

**GENERAL TERMS AND CONDITIONS ON DELIVERY AND PAYMENT
of Ashcroft Instruments GmbH
(as of May 2007)**

§ 1

General Scope

- 1.1 Our general terms and conditions on delivery and payment (hereinafter referred to as "**General Terms and Conditions**") shall have exclusive application; we do not accept conflicting terms and conditions or deviating terms and conditions used by a purchaser (hereinafter referred to as "**Purchaser**"). However, we reserve our right to explicitly agree in writing to conflicting or deviating terms and conditions.
- 1.2 Any agreements made between us and the Purchaser in order to execute the contract, including amendments or modifications, must be in writing.
- 1.3 Our General Terms and Conditions shall only be applicable with respect to entrepreneurs (*Unternehmer*) pursuant to section 14 the German Civil Code (*BGB*).
- 1.4 Our General Terms and Conditions shall be applicable for all future contracts with the Purchaser.

§ 2

Offer, offer documents and confirmation of order

- 2.1 Our offers are subject to confirmation, unless expressly otherwise agreed upon in writing.
- 2.2 An order by the Purchaser will only be accepted by our confirmation in writing. The scope of our duties shall only be determined by our confirmation of order, unless we have not exceptionally made a binding offer.
- 2.3 We reserve any right of ownership and copyrights for cost estimates, drawings and other documents (hereinafter referred to as "**Documents**"); they may only be passed on to a third party subject to our prior approval. The Documents must be returned without delay to us upon request if the order is not placed with us.
- 2.4 We reserve our right to make amendments in respect to the construction, the choice of materials and the construction method, provided that these amendments serve the technical improvement and are reasonable for the client.

§ 3

Prices and terms of payment

- 3.1 Prices exclude packaging, assembly and placing into operation, unless expressly otherwise provided in the confirmation of order or a binding offer.
- 3.2 Fix prices require explicit agreement in writing. In case of delivery more than eight weeks after the conclusion of the contract, we shall be entitled to charge the price valid on the date of delivery.
- 3.3 All our prices exclude VAT as amended.
- 3.4 Unless a term of payment has been provided by the confirmation of order or in any other way, the net purchase price is payable within 2 weeks from the date of delivery.
- 3.5 The Purchaser shall only be entitled to set-off if his counter claims are undisputed, legal recourse is not possible or if they are accepted by us. The Purchaser shall only be entitled to a right of retention under the same circumstances and if his claim results from the same contractual relationship.
- 3.6 Other means of payment than payment in cash or bank transfer shall only be accepted by way of special agreement and under the condition of its encashment. Bills of exchange and cheques will only be accepted on account of performance (*erfüllungshalber*). The Purchaser will be charged for expenses occurred for bills of exchange, cheques and discounting charges.
- 3.7 In case we are obliged to advance performance and we are informed of a considerable deterioration of assets (*Vermögensverschlechterung*) of the Purchaser after the conclusion of the contract, we are entitled to demand a security within a reasonable period of time or to demand payment versus (*Zug um Zug*) delivery subject to our discretion. If the Purchaser does not comply with our demand, we are, irrespective of other contractual rights, entitled to resign from the contract.

§ 4

Delivery period

- 4.1 The beginning of the delivery period as stated by us and the compliance with our duties of delivery are subject to the clarification of every technical question and the timely and adequate compliance of the Purchaser's obligations. Unless otherwise agreed in writing, the stated delivery period shall always be non-binding. The delivery period is deemed to be met, if until its expiry the goods to be delivered have left the plant or the readiness of dispatch has been communicated.
- 4.2 Delays in the delivery due to *force majeure* or due to other unforeseeable events occurring without default such as breakdowns, strikes, lock-out, lack of transport, difficulties in the delivery of raw material, official orders, delayed supply by the suppliers shall not constitute default from our side. An agreed delivery period shall be extended accordingly. If the obstruction shall be longer than four weeks, both parties shall be entitled to resign from the contract in writing in respect to the non-performed parts of the contract following the expiry of a reasonable time set by the resigning party. In this case claims for damages are excluded.
- 4.3 In case of default from our side, the Purchaser shall be entitled to resign from the contract following the expiry of a reasonable time set by the Purchaser and a statement that he will not accept the goods after the expiry of the reasonable time set. Claims for damages due to non- performance shall be limited to the typical and predictable damage.
- 4.4 If the delivery period is extended as demanded by the Purchaser, the Purchaser shall bear the according costs.
- 4.5 We shall be entitled to a part delivery (*Teillieferung*), unless there is an identifiable reasonable interest of the Purchaser.

§ 5

Shipment and passing of risk

- 5.1 Unless otherwise provided explicitly in the confirmation of order, the risk passes on to the Purchaser in the moment the goods leave our plant or storage. This shall also apply in case we bear the costs of delivery.
- 5.2 In case of explicit demand of the Purchaser we will enter into a transport insurance for the delivery at the Purchaser's expense.
- 5.3 Unless fix times for acceptance are agreed, the Purchaser has to accept the goods within eight days from the notification of the completion (*Fertigstellungsanzeige*).

