

# General Terms and Conditions of Purchase

**Table of Contents**

1. Scope and General .....	3
2. Enquiries and Offers .....	4
3. Orders .....	4
4. Prices and Payment Terms .....	4
5. Securities .....	6
6. Delivery and Service Periods, Default in Delivery .....	7
7. Freight, Packaging, Insurance, Delivery Note .....	8
8. Deliveries .....	8
9. Quality and Documentation, Reviews During the Performance of the Contract .....	9
10. The Right of ABL to Make Changes .....	9
11. Hazardous Substances, Environmental Protection .....	9
12. Declarations of Origin .....	10
13. Authorisation Requirements for Machine/System Operation .....	10
14. Transfer of Risk .....	10
15. Liability for Defects .....	11
16. Product Liability, Indemnity .....	13
17. Insurance .....	14
18. Industrial Property Rights .....	14
19. Force Majeure .....	15
20. Reservation of Ownership, Manufacturing Equipment, Material Provided .....	15
21. Spare Parts Supply .....	17
22. Execution of Works at ABL .....	17
23. Confidentiality .....	17
24. Use for Advertising Purposes .....	18
25. Statutory Provisions, Minimum Wage, Posting of Workers .....	18
26. Place of Performance, Place of Jurisdiction, Applicable Law, Severability Clause .....	18

## § 1 Scope and General

(1) All deliveries, services and offers of ABL suppliers shall be made on the basis of these **General Terms and Conditions of Purchase** (hereinafter referred to as “*Terms*”). For contracts concerning machinery and systems which are used for line projects, the special *Terms* for the procurement of machinery and systems for use in line projects in the currently valid version shall prevail and apply.

Contractual relationships shall be subject exclusively to these General Terms and Conditions of Purchase, unless any deviation has been expressly agreed in writing. The General Terms and Conditions of the Supplier shall not apply. The *Terms* shall also apply exclusively if the delivery is accepted unconditionally in the knowledge that the General Terms and Conditions of the Supplier contradict or deviate from these *Terms*. The mere reference to a letter from the Supplier containing or referring to the Terms and Conditions of the Supplier shall not constitute agreement on the part of ABL to the validity of such terms and conditions.

These *Terms* shall also apply in the current business relationship to all future transactions between the contracting parties without the need for a renewed reference to these terms.

(2) In individual cases, individual agreements with the Supplier (including collateral agreements, supplements and amendments) shall in any case take precedence over these terms. The content of such agreements shall be governed by a written contract or written confirmation from ABL, unless in exceptional cases the written form requirement has been deviated from.

(3) Legally relevant declarations and notifications to be made by the Supplier to ABL after conclusion of the contract (e.g. defining time periods, reminders, declaration of withdrawal, etc.) must be made in writing in order to be effective.

(4) References to the validity of statutory regulations shall only be of supplementary importance. Statutory regulations shall not apply insofar as they are directly amended or expressly excluded in these *Terms* in an effective form.

(5) Any invalidity of individual provisions shall not affect the validity of the remaining provisions.

(6) The Supplier may not transfer or assign rights, obligations and in particular claims arising from the business relationship with ABL to third parties without the prior written consent of ABL.

(7) The Supplier shall ensure certification in accordance with DIN EN ISO 9000/9001 for its services and shall provide ABL with proof of certification upon request.

## **§ 2 Enquiries and Offers**

(1) These terms shall also apply to ABL enquiries. Declarations made in the form of enquiries are non-binding.

(2) The Supplier shall base its offers on the contents of the enquiries and expressly point out any deviations. By submitting an offer at the request of ABL, the Supplier shall assume a contractual obligation towards ABL to expressly point out any deviations between its offer and the enquiry.

The preparation and submission of offers and cost estimates shall be free of charge and non-binding for ABL; ABL shall not owe any remuneration for visits, the preparation of plans, drawings and the like unless expressly agreed otherwise in writing. The offer made by the Supplier shall be binding for the Supplier and may be accepted by ABL within 4 weeks of receipt of the offer.

## **§ 3 Orders**

(1) Only written orders shall be binding. Orders placed in any other form shall only become binding upon written confirmation.

