entitled to withdraw from the Delivery Contract without a duty to pay compensation whilst retaining our claims even out of partial deliveries if the customer does not provide sufficient security within a reasonable time-limit. In case of a delay in payment, all other existing claims likewise fall due, to the extent to which they had not already fallen due, unless the delay merely relates to insignificant claim amounts.
7. We are entitled to offset incoming payments against the claims to which we are entitled against the customer at the time of payment at our choice on the basis of our own or assigned rights.
8. We are entitled to assign the claims out of our deliveries to third parties.

#### **X. Reservation of Title**

1. The delivered goods remain our property until full payment of all claims to which we are entitled out of the business relationship with the customer and to which we will still become entitled, and in case of payment by cheque or bill of exchange, until redemption. In case of a current account, the reservation of title applies to our payment balance demand.
2. The customer is entitled to onward sale of the goods within the ordinary course of business. This right expires in case of cessation of payment. Cessation of payment is presumed if the customer is in delay with the agreed payment dates and/or payment time-limits more than once by more than five (5) working days or the customer fails to pay a due claim in spite of a warning notice. The customer hereby already assigns to us all claims to which it is entitled from onward sale up to the value of the goods which are subject to reservation of title, with all subsidiary rights. We hereby accept this assignment. The customer is entitled to collect the assigned claim subject to revocation at any time. The direct debit instruction also expires without express revocation if the customer ceases to make its payments. Upon request by us, the customer must notify us in writing without undue delay of the identity of the purchaser to whom it has sold the goods and of the claims to which it is entitled out of the sale, and must issue us with officially certified deeds concerning the assignment of the claim at its own expense.  
If the customer includes the claim from onward sale in an existing current account relationship with its customer, the customer hereby already assigns to us the current account claim for the full amount. We hereby accept the assignment. Following a balancing of accounts, it is replaced by the balance acknowledged by the customer's purchaser up to the amount of the original current account's claim.
3. The processing of delivered goods by the customer takes place for us excluding the acquisition of title by the customer pursuant to Sec. 950 German Civil Code. The processed product serves as security for us up to the amount of the invoice value of the goods which are subject to reservation of title.
4. In case of processing together with other goods which do not belong to us by the customer, we are entitled to co-ownership of the new object in the ratio of the value of the goods which are subject to reservation of title in relation to the other processed products at the time of processing. The new object resulting from the processing is deemed to be goods which are subject to reservation of title within the meaning of the general terms and conditions.

5. The customer is not entitled to make other disposals of the goods which are subject to reservation of title or the items of which we are also co-owners. Attachments and other adverse effects on rights of the goods or claims belonging to us as a whole or in part must be notified by the customer without undue delay.
6. If the customer falls into delay with payment or fails to otherwise fulfil its obligations out of the reservation of title, we can require the surrender of the goods which are subject to reservation of title from the customer. The return of the goods which are subject to reservation of title only constitutes a withdrawal from the Contract if we expressly declare this.
7. We reserve the right of title and the copyrights to catalogues, cost estimates, figures, drawings and other documents provided by us to the customer.
8. If the value of the existing security exceeds the claims to be secured by more than 20%, then upon request by the purchaser, the vendor has an obligation of release.

#### **XI. General Bases of the Contract**

1. The customer will not copy or have copied the equipment and installations purchased. The customer will order replacement parts for the equipment and installations purchased from us or an AOA service point to the extent to which the respective circumstances permit this.
2. Pursuant to Sec. 33 Federal Data Protection Act, we point out to you that the personal data collected within the framework of this Contract will be stored.
3. We are entitled to process data received out of the business relationship or otherwise connected to it concerning the customer, regardless of whether such data originates from the customer itself or from third parties, within the meaning of the Federal Data Protection Act.
4. The place of performance, payment and fulfilment for all obligations out of the legal relationships with our customers is the registered headquarters named overleaf.
5. For all contractual and extra-contractual disputes with our customers, the geographical and international exclusive competence is agreed to be with Munich Regional Court I. However, we are entitled to file an action at the customer's registered headquarters. The competence specified in sentence 1 also applies to any cross-complaints by the customer.
6. The contractual and extra-contractual legal relationships with our customers are governed exclusively by substantive German law excluding the Single Purchase and Conclusion Act and the UN Convention on the International Sale of Goods.
7. If one of the foregoing conditions is invalid, this does not affect the validity of the remaining regulations. The parties should then replace the invalid provision by a legally valid regulation which comes as close as possible to the economic sense and purpose of the invalid provision.

as at: February 2010