General Terms and Conditions

General Terms and Conditions of Sale and Delivery for Technical Products (Edition 2016/V1.6)

1 General Provisions

1.1

These general terms and conditions of sale and delivery apply to the sale and delivery of machines and technical products by ARO TECHNOLOGIES AG ("Supplier") and are binding if declared applicable in the offer or in the order confirmation, or if agreed upon in writing or otherwise by the parties. Deviating terms of the purchaser shall only be valid if expressly accepted in writing by the Supplier.

1.2

All agreements and legally relevant declarations made by the contracting parties in connection with the contract must be in writing to be valid.

2 Offers and Conclusion of Contract

2.1

The contract enters into force retroactively on the date of the written order confirmation once it has been signed by both parties, provided that the necessary official permits and agreed payment securities are in place.

2.2

Offers without an acceptance period are non-binding.

3 Scope of Deliveries and Services; Technical Documentation

3.1

Only the purchase contract, including any documents referenced therein, shall be decisive for the scope and execution of deliveries and services. Any additional deliveries and services will be invoiced separately. The Supplier may make technical improvements or further developments at any time, provided they do not result in price increases.

3.2

Unless otherwise agreed, brochures and catalogs are not binding. Specifications in plans, drawings, technical documents, and data in software are only binding if they form an integral part of the contract.

3.3

If drawings, plans, software, or other technical documents are handed over, the purchaser acknowledges the ownership and other rights of the Supplier related to these materials. Such documents must be treated as confidential and may not be disclosed to third parties without prior written consent from the Supplier. They may only be used for the purposes for which they were provided and only to the extent necessary to fulfill the contract. Upon termination of the contract, they must be returned or destroyed at the Supplier's request.

3.4

If the deliveries include software, the purchaser is granted a non-exclusive and non-transferable right to use the software for the agreed purpose. The purchaser is not entitled to make copies (except for archival purposes, error analysis, or replacing defective data carriers), nor to update, upgrade, or otherwise modify the software. Without prior written consent from the Supplier, the purchaser may not disassemble, decompile, decrypt, or reverse-engineer the software. In case of violation, the Supplier has the right to revoke the software usage rights without notice.

4 Regulations in the Country of Destination

4.1

The purchaser must inform the Supplier in writing, at the latest when placing the order, of any regulations and standards applicable in the country of destination that affect the deliveries and services, as well as their safe operation and/or health and safety requirements. Otherwise, the deliveries and services shall comply with the regulations applicable at the Supplier's place of business.

5 Prices

5.1

Unless otherwise agreed, prices are quoted net ex works in accordance with the Incoterms in force at the time of contract conclusion, without packaging, in freely available Swiss francs or the agreed currency, and without any deductions. Any incidental costs incurred in connection with contract execution, such as insurance, transport, official permits, taxes, customs duties, notarizations, or other charges, shall be borne by the purchaser.

5.2

Taxes, including value-added tax, duties, fees, social security contributions, and similar levies that the Supplier or its personnel must pay in connection with the contract or its execution—particularly for deliveries and services outside Switzerland—as well as the associated administrative costs, shall be borne by the purchaser. If such taxes or costs are incurred by the Supplier, the purchaser shall reimburse them within 30 days of receiving a copy of the relevant documents.

5.3

If the cost basis used in the calculation increases between contract conclusion and proper contract performance, the Supplier is entitled to adjust the prices stated in the order confirmation accordingly.

6 Terms of Payment

6.1

The payment term is 30 days from the invoice date. Unless otherwise agreed, one third of the price is due upon contract conclusion, one third upon notification of readiness for shipment, and the final payment upon delivery. The payment obligation is fulfilled once Swiss francs or the agreed foreign currency are made freely available to the Supplier at its domicile. If payment by letter of credit is agreed, the purchaser shall bear the costs of opening, advising, and confirming the letter of credit.

6.2

Payments must be made at the Supplier's domicile, free of deductions such as discounts, fees, bank charges, taxes, or any other charges. Payments shall be made in CHF or the agreed currency; cheques are not accepted.

6.3

The purchaser may not withhold or reduce payments due to complaints, claims, or counterclaims that have not been acknowledged in writing by the Supplier.

6.4

Payment deadlines must also be met if shipping, transport, possible assembly or commissioning, or acceptance of deliveries is delayed or rendered impossible for reasons not attributable to the Supplier, or if minor parts are missing or rework is required that does not prevent the use of the deliveries.

6.5

If the initial payment or agreed securities are not provided as per the contract, the Supplier is entitled to either adhere to the contract or withdraw from it and, in either case, claim damages, including compensation for lost profit. If the purchaser is in default of any further payment, or if a situation arises after the contract is concluded that gives the Supplier serious cause to fear that the purchaser will not fulfill payment obligations in full or on time, the Supplier is entitled — without prejudice to other claims — to suspend further performance of the contract and retain ready-to-ship deliveries until new payment and delivery terms are agreed and sufficient securities are provided. If no agreement is reached within a reasonable period or no sufficient securities are provided, the Supplier may withdraw from the contract and claim damages, including for lost profit.

