



## **I. Validity of the General Terms and Conditions of Sale**

1. These General Terms and Conditions of Sale apply to all contracts between Aachener Maschinenbau GmbH (hereinafter referred to as "AMBA") and its customers.
2. Any terms and conditions of the customer that deviate from these General Terms and Conditions of Sale or the statutory provisions shall not be binding on AMBA. This also applies if AMBA does not expressly object to them, provides services without reservation or accepts the customer's services.
3. These General Terms and Conditions of Sale have been developed for contracts that are not subject to the special regulations governing the sale of consumer goods (§§ 474 ff. BGB). Should this not apply in individual cases, the customer is obliged to inform AMBA immediately and in writing prior to conclusion of the contract.
4. These General Terms and Conditions of Sale do not apply if the customer is a consumer within the meaning of § 13 BGB (German Civil Code).
5. Neither a handwritten signature nor an electronic signature is required to comply with the written form requirement. Written form is also fulfilled by fax, e-mail or other text forms without the need for a special reference to the conclusion of the declaration. However, changes to the bank details must be signed by hand and sent by post.

## **II. Conclusion of the contract**

1. The customer is obliged to inform AMBA in writing before concluding the contract if:
  - the goods to be delivered are not intended exclusively for the usual use or the customer assumes a certain suitability of the goods, or if his expectations regarding the quality are based on public statements, advertising statements or other circumstances outside the specific conclusion of the contract,
  - the goods are used under exceptional conditions or under circumstances that entail a particular health, safety or environmental risk or require increased stress.
  - The customer is aware or should be aware that the contract may involve atypical damage possibilities or unusually high damage amounts, in particular those that exceed the limits specified in Section VII. 1. e).
2. Customer orders must be made in writing. If an order deviates from AMBA's proposals or offer, the customer must expressly indicate the deviations. The regulations for the conclusion of contracts in electronic business transactions in accordance with § 312i Paragraph 1 Sentence 1 Nos. 1 to 3 BGB do not apply.



3. Orders, especially those received by AMBA employees, only become binding once AMBA has confirmed the order in writing. Delivery of the goods, any other conduct on the part of AMBA or silence on the part of AMBA shall not give rise to any confidence on the part of the customer that a contract has been concluded. AMBA may issue the written order confirmation within fourteen (14) calendar days of receipt of the order by the company.
4. The written order confirmation shall be deemed to have been received in good time if it is received by the customer within seven (7) calendar days of its date of issue. If the order confirmation arrives late, the customer is obliged to inform AMBA immediately in writing.
5. The content of AMBA's written order confirmation is binding for the scope of the contract. The contract is concluded even if the order confirmation deviates from the customer's declarations, with the exception of deviations relating to the type of goods, the price or the delivery quantity. This applies in particular to the exclusive application of these General Terms and Conditions of Sale. The contract shall only fail to come into effect if the customer objects in writing that the order confirmation from AMBA does not correspond in all respects with his declarations, specifies the deviations precisely and the objection is received by AMBA within seven (7) calendar days of receipt of the written order confirmation.
6. Special requirements of the customer, in particular special expectations regarding the use or quality of the goods, guarantees, other assurances in connection with the goods or the performance of the contract, as well as declarations of performance, instructions for use or safety information requested in electronic or printed form, shall in all cases require the express written consent of AMBA.
7. Contract confirmations issued by the customer shall have no legal effect, even if AMBA does not expressly object to them. Neither the actual delivery of the ordered goods, nor any other conduct on the part of AMBA, nor silence on the part of AMBA shall give rise to any confidence on the part of the customer that his confirmation is effective.
8. Employees, commercial agents or other sales intermediaries of AMBA are not authorized to waive AMBA's written order confirmation, to make deviating promises or to declare guarantees. Amendments to an existing contract are only effective if they are confirmed in writing by AMBA.

### **III. Obligations of AMBA**

1. AMBA is obliged to deliver the goods specified in the written order confirmation and to transfer ownership thereof. Services that are not expressly mentioned either in the order confirmation or in these General Terms and Conditions of Sale do not form part of AMBA's obligations. If not explicitly agreed in writing, AMBA is in particular not obliged to provide documents, information, accessories, additional protective devices, assembly instructions, assembly services or advice.



