

§ 1 General Provisions

(1) These General Export Conditions (AExB) shall apply to all business transactions between the purchaser and ROTHENBERGER as far as similar or related transactions/business dealings are concerned. General terms and conditions of the purchaser are not accepted and shall only apply if and to the extent that they have been explicitly agreed in writing in specific cases.

(2) When these AExB apply to a specific contract, modifications of or deviations from them must be agreed in writing.

§ 2 Definitions

In these AExB the following terms shall have the meanings herein assigned to them:

“**contract**” shall mean the written agreement between the parties concerning performance of the goods and services and all appendices, including agreed amendments and additions to the said documents;

“**contract price**” shall mean the payment to be made for the goods and services;

“**gross negligence**” shall mean an act or omission implying either a failure to pay due regard to serious consequences which a conscientious contracting partner would normally foresee as likely to ensue, or deliberate disregard of the consequences of such act or omission;

“**in writing**” shall mean communication by document signed by the parties, or by letter or fax, electronic mail and by such other means as are agreed by the parties;

“**goods**” shall mean any machinery, apparatus, materials and articles to be supplied by ROTHENBERGER under the contract;

“**site**” shall mean the place where the goods are to be erected, including as much of the surrounding area as is necessary for unloading, storage, and internal transport of the goods and the erection equipment;

§ 3 Product information, non-disclosure, property of documents

(1) All information and data contained in general product documentation and price lists, whether electronic or in any other form, are binding only to the extent that they are by reference expressly included in the contract.

(2) All drawings and technical documentation relating to the goods submitted by one party to the other prior or subsequent to the formation of the contract shall remain property of the submitting party.

(3) Drawings, technical documents or other technical information received by the purchaser shall not, without the consent of ROTHENBERGER, be used for any other purpose than that for which they were provided. The purchaser shall observe secrecy in respect of any information, including know-how, documents, plans, drawings, etc. he obtained knowledge of through working with ROTHENBERGER. They may not, without the consent of ROTHENBERGER, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

(4) If the Purchaser acts in breach of this duty of confidentiality, ROTHENBERGER shall have the right to demand a liquidated damage of € 50.000 for each separate breach.

(5) ROTHENBERGER will provide the purchaser with the documentation and information which are necessary to enable the purchaser to operate the works. ROTHENBERGER is not obliged to provide any manufacturing drawings for the goods or for spare parts.

§ 4 Prices and Payment

(1) Prices are valid for delivery Ex Works exclusive VAT. If required, shipping and handling costs which will be charged separately.

(2) The parties agree upon the following payment conditions: directly without discount.

(3) ROTHENBERGER charges an amount of 40 EURO for administrative expense for all orders with a value of less than 500 EURO net.

(4) ROTHENBERGER charges an amount of 25 EURO for administrative expense for all orders of spare parts with a value lower than 100 EURO net.

(5) In case of default of payment, ROTHENBERGER is entitled to charge interest for delay amounting to 5 percentage points above the base lending rate of the Deutsche Bundesbank, starting with the day on which the payment was due.

§ 5 Delivery and Delivery time

(1) Delivery shall be Ex Works (EXW Incoterms 2010). Place of delivery is the respective ROTHENBERGER warehouse.

(2) The beginning of the delivery time indicated by ROTHENBERGER presupposes that the purchaser correctly and in due time complies with his duties.

(3) In case of default of acceptance (if agreed) or of any other culpable breach by the purchaser of his obligation to co-operate, ROTHENBERGER is entitled to claim damages including all necessary additional expenditures. ROTHENBERGER reserves the right to assert further claims.

(4) In the event of default of acceptance (if agreed), any risk of loss or damage to the goods shall pass to the purchaser on the beginning of the delay.

(5) ROTHENBERGER is exempted from the duty to perform but for any operation of law (legal obstacles like embargos, export restrictions, etc.), as well as for all reasons of force majeure.

(6) If the Purchaser intends to resale of the goods, the Purchaser undertakes to observe the statutory export restrictions and any other provision laid down, e.g. such as the Military Weapons Control Act and the Export Act, as well as international trade restrictions, boycotts and UN sanctions. If the Purchaser acts in breach of any such provision, he has to indemnify the Supplier against all civil penalties and administrative fines as well as any other fines.

§ 6 Modifications, deviations; procurement/exercise risk

(1) ROTHENBERGER is entitled to make non-essential modifications of material and construction as far as these modifications are without consequence to the agreed price, quality, functional capability or efficiency.

(2) Under no event ROTHENBERGER assumes the risk of procurement (exercise risk).

§ 7 Passing of risk

The risk of loss of or damage to the goods shall pass to the purchaser when ROTHENBERGER puts the goods at the purchaser's disposal, according to EXW INCOTERMS 2010.

§ 8 Purchaser's default

(1) If the purchaser anticipates that he will be unable to carry out his obligations necessary for delivery of the goods by ROTHENBERGER, including all preparatory work and the ensuring that ROTHENBERGER has been informed about all relevant regulations and laws, he shall immediately notify ROTHENBERGER in writing, stating the reason and the time when he will be able to comply with his obligations.

(2) If the purchaser fails to fulfil correctly and in due time his obligations necessary for the delivery of the goods, any fixed date binding ROTHENBERGER, loses its binding character. In this event ROTHENBERGER may suspend in whole or in part the performance of the contract and may by notice in writing require the purchaser to remedy the default within a final reasonable period. ROTHENBERGER shall arrange for storage of the goods at the purchaser's risk and costs.

