

# **General Terms and Conditions for Customers**

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**ABL– General Terms and Conditions of Sale**

The following General Terms and Conditions of Sale (“GTC”) shall apply to all deliveries of goods. This expressly includes spare parts and/or the provision of services between Buyer and Seller, collectively referred to as “Goods”. All offers, acceptances, confirmations, deliveries of goods and/or all orders issued by the Buyer shall be subject exclusively to these GTC. If the Seller does not object to the GTC of the Buyer, this shall not be construed as a waiver by the Seller of the application of these GTC.

The silence of the Buyer or the acceptance or payment or use of the goods shall constitute a comprehensive and unexceptional acceptance of these GTC.

**§ 1 Conclusion of the Contract – Entirety of the Contract – Amendments**

(1) The content of the contract is defined in descending order by the offer(s) of the Seller, these GTC and acknowledgement of receipt of the order by the Seller. Any order(s) placed by the Buyer shall be binding for the Seller only if expressly accepted by the Seller. Once the order has been accepted, the Buyer may not change or cancel the order without the prior written consent of the Seller. The offers of the Seller shall be valid for a period of 30 days from the date of issue, unless determined otherwise by the Seller.

(2) If required, the validity of the contract shall depend on the receipt of an agreed progress payment, a letter of credit following the contract, a cover note for export credit insurance, and any necessary approval by public authorities. If all the aforementioned conditions are not met within 45 days from the date of issue of the contract, the contract shall be deemed null and void and non-existent.

(3) An amendment to the contract shall only be effective if it has been jointly agreed in writing by the Buyer and the Seller in advance.

**§ 2 Delivery – Risk – Reservation of Ownership**

(1) The goods shall be delivered EXW (Ex Works) from the premises of the Seller in accordance with Incoterms 2010. Partial deliveries shall be permitted. The risk of loss of or damage to the goods shall be transferred to the Buyer at the time of delivery of the goods.

(2) If the delivery terms are not EXW (Ex Works) or FCA UNLOADED (free carrier) and if damage occurs during transport and/or if such damage is discovered by the Buyer during an inspection, the Buyer shall notify the Seller by fax or e-mail without delay and file

a claim against the carrier, in which the damage is precisely described and noted on the documents submitted by the carrier to the Buyer and of which the Buyer retains a copy. The Buyer shall then confirm this claim for damages against the carrier by registered letter without delay. The Buyer shall indemnify the Seller and/or its insurance company against all claims and shall hold the Seller harmless in the event any damage suffered by the Seller as a result of failure on the part of the Buyer to comply with the notification of claim and confirmation of damage described above.

(3) The Seller shall reserve ownership of the delivered products until the purchase price has been paid in full and all (balance) claims, including future ones, have been settled ("reserved goods"). Any treatment or processing of the reserved goods shall be carried out on behalf of the Seller. In the event of that the Buyer incorporates the goods of Seller into third-party goods, the Seller shall acquire joint ownership of the resulting new products in the proportion of the value of the reserved goods to the third-party goods used. The resulting products shall also be regarded as reserved goods of the Seller. The same shall apply if the reserved goods are combined or mixed with goods of third parties or of the Buyer. The Buyer shall be entitled to sell the reserved goods within the scope of its proper business operations. The Buyer shall be obligated to reserve ownership for itself if the latter resells reserved goods on credit. In the event of third-party access to the reserved goods, the Buyer shall draw attention to the ownership of the Seller and inform the Seller without delay. The Buyer hereby assigns to the Seller by way of security all claims to which the Buyer is entitled from the resale of the reserved goods and the business relationship with its customers in connection with the resale of the reserved goods with ancillary rights in the amount of the value of the reserved goods. The Buyer shall be authorised and obligated to collect the assigned claims. If the Buyer is in default of payment, the Seller shall be entitled at any time to revoke the direct debit authorisation and to notify the customers of the Buyer of the assignment as well as to take back the reserved goods or, if applicable, to demand assignment of the surrender claims of the Buyer against third parties. The Buyer shall be obligated to inform the Seller of the information necessary for the collection of the claims and to surrender the relevant documents. The taking back or seizure of the reserved goods by the Seller shall not constitute a withdrawal from the contract. The Seller shall release the securities at the request of the Buyer to the extent that their value exceeds all claims to be secured by more than 20%.