2. AMBA's sole obligation is to the customer. Third parties not involved in the contract, in particular the customer's customers, have no claims to delivery or other contractual rights against AMBA. Even if the customer assigns claims to third parties, he remains the responsible recipient. The customer shall indemnify AMBA comprehensively against all third-party claims asserted against AMBA under the contract with the customer.
3. AMBA shall deliver the goods taking into account the provisions in sections II.1. and II.5. as well as customary tolerances with regard to type, quantity and quality. Otherwise, goods of average type and quality shall be delivered. AMBA is entitled to make partial deliveries and to invoice these separately.
4. The goods shall be made available on the agreed delivery date in accordance with EXW (Incoterms 2020) at the delivery address specified in the written order confirmation or, if no address is specified, at the company's headquarters in 52477 Alsdorf. The goods shall be made available for collection by the customer in AMBA's usual packaging. AMBA is not obliged to separate or mark the goods in advance or to notify the customer of the availability of the goods.

AMBA is not obliged - even if other clauses of the Incoterms are used - to inform the customer about the delivery, to check the goods for conformity with the contract, to give instructions for acceptance of the goods, to check the operational safety of the means of transport or safe loading, to organize the transport or to insure the goods. The use of other Incoterms clauses or agreements such as "delivery free..." or similar formulations merely results in a deviating regulation with regard to transportation and the transportation costs. In all other respects, the provisions of these General Terms and Conditions of Sale shall apply.

5. Agreed delivery periods or dates are subject to the customer fulfilling his obligations in good time. Otherwise, agreed delivery periods shall only commence from the date of AMBA's written order confirmation. AMBA is entitled to make the delivery early or to determine the delivery date itself within the agreed period.
6. Should AMBA fail to deliver on time, the company is entitled to fulfill its contractual obligations even after the agreed date, provided that the customer has been informed of the delay and a period for subsequent delivery has been communicated. Under these conditions, AMBA may make several attempts at rectification. The customer has the right to object to the subsequent delivery if this is unreasonable for him. AMBA shall reimburse any demonstrably necessary additional expenses incurred by the customer as a result of the delay in accordance with the liability provisions in Section VII.
7. Irrespective of whether the transportation is carried out by AMBA, the customer or a third party, the risk of loss of or damage to the goods shall pass to the customer when the goods are made available in accordance with Section III. 4, even if the goods are not clearly marked. The customer is responsible for loading the goods. Deviating Incoterms clauses or formulations such as "Delivery free..." shall exclusively regulate the transportation and the transportation costs without changing the other provisions of these General Terms and Conditions of Sale.



8. AMBA is not obliged to procure any attestations, certificates or other documents that have not been expressly agreed and assumes no responsibility for compliance with regulations associated with the marketing of the goods outside Germany.
9. Without waiving any further statutory rights, AMBA is entitled to assert the defense of uncertainty pursuant to Section 321 of the German Civil Code if there are reasonable doubts as to whether the customer will meet his contractual obligations in full or properly. This defense may be raised in particular if the customer fails to meet his payment obligations to AMBA or third parties to an adequate extent, if payments are delayed, if the limit of a credit insurer has been exceeded or would be exceeded with the current delivery. Alternatively, AMBA may make future deliveries, including those already confirmed, dependent on advance payment by the customer. AMBA is not obliged to continue to provide services as long as and to the extent that the services provided by the customer to avert the objection do not provide sufficient security or could be contestable.

#### **IV. Obligations of the customer**

1. Irrespective of any further obligations of the customer to secure or prepare payment, the purchase price is due on the date specified in the written order confirmation. If no such date is specified, the purchase price shall be due for payment upon receipt of the invoice and must be paid by the customer. Agreed payment terms shall lapse and all outstanding claims shall become due immediately if:
  - The customer's buyer may make payments for goods delivered by AMBA that are subject to retention of title,
  - an application is made to open insolvency proceedings against the customer's assets,
  - the customer fails to meet material obligations due to AMBA or third parties without justifiable cause,
  - the customer has provided incorrect information about his creditworthiness or
  - the cover provided by a credit insurer is reduced for reasons for which AMBA is not responsible.
2. The agreed purchase price covers the services to be provided by AMBA, including AMBA's standard packaging. The statutory value added tax is shown separately and must be paid additionally by the customer.
3. Payments are to be made in EURO without deduction to an account specified by AMBA. Decisive for the timeliness of the payment is the unconditional crediting of the amount to AMBA's bank account. Employees, commercial agents or other sales intermediaries of AMBA are not authorized to accept payments.
4. AMBA is entitled to offset incoming payments - irrespective of jurisdiction - at its own discretion against existing claims against the customer arising from its own or assigned rights.



