

## **General Terms and Conditions of Business of ASC GmbH (version 1<sup>st</sup> May 2018)**

### **1. Area of application:**

- 1.1. These General Terms and Conditions of Business of ASC GmbH (hereinafter called “ASC“) govern the performance of work and services by ASC.
- 1.2. They only apply for entrepreneurs and companies in the exercise of their independent professional or commercial activity and also for legal entities established under public law. They apply for all contracts concluded as part of the business relationship and also all future transactions.
- 1.3. Divergent terms and conditions of business of the other party only apply in so far as ASC expressly accepts these in writing or text form.

### **2. Offer and contract conclusions:**

- 2.1. Offers made by ASC are subject to final confirmation.
- 2.2. A contract is not concluded until a written confirmation or order is issued.
- 2.3. Partial deliveries are permitted. The right is expressly reserved to supply variations in the ordered or delivered articles from the order, particularly with regard to material and workmanship, while within the bounds of technical progress and complying with the contractually agreed planned attributes.

### **3. Services of ASC**

- 3.1. The work and services to be performed by ASC are shown as such in the order document and are specified in detail. ASC is under no obligation to perform amended or additional services without a prior written agreement.
- 3.2. The services which are the subject of the contract will be performed in accordance with the technical standards applicable in Germany at the time of the performance. Any deviations from these must be separately agreed in writing.

- 3.3. The delivery dates specified by ASC are not binding unless they were expressly confirmed as binding by ASC in writing. The delivery period is deemed to have been maintained if the goods were dispatched up to the last day of the delivery period. However, this is subject to the condition that the customer has met his obligations under the contract as set out in Clause 4 in good time in so far as ASC needs these documents, approvals and consents etc. in order to be able to comply with the delivery dates.
- 3.4. If the delivery period is exceeded the customer must set a reasonable grace period.
- 3.5. If the customer is in default of accepting the goods or culpably breaches obligations of cooperation, ASC is entitled to require reimbursement for losses accruing to ASC as a result thereof, including any additional expenditure. The right is reserved to assert additional claims
- 3.6. If despatch or delivery is delayed at the customer's wish or for reasons attributable to the customer, ASC may invoice the customer with reasonable storage costs commencing one month after the despatch date or notification that the goods are ready for despatch.
- 3.7. Force majeure, interruptions of operations and similar unforeseeable circumstances for which ASC is not responsible release ASC from the obligation of performance for their duration. In these circumstances the customer is, in particular, not entitled to withdraw from the contract and/or assert claims for compensation.

#### **4. The customer's obligations:**

The customer is obliged to procure all the documents, approvals and consents etc. necessary for the performance of the contract.

#### **5. Prices:**

- 5.1. Price lists, information in brochures and the Internet are subject to confirmation. Agreements on fixed prices must always be agreed in writing. A binding price definition only comes into being through a written order confirmation from ASC and is subject to the condition that the order data underlying the order confirmation remains unchanged.
- 5.2. ASC's prices are "ex works" or EXW Pfaffenhofen according to INCOTERMS 2010 and exclude packaging, delivery, insurance and other ancillary costs which will be invoiced separately by ASC.
- 5.3. All price information excludes the applicable Value Added Tax imposed by law.

- 5.4. The deduction of a prompt payment discount requires a special written agreement and is not otherwise permitted.
- 5.5. If a delivery is not made until more than four months from the confirmation issued by ASC, the latter is entitled to apply amended current prices for the goods.

## **6. Terms and conditions of payment:**

- 6.1. Payment of all invoiced amounts is due within 30 days of the invoice date without deductions. The customer is in default on the expiry of this period. In the event of a payment default ASC is entitled to demand reasonable reminder fees and to decline any further performance of the contract.
- 6.2. Notwithstanding instructions from the customer to the contrary, payments which are received are set initially against costs, then interest and finally against the principal debts; if there is more than one debt, the payment is set against the oldest debt in each case.
- 6.3. ASC is entitled to demand reasonable advance payments and progress payments. The progress payments may not be greater than the progress payments to be made in accordance with § 632 a, Paragraph 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) and § 650 m, Paragraph 1 of the German Civil Code.
- 6.4. The customer is only entitled to rights of offsetting or retention if the counterclaims have been judged to be final and absolute, are uncontested or have been recognised by ASC.
- 6.5. The assignment of any claims whatsoever against ASC is excluded and invalid in respect of ASC.
- 6.6. The same applies to partial deliveries which are invoiced separately.

