

**GENERAL TERMS AND CONDITIONS OF BUSINESS****ABRAMS Industries GmbH & Co. KG**Issued: **01.10.2020****1. General points / Scope of conditions**

The delivery of all goods and services and their payment, both in the present and in the future, shall be subject exclusively to the general conditions of business and terms of payment set out below, only German law and the valid currency of Germany is applicable.

These terms and conditions shall apply even if no specific objection is raised regarding any terms and conditions of business of the customer that might be at variance with the terms and conditions set out below. Variants shall only apply if the customer makes specific reference to them in writing and the supplier consents, likewise expressly and in writing, to such alternative terms and conditions. If the customer makes specific written reference to such terms and conditions, the supplier shall be entitled to withdraw from the agreement without recourse on the part of the customer to make any claim in this respect.

**2. Quotations and conclusion of agreement**

All quotations are non-binding. In the case of orders that do not refer to a contractually enforceable quotation, the customer shall be legally bound for a period of four weeks, counted from the date on which the written order concerned reaches the supplier's premises. The customer shall mark as legally binding the documents – including but not limited to the illustrations, drawings and details of weights and dimensions that form part of the contract entered into – and the supplier shall issue the corresponding written confirmation.

The supplier shall retain title and copyright to its own cost estimates, drawings and other documents, which must not be made accessible in any way to any third parties, and which must be returned immediately upon request.

**3. Prices / Terms of payment**

Unless otherwise agreed, our prices, which are quoted net, are to be regarded as ex-works, with packing and loading included.

They do not include value added tax (VAT) at the current rate, shipping, routine road tolls or alloy surcharges, which shall be added at the rates in force on the day of delivery.

Invoices are to be settled in full, without discounts or deductions of any kind, within the payment deadline of fourteen (14) days. Other payment deadlines and any discounting that might apply shall be subject to separate written agreement.

The supplier may, in the event of a worsening of the customer's ability to pay or negative information regarding the customer's status in this respect, demand payment in advance from the customer or the provision of a bank guarantee to assure outstanding payments.

Payments to intermediaries, agents, representatives and/or other third parties shall be at the customer's risk.

The existence of claims shall not imply any entitlement to withhold payment. The right to withhold payment and/or offset against other non-recognised counterclaims is hereby excluded.



#### 4. Delayed payment

In the event of an agreed payment deadline not being met, settlement shall automatically be regarded as delayed, without any need to issue a formal reminder to the effect, under the terms of article 286, section 2 of the German Civil Code (BGB).

If this occurs, the supplier shall be entitled, under the terms of article 288 BGB, to charge interest on delayed payment at the current bank rate, unless it can demonstrate that higher interest charges have been or are being incurred. The supplier shall be entitled to charge an administration fee of fifteen Euros (EUR 15) for each formal reminder issued as a result of such delayed payment. In order to simplify payment procedures, the customer shall authorise the supplier, in the event of delayed payment, to debit the customer's account with all outstanding amounts immediately and irrevocably, even if there are individual payments which, as a result of the agreed terms, have not yet fallen due.

#### 5. Scope of delivery

The scope of delivery shall be as shown in the written order confirmation issued by the supplier, subject to the supplier's quotation being time-limited in terms of its validity and acceptance and provided there is no other timely confirmation to the effect. All side-agreements and amendments must be confirmed by the supplier in writing.

In the case of orders involving special dimensions or special production items, deliveries may vary by a reasonable amount (i.e. by approximately plus or minus 10%) from the specified quantity. In such cases, billing shall be based on the quantity effectively supplied.

The scope of delivery does not include a works test certificate, although the supplier can carry out an alloy analysis at the customer's request. This must be requested from the supplier in writing as part of the order by no later than prior to the moment of production or despatch. A fee of twenty-five Euros (EUR 25) shall be charged for each alloy analysis.

