

General terms and conditions of sale - machines and equipment (ALBM) pro-beam Group (December 2018)

I. General information

1. Our supplies and services are based on these terms as well as other agreements. The terms and conditions of our customers have no effect even if they were not expressly opposed in a specific case.
2. In the event of an ongoing business relationship, these terms apply to all future transactions with our customer unless otherwise agreed.

II. Execution / object of contract

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 its order for a period of at least one month. The supply contract does not have 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 retain the title and copyright to samples, cost estimates, drawings and similar information, whether physical, electronic or otherwise, and such information must not be disclosed to third parties. We undertake not to disclose to third parties any information or document designated as confidential by the customer without its consent.
5. We expressly retain all copyrights, trademark and other proprietary rights to the machines and equipment supplied by us, including but not limited to designs, manufacturing methods and technologies inherent in such machines and equipment and their processing protocols. However, we grant the customer non-exclusive, nontransferable rights of use thereto, such rights being limited to the lives of the machines or equipment.
6. Insofar as the scope of supply encompasses software, we grant to our customer a non-exclusive, nontransferable right to use the software supplied, including any documentation thereof; the software is made available to the customer for use on the appropriate object of supply. Software must not be used on more than one system, and our customer is entitled to duplicate, revise, localize or convert (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 adjustments of any kind.
2. Our invoices are due and payable 14 days from the invoice date.
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.
5. In the event of default, default interest is charged at 9 % p.a. as agreed unless the rate of default interest permitted by law is greater. We reserve the right to assert additional claims for default-related damages. The amount of default-related damages by our customer, who bears the burden of proof.
6. In the event of default on the part of our customer, all of our claims against it 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 time is extended accordingly, provided the delay is not attributable to us.
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 non-compliance with delivery times or dates is attributable to Force Majeure, collective action or other events beyond our control, the affected delivery times and dates are postponed accordingly. We will inform our customer as to when such circumstances arise or cease to exist at the earliest opportunity.
4. 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. However, we are under no obligation to accept such belated requests for changes, and delivery times are extended, at a minimum, by the duration of the negotiations conducted thereon.
5. 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.
6. 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.
7. Our customer may rescind the contract without notice if and when we are rendered unable to complete delivery prior to the transfer of risk. In addition, the customer may rescind the agreement if, for a given order, a portion of the supply cannot be completed and the customer

is justified 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.

Item IX.2 applies in all other cases.

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, it remains 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. Transfer of risk / acceptance

1. Our customer is obligated to accept the object of supply as soon as we have provided notice of the order's readiness for shipment or acceptance.
2. The risk passes to our customer as soon as the object of supply leaves the plant. This is true even for partial deliveries and if we assumed additional services, such as shipping costs or shipment. To the extent that acceptance is mandatory, the transfer of risk coincides with acceptance, which must occur promptly on the acceptance date or, alternatively, following the notice of the order's readiness for shipment or acceptance. Our customer is not entitled to refuse acceptance on account of a minor defect.
3. In the event that shipment or acceptance is delayed for reasons not attributable to us, the risk passes to our customer on the date of our notice of the order's readiness for shipment or acceptance. We undertake to obtain the insurance coverage desired by our customer at its expense.

VII. 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.
3. For each instance of the resale of the object of supply, our customer hereby already assigns to us, and we hereby accept, all claims in the amount of the final invoice amount (including VAT) which the customer incurs against buyers or other third parties as a result of resale, whether or not the object of sale is resold without or after processing. 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 its payment obligations, is not in default and does not suffer a material deterioration of its financial situation.
The latter should be assumed especially if (i) our customer's assets become the object of a petition for the institution of insolvency proceedings, (ii) our customer must submit an affidavit as to the accuracy of its assets or (iii) there are factors compelling the managing director of a GmbH voluntarily to submit to insolvency proceedings under § 64 of the German Limited Liability Companies Act (GmbHG). 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 it 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 adequately to insure the goods subject to retention of title for the duration thereof against fire and water damages as well as against theft and vandalism. 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, it must take such action as may be necessary to stay execution.
In the event that we file a third-party action against execution under § 771 of the German Code of Civil Procedure (ZPO), our customer is obligated to reimburse us for any costs incurred in the same way as the opposing party, and our customer must declare co-liability accordingly.
9. In the event that our customer defaults on its 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 the items in question are in the possession of a third party, the customer is obligated promptly to notify us and will reasonably endeavor to enable us to take possession of such items.

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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.

VIII. Warranty claims

Subject to Item IX.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 given prompt written notice of any such defect detected, and replaced parts 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. Only in the presence of imminent threats to safety and property is the customer entitled to remedy the defect itself or have third parties do so and be reimbursed by us for reasonable expenditures. 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.
If the defect is insignificant, our customer is merely entitled to a discount, which does not extend to contract rates.
Additional claims are regulated under Item IX.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 unqualified 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 impossible to do at a reasonable expense or within a reasonable period, our customer is entitled to rescind the contract. Under such circumstances, we, too, are 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 XIII.7 are definitive subject to Item IX.2 in the event of violations on industrial property rights or copyrights and are further contingent on:
 - a. our customer giving us prompt notice of alleged violations of industrial property rights or copyrights;
 - b. our customer adequately supporting us in defending against alleged claims; or
 - c. our customer enabling us to implement measures to modify the violating item in accordance with Item VIII.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.

IX. 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 XIII. and IX.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 principal / directors & officers or managers; or
 - c. culpable injury to life, body and health; or
 - d. defects we concealed in bad faith or guaranteed to be absent; or
 - e. 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 nonmanagers as well as simple negligence. In the latter case, our liability is limited to the amount of coverage available under our product liability insurance policy, which encompasses typical and foreseeable damages. 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.

X. 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 IX.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.

XI. No assignment

Our customer's claims against must not be assigned.

XII. 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.