General terms and conditions of sale - Services (ALBD) pro-beam Group (December 2018)

I. General Provisions

1. As used in these General Terms and Conditions of Business, the term "performance" shall be synonymous with the term "delivery".
2. Our performances shall be determined in accordance with these Terms and Conditions and any other agreements. No general terms and conditions of our customers shall apply, even if we have not expressly objected to them in any specific case.
3. In the case of ongoing business relations, these Terms and Conditions shall apply to all future transactions with our customers, unless agreed otherwise with them.

II. Conclusion of Contract/Subject of Agreement

1. Contracts (order and acceptance) and order releases and modifications and additions thereto must be made in writing. Order releases may also be made by remote data transmission.
2. The customer shall be bound to its orders for at least one month. We shall not be obligated to accept such orders. Our offers shall be subject to change, unless designated otherwise in each specific case. The contract shall first come about through our written confirmation of the customer order.
   Release orders by our customers shall be binding if we confirm them in writing within one month.
   We shall be entitled to process the orders at the operating facility of our choice.
3. The information we provide regarding the quality of the object of delivery in brochures and catalogues shall be non-binding, unless it is expressly declared as binding. This shall also apply to photographs, 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 rights, etc. may not be made available to third parties. We hereby agree only to make information and documents designated by the customer as confidential available to third parties with the customer's approval.

III. Prices and Terms and Conditions of Payment

1. Prices shall be considered "ex works" (according Incoterms 2000) and do not include packing or the applicable value-added tax on the date the invoice is issued. Invoice amounts must be paid without deducting any cash discounts.
2. Our invoices shall be due for payment 14 days after date of invoice by transfer to one of our bank accounts.
3. Our customer shall only be entitled to set off claims with counterclaims which are undisputed or recognized by non-appealable judgment. Likewise, our customer shall only be entitled to retention rights insofar as its claims against us are undisputed or recognized by non-appealable judgment.
4. In the event of a successive delivery agreement, we shall be entitled to increase our prices based on labor, material, energy or other costs that have increased after the closing date of the agreement.
5. In the event of default in payment, a default interest rate of 9 % p.a. shall be considered as agreed upon, unless the default interest rate stipulated by law is lower. We hereby reserve the right to assert further default damage claims.
   Our customer shall retain the right to document that less default damage was incurred.
6. In the event of default in payment on the part of our customer, all claims of our company vis-a-vis our customer shall be due for immediate payment.

IV. Dispatch

1. If a period for the performance is stipulated, the period shall commence with the dispatch of the order confirmation, though not prior to the provision of the goods, documents, permits and re- leases to be provided by the customer or prior to the receipt of the stipulated payment. If this does not occur, the performance deadline shall be extended in a reasonable fashion. This shall not apply if we are responsible for the delay.
   This shall also apply to any stipulated performance deadline.
2. The observance of the performance period or deadline shall be subject to the accurate and punctual delivery by our own suppliers. We shall notify our customer as soon as possible regarding any detected delays.
3. If the non-observance of the performance period or deadline is attributable to force majeure, a labor dispute or other events beyond our control, the performance period or deadline shall be extended in a reasonable fashion. We shall notify our customer of the start and finish of such circumstances as soon as possible after learning of them.
4. If, after the contract is closed, our customer desires changes in the type of object to be delivered and/or the execution of our work, we shall negotiate with the goal of reaching agreement. We shall not be obligated, however, to accept these subsequent change requests. The performance deadline shall be extended by the duration of the negotiations to be conducted in this regard.
5. The performance period shall be considered observed and the performance deadline considered kept when we have notified our customer of the readiness for shipment or acceptance prior to the expiration of the performance period or deadline.
6. Partial deliveries shall be permissible if reasonable for our customer. Each partial shipment shall be considered as an independent transaction for purpose of settlement. We shall be entitled for this reason to settle each partial shipment separately with the customer.
7. Our customer may rescind the contract without notice if the entire performance is definitively impossible for us prior to the passage of risk. The customer may moreover rescind the contract if the execution of part of an ordered performance is impossible and the customer has a legitimate interest in refusing the partial performance. If this is not the case, the customer must pay the contractual price allocable to the partial performance. This shall also apply in the event of any incapacity on our part.
   Otherwise, Section Xl.2 shall apply.
   If the impossibility or incapacity occurs during the delay in acceptance on the part of our customer or if our customer is solely or largely responsible for these circumstances, our customer shall remain obligated to render consideration.