(2) Unless ABL expressly waives an order confirmation, each order must be confirmed to ABL without delay in writing, stating the binding delivery and service time. ABL reserves the right to cancel orders for which ABL does not receive confirmation from the Supplier within 5 calendar days. ABL may declare cancellation until receipt of the written order confirmation.

(3) Supplements or subsequent agreements must be made by ABL in writing in order to be effective.

## **§ 4 Prices and Payment Terms**

(1) The price stated in the order shall be binding. All prices are inclusive of VAT, unless this is shown separately. Unless otherwise agreed, the price shall include delivery to the place specified in the order in accordance with DDP (Incoterms 2020) including packaging.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services provided by the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance). The Supplier must take back packaging material at the request and expense of ABL.

(3) The agreed price minus 2% discount shall be payable within 30 calendar days of the full delivery and service (including any agreed acceptance) as well as receipt of a proper invoice. If payment is made within 60 calendar days, the Supplier shall not grant any discount on the net amount of the invoice. In case of bank transfer, the payment shall be deemed to have been made in good time if the transfer order is received by the bank of ABL before the end of the payment period; ABL is not responsible for delays by the banks involved in the payment transaction.

(4) Insofar as a written payment plan has been agreed between ABL and the Supplier, ABL shall make deposits only to the extent of the proven defect-free service performance; the performance and warranty rights shall remain unaffected by the payments. Unless otherwise agreed, down payments/advance payments made by ABL shall be offset against invoices due for progress payments until the invoices due for progress payments are no longer compensated by down payments/advance payments. The Supplier shall be entitled to demand that a down payment/advance payment security be returned to the Supplier against the transfer to ABL of a down payment/advance payment security correspondingly reduced by the invoiced amount.

(5) Payment shall not constitute acceptance of terms and prices and shall not affect the right of ABL in respect of improper delivery or service, the right to audit or the right to object to an invoice for other reasons.

(6) ABL shall not owe any interest payable after expiry of the due date. The default interest is 5 percentage points above the base interest rate annually. The statutory provisions shall apply to the justification for the delay, whereby a written reminder from the Supplier shall be required in any case, deviating hereof if necessary.

(7) ABL shall be entitled to the rights of set-off and retention as well as the plea of the non-fulfilled contract to the extent of the law. ABL shall in particular be entitled to withhold due payments as long as ABL still has claims against the Supplier from incomplete or defective services from the business relationship.

(8) The Supplier shall have a right of set-off or retention only with respect to legally established or undisputed counterclaims.

(9) The Supplier shall issue a separate invoice for each delivery or service. In particular, the invoice must contain the complete order number, item number, article description, article number as well as the quantity or number of the unit of measurement ordered assigned on the ABL website. If these conditions are not met, ABL shall not be responsible for the resulting delays in invoice processing and payment settlement; moreover, no discount periods shall commence in this case.

(10) If, during the term of a contract for the supply of products, the Supplier delivers the contractual or similar products in comparable quantities to a third party under more favourable conditions, in particular with regard to price, discounts, technology, quality, payment terms, delivery times or other terms (hereinafter *Conditions*), the Supplier shall be obligated to inform ABL of this without delay and automatically grant ABL these more favourable *Conditions*. The new *Conditions* shall apply retroactively from the time at which the Supplier granted these *Conditions* which are more favourable than those of the third party.

(11) If the purchase price is dependent on the quantity of delivered goods, the units of measurement specified by ABL (e.g. kg, m<sup>2</sup>, running metre) shall apply for the calculation of the purchase price. Unless the quantities actually delivered have been officially measured at the place of dispatch, the quantities and dimensions determined by ABL upon delivery shall be decisive. If it is subsequently established that the Supplier has delivered more than the quantity ordered according to the order, the Supplier shall not be entitled to demand payment for the additional quantity. If it is established that the Supplier has delivered less than the quantity ordered, ABL may either demand delivery of the missing quantity or withdraw from the purchase agreement in view of the missing quantity.

## **§ 5 Securities**

(1) As security for the down payment/advance payment, the Supplier shall provide ABL with an unlimited performance bond/guarantee from a German or international provider of performance bonds/guarantees. The following are recognised as such: domestic banks or savings banks, foreign banks with a long-term rating of at least BBB- (if issued by Fitch Ratings or Standard and Poor's) or at least Baa3 (if issued by Moody's). The wording of the guarantee must correspond to the ABL model text. Down payment /advance payment performance bonds must also cover the gross amount, be directly enforceable, free of charge for ABL and for an unlimited period, contain a waiver of defences of set-off, advance claim and invalidity and must not contain a security deposit clause. Claims arising from the performance bond/guarantee must not expire before the respective secured claim against the Supplier.

