

## Terms and Conditions for Deliveries and Services 2008

### § 1 Application

**§ 1.1** All deliveries and performances (hereinafter called "performances") and offers from suppliers (hereinafter called "contractor") of Clyde Bergemann GmbH Maschinen- und Apparatebau (hereinafter called "client") shall be effected without exception by virtue of these terms and conditions for purchase (hereinafter called "T&C"). They will be a constituent of all contracts entered into with our contractors with regard to any performances offered by them. Equally, they will apply to all future performances and offers to the client even if not reaffirmed or agreed upon separately.

**§ 1.2** In cases where agreements are reached for a certain order that differ from these T&C, these T&C shall apply subordinately and complement such agreements.

**§ 1.3** Terms and conditions of our contractors or third parties shall not apply even if we do not separately object to their application on a case-to-case basis. Even when we refer to a communication containing the terms and conditions of a contractor or third party, this shall not constitute a consent with the application of such terms and conditions.

### § 2 Offers, subsidiary agreements, illegal competition

**§ 2.1** In order to become effective, oral subsidiary agreements as well as the exclusion, alteration and/or amendment to these T&C shall require express written consent of the client.

**§ 2.2** The use of orders, samples, illustrations, parts lists and drawings for reference and/or advertising purposes shall require the express written consent of the client.

### § 3 Reservation of title, drawings, models, tools

**§ 3.1** The client reserves his proprietary and/or copy and/or other trademark rights on all illustrations, drawings, models, samples, calculations, constructional diagrams as well as any other documents made available for order processing. These documents may only be used for work in connection with job completion and must not be copied and/or made available to third parties without the client's prior written consent. Documents shall be returned unrequested and free of charge to the client after job completion or, if negotiations do not result in the conclusion of a contract. The contractor shall be liable for any damages arising to the client caused by a culpable violation.

**§ 3.2** Tools, appliances and models made available by us to the contractor or which are manufactured for contractual purposes and charged for separately by the contractor shall remain our property or their ownership will be transferred to us. They shall be marked accordingly as our property by the contractor, carefully stored and protected against damage of any kind, and used exclusively for the purposes of the contract. The contractor will bear the full cost of maintenance. Repair costs resulting from wear and tear shall be born by the client, provided the tools, appliances and models are his property. However, so far as the cost of repair is caused by items manufactured by the contractor or inappropriate use by the contractor, his employees or other agents, such cost shall be born in full by the contractor. The contractor shall inform us about all, not just considerable, damages to such items. When asked to do so, he shall be obliged to return these items in good working order, complete and clearly marked when they are no longer needed for the fulfilment of contracts entered into with us.

**§ 3.3** Reservation of proprietary rights on the part of the contractor shall only apply as far as they refer to our obligation to pay for the respective products in which the supplier reserves his proprietary rights. Augmented or extended proprietary rights in particular shall not be permitted.

### § 4 Responsibilities for technical specifications

The client's approval of drawings, calculations and other documents does not affect the contractor's sole responsibility in respect of the subject of the agreement. This shall also apply to proposals, recommendations and other contributions on the part of the client.

### § 5 Inspections

After due prior notice, the client or his employees and/or third parties named by him shall have access to the contractor's and/or his subcontractor's manufacturing plant at any time in order to inspect, among other things, the use of suitable material, the appointment of any required specialists and the competent execution of ordered goods and services. Such inspections shall take place without any legal effect with regard to a possible acceptance. An inspection will neither supersede an acceptance nor limit in any way the contractor's responsibility with respect to his services, so contributory negligence by the client in particular may not be deduced from it.

### § 6 Spare parts

The contractor shall warrant that spare and wearing parts for every order will be available for a minimum period of 10 years after the expiration of warranty. If the supplier intends to stop manufacture of spare parts for products delivered to us he shall inform us to that effect immediately after making a decision about the cessation of manufacture. The decision - subject to clause 1 - must take place at least 6 months before cessation of manufacture.

### § 7 Transport of hazardous goods, marking of hazardous substances, packaging

**§ 7.1** It is up to the contractor to check, before accepting an order, whether the objects and/or their component parts listed in the order have to be classified as hazardous goods (such as paints, adhesives, chemicals or flammable, oxidising, explosive, combustible, poisonous, radioactive, caustic substances or goods tending to generate heat) in the country of origin, country of destination and/or all transit countries. In such cases the contractor shall inform the client without delay and in full. Together with his written order confirmation at the latest, he must forward the legally required declarations for dispatch, correctly filled in and legally signed, to the client.