V. Performance Delays

1. If we are in default with our performance, our customer shall have a claim to lump-sum default compensation. Such compensation shall amount to 0.5 % for each full week of delay, though up to a total of 5 % of the value of that part of the total performance which cannot be used in due time or pursuant to the contract as a result of the delay.
   If our customer establishes a reasonable period for us to render performance after the due date-with due regard to the events exempted by law-and we fail to meet such deadline, our customer shall be entitled to rescind the contract as permitted by law.
   Further claims based on default in performance shall be determined exclusively in accordance with Section Xl.2 of these Terms and Conditions.
2. If our customer desires a later performance date than the contractually stipulated date and we approve, our customer shall be obligated to reimburse us for the costs incurred for storage (for storage at our works, at least 0.2 % of the net merchandise value for each month).
   We shall nonetheless be entitled to establish a reasonable grace period for our client to release the object of performance. In the event this period lapses unproductively, we shall be entitled to rescind the contract and assert damage compensation claims or to dispose otherwise of the object of performance. In the latter event, the performance period shall be extended by the period of time necessary to reacquire or reproduce the object of performance after receiving a release from our customer.

VI. Passage 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. The risk shall pass to our customer when the object of performance has left our premises. This shall also apply if partial deliveries are made or if we have assumed other performances (e.g. shipping costs or shipment to the destination). If a formal acceptance is to be made, this shall be decisive for the passage of risk. The acceptance procedure must be conducted immediately as of the acceptance date or, alternatively, after our notice of readiness for acceptance. Our customer shall not be entitled to refuse acceptance in the event of an immaterial defect.
3. If the shipment or acceptance is delayed or omitted as a consequence of circumstances for which we are not responsible, the risk shall pass to our customer from the date of the notice of the readiness for shipment or acceptance. We hereby agree to take out the insurance requested by our client at its cost.

VII. Chattel Mortgage

1. a. If our customer provides us objects owned by it for processing, the customer shall thereby transfer us the title to such objects - if we have not already become the owner as a result of the processing pursuant to § 950 of the Civil Code - as security for the payment claims on our part previously existing as of the delivery date and also for any future payment claims based on the current business relationship with our customer.
   b. If our customer merely has an inchoate right to acquire the title to the objects provided to us for further processing as a result of an existing title retention on the part of a third party, our customer shall transfer such inchoate right to us upon the delivery of the objects. Our customer shall in this case be obligated to assure the cancellation of the title retention by paying the purchase price. At the same time, we shall be entitled to pay the owner the residual purchase price debt of our customer for our customer's account.
   c. Our customer shall moreover assign us the claims to which it is entitled against its suppliers in the event of the dissolution or non-performance of purchase contracts, particularly the claims to restitution of any previously rendered payments.
2. Objects which become our property in this way shall be subject to the title retention provisions in the terms of Section VIII of these Terms and Conditions.