5. The customer's right to offset against AMBA's claims is excluded unless the counterclaim is due and legally established, undisputed or based on the same contractual relationship. The application of § 215 BGB is excluded.
6. The customer's statutory right to withhold payments or refuse to accept the goods is excluded, unless the right of retention is based on the same contractual relationship or on an undisputed or legally established claim. The application of § 215 BGB is excluded.
7. The customer is obliged to take delivery of the goods on the agreed delivery date at the delivery address specified in Clause III. 4. without claiming additional periods and to fulfill all obligations incumbent on him under the contract, these General Terms and Conditions of Sale, the ICC rules for the agreed Incoterms clause 2020 and statutory provisions. A refusal of acceptance is only permissible if the customer lawfully withdraws from the contract in accordance with Section VI. 1.
8. Unless otherwise agreed, the customer must ensure the reuse, recycling or legally prescribed disposal of the goods delivered by AMBA and their packaging at his own expense. AMBA is not obliged to take back delivered goods or packaging from the customer or third parties in accordance with waste disposal regulations. The customer shall indemnify AMBA against all statutory take-back and disposal obligations and associated third-party claims.
9. The customer undertakes not to enter into or carry out any transactions in relation to the goods purchased from AMBA that are prohibited under the relevant regulations, in particular under foreign trade law, including US export control law. If the customer is not sure whether a prohibition exists, he is obliged to consult AMBA in writing.

## **V. Defective goods**

### **1. Material defects**

Without waiving statutory exclusions or limitations of the Seller's liability, a material defect shall be deemed to exist if the Customer proves that the goods deviate significantly from the type, quantity, quality or suitability for the agreed use specified in the written order confirmation, taking into account the provisions in Sections II.1., II.5. or III. at the time of the transfer of risk. Unless expressly agreed otherwise, any deviation from the quality or suitability for normal use in Germany shall also be deemed a material defect. Concealed short deliveries also constitute material defects.

### **2. Defects of title**

Without waiving statutory exclusions or limitations of liability, a defect of title exists if the customer proves that the goods are not free of rights or claims of third parties enforceable in Germany at the time of the transfer



of risk. However, rights or claims of third parties based on industrial or intellectual property shall only constitute a defect of title if they are registered, published and enforceable in Germany and exclude the contractual use of the goods in Germany.

### 3. Limitation of liability

Unless expressly stated otherwise in AMBA's written order confirmation, AMBA accepts no responsibility for the goods:

- is suitable for other than normal use,
- fulfills expectations of the customer that deviate from the usual quality or
- is free from rights or claims of third parties outside Germany.

AMBA is also not liable for defects that only occur after the time of transfer of risk. If the customer undertakes measures to rectify defects himself or through third parties without AMBA's consent, AMBA's warranty obligation shall lapse unless the measures were carried out professionally.

### 4. Guarantees and assurances

Guarantees or assurances requested by customers must be expressly identified as such in the written order confirmation - also in the case of follow-up transactions. Keyword-like designations, references to recognized standards, the use of quality marks or trademarks as well as samples or specimens alone do not constitute a guarantee or assurance. AMBA employees, commercial agents or sales intermediaries are not authorized to give guarantees, assurances or information on the particular usability or cost-effectiveness of the goods.

### 5. Obligation of the customer to check

The customer is obliged to check each delivery immediately upon acceptance - irrespective of whether the goods are diverted or forwarded - for recognizable or typical deviations with regard to quality, quantity or other characteristics. This includes compliance with the product law regulations applicable to the goods. The inspection shall also be carried out in accordance with the statutory provisions.

### 6. Notification of defects

The customer is obliged to notify AMBA immediately of any material defects. In the case of obvious material defects, the period begins with the delivery of the goods. In the case of material defects which are or should have been detected by a proper inspection in accordance with the statutory provisions and in compliance with the provisions set out in these General Terms and Conditions of Sale, the period shall commence as soon as this inspection should have been completed. Hidden material defects must be reported immediately after their discovery.