**§ 7.2** With regard to packaging, marking and declaration of hazardous goods, the contractor shall comply with the respective national and international applicable regulations, in particular the hazardous materials regulations for sea freight - Sea IMDG Code, Air Freight UNICAO IATA RAR US - Dot, Rail EVO/RID as well as regulation on carriage of dangerous goods by road and rail, general regulations for the carriage of hazardous goods. In addition to this he must also comply with differing or additional national regulations of the respective country of destination if the country of destination was named in the order.

**§ 7.3** The contractor shall be responsible for any damages arising from incorrect information in the binding declarations resulting from non-compliance with applicable regulations during handling (packaging, dispatch, storage etc.) of hazardous goods.

**§ 7.4** The contractor shall be obliged to take back any packaging material from the client free of charge.

### § 8 Export licences

The contractor shall inform the client immediately in writing, if and to what extent, statutory export licences are required for the order in total or parts thereof or, if similar legal or official requirements have to be met, and whether they are subject to American export restrictions.

### § 9 Delivery time, late deliveries

**§ 9.1** The delivery time (date or period of delivery) stated in the order is firm. Early deliveries and/or partial deliveries shall require the client's express consent.

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**§ 9.2** The contractor will be committed to inform the client immediately in writing if circumstances arise or are foreseeable that ensue in a default of delivery times.

**§ 9.3** In case of a delay in delivery, and after having sent a written notification, the client shall be entitled to demand a contract penalty of 0.5% limited to a maximum of 5% of the respective order value for each commenced week of default in delivery. The contract penalty must be taken into account in the contractor's recompense for the damage caused by delayed performance.

**§ 9.4** After the expiration of an appropriate extension of time specified by him or, for danger in delay or, in order to prevent further damage, the client shall, without having to set an extension of time and notwithstanding his other legal rights, also be entitled to have the outstanding part of the performance delivered by a third party at the expense of the contractor, insofar as the facts caused by delay are based on circumstances for which the contractor is responsible. In any case of substitute performance by the client, the contractor shall provide all the information necessary for this purpose at his own expense and submit all documents in his possession as well as give the rights of use and indemnify the client immediately against claims arising from the rights of third parties, respectively for possibly existing own trademark rights or those of third parties to the extent necessary for the substitute performance. The conclusion of a contract implies that the contractor gives his consent to the use of his trademark rights during the substitute performance by the client or third parties assigned by the client. The claim for recovery of the contract penalty already arising until the assignment of the order to a third party has to be met in any case.

### **§ 10 Passing of risk**

The contractor shall bear the risk in each case as agreed in clause 11.1 of the T&C.

### **§ 11 Prices, quotation, terms of payment, delay**

**§ 11.1** Contract prices are fixed prices. They are quoted exclusive of statutory VAT. Agreed prices are quoted DDP Wesel as per INCOTERMS 2000, including customary packaging unless other conditions were contractually agreed upon as per INCOTERMS 2000.

**§ 11.2** Payment shall be made less 3% discount on the 25th day of the months succeeding the complete and duly fulfilment of the contract (incl. inspection certificates, specifications and/or safety data sheets, operating instructions, signed acceptance certificates) or net within 90 days.

**§ 11.3** In case of agreed part payments, the receipt of the invoice shall be binding for the start date of a part payment unless the provision of certain services and/or the provision of collateral was agreed as a precondition. Any agreed part payments shall not release the contractor from his obligation to list and account for all performances in a specified final bill.

**§ 11.4** Delay shall come into effect only after a written reminder.

**§ 11.5** The client will not be in default of payment if he makes a genuine bona fide mistake with respect to the existence of an objection made against the claim for compensation by the client or an alleged right of retention.

**§ 11.6** On default of payment, the client will be liable for default interest of 5 percent points above base interest rate as per article 247 German Civil Code.

**§ 11.7** Payments by the client will in no case signify the recognition of a professional and faultless performance in terms of an acceptance.

### **§ 12 Declaration of set-off, right of retention**

**§ 12.1** The client will be entitled to declaration of set-off and rights of retention within the statutory limits.

**§ 12.2** The client will also be entitled to declaration of set-off and rights of retention concerning bills outstanding from companies associated with the contractor as stated in article 15 Companies Act.

**§ 12.3** Disputes about the extent of payment to be paid to the contractor shall not entitle the contractor to temporarily cease his performances, neither completely nor even partly.

