



## General terms and conditions of AMPHOS GmbH

### 1. General provisions

1.1 Our deliveries, services and offers are carried out exclusively in accordance with these delivery and payment terms. They shall also apply to all future commercial relations, even if the General Terms and Conditions (T&C) are not expressly agreed upon again. If the Buyer has general terms and conditions that deviate from our delivery and payment terms, such terms and conditions shall not be valid unless AMPHOS has expressly agreed to their validity in writing. Our T&C shall apply even if AMPHOS, with knowledge of the Buyer's conflicting or deviating terms and conditions, makes deliveries to the Buyer without reservation.

1.2 All agreements and arrangements made between us and the Customer for the purpose of executing this Contract are set out in writing in this Contract. Additional verbal agreements shall not be valid.

1.3 Future deviations from the Contract, commitments and additional agreements shall also require a written agreement.

1.4 AMPHOS may allow its affiliates to enter into the Contract with the Buyer in its place. In this case, these T&C shall continue to apply in full. In such a case, the Customer shall have the right, which must be exercised within one month, to terminate the Contract.

### 2 Offers, conclusion of the Contract, right of termination

2.1 Our offers shall be non-binding, unless the offer expressly states that it is binding and/or until an order placed on the terms and conditions of the offer has been confirmed by us.

2.2 All information contained in our brochures on designs, dimensions and weights shall be non-binding, unless otherwise agreed.

2.3 Contracts are concluded by way of our order confirmation.

2.4 The Customer's right of termination in accordance with Section 649 (1) BGB (*Bürgerliches Gesetzbuch* [German Civil Code]) shall not apply.

### 3 Prices, payment terms

3.1 We shall be bound by the prices contained in our offers for four weeks from the date of the offer, unless otherwise agreed. Solely the prices stated in our order confirmation, exclusive of

the applicable VAT, shall be binding.

3.2 Unless otherwise stated on the order confirmation, our invoices shall be payable 30 days from the invoice date (= date of goods dispatch) without deductions.

3.3 The deduction of a discount shall require special written agreement. Payment shall be deemed to have been made on the day we can access the sums.

3.4 Payments shall always be allocated to the oldest payable debt.

(3.5) The Buyer shall only be entitled to set-off, retention or reduction, even if notifications of defects or counterclaims are asserted, if these are found to be legally binding, recognised by us or indisputable. In this case, payments may be withheld in reasonable proportion to the defects that have occurred.

3.6 In the case of a call-off order, all discounts shall lapse if the Buyer does not purchase the contractually agreed minimum quantity in the relevant period. Unless otherwise agreed, call-off orders must be drawn down within one year.

3.7 We reserve the right to accept discountable cheques or bills of exchange. Discount and collection fees charged by banks must be paid by the Buyer.

3.8 We reserve the right to demand full or partial advance payment on a case by case basis, particularly in the event of custom-made orders.

### 4 Payment default, assignment of claims, creditworthiness

4.1 In the event that payment is not made by a fixed payment date or within the 30 day payment period, we shall have the right to charge default interest at a rate of 5% over the respective base rate set by the German Federal Bank, but at least 8% p.a. The right to claim further damages is expressly reserved.

4.2 We shall have the right to assign claims arising from our commercial relations. The Customer shall only have the right to assign claims against us of any kind with written consent.

4.3 In the event of well-founded doubt in the Buyer's creditworthiness - e.g. inability to redeem cheques and bills of exchange, suspension of payments, application for insolvency or bankruptcy proceedings, futile distraint - and a risk to our claim for payment on this basis, we shall have the right to declare the whole

remaining debt immediately payable, even if we have accepted cheques. In this case, we shall also have the right to require advance payment or provision of a security. If the Customer provides false information about their creditworthiness, we shall have a right to choose between withdrawing from the Contract and declaring debts immediately payable.

### 5 Reservation of title

5.1 The delivery shall remain our property until all of our claims against the Buyer on any legal grounds, now or in the future, have been satisfied. The Buyer shall be required to handle the objects of sale with care. In particular, the Buyer shall be obliged to insure the objects of sale to their replacement value against fire, water and theft, at the Buyer's own cost. If maintenance and inspection work is necessary, the Buyer shall carry out such work at its own cost in good time.

5.2 Processing or modification shall always be deemed to be performed on our behalf as the manufacturer, but without any obligation on our part in accordance with Section 950 BGB. The processed goods shall be deemed retained goods within the meaning of these provisions. We shall have joint ownership of the new goods in the ratio of the value of the retained goods (invoice value) to the new goods. In this case, the Buyer shall store the retained goods for us free of charge.

