

# **General Terms and Conditions of Sale**

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**ABL – General Terms and Conditions of Sale**

The following Terms and Conditions apply to all goods deliveries. This explicitly also includes spare parts and / or services provided between ABL and the customer, collectively termed 'goods'. All offers, acceptances, confirmations, goods deliveries and/or all customer orders are subject to these Terms and Conditions exclusively. If ABL does not object to the customer's Terms and Conditions, this is not to be regarded as ABL foregoing the application of these Terms and Conditions.

The customer's tacit agreement, or the acceptance, payment, or use of the goods, constitutes the comprehensive acceptance of these Terms and Conditions without exception.

### **§ 1 Contract formation – Entirety of contract – Modifications**

1. Pertinent in relation to the contractual content agreed between the parties is primarily the transmitted order confirmation. Supplementarily applicable are these Terms and Conditions of Sale, as well as the respective offer. In case of content discrepancies between offer and order confirmation, the content of the order confirmation takes precedent. Any order(s) placed by the customer is (are) only binding for ABL if it (they) has (have) been explicitly accepted. As soon as the order has been accepted, the customer may not change or retract the order without ABL's prior written agreement. ABL offers are valid for a period of 30 days beginning with the date of issue, unless otherwise determined by ABL.
2. Where requested, the validity of the contract depends on the receipt of an agreed instalment, a letter of credit in line with the contract, a cover note from an export credit insurer, and any required government authority approvals. If these prerequisites are not met within 45 days from the date of issue of the contract, the contract is considered invalid and non-existent.
3. Any amendment to the contract is only valid upon prior written agreement between the customer and ABL.

### **§ 2 Delivery – Risk – Property**

1. The delivery of goods is conducted Ex Works (EXW) by ABL in accordance with Incoterms 2020. Partial deliveries are permitted. The risk of loss or damage of goods is transferred to the customer at the time of delivery.
2. If the conditions of delivery are not EXW (EX Works) or FCA UNLOADED, and damage occurs during transport, and/or such damage is discovered by the customer during inspection, the customer informs ABL by fax or email without delay and lodges a claim with the carrier, in which the damage is described accurately and noted on the documents presented to the customer by the carrier, and of which documents the customer retains a copy. The customer shall then immediately confirm the damages claim with the carrier by registered mail. The customer indemnifies ABL and / or its insurer of any claims and holds it harmless of any damages arising to ABL from the customer not complying with the duty of lodging and confirming a claim of damages as described above.
3. ABL reserves its ownership of all delivered products until full payment of the purchase price and full payment of all receivables, including any future outstanding balances

('reserved goods'). Any processing of reserved goods is carried out on behalf of ABL. If reserved goods are installed in other goods by the customer, ABL becomes joint owner of the resulting products commensurate with the value of the reserved goods as a proportion relative to the value of the other goods utilised. The products generated in this way are also considered reserved goods of ABL. This principle also applies if reserved goods are associated or mixed with the goods of a third party or the customer. The customer is entitled to sell reserved goods within his proper business operations. He is obliged to reserve ownership himself insofar as he sells reserved goods on credit. In case of third-party access to the reserved goods, the customer shall point out ABL's ownership and notify ABL immediately. For security purposes, the customer shall already now transfer to ABL, to the value of the reserved goods, all receivables including subsidiary rights due to him as a result of selling on the reserved goods or his business relationship with his customers. The customer is entitled and obliged to collect the ceded receivables. Should the customer enter into arrears, ABL is entitled at any time to withdraw the authority to collect the claims and to notify the customers' buyers of the cession, as well as to take back the reserved goods or, if required, to demand the cession of the customers' claims against third parties. The customer is obliged to inform ABL of the data necessary to collect the claims, and to hand over the related documents. Taking back or seizure of reserved goods by ABL does not constitute a rescission of contract. On request of the customer, ABL shall release the securities insofar as their value exceeds all claims to be secured by more than 20 %.

### **§ 3 Conditions for contract fulfilment**

1. The customer shall make available to ABL – to the extent necessary – all drawings, documents, and other information required to fulfil the contract. ABL may rely on these drawings, documents, data, and information without additional research, and shall base its fulfilment of the contract on them. ABL shall not be liable for design, production, or other errors resulting from faulty drawings, documents, data, or other information provided by the customer or third parties.
2. If ABL is unable to deliver the entire volume of goods, no matter the reason, ABL may distribute its production capacity among other customers and other companies associated with ABL as is reasonable and appropriate. ABL shall inform the customer about the conditions under which such an allocation is made.

#### **§ 4 Delivery periods – Acceptance**

1. The delivery dates or periods quoted in the contract represent ABL's best possible estimates thereof. With the exception of liability on the basis of intent or gross negligence, and damages because of injury to life, limb, or health, ABL shall not be held liable in relation to compliance with these delivery dates or period and any claims derived from them. Delivery times are automatically moved or extended in case of delays not attributable to ABL, e.g. in case of force majeure or the customer's non-compliance with his own obligations.
2. The customer carries out incoming goods inspections according to § 6 (3). Should the customer omit to complain, the goods are considered accepted. Customer's reservations regarding faults / defects that do not affect the function and / or condition of the goods do not prevent the full acceptance of the goods. If a defect is not exclusively attributable to ABL, the return of the goods by the customer is at his own risk and cost. All goods are identified by their ABL parts numbers / labelling, whereby parts numbers / labelling by the customer is for information purposes only.

#### **§ 5 Prices – Payments**

1. Prices are in euro and at delivery of goods EXW ABL premises (Incoterms 2020). The costs of packaging the goods are not included, and will be determined separately. The prices determined in the contract may be adjusted by ABL according to developments in the prices for raw materials. All prices are excluding taxes (e.g. VAT), fees, other charges, transport and insurance costs. The customer shall release ABL from all tax obligations regarding the sale, receipt, or retention of the goods. Should a law or regulation leading to a cost increase come into effect after the date of issue of ABL's offer, the price shall be adjusted accordingly. For transactions inside the EU, the customer shall make all information and documents required for Value-Added-Tax (VAT) available to ABL.
2. Goods will be invoiced with delivery EXW ABL. Unless agreed otherwise, all invoices are payable within 10 days from the date of the invoice without deductions. Notwithstanding other rights, ABL is entitled to charge interest at the rate of 9 % above the respective base rate of the European Central Bank in case of payment delays. No discounts are granted for payments before the due date.
3. Payments are to be made without deductions, retention, or offset, and irrespective of any conflicts and/or legal disputes between ABL and the customer.

## **§ 6 Warranty**

1. ABL guarantees that the goods conform with ABL's technical requirements, and are free of faults in materials and manufacturing. Unless prescribed otherwise by compelling legislation, the warranty period against material deficiency ends 24 months after delivery of the goods.
2. Should the goods turn out to be deficient within the warranty period, ABL is entitled to elect to repair all or parts of the faulty goods as part of its entitlement to rectify, or to exchange or modify them under identical contractual conditions. In this case, ABL is also explicitly entitled to conduct an exchange of parts or whole products in form of the respective current production series. As part of rectification, ABL is further entitled to conduct any fault analysis, repairs and / or exchange through partners to be determined by ABL. Should the fault analysis show that no defects are present, the customer bears the costs resulting for ABL. The customer shall be informed of the expected costs prior to the analysis. The customer reserves the right to prove a defect by other means. ABL remains expressly entitled to carry out rectification by way of exchanging the faulty product in its entirety for a new product. The selection and form of rectification is subject to ABL's sole determination. In case of a return of goods not agreed with ABL, the customer bears the risk of additional costs thus incurred, especially with respect to ABL's entitlement to selection.
3. The ABL ticketing system is available particularly for warranty claims, defect notices, ordering spare parts, support during commissioning, goods returns, and other enquiries (<https://www.ablmobility.de/de/service/support/>).
4. The warranty is subject to the condition that the customer has properly accepted, treated, stored, installed, operated, used, and maintained the goods without making any changes or modifications to the goods, or damaging them in any way, and that he inspects the goods immediately upon delivery and lodges a complaint regarding noticeable defects in writing within 5 working days of delivery, and / or lodges a written complaint regarding not immediately noticeable defects without delay after their discovery. The written complaint must accurately describe the defect.
5. The warranty does not apply to friction materials and other defects resulting from the customer's and /or third party's instructions, e.g. delivery and / or instructions regarding construction, materials, products, and tools, or that can be attributed to wear and defects resulting from normal wear and tear. Warranty claims against ABL are also always excluded if changes, modifications, reconfigurations, own repair attempts not agreed with ABL,

or other unauthorised measures by the customer, or another unauthorised or uncertified third party, have been carried out on ABL products. The exclusion of warranty does not apply to cases where repair attempts have been agreed with ABL in writing. In consultation with ABL, the customer can, instead of rectification or, including outside of warranty provisions, in case of a defect, receive a new (B-grade) or refurbished product. In case of a B-grade product, the warranty period of two years also applies. A different warranty period of one year applies to refurbished products.

6. Spare part orders placed other than on the basis of warranty entitlements, because they occur outside of the warranty period or because no valid warranty claim exists, are subject to a minimum order surcharge of 20.00 euro net for goods values under 50.00 euro net.
7. Returns for which no defect can be established may attract costs for analysis and assessment. In this case, the customer will be informed about any costs incurred.

#### **§ 7 Liability – Penalties**

1. In no case, be it on the basis of breach of contract, prohibited action (including liability for negligence, product liability, strict liability, or other type of liability), or on the basis of warranty or another entitlement, shall ABL be liable with respect to any person or company (including the customer) for damages resulting from un-installing or re-installing the goods. Further claims of the customer for damages and compensation, no matter on which legal basis, especially for reasons of neglect of duties relating to contractual obligations and unauthorised actions, are excluded. This does not apply where liability is binding, e.g. according to product liability legislation, in case of intent, gross negligence, injury to life, limb, or health, or breach of substantive contractual obligations.
2. The entitlement to damages for a breach of substantive contractual obligations is, however, limited to foreseeable damage typical for the contract, as long as there is no intent or gross negligence, and as long as liability is not related to injury to life, limb, or health.

## **§ 8 Returned goods conditions**

In individual cases, ABL grants a right to return defect-free goods and deliveries on the basis of goodwill. The customer may not infer a general entitlement from this, while ABL reserves the decision to refuse the goodwill right of return.

The right of return is subject to the following conditions, which must be fulfilled cumulatively and in their entirety:

- The return was notified by the customer and approved by ABL. Unannounced returns will not be accepted by ABL, or returned to the customer at his own cost.
- The receipt of the goods (ABL's invoice date is the determining factor here) took place within a period of 6 months before receiving the request for return.
- The goods are in their original packaging, are unused, and are part of the current product range.
- Returns are possible only in complete packaging units.
- Customer-specific branded products and custom-made products are excluded from returns.

Moreover, returns are subject to the following procedural prerequisites and can only occur if these have been met:

- Returns are delivered free to ABL premises.
- The customer receives an RMA number and a return slip by email, which must accompany the goods.
- The RMA number allocated as part of the approval must be attached to and clearly visible on the goods.

If the customer does not fulfil the conditions for returns and / or does not meet the procedural prerequisites, and this only comes to light when the goods arrive and / or are inspected at ABL, ABL is entitled to return the goods to the customer at his own cost and to refuse the goodwill return.

ABL charges the customer a processing fee of generally 30 % of the net goods value, plus any discounts and/or bonuses paid. If repackaging becomes necessary, if freight, customs, or other charges arise, if increased administrative effort is required, or if the condition of the return shipment does not match the condition of the original shipment from ABL to the customer, a higher processing fee will be charged in individual cases. ABL will inform the customer of such an increased processing fee. Returns are only accepted on the basis of this processing fee.