### **§ 13 Assignment of claim**

Claims against the client may only be assigned after seeking his prior written consent.

Article 354 a German Commercial Code will remain unaffected.

### **§ 14 Documents**

The contractor shall be obliged to quote the client's order number as well as the contractually agreed marking on all dispatch notes and/or delivery notes; failing that, possible consequences (such as further delay, additional cost) if caused by the contractor, will be at the expense of the contractor.

### **§ 15 Warranty, notice of defects, recourse**

**§ 15.1** The contractor shall ensure that his goods and services comply with recognised rules and are state-of-the-art as well as comply with the existing standards, regulations and norms in the country of the contractor and the country of destination (including safety, occupational health and safety and accident prevention regulations) and meet the agreed quality as well as the guaranteed characteristics, and are otherwise free of material defects and legal defect of title.

**§ 15.2** The client will be obliged to examine goods and services according to circumstances and climatic and other requirements at each point of use with respect to possible quality defects, and to make his complaint immediately after discovery.

**§ 15.3** The client will be entitled to legal warranty rights without limitations. In any case, the client will have the option to demand a correction of faults or compensation. All expenses arising from the correction of faults or compensation shall be born by the contractor. After informing the contractor to that effect, the client shall also be entitled to correct faults himself at the expense of the contractor if there is an imminent danger or, if urgency is required due to an duty to avert, minimise or mitigate loss and where setting a deadline for the correction of faults would therefore not be practical or a previously set deadline for the correction of faults has passed without success or supplementary performance has failed. The client shall be entitled to ask the contractor for an advance to cover expenses thus incurred.

**§ 15.4** Insofar as the client is entitled to carry out the correction of faults himself as per clause 15.3), clause 9.4) shall apply with respect to the responsibilities of the contractor. All expenses incurred, in particular for disassembly, fitting, travel, freight, packaging, insurances, customs duty and other public dues will be born by the contractor.

**§ 15.5** Client's warranty will lapse after 36 months from delivery or acceptance (signed acceptance protocol) if acceptance has been agreed. If the performance is destined for a building and has caused defects in the latter, the statute of limitation will be 5 years. Any longer legal statutes of limitation will be unaffected. Article 438 sub-section 3, 634 a sub-section 3 German Legal Code will likewise be unaffected. Insofar as performances cannot be put to their contractual use by the client due to subsequent performance, the warranty period will be extended by this period of interruption. Within the scope of warranty, repaired and/or replaced performances, the warranty period will recommence on acceptance of repairs or subsequent performance as per clause 16.5), unless the client has to assume from the behaviour of the contractor that the latter did not consider himself liable to undertake this measure but has made the replacement delivery merely out of good will or similar reasons.

### **§ 16 Product liability, indemnity, insurance cover**

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**§ 16.1** The contractor shall be liable for all claims made by third parties for personal injury and material damage resulting from a faulty product supplied by him and shall be obliged to indemnify the client against any liability resulting hereof. If the client is obliged to carry out a recall action from third parties in case of a defect in a product supplied by the contractor, the contractor will bear any cost related to the recall of the product.

**§ 16.2** The same shall apply to product defects resulting from performances by pre-contractors or subcontractors of the contractor.

**§ 16.3** The contractor shall be obliged to take out sufficient product liability insurance and to provide the client at any time with written proof, in particular the written confirmation of the contractor's insurer.

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### § 17 Liability for environmental damages

The contractor shall be liable for any damages in connection with his goods and services resulting from a violation of environmental regulations (such as immission control acts, waste oil and water supply laws, waste disposal laws and/or effective regulations).

### § 18 Trademark rights

**§ 18.1** The contractor will be committed to ensure that in connection with his delivery no trademark rights of third parties are violated in any of the countries of the European Union, North America or other countries in which he manufactures or has his products manufactured.

**§ 18.2** The contractor shall be obliged to indemnify the client against all claims made by third parties against the client because of a violation of industrial property rights and will recompense the client for any expenses required in connection with such demands. This entitlement will remain irrespective of a fault on the part of the contractor.

### § 19 Work on building sites according to contracts for work and labour - § 631 German Civil Code

**§ 19.1** The contractor shall employ a competent and experienced site supervisor at the building site and empower him with the necessary authority. The client will have to be informed prior to a change of site supervisor.

**§ 19.2** The contractor will have to obtain the knowledge required about the building site and for what purpose his delivered goods will be used at his own expense, in particular about climatic and environmental conditions as well as the infrastructure.

