

## **§ 1 GENERAL – SCOPE OF APPLICATION**

- (1) These General Terms and Conditions apply to business enterprises, legal entities under public law and special funds under public law (hereinafter: the "Customer").
- (2) In substantive terms, they apply to all our industrial customers (Arnold AG Business Unit Industry, hereinafter "we" or "us"), regardless of the specific industry the respective Customer belongs to. They do not apply for the production of works of art.
- (3) Our deliveries, performances and offers by our Business Unit Industry as defined in § 1 (2) shall be made exclusively on the basis of these General Terms and Conditions; terms and conditions of the Customer or third parties shall not apply, even if we do not specifically object to their validity in individual cases, unless we have expressly agreed in writing to their validity. Our General Terms and Conditions shall also apply if we carry out the delivery to the Customer without reservation in knowledge of terms and conditions of the Customer conflicting with or deviating from our General Terms and Conditions. Even if we refer to a letter that contains or makes reference to terms and conditions of the Customer or a third party, this does not constitute any agreement to the validity of those terms and conditions.
- (4) All agreements made between us and the Customer must – in the interest of both parties in order to avoid ambiguities – be set down in writing.

## **§ 2 OFFER – OFFER DOCUMENTS – CHANGES**

- (1) Our offers are subject to change and non-binding unless we have expressly designated them as binding. If the Customer's order is to be qualified as an offer pursuant to Section 145 BGB [Bürgerliches Gesetzbuch – German Civil Code], we may accept this within 2 weeks by sending a written confirmation of acceptance or by executing the service or performance ordered within the same period.
- (2) Cancellation of quantitatively defined framework orders (quantity contracts) or individual orders once issued is not possible unless these are substituted by other orders of a comparable volume. If, notwithstanding the substitution of a cancelled order with another order of comparable volume, Arnold suffers damage, for example because material has already been procured that cannot be utilised for the new order, Arnold may claim damages.
- (3) Illustrations, drawings, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.

- (4) We will examine any change requests of the Customer and coordinate the further procedure as well as any changed prices and delivery periods/delivery dates with the Customer.
- (5) We shall be entitled at any time and at our own discretion to avail ourselves of the services of subordinate sub-contractors in order to fulfil parts or the entirety of the performances owed ("extended workbench"). Such sub-contracting will not release us from our obligations arising from these General Terms and Conditions.

### **§ 3 PRICES – TERMS OF PAYMENT**

- (1) The prices for our services result from the agreement between ourselves and the Customer, in the case of doubt from our order confirmation. If energy costs and/or material prices and/or wage costs increase by more than 3 % in the period between a framework order and the call-off of our services, we shall be entitled to assert the cost increase against the Customer. If the execution of an order or of a call-off by the Customer requires the prior procurement of larger quantities of raw materials from us, or if the situation on the world market requires a more extensive stockpiling of material, we will agree with the Customer on the course of action in good faith in order to spread the risks appropriately.
- (2) Unless otherwise stated in the order confirmation, our prices are quoted "ex works" (EXW in accordance with INCOTERMS in their respective current version).
- (3) However, in deviation from INCOTERMS EXW, we reserve the right to invoice packaging separately. No transport packaging or any other packaging in accordance with the Verpackungsverordnung [German Packaging Ordinance] will be taken back, with the exception of pallets. The Customer is obliged to arrange for the disposal of the packaging at their own expense and responsibility.
- (4) The respectively applicable statutory value added tax is not included in our price quotations; it is shown separately in the invoice at the statutory rate on the date of the issue of the invoice and must be paid by the Customer.
- (5) The deduction of any prompt payment discount requires a separate written agreement.
- (6) Unless otherwise stated in the order confirmation, the net purchase price (without any deduction) is due for payment within 30 days of the invoice date, provided that the Customer provides a Euler Hermes commercial credit insurance in the corresponding amount. Otherwise,

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we reserve the right to demand an advance payment from the Customer. The statutory provisions governing the consequences of default in payment apply.

- (7) Bills of exchange and cheques will only be accepted on account of performance and, in the case of bills of exchange, only by prior agreement. No liability for the timely presentation or protesting is assumed. Discount charges and any other costs shall be borne by the sender.
- (8) Where justified reasons exist, in particular in the case of default in payment, protest of a cheque or bill of exchange or insolvency proceedings in respect of the Customer's assets, we may demand advance payments or the provision of securities prior to delivery. In these cases, all our claims, including those for which bills of exchange have been issued, shall become due immediately.
- (9) The Customer shall only be entitled to rights of set-off if their counterclaims have been finally and non-appealably established, uncontested or have been acknowledged by us. In addition, they shall only be authorised to exercise a right of retention in so far as their counterclaim is based on the same contractual relationship.

