

# General Terms and Conditions of Sale - Machines and Equipment (ALBM) pro-beam Group (February 2023)

## I. General Information

1. Our deliveries and services are based on these terms as well as possible other agreements. These terms and conditions apply exclusively. The terms and conditions of our customers have no effect even if they were not expressly opposed in a specific case. Deviating, contrary or supplementary terms and conditions of the seller only become an integral part of the program if and to the extent to which we expressly agreed to their validity in writing. This requirement of consent applies in any case, for example even if the seller refers to their own terms and conditions in the course of the order confirmation and we do not expressly object to them.
2. In the event of an ongoing business relationship, these terms apply to all future transactions with our customer unless otherwise mutually agreed.
3. As long as no other written agreement is arranged, these terms and conditions apply also to future similar contracts in the version valid at the time our services are rendered and/or in any case in the version last communicated to the customer, without any requirement on our part to refer to them once more.
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## II. Conclusion of Contract/Subject of Agreement

1. Supply contracts (order and acceptance) as well as changes and amendments thereto must be prepared and made in writing.
2. Our rates are subject to change.  
The customer is bound by their order for a period of at least one month. The supply contract does not come into effect until we have confirmed the customer's order in writing.
3. Our statements with regard to the quality of the object of supply in brochures and catalogues are non-binding unless specifically designated to be binding in nature. This applies likewise to photos, drawings and other depictions.
4. We hereby reserve the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical or intangible nature, even in electronic form. Such items etc. may not be made available to third parties. We undertake not to disclose to third parties any information or document designated as confidential by the customer without their consent.
5. We expressly reserve all copyrights, trademark rights and other property rights to any machines and equipment delivered by us. This applies both to the design type of the machine or the equipment and to the technology for their production as well as to our proprietary technology of processing sequences the machine or the equipment itself uses. We do, however, grant our customer nonexclusive and nontransferable rights of usage for this. Those rights are limited to the service lifetime of the machine and/or equipment.
6. Insofar as the scope of supply encompasses software, we grant to our customer a nonexclusive, nontransferable right to use the software supplied, including any documentation thereof. The software is made available to said customer for use on the appropriate object of supply. Usage of the software on more than one system is prohibited. Our customer is entitled to duplicate, revise, localize or convert the software from object to source code only to the extent permitted by law (§§ 69a et seq. of the German Copyright Act (UrhG)). Our customer undertakes not to remove or change without our prior written consent any manufacturer's marks, including but not limited to copyright notes.  
All other rights to the software and its documentation, including copies, remain with us or the software supplier. No sublicenses may be granted. The scope of supply does not encompass software updates, upgrades and similar services. In the event that we provide, upon the customer's request, updates, upgrades or similar services against a fee (to be agreed separately), the aforementioned provisions on software use apply accordingly.
7. Our shipments are "ex works."

## III. Prices and Terms of Payment

1. Prices are "ex works" and stated exclusive of VAT (as applicable as of the invoice date) and handling. Invoice amounts are payable in full without cash discount reductions.
2. Our invoices are due and payable 14 days from the invoice date. Invoices are issued in writing for the purpose of § 126b German Civil Code (BGB).
3. In the absence of an agreement stipulating otherwise, we are entitled to bill our customer for 60 % of the order amount upon our confirmation thereof, another 30 % upon notice of the order's readiness for shipment or acceptance and the remaining 10 % following acceptance but no later than 30 days from the notice of the order's readiness for shipment or acceptance.
4. Our customer may set off such counterclaims, and only such counterclaims, as are undisputed or have been effectively established. Likewise, our customer holds a right of retention only with respect to claims that are undisputed or have been effectively established. In case of delayed payment, a default interest at the statutory conditions of nine percent above the base interest rate applies to the respective remuneration.  
The assertion of other (default) damage claims is not affected thereby. In such case, the customer reserves the right to furnish evidence that none or lower (default) damages have been incurred.
5. In the event of default on the part of our customer, all of our claims against them fall due with immediate effect.