### **§ 3 Terms for Performance of the Contract**

(1) If necessary, the Buyer shall provide the Seller in good time with all drawings, data, documents and other information required for the performance of the contract; the Seller may rely on these drawings, documents, data and information without further investigation and shall base the performance of the contract on them. The Seller shall not be liable for design, manufacturing or other errors that result from incorrect drawings, documents,

data or other information given by the Buyer or third parties.

(2) If the Seller is unable to deliver the entire quantity of goods, for whatever reason, the Seller may reasonably and appropriately distribute its manufacturing capacity between other buyers and other affiliates of the Seller. The Seller shall inform the Buyer of the terms under which such an allocation takes place.

#### **§ 4 Delivery Times – Acceptance**

(1) The delivery dates or periods set out in the contract shall represent the best estimate on the part of the Seller thereof; except in the case of liability based on wilful misconduct or gross negligence and damages for negligent actions causing death or personal injury, the Seller shall not be liable for compliance with these delivery dates or periods and any claims derived therefrom. Delivery times shall be postponed or extended automatically in the event of delays not attributable to the Seller; e.g. in case of force majeure or non-fulfilment on the part of the Buyer of its obligations.

(2) The Buyer shall carry out the incoming goods inspection in accordance with § 6 (3). If the Buyer fails give notice of defects, the goods shall be deemed to have been accepted. Buyer reservations with regard to faults/defects which do not impair the basic function and/or quality of the goods shall not prevent full acceptance of the goods. If a defect is not attributable exclusively to the Seller, the Buyer shall return the goods at its own risk and expense. All goods are determined by the part numbers/labelling of the Seller; the part numbers/labelling of the Buyer are for information purposes only.

#### **§ 5 Prices – Payments**

(1) Prices are valid in euros and under EXW delivery of the goods from the premises of the Seller (Incoterms 2010). The costs of packaging the goods are not included and will be charged separately. The prices fixed in the contract may be adjusted by the Seller according to the development of raw material prices. All prices are exclusive of taxes (e.g. VAT), fees, as well as other charges including transport and insurance costs. The Buyer shall indemnify the Seller against all tax liabilities relating to the sale, receipt or retention of the goods. If a law or regulation comes into force after the date of the offer of the Seller which leads to an increase in costs, the price shall be adjusted accordingly. For transactions within the EU, the Buyer shall provide the Seller with all information and documents required for VAT purposes.

(2) The goods will be invoiced upon EXW delivery from the premises of the Seller. All invoices shall be payable without deductions within 10 days of the invoice date. Notwithstanding further rights, the Seller shall be entitled to charge interest

in the amount of 9% above the respective base interest rate of the European Central Bank in the event of default of payment. No deductions shall be made for payments made before the due date.

(3) Payments shall be made without deductions, withholding, offsetting and irrespective of any disputes and/or litigations between the Seller and the Buyer.

## **§ 6 Warranty**

(1) The Seller shall warrant that the goods comply with the technical specifications of the Seller and are free from defects in material and workmanship. Unless otherwise stipulated by mandatory law, the warranty for material defects shall end 24 months after delivery of the goods.

(2) If the goods prove to be defective within the warranty period, the Seller shall be entitled to repair all or parts of the defective goods within the scope of its right to remedy at its discretion or to replace or modify them under the same contractual terms. The Seller shall also be expressly entitled to replace parts or the entire product in the form of the current manufacturer series. Within the scope of the right to remedy, the Seller shall also be entitled to have any repair and/or replacement carried out by a sales partner to be determined by the Seller. The Seller shall also be expressly entitled to remedy the defect by installing an entire replacement device. The choice and form of the remedy shall be at the discretion of the Seller.