## **§ 4 DELIVERY AND DELIVERY PERIOD; LIABILITY IN THE CASE OF DELAY IN DELIVERY**

- (1) Our delivery obligations are subject to the proviso that we receive correct and punctual delivery from our own suppliers unless we are responsible for the incorrect or late delivery to us.
- (2) We undertake to deliver the quantities ordered or called off by the Customer; back-up capacities may be reserved by the Customer by separate agreement if this is remunerated separately.
- (3) We shall be entitled to partial delivery and partial performance if this is of interest to the Customer according to the purpose of the contract and if the Customer does not incur any significant additional expenses as a result.
- (4) Delivery dates indicated by us always correspond to the status of our planning and are non-binding unless the dates are expressly agreed as a "fixed delivery date". The delivery period stated by us shall only commence after all technical issues have been clarified.

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- (5) Compliance with our delivery obligation is further conditional upon the timely and proper fulfilment of the Customer's own obligations. The right to invoke the legal defence of non-performance of the contract remains reserved.
- (6) If the Customer is in default in acceptance or culpably violates any other obligations of co-operation, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenditure. Likewise, in the event of default in acceptance, we shall demand storage costs amounting to EUR 25/sqm per month or part thereof unless Arnold provides proof that higher damages have been incurred. We reserve the right to further claims.
- (7) If the conditions substantiating default in acceptance are met, the risk of accidental loss or accidental deterioration of the goods purchased shall pass to the Customer at the time when the Customer falls into default in acceptance or payment.
- (8) We shall be liable in accordance with the statutory provisions governing default in so far as the underlying purchase contract is a fixed date transaction within the meaning of Section 286 (2) no. 4 BGB or Section 376 HGB [Handelsgesetzbuch - German Commercial Code]. We shall also be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the Customer is entitled to assert that they no longer have any interest in the further fulfilment of the contract.
- (9) We shall further be liable in accordance with the statutory provisions if the delay in delivery is due to a breach of a material contractual obligation ("cardinal obligation") for which we are responsible or due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or vicarious agents shall be attributable to us. In the event of any delay in delivery caused by us neither intentionally nor through gross negligence, we shall be liable after the expiration of a grace period of two weeks for each completed week of delay within the framework of a lump-sum compensation for delay in the amount of 0.5% of the delivery value, subject, however, to a maximum of 2% of the delivery value, provided that the Customer can provide evidence of the damage caused by the delay.

## **§ 5 PASSING OF RISK**

- (1) Unless otherwise stated in the order confirmation, delivery "ex works" (EXW in accordance with INCOTERMS in their respective current version) is agreed, so that risk shall pass when the goods are handed over to the Customer or their forwarder in our factory.

- (2) If the Customer wishes, we shall arrange transport insurance for the shipment; the costs incurred in this respect shall be borne by the Customer.

## **§ 6 DEFECTS; WARRANTY**

- (1) Potential uses or further-reaching technical specifications unilaterally anticipated by the Customer do not result in a quality agreement.
- (2) In the event of a defective delivery, the Customer shall be entitled to their statutory rights against us in accordance with the following provisions.
- (3) Claims for defects by the Customer are conditional upon them having duly fulfilled their obligations to inspect the goods and give notice of defects in accordance with Section 377 HGB. In any event, obvious defects must be reported in writing within 5 working days from delivery and defects not recognisable during the inspection within the same period as from the time of discovery.
- (4) To the extent that a justified and timely notice of defect has been given, we shall be obliged to provide the Customer with supplementary performance which we may, at our option, fulfil in the form of remedying the defect or by delivering a new good free of defect. In the event of remedying the defect, we shall be obliged to bear all necessary expenses, in particular transport, travel, labour and material costs. In so far as these are significantly increased by the fact that the purchased good has been moved to a location other than the place of performance or the registered office of the Customer, the Customer alone shall bear this additional expense.
- (5) If the supplementary performance fails or if the Customer cannot reasonably be expected to accept further attempts at supplementary performance, the Customer shall, at their option, be entitled to demand withdrawal from the contract or a reduction of the price.
- (6) The Customer may likewise only assert claims for damages due to a defect if the supplementary performance has failed or we refuse to carry out supplementary performance. The right of the Customer to assert further-reaching claims for damages under the conditions laid down in § 7 remains unaffected hereby.
- (7) The limitation period for claims for defects is 12 months, calculated from the passing of risk. The limitation period in the event of any recourse claims pursuant to Sections 478, 479 BGB remains unaffected; it amounts to five years from the delivery of the defective goods.

- (8) The holding in stock and/or delivery of spare parts beyond those necessary to cover warranty claims shall always require an individual agreement, in particular after termination of the contract.

