



General Terms of Sale Clyde Bergemann GmbH, Wesel November 2009

§1 General information

§1.1 These General Terms of Sale, Delivery and Payment for commercial customers (hereinafter: Terms of Sale) of Clyde Bergemann GmbH Maschinen- und Apparatebau (hereinafter: Clyde Bergemann) shall apply exclusively and we shall not accept any conflicting terms and conditions of the buyer or terms and conditions which deviate from our Terms of Sale unless we have expressly approved their validity in writing. For the avoidance of doubt our Terms of Sale shall also apply if we deliver the goods to the buyer without expressly providing our Terms of Sale and are aware of conflicting terms and conditions of the buyer or terms and conditions which deviate from our Terms of Sale, including procurement directives of buyers which are public bodies.

§1.2 These Terms of Sale shall also apply to all future business with the buyer insofar as it concerns transactions of a similar type.

§1.3 These Terms of Sale shall apply exclusively and only towards commercial customers, legal entities under public law and special assets under public law within the meaning of § 310 Par. 1 BGB [German Civil Code].

§2 Contract

§2.1 A contract shall only be effective upon provision of a written order confirmation by Clyde Bergemann or upon the delivery of the goods or performance of services by Clyde Bergemann or upon the whole acceptance by the buyer of a previously prepared offer within the deadline set out in the previously prepared offer.

§2.2 Unless otherwise agreed in a contract, the following order of precedence shall principally apply when assessing the documents:

- a. Order confirmation by Clyde Bergemann
- b. Technical interpretation documents of Clyde Bergemann
- c. These Terms of Sale
- d. Technical enquiry specifications of the buyer

These documents (hereinafter: the contractual documents) form the integral parts of a contract. All documents such as catalogues, product specifications and other correspondence, that are dated before or were received by the buyer prior to the commencement of a contract, and which are not explicitly named in the contractual documents, shall not form an integral part of a contract.

§2.3 All amendments to a contract must be confirmed in writing by Clyde Bergemann in order to be deemed valid.

§3 Sub-suppliers

Clyde Bergemann reserves the right to choose any sub-suppliers. Sub-suppliers and/or products for the production as stipulated by the buyer only have to be used by Clyde Bergemann if Clyde Bergemann has expressly agreed this.

§4 Prices

§4.1 Unless otherwise set out in the order confirmation, our prices shall apply "ex works" (according to INCOTERMS 2000) exclusive of value added tax and exclusive of packaging. Transport costs and costs for packaging shall be charged to the buyer separately.

§4.2 Taxes, customs, duties or other costs incurred through the delivery of goods or the provision of services shall be charged separately to the buyer.

§5 Terms of payment

§5.1 Clyde Bergemann's previously prepared offers are based on an immediate payment upon receipt of the invoice. There shall be no discount to the price.

§5.2 Unless otherwise agreed in writing, payment is due and payable immediately upon receipt of an invoice which may be issued upon delivery of the goods or provision of the services or upon notification that the goods are ready for shipment if the delivery is delayed for reasons for which the buyer is responsible. Any bank charges in respect of the payments shall be charged to the buyer. The date of the payment is the date upon which cleared funds are received by Clyde Bergemann. Storage of the goods as agreed between the parties does not release the buyer from his payment obligation if notification is given that the goods are ready for shipment.

§5.3 The buyer is not entitled to withhold payment of any amount due to Clyde Bergemann by way of set-off or counter-claim unless the counter-claims have been declared final and absolute, are undisputed or have been accepted by us. The buyer is only entitled to exercise a right of retention or a right to refuse service if the same pre-requisites have been satisfied with his counter-claims and in addition his counter-claim is based on the same contractual relationship.

§5.4 Clyde Bergemann is entitled to only make still outstanding deliveries or provide still outstanding services against an advance payment or provision of collateral if we become aware of any circumstances after the contract has been concluded which substantially reduce the creditworthiness of the buyer and through which the payment of our outstanding claims from the respective contractual relationship by the buyer are endangered.

§5.5 Interest at a rate of 8 percentage points above the base lending rate according to § 288 Par. 2 BGB may be charged on payments which are not made on time.

§5.6 A payment shall be deemed as made when we have received clear funds. Until this time, we retain title over the goods.

§6 Retention of title

§6.1 The retention of title provisions below shall apply to all contracts between Clyde Bergemann and the buyer to secure all existing and potential future claims of Clyde Bergemann against the buyer arising from the contractual relationship.

