



General terms and conditions of sale - status 11 / 2017

§ 1 General

(1) All supplies and performances as well as proposals of the Seller (Aster Europe GmbH) are based exclusively on these terms and conditions. They form part of all contracts that the Seller may assign with the Buyer for the supplies and performances proposed. They also apply to all future deliveries, services or proposals to the Buyer, even if they are not separately agreed again. In the absence of particular agreements a contract is deemed as concluded by the written order confirmation of the Seller.

(2) Terms and conditions of the Buyer or other third party are not applicable, even if the Seller does not explicitly object its applicability. Even if the Seller refers to correspondence, that contains the terms and conditions of the Buyer or other third party or refers to them, does not mean their acceptance of such terms by the Seller.

§ 2 Proposal and purchase order

(1) All proposals of the Seller are non-binding unless explicitly indicated as binding or showing an expiry deadline. Purchase orders can be accepted by the Seller within fourteen days of receipt.

(2) The written purchase agreement is the exclusive definition of the legal relationship between Seller and Buyer, including these general terms and conditions. Verbal confirmations of the Seller prior to the conclusion of the purchase order are legally non-binding and verbal agreements of the parties are substituted through the written agreement, as far as these do not explicitly express that they shall remain valid. Amendments and changes of the agreement including these terms must be in writing only. With the exception of the Managing Directors the employees of the Seller are not entitled to make deviating verbal agreements. To maintain the written requirement submission via telefax will be acceptable. However the submission via E-mail is not deemed sufficient.

(3) Information of the Seller concerning the object of supply or the performance (i.e. weight, dimensions, use values, load capacity and technical data) as well as illustrations of the same (i.e. drawings and schematics) provide approximations as long as the usability for the contractual purpose does not require an exact accordance. They are not to be considered as guaranteed characteristics but rather descriptions and identifications of the supplies or performances. Commercially common deviations, including those that follow legal obligations or constitute technical improvements, as well as the replacement of original with equivalent parts are permitted as long as they do not affect the use for the contractual intended purpose.

(4) The Seller reserves all proprietary and copy rights on samples, cost estimates, calculations, catalogues, tools, drawings and similar information, physical and non-physical, also in electronic format. Neither as such nor their content shall be disclosed to third parties without the consent of the Seller.

§ 3 Prices and payment

(1) Prices are applicable to the scope of supply and performances listed in the order confirmation. Additional performances and extra supplies will be invoiced separately. Unless stated to the contrary prices are in EURO, ex-works Darmstadt or Bergamo (Italy), inclusive packing, exclusive statutory VAT, and for export supplies exclusive customs duty and other applicable expenses. Our spare parts prices are in EURO ex warehouse Darmstadt plus packaging, the statutory value added tax, for export deliveries also plus customs duties as well as fees and other public charges. Invoiced will be at the price valid on the day of delivery. Spare parts estimates are calculated with a cost allowance of 1% of the estimated cost, but at least 100,00 EURO. This amount will be due no later than four weeks after the proposal has been prepared. If the order is placed on the basis of the cost estimate, the amount paid for the estimate will be remunerated accordingly.

(2) Invoices become due within 30 days without deductions, unless agreed different in writing. Relevant is the date of the Sellers receipt of payment. Should an invoice become overdue interest at 5% over the base interest will become due to pending amount. The Seller reserves the right to claim higher interest or further damages caused by delayed payment.

(3) Discounting of invoices through the Buyer based on claims, or retention of payments for such reasons may be applied only if they are undisputed or legally confirmed.

(4) Following contract agreement the Seller reserves the right to demand advance payment for supplies or performances not already supplied in case information becomes available indicating the deterioration of the credit rating of the buyer to an extent that jeopardises payment of the receivables to become due.

(5) Employees of the Seller, in particular technicians are not entitled to accept checks or bill of exchange unless they have a written authorisation in original, signed by the managing director or his delegate, issued by Aster Europe GmbH.

§ 4 Supply and delivery time

(1) Supply is performed ex-works Darmstadt (Germany) or Bergamo (Italy).