(2) As security for claims for defects, the Supplier shall provide an unlimited performance bond from a major German bank or a German credit insurer for acceptance, the wording of which shall correspond to the ABL model text. The security shall amount to 5% of the net invoice amount, unless otherwise agreed. The security for claims for defects shall extend to the settlement of all claims for defects including damages as well as the reimbursement of overpayments including interest. Claims arising from the performance bond must not expire before the respective secured claim against the Supplier. Until the contractual security has been provided, ABL shall be entitled to retain 5% or a differently agreed percentage of the net invoice amount.

(3) ABL shall also be entitled at any time to demand from the Supplier, in addition to the two aforementioned performance bonds or guarantees pursuant to paragraphs (1) and (2), a contractual performance bond or guarantee of an appropriate amount.

## **§ 6 Delivery and Service Periods, Default in Delivery**

(1) The deadlines specified by ABL in the order shall be binding. The date of receipt of the goods at the delivery address stated in the order during normal business hours with the necessary shipping documents is decisive for compliance with the delivery or service date or the delivery or service period.

If a delivery with assembly or service has been agreed between the Supplier and ABL, the delivery of the defect-free goods after proper execution of the assembly or service shall be decisive for the timeliness of the delivery. Insofar as acceptance is provided for by law or contractually agreed, the time of acceptance shall be decisive. The Supplier shall be entitled to claim the absence of deliveries or services required or to be provided in advance according to the agreement by ABL, only if the Supplier has requested them in writing and has not received them within a reasonable period of time. If the Supplier recognises that the agreed deadlines cannot be met for any reason whatsoever, the latter shall notify ABL without delay in writing, stating the reasons for and the duration of the delay. The unconditional acceptance of a delayed (partial) delivery or (partial) service shall not constitute a waiver by ABL of any rights with regard to the late (partial) delivery or (partial) service.

(2) The Supplier shall be liable to ABL for all direct and indirect damage caused by the delay. Acceptance of the delayed delivery or service shall not constitute a waiver of claims for compensation. If the Supplier is in default with its delivery or service, ABL shall be entitled to withdraw from the contract and claim damages for non-performance after expiry of a reasonable grace period set by us, notwithstanding further statutory claims and rules. In this context, the Supplier shall also reimburse ABL for any additional costs incurred as a result of any covering purchase.

(3) If the Supplier is in default with a delivery or in the event of an incorrect delivery, ABL shall be entitled to claim a contractual penalty in the amount of 1% of the net price per commenced calendar week, but not more than a total of 5% of the net price of the goods delivered late or incorrectly. ABL shall be entitled to claim the contractual penalty in addition to demanding performance and as a minimum amount of damages owed by the Supplier in accordance with the statutory provisions; the assertion of further damages shall remain unaffected. If ABL accepts the delayed service, ABL shall assert the contractual penalty at the latest with the final payment.

(4) If delivery takes place earlier than agreed, ABL reserves the right to return the goods at the expense of the Supplier. If the goods are not returned in the event of premature delivery, the goods shall be stored by ABL until the delivery date at the expense and risk

of the Supplier.

## **§ 7 Freight, Packaging, Insurance, Delivery Note**

(1) Delivery will be made in accordance with DDP (Incoterms 2020) to the place specified in the order placed by ABL.

(2) Insofar as it has been agreed that ABL shall bear the freight costs, ABL shall bear only the freight costs most favourable to ABL. Insofar as it has been agreed that the Supplier shall commission the transport and ABL shall bear the costs thereof, the Supplier shall use the carrier or forwarding agent designated by ABL. This agreement does not change the agreements regarding the place of performance and transfer of risk. All costs incurred up to handover to the carrier, including loading and carriage, shall also be borne by the Supplier in this case.

(3) The Supplier shall comply with the requirements of the current ABL packaging regulations. The Contractor shall also carefully safeguard the interests of ABL during shipment. The goods should be packed so that the risk of damage during transport is as low as possible. The Supplier shall be liable for damage resulting from improper packaging.