§6.2 The goods delivered to the buyer by Clyde Bergemann shall remain the property of Clyde Bergemann until the full payment of moneys due to Clyde Bergemann under the contract is made. The goods, as well as the goods which replace these according to this clause and which are covered by the reservation of title, are hereinafter referred to as retained goods.

§6.3 The buyer shall store the retained goods free of charge for Clyde Bergemann. The buyer undertakes to treat the retained goods with due care and attention; and, in particular, undertakes to sufficiently insure on Clyde Bergemann's behalf, at the buyer's own expense, the retained goods at their replacement value against loss or damage from fire, water or theft. Insofar as service or inspection of the retained goods is necessary, the buyer must carry out this work at his own expense in accordance with the maintenance requirements.

§6.4 The buyer is entitled to process and sell the retained goods in the ordinary course of its business until the termination of the contract in accordance with Subclause 9 of

this Clause 6. Pledging and/or assignment of the retained goods as collateral is not permitted.

§6.5 If the retained goods are processed by the buyer then it is hereby agreed that the processing is carried out on behalf and for the account of Clyde Bergemann as manufacturer and Clyde Bergemann directly acquires the ownership or – if the goods are processed together with materials from several owners or the value of the processed object is higher than the value of the processed retained goods – the partial ownership to the newly created object as a ratio of the value of the retained goods to the value of the newly created object. In the event that Clyde Bergemann does not acquire any such ownership, the buyer hereby assigns to Clyde Bergemann his future ownership or – in the afore-mentioned ratio – co-ownership to the newly created object as collateral. If the retained goods are connected to or inseparably mixed with other objects to form one combined object and if one of the other objects is to be seen as the main object then Clyde Bergemann, insofar as the main object belongs to it, assigns to the buyer the pro rata co-ownership to the combined object in the ratio as stated in Sentence 1.

§6.6 In the event that Clyde Bergemann has co-ownership of the retained good in terms of Subclause 5 of this Clause 6, such assignment shall be in accordance with pro rata basis set out in that subclause. The same shall apply to claims which result in the retained goods being replaced, in which case Clyde Bergemann shall be entitled to pro rata ownership of the replacement goods, and to the proceeds of any successful claim in relation to the retained goods such as, for example, insurance claims or claims from tortious act in case of loss or destruction. Clyde Bergemann hereby revocably authorizes the buyer to proceeds of claims assigned to Clyde Bergemann in his own name for the account of Clyde Bergemann. Clyde Bergemann may only revoke this authorization to proceed in the event of the realisation of a debt.

§6.7 In the event that third parties gain possession to the retained goods, in particular through the seizure of goods, the buyer shall inform these parties of the ownership of Clyde Bergemann immediately and shall inform Clyde Bergemann in order to enable Clyde Bergemann to assert its property rights. Insofar as the third party is not in the position to reimburse Clyde Bergemann the in-court or out-of-court costs incurred in this respect, the buyer shall be liable for reimbursing these costs to Clyde Bergemann.

§6.8 Clyde Bergemann shall release the retained goods as well as the objects or claims which replace these upon request at its choice insofar as their value exceeds the amount of the secured claims by more than 50%.

§6.9 In the event that Clyde Bergemann terminates a contract due to the conduct of the buyer which is in breach of the contract – in particular by default of payment – Clyde Bergemann shall be entitled to demand that the retained goods are handed over. The termination of the contract shall not prejudice any claims that Clyde Bergemann may have against the buyer. Clyde Bergemann is entitled to sell the retained goods after such goods have been reclaimed. The proceeds from such sale of the goods are to be credited against the liabilities of the buyer minus reasonable sales costs. The debt realisation regulations of InsO (German Bankruptcy Act) remain unaffected.

§7 Delivery

§7.1 The delivery times stated by Clyde Bergemann presume that all necessary, in particular technical matters have been clarified and that the buyer has satisfied his obligations. The terms of delivery is, insofar as not otherwise derived from the order confirmation, “ex works” according to INCOTERMS 2000, exclusive of packaging.

§7.2 Clyde Bergemann can – without prejudice to its rights arising from default of the contract by the buyer – demand an extension of delivery and service deadlines or a postponement of delivery and service dates from the buyer equivalent to the period of time by which the satisfaction by the buyer of its contractual obligations is delayed.