(2) Any deadlines or supply dates envisaged by the Seller for supplies or performances are approximations, unless firm deadlines or dates are confirmed or have been agreed. In case a shipment date has been agreed then this refers to the transfer date of the goods to the freight forwarder or any other party that takes care of transportation.

(3) The Seller may – irrespective of his rights under delay default of the Buyer – demand an extension of the supply deadline that is equivalent to the period the Buyer has been in default to fulfil his obligations under the contract agreement.

(4) The Seller is not liable in case the supply of goods or performances have become impossible or delayed in case of force majeure or other circumstances that could not be envisaged at the time of contract agreement, including but not limited to act of god (i.e. fire, explosion, earthquake), war, hostiles, embargo, rebellion, revolution, civil war, riot, strikes, go slows, lockouts or disorder, acts or threats of terrorism. If such events aggravates or makes impossible the performance of the Seller and the impediment is not of temporary nature the Seller shall be entitled resign from the agreement. In case of temporary impediment the Sellers deadline for performance shall be extended by the duration of the impediment. Should the delay in performance constitute an unreasonable imposition on the Buyer he may resign from the agreement through written confirmation.

(5) The Seller shall be entitled for partial delivery only in case if

- the partial delivery is usable by the Buyer for the contractual purpose,
- the delivery of the remaining supplies is ensured, and

– no extra effort or additional cost being incurred for the Buyer, unless the Seller declares to take over these additional cost.

(6) Liability for delay of the Seller is limited in accordance with the provisions of §8 of this document.

§ 5 Place of performance, shipment, packing, transfer of risk, takeover

(1) Place of performance from the contractual agreement is Darmstadt (Germany), unless agreed otherwise. In case the agreement includes installation then place of performance is the site where installation will take place.

(2) Choice of means of transportation and packing is at the discretion of the Seller.



(3) Risk is transferred to the Buyer the latest on handover of the goods to the freight forwarder (start of loading process) or any other party that takes care of transportation. Spare parts will be usually shipped through UPS. Partial delivery shall be permitted. For returned spare parts within 8 days the value of the parts less 10% restocking fee and shipment cost will be credited. This applies also in case of partial deliveries or in case the Seller has taken additional performance (i.e. shipment or installation). In case these circumstances effect a delay on shipment or handing over attributable to the Buyer the transfer of risk is effected on the date the Seller is ready for shipment and has confirmed the same to the Buyer.

(4) Storage cost following transfer of risk will be on Buyers account. For storage through the Seller the cost will be 0.25% of the value of the goods being stored per full week. Claims for further cost or evidence of further or lower storage cost are reserved.

(5) The goods being shipped will upon the Buyers demand only be insured at his expense against theft, damage, transport, fire and water damage or any other risk that can be insured.

(6) If acceptance proceedings must be performed the goods shall be considered accepted if

- the supply and, if agreed the installation has been completed,
- the Seller has notified the Buyer under reference to this § 5 (6) and requested for acceptance of the goods,
- a period of 12 working days has expired since supply or installation, or the Buyer has commenced using the goods bought (i.e. commissioning of the supplied machine) and in this case six working days have expired since delivery or installation, and
- the Buyer within this period refused acceptance for any other reason than a notified default of the Seller, that would make the use of the goods impossible or severely impaired.

§ 6 Warranty

(1) The warranty period is 12 months from supply, or where acceptance is required, from acceptance.

(2) The goods supplied must be carefully inspected, without delay, upon supply to the Buyer or his nominee. The goods are considered approved if the Seller is not provided with a default claim for obvious or other defects within seven working days from the supply date of the goods, which would have been discovered during an immediate and careful inspection, or otherwise within seven working days after the discovery of the defect or the moment, the defect during normal use of the goods became apparent without a close inspection, in the form as required under § 2 (2). Upon demand of the Seller the goods must be shipped back to the Seller at the Buyers expense. In case of a justified defect the cost for the most economic shipment will be reimbursed by the Seller; this does not apply if the goods are in a location that is different to the as intended location.

(3) For defects of the goods supplied the Seller shall within reasonable time according to his discretion choose to rectify or replace the defective goods. In case this fails for impossibility, unreasonableness, refusal or disproportionate delay of the rectification or replacement, the Buyer may withdraw from the agreement and reduce the purchase price accordingly.