6.6

In case of payment default, the Supplier is entitled — without the need for a reminder and without prejudice to further claims — to charge default interest of 6% per annum. The obligation to make contractually agreed payments remains unaffected.

7 Retention of Title

Until full payment has been received, the Supplier shall retain ownership of all deliveries. The purchaser is obliged, at their own expense, to take all necessary measures to protect the Supplier's ownership rights (e.g. maintenance, insurance) and to ensure that these rights are not impaired. In particular, the purchaser undertakes to arrange, at their own expense, for the entry of the Supplier's retention of title into a public register in their country of domicile if such entry is required to make the retention of title valid. If the purchaser fails to do so, they shall be fully liable to the Supplier.

8 Deliverey Period

8.1

The delivery period begins upon conclusion of the contract and receipt of any payments due at that time, the completion of official formalities, and the resolution of essential technical matters.

8.2

The delivery period shall be deemed met if the Supplier has sent the notification of readiness for shipment to the purchaser by the expiry date.

8.3

Meeting the delivery period is contingent on the purchaser fulfilling all contractual and non-contractual obligations towards the Supplier.

8.4

If the delivery is delayed due to an event that the Supplier, despite due care, could not prevent or for which it is not responsible—or due to the purchaser's actions or omissions, or their failure to meet contractual obligations in a timely manner—or in the event of force majeure such as natural disasters, epidemics, war, mobilization, civil unrest, embargo, labor disputes, accidents, delayed or faulty delivery of raw materials, semi-finished or finished products, rejection of critical components, official actions or omissions, or other unforeseeable circumstances—the delivery period shall be extended accordingly.

8.5

The purchaser must accept the delivery from the final carrier during the delivery period. If the purchaser delays acceptance, the Supplier may grant a reasonable grace period and, if this period expires without result, either withdraw from the contract and claim damages (positive or negative contractual interest) or demand acceptance.

8.6

If a specific delivery date is agreed instead of a delivery period, that date shall be deemed the final day of the delivery period; Articles 8.1 to 8.5 and Article 9 apply accordingly.

9 Delay in Delivery

9.1

For delayed deliveries, beginning with the fourth week of delay, the purchaser may claim a penalty of up to 0.5% of the contract price for the delayed portion per full week of delay, not to exceed 5% in total, provided the delay is demonstrably the fault of the Supplier and no substitute delivery can be arranged.

9.2

If the maximum delay penalty is reached, the purchaser must grant the Supplier a reasonable grace period in writing. If this grace period expires unused due to reasons attributable to the Supplier, the purchaser may reject the delayed delivery. If partial acceptance is economically unreasonable for the purchaser, they may withdraw from the contract and request a refund for payments made for the affected parts upon return of those goods. The Supplier has no further obligations beyond this refund.

9.3

The purchaser's rights and claims in connection with delivery delays are explicitly and conclusively set out in Articles 8 and 9. Further or other rights or claims are excluded. This limitation of liability does not apply in cases of gross negligence or unlawful intent by the Supplier.

10 Packaging, Transport, and Insurance

10.1

Packaging is carried out by the Supplier at the purchaser's expense and will not be taken back unless otherwise agreed. However, if the packaging is designated as the property of the Supplier, it must be returned prepaid to the point of dispatch by the purchaser.

10.2

Transport is at the purchaser's expense and risk. Any complaints must be addressed by the purchaser to the last carrier as soon as the deliveries or freight documents are received.

10.3

Die Insurance of the deliveries and services against any kind of damage is the responsibility of the purchaser and must be arranged at their expense, even if the Supplier may, upon express agreement, arrange such insurance.

10.4

For tax reasons, the country of destination of the delivery must correspond to the country of the invoice recipient.

11 Transfer of Benefit and Risk

11.1

Benefit and risk shall pass to the purchaser at the latest upon departure of the deliveries from the Supplier's works, in accordance with the Incoterms in effect at the time of contract conclusion.

11.2

If shipment is delayed for reasons not attributable to the Supplier, risk shall transfer at the originally scheduled time of dispatch. From that point, deliveries will be stored and insured at the purchaser's cost and risk.

12 Inspection and Acceptance of Delivery

12.1

Where customary, the Supplier inspects the deliveries and services before dispatch. If the purchaser requires additional inspections, such as an acceptance test, this must be agreed upon in writing and shall be reimbursed by the purchaser.

12.2

The purchaser must inspect the deliveries and services immediately upon receipt and report any defects in writing within 8 working days. If they fail to do so, the deliveries and services shall be deemed accepted.

12.3

If the reported defects are attributable to the Supplier, the Supplier shall remedy them as quickly as possible, and the purchaser shall provide sufficient opportunity for this. After the defect has been corrected, an acceptance test shall be performed upon request of either party, provided one was agreed upon according to Article 12.1.