## IV. Delivery

1. If a delivery period has been agreed, such period commences upon the dispatch of the order confirmation, but no sooner than upon the receipt of the first installment according to Item III.3 of these terms as well as the availability of the goods, documents, permits and releases to be procured by the customer. If this is not the case, the delivery period shall be suitably extended. This shall not apply if we are responsible for the delay.  
This shall also apply to any stipulated delivery period.
2. Adherence to the delivery deadlines and periods is subject to the condition of correct and timely self-supply. Delays are communicated to the customer as they become apparent.
3. In the event that the customer, following the execution of a contract, desires changes to the nature of the object of supply and/or the performance of our tasks, we will enter into negotiations with a view to reaching an agreement. We shall not be obligated, however, to

accept these subsequent change requests. The delivery period shall be extended by at least the duration of the negotiations to be conducted in this regard.

4. Delivery times and dates are deemed to have been met so long as we have given our customer notice of the order's readiness for shipment or acceptance by the expiration or due date.
5. Partial deliveries are permitted, provided they do not place an unreasonable burden on our customer. For billing purposes, partial deliveries are considered independent transactions, which is why we are entitled to bill the customer separately for each such partial delivery.
6. In addition, the customer may rescind the agreement if, for a given order, a portion of the supply cannot be completed and the customer has a justified interest in rejecting the partial delivery. If this is not the case, the customer must pay the price attributable to such partial delivery under the contract. The same applies in the event of our incapacity to comply.  
Otherwise, Section X. 2 shall apply.  
If an instance of inability or incapacity arises during a delay in acceptance on the part of our customer or if our customer is solely or chiefly responsible for such circumstances, they remain liable for compensation.

## V. Delays in Delivery

In the event that our customer requests that the agreed delivery date be moved back, and if we consent thereto, our customer is obligated to reimburse us for any storage costs incurred - for storage at our plant, such charges accrue at a rate of no less than 0.2 % of the net goods value per month.

By the same token, we are entitled to place our customer on reasonable notice to claim the object of supply. If such notice produces no result, we are entitled to rescind the contract and claim damages or otherwise dispose of the object of supply. In the latter case, the delivery period is extended by the amount of time needed newly to procure or manufacture the object of supply following our customer's request for such object of supply.

## VI. Exemption from the Obligation to Perform Due to Force Majeure

1. In cases of force majeure, we are released from the obligation to deliver or accept for the duration and to the extent of the respective effect. Force majeure is any event beyond our control that prevents us from fulfilling our obligations in whole or in part, including fire damage, floods, strikes and lawful lockouts, unexpected pandemics or epidemics, and operational disruptions or government orders for which we are not responsible. Supply difficulties and other performance disruptions on the part of our upstream suppliers shall be deemed to be force majeure if the upstream supplier, for their part, is prevented from providing the service incumbent upon it as a result of an event pursuant to Sentence 1.
2. In the event of Paragraph 1, we shall notify our customer of the occurrence and cessation of the force majeure without delay and shall use our best efforts to remedy the force majeure, and to limit its effects as far as possible.
3. In the event of the occurrence of force majeure, we will consult with our customer on the further procedure and determine whether, after its termination, the products not delivered during this period should be delivered at this later point. Notwithstanding the foregoing, we shall be entitled to withdraw from the orders affected thereby if the force majeure incident lasts for more than 6 weeks from the agreed delivery date. The right to terminate the contract for good cause in the event of prolonged force majeure shall remain unaffected.

## VII. Transfer of Risk/Acceptance

1. Our customer shall be obligated to receive the object of performance as soon as we have declared to the customer that it is ready for shipment or acceptance.
2. Delivery is ex stock (warehouse loading dock), which is also the place of performance for the delivery and any subsequent performance.
3. At the customer's request and expense, the goods shall be shipped to another destination at the customer's risk (sales shipment). Unless otherwise agreed, we are entitled to determine the type of shipment ourselves (in particular carrier, shipping route, packaging).
4. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover.  
In the event of default in acceptance, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon the occurrence of the default in acceptance.  
In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment.  
Insofar as acceptance has been agreed, this event shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. If the buyer is in default of acceptance, this equals the handover or acceptance. The commissioning without contradiction or the use of the goods for the intended purpose by the customer shall also be regarded as equivalent to acceptance.
5. If the customer fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a lump sum compensation in the amount of 0.25% of the net price per calendar day, however not more than 5% of the net price of the delivery in total, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for shipment. We hereby further agree to take out the insurance requested by our client at their cost.