§7.3 Clyde Bergemann shall not be liable for failure to deliver the goods or for delays in delivery caused by force majeure or other events, which were not foreseeable at the time when the contract commenced (including without limitation interferences to operation of all kinds, difficulties in procuring materials or energy; transport delays; strikes; lawful lockouts; shortage of workers, energy or raw materials; difficulties in obtaining necessary official permits; official prohibitions; or, the non-delivery, incorrect or late delivery by suppliers), for which Clyde Bergemann was not responsible. Insofar as the delivery or service is substantially more difficult or impossible for Clyde Bergemann due to such events, and the impediment is not just temporary, Clyde Bergemann shall be entitled to cancel the contract. In case of temporary impediments the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of time of the impediment plus a reasonable start-up time. Insofar as the acceptance of the delivery or service is not deemed reasonable for the buyer as a result of the delay he can cancel the contract by notice in writing to Clyde Bergemann.

§7.4 Subject to the provisions of Clause 7.3 above if Clyde Bergemann is in default with a delivery or service or if it is not possible for Clyde Bergemann to carry out a delivery or service, no matter for what reason, then the buyer is only entitled to cancel the contract after a reasonable period of time has lapsed. Clyde Bergemann’s liability for damages is limited according to Subclause 12. of these Terms of Sale.

§7.5 The delivery may be postponed by the buyer giving notice in writing to Clyde Bergemann and Clyde Bergemann accepting such notice. The buyer shall bear all costs which are incurred due to the postponement.

§7.6 Clyde Bergemann may make partial deliveries if

- a. the partial delivery can be used by the buyer within the framework of the intended purpose as per contract, and
- b. the delivery of the residual ordered goods is certain and
- c. no substantial additional expenses or costs are incurred hereby for the buyer unless Clyde Bergemann declares that it is willing to assume these costs.

§8 Passing of risk and acceptance

§8.1 The risk for goods passes according to INCOTERMS 2000. In the event of storage of the goods beyond the agreed delivery date by Clyde Bergemann at the request of the buyer, the risk of accidental loss or accidental deterioration of the goods shall pass to the buyer on the originally agreed delivery date.

§8.2 Insofar as the goods have to be accepted the goods are deemed accepted if

- a. the delivery and, insofar as Clyde Bergemann is also responsible for the installation, the installation has been completed and
- b. Clyde Bergemann informs the buyer thereof by referring to the acceptance fiction according to this Subclause 8. 2. and has requested the buyer to accept the goods and
- c. twelve business days have passed since the delivery or installation or the buyer has begun using the goods (e.g. has put the delivered system into operation) and in this case six business days have passed since delivery or installation and
- d. the buyer has failed to accept the goods within the relevant period of time for reason other than a defect which was reported to Clyde Bergemann, which makes it impossible to use the goods or essentially impairs its use.

§9 Warranty

§9.1 The warranty rights (claims for defects) of the buyer presume that the buyer inspects these goods according to §377 HGB [Commercial Code] immediately after receipt of the goods and reports by providing specific details any discovered

defects to Clyde Bergemann in writing immediately after the inspection, or in the case of any hidden defects immediately after they are discovered.

§9.2 No claims for defects shall exist insofar as there are only insignificant deviations from the condition or only an insignificant impairment to the usability.

§9.3 All those parts or services, which feature a defect of quality within the statute of limitations period of Subclause 9 Par. 7., are to be repaired, replaced or modified, or a new service provided by Clyde Bergemann – at our choice – free of charge, insofar as the cause of this defect existed at the time when the risk passed.

§9.4 Payments of the buyer may only be retained in case of reported defects to an extent, which is in reasonable proportion to the defects which are determined. These payments may also only be retained if the pre-requisites according to Subclause 5 Par.3. Sentence 2 have been satisfied.

§9.5 If the buyer reports a defect which is not the responsibility of Clyde Bergemann, then Clyde Bergemann shall be entitled to invoice the buyer for the reasonable expenses incurred to us for determining and/or remedying the defect.

§9.6 The buyer shall be liable for any increase in expenses, which are incurred by the repair, replacement or modification of the goods due to a defect for which Clyde Bergemann is responsible, in particular transport, route, work and material costs, insofar as these expenses increase through subsequent transport of the goods to another location than the original place of delivery unless it concerns a location which was agreed in the contract. Clyde Bergemann is entitled to charge the buyer such additional costs without giving any prior notification.

§9.7 Claims for defects shall become statute-barred within 12 months from the passing of risk to the buyer. The above provisions in this clause 9 shall not apply insofar as the law stipulates mandatory longer deadlines according to § 438 Par. 1 No. 2 BGB, § 479 Par. 1 BGB and § 634a Par. 1 BGB; as well as in the event that a defect is caused by wilful intent or gross negligence; and in the case of malicious non-disclosure of a defect. Our prior consent is to be obtained before returning any goods. If a repair, modification or replacement of defective goods is required the statute of limitations shall only be extended by the period of time required for the remedying of the defect and shall not begin to apply again.