(3) If performance is delayed by the purchaser's default, he shall nevertheless pay any part of the contract price which, but for such delay, had become due. The purchaser shall reimburse ROTHENBERGER for any costs reasonably incurred by ROTHENBERGER as a result of the before mentioned measures.

(4) If the purchaser fails to fulfil and to remedy his default within the period set by ROTHENBERGER according to § 8 Section 2, ROTHENBERGER may by notice in writing terminate the contract. ROTHENBERGER shall then be entitled to compensation for the loss suffered because of the purchaser's default.

(5) Storage of the supplied goods at the purchaser's premises is at the purchaser's own risk. The goods supplied by ROTHENBERGER must not be stored outside, even if covers, boxes, etc. are placed over the goods for protection. In the event of outside storage ROTHENBERGER's liability for defects is excluded.

§ 9 Retention of title

(1) All goods sold to the purchaser shall remain property of ROTHENBERGER until paid for in full, including payment for the delivery of the goods and interests for late payment, to the extent that such retention of title is valid under the applicable law.

(2) The purchaser shall at request of ROTHENBERGER assist ROTHENBERGER in taking all measures necessary to protect ROTHENBERGER's title to the goods in the country concerned.

(3) The retention of title shall not affect the passing of risk under § 7.

§ 10 Liability for defects; Warranty

(1) Pursuant to the provisions of this § 10 ROTHENBERGER shall remedy any defect or non-conformity in the goods resulting from faulty design, materials or workmanship. Under no event ROTHENBERGER assumes a guarantee for properties and conditions.

(2) ROTHENBERGER's liability is limited to defects in the works which appear within a period of 12 months with a daily use for 1 shift (8 hours) from transfer of risk or taking over of the goods. If the daily use exceeds the agreed use, this warranty period shall be reduced proportionately. If taking-over has been delayed for reasons for which the purchaser is responsible, ROTHENBERGER's liability for defects shall not be extended beyond 18 months after delivery. The place of supplementary performance is the site of ROTHENBERGER in Kelkheim.

(3) The purchaser shall without undue delay, notify ROTHENBERGER in writing, describing the defect, of any defect which appears. Such notice shall under no circumstance be given later than 2 weeks after the expiry period given under § 10 sect. 2. If the purchaser fails to notify ROTHENBERGER in writing of a defect within the time-limit set forth in this clause, he loses his right to have the defect remedied.

(4) The expiration of the period stated under § 10 Section 2 is suspended with the occurrence of the defect and continues with the effected remedy of the defect.

(5) Provided that the defect may cause serious damage, the purchaser shall immediately inform ROTHENBERGER in writing. The purchaser shall bear the risk of damage resulting from his failure so to notify.

(6) On receipt of the notice ROTHENBERGER shall remedy the defect without undue delay at his own cost. Provided the expected costs for ROTHENBERGER to remedy the defect are unreasonably high, ROTHENBERGER may assign a third party to remedy the defect. The purchaser shall remedy minor defects after consultation with ROTHENBERGER.

(8) Condition precedent to ROTHENBERGER's liability is the regular, proper and verifiably professionally carried out maintenance, the use of ROTHENBERGER materials and wear and spare parts as well as the appropriate storage of the goods according to the current storage instructions of ROTHENBERGER. No remedy of a defect shall be considered to be an acknowledgement.

(9) If the purchaser has given such notice and as mentioned in § 10 Section 3 no defect is found for which ROTHENBERGER is liable, ROTHENBERGER shall be entitled to compensation for all costs incurred as a result of this notice.

(10) Wear and tear parts are excluded from liability.

(11) Place of fulfilment of the duties resulting of the liability for defects is the place of delivery according to § 5 (1).

§ 11 Limitation of liability

(1) ROTHENBERGER shall not be liable for any damage to property caused by the goods after competition and whilst in the possession of the purchaser due to negligence. Nor shall ROTHENBERGER be liable for any damage to products manufactured by the purchaser or to products of which the purchaser's products form part due to negligence.

(2) If ROTHENBERGER incurs liability towards any third party for such damage to property as described before, the purchaser shall indemnify, defend and hold ROTHENBERGER harmless.

(3) This limitation of liability neither applies to damages due to gross negligence or intent nor to any product liability (Produkthaftung).

§ 12 Take-back obligation and waste disposal

(1) In respect of new electrical and electronic equipment to which the WEEE-Directive (2002/96/EU) applies, put into circulation after the 13.08.2005, the purchaser shall be liable for the waste disposal according to the provisions of the law.

(2) The same applies to electrical and electronic equipment put into circulation as new equipment before the 13.08.2005.

§ 13 Software

As far as any computer software makes part of the delivery, the purchaser is entitled to non-exclusively use the software and documentation with the determined goods/delivery item. ROTHENBERGER reserves all other rights in respect of software, documentation and copies. The purchaser is not entitled to sublicense. The purchaser is not entitled to duplicate, reproduce, modify the software, nor to change or eliminate manufacturer's data and Copyright notice.

§ 14 Disputes; Applicable law

(1) Any dispute, controversy, question or interpretation arising under, out of, in connection with, or in relation to the contract or business relation between ROTHENBERGER and the purchaser shall be submitted to, determined and settled by the appropriate competent Court in Frankfurt, Germany. The parties hereby submit to the jurisdiction and venue of any such court.

(2) All business transactions or contracts between ROTHENBERGER and the purchaser shall be governed by the laws of Germany excluding the application of the CISG.

§ 15 Severability clause

Should any of the provisions in these General Conditions be or become invalid or void, this shall have no effect on the other provisions. The Parties are obliged to replace the invalid provision by an arrangement that comes as close as possible to its original business purpose.