

## 1 General Provisions

1.1 All articles and services supplied by companies in the ARGO-HYTOS Group with registered offices in a country of the European Union (hereinafter referred to individually and collectively as the „Seller“) shall be subject to these General Terms of Sale and to any separate contractual agreements. Any differing terms and conditions of purchase of the purchaser shall not become part of the contract either when an order is accepted or if they are not objected to.

1.2 Unless otherwise expressly agreed, a contract shall be concluded when the Seller issues his written confirmation of the order. Written form shall also include confirmations sent in textform by datatransfer (e.g. e-mail), electronic signature via signature programs such as DocuSign, AdobeSign or fax.

1.3 If clauses customary in the trade are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.

1.4 Documents, such as illustrations, drawings and information on dimensions and performance shall only be approximately authoritative and are not considered to be warranted characteristics or guarantees, unless they are expressly designated as binding.

1.5 The Seller reserves ownership of and copyrights to samples, cost estimates, drawings and the like, and to information embodied in a tangible or intangible manner, including in electronic form. This information shall be used only for contractual purposes and shall not be edited, reproduced, or made available to a third party without the consent of the Seller. The Seller shall make documents designated as confidential by the purchaser available to a third party only with the consent of the purchaser.

## 2 Prices and payment

2.1 Unless otherwise agreed, the prices shall not be deemed to be fixed prices. For services ordered by the purchaser, which are not covered by the original order, there is a right to additional, appropriate remuneration. Unless agreed separately, the prices shall be ex works of the Seller and shall include loading at the works, but not include insurance costs, packaging, unloading and all other auxiliary costs. Value-added tax shall be added to the prices at the respective statutory rate.

2.2 The Seller shall be entitled to adjust the contractually agreed price if changes in the amount of at least 1.5 % have occurred with regard to (i) the wage costs by law, regulation, collective agreement, company agreements or (ii) other cost factors necessary for the performance of the service such as procurement costs of the materials used, e.g. due to changes in the national or world market prices for raw materials, exchange rates since the conclusion of the contract. The adjustment shall be made to the extent that the actual production costs at the time of conclusion of the contract change compared to those at the time of the actual performance of the service. A price adjustment for the period in which the Seller is in default through his own fault is excluded.

2.3 Costs for travel, daily and overnight allowances are charged separately. Travel times are considered as working hours.

2.4 Unless separately agreed, payments shall be made without deduction to the Seller's account, namely:

- a down-payment of one third of the price when the order is placed,
- one third of the price payable when half the delivery period expires,
- the remainder payable upon delivery or upon notification of readiness for shipment if delivery is not possible immediately after completion for reasons for which the Seller is not responsible.

2.5 Unless otherwise specified in the acknowledgement of order, payments shall be due net (without deduction) within 30 days of the invoice date. The statutory provisions regarding the consequences of default in payment shall apply.

2.6 The purchaser shall be entitled to withhold payments or offset his counterclaims only if they have been ruled on finally or have been acknowledged by the Seller.

## 3 Cooperation obligations of the Purchaser

3.1 The purchaser shall perform all duties to cooperate vis-à-vis the Seller in such a timely manner that the Seller can deliver or perform in due time.

3.2 Unless otherwise agreed, the purchaser shall be responsible for obtaining the required permits at its own expense.

3.3 To the extent requested by Seller, purchaser shall make available to Seller, free of charge and for the time of performance, lockable, closed rooms not accessible to third parties for the stay of Seller's employees and for the storage of tools and materials.

## 4 Delivery period, delay in delivery, force majeure

4.1 The delivery period shall be as agreed by the parties. To allow it to commence and to be observed by the Seller, all commercial and technical questions must first be clarified, and the purchaser must have fulfilled all his obligations, such as furnishing of the necessary official certificates or approvals or making of a down-payment.

If this is not the case, the delivery period shall be extended commensurately. This shall not apply if the Seller is responsible for the delay.

4.2 The delivery period shall be deemed to have been observed if the article to be supplied is ready for loading or the services are indicated ready for acceptance by the time the delivery period expires. If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be binding, except in the case where the purchaser justifiably refuses acceptance.

4.3 If ready for shipment declarations or acceptance of the article to be supplied is delayed for reasons for which the purchaser is responsible or if the purchaser violates other duties of cooperation on his part, the Seller shall be authorised to demand compensation for the losses he has incurred in this regard, including any additional expenses. Without prejudice to further claims, the Seller can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy, in particular store the article to be supplied at the risk and expense of the purchaser and/or supply the purchaser within a reasonably extended period.