§9.8 Before the buyer can assert further claims or rights (cancellation, reduction, damages, reimbursement of expenses) Clyde Bergemann is to be given the opportunity for repair, modify or replace the defective goods within a reasonable period of time insofar as we have not given any other guarantee. The buyer can cancel the contract or reduce the remuneration if: Clyde Bergemann fails to remedy the defect despite at least two attempts; or if remedying the defect is not possible; or if Clyde Bergemann refuses to remedy the default; or if the remedy is deemed unreasonable to the buyer.

§9.9 Subclause 12 of these Terms of Sale shall apply to claims for damages owing to defects. The assertion of further claims and rights against Clyde Bergemann or our vicarious agents owing to a defect of quality is excluded.

§9.10 Parts subject to wear and tear are excluded from the warranty.

§9.11 In case of defects of component parts of other manufacturers, which Clyde Bergemann cannot remedy for reasons under licensing law or otherwise, Clyde Bergemann shall at its choice assert its warranty claims against the manufacturers and suppliers for the account of the buyer or assign these claims to the buyer. Warranty claims against Clyde Bergemann in respect of such defects shall only be pursued by the buyer if the afore-mentioned claims against the manufacturers and suppliers were unsuccessful or have no prospects of success, for example due to the insolvency of the manufacturer or supplier. The statute of limitations of the relevant warranty claims of the buyer against Clyde Bergemann shall be extended by a period of time equivalent to the duration of the claim.

§9.12 The warranty shall cease to apply if the buyer modifies, or has modified through third parties, the goods without the consent of Clyde Bergemann and the remedy of a defect is not possible or made unreasonably difficult by this modification. In any case the buyer must bear the additional costs for remedying such defect.

§10 Property rights and copyrights

§10.1 Clyde Bergemann reserves all property rights and copyrights to diagrams, drawings, calculations and other documents. The aforementioned documents may not be made accessible to third parties. This shall apply in particular to those written documents which are expressly described as "confidential". They may only be forwarded to third parties after obtaining our express prior written consent.

§10.2 Software or models delivered by Clyde Bergemann within the framework of the contract shall remain the property of Clyde Bergemann. The buyer or his customers are exclusively entitled to the use, as well as the operation, service or repair within the framework of the contract.

§11 Special regulations for software

§11.1 Insofar as software, which was produced by third parties, is the object of the delivery or part of the delivered objects, the scope of the rights and authorizations, which are granted to the buyer, shall be determined according to the licensing terms and conditions of this third party, which will be sent in advance or enclosed with the documentation at the request of the buyer.

§11.2 Insofar as software, which was developed by us, is the object of our deliveries (whether as a part in appliances or as independent delivered object) the following regulations shall apply:

§11.2.1 The handing over of the software for use against payment of a one-time fee represents a legal purchase insofar as not otherwise agreed in writing in an individual case.

§11.2.2 We grant the buyer an exclusive, non-transferable right, which is not limited in time, to use the software developed by us on the PC/PLC as stated by us. The use of the software by way of the ASP (Application Service Providing) or by way of outsourcing is not permitted. The software may only be used for own purposes without a written consent. A rental to or use similar to a rental by, or other provision to, third parties is not permitted without our prior written consent.

§11.2.3 The buyer is not permitted: a) to forward the software or the associated material or otherwise make these accessible to third parties without our prior written consent, b) to modify the software without our prior written consent, c) to create works derived from the software or to reproduce the written material, or d) to translate or change it or to create works derived from the written material. The afore-mentioned regulations shall not apply insofar as the user is expressly entitled to individual acts by virtue of law or as per contract.

§11.2.4 We shall retain all rights to the software created by us and the associated documents as well as to changes, which we have made. The software and the associated documents are to be used and stored to the extent that they are reasonably protected against any use, reproduction and forwarding which is in breach of the contract.

§11.2.5 It is permitted to make a copy for backup purposes. A reference to our copyrights is to be affixed to or included in the backup copy. Should there be a copyright notice and/or a registration number available in the software these may not be removed.

§11.2.6 The buyer shall only be entitled to warranty claims for software provided by us if: the delivered software does not essentially satisfy the agreed main functions, or main functions which are presumed as per agreed in the contract, or does not comply with the recognised rules of technology, or features contains defects, which more than just insignificantly reduce or cancel the value or the usability for the customary use or use which is presumed as agreed in the contract.