(4) The Supplier must take back used, empty packaging free of charge. If this is not possible, the Supplier shall bear the corresponding reasonable disposal costs incurred by ABL.

(5) The delivery must be made with a delivery note on which the order number, item number, article description, article number of ABL as well as the quantity or number of the unit of measurement ordered are noted. If these details or the delivery note are missing, ABL may reject the delivery.

## **§ 8 Deliveries**

(1) The Supplier shall not be entitled to have the service owed by it performed by third parties (e.g. subcontractors) without the prior written consent of ABL. The Supplier shall bear the procurement risk for its services, unless otherwise agreed in writing in individual cases (e.g. sale of goods in stock).

(2) The Supplier must adhere exactly to the orders with regard to quantity. The Supplier shall only be entitled to make partial deliveries or provide partial services if partial deliveries or partial services have been previously agreed in writing by ABL, have been contractually agreed or are reasonable under exceptional circumstances for ABL. Insofar as quality verification certificates have been agreed, they shall form an integral part of the delivery and must be handed over to ABL at the latest together with the goods.

(3) Insofar as the subject of the contract is the supply or manufacture of structural installations, machinery and technical equipment, the Supplier must also deliver the

corresponding technical documentation including circuit diagrams, functional diagrams and construction plans.

(4) Without the consent of ABL, excess or shortfall deliveries may not be made. Acceptance of goods is always subject to quality, condition and quantity.

## **§ 9 Quality and Documentation, Reviews During the Performance of the Contract**

(1) The Supplier must comply with the recognised technical guidelines and the applicable safety regulations for its deliveries. The Supplier shall perform and maintain effective quality assurance and provide ABL with evidence upon request. Insofar as the Supplier has received drawings, samples or other regulations or documents from ABL, the Supplier shall comply with them with regard to the execution and characteristics of the delivery item. Changes to the delivery item, an already approved production process or its relocation to another site shall require timely written notification by the Supplier and the prior express written consent of ABL.

(2) ABL shall be entitled to review the performance of the contract by the Supplier at any time. For this purpose, ABL shall be entitled to enter the factory of the Supplier during normal operating hours after prior notification and to inspect the facilities and systems relevant for the performance of the contract. The Supplier and ABL shall each bear the expenses arising from the review themselves. The contractual or statutory rights of ABL shall not be affected by such reviews.

## **§ 10 The Right of ABL to Make Changes**

ABL shall be entitled, even after confirmation of the order by the Supplier, to request that the Supplier make changes to the products (in particular also with regard to the construction and design of the products) at any time. In this case, the Supplier shall inform ABL without delay of the effects of this change request, in particular with regard to additional or reduced costs and the delivery date, and the parties shall agree, if necessary, on an appropriate contractual adjustment.

## **§ 11 Hazardous Substances, Environmental Protection**

(1) For goods and materials as well as for processes which, due to laws, regulations, other provisions or due to their composition and their effect on the environment, require special treatment

with regard to transport, packaging, labelling, storage, handling, manufacture and disposal, among other things, the Supplier shall be obligated to comply with the legal regulations of the country of manufacture as well as the country of distribution.

(2) In this case, the Supplier shall provide ABL with the necessary papers and documents prior to confirmation of the order. If, in the course of the supply relationship, the requirements according to paragraph 1 change, the Supplier shall send ABL the papers and documents corresponding to the changed requirements without delay.

(3) The Supplier shall be liable for all damages resulting from culpable breach of the existing statutory provisions.

(4) In addition, the Supplier is obligated to comply with all statutory and official regulations with regard to environmental protection when fulfilling its contractual obligations.

## **§ 12 Declarations of Origin**

If the Supplier makes declarations regarding the origin of the delivered goods, the following shall apply:

(1) The Supplier shall undertake to enable the customs authorities to check these proofs of origin without delay, to provide the necessary information and to provide any necessary confirmations.

(2) If the declared origin is not recognised by the competent authority due to a lack of documentary evidence or inability to check, the Supplier shall be obligated to pay damages. However, this liability shall only arise in the event of negligence on the part of the Supplier or in the absence of warranted characteristics.