4.4 If a failure to observe the delivery period is due to force majeure, such as natural disasters, epidemics, pandemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, cyberattacks, nuclear/reactor accidents, embargo/sanctions or similar restrictions, labour disputes shortage of raw materials, materials, components and means of transport or other events that are outside the Seller's control, the Seller shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. Effects and/or restrictions arising from or in connection with an event of force majeure (e.g. travel restrictions, border closures, transport restrictions or delays, plant closures, etc.) which make it impossible or unreasonably difficult to comply with the delivery or performance time, shall be deemed to be an force majeure event within the meaning of Section 4.4. The Seller shall inform the purchaser of when such circumstances start and end within a reasonable time after becoming aware of them. If the force majeure event or multiple force majeure events lasts for more than 6 months, the Seller shall also be authorised to terminate the contract. In case of delay - due to force majeure - the purchaser is not entitled to make any monetary claims against the Seller.

4.5 If the Seller is in delay and the purchaser incurs losses as a result, the latter shall be authorised to demand lump-sum compensation for the losses due to such delay. This shall be 0.5% of the value of that part of the overall delivery that cannot be used

on time or in accordance with the contract because of the delay, for each full week of the delay but a maximum total amount of 5% of said value.

If the Seller is in delay and the purchaser grants him reasonable time to perform his obligation – considering the statutory exceptions – and if this period of time is not observed for reasons for which the Seller is responsible, the purchaser shall be authorised to rescind the contract within the framework of the statutory provisions.

Further claims of the purchaser towards the Seller from delay in delivery shall be excluded within the framework of Art. 100 para. 1 of the Code of Obligations (OR).

#### **5 Transfer of risk, acceptance, packaging**

5.1 Unless otherwise agreed individually, risk shall pass to the purchaser upon the start of loading of the parts to be supplied at the Seller's works, even if partial deliveries are made or the Seller has assumed other services, such as shipping cost or delivery and installation. Subject to any different agreements, the obligation to load, stow and secure the supplied article safely during transport and unload it is the responsibility of the purchaser and his freight forwarding agent, freight carrier or agent making the collection; he shall also have an obligation to provide and make available at his own expense appropriate securing devices.

5.2 If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively after the Seller has given notification that the object is ready for acceptance. The purchaser cannot refuse acceptance due to an insignificant defect, provided the Seller acknowledges his obligation to remedy the defect.

5.3 If shipment or acceptance is delayed or not performed due to circumstances not attributable to the Seller, the risk of accidental loss or accidental deterioration of the article to be supplied shall pass to the purchaser from the day on which notice is given of its readiness for shipment or acceptance. The Seller undertakes to take out insurance requested by the purchaser, such as transport insurance, at the expense of the purchaser. In case of default of acceptance by the purchaser, the Seller shall be entitled to charge a storage fee.

5.4 Partial deliveries shall be permitted if this is reasonable for the purchaser.

5.5 Transport and other packaging shall be taken back at the cost and expense of the purchaser. The place of return of packaging is the Seller's factory gate.

#### **6 Retention of title, assignment of claims, withdrawal**

6.1 The Seller shall retain his title to the supplied article until all claims have been settled, the respective outstanding balances to which the Seller is entitled as part of the business relationship with the purchaser (overall retention of title). If the destination state of the articles is in Switzerland, the Seller shall be entitled to have the retention of ownership registered in the retention of ownership register. If the destination country of the articles is outside Switzerland and if the validity of the retention of title in the destination country of the articles requires an entry in a register or a similar procedure, the Seller shall be entitled to have the retention of title registered and take any action required for the validity of the retention of ownership, with the purchaser providing any cooperation required.

6.2 The purchaser shall be obliged to treat the supplied article subject to retention of title (retained articles) with care; in particular, he shall be obliged at his own expense to insure it adequately against theft, breakage, fire, water, and other damage at the reinstatement value. The Seller shall be authorised to take out this insurance at the expense of the purchaser if the purchaser has demonstrably not taken it out.

6.3 If the retained articles are combined with other objects such that they become an essential part of another object, the Seller shall obtain co-ownership of the other object. If a new object is produced by combining or processing of the retained articles, the Seller shall always acquire a corresponding right of co-ownership.

6.4 The purchaser shall be authorised to resell the retained articles in the normal course of business. If the retained articles that have

been supplied or produced in accordance with Section 6.3 are sold, the purchaser hereby assigns the claims against his purchasers from the sale (total sum invoiced including value-added tax) or a corresponding part thereof, along with all secondary rights, to the Seller until the latter's claims have been settled in full. The purchaser is obligated to provide the Seller with a copy of the invoice in respect of the resale without delay.