## **§ 7 LIABILITY**

- (1) We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; in this case, however, our liability for damages shall be limited to the typically occurring damage foreseeable at the time of conclusion of the contract.
- (2) An indemnification of the Customer against claims of third parties shall only be considered in those cases where such an indemnification is mandatory by law.
- (3) Liability for culpable injury to life, limb or health remains unaffected; this also applies to strict liability under the Produkthaftungsgesetz [German Product Liability Act].
- (4) In so far as our liability for damages is excluded or limited, this also applies in regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **§ 8 RETENTION OF TITLE**

- (1) We retain title to our goods until receipt of all payments. In the event of behaviour of the Customer in breach of the contract, in particular in the event of default in payment, we shall be entitled to take back the goods. Our taking back of the goods does not constitute a withdrawal from the contract unless we have expressly declared this in writing. Seizure of the goods by us shall always constitute a withdrawal from the contract. After taking back the goods, we shall be entitled to realise the same; the proceeds from the realisation are, following deduction of reasonable realisation costs, to be set off against the liabilities of the Customer.
- (2) The Customer shall be obliged to treat the goods with care until full payment has been made; in particular, they shall, at their own expense, be obliged to insure the goods adequately at replacement value against damage by fire, water and theft. If maintenance and inspection work is necessary, the Customer must carry out such work in due time at their own expense.

- (3) In the event of seizures or other interventions by third parties, the Customer shall notify us without delay in writing so that we can bring an action pursuant to Section 771 ZPO [Zivilprozessordnung – German Code of Civil Procedure]. In so far as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO, the Customer shall be liable for the loss incurred by us.
- (4) The Customer shall be entitled to resell the purchased good in the ordinary course of business; however, it hereby assigns to us all claims in the sum of the final invoice amount of our claim (including VAT) accruing to them against their customers or third parties from the resale, irrespective of whether the purchased good has been resold without or following processing. The Customer remains authorised to collect these claims even following the assignment. Our power to collect the claims ourselves remains unaffected hereby. However, we undertake not to collect the claims as long as the Customer meets their payment obligations from the proceeds collected, does not fall into default in payment and, in particular, no application for the opening of insolvency proceedings has been filed and their payments have not been suspended. However, if this is the case, the Customer shall inform us hereof without delay in writing and we may demand that the Customer discloses to us the details of the assigned claims and their debtors, provides all information necessary for their collection, hands over the pertinent documents and notifies the debtors (third parties) of the assignment.
- (5) We undertake, at the request of the Customer, to release the securities to which we are entitled to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10 %; the choice of the securities to be released is at our discretion.

## **§ 9 WITHDRAWAL; FORCE MAJEURE**

- (1) In the event of serious breaches of contractual obligations by the Customer, their imminent or actual insolvency, or in the event of non-delivery, incorrect delivery or late delivery by our suppliers for which we are not responsible, we may withdraw from the contract at any time by written notice.
- (2) In cases of force majeure or other unforeseeable events at the time of conclusion of the contract (e.g. operational disruptions of any kinds, restrictions due to pandemics or measures adopted to combat a pandemic, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, inflation, difficulties in obtaining necessary official permits, official measures or difficulties caused by non-delivery,

incorrect or late delivery from our suppliers for which we are not responsible), our obligation to perform shall lapse solely for the duration of the event.

## **§ 10 RIGHTS**

- (1) We reserve property rights and copyrights to our illustrations, drawings, calculations and other documents. This also applies to such written documents that are designated as "confidential". Before passing on illustrations, drawings, calculations or other documents to third parties, the Customer requires our express written consent.
- (2) With regard to any pre-existing industrial property rights, each party remains the owner of the rights. With regard to any joint developments, the Customer and Arnold shall in principle be jointly entitled to any rights arising therefrom. If necessary, the parties shall negotiate the rights in good faith.

## **§ 11 PLACE OF JURISDICTION – APPLICABLE LAW – PLACE OF PERFORMANCE**

- (1) The place of business of Arnold AG in Friedrichsdorf im Taunus, Germany, shall be the exclusive place of jurisdiction; however, we shall also be entitled to sue the Customer at their place of business.
- (2) These General Terms and Conditions shall be governed by the law of the Federal Republic of Germany; the application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Unless otherwise stated in the order confirmation, our place of business is the place of performance.

## **§ 12 SEVERABILITY**

In the event that the contract or these General Terms and Conditions contain any gaps, such legally effective provisions shall be deemed agreed to fill these gaps which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions if they had been aware of the gaps.



## **§ 13 APPLICABLE VERSION**

These General Terms and Conditions shall apply in their respective current version. They are written in German and English. The English version serves for reading purposes only. In the event of any discrepancies between the German and English versions, the German version shall prevail and only that version shall be legally binding.

Status: 10 December 2021