## **§ 13 Authorisation Requirements for Machine/System Operation**

Insofar as the operation of the machine/system to be delivered by the Supplier requires public-law or official approval, the Supplier must procure this at its own expense and risk and provide proof of this to ABL.

## **§ 14 Transfer of Risk**

The risk of accidental loss or accidental deterioration of the goods shall be transferred to ABL upon proper and full delivery and service at the agreed place, including handover as specified in § 8 paragraph 3 and other necessary documents. If a delivery has been agreed with an installation/assembly/service,

the transfer of risk takes place after proper execution of the installation/assembly/service and handover. If an acceptance is provided for by law or contractually agreed, the acceptance date shall be determined jointly. The result of the acceptance shall be recorded in an acceptance report.

The transfer of risk shall not take place before the written confirmation of successful acceptance by ABL in the written acceptance report. Declarations of acceptance shall be subject to the written form requirement. Acceptance cannot take place in any other way, in particular not by means of reviews, expert opinions, certificates or work reports. The payment of invoice amounts expressly does not constitute an implied acceptance.

### **§ 15 Liability for Defects**

(1) In the event of defective delivery, the statutory provisions shall apply unless otherwise stipulated in the following provisions (in particular for production material).

(2) ABL shall inspect the products ("production material") delivered by the Supplier for production purposes upon receipt for conformity of the goods ordered and the goods delivered, for any deviations in quantity, as well as for externally visible damage, to the extent that and as soon as this is actually possible and reasonable in the ordinary course of business.

ABL shall notify the Supplier of any defects identified during this inspection within 14 days of their discovery. The Supplier shall otherwise waive any further incoming goods inspection by ABL. ABL shall notify the Supplier of other defects which are only identified by ABL during processing or the intended use of the delivered goods within 14 days of identification of the defects.

In this respect, the Supplier shall expressly waive any objection regarding delayed notice of defects.

(3) The Supplier shall warrant that its delivery or service is in accordance with the contract, that it is functional, faultless and free from material defects and defects of title. The Supplier shall also warrant that its delivery and service comply with the quality agreed with ABL, including the agreed technical delivery regulations, specifications, drawings, samples and/or descriptions, and comply with applicable standards including DIN EN ISO 9000/9001. The Supplier shall also warrant that its deliveries and services are state of the art.

(4) The Supplier shall be obligated to carry out the order in such a way that the law on technical work equipment, the relevant accident prevention regulations, other occupational health and safety regulations as well as the generally recognised safety, occupational health and hygienic regulations applicable in the Federal Republic of Germany are observed. If this regulation is not

observed, the delivery or service shall be deemed improperly rendered.

(5) ABL shall be entitled to the statutory rights based on liability for defects without restrictions. In particular, ABL shall be entitled, as subsequent performance at the option of ABL, to demand that the Supplier remedy the defect or deliver a replacement. Subsequent performance shall be carried out by the Supplier without delay. It must also comply with the operational requirements of ABL.

(6) In the event of subsequent performance, the Supplier shall be obligated to bear all expenses necessary for the purpose of remedying the defect or delivering a replacement. If the defect is discovered by an ABL customer, the necessary expenses shall also include transport costs to the ABL customer. If the defect is discovered after the product has been incorporated into other items, the necessary expenses shall also include the costs of dismantling the defective products and installing the products repaired or replaced by the Supplier. Approval by ABL of the drawings and calculations of the Supplier shall not affect its warranty obligation.

(7) If there is a defect in the delivery or service provided by the Supplier, ABL may, after the unsuccessful expiry of a reasonable period determined for subsequent performance, remedy the defect itself or have it remedied by a third party and claim reimbursement for the necessary expenses, unless the Supplier rightly refuses subsequent performance. Section 323 (2) of the German Civil Code shall apply accordingly. The determination of a reasonable period is not necessary even if the subsequent performance has failed or is unreasonable. ABL may demand an advance from the Supplier for the expenses necessary to remedy the defect.

(8) In the event of defects of title, the Supplier shall also indemnify ABL against any existing third-party claims, unless the Supplier is not responsible for the defect of title.

(9) ABL can either keep defective goods or return them to the Supplier at the expense and risk of the Supplier.

(10) Unless expressly agreed otherwise, the warranty period shall be 36 months from delivery or, if acceptance is provided for by law or contractually agreed, from acceptance.

