

GENERAL TERMS OF SALE AND DELIVERY

1. Application

(1) These General Terms of Sale and Delivery (hereinafter "General Conditions") shall apply exclusively to all sales and deliveries of goods and accessories as well as services (hereinafter "the goods") by Absolute Cold GmbH (hereinafter "ACG"). Any conflicting and/or supplementing terms or conditions of the Buyer are not binding upon ACG. This applies also, if ACG shall not expressly object to such terms or conditions or if ACG shall fulfil its obligations without objecting to such terms or conditions.

(2) The General Conditions together with the document of which they form a part, contain all relevant terms and conditions of the agreement entered into with the Buyer. No collateral agreements exist.

(3) These General Conditions also apply to all future business with the Buyer.

2. Order

(1) Any offers made by ACG are not binding. They merely constitute an invitation to the Buyer to submit an offer.

(2) Public Statements made by ACG, or the producer of the delivered goods or his assistants, especially while promoting or labelling the goods, are not descriptions of the quality of the goods or a guarantee thereof.

3. Prices and Costs of Performance of Contract

The prices stated in the confirmation of order are binding for a period of four weeks from the date of conclusion of the contract. In the event that the costs of ACG shall increase after such period and prior to delivery due to increases of costs, e.g. prices for raw materials, wages, taxes, or other costs beyond ACG's control, ACG shall be entitled to adapt its prices accordingly. ACG will provide the Buyer with evidence for such cost increases upon request.

4. Delivery and Default of Delivery

(1) All deliveries shall be made ex works (EXW) Braunschweig in accordance with Incoterms 2000.

(2) Time limits, in particular delivery dates stipulated by ACG are only binding if expressly confirmed as binding in the confirmation of order. ACG is under no obligation to meet confirmed delivery dates if any final specifications and/or customer information required for the delivery of the goods are received by ACG after dispatch of the confirmation of order.

(3) Periods of delivery are reasonably extended in the event of impediments beyond the control of ACG, in particular short falls in energy supply, transport impediments, embargo impositions, disturbances of operation, discontinuance of operation, strikes, industrial actions, deficiencies or delays of deliveries by sub-suppliers. In the event that delivery becomes impossible for the aforesaid reasons, the respective order is deemed cancelled. ACG will inform the Buyer of such impediments without undue delay.

(4) ACG is entitled to make partial deliveries.

(5) ACG retains the right to make any changes of design and shape during the period of delivery if they are necessitated by technical improvements or statutory duty and if they are reasonable for the Buyer.

(6) In the event that the Buyer fails to accept the due delivery, ACG shall, without prejudice to any other remedies, be entitled to store the goods at the Buyer's risk and recover from the Buyer any extra expenses (such as additional storage charges) incurred due to the Buyer's failure of acceptance.

(7) If the Buyer still fails to accept delivery after the expiry of a reasonable grace period, ACG shall be entitled to otherwise dispose of the delivered goods and to charge the Buyer 20 % of the purchase price as minimum damages, unless the Buyer is able to prove that the actual damage was considerably lower.

5. Packing and Packaging Costs

ACG retains the option of appropriately packing the goods. Any costs of packaging shall be borne by the Buyer. Packaging will not be taken back by ACG.

6. Terms of Payment

(1) Payments are due and payable within 14 days from the date of delivery. Thereafter the Buyer results in default of payments pursuant to sec. 286 subsec. 2 number 2 German Civil Code. The legal consequences will be determined pursuant to section 288 German Civil Code.

(2) Bills and Checks are only taken as conditional payment (on account of performance). Payments are deemed received by ACG if ACG cashed the bill. Bill and discount charges fall due immediately and shall be borne by the Buyer.

(3) In the event that the Buyer fails to meet his payment obligations ACG is entitled to suspend further performance either in whole or in part until payment of the amounts due or provision of security.

(4) In the event that ACG is obliged to perform in advance and the Buyer's financial situation deteriorates substantially which endangers the payment of the agreed price, e.g. suspension of payment by the Buyer or filing of a petition of the commencement of insolvency proceedings upon the assets of the Buyer, ACG shall be entitled to suspend performance until payment in advance or provision of security. If after a reasonable period of time the Buyer has failed to pay in advance or provide security, ACG shall be entitled to rescind the contract.

(5) Set-off or retention rights of the Buyer are only given if its counterclaim is undisputed or has been confirmed by a final court decision.

(6) The Buyer is not entitled to assign any rights or claims under this contract to a third party without ACG's prior written consent.

7. Warranty

(1) The Buyer must examine the goods without undue delay following delivery by ACG and notify a defect to ACG immediately in writing. This shall also apply in the event of substitute delivery. If the Buyer fails to notify ACG the goods are deemed approved unless there is a defect which at the time of the examination was not perceptible. Where such a defect becomes apparent at a later time, notice must be made without undue delay following detection. Otherwise the goods are deemed approved with regard to this defect.

(2) The warranty period shall be one year from the transfer of risk.