§ 6

Liability for defects

- 6.1 The Purchaser shall be obliged to investigate the delivered goods without undue delay for defaults in quality and quantity and inform us in writing about visible damages within one week from the receipt of the goods; the Purchaser's claim for damages shall be excluded if he violates his duty of investigation. The Purchaser shall be obliged to inform us about hidden defaults within one week from the day of their discovery. The dispatch of the notification shall be sufficient. The Purchaser bears the burden of proof for any conditions of his claim, in particular for the defects, for the time of discovery and the timeliness of the notification.
- 6.2 Information given in respect to weight, dimensions and technical information in drawings, prospects, illustrations and other documents are, unless explicitly otherwise agreed upon in writing, not binding and in particular shall not be warranted characteristics (*zugesicherte Eigenschaften*).

- 6.3 In case the delivered good is defective for reasons we are responsible for, we are entitled to remedy the defect (*Mangelbeseitigung*) or to compensation delivery (*Ersatzlieferung*) subject to our complete discretion.
- 6.4 If supplementary performance fails, the Purchaser shall be entitled to reduce the remuneration (*Minderung*), to resign from the contract (*Rücktritt*) and to also claim damages (*Schadensersatz*). In case of insubstantial defects the Purchaser shall not be entitled to resign from the contract.
- 6.5 Warranty claims are excluded in case of insignificant deviance from the agreed qualities, in case of only minor impairment of usefulness, of natural wear and tear or damages arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or from particular external influences not assumed under the contract, or from non-reproducible software errors. Warranty claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
- 6.6 The above mentioned exemptions from liability shall not apply in case the reason for the damage is based on intent, gross negligence, or a negligent infringement of a substantial duty arising from the contract by us or a member of our executive staff. They shall further not apply if the Purchaser claims damages for non-performance (*Schadensersatz wegen Nichterfüllung*) due to the lack of a warranted characteristic (*zugesicherte Eigenschaft*). However, the compensation shall always be limited to the foreseeable damage.
- 6.7 Unless otherwise explicitly agreed upon, claims based on defects are subject to a limitation period of 12 months beginning with the passing of the risk. For work delivery (Sec. 631 et seq. BGB) the statutory limitation periods apply with a minimum period of 12 months. Concerning remedied parts and substitute delivery (*Ersatzlieferung*) a minimum limitation period of 12 months applies beginning with the end of the completion of the remedy or the substitute delivery. These terms are limitation periods (*Verjährungsfristen*) and shall also apply for consequential damages (*Mangelfolgeschäden*), unless claims for liability in tort are asserted.

§ 7

Liability for other reasons

- 7.1 Any claims for damages and reimbursement of expenses the Purchaser may have (Claims for Damages), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort exceeding the extent of the remedies granted in the above Sections 4 and 6 shall be excluded.
- 7.2 The above shall not apply in case of mandatory liability, e.g. under the German Product Liability Act (*Produkthaftungsgesetz*), in the case of intent, gross negligence, injury of life, body or health, or breach of substantial duties arising from the contract (*wesentliche Vertragspflichten*). However, Claims for Damages arising from a breach of substantial duties arising from the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
- 7.3 To the extent that the Purchaser has a valid Claim for Damages according to this Sec. 7, such a Claim for Damages shall be time-barred upon expiration of the limitation period applicable to defects pursuant to Sec. 6.7. In case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.
- 7.4 As far as our liability is excluded or limited, this shall also apply to the personal liability of our employees, staff members, representatives and persons employed in the performance of our obligations (*Erfüllungsgehilfen*).

§ 8

Retention of Title

- 8.1 Items pertaining to the supplies (hereinafter referred to as "**Retained Goods**") shall remain our property until each and every claim we have against the Purchaser on account of the business connection has been fulfilled. If the combined value of our security interests exceeds the value of all secured claims by more than 20 %, we shall release a corresponding part of the security interest if so requested by the Purchaser.
- 8.2 For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only upon the condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling his obligation to effect payment. The retraction of the Retained Goods by us does not result in a rescission from the agreement, unless explicitly otherwise provided in writing. After the retraction of the Retained Good we shall be entitled to its disposal; the proceeds of the disposal less the reasonable costs of disposal are deducted from the claims against the Purchaser.
- 8.3 The Purchaser is obliged to deal with the Retained Goods diligently; in particular the Purchaser shall insure the Retained Goods at replacement value against fire, water and theft at his own expense. The Purchaser has to conduct necessary maintenance and inspection work timely and at his own expense.
- 8.4 The alteration and processing of the Retained Goods by the Purchaser are always executed on our behalf.
- 8.5 The Purchaser assigns to us - as a security of our claims against him - any of his claims against third parties arising from the connection of a Retained Good with land.

§ 9

Venue - Place of Delivery

- 9.1 If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be Aachen. However, we shall also be entitled to bring an action at the Purchaser's place of business or if the business is related to a branch of the Purchaser to bring an action at such branch of the Purchaser.
- 9.2 The place of delivery (*Erfüllungsort*) for all claims related to the contractual relationship between the parties shall be Baesweiler.

§ 10

Applicable law/Severability clause

- 10.1 Legal relations existing in connection with this contract shall be governed by German substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.