Unless otherwise agreed, all work on or in connection with buildings shall be subject to a warranty period of five years. If the Supplier provides subsequent performance, the limitation period for liability for the absence of defects in the subsequent performance shall begin anew after conclusion of the subsequent performance, unless the Supplier has expressly and justifiably reserved the right to provide subsequent performance only as a gesture of goodwill, to avoid disputes or in the interest of the continuation of the business relationship.

(11) For hidden defects, the Supplier shall assume a warranty of 5 years from delivery or acceptance of the goods. The warranty period shall be extended by the duration of the

interruption of operations caused by the work carried out to remedy the defect or deliveries of replacement parts for the delivery item. These, in turn, shall be subject to the full warranty period.

## **§ 16 Product Liability, Indemnity**

(1) Insofar as the Supplier has caused a product fault and/or (depending on the underlying basis of the claim) is responsible for it, the Supplier shall be obligated, at the first request of ABL, to pay damages or indemnify ABL against all third-party claims, provided that the cause of the claim lies within the control and organisation of the Supplier and the Supplier itself would be liable towards third parties. Insofar as the joint responsibility for or contributory negligence of ABL can be asserted, the Supplier may assert this joint responsibility or contributory negligence against ABL. In the relationship between ABL and the Supplier, the respective share of the payment for damages shall be based on the corresponding proportionate joint responsibility (Section 254 of the German Civil Code) and/or contributory negligence.

(2) The obligations of the Supplier pursuant to paragraph 1 shall also include the costs incurred by ABL as a result of the use of legal assistance or otherwise in connection with the defence against product liability claims. If ABL is subject to special rules governing the burden of proof in relation to the injured party, these rules governing the burden of proof shall also apply in the relationship between ABL and the Supplier, unless the circumstances to be proven are the responsibility of ABL.

(3) In cases of product liability pursuant to paragraph 1, the Supplier shall provide ABL with all necessary information and support using reasonable efforts in order to dispute the claims.

(4) Insofar as a recall action or an owner notification programme is necessary to comply with a law, regulation, order or other governmental requirement or as a safety measure to avoid personal injury or death or in the case of other field or service actions, the costs, including but not limited to labour, transport and traceability costs, shall be apportioned on the basis of the contributory negligence (Section 254 of the German Civil Code)/joint responsibility respectively attributable to ABL and the Supplier. As far as possible and appropriate, ABL shall inform the Supplier of the content and scope of the recall actions or other field or service actions to be carried out and give the Supplier the opportunity to comment. All other statutory claims shall remain unaffected by this.

## **§ 17 Insurance**

(1) The Supplier shall be obligated to take out and maintain comprehensive business, product and environmental liability insurance (including extended

product liability, which also covers recall risk) with a reputable insurance company with a minimum coverage of at least EUR 10.0 million per claim for personal injury, property damage and pecuniary loss. Insofar as the insurance contract provides for a maximum compensation sum for all claims in an insurance year, this must be at least twice the amount of the cover available per claim. Such insurance shall also extend to affiliated companies of the Supplier insofar as they are involved in a service which is subject to these terms. The contractual and statutory liability of the Supplier shall remain unaffected by the scope and amount of its insurance cover.

(2) At the request of ABL, the Supplier shall provide evidence of having taken out such insurance and the premium payment without delay.

### **§ 18 Industrial Property Rights**

(1) The Supplier shall ensure and warrant that by purchasing, owning, offering, using, processing or reselling the products, ABL or customers of ABL do not infringe any industrial property rights of third parties, in particular any trademark rights, corporation rights, rights to a name, patent rights, utility model rights, design patent rights, trade dress, design rights or copyrights of third parties (including corresponding protective rights applications) ("industrial property rights") in the country of origin of the Supplier, as well as within the Federal Republic of Germany, the European Union, the USA, Canada, Brazil, Argentina, China, Korea, Japan, India and Russia. If the Supplier culpably breaches this obligation, the latter shall indemnify ABL and ABL customers at the first request of ABL against any third-party claims arising from such actual or alleged infringements of industrial property rights and shall bear all costs and expenses incurred by ABL in this context, in particular legal prosecution and defence costs and costs resulting from compliance with a possible duty to refrain.