(3) If the delivered goods shall be defective ACG may repair the defect free of charge or effect a substitute delivery at its own discretion (remedy). If ACG fails to mend or remedy the defect to the reasonable satisfaction of the Buyer, the Buyer shall be entitled to proportionate

reduction of payment or rescission of the contract. Additional claims of the Buyer are excluded, notwithstanding any rights pursuant to art. 7 (liability). Any claims of the Buyer pursuant to section 478, 479 of the German Civil Code (recourse within the supply chain) remain unaffected.

8. Liability

(1) ACG shall only be liable for damages, if

- (a.) liability is mandatory under the applicable law, e.g. under the Product Liability Act or in case of injury to life, body or health,
- (b.) ACG has granted a guarantee,
- (c.) ACG through its fault commits a material breach of this contract, or if
- (d.) the damage is attributable to gross negligence or wilful conduct on the part of ACG.

(2) In all other cases ACG has no liability for damages whatsoever, irrespective of the legal basis. In particular, ACG does not assume any liability of indirect and/or consequential damage, loss of profit or damage to other assets of the Buyer.

(3) In any event liability shall be limited to such damages which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which the party then knew or ought to have known, as a possible consequence of the breach of contract. This limitation of liability is not applicable in cases of subsection (1), lit. a) and b) of this section 8 (liability) as well as in cases of faulty damage.

(4) The exclusion and/or limitation of claims for damages according to the above sections applies also to claims against employees and contractors of ACG.

9. Force Majeure

Notwithstanding any rights pursuant to art. 8 (liability) ACG is not responsible or liable for any impediments to or default of the performance of any part of this contract insofar as the same is caused by the occurrence of events beyond ACG's control, including strikes or any other industrial disputes. Should such conditions prevail for 30 days or more, ACG and the Buyer shall have the right to rescind the contract at any time by giving notice to the other party without any liability for loss or damage caused thereby.

10. Retention of Title

(1) ACG retains title to the delivered goods (hereinafter "the retained goods") until full settlement of all claims – present and future – under the business relationship with the Buyer.

(2) The retained goods are always processed or transformed by the Buyer on behalf of ACG as producer, but without binding ACG. In case ACG loses title to the delivered goods due to processing, ACG shall have partial title to the new product proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of processing. Where the title entirely passes to the Buyer due to fixed attachment or mixture, the Buyer is obliged to transfer to ACG a partial title proportionate to the value of the delivered goods in relation to the value of the other components of the new product at the time of the fixed attachment or mixture. ACG's partial title acquired under the provisions of this clause shall pass to the Buyer under the same conditions as ACG's full title to the delivered goods.

(3) The Buyer shall be entitled to resell retained goods in the ordinary course of his business. The Buyer assigns to ACG all present and future accounts receivable (including VAT) resulting from the sale of these goods in the amount corresponding to the invoice value of the respective retained goods. ACG accepts such assignment. The Buyer remains entitled to collect said accounts receivable from the respective parties which does, however, not affect ACG's right to collect the account receivable itself. ACG is obliged not to collect the assigned accounts receivable, while the Buyer fulfils his obligation to forward collected payments to ACG, is not in default of payment and no filing for the commencement of insolvency proceedings has been made and the Buyer has not suspended payment.

(4) The Buyer is not entitled to use the retained goods for any other purposes. Especially he is not entitled to transfer ownership by way of security or pledging.

(5) The Buyer shall notify ACG in writing without undue delay of any attempts of impairment or attachment of the retained goods by third parties. The cost required to protect the right of ACG shall be borne by the Buyer to the extent that such costs will not actually be reimbursed by the Third party.

(6) If the Buyer commits a material breach of contract, in particular if he is in default of payment, ACG shall be entitled to take the retained goods back at the Buyers expense or to demand assignment of the rights of possession which the Buyer has towards third parties, and to revoke the Buyer's right to sell the goods, collect accounts receivable and to use, process ship or sell the retained goods. Where ACG takes the retained goods back or sells these goods, such act shall not be deemed as a rescission of contract. ACG may offset the proceeds of the sale against the outstanding amounts. The Buyer shall be liable for any loss to the extent that the proceeds of the sale are lower than the purchase price outstanding.

(7) To the extent that the value of the securities provided exceeds the claims of ACG by more than 50 %, ACG is obliged upon the Buyer's request to release securities at its discretion.

11. Data Processing

(1) ACG is entitled to collect, store, change and transmit all data which is necessary for the contractual performance and will use this data only within the scope of legal provisions and, if necessary, for any further information to the Buyer with respect to ACG's products.

(2) The Buyer may always demand information about, as well as correction, blocking and deletion of his stored data.

12. Governing Law, Disputes

(1) The contract is governed by the laws of the Federal Republic of Germany. The CISG (United Nations Convention on Contracts for the International Sale of Goods) is not applicable. The trade terms under this contract are governed by and interpreted under the provisions of the International Rules for the Interpretation of Trade Terms (Incoterms) and its Supplements prevailing at the date of the shipment of the Goods hereunder.

(2) Hamburg shall be the place of exclusive jurisdiction in respect of all legal disputes arising from or in connection with a contractual relationship. Notwithstanding such agreed jurisdiction, ACG shall always be entitled to bring legal action at the Buyer's seat of business.