

§ 1 General – Scope

(1) Our general terms and conditions shall apply exclusively. We do not accept any terms to the contrary or terms deviating from our terms and conditions of the purchaser, unless expressly agreed in writing. Our terms and conditions shall also apply in the case, if we supply the goods to the purchaser without any reservation aware of terms to the contrary or terms deviating from our terms and conditions.

(2) All agreements between us and the purchaser with regard to the performance of this contract have been settled in writing in this contract.

(3) Our terms and conditions shall have a legally binding effect with respect to contractors only according to § 310 I BGB [German Civil Code].

§ 2 Offer – Offer Documentation

(1) If the order qualifies as an offer according to § 145 BGB, we can accept the same within 4 weeks.

(2) We reserve property and copyrights of illustrations, drawings, pricings, technical calculations and other documentation. This shall also apply for such written documentation marked to be „confidential“. Any disclosure by the purchaser to third parties requires our explicit consent in writing.

(3) The figures, drawings, pricings, technical data, weight and dimension specifications as well as calculations and other documentation are not legally binding for us, unless explicitly marked to be binding.

(4) Software and samples with corresponding programme descriptions and documentation must not be reproduced or handed out to third parties in any form. With respect to such software products which have not been developed by us, this provision shall not apply, unless otherwise agreed or specified by the software manufacturer or copyright owner.

(5) Software products developed by us are subject to the special "Terms of Use of ARLA Software". These terms of use are delivered together with the order confirmation and the software, and shall be binding for the purchaser. Software of other companies shall be subject to the "Special Terms of Use" provided by the manufacturer which is also delivered with the order confirmation and the software. These terms of use shall always have priority.

(6) If the software comes with a software lock (hard lock, dongle, card protection, other plug protections and/or security software with or without password protection), this protection must be properly installed and protected and insured against unauthorised access and theft. In the case of losing such software protection, the software license granted to the customer expires. A replacement shall be delivered upon request and on the account of the purchaser, and may lead to re-purchase the license.

(7) The documentation to be provided by the purchaser, such like drawings, data, samples, models or similar are only relevant for us. The purchaser shall assume liability for the correctness and completeness of their contents and the technical feasibility of this documentation. We are not obliged to review it. The purchaser shall be also responsible that the use of such documentation does not infringe upon a right of third parties and must relieve us from any disadvantages resulting from any claims or damages by infringing upon such right.

§ 3 Prices – Terms of Payment

(1) Unless stated otherwise in the order confirmation, our prices are "ex works" (EXW Wipperfurth, Incoterms 2000), excluding packaging without on-site expenses with the purchaser within the scope of setting up, mounting, instruction or training. Such expenses are invoiced separately.

(2) Prices do not include the statutory value-added tax. The VAT is calculated separately in the invoice when issuing the invoice.

(3) Any customs, taxes or other possible statutory duties shall be borne by the purchaser and will be invoiced separately, unless otherwise stated.

(4) Cash discount deductions require a special written agreement.

(5) Unless stated otherwise in the order confirmation, the net purchase price (without deduction) is indicated in EUR and payable within 2 weeks from date of invoice. Unless specified otherwise, payment must be made in Euro via bank transfer. If the purchaser should be in default, we shall be entitled to charge interests for the default to the amount of 8% above the respective base rate. Should we be able to prove a higher damage caused by such default, we shall be entitled to claim such damage. However, the purchaser shall be entitled to provide evidence that the default of payment has caused a significantly lower damage. In addition, the regulations on the interests of the HGB (German Commercial Code) for mutual trading transactions shall apply.

(6) For obvious errors and deviations included in the price lists, invoices or confirmations, we explicitly reserve the right to subsequently amend or recalculate them. The same applies for transmission errors. For substantial amendments of important cost factors, such like labour costs, manufacturing material, and costs of shipment or any changes to the exchange rate, we reserve the right to adjust the agreed purchase prices to reasonable extent.