5.3 If the retained goods are processed or inseparably joined with other objects not belonging to AMPHOS GmbH, the Buyer shall acquire joint ownership of the new goods in the ratio of the invoice value of the retained goods to the invoice value of the rest of the other processed goods at the time of processing or joining. The joint ownership rights acquired in this way shall be deemed retained goods within the meaning of these provisions.

5.4 The Buyer may only resell the retained goods within the proper course of business. Other forms of disposal of the goods are excluded, particularly transfer as security and pledge. The Buyer shall hereby assign all debt claims to us that they have incurred against their customers or third parties as a result of the resale. The Buyer shall also remain entitled to collect these debts after their assignment. Our authority to collect the debt ourselves at the Buyer's cost shall remain unaffected. In particular, we may

require that the Buyer discloses information about the debt, its status and the debtor and also all information required for collection, and also that the Buyer immediately provides us with the relevant documents and immediately informs the debtor of the assignment. However, we shall be obliged to refrain from collecting the payment ourselves for as long as the Customer fulfils their payment obligations from the revenues collected, is not in default of payment, and, in particular, if composition or insolvency proceedings have not been applied for or payments have not ceased.

5.5 Should the Buyer act in breach of the Contract, particularly in the case of default of payment, we shall have the right to repossess the goods. The repossession or seizure of the goods shall not constitute a declaration of withdrawal; this shall only apply in the event of a written declaration.

5.6 In the event of seizure or other third party measures, the Buyer shall make reference to our ownership of the goods and inform us immediately in writing. Any costs and damages shall be borne by the Buyer.

5.7 We shall be obliged to release the securities that we hold at the Buyer's request if and when the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of security released shall be at our discretion.

## **6 Delivery time**

6.1 Agreed delivery times shall only begin upon full clarification of all production details and order confirmation by AMPHOS GmbH.

6.2. Delivery times shall always be exclusive of transportation time.

6.3 We shall have the right to make part-deliveries and early deliveries, unless this is unreasonable for the Customer.

6.4 Delays in deliveries and services due to force majeure; circumstances and events that significantly impede or hinder the delivery, even if they arise with our suppliers or their sub-suppliers; and cases of unforeseeable hindrances to performance that cannot be overcome with reasonable effort shall release us from our obligation to deliver and shall not be deemed our responsibility, even in the event of binding delivery dates and periods. In these cases, we shall have the right, at our discretion, to postpone our deliveries and services for the corresponding length of the delay plus a reasonable start-up period, or withdraw from the Contract in part or in full on the grounds of the non-fulfilled part of the Contract. A hindrance that we are responsible for shall not release us from

our services, however, and shall not grant us a right of withdrawal.

6.5 Force majeure is an exceptional, unforeseeable and unavoidable event (e.g. natural disasters, war, revolution, abduction, fire), the consequences of which cannot be averted by reasonable commercial precautions. This also includes strikes, lockouts and government intervention, provided that these are not foreseeable or caused/contributed to by actions or failures to act attributed to the Supplier.

6.6 If our delivery is delayed by more than three months, the Buyer shall have the right to withdraw from the non-fulfilled part of the Contract after setting a reasonable grace period. The Buyer may not derive any further claims for damages from a delayed delivery if we informed them of it immediately.

6.7 We shall also have liability in accordance with the legal provisions if the delayed delivery is due to a breach of contract on our part, either on the grounds of intent or gross negligence; fault on the part of our representatives or agents shall be attributed to us. If the delay is due to a breach of contract on our part on the grounds of gross negligence, our liability to pay damages shall be limited to the amount of the foreseeable, typically incurred damages.

6.8 We shall also have liability in accordance with the legal provisions if the delayed delivery on our part is due to the culpable breach of a fundamental contractual obligation; in this case, however, our liability to pay damages shall be limited to the foreseeable, typically incurred damages.

6.9 The proper and timely fulfilment of the Buyer's obligations shall be a prerequisite for compliance with our delivery and service terms. We reserve the right to assert the defence of breach of contract. If the Buyer is in default of acceptance, they shall be obliged to reimburse us for the damages and expenses incurred by us. Further claims or rights shall remain reserved. The risk of the accidental loss, destruction or degradation of the purchased goods shall be transferred to the Customer from when they enter into default of acceptance.

## **7 Transfer of risk, shipment, insurance**

7.1 Risk shall be transferred to the Buyer as soon as the shipment is passed to the person transporting it or as soon as the shipment leaves our warehouse for the purpose of shipping, even when carriage paid delivery has been agreed. This shall also apply in the event of delivery with set-up/installation/commissioning. Risk shall also be transferred to the Buyer if the Buyer does not accept the ordered

and already selected goods from us, despite our readiness and ability to deliver. If dispatch is delayed at the Customer's request despite the fact that we are ready to deliver and the order is due, risk related to the objects of purchase shall be transferred to the Customer. We shall also have the right to charge a fixed monthly amount of 5% of the invoice amount for storage costs as damages caused by the delay, unless the Customer can prove lesser damages.

7.2 Shipment shall be at the Buyer's cost. If the Buyer has not made any shipment specifications, the means and route of transportation shall be at our discretion.

7.3 If the Customer desires, we shall obtain transport insurance for the delivery; the Customer shall bear the costs incurred in this regard.

## **8 Warranty**

8.1 We shall provide a warranty for the guaranteed properties and freedom from defects in line with the state of the art. The warranty period shall begin upon transfer of risk, and shall be 12 months for mechanical parts and 12 months for electronic parts. Any repair work shall not activate a new warranty period. We reserve the right to make changes to the construction or design that affect neither the functionality nor the value of the objects of purchase, and this shall not entitle the Customer to make a complaint. The guarantee of properties shall require our written declaration or confirmation under all circumstances.

8.2 If the delivered goods are lacking a guaranteed property or if there is a defect in the objects of purchase that we are responsible for and which has a major impact on the value or usability of the goods, we shall have a right to either repair the goods or provide replacements at our discretion. In both cases we shall be obliged to bear all expenses incurred for the purpose of remedying the defect, particularly transportation, shipment, labour and material costs, unless these are increased as the result of the object of purchase being transported to a location other than the delivery address stated in the order confirmation. If the Buyer requests that work done under the warranty be performed at another location (besides the place of fulfilment and the Buyer's delivery address) and we fulfil this request, the Buyer shall bear the travel costs at our standard rates, whilst the parts covered by the warranty shall not be charged for. Replaced parts must be sent back to us free of charge.

8.3 Warranty obligations shall only become effective for our company if the Customer gives specific written notification of visible defects in accordance with Section 377 HGB

(*Handelsgesetzbuch* [German Commercial Code]) within 14 days of receipt of the goods. Specific written notification of defects that arise subsequently must be given immediately upon discovery.

8.4 The warranty shall lapse if our operating or maintenance instructions are not followed, changes are made to the delivery or service, parts are exchanged, or consumable items that do not meet the original specifications are used.

8.5 There shall only be a warranty for self-contained equipment systems if these systems were supplied by us at the same time and were supplied complete (all parts).

8.6 The commissioning of machine part(s) is prohibited until, after installation in a main machine or attachment of the necessary safety devices, all of the requirements of the EC machinery directive (EC 89/392) concerning health and safety have been fulfilled.

8.7 The Buyer shall not have any warranty claims if, without our written consent, they themselves or a third party makes changes that exceed the necessary adjustment of the objects of purchase to their operating procedures, and the defect is due to these changes.

8.8 A warranty for optical elements and normal wear and tear is generally excluded.

8.9 We assume no guarantee for EMC faults that result from the specific machine environment and cause undesired effects. EMC faults should be repaired under our instruction or direction. The Customer shall bear the costs of this.

8.10 Only the direct buyer shall have warranty claims against us, and these claims shall not be transferable.

8.11 If we do not fulfil our warranty obligations within a reasonable period of time for reasons that we are responsible for, the Buyer shall have the right to withdraw from the Contract or demand a reduction of the purchase price.

8.12 We shall also have liability in accordance with the legal provisions if the Customer claims damages on the grounds of intent or gross negligence, including intent or gross negligence on the part of our representatives or agents. Unless we are accused of an intentional breach of contract, our liability to pay damages shall be limited to the foreseeable, typically incurred damages.

8.13 We shall have liability in accordance with the legal provisions if we culpably breach a fundamental contractual obligation; our liability shall also be limited to the foreseeable, typically incurred damages in this case.

This shall not affect liability for culpable

injury to life, limb or health; this shall also apply for mandatory liability in accordance with the *Produkthaftungsgesetz* [German product liability act].

(7) Unless otherwise stipulated above, liability shall be excluded.

## 9 Software warranty

9.1 We guarantee that the software works in accordance with our programme specifications, provided that the software is installed on the equipment systems specified by us in accordance with our instructions.

9.2 The warranty for software is limited to 6 months.

9.3 The warranty shall not apply for such software that can be reproduced at any time.

9.4 We shall be obliged to rectify all defects that are significant for use in accordance with the Contract. However, we reserve the right to rectify the defect at our discretion based on the significance of the defect, either by installing an improved software version or giving instructions on rectifying or bypassing the defect.

9.5 If we have provided the Buyer with software and adaptation components (e.g. interfaces) as additional products, we shall assume no guarantee or liability for these.

9.6 We shall assume no guarantee for the software working faultlessly in all combinations selected by the Buyer but not specified by us.

9.7 In the event of the loss of the Customer's data due to our software being defective, our liability if a back-up copy is available shall be limited to the restoration costs, provided that we can only be accused of *leicht fahrlässige* [slightly negligent] conduct.

## Intellectual property rights

10.1 The Buyer shall receive a non-exclusive, non-transferable right of use for each individual delivery and for internal purposes to programmes and the documentation associated with the intended use of our delivery, as well as updates/upgrades. The Customer shall have no other rights to the programmes and documentation.

10.2 Our company remains the sole holder of copyright. The Buyer shall not acquire any ownership of the programmes and shall not have the right to reverse engineer, decompile or disassemble the software.

10.3 The Buyer shall not be permitted to copy or otherwise reproduce our programmes, documentation and

subsequently delivered updates, if applicable, without our prior written consent, nor may they make the same accessible to third parties.

10.4 Source codes are not normally provided; they shall only be provided on the grounds of a separate written agreement.

10.5. We also reserve the ownership rights and copyright over illustrations, drawings, calculations and other documents. This shall also apply to those written documents that are deemed "confidential". The Customer shall require our explicit written consent before transmitting such to third parties.

## 11 Joint liability

All liability shall be limited in amount to the amount of the purchase price. This shall not apply if there is mandatory liability for principal contractual services in the event of intent or gross negligence on the part of the Supplier. Claims by the Customer for consequential damages shall be excluded without restriction. This includes: damages from the loss of profit, operational disruptions, loss of business information or data, or from other financial loss; from positive *Forderungsverletzung* [positive breach of contract], the breach of obligations during contract negotiation, and unlawful acts; and also consequential damages due to the use of our products or in the inability to use these.

The legal provisions regarding default of acceptance shall remain unaffected. This limitation of liability shall apply for the Buyer accordingly.

## 12 Third-party intellectual property rights

12.1 If the contractual use of the software by the Customer of the software supplied by us infringes third-party property rights, we shall have the option - if we acquire the license - of altering or exchanging the software. If we do not grant third-party rights, regardless of the reasons, the Buyer shall have a right of reduction or withdrawal.

12.2 The Buyer shall be obliged to notify us immediately if they are advised of breaches of this nature.

12.3 If the goods supplied were constructed in line with the Buyer's designs or instructions, the Buyer must release us from all claims made by third parties on the grounds of breaches of intellectual property rights. A reasonable advance must be paid on any procedural costs.

## 13 Export

13.1 Products and technical expertise

provided by use are intended to remain and be used in the country of delivery agreed upon with the Buyer. The goods delivered shall be subject, either individually or in system-integrated form, to German export controls and embargoes, and also those of the country of delivery. The export of the goods from the Federal Republic of Germany shall require a permit, i.e. is only permitted with the approval of the relevant *Bundesämter* [federal offices].

13.2 Regardless of whether the customer states the final destination of the contractual products, the Buyer shall be responsible for making enquiries in accordance with these provisions and for obtaining the export permits.

13.3 The Buyer shall also be obliged to pass this advice on to their customer so that, to the extent that this is within their power, compliance with the provisions up to the point of the end user can be guaranteed.. AMPHOS GmbH wishes to draw attention to the liability to punishment from a violation.

13.4 The legally binding nature of our order confirmations shall be subject to official permits.

#### **14 Data processing**

AMPHOS GmbH shall have the right to store customer data by way of automatic data processing in accordance with the *Bundesdatenschutzgesetz* [German federal data protection act].

#### **15 Place of jurisdiction, place of performance, applicable law**

15.1 If the Buyer is a *Vollkaufmann* [registered trader] or legal entity under public law, the company's domicile shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the Contract.

15.2. The place of performance for delivery and payment shall be our registered office.

15.3 German law shall apply for all business between the contracting parties, under exclusion of international sales law. Foreign law is not applicable to the Contract.

#### **16 Severability clause**

If individual provisions of this Contract are or become invalid, ineffective or contestable, the validity of the remaining provisions shall not be affected by this. The provisions concerned shall be replaced by the legal provisions of German law in such a way that the intended economic purpose is achieved as precisely as possible. This shall also apply accordingly for any loopholes

requiring amendment.

Aachen, June 2011  
AMPHOS GmbH