The notification of defects must be addressed directly to AMBA in writing and formulated in sufficient detail to enable AMBA to initiate remedial measures and secure any recourse claims against upstream suppliers without further queries to the customer. In addition, the notification must comply with the statutory requirements. Employees, sales representatives or other sales partners of AMBA are not authorized to accept notifications of defects or to make warranty statements outside AMBA's business premises.

**7. Legal remedies in the event of proper notification**

After proper notification of defects in accordance with Section V.6., the customer may assert the legal remedies provided for in these General Terms and Conditions of Sale as well as reimbursement of expenses in accordance with Section 445a BGB. Notwithstanding this, the customer shall have no further claims for breach of duty to deliver defect-free goods, unless otherwise agreed in writing by AMBA. If the customer fails to make proper notification, he may only assert legal remedies if AMBA has deliberately concealed the defect. Statements or comments by AMBA on defects serve exclusively to clarify the facts and do not constitute a waiver of the requirement for proper notification of defects.

**8. Restrictions on legal remedies**

The customer shall have no remedies in respect of the supply of defective goods if he is responsible for any particular quality or fitness for purpose of the goods which is not part of the agreement with AMBA. Similarly, the customer may not claim remedies if he would not be liable for the delivery of defective goods if the relevant statutory provisions were applied in his own business relationships with customers.

**9. Subsequent performance and further rights**

If the customer is entitled to legal remedies for defective goods under these General Terms and Conditions of Sale, he may demand subsequent performance from AMBA within a reasonable period of time after notification of the defect. The place of performance for subsequent performance is the delivery address specified in Section III.4. AMBA shall bear the necessary costs of subsequent performance, insofar as these are not increased by the use of the goods outside Germany. However, the customer is obliged to take all reasonable measures to minimize the amount of the necessary expenses after becoming aware or having become aware of the defect. The assumption of costs also presupposes that AMBA is liable in accordance with Section VII. Should subsequent performance ultimately fail, be impossible or not take place within a reasonable period, the customer is entitled to reduce the purchase price or, after setting a deadline with a threat of refusal, to withdraw from the contract within a preclusive period of four weeks after expiry of this deadline. In the cases of § 445a BGB, it is not necessary to set a deadline. Irrespective of the customer's legal remedies, AMBA always reserves the right to repair or replace the defective goods in accordance with Section III.6.

**10. Limitation of claims**

All claims of the customer due to defective new goods shall lapse within one (1) year, in the case of used goods within six (6) months from the start of the statutory limitation period. Neither replacement deliveries nor repairs



shall lead to a recommencement of the limitation period. Notwithstanding the above, the statutory periods shall apply:

- if the goods are a newly manufactured item that is a building and/or an item that has been used for a building in accordance with its normal use and has caused its defectiveness;
- if the customer's claims are based on an intentional and/or grossly negligent breach of contract;
- if AMBA has fraudulently concealed the defect;
- for claims due to injury to life, body and/or health;
- for claims according to § 445a BGB;
- for claims pursuant to § 439 (2) and (3) BGB (reimbursement of expenses necessary for the purpose of subsequent performance), provided that the goods sold by AMBA are newly manufactured goods, whereby such a claim presupposes that the claim for subsequent performance pursuant to § 439 (1) BGB has not become time-barred in accordance with these General Terms and Conditions of Sale.

## **VI. Resignation**

### **1. Right of withdrawal of the customer**

In addition to the provisions in Section V.9., the customer shall be entitled to withdraw from the contract in accordance with the applicable statutory provisions if AMBA is unable to fulfill its contractual obligations, if AMBA is in default in the fulfillment of material contractual obligations, or if AMBA is in material breach of obligations arising from this contract, provided that AMBA is responsible for the default or breach of obligation in accordance with Section VII.1.c). A separate written request to perform the service within a reasonable period of time is always required to establish default, even in the case of calendar-based performance deadlines. The customer must declare his withdrawal in writing and directly to AMBA within a reasonable period after the reason for withdrawal has arisen.