(7) The purchaser shall only be entitled to rights to set-off, if the purchaser's counterclaims have been legally established or are undisputed or recognised by us. Furthermore, the purchaser shall be entitled to exercise the retention right only to the extent to which the counterclaim is based on the same contractual relationship.

(8) Should the purchaser default on partial or full payment, we shall be entitled to claim for the furnishing of a bank security to the amount of the outstanding payment. Should the purchaser default on furnishing a bank security, we shall be entitled, subject to appoint a date of fulfilment in advance, to withdraw from the contract and claim damages instead of the contractual performances. The

provisions as set in the sentences 1 and 2 shall also apply, if the property of the purchaser is levied to judicial execution, if the purchaser suspends payment or if the purchaser requests for a comparison or a moratorium.

§ 4 Delivery Period

(1) The delivery period specified by us shall commence upon discussion of all technical issues.

(2) The compliance with our terms of delivery requires the due and proper fulfilment of the purchaser's obligation. The defence of non-performance shall be reserved. The due and proper fulfilment of the purchaser's obligation includes the provision of the relevant documentation, licenses, releases and the agreed advance payment to be furnished by the purchaser. The date of delivery is re-scheduled, if changes are required in the meantime which were not included in the order confirmation. The delivery date shall be deemed as fulfilled, if the object of delivery has left the supplier or the readiness for dispatch has been notified until the end of the delivery period.

In the event of taking measures within the scope of industrial disputes, especially strikes and lockouts and with unexpected obstacles beyond our sphere of influence, the delivery time shall be reasonably extended.

(3) If the purchaser defaults on acceptance, or fails to attend cooperation obligations, we shall be entitled to claim any damages incurred including possible extra expenditure. Any claims in excess are reserved. If the purchaser requires the dispatch or payment to be delayed for more than one month after notification of readiness of dispatch, we shall be entitled to charge the purchaser monthly storage costs to the amount of 0.5% of the purchase price for the objects or deliveries, but maximum 5% in total. The contracting parties shall be free to prove higher or lower storage costs.

(4) In the event of the preconditions according to clause 3, the risk of an accidental loss or an accidental depreciation of the object of sale shall pass to the purchaser on the date on which default of acceptance or debtor's default begins.

(5) We shall assume liability to the extent of the legal provisions, if the contract presented is a firm deal according to § 323 II no. 1 BGB or 376 HGB (German Commercial Code). We shall also assume liability to the extent of the legal provisions insofar that the purchaser shall be entitled to claim any consequences resulting from a delay in delivery due to a fault caused by us, which lead to discontinuance of the completion of the purchaser's obligations under this contract. A withdrawal may be declared by the purchaser only if the delay in delivery is substantial and the purchaser's delivery interest is significantly affected. Such impairment shall not be substantial, if the purchaser continues to use the object of sale.

(6) If the purchaser should accrue damage due to a delay owing to us, the purchaser shall be entitled to claim delay compensation which does not affect, however, the right of withdrawal according to § 7 para. 3 regulated by these conditions. Any claims for delay in excess shall be excluded, unless the delay is due to intention gross negligence on our part or one of our vicarious agents.

(7) We shall assume liability according to the statutory provisions to the extent that the delay in delivery owing to us is based on the substantial breach of an obligation under the contract. In this case, the liability for damage shall, however, be restricted to predictable and usually occurring damages.

(8) Other legal claims and rights of the purchaser, in particular with delay in delivery, shall remain unaffected.

§ 5 Acceptance – Part Deliveries

(1) The purchaser shall not refuse acceptance of deliveries due to irrelevant defects.

(2) Part deliveries are permitted, unless unacceptable for the purchaser.

§ 6 Transfer of Risks – Packing Costs

(1) Unless stated otherwise in the order confirmation, delivery is "ex works" (EXW Wipperfurth, Incoterms 2000). The same shall apply in the case, if we have accepted additional costs (e.g. bearing the freight costs, supply, installation of the object of sale etc.).

(2) Transport and other packaging according to the regulation on packaging are not taken back, excluding pallets. The purchaser shall be self responsible for the disposal of the packaging on own account.