6.5 The purchaser shall remain authorised to collect the claim assigned pursuant to Section 6.4; the Seller's authorisation to collect the claim himself shall remain unaffected thereby. The Seller shall not collect the claim if the purchaser meets his payment obligations from the collected amounts, is not in arrears with payment or has not discontinued payment, and an application for instigation of insolvency proceedings, administration of an insolvent estate or similar procedure has not been filed against the purchaser with a view to general execution.

If one of the above situations applies, the Seller can demand that the purchaser disclose the claims assigned to the Seller as security and provide all details and documents required to collect them.

6.6 If the purchaser acts in breach of contract, if he is in arrears with payment, the Seller shall be authorised to take back the supplied articles after issuing an unsuccessful warning. This, like any levy of execution on the articles by the Seller, shall not constitute a rescission of the contract by the Seller.

6.7 An application to instigate insolvency proceedings, administration of an insolvent estate or similar procedure with a view to general execution or the rejection of such an application due to insufficient assets, shall authorise the Seller, upon its choice (i) (in case of the rejection of such an application) to rescind the contract and otherwise to demand immediate surrender of the supplied article or (ii) to provide further contractual obligations conditional upon advance payment-performance. The choice of the latter does not bar the remedy of the Seller to rescind the contract later.

#### **7 Liability for defects**

The Seller shall be liable for defects and legal imperfections in title to the exclusion of further claims – subject to Section 8 – as follows:

##### **7.1 Material defects**

7.1.1 Details given by the Seller about the properties of the article to be supplied are the result of his measurements and calculations and shall be the article's agreed nature, but not its warranted qualities or guarantees within the meaning of Article 197 of the Code of Obligations (OR).

7.1.2 The purchaser can assert claims due to a material defect only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects in accordance with Article 201 of the Code of Obligations (OR) and Section 7.1.3 below. Notices of defects and complaints of any kind are to be given in writing by entrepreneurial customers to the Seller within the statutory period, with as exact a description of the defect as possible and an indication of the possible causes, otherwise the warranty claims will be forfeited. If no complaint is made, the article shall be deemed to have been approved.

7.1.3 All parts that prove to be defective because of circumstances before the transfer risk shall, at the discretion of the Seller, be repaired or resupplied free of charge. Such defects shall be reported to the Seller clearly and in writing as soon as they are discovered. Replaced parts shall become the property of the Seller.

7.1.4 The purchaser must prove that the defect was already present at the time of transfer of risk.

7.1.5 The Seller's liability for material defects in essential third-party products, which are an integral part or accessories of the supplied articles, shall be limited to assignment of the claims for material defects of the Seller against his supplier. If the assigned claims for material defects are not settled, the claims of the purchaser against the Seller due to material defects shall be revived.

7.1.6 Following agreement with the Seller, the purchaser shall give the Seller the required time and opportunity to make all the repairs and to supply such replacements as the Seller deems necessary; otherwise, the Seller shall be discharged from liability for the resultant consequences. The purchaser shall have the right to

rectify the defect himself or have it rectified by a third party and demand compensation for his necessary expenses from the Seller only in urgent cases of risk to safety; the Seller shall be informed immediately thereof.

7.1.7 Of the direct costs incurred because of repair or delivery of a replacement, the Seller shall – provided the complaint proves to be justified – bear the costs of the repair work and/or the replacement item (material- and workmanship costs), including the cost of shipping it to the place of performance. The Seller shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement article if installation of the part that later became defective was originally part of the contract due from the Seller. The acceptance of further costs incurred by the Seller in connection with rectification or replacement delivery shall be expressly excluded.

7.1.8 Within the framework of the statutory provisions, the purchaser shall have the right to rescind the contract if the Seller fails to remedy a material defect by a reasonable period of time set for him to repair the article or supply a replacement where non-compliance within the additional period is due to circumstances which can be attributed to the Seller but not in cases of force majeure or similar instances. If the defect is only insignificant and the Seller has failed to remedy the defect by a reasonable period set for him to repair the article or supply a replacement, the purchaser shall merely have a right to a reduction in the contractual price.

7.1.9 The Seller shall not be liable for defects that are attributable to measures or designs expressly demanded by the purchaser or that occur in materials or products which have been provided by the purchaser or whose use the purchaser has expressly demanded contrary to the Seller's advice. No liability shall be assumed in the following cases:

Unsuitable or improper use or incorrect installation or commissioning by the purchaser or a third party; failure to use original parts and materials; normal wear and tear; incorrect or negligent handling; improper maintenance; unsuitable operating supplies; faulty construction work; unsuitable subsoil; failure to back up or inadequate backing up of data by the purchaser; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 10.3) by the purchaser; unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter); corrosion (e.g. through halogens); chemical, electrochemical or electrical influences – unless the Seller is to blame for them; violation by the purchaser of the obligations described in Section 7.2.4.