(3) The warranty of this article is subject to the condition that the Buyer inspects the goods without delay after delivery, giving written notice of visible defects within 5 working days of delivery at the latest and/or giving written notice of defects which are not visible without delay after their discovery, giving a precise description of the defect on the notice, and that the Buyer receives, handles, stores, installs, operates and uses or maintains the goods without altering, damaging, misusing or repairing them.

(4) The warranty does not apply to friction materials and defects caused by specifications given by the Buyer and/or third parties, e.g. delivery and/or instructions for construction, material, products and tools, or to wear and defects caused by normal wear and tear. Warranty claims against the Seller shall also be excluded if the products of the Seller have been changed, modified, adapted, repaired independently and not in agreement with the Seller, or other unauthorised measures have been carried out by the Buyer or by another unauthorised and non-certified third party.

## **§ 7 Liability – Contractual Penalties**

(1) Under no circumstances, whether for breach of contract, tort (including liability for negligence, product liability, strict liability or other liability) under warranty or otherwise, shall the Seller be liable to any person or company (including the Buyer) for any damage caused by disassembly or re-installation of the goods. Further claims for damages and reimbursement of expenses on the part of the Buyer for whatever legal reason, in particular for breach of obligations arising from the contractual obligations and tort, are excluded.

This shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act, in the case of wilful misconduct, gross negligence, negligent actions causing death or personal injury or breach of material contractual obligations.

(2) The claim for damages for the breach of material contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless wilful misconduct or gross negligence exists or liability is assumed for negligent actions causing death or personal injury.

## **§ 8 Return Policy**

For defect-free products and deliveries, the Seller has a return policy on a goodwill basis under the following conditions, which must be met cumulatively and in total:

- The return of goods was announced by the customer and approved by ABL customer service. Unannounced returns will be returned to the customer by ABL at the expense of the customer.
- The purchase of the goods (the date of dispatch by ABL is decisive in this respect) took place within a period of 2 years from receipt of the returns request.
- The goods are in their original packaging.
- The returns request refers to complete packaging units.

The return is also subject to the following procedural requirements and can only take place if these are met:

- The return shall be sent to ABL free of charge.
- The customer shall receive an RMA number and a returns form by e-mail, which must be enclosed with the goods.
- The RMA number issued upon authorisation must be clearly visible on the goods.

ABL shall charge the customer a processing fee of 25% of the net value of the goods plus any discount and/or bonus payments applied. Any necessary repackaging, freight, customs or other costs incurred, increased processing costs or goods returned in a condition which does not correspond to the condition of the original shipment, shall be subject to a

higher processing fee in each case. This increased processing fee will be communicated to the customer by ABL. Returns are subject to payment of this processing fee.

## **§ 9 Confidentiality – Industrial Property Rights – Patent Infringements**

(1) The Seller shall have industrial property rights to all drawings, designs, specifications, documents, information or expertise made available under the contract and to expertise, improvements, discoveries or inventions made or developed in the context of the performance of the contract and/or resulting therefrom (“IP”). The Buyer shall undertake to obligate its employees, agents, suppliers and contractors as well as their contractors to treat IP as strictly confidential and not to use, copy, reproduce, release, disclose or publish IP in any way or to provide third parties with access to or ownership of IP without the prior written consent of the Seller. IP shall remain the property of the Seller and shall only be made available to the Buyer for the performance of the contract.

(2) The Seller shall indemnify and hold the Buyer harmless against any and all damages and costs arising out of or in connection with the normal sale and use of the goods developed by the Seller and imposed in any litigation or IP infringement proceeding and valid in the country of manufacture of the goods, provided that the Seller has been notified without delay in writing and has been given all the required information, assistance and authority for the defence of said litigation or proceeding and the infringement does not arise from any application, use of such goods in relation to or in combination with other materials, means of production, apparatus or units not supplied by the Seller or from changes made to the goods by anyone. In the event that the goods or any part thereof, in the manner described herein, become the subject of any litigation or proceeding in which an infringement of industrial property rights is found and use is prohibited by law, the Seller shall, at its sole discretion and expense, take any of the following actions: give the Buyer the right to continue to use said goods or parts thereof; to replace them with materially similar goods that do not infringe any industrial property rights; or to change the goods so that they no longer infringe any industrial property rights. The defence and indemnification of the Seller as described herein shall constitute the full fulfilment of all of its obligations or liabilities to the Buyer with respect to any infringement of industrial property rights and shall constitute the exclusive legal remedy of the Buyer with respect thereto.