(3) Delivery may be covered by transport insurance, if required by the purchaser. The relevant insurance costs incurring shall be borne by the purchaser.

§ 7 Warranty for Defects

(1) The warranty claims shall require the purchaser's obligation to duly inspect the deliveries and give notice of any defects according to § 377 HGB. In each case, the purchaser shall inform us in writing about obvious defects within two weeks from date of acceptance of delivery, and hidden defects within two weeks from date of detection. If the purchaser fails to adhere to the obligation of inspection and complaint, all warranty claims shall become inapplicable.

(2) If the object of sale reveals a defect, we shall be entitled to either remedy the defects or provide replacement. In the case of remedy of defects, we shall be responsible for all expenses required for remedying the defects, in particular material, shipping, labour and material costs, unless said costs are not increased by having the object of sale passed to a place different from the place of delivery.

Relevant for the scope of delivery shall be our written order confirmation. In case of receiving our offer with limited time and due acceptance, the offer shall

be relevant, unless a due order confirmation has been submitted. Additional agreements and changes require written confirmation.

(3) Should we fail with the supplementary performance by rectification or replacement of a defect for which we are responsible, the purchaser shall be entitled to either reduce the purchase price or, if the defect is of substantial nature, to withdraw from the contract.

(4) We shall assume liability to the extent of the legal provisions, unless the purchaser does not claim any damages due to intentional or gross injury to life, body and health. In addition, we shall assume liability for any claims based on intention or gross negligence including intention or gross negligence caused by our representatives or vicarious assistants.

(5) We shall assume liability to the extent of the statutory provisions, unless a substantial obligation under the contract is not culpably breached. In this case, however, the liability for damage shall be restricted to the predictable and usually occurring damage.

(6) For the rest, the claim for damage is excluded. We shall not be responsible to assume liability for damages which were not directly caused to the object of sale.

(7) The legally binding provisions under the Product Liability Act shall remain unaffected.

(8) The warranty period shall be one year from the transfer of risk. This period represents a period of limitation and shall also apply for claims for compensation of consequential damages, unless claims have been raised from offence for which the statutory period of limitation shall apply.

(9) We shall not assume liability for defects to deliverables and receivables of the purchaser or third parties who are neither our assistants nor vicarious agents, and for damages caused by such defects.

§ 8 Joint Liability

(1) Further entitlements to damages in excess of the preceding provisions – regardless of the legal nature of the damage claim – are excluded.

(2) The regulation according to § 8 para. 1 does not apply for claims according to §§ 1, 4 Product Liability Act and in cases of impossibility.

(3) The exclusion of liability for other damage claims shall not apply for injury to life, body and health as well as caused intentionally or by gross negligence of our managers or executive staff. Furthermore, the exclusion of liability shall not include damages covered by the company's compulsory liability insurance. The proof of intention or gross negligence shall be subject to the legal provisions set in the *BGB*.

(4) If the liability for damage against us is excluded or limited, this shall also apply for the personal liability for damage of our staff, employees, representatives and vicarious agents.

(5) In the case of liability for simple negligence, the scope of liability covered by us shall be restricted to the actual damage and to the amount of the individual order value, unless the predictable damages usually arising under such contract are higher. In the latter case, the liability shall be restricted to the predictable damages usually arising under such contract according to type and amount. This liability restriction shall not apply with gross injury to life, body and/or health.

§ 9 Reservation of Proprietary Rights

(1) We reserve the right of ownership of the object of sale until we have received all payments due under the delivery contract concluded with the purchaser. If the purchaser fails to fulfil the contractual obligations, in particular in the event of default of payment, we shall be entitled to take back the object of sale. The return of the object of sale shall not represent a withdrawal from the contract, unless this was explicitly stated by our company in writing. The distraint of the object of sale by us shall always constitute a withdrawal from the contract. After having taken back the object of sale, we shall be entitled to resell the same, and the proceeds of sale shall be charged to the purchaser's obligations less reasonable proceeds of sale.