VIII. Retention of Title

1. We hereby reserve title to all objects of contract (reserved goods) until full compensation of all claims to which we are entitled from the business relation with the customer. With respect to current invoices, all objects of contract shall serve to secure our claim to the balance.
2. The customer may sell, pledge, process or mix the object of contract, even in part, unless the customer is in default in payment.
3. For every event of resale of the object of contract, 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 contract has been resold processed or unprocessed. We hereby accept this assignment.
   With this resale approval, our client shall simultaneously be authorized to collect claims, even after they have been assigned. Our power to collect the claims ourselves shall not be prejudiced hereby. We hereby agree, however, not to collect the claim so long as our client duly meets its payment obligations to us, is not in default in payment and has not experienced any substantial deterioration in its assets. This is to be assumed particularly if a petition for insolvency has been filed concerning our client's assets, our client has issued an affidavit on the accuracy of a list of its assets or grounds exist which would obligate the managing director of a German limited li- ability company to file a petition for insolvency pursuant to § 64 of the GmbH Act. In such event, our client shall be obligated to notify us of the assigned claims and the debtors thereof, to pro- vide all information concerning the collection, to hand over the related documents to us, and to notify the debtors and/or third parties of the assignment.
4. The processing or alteration of the object of contract or parts thereof by our customer shall al- ways be made on our behalf. If the object of contract is processed with other objects not belonging to us, we shall acquire joint title to the new thing in the proportion of the value of

the object of contract to the other processed objects at the time of the processing. The same provisions applicable to reserved goods shall otherwise apply to things arising through processing.

5. If the object of contract or parts thereof are inseparably mixed with other objects not belonging to us, we shall acquire joint title to the new thing in the proportion of the value of the object of contract to the other mixed objects at the time of the mixing. If the objects are mixed so that the thing of our customer is to be viewed as the main thing, it shall be considered as agreed that our customer transfers us the prorated joint title. Our customer shall safeguard the sole or joint title free of charge on our behalf.
6. To secure our claims against it, our customer hereby also assigns the claims accruing to our customer against third parties through the combining of the object of contract (or parts thereof) with an object.
7. We hereby agree to release the securities to which we are entitled at the request of our customer insofar as their value exceeds the claims to be secured-provided these have not yet been paid-by more than 20 %. We shall be responsible for the choice of the securities to be re- leased.
8. Our customer shall be obligated to insure the retained good throughout the existence of the reservation of title in an adequate amount against fire and water damage and against theft and vandalism.
9. Our client shall be obligated to notify us immediately in writing of all execution measures levied on an object under title retention and to send us a copy of the attachment orders or records. Our client must moreover undertake everything to avert the 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.
10. If our customer is in default in payment to us, we shall be entitled to take possession again of the objects under title retention after a warning and expiration of a reasonable grace period. In urgent events, we may forgo the establishment of a grace period. 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.
11. Our customer shall reimburse us for the transport, storage and other costs associated with taking back the objects, including the costs of any necessary legal prosecution. This shall also apply to any reductions in value or disassembly costs incurred.

IX. Provision of Materials

1. Our customer is aware that, in accordance with the current state of technology; reject rates of 4 % in relation to the material to be provided by the customer (assuming series processing of > 100 parts) are technically unavoidable. In the case of electron beam drilling, the corresponding reject rate is 8 %. There is also the material required for calibrating the machinery and processing test parts. For this reason, our customer hereby agrees to supply materials at its own cost and risk in due time and free of defects with a reasonable volume markup of 5 % or, in the case of electron beam drilling jobs, 10 %. We shall notify our customer as soon as possible regarding any detected defects.
2. If these prerequisites are not fulfilled, the performance period shall be reasonably extended. Our customer shall moreover bear any additional costs resulting from production interruptions that become necessary for this reason. We hereby reserve the right to assert damage compensation claims.
3. Our liability in relation to the materials provided shall be determined in accordance with the pro- visions in Section XI.2 of these Terms and Conditions.

X. Defect Claims

We hereby provide the following warranty for material defects and defects in title related to the object of performance, to the exclusion of any further claims and subject to Section XI.2:

Material Defects

1. We shall subsequently improve, free of charge, any parts defectively processed by us. If this is not possible because the parameters of the provided material, particularly the dimensional ac- curacy, quality of processing, etc., cannot be assured by the subsequent improvement, we shall process replaced provided material. Our customer shall be obligated to provide the material necessary in this regard.
   Replaced parts shall permanently remain our property.
2. Our customer must provide us the time and opportunity necessary to undertake all subsequent improvements and replacement performances that appear necessary to us. 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 itself or have them remedied by third parties and to demand that we compensate it for the expenses required in this regard. Our customer shall be obligated in such event to notify us about this without delay in writing or by telefax.
3. As permitted by law, our customer shall have the right to rescind the contract if we-with due regard to the cases exempted by law-allow a grace period set twice for us to render a subsequent improvement or replacement performance due to a material defect to lapse unproductively. 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. Further claims shall be determined in accordance with Section XI.2 of these Terms and Conditions.
4. Our client shall not have any defect claims in the event of unsuitable or improper use, faulty assembly and/or operation by our customer or third parties, natural wear and tear, faulty or negligent treatment, improper servicing, the use of unsuitable supplies, defective construction work, an unsuitable construction site, chemical, electrochemical or electrical influences, unless we are responsible for them.
5. If our customer or a third party makes an improper subsequent improvement, we shall not be liable for the consequences arising therefrom. This shall also apply to changes made to the object of performance without our prior approval.

Defects in Title

6. If the use of the object of contract leads to the infringement of industrial property rights or copy- rights within Germany, we shall in principle procure for the customer at our cost the right to further use the object or shall modify the object of contract in a reasonable fashion for our customer so that the property right infringement 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 the prerequisites specified, we shall also have a right to rescind the contract.
   We shall moreover release our customer from undisputed claims or claims determined by non-appealable judgment on the part of the property right holder.
7. Subject to XI.2, the obligations on our part mentioned in Section X.6 shall be conclusive in the event of property right and copyright infringements. Our obligations shall only exist if:
   a. our customer informs us without delay of the property right or copyright infringements asserted;
   b. our customer supports us to a reasonable extent in the defense against the claims asserted; or
   c. enables us to carry out modifications pursuant to Section X.6;
   d. we retain the right to undertake any defensive measures, including out-of-court settlements;
   e. the defect in title is not based on any instruction by our customer; and
   f. the infringement of the right was not caused because our customer changed the object of contract on its own or used it in a way not pursuant to the contract.

XI. Liability

1. If the object of contract cannot be used as agreed by our customer because we have negligently failed to carry out or have defectively performed proposals or recommendations made before or after the closing date of the contract or because of a breach of other ancillary contractual obligations (e.g. instructions regarding the operation or servicing of the object of contract), the provisions in Sections X and XI.2 shall apply accordingly, to the exclusion of any further claims on the part of our customer.
2. Irrespective of the legal ground, we shall only be liable for damage not incurred to the object of contract itself in the event of:
   a. intentional action; or
   b. gross negligence on the part of the owner/officers or executives; or
   c. negligent injury to life, limb or health; or
   d. defects which we have maliciously concealed or whose absence we have guaranteed; or
   e. defects for which liability exists in accordance with the Product Liability Act with respect to persons or material damage to privately used objects.

   In the case of a negligent breach of material contractual duties, we shall also be liable for the gross negligence of non-executives and for slight negligence. In the latter case, our liability shall be limited to the coverage amount of our product liability insurance or, if applicable, our recall cost insurance. The latter encompasses damage typically stipulated in contracts. We shall allow our customer upon request to inspect our insurance policy and to agree on a higher coverage amount, provided our customer pays the additional premium necessary for this.

XII. Limitation of Claims

All claims of our customer, irrespective of the legal ground, shall lapse in 12 months.
The periods stipulated by law shall apply to damage compensation claims in accordance with Sections XI.2 a) to e). They shall also apply to defects in a construction work or objects of contract which were used in a normal fashion for a construction work and caused the defect therein.

XIII. Prohibition on Assignment

No claims of our customer against us may be assigned.

XIV. Applicable Law/Place of Jurisdiction

1. Exclusively the law of the Federal Republic of shall apply to all legal relations between our customer and ourselves.
2. The common place of performance shall be the registered office of the operating facility executing the order.
3. The place of jurisdiction shall be the court competent for the registered office of the operating facility concluding the contract. However, we shall also be entitled to file an action at our customer's principal place of business.