(2) Paragraph 1 shall not apply if the delivery item has been manufactured according to drawings, models or other detailed information provided by ABL and the Supplier was neither aware nor should have been aware that industrial property rights of third parties were infringed as a result.

(3) The parties shall be obligated to inform each other without delay of any infringement risks and alleged cases of infringement that become known and to mutually counteract such infringement claims using reasonable efforts.

**§ 19 Force Majeure**

(1) If ABL loses interest in service in case of events of force majeure (e.g. natural disasters, war, insurrection, acts of God, energy shortage, pandemics, epidemics, industrial action), for example because ABL cannot use the service due to damage to the production facilities, ABL may, at its option, withdraw from the contract in whole or in part with regard to those services which have not yet been delivered or provided to ABL or request that the service be provided at a later date. With regard to the services affected by such a withdrawal, the Supplier may claim reimbursement of the expenses already incurred with regard to the service, insofar as the latter cannot otherwise use the result of the expenses.

(2) The Supplier shall inform ABL without delay in writing of any impending or already existing obstacles to delivery which are recognisable to the Supplier and shall provide all possible and necessary information and take all measures to nevertheless fulfil its obligations as fully as possible.

(3) If ABL is prevented from accepting and/or receiving the delivery or service by events of force majeure, this shall not constitute default of acceptance or payment.

**§ 20 Reservation of Ownership, Manufacturing Equipment, Material Provided**

(1) ABL does not recognise any reservations going beyond the simple reservation of ownership of the Supplier. ABL shall be entitled to use, further process and sell as well as to combine and mix the goods with other goods irrespective of reservation of ownership.

(2) The Supplier shall undertake to use material provided by ABL exclusively for the fulfilment of orders placed by ABL. The Supplier must mark ABL material as such, manage it and store it separately.

(3) If material provided by ABL is processed or modified, ABL shall acquire sole ownership of the new item. In this case, processing and modifications shall be carried out for ABL. In lieu of transfer of ownership, the Supplier shall store the goods for ABL free of charge with the diligence of a prudent businessman.

(4) If ABL provides parts or material (including software, finished and semi-finished products) to the Supplier, ABL shall reserve ownership thereof. Processing or modification by the Supplier shall be carried out for ABL. If the reserved goods are processed by ABL with items not belonging to ABL, ABL shall acquire joint ownership of the new item in the proportion of the value of the item of ABL (purchase price plus VAT) to the other items processed at the time of processing.

(5) If the parts or material provided by ABL are inseparably mixed or combined with other items not belonging to ABL, ABL shall acquire joint ownership of the new item in the proportion of the value of the reserved item (purchase price plus VAT) to the other mixed or combined items at the time of mixing or combining. If the mixing or combination takes place in such a way that the item provided by the Supplier is to be regarded as the main item, it shall be deemed agreed that the Supplier shall assign joint ownership to ABL on a pro-rata basis; the Supplier shall retain sole ownership or joint ownership for ABL.

(6) Insofar as the security rights to which ABL is entitled pursuant to paragraph 4 and/or paragraph 5 exceed the purchase price of all reserved goods not yet paid by ABL by more than 10%, ABL shall be obligated to release the security rights at its option at the request of the Supplier.

(7) The Supplier shall assume liability for any damage, loss, theft, deterioration, destruction and rejection through no fault of its own for the material provided and the items manufactured therefrom.

(8) Tools, models and other aids which are manufactured for the fulfilment of the order and separately invoiced by the Supplier shall become the property of ABL at the time of manufacture. In the event of damage, loss or destruction, the Supplier shall be obligated to restore or replace the goods.

(9) The handing over of tools, models and other aids in accordance with paragraph 8 above shall be replaced by the fact that the Supplier stores them free of charge for ABL. The Supplier must clearly mark the aforementioned items as property of ABL and draw the attention of third parties wishing to establish a claim to them to the right of ownership of ABL. The Supplier shall be obligated to maintain and preserve the aforementioned items and to remedy normal wear and tear; the necessary expenditure shall be covered by the purchase price. In the event of damage, loss or destruction, the Supplier shall be obligated to restore or replace the goods.

(10) Submitted samples, drawings, sketches, illustrations etc. shall remain the property of ABL; ABL shall retain the copyright or right of use to them. They may not be copied or reproduced without the written consent of ABL. The documents must be returned to ABL together with the offer.