(4) In case the defect is attributable to the Seller the Buyer may claim compensation under the provisions of § 8.

(5) For defects on parts of other suppliers, that the Seller cannot rectify for licence protection or any other substantial reasons, the Seller will at his discretion present his warranty claims against the suppliers and manufacturers for the account of the Buyer or cedes his rights to the Buyer. Warranty claims of this nature under other conditions and according to these general terms exist against the Seller only in case legal proceedings of the aforementioned claims against suppliers and manufacturers have failed, or have become hopeless, i.e. due to insolvency. For the duration of the legal proceedings the limitation of the corresponding warranty claim against the Seller shall be suspended.

(6) The warranty expires if the Buyer modifies or allows modification by a third party without consent of the Seller and as a consequence the rectification of defects under warranty becomes impossible or unreasonably difficult. Additional cost for rectification incurred due to the modification will be on Buyers account.

(7) In case the parties may agree supply of used goods then warranty is excluded.

§ 7 Property rights

(1) The Seller warrants that, according to this paragraph, the goods supplied are free from any property rights or copyrights by third parties. Both, Seller and Buyer will, without delay, inform the other party in writing, should somebody claim violation of such rights.

(2) In case the goods supplied violate a property right or copyright of a third party, the Seller will, at his choice and cost, either modify or replace the goods supplied such that the rights of the third party are no longer violated, the goods however still comply with the specified function and performance, or obtain for the Buyer an unlimited and exclusive licence for use in association with the goods supplied. Should this not seem attainable within reasonable time then the Buyer is entitled to resign from the contract agreement or to commensurately reduce the purchase price. Possible claims for damage compensation are limited to the provisions of § 8 of these general supply terms.

(3) In case of rights violation through goods supplied by the Seller but manufactured by others, the Seller will at his discretion present his claims against the suppliers and manufacturers for the account of the Buyer or cedes his rights to the Buyer. In such cases claims against the Seller under this § 7 prevail only in case legal proceedings of the aforementioned claims against suppliers and manufacturers have failed, or have become hopeless, i.e. due to insolvency.

§ 8 Liability for damages

(1) The Sellers liability for damages is, irrespective of the legal grounds, in particular for impossibility, delay, defective or wrong supply, violation of the contract terms, violation of his obligations during negotiations or tort, as far as evaluated under fault attributably, limited under this § 8.

(2) The Seller is not liable

a) in case of simple negligence of his organs, legal representatives, employees or other agents.

b) in case of gross negligence of his employees or agents, as long as it is not a violation of essential contractual obligations. Contractually essential are the Seller's obligations for timely and free of defects supply and installation as well as consultancy, protection and care obligations, that allow the Buyer the compliant use of the goods supplied ensuring protection of body and life of the Buyers personal and agents as well as the protection of the Buyers property from damage.

(3) As far as the Seller according to § 8 (2) is liable for damages, the liability is limited to damages, which could have been anticipated by the Seller at the time of contract conclusion, or under consideration of the circumstances, that were known to him or should have been known to him, could have been envisaged if the Seller would have applied customary. Indirect and consequential damage, as a consequence of defects of the goods supplied, are also substitutable only if they could be typically expected through intended use.

(4) Liability for personal injury or damage to physical property caused negligently shall be limited to € 1.000.000 for each damaging event, up to a total of € 2.000.000, irrespective of the number of events.

(5) The above exclusions and limitations of liability apply in the same scope to organs, legal representatives, employees and other agents of the Seller.

(6) If the Seller provides technical information or consultancy and the information or consultancy does not relate to the owed, contractually agreed scope of supply then this service is provided free of charge under exclusion of any liability.

(7) The liability limitations of this § 8 do not apply in case of intent of the Seller, for guaranteed features, violation of life, body or health or the product liability law.



