

# General terms and conditions of sale

## I. General terms and conditions

1. These general terms and conditions of sale apply to all business relationships that BEHA-AMPROBE Glottertal (hereinafter referred to as Supplier) enters into with its customers (hereinafter referred to as Purchasers). These general terms and conditions of sale apply only if the Purchaser is considered an industrialist (Art. 14 of the German Civil Code [BGB]), corporate body under public law or a special fund under public law.

2. These general terms and conditions of sale apply in particular to contracts governing the sale and/or supply of goods subject to transport (hereinafter referred to as Goods), irrespective of whether the Supplier manufactures the Goods itself or purchases the Goods from sub-suppliers (Art. 433, Art. 651 of the German Civil Code). These general terms and conditions of sale also apply as a general agreement in their respectively valid version to future contracts governing the sale and/or supply of goods subject to transport concluded with the same Purchaser without the Supplier having to refer back to these in each individual case.

3. These general terms and conditions of sale apply exclusively. Alternative, conflicting or supplementary general terms of business of the Purchaser form part of this agreement only if and to the extent that the Supplier expressly approves of their validity. This provision on consent applies in all cases, including, for instance, where the Supplier executes delivery to the Purchaser unreservedly in full knowledge of the general terms of business of the Purchaser.

## II. Contract conclusion

1. Quotations provided by the Supplier are non-binding and without obligation.
2. Ordering of the Goods by the Purchaser shall be considered a binding offer of contract. Unless otherwise stated in the order, the Supplier has four weeks from receipt to accept this offer of contract.
3. Acceptance can be expressed either in writing (e.g. by order confirmation) or by delivery of the Goods to the Purchaser.
4. The Supplier reserves the right, including in respect of multiple delivery contracts and general agreements, to make design modifications at any time. In such cases, the Supplier shall not be obliged to make similar modifications to products that have already been delivered. This shall apply accordingly to software updates and upgrades.

## III. Pricing and terms of payment

1. The prices indicated are factory prices and exclude packaging and value-added tax at the legally applicable rate.
2. If the Supplier is obligated in accordance with Art. 4 of the German Packaging Regulations [VerpackV] to take back packaging used for transport of the goods, the Purchaser shall bear the cost of the return transport of the used packaging.
3. If the Supplier has assumed responsibility under this agreement for the setup or installation of the Goods and no alternative arrangement has otherwise been concluded, the Purchaser shall, in addition to the full remuneration due under this agreement, bear the cost of all necessary additional expenses, in particular travel expenses, costs for the transport of tools and the personal belongings of personnel deployed by the Supplier and accommodation allowances.
4. The Purchaser shall bear the cost of any customs duties payable, fees, taxes or other public charges. All other packaging that is not covered by Art. II No. 2 shall not be taken back by the Supplier and shall become the property of the Purchaser.
5. Payments are to be made to the payment office of the Supplier.
6. Invoices are to be paid strictly net by the 15th of the subsequent month. The Purchaser shall be deemed to be in default of payment beyond the payment term specified above. An interest rate of 8 percent above the base rate, though not less than 12 percent p.a., will be applied to the purchase price during the period in default. The Supplier reserves the right to assert a further claim for damages as a result of non-payment. With respect to traders, the Supplier's right to commercial due date interest (Art. 353 of the German Commercial Code [HGB]) remains unaffected.
7. The Purchaser shall be entitled to rights of offset only insofar as such claim is established without further legal recourse or is unchallenged. The same applies accordingly to the right of retention, exercise of which effective under law is con-

tingent on the counterclaim of the Purchaser being based on the same contractual relationship.

## IV. Terms for delivery; delivery and acceptance delays

1. To ensure adherence to delivery terms, the Supplier must be in receipt of all documentation, approvals and releases, in particular of plans, to be supplied by the Purchaser in due time and the agreed terms and conditions of payment and other obligations to which the Purchaser is bound must be satisfied. If these requirements are not satisfied in due time, the Supplier is entitled to reasonably extend the delivery terms; this not applies if the Supplier is at fault with respect to the delay.
2. If non-adherence to indicated time frames is the result of force majeure, e.g. mobilisation, war, civil disturbance or similar events, e.g. industrial action, lock-out, the Supplier is entitled to reasonably extend the delivery terms.
3. If the Supplier fails to deliver the Goods to schedule, the Purchaser is entitled to demand compensation for each full week of delay of 0.5%, though not exceeding a total of 5%, of the price for the part of the deliveries that has not been delivered, provided the Purchaser substantiates any consequential financial loss. Both claims for damages on the part of the Purchaser due to delays in delivery and claims for damages in lieu of performance exceeding the thresholds stipulated in the preceding clause are excluded in all instances of delayed delivery, including after expiry of a term imposed on the Supplier to deliver. This does not apply to cases set forth in Art. XI No. 2.
4. The Purchaser shall be obligated to declare within a period of two weeks whether he intends to withdraw from the agreement due to the delay of a delivery upon request of the Supplier. If the Purchaser fails to do so within the prescribed term, his right to withdraw from the agreement will expire.
5. If shipment or transfer is delayed at the behest of the Purchaser by more than one month after notice of readiness for dispatch, a storage charge may be billed to the Purchaser after expiry of the one-month term at a rate of 1% of the price of the articles of delivery for each commenced week, with a maximum charge of 100%. The parties to the agreement shall be at liberty to demonstrate that higher or lower storage costs have been incurred; the fixed-rate storage charge will be counted against any more extensive monetary claims.
6. If a contractual right to return the Goods has been agreed, the Purchaser shall bear the cost of packaging and shipment. The Purchaser shall bear the full risk of deterioration or potential total loss of the Goods until receipt of the return delivery.