7.1.10 If the purchaser or a third party carries out repairs improperly, the Seller shall not be liable for the resultant consequences.

The same shall apply to changes to the supplied article that have been made without the prior consent of the Seller.

7.1.11 The title of articles or services complained about shall pass back to the purchaser, if this is feasible. The purchaser shall be obliged to return the defective part at its cost and expense to the Seller at the request of the Seller.

7.1.12 Subject to Section 9.2, the above warranty provisions shall apply accordingly to rectification of defects.

## **7.2 Legal imperfections in title; Export control**

7.2.1 If use of the supplied article results in the infringement of industry property rights such as patents or copyrights of third parties, the Seller shall in principle and at his own expense obtain the right for the purchaser to continue using it or modify the supplied article in a way that the purchaser can reasonably be expected to accept so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period, the purchaser shall be authorised to rescind the contract. If said conditions exist, the Seller shall also have the right to rescind the contract.

Moreover, the Seller shall – if he is to blame – indemnify the purchaser against claims of the owner of the property rights that are undisputed or have been ruled on finally and conclusively.

7.2.2 Subject to Section 8, the Seller's obligations specified in Section 7.2.1 shall be final in relation to the infringement of proprietary rights or copyrights.

These obligations shall exist only if

- the purchaser informs the Seller as soon as infringements of proprietary rights or copyrights are claimed,
- the purchaser assists the Seller to a reasonable extent in defending against the claims or enables the Seller to make the modifications as stated in Section 7.2.1,
- the Seller retains the right to undertake all defensive measures, including out-of-court settlement,
- the legal imperfection in title is not attributable to an instruction by the purchaser or to the fact that the infringement only occurred because of combination of the supplied article by the purchaser with products or deliveries outside the Seller's scope of supply, and
- the infringement has not been caused by the fact that the purchaser has modified the supplied article on his own or used it in a way not in conformity with the contract.

7.2.3 The Seller does not warrant that the end products manufactured on the supplied article, including the manufacturing process used, are free of third-party property rights.

7.2.4 If the purchaser intends to export or transfer the supplied article to a country or territory against which the United Nations, the European Union or the United States of America has imposed or implemented an embargo or any other export or re-export restrictions or intends to use the supplied article in such country or territory, the purchaser shall notify the Seller of the same in writing before the contract is entered into. If the purchaser adopts such an intention after the contract is entered into, such export, transfer or use shall be subject to the seller's prior written approval. Notwithstanding anything to the foregoing, the purchaser represents and warrants that it will comply (i) with all German, EU and UN export control regulations including embargoes and other sanctions and (ii) with all other foreign export control regulations including embargos and other sanctions provided that Germany, the EU or the UN have enacted similar regulations, embargos or other sanctions targeting the same countries. If the supplied article is resold by the purchaser, the latter shall enter agreements to ensure that the obligations set forth in this Section are transferred through to the entire delivery chain and to the final customer ultimately holding the supplied article. In the event of a violation of the obligations set forth in this Section 7.2.4, the Seller shall be entitled to terminate the contract with immediate effect.

## **8 Liability**

8.1 Irrespective of whether the Seller is at fault before or after conclusion of the contract, the Seller shall only be liable for damage to the supplied article itself and limited to the amount of the invoice amount for the respective supplied article, unless an exception pursuant to Section 8.2 applies.

8.2 The Seller shall be liable for damage not caused to the supplied article itself – on whatever legal grounds, including liability for auxiliary personnel and tort – only

- if he has acted with intent,
- if he has been grossly negligent,
- in the case of defects, the Seller has concealed with intent to deceive,
- in the case of defects a mandatory legal liability.

8.3 The Seller shall not be liable for indirect damage, loss of profit, loss of production, loss of interest, failure to make savings, consequential damage, and financial loss, for damage arising from third-party claims and for the loss of data and programmes and their recovery, unless an exception pursuant to Section 8.2 applies.

8.4 Further claims for damages – on whatever legal grounds – shall be excluded. If liability for damages on the part of the Seller is excluded or limited, this shall also apply to personal liability for damages on the part of the Seller's employees.

## **9 Limitation of actions**

9.1 All claims of the purchaser – on whatever legal grounds – shall



become statute-barred insofar as they are not asserted within 12 months from the due date and the purchaser's knowledge of the infringing party and damage. The statutory periods of limitation shall apply to intent or intent to deceive, culpable injury to life, body or health and claims under the applicable Product Liability Law. Defects in a building or in supplied articles that have been used for a building in accordance with their customary usage and have caused the defect in the building shall be subject to a limitation period of 3 years.