### **2. AMBA's right of withdrawal**

Irrespective of any further legal rights, AMBA is entitled to withdraw from the contract if:

- the execution of the contract is or becomes prohibited by law,
- the customer objects to the validity of these General Terms and Conditions of Sale,
- the special regulations of the sale of consumer goods (§§ 474 ff. BGB) are applicable,
- the written order confirmation is received by the customer more than 14 calendar days after its date of issue for reasons for which AMBA is not responsible,
- an insolvency petition is filed against the customer's assets,
- the customer fails to fulfill material obligations to AMBA or third parties without providing a justifiable reason,
- the customer provides inaccurate information about his creditworthiness,



- credit insurance is reduced for reasons for which AMBA is not responsible,
- or if AMBA itself is not supplied properly or on time through no fault of its own.

## **VII. Compensation for damages**

### 1. Limitations of liability

With the exception of liability:

- in accordance with the Product Liability Act (Produkthaftungsgesetz),
- due to fraudulent concealment of a defect
- from an assumed guarantee for the quality of the goods,
- as well as for damages resulting from culpable injury to life, body or health,
- as well as for damages resulting from a grossly negligent or intentional breach of duty

AMBA is only obliged to pay compensation for damages due to the breach of obligations arising from the contract or from the contractual negotiations in accordance with the following provisions, whereby the statutory requirements remain unaffected.

These provisions shall also apply in the event of a breach of warranty obligations or in the event of a delay in delivery:

- a) Compensation for defective goods is excluded if the defect is insignificant.
- b) The customer must primarily make use of the regulations in accordance with section III.6, in particular offers for subsequent performance, as well as the legal remedies in accordance with sections V. and VI. Compensation can only be demanded for remaining disadvantages, but not instead of other legal remedies.
- c) Without waiving statutory exclusions or limitations, AMBA shall only be liable for culpable breach of material contractual obligations and for intentional or grossly negligent breach of other contractual obligations. Material contractual obligations are those whose fulfillment is essential for the proper performance of the contract and on whose fulfillment the customer regularly relies and may rely.
- d) In the event of liability, AMBA shall compensate the customer's proven damage, taking into account the limits set out in letter e), to the extent that was foreseeable for AMBA at the time the contract was concluded as a consequence of the breach of duty with regard to the occurrence and amount of damage and is unavoidable for the customer.
- e) In the event of delay, the amount of compensation shall be limited to 0.5% of the value of the delayed part of the performance per full week of delay, but to a maximum of 5% of the value of the goods (net). In the case



of other breaches of duty, the limit shall be 200% of the value of the part of the performance not in accordance with the contract. These limitations shall not apply in the event of gross negligence on the part of AMBA or its vicarious agents.

- f) The customer may only claim damages in lieu of full performance if he has requested AMBA in writing to provide the service within a reasonable period and AMBA has allowed this period to elapse. The claim for damages must be asserted by the customer in writing and directly to AMBA within a further reasonable period after the occurrence of the justifying circumstances.
  - g) AMBA shall be liable for damages for breach of contractual and/or pre-contractual obligations solely in accordance with the provisions of these General Terms and Conditions of Sale. Claims arising from other bases for claims, in particular of a non-contractual nature, are excluded. Also excluded is the personal liability of organs, employees, staff, representatives or vicarious agents of AMBA for the breach of contractual obligations.
  - h) Unless AMBA acts with intent or the customer's claim is not time-barred, a limitation period of six months shall apply to the assertion of claims for damages, beginning with the rejection of the claim for damages by AMBA.
  - i) The above liability provisions shall apply accordingly to claims by the customer for reimbursement of expenses.
2. Irrespective of any further legal or contractual claims by AMBA, the customer is obliged to pay AMBA the following compensation:
- a) In the event of late receipt of payment, the customer shall bear the reasonable costs of judicial and extrajudicial legal action, but at least a lump sum of € 40.00 and interest at a rate of 9 percentage points above the respective base interest rate of the Deutsche Bundesbank.
  - b) If the customer is in default of acceptance or fails to call off agreed goods on time, AMBA may, after the fruitless expiry of a reasonable grace period, demand lump-sum compensation amounting to 15% of the delivery value, unless the customer can prove that no damage or significantly less damage has been incurred.
3. The customer is obliged to limit its liability for compensation for expenses and damages vis-à-vis its customers to the extent and amount legally possible and customary in the industry.
4. The regulation of § 348 HGB (contractual penalty) does not apply.