§11.2.7 Faults to the software shall be exclusively remedied by Clyde Bergemann or the contractual partners, insofar as it is not a defect which substantially restricts the usability of the software. The buyer is required to support us within the framework of that which is deemed reasonable in determining programme errors by sending error protocols and providing other necessary information based upon our enquiry. The warranty period shall principally not begin to apply from the beginning again through the delivery of a new programme version.

§11.2.8 Even after expiry of the warranty claims the buyer is not entitled to personally correct or have corrected faults to the software unless we have refused to correct the fault against a reasonable payment at the request of the buyer.

§11.2.9 Incidentally, the general provisions of the contract and these Terms of Sale shall apply with regard to software, in particular with regard to the warranty and our liability.

§12 Liability

§12.1 The liability of Clyde Bergemann for damages, no matter for what legal grounds, in particular due to: impossibility to deliver; delayed, faulty or false delivery; breach of contract; breach of duties in contractual negotiations; or tortious act, insofar as it respectively depends on a fault, is limited according to this Subclause 12.

§12.2 Clyde Bergemann shall not be liable for damages

- a. in the event of simple negligence of its executive bodies, legal representatives, employees or other vicarious agents;
- b. in the event of gross negligence of its non-executive employees or other vicarious agents,

insofar as it does not concern a breach of essential contractual duties. Deemed as essential for the contract are the obligation for the timely, faultless delivery and installation as well as obligations to provide advice, protection and show due care, which should enable the buyer to use the goods as per contract or are intended to protect the body or life of personnel of the buyer or third parties or the property of the buyer against substantial damages and injuries.

§12.3 Insofar as Clyde Bergemann is liable for damages in terms of the reason according to Subclause 12 Par. 2., this liability is limited to damages which Clyde Bergemann envisaged as possible consequence of a breach of contract when the contract was concluded or by taking into account the circumstances of which it was aware or which it should have known, or should have been able to foresee when applying customary care and attention. Indirect damages and follow-up damages, which are the result of defects to the delivered object, are also only liable for compensation insofar as such damages can typically be expected with the use of the delivered object as intended. The liability is limited to the already received payments from the respective contract. All other liability, including liability for (i) tortious acts; and (ii) for indirect and/or follow-up losses such as for example missed profits, loss of production or missed business opportunities or damages is excluded.

§12.4 In the event of liability for simple negligence, Clyde Bergemann's obligation for compensation for property damages or physical injuries is limited to an amount of EUR 1,400,000.- per damaging event even if it concerns a breach of essential contractual duties.

§12.5 The afore-mentioned liability exclusions and limitations shall apply to the same extent for the benefit of the executive bodies, legal representatives, employees and other vicarious agents of Clyde Bergemann.

§12.6 Insofar as Clyde Bergemann provides technical information or acts as a consultant and this information or consultancy does not belong to the scope of services owed by it and agreed as per contract, this shall be carried out free of charge and under the exclusion of all liability.

§12.7 The restrictions of this Subclause 12 shall not apply to the liability of Clyde Bergemann owing to intentional conduct, to guaranteed condition features, owing to personal injury or according to the Product Liability Act.

§13 Technical design

Customary deviations and deviations, which are carried out owing to legal regulations or represent technical improvements as well as the replacement of components by equivalent parts are permitted insofar as they do not impair the usability for the purpose as envisaged per contract.

§14 Publications

Both contractual partners are entitled to include projects, etc. in their respective reference lists.

§15 Miscellaneous

§15.1 The German language text shall be exclusively binding for Clyde Bergemann with regard to all written documents.

§15.2 The buyer acknowledges that Clyde Bergemann saves data from the contractual relationship according to § 28 Federal Data Protection Act for the purpose of data processing and reserves the right to transmit the data to third parties (e.g. insurances) insofar as necessary to satisfy the contract.

§16 Place of performance and place of jurisdiction

§16.1 The place of jurisdiction for all possible disputes from the business relationship between Clyde Bergemann and the buyer is the court of jurisdiction at the registered seat of Clyde Bergemann. Mandatory statutory provisions concerning exclusive places of jurisdiction remain unaffected by this regulation.

§16.2 The relations between Clyde Bergemann and the buyer are exclusively subject to the law of the Federal Republic of Germany. The convention of the United Nations concerning contracts for the international sale of goods of 11 April 1980 (CISG) shall not apply.

§16.3 Insofar as the contract or these Terms of Sale feature loopholes in the regulations those legally effective regulations shall be deemed as agreed for filling these loopholes which the contractual partners would have agreed according to the commercial objectives of the contract and the purpose of these Terms of Sale, if they had been aware of the loophole in the regulation.