9.2 If, as part of rectification of a defect, the purchaser obtains rights in relation to defects, all defect claims become statute-barred 12 months from delivery date. For new rights in relation to defects, all claims arising from these rights shall become statute-barred at the latest 6 months from when the defect was rectified whereby such claims shall exclusively be limited to defects that arise directly in connection with the rectification of the defect.

#### **10 Use of software**

10.1 If software is supplied, the purchaser shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended object supplied. The software shall not be used on more than one system.

10.2 The purchaser shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by Copyright Law (*UrG*). The purchaser undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without the Seller's prior written consent.

All other rights to the software and documentation, including copies thereof, shall remain with the Seller or the software supplier. Sublicensing of it shall not be permitted.

10.3 Before providing the software to the purchaser, the Seller shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as "computer viruses"). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the purchaser later and possibly change or delete program data of the software or other data or programs or impair systems.

10.4 Consequently, the purchaser himself shall likewise take measures to protect against computer viruses and other destructive data. The purchaser shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the purchaser wishes to use as part of his (operating or control) systems, where the functionality of the Seller's software may be affected thereby.

10.5 The purchaser shall be obliged to back up data himself on a regular basis to prevent loss of it because of computer viruses. If data is lost or manipulated, the Seller shall be liable only for the cost involved in restoring the correct data if the purchaser has backed it up properly.

#### **11 Applicable law, place of jurisdiction**

11.1 In addition to these provisions the substantive law of Switzerland shall apply to all legal relationships between the Seller and the purchaser without applying conflicting legal regulations and the regulations of the United Nations Convention dated 11 April 1980 on the international sale of goods (CISG).

11.2 Any dispute, controversy or claim arising out of or in relation to the contractual relationship between the Seller and the purchaser, including the validity, invalidity, breach, or termination thereof, shall be subject to the exclusive jurisdiction of the ordinary courts in Zürich, Switzerland.

#### **12 Final provisions**

12.1 The Seller shall be entitled to store, transfer within the Seller's country and abroad, use, alter and erase data related to persons as given by the purchaser in the course of business. The purchaser shall hereby be notified of this.

12.2 Unless otherwise specified in the acknowledgement of order, the place of performance for the parties' mutual obligations from the contractual relationship shall be the place of the Seller's registered offices. This shall also apply if clauses customary in the trade have been agreed.

12.3 Should individual parts of these General Terms of Sale be invalid, this shall not affect the validity of the remaining parts.

12.4 Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing. Written form shall also include declarations sent in textform by data transfer (e.g. e-mail), electronic signature via signature programs such as DocuSign, Adobe Sign or fax, unless the written form is mandatory according to applicable law.

12.5 The purchaser shall not assign his contractual rights to a third party without the written consent of the Seller. The Seller may transfer his contractual rights to third parties at any time, unless the third parties are direct competitors of the purchaser. In the latter case, the written consent of the purchaser is required.

12.6 If the Seller provides installation, commissioning, maintenance, repair or similar services, the relevant special terms and conditions of the Seller shall apply additionally and with precedence.

12.7 The purchaser shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods or technology sold, supplied, transferred or exported to the purchaser by the Seller that fall under the scope of Article 12 g of Council Regulation (EU) No. 833/2014 as amended from time to time (for the latest version of Council Regulation (EU) No. 833/2014 see <https://eur-lex.europa.eu/oj/direct-access.html> and <https://eur-lex.europa.eu/homepage.html?locale=en>).

The purchaser shall undertake its reasonable efforts to ensure that the purpose of preceding sentence is not frustrated by any third parties further down the commercial chain, including by possible resellers, and shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of the preceding sentence.

The purchaser shall immediately inform the Seller about any problems in applying the two preceding sentences including any relevant activities by third parties that could frustrate the purpose of the two preceding sentences.

The Purchaser shall make available to the Seller information concerning compliance with the obligations under this paragraph within two weeks of the simple request of such information.

Any violation of any of the four preceding sentences shall constitute a material breach of an essential obligation of the purchaser, and the Seller shall be entitled to seek appropriate remedies, including, but not limited to (i) a termination of the contract and (ii) a penalty of 10 % of the total value of the contract or price of the goods or technology exported, whichever is higher.

The obligations set forth in this paragraph (12.7) shall come in addition to any other obligations which purchaser might have otherwise under the contract. In case of any contradiction of the stipulations of this paragraph (12.7) with any other obligation which purchaser might have under the contract, the stipulations of this paragraph (12.7) shall prevail.