#### 6. Delivery times and delays in delivery

- a. Delivery time is counted from the date of despatch of the order confirmation, but not before the customer has supplied all the necessary documentation, approvals and permits, along with the agreed down-payment.
- b. The delivery schedule shall be regarded as fulfilled if, by the corresponding deadline, the items concerned leave the supplier's premises or are notified as being ready for despatch.
- c. Delivery times may be extended by a reasonable amount as a result of labour disputes, including but not limited to strikes and lockouts, and/or in the event of unforeseen circumstances outside the supplier's control, insofar as such circumstances have a demonstrable and considerable negative effect on the supplier's ability to produce or deliver. This shall also apply if such circumstances affect the supplier's subcontractors.
- d. Such circumstances are likewise deemed beyond the supplier's control if they arise in the course of an existing delay. The supplier shall notify the customer as soon as possible of the existence of such circumstances, and of when they end.
- e. The customer shall be entitled to claim compensation for delay resulting from action or omission on the part of the supplier, if such delay results in loss or damage to the customer.



- f. This compensation shall amount to 0.5% for each full week of delay, up to a maximum of 5% of the value of that part of the overall delivery that was not available on time as a result of this delay, or not made available for use as contractually agreed. All further claims for loss and damage shall be subject exclusively to the terms described in section 12 (e).
- g. This shall not apply in the event of delays due to *force majeure* or circumstances beyond the control of the supplier, with particular reference but not limited to the ordering of raw materials and/or semi-finished items from third parties.
- h. If despatch is delayed at the customer's request, storage costs will become chargeable once a period of one month has passed from the date of notification of readiness for delivery. These costs shall be billed, for storage on the supplier's premises, at a minimum monthly rate of 0.5% of the corresponding invoiced amount.
- i. The supplier shall nevertheless be entitled, after granting a reasonable deadline extension that still fails to result in delivery, to use the items concerned for other purposes and supply the customer at a later, reasonably appropriate date.
- j. Compliance with delivery times shall be subject to the customer fulfilling its contractual obligations.

## 7. Transfer of risk and acceptance

- a. Risk shall be transferred to the customer at the moment of despatch of the items concerned, including in the event of partial delivery or of other services such as, but not limited to, the cost of shipping being provided by the supplier.
- b. The shipment may be covered, at the customer's request and expense, against theft, breakage, damage in transit and/or damage due to fire or water and/or other insurable risks.
- c. If shipment is delayed for reasons attributable to the customer, risk shall be transferred to the customer upon issue by the supplier of notification of readiness for dispatch; with the supplier undertaking, at the request and expense of the customer, to make any insurance claims that might be enforceable in this respect.
- d. The items supplied must be accepted by the customer even if they display minor imperfections or faults, notwithstanding the rights defined in section 6.
- e. Partial deliveries are permitted.

## 8. Liability for delivery defects

If the items supplied are destined for installation in machines and/or devices belonging to the customer, or for other uses, the supplier shall not be liable for their suitability, strength or durability, unless the purpose of use and the corresponding specifications have been expressly defined in writing by the customer and confirmed, likewise in writing, by the supplier. The customer shall in any case be solely responsible for verifying the suitability for purpose of the items supplied. The supplier shall only be liable for delivery defects, including those relating to expressly assured characteristics, if the above requirements are fulfilled, and to the exclusion of all other claims, notwithstanding section 12 (d), as set out below:

- a. All items affected in this respect shall be repaired or replaced, at the supplier's discretion and free of charge, provided the fault arises within six (6) months after receiving and immediate control of the goods and that it arises from an occurrence prior to the transfer of risk – with particular reference to incorrect dimensions, materials or defective design – which renders the item concerned unusable or which affects its usability to a not inconsiderable extent. The detection of such defects must be reported to the supplier in writing without delay. Replaced parts shall become the property of the supplier. If despatch and/or



entry into use are delayed for reasons not attributable to the supplier, liability shall expire twelve (12) months after the transfer of risk.