## V. Delivery, transfer of risk

1. Delivery is ex works; this is also deemed the place of performance. The Goods will be shipped to an alternative destination (sale by dispatch) at the request and expense of the Purchaser. Unless otherwise agreed, the Supplier is entitled to determine the nature of shipment (in particular the shipment company, shipment route, packaging).
2. The Purchaser shall assume the risk of accidental total loss, accidental deterioration of the Goods and delay, including in the case of freight-paid delivery, as follows:
  - a) In the case of sale by dispatch, the full risk passes to the haulage contractor, the freight carrier or other individual or establishment appointed to execute the shipment from the point of dispatch of the Goods. At the request and expense of the Purchaser, the deliveries will be insured by the Supplier against common transport risks
  - b) In the case of deliveries with setup or assembly, on the day of transfer to the Purchaser's premises or, if agreed, following flawless test operation
  - c) If acceptance has been agreed, this will be decisive with respect to the transfer of risk. Statutory provisions governing work contracts will also otherwise apply with respect to agreed acceptance; Art. VI No. 6 remains unaffected.
3. The Purchaser shall bear the full risk if dispatch, transfer, initiation, performance of setup or assembly, transfer to the Purchaser's premises or test operation are delayed for reasons attributable to the Purchaser or acceptance is delayed by the Purchaser for other reasons.

4. The Purchaser may not refuse to accept deliveries due to minor defects. Partial deliveries will be permissible, provided this is not unreasonable to the Purchaser.

## VI. Acceptance

If the Supplier requests an acceptance sign-off of the delivery, this must be performed by the Purchaser within two weeks of delivery. If this does not occur, acceptance will be considered signed off if the Purchaser does not complain of precisely identified faults or malfunctions in writing within this period; receipt of complaints by the Supplier is decisive with respect to adherence to the term. Acceptance will likewise be considered signed off if the delivered Goods have been used, if applicable following completion of an agreed test phase.

## VII. Retention of ownership

1. The Supplier shall retain full ownership of the Goods sold until full payment of all current and future receivables owed to the Supplier resulting from the purchase agreement and current business relationship (secured receivables).

2. The Goods subject to retention of ownership may not be pledged to third parties nor assigned as security until full payment of secured receivables. The Purchaser must immediately inform the Supplier in writing if and when access to the Goods belonging to the Supplier are accessed by third parties.

3. The Purchaser is entitled to sell on and/or process the Goods subject to retention of ownership in the regular course of business. In such cases, the following additional conditions apply.

a) Retention of ownership extends to products produced through the processing, mixing or combining of the Goods of the Supplier to their full value, whereby the Supplier is deemed the manufacturer.

b) If third party proprietary rights continue to exist in the case of processing, mixing or combining with third party goods, the Supplier will acquire co-ownership rights proportionate to the invoice value of the processed, mixed or combined goods. In all other cases, the provisions applicable to the delivered Goods subject to retention of ownership likewise apply to the product produced.

c) The Purchaser undertakes to immediately relinquish to the Supplier in full accounts receivable from third parties in the event of selling on the Goods or product at the rate of the Supplier's coownership share in the case of (a) and/or (b) as security. The Supplier shall accept the surrender of receivables. The duties and obligations of the Purchaser stipulated in paragraph 2 also apply with respect to surrendered receivables.

d) The Purchaser shall remain authorised to collect the receivables alongside the Supplier. The Supplier undertakes not to take action to recover the receivables so long as the Purchaser complies with its payment obligations with respect to the Supplier, is not in default of payment, no application is made to initiate insolvency proceedings concerning the assets of the Purchaser and no other deficiency is identified with respect to the Purchaser's payment capability. In the case of the above, however, the Supplier may demand that the Purchaser notify him of the receivables surrendered and the respective debtors, provide all further information necessary to recover the monies, surrender the associated documentation and notify the debtors (third parties) of the surrender of receivables.

e) If the attainable value of the securities exceeds the secured receivables of the Supplier by more than 20%, upon request of the Purchaser, the Supplier shall release securities as chosen by the Supplier.