(2) The purchaser shall be responsible to carefully handle the object of sale, and shall be particularly responsible to sufficiently cover this object against damages caused by fire, water and theft to its replacement value on own account. If maintenance and inspection works should become necessary, the purchaser shall arrange for such works in due time and on the purchaser's own account.

(3) With distraint or any other impacts of third parties, the purchaser shall immediately notify us in writing in order to take action according to § 771 ZPO (German Code of Civil Procedure). Unless third parties are able to compensate the judicial and extrajudicial costs of a claim according to § 771 ZPO, the purchaser shall be liable for the loss caused to us.

(4) The transfer and resale of ARLA software products to third parties shall require a separate written agreement. Irrespective of this fact, the terms of use mentioned under § 2 para. 5 shall preferably apply for software deliveries, which might also be hardware deliveries.

For all other ARLA products (i.e. "Non-Software" products), the purchaser shall be entitled to properly resale the object of sale. This resale includes, however, that the purchaser already now transfers any outstanding amounts being the invoiced total sum (including VAT) of the outstanding payment which the purchaser claims against customers or third parties from such resale, regardless of the fact, whether the object of sale has been sold with or after processing. The purchaser shall remain authorised for the collection of the receivables even after having assigned the claims. This shall not affect our entitlement to collect receivables on our own. However, we reserve the right not to collect receiv-

ables, unless the purchaser fails to meet the payment obligations from the revenues received, is in default and, in particular, a request for opening insolvency proceedings or cessation of payment is present. In this case, we shall be entitled to ask the purchaser to disclose the outstanding amounts and their debtors assigned, to provide us with all information required for collection, to deliver us the corresponding documentation and to inform the debtors (third parties) about the assignment of the claims.

(5) The processing or modification of the object of sale by the purchaser shall always be deemed to be carried out in our favour. If the object of sale is processed with other objects which do not belong to our products, we shall acquire the joint ownership of the new object to the extent of the value of the object of sale (invoiced total sum including VAT) for the other processed objects at the point of processing. For the object resulting from the processing, the same as for the object of sale delivered with reservation shall apply.

(6) If the object of sale should be inseparably mixed with other objects not belonging to us, we shall acquire the joint ownership of the new object to the extent of the value of the object of sale (invoiced total sum including VAT) for the other mixed objects at the point of mixing. If the mixing is carried out in the way that the object of the purchaser is regarded to be the main object, it shall be deemed to be agreed that the purchaser proportionally assigns us joint ownership. The purchaser maintains the sole or joint ownership arising therefrom for us.

(7) The purchaser shall also assign the claim for the security of our receivables against the purchaser which the same is entitled to from the connection of the object of sale with a property against a third party.

(8) We shall be responsible to release the purchaser from the securities which we are entitled to upon request of the purchaser to the extent that the realisable value of the securities exceeds the receivable to be secured by more than 10%. We shall be entitled to select the securities to be released.

§ 10 Court of Jurisdiction – Place of Fulfilment – Applicable Law

(1) If the purchaser is a trader, the place of jurisdiction shall be our registered office in Wipperfurth. We shall, however, be entitled to institute legal proceedings against the purchaser at the court of the purchaser's residence.

(2) Unless otherwise stated in the order confirmation, our registered office in Wipperfurth shall also be the place of performance.

(3) The legal relationships arising under this agreement shall be governed by the German Substantive Law to the exclusion of the United Nations Convention on Contracts for the International Sale (CISG).

§ 11 Severability Clause

If individual provisions should become legally ineffective, the effectiveness of the remaining provisions of the contract shall remain unaffected. This shall not apply, if the adherence to the contract would represent an unacceptable severity for one contracting party.

ARLA Maschinentchnik GmbH
Hansestraße 2
D-51688 Wipperfurth / GERMANY

Phone: +49 2267 6585-0

Fax: +49 2267 6585-70

E-mail: info@arla.de

Internet: www.arla.de