(3) The Buyer shall indemnify and hold the Seller (including its suppliers) harmless against all costs (including lawyer’s fees), damages, losses and/or proceedings, arising out of any claim or litigation that the goods infringe industrial rights according to the designs, changes,

specifications or instructions of the Buyer (including its subcontractors).

### **§ 10 Manufacturing Equipment**

Any tools, machinery, systems and other manufacturing equipment of a similar nature, manufactured or purchased by the Seller for the performance of the contract (“manufacturing equipment”), shall be the exclusive property of the Seller, even if the Buyer contributed to the cost of the manufacturing equipment.

### **§ 11 Force Majeure**

The Seller shall not breach the contract, provided that the non-conformity has arisen due to force majeure. Force majeure shall be defined as any event beyond the reasonable control of the Seller, such as: unavoidable events, acts of terrorism, storms, floods, fire, civil unrest, sabotage, trade restrictions, strikes, any form of industrial action, effects of energy and/or raw material shortages, manufacturing equipment failure or defect, delay in transportation due to force majeure, intervention by civil authorities, laws, regulations or instructions of any public authority (including delayed or non-issuance of licenses, certificates or authorisations of any kind whatsoever), wars or any act of negligence on the part of the Buyer. In this case, the contractual periods shall be postponed until the situation of force majeure has ended. If the situation of force majeure lasts longer than 3 months, both parties may terminate the contract (without prior court order); they shall agree in good faith on the consequences of such a termination.

### **§ 12 Termination**

(1) If the Buyer fails to make payments to Seller under the purchase contract or the Seller determines at its sole discretion that the financial condition of the Buyer (with or without information provided by the Buyer) is insufficient or threatening to become insufficient, the Seller may suspend the performance of the contract or extend the period for performance of the contract until any outstanding claims have been settled by the Buyer and/or demand immediate payment prior to delivery.

(2) The Seller shall be entitled to terminate the contract with immediate notice in writing if the Buyer breaches material contractual obligations. A default of payment of more than 30 calendar days shall also constitute a material breach of contract. In this case, the Buyer shall pay for all goods already delivered as well as the goods deliveries prepared at the time of termination, notwithstanding further rights as the law stands.

(3) If the Seller provides services in the form of recurring services, the Seller shall be entitled, irrespective of any other agreements to the contrary, to terminate the contractual relationship at the end of any calendar month subject to a notice period of 3 months. Unless otherwise agreed in individual cases, the Buyer shall also be entitled to this right of termination.

### **§ 13 Applicable Law - Dispute Resolution**

The contract shall be subject exclusively to German law, excluding the UN Convention on Contracts for the International Sale of Goods. The application of German conflict of laws shall also be excluded in this respect. For any disputes arising from or in connection with the contract, the courts in Nuremberg shall have exclusive jurisdiction, both *ratione materiae* and internationally. This shall also apply to counterclaims and interim injunctions.

### **§ 14 Other Provisions**

(1) The Buyer is not entitled to assign rights and/or obligations of the contract in whole or in part and/or to transfer them to third parties without the prior written consent of the Seller. The latter may assign or transfer contractual rights and obligations to its affiliated companies or to one or more subcontractors.

(2) The Buyer shall be responsible for dealing with government agencies and licensing authorities and shall obtain at its own expense licenses and permits required for the performance of the contract (including for the use, sale or distribution of the goods or the provision of services) in the relevant country. The Buyer shall assist the Seller in obtaining visas, permits and customs clearances where necessary.

(3) The place of performance and exclusive place of jurisdiction for all claims arising from the underlying contractual relationship shall be Nuremberg.

(4) The total or partial invalidity of individual contractual provisions shall not affect the overall validity. Instead, the parties shall agree on a substitute provision that is as close as possible to the meaning and purpose of the provision in question.