- b. The customer's right to assert claims for the consequences of defects shall, in any case, expire in accordance with the corresponding legal provisions.
- c. No warranty shall be given as to losses or damage arising from the following:  
unsuitable or incorrect use; incorrect installation and/or startup by the manufacturer or a third party or parties; natural wear and tear, incorrect or negligent operation; the use of incompatible or non-original consumables or spares; chemical, electrochemical or electrical factors not attributable to the supplier, provided that none of these circumstances are attributable to the supplier.
- d. The customer shall allow the supplier to take, at its discretion, the necessary time and opportunity to remedy any defects that might arise and replace items as required. Otherwise the supplier shall be freed of any liability for the resulting consequences. The customer may only act unilaterally to remedy defects, or have them remedied by a third party, in urgent cases where operational safety may be seriously affected, or in order to prevent a disproportionately high loss or damage, or if the supplier is late in providing a remedy. The supplier must be informed immediately for the customer to have any claim to compensation in this respect.
- e. The supplier shall, subject to the claim being verified, bear the immediate costs of repair or replacement, including the cost of spare parts and shipment. All other costs shall be met by the customer.
- f. The replacement part(s) and/or repair supplied shall carry a minimum three-month warranty, which shall nevertheless remain in force until the expiry of the original warranty on the item concerned. The period of liability for defects with respect to the item or items supplied shall be extended to cover any downtime occasioned by the repair work carried out.
- g. Any attempt by the customer or a third party or parties to carry out modifications or repairs, without previous authorisation, to the item or items supplied shall cancel out all liability for possible consequences in this respect.
- h. All further claims by the customer, with particular reference but not limited to loss or damage not attributable to the actual item or items supplied, are hereby excluded.

This exclusion of liability shall not apply in the event of misrepresentation, gross negligence on the part of the owner or a senior staff member, or serious infringement of major contractual obligations.

In the event of negligent infringement of major contractual obligations, the supplier shall – with the exception of gross negligence on the part of its owner or a senior member of staff – only be liable for loss or damage reasonably considered typical and/or foreseeable for an agreement of this type.

The liability exclusion shall likewise not apply in cases where, in accordance with product liability law, defects in the item or items supplied result in liability arising from personal injury or material damage to privately-used property. The exclusion shall likewise not apply to failure to fulfil assured specifications, if and insofar as such a guarantee was designed to provide protection from loss or damage other than that arising from the actual item or items supplied.



**9. Liability for secondary obligations**

If the customer cannot use the item or items supplied as contractually agreed due to a fault attributable to the supplier with respect to defective or erroneous instructions provided before or after entering into the agreement, or due to infringement of other secondary contractual obligations – with particular reference to instructions relating to the application of the item or items delivered – the provisions of sections 8 and 12 shall apply accordingly to the exclusion of all further claims on the part of the customer.

**10. General exclusion of liability**

Liability on the part of the supplier shall in any case be excluded if the customer fails to fulfil, immediately upon receipt of delivery, its agreed obligation to examine the shipment and submit, in a timely manner, any claims that might arise in this respect.

This obligation to examine the shipment and submit corresponding claims shall continue to apply even if the item or items concerned are subject to further processing and/or sold on to another party.

**11. Reservation of title**

The supplier shall retain title to the item or items delivered until all the supplier's claims for payment against the customer arising from their business relationship, including all and any interest and other costs that might apply, have been settled in full. This shall continue to apply until the customer's account is fully settled, even where individual invoices or open account terms apply. The right on the part of the supplier to exercise reservation of title and/or seize the item or items delivered shall not be interpreted as constituting withdrawal from the agreement. The customer shall inform the supplier immediately in the event of seizure or any other third-party intervention involving the supplier's property. Retention of title shall not be cancelled out as a result of payments made by third parties, most notably by bill endorsers. In this respect, the supplier's rights shall be transferred to the party making payment. The customer undertakes to obtain adequate insurance for items subject to retention of title, to cover them against fire, break-in, theft and damage due to water. All rights to claim for insurance, up to the value of the item or items concerned, are hereby ceded to the supplier.

The customer shall be entitled to resell, in the normal course of business and subject to the usual terms, the item or items supplied, provided such sale conforms to these terms and conditions of business. However, the customer hereby cedes to the supplier all and any claims and/or counterclaims that arise or might arise from the sale of items subject to retention of title or from any other legal grounds. The customer shall continue to be entitled to recover debts after they have been ceded in this manner, but the supplier shall be entitled to recover all such proceeds from the customer's purchaser directly, although the supplier will endeavour not to take such steps, provided the customer continues to fulfil correctly its outstanding obligations in this respect.