## VIII. Material defects

1. Deliveries that exhibit material defects within the statutory period of limitation — irrespective of the duration of operation — will be repaired, redelivered or re-rendered without charge at the Supplier's discretion, provided the cause of the material defect was present at the time of the transfer of risk. Except where otherwise stipulated with respect to liability for damages under Art XI., the Supplier shall not be liable in accordance with its supplementary performance obligations either to remove a defective item from an alternative item (not supplied by the Supplier) in which the defective item is installed, nor bear the cost of installing a replacement or repaired item.

2. Material defect claims are limited to 12 months under the statute of limitations. This does not apply if longer terms are prescribed under law in accordance with Art. 438 Para. 1 No. 2 (structures and items for structures), Art. 479 Para. 1 (right of recourse) and Art. 634a Para. 1 No. 2 (construction defects) of the German Civil Code, as well as in the case of fatal injury, personal injury or damage to health, or in the case of a breach of duty on the part of the Supplier attributable to wil-

ful intent or gross negligence, or where a defect is wilfully concealed. Statutory provisions governing suspension of expiry, suspension and re-initiation of terms remain unaffected.

3. The Purchaser undertakes to immediately notify the Supplier in writing of material defects (including incorrect and underdelivery). The Purchaser shall not be deemed to have notified the Supplier immediately if notification is not given within two weeks; notification must be given within this period for the term to have been observed under this agreement.

4. The Supplier is entitled to make supplementary performance under this agreement conditional on payment by the Purchaser of the purchase price due. The Purchaser is entitled in this case, however, to without a reasonable portion of the purchase price proportionate to the defect in accordance with Art. III No. 7 Clause. 2. If a defect claim is wrongfully submitted, the Supplier is entitled to demand from the Purchaser expenses incurred in this regard in compensation.

5. The Supplier will first be given the opportunity to perform supplementary works within a reasonable time frame. If supplementary works are ineffective, the Purchaser is entitled to withdraw from the agreement or to reduce the rate of remuneration.

6. Defect claims are excluded in the case of minor deviations from the agreed properties, minor impairment of usability, natural wear and tear or damage resulting after the transfer of risk from incorrect or negligent handling, excessive use, unsuitable equipment, deficient construction workmanship, unsuitable foundations or from particular external influences not assumed under this agreement, or in the case of non-reproducible software errors. If modifications or repair works are performed improperly by the Purchaser or third parties, defect claims are likewise excluded for these and the resulting consequences.

7. Claims on the part of the Purchaser with respect to expenses incurred for the purpose of supplementary performance, in particular transport, travel, labour and material costs, are excluded if costs increase as a result of the Goods being delivered to an alternative delivery location to the premises of the Purchaser, unless such delivery is consistent with the intended use.

8. The Purchaser's rights of recourse against the Supplier in accordance with Art. 478 of the German Civil Code (recourse of contractor) shall exist only insofar as the Purchaser has not concluded any agreements with its recipient exceeding the scope of statutory defect claim provisions. Art. VIII No. 7 also applies accordingly to the scope of the Purchaser's right of recourse against the Supplier in accordance with Art. 478 Para. 2 of the German Civil Code.

9. Art. XI (other claims for damages) also otherwise applies to claims for damages. Further claims by the Purchaser against the Supplier or its agents or claims other than those stipulated in Art. VIII resulting from a material defect are excluded.

## IX. Industrial property rights and copyrights; defects of title

1. Unless agreed otherwise, the Supplier shall render delivery free from industrial property rights and third-party copyrights (hereinafter referred to as Property Rights) solely in the country of the point of delivery. If a third party asserts legitimate claims against the Purchaser due to a violation of Property Rights by deliveries rendered by the Supplier and used in accordance with this agreement, the Supplier shall indemnify the Purchaser as follows within the period stipulated in Art. VIII No. 2:

a) The Supplier shall, at its own discretion and expense, either acquire usage rights to the deliveries in question, modify the Goods such that Property Rights are no longer violated or replace the Goods. If this is not possible for the Supplier to achieve this reasonably, the Purchaser is legally entitled to withdraw from the agreement or to reduce the rate of remuneration.

b) The duty of the Supplier to pay compensation is governed by Art. XI.

c) The above-stipulated obligations of the Supplier apply only if the Purchaser informs the Supplier immediately of any claims asserted by a third party in writing, does not acknowledge a violation and all defensive measures and settlement negotiations remain solely at the Supplier's discretion. If the Purchaser suspends use of the delivered goods for the purposes of damage limitation or for other important reasons, the Purchaser shall be obligated to point out to the third party that the suspension of use does not signal acknowledgement of a violation of Property Rights.