**§ 19.3** The contractor shall obtain information about any required safety instructions in good time and shall name and employ a safety officer during the installation time. During the execution of work the contractor must comply with relevant safety regulations by taking the safety regulations of each building site into account. The positioning of building site signs is subject to approval.

**§ 19.4** The contractor shall be committed to make enquiries with regard to all current safeguarding provisions, applying to the place of fulfilment with respect to environmental protection, fire prevention and explosion prevention.

**§ 19.5** In due time prior to the start of placing and installation work, the contractor must check the building site with regard to groundwork, soil conditions, connections, staking out etc. and to inform the client about any objections immediately.

**§ 19.6** Arrangements and agreements of the contractor with the client's customer require prior consent from the client. Any cost resulting from arrangements without approval must be born by the contractor.

**§ 19.7** The contractor shall deliver a complete performance within the scope of the contractually agreed contract for work and labour as per article 631 German Civil Code even if any of the required partial performances are not described in detail.

**§ 19.8** The contractor is responsible that his employees and those of his agents observe building site regulations, carry out the contractor's or the contractor's customer's instructions regarding order and safety, and comply with common control measures on the building site. All items incl. tools taken to the building site of the purchaser by the contractor and/or third parties commissioned by him must be marked stating their names or company.

**§ 19.9** Before starting work, the contractor shall supply the client with a list of names of staff, including site supervisors, employed on the building site. The client must be informed about any changes immediately. The contractor shall proof, on request that the staff has the statutory national insurance protection. The contractor and his staff must comply with all legal and official regulations, in particular concerning the

employment of foreign workers at the site. The contractor shall be liable in relation to the client for any non-compliance and shall indemnify the client against possible claims by third parties. The client's employees and the employees of third parties deployed by him may be refused access for important reasons (such as gross violation of safety regulations). The coordination of working arrangements, with simultaneous work execution of different participants on site, will have to be dealt with in a way that guarantees smooth order processing. In this respect, claims by the contractor due to obstruction of work will be excluded.

### § 20 Acceptance

Machines, plants and performances for the purpose set out in these conditions shall require qualitative and quantitative acceptance. The date of acceptance will be specified on written request by the contractor. The result of the acceptance must be recorded in an acceptance protocol. The acceptance protocol must be signed by contractor and client. There shall be no other way of carrying out, or concluding, an acceptance. Acceptance may particularly not take place implied through inspections, so-called acceptance tests, the issuing of certificates or other evidence, commissioning, oral statements, silence or payments by the client. The material cost for acceptance shall be born by the contractor. Staff-related cost incurred by client and contractor shall be born by each of them. All cost incurred for failed acceptances shall be born solely by the contractor.

### § 21 Cancellation

**§ 21.1** In case of a premature cancellation of the contract by the client, settlement shall take place for the contractual performances delivered by the contractor until the date of cancellation, strictly contract-based. Remuneration in this case will be determined by statutory provisions.

**§ 21.2** In case of premature cancellation of the contract by the client for an important reason, settlement shall take place merely for the performances delivered by the contractor until the date of cancellation that can be used by the client as intended. Performances not delivered will not be paid for. Any damage to the client will be taken into consideration for settlement as well as any expenses incurred to the client by having to deliver the performance that was not delivered by the contractor himself or through third parties. The same shall apply to a contract penalty. The client shall in addition be entitled to withhold payments until the contractor has turned over the final bill to the client. Reasons for premature cancellation include in particular: Default/insolvency of contractor, application for the commencement of composition proceedings, insolvency or total proceedings with regard to the assets of the contractor or voluntary liquidation of the contractor. Stipulations under § 21.1 shall apply equally for this cancellation.

### § 22 Code of conduct

The client expects that the contractor observes the principles of human rights, labour standards, environment and anti-corruption established by the Global Impact Initiative by the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

### § 23 Secrecy

**§ 23.1** The contractor is committed to keep secret the conditions of order as well as all information and documents (with the exception of publicly available information) within legally admissible limits and to use them exclusively for order processing. On request the contractor will return them immediately to the client after carrying out inquiries or after processing of orders.

**§ 23.2** The contractor shall bind his sub-contractors according to this § 23 and will provide the client unrequested with written confirmation to that effect.

### § 24 Place of fulfilment, place of jurisdiction, applicable law



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**§ 24.1** Place of fulfilment for both parties and exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be the place where the client has his registered office.

**§ 24.2** The contracts entered into by us and the contractor shall be subject to the Law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods.