

Effective as of 1 January 2005 – German abbreviation: AB Masch 2005 –

Preliminary Notes:

1. The present version of the AB Masch 2005 in English language is a non-binding translation of the German original. In case of any doubts or divergences with respect to the language or the subject matter of the English version, the German original version shall be the only authoritative and prevailing version.
2. The table of contents, the headlines, and the numbering within the AB Masch 2005 shall only be deemed to facilitate the reading and understanding, but shall under no circumstances constitute a limitation or modification of the subject matter of the clauses, nor shall they serve as a means of interpretation or construction, nor shall they affect the legal effect of the clauses in any other way.

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1. Scope of Application

- (1) These Terms and Conditions (AB Masch) shall apply to any deliveries of goods and services (hereinafter altogether referred to as services or performance) for which their applicability has been explicitly agreed. The standard Terms and Conditions of Purchase printed on the reverse page of our order forms shall not be applicable.
- (2) The Contractor's standard terms and conditions shall not be applicable; instead, our AB Masch shall apply exclusively, even if we (hereinafter from time to time referred to as Customer) do not explicitly object to the Contractor's standard terms and conditions or any other contractual conditions established by the Contractor. Any terms and conditions established by the Contractor that conflict with or diverge from our purchase orders or from this AB Masch shall neither be acknowledged nor taken account of unless we have expressly agreed in writing in any individual instance.
- (3) Execution of our order shall be deemed to constitute unqualified acknowledgement of the present Terms and Conditions.

2. Quotations, Orders and Other Representations, Commercial Clauses

- (1) All quotations shall be free of charge and shall not be binding for us.
- (2) Orders, agreements and any other representations shall be binding only if placed or confirmed by us in writing. If we do not react to any quotation, including electronically forwarded quotations, this shall not be interpreted as acceptance.
- (3) If not explicitly agreed otherwise, any and all papers and correspondence, including the documentation, shall be provided in the German language.
- (4) Any interpretation of the commercial clauses shall be based on the Incoterms as in effect at the date of conclusion of the Contract.

3. Scope of Performance, Completion Clause

- (1) All services rendered by the Contractor shall meet the contractual scope of performance, and in particular any essential characteristics specified in the Contract, and shall be suitable, without any qualifications, for the customary period of use and for the purpose specified in the Contract or, if such purpose is not specified, for the customary purpose of usage.
- (2) The scope of performance shall include, even if not explicitly and separately specified in the Contract documents:
 - a) any and all parts which constitute part of the contractual scope of performance and which, according to the latest state of the art, are essential in order to make the plant become failure safe and ready to operate, and which are necessary in order to enable operation in compliance with the Contract and free of defects, regardless of whether such parts are explicitly listed in the call for tender, the quotation, the technical specifications, or in any other supporting documents;

- b) compliance with any mandatory technical and other regulations and findings relating to the services due to us under the Contract, including any regulations
- on occupational safety, in particular any safety and protective precautions specified by law, the regulatory authorities, the employers' liability insurance associations and any other institutions working out regulations (e.g. Device and Product Safety Law [*Geräte- und Produktsicherheitsgesetz*]; Workplace Directive [*ArbeitsstättenVO*]; Hazardous Materials Regulations [*GefStoffV*]; section 2, paragraph 1, sub-par. 1 and 2, VBG 1) and any scientific findings relating to the design of workplaces that are suitable for men and women;
 - on environmental protection, e.g. the Recycling and Waste Management Act [*Kreislaufwirtschafts-/Abfallgesetz KrW-/AbfG*], the Federal Pollution Control Act [*Bundes-Immissionsschutzgesetz BimSchG*] and any related ordinances including the respective administrative directives, the regulations on Air Pollution Control [*TA Luft*] and on Noise Pollution Control [*TA Lärm*], the Federal Water Resources Management Act [*Wasserhaushaltsgesetz WHG*] including any applicable ordinances issued by the federal states;

- c) the commitment to hand over the execution documents (documentation) according to the technical specifications or a separate agreement in the agreed scope.

Any models and templates (as far as necessary for performing the commission) and any special auxiliary devices which cannot be purchased as standard products shall be deemed to constitute part of the scope of supply. Upon reporting operational readiness, the Contractor shall submit a list of these items, and it shall be at our discretion to decide on the models, templates or auxiliary devices to be surrendered to us prior to acceptance of the service so that they will become our property upon acceptance.

- d) **Device and Product Safety Law, EC Machinery Directive etc.**

The Contractor shall be obliged to perform the scope of deliveries and services in compliance with with applicable European and German statutory provisions.

Especially the Device and Product Safety Law and related ordinances, the EC Machinery Directive 98/37/EC including related standards, and the general minimum requirements for tools and equipment as specified in Directive 89/655/EEC shall be complied with, each of them as amended, to the extent they have been implemented into national law, or shall be complied with directly in the absence of national implementation.

As stipulated by law, any item supplied by the Contractor that is ready for use shall be marked with the CE label; in addition, upon operational readiness, if not earlier, the Contractor shall submit the hazard analysis, and, upon delivery, the EC declaration of conformity relating to any machine/equipment ready for use, or the manufacturer's declaration in the event of any machine/equipment that is not ready for use.

- e) **Spare Parts Lists**

The Contractor shall submit the respective spare parts lists, including prices, and shall be under an obligation to clearly indicate the original manufacturer's specifications.

The spare parts lists shall include any and all information necessary for the Customer's alternatively inquiring or ordering the spare parts from third parties.

The date of conclusion of the Contract shall be decisive for the above paragraphs a), b), c) and d).

- (3) It shall also be the Contractor's responsibility to inform us in time and in detail if any change of the scope of services should be necessary in order to fulfil the Contract.
- (4) Apart from the above services, the following services shall be deemed to constitute part of the Contract and shall be included in the agreed prices:
 - lifting devices and any other necessary equipment and scaffoldings, except cranes, which may be provided by the Customer under separate agreement;
 - complete delivery of any installations according to sub-paragraph (1), including packing, if necessary;
 - removal of any waste produced by the Contractor;
 - any necessary dismantling, cleaning and modification work on the existing plants, facilities and buildings as far as needed for assembly, operation and use of the complete subject of performance;
 - cutting any removed component parts into handy sizes, sorting them according to materials, and loading them on containers or waggons;
 - complete assembly of any delivered installations ready to use, including trial run and initial operation until acceptance; and any loading and unloading of component parts including interim transportation to the location of installation or assembly.

4. Contractor's Duty to Inform Himself

The Contractor acknowledges that he inspected the construction site and that he is familiar with the details of actual local conditions. Regarding these conditions, the Contractor shall have no right to plead ignorance or error at any later date. It shall be the Contractor's responsibility to take the dimensions and check the drawings for conformity with the existing plant, facilities and buildings as necessary for the execution of the order in accordance with any constructional specifications and for assembling and commissioning the plant.

5. Pricing

- (1) Unless otherwise agreed, prices shall be fixed prices and exclusive of statutory VAT.
- (2) Prices shall include any efforts the Contractor has to make in order to meet his contractual obligations at the agreed place of performance. Services shall be rendered free of shipping cost at the agreed place of delivery. For example, the scope of services, and hence the price, shall include:

- The Contractor's costs of technical processing, execution documents and Contract-specific aids (e. g. templates), materials to be delivered, wages and incidental wage costs, installation, surveillance, permanent provision and vacation of the construction site facilities, procurement and permanent availability of any required devices, scaffoldings, tools, safety precautions and barriers etc., sheds for employees and tools, any fuels and consumables needed for assembly devices, cutting gases, their delivery and removal to/from the site, unloading and transport of any materials etc. from the storage area to the place of use, and storage costs;
 - Acceptance tests prior to commissioning any plant that involves the use of substances harmful to water must be conducted pursuant to the provisions of VAWs [German ordinance on systems with substances harmful to water] by an authorised expert; the costs incurred shall be borne by the Contractor.
- (3) If the actual weight of any mechanical devices which are to be invoiced per weight, rather than units, is more than 5% below the agreed weight, then the amount to be invoiced shall be reduced to reflect any underweight in excess of 5%, and such reduction shall be in proportion to the full average kilogram price. Any overweight shall not be invoiced.
- (4) We shall have the right to entrust a sworn test engineer to check the static calculation prepared by the Contractor. Any costs resulting from impositions to alter the static as required by test engineer shall be borne by the Contractor unless the Contractor can prove that such requirement is unfounded.

6. Divergence from Contract

- (1) Any services other than those stated in the Contract (i.e. any modified or additional services) shall not authorise the Contractor to claim extra payment unless such divergence has been confirmed in writing by our purchasing department.
- (2) If the Contractor considers modified or additional services to be necessary or any services requested by the Customer not to be included within the scope of the Contract, the Contractor shall, without further request and immediately, submit a written supplementary quotation, the Contract serving as a basis for fixing the prices thereof, and any reductions of the contractual scope of services shall also be duly reflected. The supplementary quotation must specify any and all of the technical, economic and schedule-related consequences resulting from the divergence. Supplementary quotations shall be free of charge.
- (3) Unless otherwise agreed in any particular instance, our confirmation of any diverging services shall be given by written supplementary order.
- (4) Due dates and deadlines for the performance of services shall not be affected by the modification of any services unless explicitly agreed in writing.
- (5) If Contractor and Customer disagree on whether or not any service has to be classified as additional or modified service, the Contractor shall render evidence that the respective service has not been, or not in this form, included in the present scope of the Contract. This shall also apply if such controversial service was rendered upon our express instruction.

- (6) We reserve the right to perform any additional services ourselves or to have such additional services performed by any third parties.

7. Packing

The Contractor shall properly dispose of any waste packing materials and shall do so at its own expense.

8. Construction

- (1) Any items that we put at the Contractor's disposal may only be used for executing the Contract. The Contractor shall return them promptly upon completion of his work, in proper condition and as they were when handed over to him. Excessive wear or damage shall be charged to the Contractor.
- (2) It shall be the Contractor's sole responsibility to make sure that the construction of the contractual product is in accordance with any relevant regulations and rules.
- (3) It is only for the purpose of inspection that we shall receive the Contractor's construction design documents. Our signing of these documents shall only signify that we have taken note thereof; we do not thereby adopt any responsibility in relation to construction design, embodiment and absence of defects. Proposals for modification, hints and complaints made by us shall not release the Contractor from his sole responsibility to bring about the result due under the Contract. We shall have the right to give the Contractor instructions with a view to ensuring that the purpose of the Contract is met and that performance will be free of defects. In the event of any directions given by us we shall only be liable according to section 645 German Civil Code if the Contractor promptly expressed and substantiated any concerns in writing.
- (4) The construction documents submitted by the Contractor shall become our property if the order has been placed. We shall have the right to use them without express permission in order to purchase accessory items for maintenance and repair work, for future modifications and for manufacturing spare parts ourselves or by having them manufactured by any third parties, and to surrender these documents for such purposes.
- (5) The Contractor shall name an authorized appointee. Prior written consent by us shall be required for the substitution of such appointee, and such consent shall not be refused unless for cogent reasons.
- (6) In the presence of cogent reasons we may refuse admission to our premises to any persons working on behalf of the Contractor.
- (7) Any tools or equipment brought onto our premises shall be checked by our security service. The Contractor shall mark his own items with his name or logo before taking them to our premises. When transporting such items onto or away from our premises, the Contractor shall present and deposit a written list of these items to/at our plant security unit. Wagons and other means of transport shall only be cleared during our office hours.
- (8) Without prejudice to the Contractor's obligations, we shall have the right to inspect the performance of the services at the construction site or at the Contractor's or subcontractors' premises, to raise objections to any improper performance and to reject defective parts. During office or working hours, the Contractor shall grant us access to any work-

ing places, workshops and store rooms in which the Contractor produces the items, or parts of items, to be supplied to us or in which the materials for these items are stored. The Contractor shall allow us to inspect the construction documents and shall provide any necessary information upon our request. The Contractor shall not be obliged to disclose his production or trade secrets. If we suspect a defect or damage in parts purchased for integration into the contractual service, or in the subcontractors' services, the Contractor shall provide information on the external manufacturer, middleman or subcontractor and any information required for asserting any claims against them. We shall keep confidential any information we may have obtained during the inspection, or from any documents or any other information, relating to production or trade secrets.

- (9) The Contractor shall bear full responsibility for and the risk (e.g. theft, fire) of any items that the Contractor brought onto our premises or that we surrendered to the Contractor for the purpose of executing his contractual services.
- (10) Any documents to be submitted to us pursuant to the Contract shall be physically handed over in copy form to be filed on our record.

9. Devolution of Title / Change of Firm, Subcontractors, Conditions for Deploying Staff at our Premises

- (1) The Contractor shall promptly inform us about any devolution of title relating to the Contract by virtue of law and any change of its firm.
- (2) In case insolvency proceedings are being instituted against the Contractor's assets, or in case of the existence of reasonable grounds to assume that the conditions for applying for insolvency proceedings are met, or in the absence of sufficient assets, we shall have an extraordinary right to terminate the Contract, and the Contractor shall have no right to claim for damages.
- (3) The formation of working teams or consortiums shall require our prior approval in writing.
- (4) To meet his obligations, the Contractor shall have the right to call in subcontractors on condition that prior approval has been obtained from us in writing. The Contractor shall inform us in writing and on his own accord about any subcontractor that the Contractor plans to involve, and shall do so before signing the subcontract with such subcontractor. The Contractor shall bear the sole responsibility in relation to us. In the presence of cogent reasons we shall have the right to bar any subcontractor from working on our premises.

If any of the Contractor's contractual services are carried out by subcontractors, the Customer shall have the right to discuss directly with such subcontractors. The Contractor shall establish such contact upon our request. At the request of the Contractor, the discussions shall take place in the Contractor's presence.

The Customer shall not make any agreement and/or arrangement with the subcontractor that conflict with the Contract agreed between the Contractor and the Customer.

The Contractor shall be liable for any negligence on the part of suppliers and subcontractors as if such negligence were the Contractor's.

- (5) The Contractor shall comply with the following rules when deploying his employees on our premises:

a) The Contractor shall make sure:

- that any of his employees working for the Contract are registered for statutory social security and that they all hold a social security card as required by law,
- that any wage taxes and statutory social insurance contributions (health insurance, old-age pension insurance, unemployment insurance, employers' liability insurance) for these employees are correctly remitted,
- that foreign workers have the required work permit, and
- that at least the foreman speaks German.

The Contractor hereby undertakes to comply with applicable industrial inspection board regulations, accident prevention regulations and any other occupational safety regulations, including, e. g., the regulations concerning hazardous materials and goods, the federal water management regulations and the respective ordinances of the federal states, and any working time regulations; the Contractor hereby also represents that he is familiar with these regulations and that his employees have been informed about any applicable occupational safety regulations.

b) The Contractor warrants that his subcontractors, too, shall comply with the above regulations.

If the Contractor involves any persons as subcontractors who are not liable to pay statutory social security contributions, such as freelancers, then the Contractor shall make sure that these persons

- have adequate accident and health insurance coverage,
- and that, if carrying on any trade, such persons had their trade duly registered (sections 14, 15 (1) *GewerbeO* [trade regulations]). Before issuing access permits, our security service unit will ask for a copy of their trade registration certificates, stating issuing authority and date.

c) Upon our request, evidence shall at any time be produced by these persons that the above obligations have been met.

d) If the Contractor fails to comply with the above obligations, or of parts thereof, we shall have the right to terminate the entire Contract, or parts thereof, and to claim compensation for any damages sustained.

10. Shipment

For the protection of our interests, the Contractor shall be under an obligation to act with care when shipping any items. We reserve the right to refuse clearance of any truckloads until the delivery documents have been submitted. The Contractor shall bear any costs resulting from the Contractor's breach of contractual obligations.

11. Due Dates, Obstacles to Performance

(1) The prerequisites and legal consequences of any delay in delivery are as established by law, provided however that any failure to meet intermediate due dates expressly specified as “contractual due dates” as well as any failure to meet the deadlines for operational readiness, for completion and for acceptance shall be deemed to constitute a delay unless the supplier can render evidence that he cannot be held responsible for such failure in this individual case. In addition to the failure to meet a calendar deadline, it shall also be deemed to constitute a failure in terms of this paragraph if any agreed due date is not a definite calendar date but, pursuant to the Contract, if a particular event must occur before such due date can be met and the time available for performing the service depends on such preceding event (e.g. due dates specified as a number of weeks after the occurrence of the preceding event).

(2) The Contractor shall promptly inform us in writing about any circumstances which interfere or are likely to interfere with due performance, or if the Contractor believes that such circumstances do exist, especially if the Contractor realizes that he will not be able to meet contractual due dates as a result of force majeure or any other reasons for which the Contractor cannot be held liable.

If he fails to comply with this obligation, the Contractor shall have no right at a later date to plead that such circumstances did exist unless they were obvious for us.

(3) If any due dates cannot be met for any reasons that we must be held responsible for, or if the Contractor cannot be held responsible pursuant to paragraph 2, first sentence, then the period shall be extended, or the due date be postponed, by a period that reflects the delay period. Such extension of time shall be fixed individually.

(4) Normal or foreseeable weather effects shall not affect contractual times and deadlines; they have to be taken account of in advance when fixing such deadlines. In the event of completely abnormal and unpredictable weather conditions causing a disastrous situation, completion times or deadlines shall be extended to reasonably respond to the situation and no extra costs shall be charged. This is without prejudice to the provisions relating to force majeure as stated in clause 12.

(5) Sunday and bank holiday work necessary to meet due dates require the approval of the authorities, which shall be applied for by the Contractor.

(6) The legal consequences of any delay shall be determined on the basis of existing statutory regulations. If we exercise our right to terminate the Contract (Rücktritt), the Contractor shall, regardless of his statutory obligations, promptly return the items which he received according to clause 8, paragraph 1, first sentence. To the extent that we are authorized to cancel the Contract, and provided that the delay affects a limited part of the contractual performance, cancellation may be limited to such part of the Contract, and the remaining parts of the Contract can remain in effect. The provisions of clause 15, relating to the cancellation of the Contract, shall apply accordingly.

(7) To enable us to otherwise procure the services, the Contractor shall – once we have exercised our right of cancellation – hand over any plans, drawings, calculations, software documents, industrial property rights, documentations and specifications that he prepared with a view to performing his services, and a fair compensation shall be paid to the Contractor; in this respect we shall have a right of option. The Contractor shall also be under an obligation, once we have exercised our right of cancellation, to provide sufficient information about the services already performed, and shall do so free of charge.

12. Force Majeure

- (1) Any events attributable to force majeure shall entitle either contractual Party to postpone the performance of obligations under the Contract or, if the execution of the Contract becomes completely or partly unreasonable, to withdraw from the Contract to the extent it has been affected, and the other Party shall have no claims for damages. Force majeure shall include any events occurring unexpectedly and not culpably caused by either Party such as, without being limited to: natural disasters, fires, strokes of lightning, explosions, escaping poison or gas, floods, general supply disturbances, war, terrorist acts, upheavals or similar influences, industrial actions in the Party's own enterprise or elsewhere, and interference by the authorities.
- (2) The effects of serious operational breakdowns which result in lower production or stoppage and any other circumstances making it more difficult or impossible to meet the contractual obligations shall be deemed similar to force majeure no matter whether these breakdowns occur in the organisations of either Party or of any third parties provided that neither Party nor such third parties are liable.

13. Industrial Property Rights

- (1) The Contractor shall be liable to make sure that none of his services nor their contractual and intended use violate the industrial property rights of any third parties (e.g. patent applications and patents published for opposition, copyrights). The Contractor shall be obliged to enable us to use his contractual work, e.g. by satisfying such third parties' rights or by modifying the construction of the contractual work accordingly. Such modification must not in any way negatively affect the contractual use of the plant.
- (2) If the Contractor cannot enable such contractual use of the plant, especially because the third party insists on the plant to be closed down, and if no suitable modification seems possible, the Contractor shall remove the contractual work at his own expense and reimburse any payments received, plus 5% interest above the base interest rate pursuant to section 247 German Civil Code. This is without prejudice to any additional legal claims.
- (3) Upon purchasing the contractual work we shall obtain the right to purchase accessory equipment, carry out maintenance and repair work, carry out modifications in the future and manufacture spare parts ourselves, or have them manufactured by third parties. These rights shall not be restricted by any industrial property rights which the Contractor may have. The Contractor also warrants that no industrial property rights held by any third parties restrict these rights.
- (4) If, during preparation and execution of the Contract, any know-how on methods, devices or plants is developed which is suitable for patent application or utility model registration, and if we have contributed to the development of such know-how by co-operating in negotiations, meetings, joint tests, trial runs etc., in that case we and the Contractor shall act as joint applicants for the registration of industrial property rights at home and abroad. This is without prejudice to any obligations under the Employees' Invention Act [*Arbeitnehmererfindergesetz*]. When exploiting any protectable know-how, due account shall be taken of the interests of either Party or their joint interests. If either applicant waives his share of rights in such joint application or his share of the protected right, then such share shall fully devolve on the other applicant. Any obligations to pay inventor compensations according to the Employee Invention Act shall also fully pass to the

remaining Party. The above regulations shall apply, mutatis mutandis, to any technical know-how which is not protectable.

- (5) Without prejudice to any claims that we may have under the law, the Contractor shall indemnify us against any third-party claims and related damages, expenses and other disadvantages. This shall include in particular any disadvantages arising from any necessary modification of buildings, machinery, plants, and data processing systems or programs and from delays in construction, project or operational sequences.

14. Proof of Performance and Acceptance

- (1) Unless otherwise agreed in the Contract, the Contractor's performance shall require a formal process of acceptance, which shall constitute a precondition for payment to become due under any and all contracts based on these Terms. Acceptance shall take place at the place of performance as soon as the Contractor has completed the contractual project and applies in writing for such acceptance and as soon as all prerequisites for acceptance have been met. Acceptance shall be taken necessarily on record on a standard form provided by us and shall be signed by us and the Contractor. There shall be no oral acceptance, nor shall any implied acceptance be inferred from the act of commissioning the contractual item.
- (2) The acceptance procedure of any facilities requiring a run-in phase should be conducted as soon as possible after the run-in phase has started. We shall have the right to use such facilities for production purposes during the run-in phase.
- (3) In particular, acceptance shall depend on the Contractor's performance meeting the essential characteristics and technical specifications and standards as specified in the Contract. The test of proper performance shall begin no earlier than upon establishing operational readiness of the plant or facility and shall end upon the essential characteristics and technical specifications having been demonstrated; acceptance can be refused until fundamental defects have been repaired. If operating and maintenance manuals or any other information (e.g. documentation) to be submitted before acceptance according to the Contract are missing, we shall have the right to refuse acceptance until such documents have been submitted in complete and perfect condition. As long as we are entitled to refuse acceptance, the period of limitation for defects shall not start.
- (4) If the essential characteristics are not performed due to any reasons for which the Contractor is responsible, the Contractor shall have the right to have the performance test repeated, and shall have the obligation to promptly take any steps necessary for improving the plant or facility so that the essential characteristics and/or technical specifications are met. However, if contractual performance cannot be proved within a reasonable period of time (no more than 3 months as calculated from the contractual date of operational readiness), we shall be authorized to assert our statutory rights.
- (5) If the proof of performance, or any other conditions to be met before acceptance, cannot be furnished within a period of 6 months or more, as calculated from the date of operational readiness, exclusively for reasons for which we are responsible (Contractor's burden of proof), acceptance shall be deemed to occur after expiration of six months at the latest.
- (6) The Contractor shall promptly remedy any minor defects detected during the performance test. The successful repair of such defects shall be taken on record and the respective period of limitation for this part of the performance shall begin.

- (7) Upon acceptance, the risk of accidental loss or deterioration shall pass over to us.

15. Defects

- (1) The Contractor warrants that his performance is complete and that it is free from any defects, that it embodies the essential characteristics as agreed in the Contract and that it is suited for the intended purpose under customary operating conditions. Such warranty shall also apply to any customised constructions in terms of section 3, paragraph 2, Geräte- und Produktsicherheitsgesetz [*Device and Product Safety Law*]. Only such parts shall be excluded from the Contractor's obligation to remedy defects which have been expressly agreed as being wear and tear parts, indicating their service lives, prior to order placement.
- (2) Any claims on account of non-performance, or improper performance, shall become statute-barred in accordance with the general statutory provisions. The limitation period shall start upon the date of final acceptance. However, the limitation period of spare parts shall not start until the date of their installation, commissioning or consumption, and shall expire five years after delivery.
- (3) In the event of any defects in quality or title of the Contractor's performance, the general statutory provisions shall apply. We shall have the option to decide on how such defects shall be remedied, i.e. either by subsequent rectification of defects or by substitute delivery. We shall have the right to set a reasonable deadline for such repair or replacement, such reasonability also depending on our operational demands. If we cannot reasonably be expected to agree to any remedy or substitute delivery, we shall have the right to object to such repair or substitute delivery. Without prejudice to the provisions of law, such situation may exist if any remedial actions will result, or are likely to result, in unreasonable delays or if it is doubtful whether they will bring about the desired effect in relation to any devices, systems or facilities which are safety-relevant or necessary for maintaining our business and manufacturing operations. The deadline for remedial action can also be set by mutual agreement of the Parties hereto, the legal effect being the same as if such deadline had been set by us.
- (4) To the extent that we are entitled by law or under the Contract to cancel the Contract on the grounds of the Contractor's non-performance or improper performance, such cancellation may be restricted to the affected part of the Contract – on condition that the part affected by non-performance or improper performance can be clearly delineated –, and the remaining parts of the Contract shall remain in effect.
- (5) Once we have exercised the right to terminate the Contract for the Contractor's failure to perform, or to perform properly, and are entitled to claim damages instead of performance, we shall have the right – provided that the service or residual service needs to be procured from a third party – to reasonably claim an advance payment to cover expected costs, plus a surcharge of 50%, and this provision shall be without prejudice to any right existing under law. This situation arising, we shall be under an obligation to procure several quotations only if and to the extent that this will not, or is not likely to, cause any material delays or breakdowns of our business and manufacturing operations. Any services performed by ourselves shall be invoiced at third-party market prices. In the event of Contract termination the Contractor shall remove any work performed by the Contractor and return the building site to us as it was before, and shall restore the original state of our plants at any interfaces and shall do so free of cost. Once we have exercised the right to terminate the Contract we shall have

an option to continue to use the facility [i.e. the Contractor's performance] at our own risk, paying a reasonable compensation for such use, until the date of operational readiness of the substitute facility.

- (6) In the presence of any defects in quality we shall have the right, also in the event of any purchase contracts and contracts for work and materials, to remedy such defects ourselves once the deadline for remedial action pursuant to section 637 German Civil Code has expired and to request advance payment, and this shall be without prejudice to any statutory claims that we may have. With respect to the advance payment, clause 15, paragraph 5, AB Masch shall apply accordingly.
- (7) If any defect in quality is discovered within six months after the risk passed to the Customer, the respective work or product shall be deemed to have been defective at the time the risk passed unless such assumption is inconsistent with the type of work/product or type of defect. This provision shall not affect any expressly agreed warranties.
- (8) A defect having been repaired, the statutory limitation period of warranty claims relating to such repaired part shall start again; this shall also apply to any parts which constitute a functional unit with the repaired part and which are likely to have been adversely affected by the defective part.
- (9) During the time of production stoppage, the statutory limitation period shall be suspended for any plant components which cannot be used as contractually intended on account of production stoppage occasioned by repair work on defective parts or by spare part deliveries.
- (10) If, pursuant to section 377, paragraph 1, German Commercial Code, the inspection of Contractor's performance and notification of defects is incumbent on us, we shall have two weeks' time from the date of delivery to meet such obligation. Any defect discovered at a later date shall be deemed to have been notified in due time if notified no later than two weeks from the date of detection (section 377, paragraph 3 Commercial Code). As a rule, any defects shall be notified within three months after discovery.

16. Limitation of Liability

- (1) The Parties' mutual liabilities shall be subject to the statutory provisions, on the following conditions:
 - a) Liability shall be limited to foreseeable damage.
 - b) There shall be no liability for lost production, interruption of operations, stoppage, and loss of profit.
 - c) Either Party's liability shall be limited to the total gross order value, i.e. the price total of the contractual performance including any supplementary performance and also including statutory turnover tax. If such total gross order value is under 10,000 Euros, either Party's liability shall be limited to 10,000 Euros.

The above limitations of, or exemptions from, liability shall not be applicable:

- if liability is imperative under law (e.g. personal damages, damage to privately used items), or

- if otherwise agreed in the Contract, or
 - in the event of any insurable damages that are within the scope of contractual insurance coverage (inclusive of any deductible), or in the presence of any other restitution claims against any non-group third parties.
- (2) The Contractor shall take out an ordinary commercial third party liability insurance contract excluding any recourse against the Customer, the minimum liability insured to be 5 million Euros – unless any other sum has been contractually agreed – and shall maintain such insurance coverage over the entire life of the Contract unless otherwise agreed by separate agreement. Upon our request, the Contractor shall produce evidence of such insurance coverage.
- (3) Failing in compliance with the provisions of paragraph (2) above or any other insurance obligations imposed on the Contractor under the Contract, the Contractor shall indemnify the Customer against any damages as if insurance coverage as due under the Contract had been taken out and/or maintained.

17. Invoicing by Contractor

- (1) The Contractor shall prepare separate invoices for every order, inclusive of any supplements to such order, and the full proof of performance shall be attached.
- (2) The invoice shall be prepared in accordance with German turnover tax legislation, shall indicate the respective order number and shall list any and all items of service in a clear and comprehensible way.

18. Payment

- (1) The Contractor shall call for the respective amounts due for payment as agreed. Such payments shall not be interpreted as constituting acknowledgement of correctness of the invoice and/or compliance of performance with Contract. Rather, such payments shall be made subject to the proviso of subsequent verification.
- (2) Unless otherwise agreed, we shall be liable to pay interest in the amount of 5% p.a. above the base interest rate pursuant to section 247 German Civil Code if we fail to pay at the due date. We shall make payment by remittance or cheque, as we may choose. Payment shall be deemed to have been made in due time if we can prove that the cheque or banker's order was dispatched on or before the due date.
- (3) We shall not accept any cash-on-delivery consignments.
- (4) In concert with all companies of the EUROPIPE group, we shall be entitled to set off any amounts due by the Contractor to us, or to any one of our group companies, against any amounts due by us, or any one of our group companies, to the Contractor on any legal grounds whatsoever. By request, a list of our group companies can be provided. This shall also apply if one party has agreed on cash payment whereas the other party has agreed on payment by bill of exchange or any other type of payment on account of performance. Should the situation arise, these set-off agreements shall relate to the balance only. If such payments should be due at different times, the respective balance shall be

computed by applying the discount method. Any collaterals furnished to us or any one of the group companies shall be liable for any claims of the above companies respectively.

- (5) Our final payment shall not be deemed to constitute any acknowledgement of faultlessness of the contractual services nor any waiver of claims against the Contractor.

19. Assignment

- (1) The Contractor shall not assign any receivables due by us to him, either in whole or in part, unless prior written consent has been obtained from us. Such consent shall not be refused unless for good cause.
- (2) We hereby consent to any assignment made on the grounds of an extended reservation of title, subject to the proviso that we reserve all rights in relation to the assignee which we would have if such assignment had not been made.

20. Interest on Amounts Payable by Contractor

Upon the Contractor's default, interest shall be due on any amounts payable to us, and the rate of interest shall be the same as applicable to any default by us.

21. Security

If we make any down payments or advance payments based upon our order, we shall be entitled at any time to request the Contractor to furnish a security, worded by us, and/or the assignment as security of materials, including the products ordered under the Contract and subsequently in process.

22. Set-Off and Retention by Contractor

- (1) The Contractor shall not be allowed to set off any claims unless such claims are undisputed or have been recognized by declaratory judgement.
- (2) The Contractor shall have no right of retention unless such right is based on the same contractual relationship.
- (3) In the event of any disputes in relation to additional or modified services, the Contractor shall have no right of retention nor any other right to refuse performance, in particular no right to discontinue construction and assembly activities.

23. Secrecy

- (1) The Contractor and any of his agents (such as his employees and subcontractors) shall keep confidential any and all construction documents, of whatever kind and origin, of which they have obtained knowledge. The same shall apply to any other operational methods and data, models, drawings, sketches, pictures and other information which they become aware of or which are disclosed to them in the course of executing the order and which, on account of their very nature, we wish to keep confidential. The information mentioned in the first and second sentence of this paragraph shall neither be dis-

closed nor copied nor made available to any third parties nor used for any purpose other than the purpose originally intended unless we have previously given consent in writing.

- (2) Orders shall not be disclosed beyond the scope of these orders unless we have previously consented in writing. The same shall apply to any photographs taken at our premises and their publication.
- (3) The Contractor shall familiarise his agents with the above obligations and commit them to compliance.

24. Partial Invalidity

Should any provisions of these Terms and Conditions be ineffective, fully or in part, this shall not affect the effectiveness of the remaining provisions hereof.

25. Application of German Law

The legal relationship between the Customer and the Contractor shall exclusively be governed by German law relating to the legal relationship of domestic parties as applicable at the place of the Customer's registered office.

The UN Convention on Contracts for the International Sale of Goods shall not apply.

26. Place of Jurisdiction and Performance

- (1) The Parties shall submit to the jurisdiction of the courts (Amtsgericht or Landgericht) having general jurisdiction at the place of the Customer's registered office; in addition, we shall have the right to sue the Contractor at his own place of jurisdiction.
- (2) The place of performance of any payment claims asserted by the Parties shall be our respective administrative headquarters; for any other claims, the respective place of delivery as stated in our order form under "Shipping address" shall be the place of performance.