The supplier may obtain from the customer, on demand, the details of all assigned debts and their corresponding debtors, along with the documents relating to all outstanding debts and their settlement. Third-party debtors shall likewise be notified on demand of any assignment (open cession). If the item supplied is sold on along with other goods that are not the property of the supplier, cession will apply to that part of the debt owed by the end-user to the customer that corresponds to the delivery price agreed between the supplier and the customer. If items that are not the property of the supplier are combined or mixed with items subject to retention of title, the supplier then acquires part-ownership of the resulting end-product, in proportion to the value of the



supplier's input relative to the finished article. Compensation paid out from insurance or as the result of other claims shall likewise be assigned to the supplier. If the customer engages a finance company, credit organisation or bank as an intermediary, it must notify the organisation concerned, along with other required details, of the above arrangements relating to retention of title. The customer shall, despite retention of title, bear all risk relating to the deterioration or destruction of the goods supplied.

## 12. Customer's rights regarding withdrawal and rescission; other liability on the part of the supplier

- a. The customer may withdraw from the agreement if the supplier is definitively unable to fulfil the entire order before the transfer of risk takes place. The same shall apply in the event of inability on the part of the supplier. The customer may likewise withdraw from the agreement if the number of items supplied as a partial delivery makes the order of these, or comparable, items as a whole unviable, and there are justifiable grounds for refusing such a partial delivery. If this is not the case, the customer may adjust payment accordingly.
- b. If delivery is delayed within the meaning of section 3 of the terms and conditions of delivery, and the customer has given the supplier a reasonable deadline extension on the express condition that failure to deliver by the expiry of this new deadline will result in refusal of delivery, and this deadline is not then kept, the customer shall be entitled to withdraw from the agreement.
- c. If such inability to delivery should arise during a delay in acceptance or for reasons attributable to the customer, the customer shall continue to be liable for fulfilling its part of the agreement.
- d. The customer shall furthermore be entitled to withdraw from the agreement if the supplier fails, due to action or omission on its part and by the expiry of a reasonable extension to the delivery deadline, to repair or replace an item defined as defective within the terms and conditions of delivery. The customer's right to withdraw from the agreement shall also apply in other cases involving action or omission on the part of the supplier in relation to failure to repair or replace items delivered by the supplier.
- e. All further claims by the customer, with particular reference but not limited to cancellation or reduced performance, compensation for loss and damage of any kind or loss or loss and damage not attributable to the actual item or items supplied, are hereby excluded. This exclusion of liability shall not apply in the event of misrepresentation, gross negligence on the part of the owner or a senior staff member, or serious infringement of major contractual obligations.
- f. In the event of negligent infringement of major contractual obligations, the supplier shall – with the exception of gross negligence on the part of its owner or a senior member of staff – only be liable for loss or damage reasonably considered typical and/or foreseeable for an agreement of this type.
- g. The liability exclusion shall likewise not apply in cases where, in accordance with product liability law, defects in the item or items supplied result in liability arising from personal injury or material damage to privately-used property.
- h. The exclusion shall likewise not apply to failure to fulfil assured specifications, if and insofar as such a guarantee was designed to provide protection from loss or damage other than that arising from the actual item or items supplied.



**13. Other arrangements**

- a. The supplier shall be entitled to process data relating to or connected with this contractual relationship, regardless of whether the data concerned were supplied directly or via a third party, provided that such data processing occurs within the meaning and spirit of the terms of the German Federal Law on Data Protection (BDSG).
- b. The contractual relationships defined herein are subject to the laws of Germany, to the express exclusion of the uniform United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980.
- All and any contradictory terms and conditions of purchase on the part of the customer are hereby excluded.

**14. Supplier's intellectual property rights**

The supplier expressly retains its property rights and copyrights to all images, illustrations, labelling, texts, calculations and all and any other documents that might be supplied.

The customer shall not be entitled to use for any purpose other than as permitted by the supplier the items and/or illustrations covered by an intellectual property right owing to the supplier.

The customer is specifically not allowed to pass on to a third party any items protected by a copyright owing to the supplier without first obtaining the express consent of the supplier.

The customer shall ensure that none of the items commissioned from the supplier infringe any third-party intellectual property rights in any way.

**15. Severability clause**

The possible invalidity of individual provisions in this agreement shall have no effect on the legality of the agreement as a whole.

**16. Place of performance and legal jurisdiction**

The place of performance is the registered place of business of the supplier.

If the customer is a registered trader, a legally entity or an organisation incorporated under public law, all and any disputes that might arise from this contractual relationship shall be resolved by the tribunals and courts of law of the supplier's main place of business. The supplier shall, however, also be entitled to bring legal action in the jurisdiction corresponding to the customer's main place of business.