## VIII. Retention of Title

1. We retain the title to all objects of supply (goods subject to retention of title) until satisfaction in full of all claims to which we are entitled against the customer under the business relationship. For open accounts, all objects of supply serve as collateral security for our claims as to outstanding balances.
2. The sale, pledge or attachment of the object of supply and any part thereof is subject to our consent as long as we retain the title thereto.

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3. For every event of resale of the object of delivery, our customer hereby assigns us in advance all claims in the amount of the final invoice amount (including value-added tax) accruing to our client from the resale against its buyers or third parties, irrespective of whether the object of delivery has been resold processed or unprocessed. We hereby accept this assignment. Having obtained permission to resell, our customer is entitled to collect receivables even after the assignment. Our right to collect such receivables ourselves is not affected thereby. However, we undertake not to collect so long as the customer properly meets their payment obligations, is not in default and does not suffer a material deterioration of their financial situation. The latter should be assumed especially if our customer's assets become the object of a petition for the institution of insolvency proceedings, our customer must submit an affidavit as to the accuracy of its assets or there are reasons compelling the managing director of a limited liability company to submit to insolvency proceedings under § 15b of the German insolvency code (InsO). In this case, our customer is obligated to notify us of any assigned claims and their debtors, to provide such information as may be required for collection, to deliver to us any related document and to give notice of the assignment to such debtor or third parties.
4. In the event that the object of supply or parts thereof are inextricably linked to other items not belonging to us, we become co-owners of the new item in the proportion of the value of the object of supply to the other items at the time of their connection. If the connection renders the item of our customer the principal object, it is deemed to have been agreed that our customer grants to us proportional co-ownership. Our customer maintains sole ownership or co-ownership, whatever the case may be, at no charge to us.
5. To secure our claims against it, our customer also assigns such claims to us as they may incur against third parties as a result of the connection of the object of supply or parts thereof to a property.
6. We undertake to release the security to which we are entitled upon our customer's request if and to the extent that the value of such security exceeds outstanding claims to be secured by more than 20 %. The decision as to which securities to release is ours.
7. Our customer is obligated to insure the goods subject to retention of title adequately against fire and water damages as well as against theft and vandalism for the duration of said retention of title. Insofar as maintenance and/or an inspection or protective measures need to be performed on the object of supply, our customer must see to the timely completion of such measures at its own expense.
8. Our customer is obligated to give us prompt written notice of any enforcement measures taken against an item subject to retention of title, furnishing us with copies of writs of execution and bailiff's returns. In addition, they must take such action as may be necessary to stay execution.  
If we raise a third-party objection pursuant to § 771 of the Civil Procedure Code, our customer shall be obligated to reimburse us for the costs incurred in the same fashion as the adverse party is obligated to do so. Our customer shall declare an assumption of debt in this regard.
9. In the event that our customer defaults on their payment obligations, we are entitled to take possession of any item subject to retention of title following a reminder and the expiration of a reasonable grace period. In urgent cases, a grace period may be done away with. If these objects are in the possession of a third party, our customer shall be obligated to inform us thereof without delay. Our customer shall be obligated to do everything reasonable to enable us to take possession of these objects again.
10. Transportation, storage and other costs related to repossession, including the costs of legal action, where necessary, are borne, or reimbursed, by our customer.  
The same applies to declines in value and removal costs.

## IX. Warranty claims

Subject to Item X.2, we hereby offer the following warranty for material and legal defects of the object of supply to the exclusion of additional claims:

### Material defects

1. At our option, we will refurbish or replace with a defect-free part at no cost any part shown to be defective as a result of circumstances predating the transfer of risk. We must be notified of the discovery of such defects immediately and in writing. Replaced parts shall become our property.
2. The customer must allow for adequate time and opportunity as discussed with and needed by us to see to the improvements or replacements we deem necessary. Otherwise, we shall be released from the liability for the consequences arising in this regard. Only in urgent events of jeopardy to plant safety or to avert disproportionately large damage shall our customer have the right to remedy the defects themselves or have them remedied by third parties and to demand that we compensate them for the expenses required in this regard. In this case, our customer is obligated promptly to notify us.
3. Of the costs incurred as a direct result of improvements or replacements, we bear the costs of the spare part, including shipping, provided the claim is shown to have merit. In addition, we bear the costs of removal and installation as well as the costs of technicians, including travel expenses, to the extent that no unreasonable burden is imposed on us as a result. § 444 BGB is not affected thereby.
4. Under applicable law and subject to the exceptions granted thereunder, our customer has a right to rescind the contract if we fail to provide a refurbished or spare part within the period allotted on the basis of a material defect. In the event of a merely insubstantial defect, our customer shall merely have the right to reduce the contractual price. The right to reduce the contractual price shall otherwise be excluded hereby. Additional claims are regulated under Item X.2 of these terms.
5. Our customer holds no warranty claims in the event of our customer's or third parties' unqualified or improper use, defective installation or operation, for natural wear and tear, improper or negligent treatment, improper maintenance, the use of unsuitable tools, unqualified repairs, unsuitable foundation, chemical electro-chemical or electrical impact (unless they are attributable to us).
6. In the event of unqualified improvements made by our customer or a third party, we are not liable for any consequences. The same applies to changes to the object of supply made without our prior consent.