## **7. Passing of risk and despatch:**

- 7.1. Unless stated otherwise in the order confirmation, delivery will be “ex works” (EXW Pfaffenhofen according to INCOTERMS 2010 as amended). In the absence of a special agreement the customer is at liberty to select the carrier and the nature of the means of transport.
- 7.2. The risk of accidental destruction and accidental deterioration of the goods passes to the customer on despatch from “ex works” even if a carriage paid delivery was agreed.

- 7.3. If despatch is delayed for reasons for which the customer is responsible, risk passes to the customer at the time the goods were ready for despatch. Costs arising as a result of the delay (particularly storage costs) must be borne by the customer in these cases.
- 7.4. ASC is not obliged to insure the goods against damage while in transit or arrange for the goods to be insured against damage while in transit unless an obligation to this effect has been accepted by ASC in writing.

## **8. Reservation of title:**

- 8.1. ASC only delivers on the basis of the reservation of title described in more detail below. This also applies to all future deliveries even if ASC does not always explicitly invoke this condition.
- 8.2. ASC retains title to the goods which have been delivered until all debts arising from the supply agreement have been paid in full. ASC is entitled to take the goods back if the customer fails to conduct himself in accordance with the contract.
- 8.3. For so long as title has not yet passed to the customer, the latter is obliged to treat the purchased item with due care. He is particularly obliged to arrange reasonable insurance cover at his own expense. If maintenance and inspection work has to be undertaken, the customer must undertake these in good time and at his own expense. For so long as title has not yet passed, the customer must inform ASC promptly in writing if the delivered item is exposed to attachment or other third party action. Should the third party be unable to reimburse ASC for the judicial and extrajudicial costs of a suit in accordance with § 771 of the German Code of Civil Procedure (*Zivilprozessordnung*) the customer is liable for the loss incurred by ASC.
- 8.4. The customer is entitled to resell the goods subject to retention of title in the normal course of business. The customer hereby assigns to ASC the end-customer's debts arising from the resale in the amount of the grand total of the invoice agreed with ASC (including Value Added Tax). This assignment applies irrespective of whether the purchased item was resold with or without further processing. The customer remains authorised to collect the debt even after the assignment. The authority of ASC itself to collect the debt remains unaffected thereby. However, ASC will not collect the debt so long as the customer complies with his payment obligations arising from the revenues he collects, is not in payment default and, in particular, so long as no application for the opening of insolvency proceedings has been made or payments have not been suspended.

- 8.5. The processing, adaptation or transformation of the purchased item by the customer is always undertaken in the name of and on behalf of the ASC. In this case the expectant right of the customer to the purchased item in its transformed form continues in existence. In so far as the purchased item is processed along with other objects not belonging to ASC, the latter acquires joint ownership in the proportion of the objective value at the time of processing of the purchased item to the other objects which have been processed. The same applies in the event of amalgamation. In so far as the amalgamation occurs in such a manner that the customer's item can be regarded as the main item, it is deemed to be agreed that the customer transfers joint ownership pro rata to ASC and safeguards the sole or joint ownership for ASC. In order to secure our debts owed by the customer, the latter also assigns such debts to ASC as arise to the customer from a third party through connecting the goods which are the subject of retention of title with real property; ASC hereby accepts this assignment.
- 8.6. If so requested by the purchaser, ASC undertakes to release the securities to which it is entitled to the extent that the value of the securities exceeds the debts which are secured by more than 20 %.

## **9. Warranty, complaints for reason of defects and liability:**

- 9.1. The customer's warranty rights presuppose that the customer has properly complied with his investigation and complaint obligations as set out in § 377 of the German Commercial Code (*Handelsgesetzbuch*).
- 9.2. Claims for defects become time barred 12 months from the delivery of goods supplied by ASC to the customer. The statutory period of prescription applies for claims for compensation in the event of intent and gross negligence as well as for loss of life, bodily injury and impairment of health due to an intentional or negligent infringement of an obligation by ASC. In so far as the law pursuant to § 438, Paragraph 1, Number 2 of the German Civil Code (building works and items for building works), § 445 b of the German Civil Code (recourse action) and § 634a, Paragraph 1 of the German Civil Code (construction defects) stipulates longer compulsory periods, these periods apply. The consent of ASC must be obtained before any goods are returned.
- 9.3. If, in spite of all due care, the goods which were supplied should exhibit a defect, which was already in existence before the point in time at which risk passed, ASC will rectify the defect or supply a replacement at its option, subject to a complaint being lodged within the period allowed. ASC must always be given the opportunity of subsequent performance within a

reasonable period. Recourse actions remain unaffected by the above provision without restriction.

- 9.4. If subsequent performance should be unsuccessful, the customer – without prejudice to any claims for compensation – may withdraw from the contract or reduce the payment.
- 9.5. Claims for defects are excluded in the case of only minor deviations from the agreed attribute, only minor impairment of serviceability, normal wear and tear or deterioration such as damage which occurred after risk had passed as a result of defective or negligent treatment, excessive loading, unsuitable operating resources, defective building works, unsuitable ground or due to special external influences which were not specified in the contract. If the customer or third parties incorrectly maintain or modify the goods, claims for defects are also excluded for these and the resultant consequences.
- 9.6. The customer's claims for expenditure for the purpose of subsequent performance, particularly transport, road, labour and material costs are excluded in so far as the expenditure arose because the goods supplied by ASC were subsequently moved to a place other than the customer's branch unless the movement corresponded to the use for which the goods were intended. In all other respects §§ 439, Paragraphs 2 and 3 and § 635, Paragraph 2 of the German Civil Code apply.
- 9.7. The customer's recourse actions against ASC exist only in so far as the customer has not concluded any agreements with his end-customer over and above the compulsory statutory claims for defects.
- 9.8. ASC is liable for loss or damage caused by intent or gross negligence on the part of ASC or its legal representatives or vicarious agents. In the event of the breach of material contractual obligations and also in the event of loss of life, bodily injury or the impairment of health, this liability also applies in respect of ordinary negligence. In the case of the breach of material contractual obligations due to ordinary negligence, the liability of ASC is limited to the average loss or damage typical under the contract and foreseeable with the nature of the service. This also applies in the event of breaches of obligations due to the ordinary negligence of ASC's legal representatives and vicarious agents.
- 9.9. Liability of ASC is excluded in so far as the customer has modified the goods or their functional capability (e.g. by changing the plugs on the sensors).
- 9.10. Liability exclusions do not apply in the event of express guarantee agreements and liability under the German Product Liability Act (*Produkthaftungsgesetz*).

## **10. Copyrights and third party protective rights**

- 10.1. All copyrights, ancillary copyrights and other rights in respect of the documents created by ASC remain with ASC. The use, duplication, editing, adaptation, public reproduction and other exploitation is only permitted to the contractual partner within the applicable legal constraints in each case or by reason of a separate contractual agreement.
- 10.2. ASC does not guarantee that the contractual items do not infringe any third party rights. In the event of claims asserted against the customer by reason of any third party rights, the customer will however inform ASC without delay and the parties will support each other in the defence.

## **11. Termination:**

- 11.1. Both contractual partners may terminate the contract without notice for good cause if the other party fails to perform his contractual obligations. A suitable grace period must be previously set for the other party. However, termination for good cause is excluded in the event of minor infringements of the contract.
- 11.2. In the event of termination by the customer, the latter is obliged to pay for the services performed up to the time of the termination of the contract and the materials delivered up to that time. In the case of extraordinary termination for a reason for which ASC is responsible, payment is only due for those materials which the customer can use. In addition to these, the customer must reimburse ASC for other claims arising from the provisions of these General Terms and Conditions of Business or the provisions of law.

## **12. Final provisions:**

- 12.1. Amendments of or additions to these Terms and Conditions of Business must be made in writing. This also applies to the rescission of this requirement for written form.
- 12.2. The law of the Federal Republic of Germany applies.
- 12.3. The place of performance and the sole place of jurisdiction for all disputes arising from or in connection with this contract is the registered office of ASC.

- 12.4. If individual provisions of this contract should be invalid or be in conflict with the provisions of law, the contract is not affected thereby in all other respects. The invalid provision will be replaced by a provision which is valid in law, comes closest to the financial spirit and purpose of the invalid provision and is mutually agreed by the contractual parties.