## **§ 21 Spare Parts Supply**

The Supplier shall undertake to ensure a supply of spare parts for the intended service life of the end products for which the products are to be used. The minimum period is 15 years after the end of (series) of production of the products. In good time before the end of the minimum period, the

Supplier shall offer ABL the possibility of a final order for its needs after the end of series production

## **§ 22 Execution of Works at ABL**

Persons carrying out work at the factory premises of ABL in the context of the performance of the contract shall observe the provisions of the respective factory regulations; the regulations for entering and leaving the factory premises must be complied with. Liability for accidents which may happen to these persons while on the factory premises shall be excluded, unless these have been caused by ABL through wilful misconduct or gross negligence.

## **§ 23 Confidentiality**

(1) The Supplier shall undertake to treat all information received directly or indirectly from the other contracting party as strictly confidential and not to use it for any purpose other than for the performance of the respective contract. Orders and all related commercial and technical details must also be treated as confidential information. In particular, all illustrations, drawings, calculations, quality guidelines, samples and similar items received must be treated as confidential. Reproduction and disclosure of confidential information shall only be permitted within the framework of operational requirements. Confidential information may only be disclosed to third parties in written form with the prior consent of ABL.

(2) The above obligations shall not apply to such confidential information which the Supplier can prove to be (i) already publicly accessible at the time of such communication or to have subsequently been made publicly accessible through no fault of the Supplier; (ii) already in the possession of the Supplier at the time of such communication; (iii) made available to the Supplier by a third party without any obligation to keep it confidential and not to use it, provided that this third party has not received such information directly or indirectly from the Supplier; and (iv) required by law to be communicated to authorities.

(3) The Supplier shall undertake to obligate its employees and vicarious agents affected by this confidentiality provision as well as its subcontractors to maintain confidentiality to the same extent. The Supplier may use the confidential information made known to it by ABL exclusively for the intended purpose.

(4) The obligation to maintain confidentiality is valid beyond the termination of the supply relationship for a period of 10 years. The Supplier shall undertake to return to ABL all confidential information received after termination of the supply relationship, insofar as it is represented or stored on electronic storage media. At the request of ABL, the Supplier shall confirm in writing to ABL the fulfilment of the obligations arising from the last two sentences.

**§ 24 Use for Advertising Purposes**

The Supplier shall not be entitled to provide third parties with information about machines manufactured by ABL or an ABL customer without the prior written consent of ABL. In particular, the Supplier shall not be entitled to exhibit machines for its own advertising purposes or to make photos, drawings, technical data etc. of these machines known to third parties in order to advertise itself. Advertising with the business relationship existing with ABL shall also require the prior written consent of ABL.

**§ 25 Statutory Provisions, Minimum Wage, Posting of Workers**

With regard to the obligation of the Supplier to pay the applicable minimum wage to its employees or to comply with the German Posted Workers Act, the statutory provisions in connection with the special contractual terms relating to the statutory minimum wage apply.

**§ 26 Place of Performance, Place of Jurisdiction, Applicable Law, Severability Clause**

(1) The place of performance for all mutual deliveries and services shall be the place of destination specified by ABL, even if ABL assumes transport costs or the insurance of the goods. The shipment risk shall in any case be borne by ABL until delivery at the receiving factory of ABL or at the place of destination of the Supplier.

(2) Insofar as the written form is stated and required as a formal requirement in these General Terms and Conditions or in the contracts associated therewith, this shall also be expressly observed by means of a declaration in the form of an e-mail or fax.

(3) German law shall apply exclusively, excluding UN Convention on Contracts for the International Sale of Goods and the provisions of international private law. The exclusive place of jurisdiction shall be the court competent for the registered office of ABL. However, ABL shall also be entitled to appeal to the court having jurisdiction at the registered office of the Supplier.

(4) Should individual provisions of these terms or of the respective contract between the parties be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall undertake to replace ineffective provisions with new provisions that comply with the regulations contained in the ineffective provisions in a legally permissible manner. The same shall apply to loopholes in the regulations. The parties shall undertake to remedy the loophole in a manner that comes as close as possible to what the parties would have determined in accordance with the meaning and purpose of the contract if they had considered this point.