### Legal Defects

7. If the use of the object of supply gives rise to violations of domestic industrial property rights or copyrights, we will make every effort to procure the right to continued use at our expense and for our customer's benefit or modify the object of supply in a manner acceptable to our customer to ensure that a violation of industrial property rights no longer exists.  
If this is not possible at reasonable economic terms and conditions or within a reasonable period, our customer shall be entitled to rescind the contract. Under such circumstances, we are equally entitled to rescind the contract.  
Moreover, we will indemnify and hold our customer harmless against undisputed or effectively established claims of the respective holders of industrial property rights.  
We bear no liability for the violation of industrial property rights or copyrights owing to the products manufactured by our customer on the object of supply.
8. The obligations attributable to us under Item IX.7 are definitive subject to Item X.2 in the event of violations on industrial property rights or copyrights and are further contingent on:  
Our obligations shall only exist if:
  - a. our customer informs us without delay of the property right or copyright infringements asserted;
  - b. our customer adequately supporting us in defending against alleged claims; and/or
  - c. our customer enabling us to implement measures to modify the violating item in accordance with Item IX.6;
  - d. our retaining the right to take any defensive action, including out-of-court settlements,
  - e. the legal defect not being attributable to instructions issued by our customer, and
  - f. the violation not being the result of our customer's unauthorized or improper use of the object of supply.

### X. Liability

1. In the event that the object of supply cannot be put to the use contemplated under the contract through our fault and as a result of (i) the failure (properly) to implement suggestions or the results of consultations made or produced after the execution of the contract or (ii) the violation of other subsidiary obligations thereunder, including but not limited to instructions for the operation and maintenance of the object of supply, the provisions of IX. and X.2 apply accordingly to the exclusion of any other claims on our customer's part.
2. Irrespective of legal grounds, our liability for damages not directly affecting the object of supply is limited to cases of:
  - a. intent; or
  - b. gross negligence on the part of the owner/the executive bodies or senior employees; or
  - c. in case of culpable injury to life, body and health; or
  - d. in case of defects we concealed in bad faith or guaranteed to be absent; or
  - e. in case of defects with respect to which liability for personal injury or property damage is mandated under the German Product Liability Act (ProdHaftG).In cases of culpable violations of material contractual obligations, our liability extends to gross negligence of non-management staff as well as simple negligence. In the latter case, our liability shall be limited to the coverage amount of our product liability insurance. The latter encompasses damage typically stipulated in contracts. We will permit our customer to review our insurance policy and arrange for a greater amount of coverage if our customer is willing to pay the difference in premiums.

### XI. Limitation

Our customer's claims expire after 12 months irrespective of legal grounds. It is deemed to have been agreed that the object of supply may be used in no more than 2 tiers. For 3-tier applications, the period of limitation is reduced to 8 months. For claims for damages under Item X. 2 a) through e), the statute of limitations prescribed by law applies. The statute of limitations further apply to defects on a structure or objects of supply used on a structure as intended and causing it to be defective.

### XII. Non-assignment clause

Our customer's claims against us must not be assigned.

### XIII. Applicable Law/Jurisdiction

1. All legal relations between our customer and us are subject to such laws of the Federal Republic of Germany as apply to the legal relations of domestic parties with one another.
2. The joint place of performance is the location of our registered offices.
3. Disputes arising from or in connection with these terms are settled by the courts with jurisdiction over the location of our registered offices. However, we are entitled to institute legal action at the location of our customer's registered offices as well