### **VIII. Retention of title**

1. The delivered goods shall remain the property of AMBA until all principal and ancillary claims of AMBA against the customer have been settled in full, irrespective of their legal basis and due date. In the case of current accounts, the retention of title shall apply to the respective balance amount.
2. As long as the retention of title exists, the customer shall grant AMBA's employees access to the goods subject to retention of title at any time during normal business hours. The customer is obliged to insure these goods against theft, damage and destruction. At the request of AMBA, the customer shall store the goods separately or visibly mark them as the property of AMBA and take all measures necessary to secure the retention of title. The customer hereby irrevocably assigns any claims arising from the insurance policies to AMBA in full; AMBA accepts the assignment.
3. Should a third party assert rights or claims to the goods or to assigned claims during the retention of title, the customer is obliged to inform AMBA immediately in writing and to support AMBA free of charge in safeguarding its rights. If a third party acquires rights to the goods subject to retention of title during the existing retention of title, the customer's claims against the third party are hereby irrevocably assigned to AMBA by way of security; AMBA accepts the assignment.
4. The customer may only sell the goods subject to retention of title in the ordinary course of business if he is not in default of payment and the customer's payment is due at the latest at the same time as his own payment to AMBA. Other dispositions, such as pledging or transfer of ownership by way of security, are prohibited. The customer's claims arising from the resale of the goods, including all ancillary rights, are hereby assigned in full and irrevocably to AMBA. If claims arising from the sale are included in a current account relationship, the customer shall also irrevocably assign to AMBA by way of security the current account claim resulting after balancing. AMBA accepts these assignments.

### **IX. Other regulations**

1. The customer data received in the course of the business relationship is processed by AMBA in accordance with the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz) and the General Data Protection Regulation (Datenschutz-Grundverordnung).
2. The customer undertakes to inform AMBA immediately in writing if authorities become active or involved in connection with the goods.
3. Without waiving any further claims, the customer shall indemnify AMBA without limitation against all third-party claims asserted against AMBA on the basis of product liability or comparable provisions, insofar as the



liability is attributable to circumstances such as the presentation of the product by the customer or by third parties under the customer's control, without the express written consent of AMBA. The indemnification also includes in particular the reimbursement of expenses incurred by AMBA and is granted without any further conditions or objections on the part of the customer. In particular, the customer waives objections such as non-compliance with monitoring and recall obligations or the defense of the statute of limitations.

4. AMBA reserves all property rights, copyrights and other industrial property rights as well as know-how rights to all illustrations, drawings, calculations, other documents and software provided in physical or electronic form. These materials are to be treated confidentially and may only be used to fulfill the respective order. Disclosure to third parties is prohibited.
5. Notwithstanding statutory provisions, a suspension of the limitation period shall also end if the underlying negotiations are not continued for a period of more than four weeks. A recommencement of the limitation period for the customer's claims shall in all cases require express written confirmation by AMBA.

#### **X. General contractual bases**

1. The place of delivery is determined by the provision in Section III.-4. of these General Terms and Conditions of Sale. The place of payment and performance for all other obligations arising from the legal relationship between AMBA and the customer is 52477 Alsdorf. This provision also applies if AMBA provides services for the customer at a different location or if services provided are to be reversed. Deviating agreements such as clauses of the Incoterms or formulations such as "delivery free..." relate exclusively to transportation and transportation costs; all other provisions of these General Terms and Conditions of Sale remain unaffected.
2. All contractual and non-contractual legal relationships between AMBA and the customer shall be governed exclusively by German law and the customary commercial practices in Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Unless otherwise agreed, trade terms shall be interpreted in accordance with the Incoterms 2020 of the International Chamber of Commerce, whereby the provisions of these General Terms and Conditions of Sale shall take precedence. Deviations from these contractual bases require an individual agreement between AMBA and the customer and compliance with these General Terms and Conditions of Sale.
3. The exclusive and also international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered office of AMBA.
4. Should individual provisions of these General Terms and Conditions of Sale be or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The parties undertake to replace the invalid provision with a legally valid provision that comes as close as possible to the economic purpose and meaning of the original provision.