2. Claims on the part of the Purchaser are excluded if the Purchaser is responsible for the violation of Property Rights.

3. Claims on the part of the Purchaser are furthermore excluded if the violation of Property Rights is attributable to special provisions imposed by the Purchaser, to use of the goods not as envisaged by the Supplier or to modification of the goods by the Purchaser or their use with products not supplied by the Supplier.
4. The Supplier retains all propriety rights and copyright on cost estimates, drawings, manuals and other documentation (hereinafter referred to as Documentation) without limitation. The Documentation must not be made accessible to third parties without the prior approval of the Supplier and must be returned to the Supplier immediately on request if the contract is not awarded to the Supplier. Clauses 1 and 2 apply accordingly to the Documentation of the Purchaser; such documentation, however, may be made available to those third parties to whom the Supplier has lawfully transferred deliveries.
5. Unless otherwise expressly agreed in writing, information submitted to the Supplier in connection with orders will not be treated as confidential.
6. The Purchaser shall have the non-exclusive right to use software supplied by the Supplier provided the agreed performance characteristics are observed without modification and on the agreed devices. The Purchaser may produce two back-up copies without express approval.
7. In the case of Property Right violations, the provisions of Art. VIII No. 4, 5 and 9 will otherwise also apply accordingly with respect to claims on the part of the Purchaser regulated under No. 1 a).
8. In the case of other defects of title, the provisions of Art. VIII will apply accordingly.
9. Further claims by the Purchaser against the Supplier or its agents or claims other than those stipulated in Art. IX resulting from a defect of title are excluded.

#### X. Impossibility of performance, contract modification

1. If delivery is deemed impossible, the Purchaser is entitled to demand compensation unless the Supplier is found not to be responsible in this regard. Claims for compensation on the part of the Purchaser, however, will be restricted to 10% of the value of the respective part of the delivery that cannot be put to its intended use due to the impossibility of performance. This limitation does not apply where mandatory liability is prescribed in cases of wilful intent, gross negligence or due to fatal injury, personal injury or damage to health; the burden of proof in this case does not shift to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract remains unaffected.
2. If unforeseeable events as defined by Art. IV No. 2 modify substantially the economic significance or content of delivery or significantly affect the Supplier's business, the contract will be reasonably adapted in good faith. If such a contract modification is economically unreasonable, the Supplier shall have the right to withdraw from the contract. If the Supplier intends to exercise its right to withdraw from the contract, the Supplier must notify the Purchaser accordingly within three weeks of becoming aware of the event. If the Purchaser fails to do so within the prescribed term, his right to withdraw from the agreement will expire.

#### XI. Other claims for damages

1. The Supplier shall be liable for claims for damages — irrespective of the legal basis — only in the case of wilful intent and/or gross negligence. In the case of ordinary negligence, the Supplier shall be liable only for damages associated with fatal injury, bodily injury or damage to health, or for damages associated with the violation of a significant contractual obligation (an obligation essential to the proper performance of the contract and whose performance the contractual partner typically relies upon and is entitled to expect); in such cases, however, the liability of the Supplier is limited to compensation for foreseeable, typically associated damages.
2. Limitations of liability derived from Para. 1 do not apply if the Supplier is found to have wilfully concealed a defect or has provided a guarantee for the quality of the Goods. The manufacturer's warranty does not constitute the provision of a guarantee by the Supplier. The provisions of Clause 1 apply accordingly to claims on the part of the Purchaser in accordance with the German Product Liability Act.
3. If the Purchaser is entitled to claim for damages in accordance with Art. XI, the period of claim applicability expires on completion of the statutory period of limitation applicable to material defect claims in accordance with Art. VIII No. 2. In the case of claims for damages in accordance with the German Product Liability Act, the statutory provisions of the statute of limitations apply.

#### XII. Place of jurisdiction and applicable law

1. The exclusive place of jurisdiction for all disputes arising either directly or indirectly from the contractual relationship will be the place of domicile of the Supplier if the Purchaser is a merchant, a corporate body under public law or a special fund under public law. The Supplier is also entitled, however, to file a suit at the general place of jurisdiction of the Purchaser.
2. German substantive law shall apply to legal relationships in connection with this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The preconditions for and effects of the retention of ownership as agreed above shall be governed by the law applicable at the respective storage location of the Goods, insofar as the choice of law in favour of German law proves inadmissible or ineffective in accordance with the respective law.

#### XIII. Severability clause:

Should a provision of this contract be or become invalid or null and void, the validity of the remaining provisions is not affected