### **§ 9 Confidentiality – Rights protection – Patent infringement**

1. ABL holds a commercial property right to all drawings, designs, specifications, documents, information, and know-how provided as part of the contract, and to all know-how, improvements, discoveries, and inventions made or developed as part of fulfilling the contract and / or resulting from it (IP). The customer shall oblige his employees, sales representatives, suppliers, contract partners, and their contract partners, to treat IP as strictly confidential, and not to use, copy, reproduce, make available, disclose, or publish it, nor to grant third parties access to or possession of the IP without ABL's prior written agreement. IP remains the property of ABL and is only provided to the customer for the purposes of fulfilling the contract.
2. ABL shall indemnify and hold the customer harmless from any damages and costs arising in connection with the regular sale and use of the goods developed by ABL, and which are imposed as part of a legal dispute or proceedings for infringement of protective rights, and are legally in force in the country of manufacture, as long as ABL has been informed immediately and in writing, and furnished with comprehensive authority, information, and support to defend said legal dispute or proceedings, and as long as the infringement does not result from an application or use of such goods with respect to or in combination with other materials, means of production, devices, or units that were not supplied by ABL, nor from modifications made to the goods by any party. Should the goods or parts thereof become the subject of a legal dispute or proceedings during which a protective rights infringement is determined and their utilisation is prohibited by the court, ABL shall, according to its own judgement and at its own costs, undertake one of the following actions: Ensuring the customer is furnished with the right to continue to use said goods or parts thereof; exchanging of the goods for substantially similar goods that are not infringing any protective rights, or modifying the goods so that they no longer infringe any protective rights. The defence and indemnification by ABL as described here represents the complete fulfilment of all of ABL's obligations or liability towards the customer with regard to any infringement of protective rights, and forms the basis of the customer's sole legal remedy in this regard.
3. The customer shall indemnify and hold harmless ABL (incl. its suppliers) of all costs (incl. the costs of legal representation), damages claims, losses and / or proceedings that arise from a claim or legal dispute based on the fact that goods produced to the designs, modifications, specifications, or instructions of the customer (incl. all his subcontractors) infringe protective rights.

### **§ 10 Means of production**

Any tools, machines, plant, and other means of production of a similar nature, produced or bought by ABL for the fulfilment of the contract ('means of production'), are the sole property of ABL, even if the customer has contributed to the costs of such means of production.

### **§ 11 Force majeure**

ABL is not in breach of contract if a contract breach results from force majeure. Force majeure is any event outside of ABL's reasonable sphere of influence, e.g.: inevitable events, terrorist activities, storm, flood, fire, riots, pandemics, epidemics, sabotage, trade restrictions, strike, any form or industrial dispute, effects of energy and / or raw material shortages, loss or defects of means of production, transport delays for reasons of force majeure, interventions by civil authorities, laws, regulations, or instructions issued by any government authority (including delays or non-issue of licences, certificates, or authorisations of any kind whatsoever), wars, or actions or omissions of the customer. In this case, contractual deadlines or periods are extended commensurate with the end of the state of force majeure. If a state of force majeure extends beyond 3 months, both parties may terminate the contract (without a prior court ruling). They will agree on the consequences of such a termination in good faith.

### **§ 12 Termination**

1. If the customer does not make payments according to the sales contract, or if ABL deems at its own discretion (with or without information provided by the customer) that the financial situation of the customer is insufficient or at risk of becoming insufficient, ABL can suspend the fulfilment of the contract or extend the period for contract fulfilment until any outstanding payments due by the customer have been made and / or demand immediate payment before delivery.
2. ABL is entitled to terminate the contract with immediate effect if the customer breaches substantive contractual obligations. A payment delay of more than 30 calendar days also constitutes a breach of contractual obligations. In this case, the customer pays for all goods already delivered, as well as for all deliveries prepared at the time of termination, while reserving any further entitlements according to current laws.
3. Should ABL be providing services in the form of repeating services, ABL is, notwithstanding any agreements stating otherwise, entitled to terminate the contractual relationship in compliance with a notice period of 3 months to the end of each calendar month. Unless otherwise agreed in individual cases, this right to termination is also afforded the customer.

### **§ 13 Applicable laws – Conflict resolution**

The contract is subject exclusively to German law, to the exclusion of the UN Sales Convention (CISG). The application of German conflict of law's provisions is also excluded to this extent. For all disputes arising from or in connection with the contract, the courts in Nuremberg are exclusively responsible with regards to the subject matter and internationally. This also applies to counterclaims, as well as to injunctions.

**§ 14 Other provisions**

1. The customer is not entitled to delegate in whole or in part his contractual rights and / or obligations, and / nor to transfer them to third parties without ABL's prior written agreement. ABL may cede contractual rights and obligations to its associated companies, or transfer them to one or several subcontractors.
2. The customer is himself responsible for dealing with government and regulatory authorities, and shall obtain at his own cost the licences and approvals required for fulfilling the contract (incl. for the use, sale, or distribution of the goods, or for carrying out the services) in the respective country. He shall, where required, support ABL in obtaining visa, approvals, and customs clearance.
3. Place of execution and exclusive place of jurisdiction for all claims arising from the contractual relationship is Nuremberg.
4. The ineffectiveness in whole or in part of individual contractual provisions does not affect overall effectiveness. The parties shall instead agree on a replacement provision that approximates as closely as possible the respective provision in spirit and purpose.