§ 9 Retention of title

- (1) The retention of title serves to secure all existing and future requirements of the Seller towards the Buyer from the existing supply relationship between the parties inclusive balance claims from a current account relationship limited to this supply relationship.
- (2) The goods supplied by the Seller to the Buyer remains the Seller's property until all requests from deliveries have been fully paid. The goods as well as the goods, which take their place according to this clause and are covered by the retention of title, are hereinafter referred to as reserved goods.
- (3) The Buyer secures the reserved good free of charge for the Seller. Until all liabilities have been balanced the Buyer shall insure the reserved goods against theft, damage, fire and water as well as other damage. The Buyer shall instruct the insurer in case of damage to first balance remaining liabilities with the Seller. The Buyer will arrange that the insurer will provide such confirmation to the Seller. Should the Buyer himself not have demonstrably contracted such insurance, then the Seller shall be entitled to insure the reserved goods on account of the Buyer.
- (4) The Buyer is entitled to process and sell the goods subject to retention of title until the event of recovery (paragraph 9) has occurred in the ordinary course of business. Pledges and chattel mortgages are prohibited.
- (5) If the reserved goods are processed by the buyer, it is agreed that the processing takes place in the name and for the account of the Seller as the manufacturer and the Seller directly the property or - if the processing is made of materials of several owners or the value of the processed thing is higher as the value of the reserved goods - acquires the co-ownership (fractional ownership) in the newly created object in proportion of the value of the reserved goods to the value of the newly created object. In the event that no such acquisition of ownership by the seller should occur, the Buyer already transfers his future ownership or - in the aforementioned relationship - co-ownership of the newly created thing for safety to the Seller. If the goods subject to retention of title are combined with other items or combined inseparably and if one of the other items is to be regarded as the main item, the Seller, to the extent that the main item belongs to him, proportionally transfers the co-ownership of the unitary item to the Buyer in the ratio mentioned sentence 1 above.
- (6) In the case of resale of the goods subject to retention of title, the Buyer hereby assigns to the Seller, as a precaution, the resulting claim against the Buyer - in the case of co-ownership of the Seller of the reserved goods in proportion to the co-ownership share. The same applies to other claims that take the place of the reserved goods or otherwise arise with respect to the reserved goods, such as: Insurance claims or claims for tort in the event of loss or destruction. The Seller authorizes the Buyer revocable to collect the claims assigned to the Seller in his own name for the account of the Seller. The Seller may only revoke this direct debit authorization in the event of realization.
- (7) If third parties access the goods subject to retention of title, in particular by seizure, the Buyer will immediately inform them of the Seller's property and inform the Seller in order to enable him to enforce his property rights. If the third party is not in a position to reimburse the Seller for the legal or extrajudicial costs incurred in this connection, the Buyer shall be liable to the Seller for this.
- (8) The Seller will release the goods subject to retention of title as well as the goods or claims which replace them on request at his option, provided that their value exceeds the amount of the secured claims by more than 50%.
- (9) If the Seller withdraws from the contract in case of breach of contract by the Buyer - in particular default of payment - he is entitled to demand the reserved goods to be returned.

§ 10 Service calls

For technician missions, the separate installation conditions for technicians of Aster Europe GmbH apply.

§ 11 Final provisions

- (1) Jurisdiction for any disputes arising from the business relationship between the Seller and the Buyer is at our discretion Darmstadt or the domicile of the Buyer. For complaints against the Seller Darmstadt is the exclusive place of jurisdiction. Mandatory statutory provisions on exclusive jurisdictions remain unaffected by this provision.
- (2) The relations between the Seller and the Buyer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- (3) Insofar as the contract or these General Terms and Conditions contain gaps in the regulations, those legal provisions shall be deemed to have been agreed upon, which the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms of Delivery, if they had known the regulatory loophole. Should one or more provisions of this contract be or become invalid or unenforceable, the validity of the remaining provisions of the contract shall remain unaffected. In lieu of the invalid or unenforceable provision, the completion pursuant to sentence 1 applies.
- (4) Both parties are not entitled to assign the claims from the contractual relationship to third parties. This does not apply if it concerns money claims.

Note:

The client acknowledges that the seller stores data from the contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing and reserves the right to transmit the data to third parties (for example, insurance companies) to the extent necessary for the fulfilment of the contract.