12.4

If an acceptance test has been agreed according to Article 12.1, the following applies in the absence of other arrangements: the Supplier shall notify the purchaser in good time of the acceptance test so that they or their representative can attend. An acceptance report shall be prepared and signed by both parties or their representatives. The report shall indicate whether acceptance has occurred, occurred with reservations, or was refused. In the latter two cases, identified defects shall be itemized in the report. The purchaser may not refuse acceptance or signing of the report due to minor defects, particularly those that do not significantly impair the usability of the deliveries. The Supplier shall promptly remedy such defects. In the case of significant defects, the purchaser must give the Supplier the opportunity to rectify them within a reasonable period. Another acceptance test shall then be carried out. If major defects persist, the purchaser is entitled to compensation as agreed or, if no such agreement exists, to a reasonable price reduction. If defects are so serious that they cannot be remedied within a reasonable period and render the deliveries unsuitable or significantly reduce their usability for the intended purpose, the purchaser may reject the defective part. If partial acceptance is economically unreasonable, the purchaser may withdraw from the contract and claim a refund for the affected parts upon their return. The Supplier has no further obligations beyond this refund.

12.5

Acceptance shall also be deemed to have occurred if the purchaser or their representative does not attend the acceptance test; if the acceptance test cannot be carried out on schedule for reasons not attributable to the Supplier; if the purchaser refuses to sign the acceptance report; if the purchaser puts the deliveries into operation or tacitly accepts them in another manner; or if the purchaser refuses acceptance without justification.

12.6

Der The purchaser shall have no rights or claims in connection with defects other than those explicitly stated in this Article 12 and the following Article 13. Further or other rights or claims are excluded. This limitation of liability does not apply in cases of gross negligence or unlawful intent by the Supplier.

13 Liability for Defects; Warranty Period

13.1

The standard warranty period is 12 months and begins upon departure of the deliveries from the Supplier's works. In the event of a delay in shipment for reasons not attributable to the Supplier, the warranty period shall expire no later than 18 months after the Supplier notifies readiness for shipment. For parts replaced or repaired during the warranty period, the warranty period restarts and lasts for 6 months from the correction of the defect or acceptance, but not longer than double the original warranty period.

13.2

If the purchaser or third parties carry out improper repairs or modifications to the deliveries, or if non-specified auxiliary or operating materials are used without the Supplier's prior approval, the warranty period shall expire prematurely. The same applies if the purchaser fails to take all necessary measures to minimize damage upon occurrence of a defect or does not give the Supplier the opportunity to remedy the defect without delay.

13.3

If a written defect notice is submitted within 8 working days of discovering the defect, and the purchaser simultaneously or subsequently submits a written request for correction, the Supplier shall — at its discretion and as quickly as possible — repair or replace parts of the deliveries that prove to be defective or unusable during the warranty period due to poor material, faulty design, or poor workmanship. The purchaser must provide sufficient opportunity for this. Replaced parts may be returned to the Supplier and will become its property. The Supplier shall bear the cost of repair at its own plant. If repairs are requested outside the plant, the resulting costs — such as transport, travel and accommodation expenses, as well as any foreign taxes, duties, and fees — shall be borne by the purchaser.

13.4

Guaranteed characteristics are only those explicitly designated as such in the contract, specification, or requirement documents. Such guarantees apply only until the expiry of the warranty period. Proof of guaranteed characteristics is to be provided during the acceptance test, if one has been agreed upon. If a guaranteed characteristic is not met or only partially fulfilled, the purchaser is initially entitled solely to rectification by the Supplier and must grant the Supplier the opportunity to do so. If rectification fails or is only partially successful, the purchaser is entitled to the agreed compensation, or if none was agreed, to a reasonable price reduction. In the case of serious defects that cannot be rectified within a reasonable time and significantly impair or prevent the agreed use of the deliveries or services, the purchaser may reject the defective part. If partial acceptance is economically unreasonable, the purchaser may withdraw from the contract and claim reimbursement for affected parts upon their return. The Supplier shall have no further obligations beyond this refund.

13.5

The Supplier provides no warranty or liability for defects or damage due to natural wear and tear, improper maintenance, disregard of operating instructions, excessive use, unsuitable equipment, chemical or environmental influences, work not performed by the Supplier, or any other causes not attributable to the Supplier.

13.6

No warranty is provided for damage caused by improper use, incorrect commissioning, modifications or repairs, improper handling, normal wear, or non-compliance with applicable standards.

13.7

For deliveries and services from subcontractors mandated by the purchaser, the Supplier assumes warranty responsibility only within the scope of the subcontractor's obligations.

13.8

In cases of faulty advice or breaches of ancillary obligations, the Supplier is liable to the purchaser only in the case of gross negligence or unlawful intent.

13.9

The purchaser shall have no rights or claims due to warranty, defect liability, or absence of guaranteed characteristics other than those explicitly stated in this Article 13 and the following Article 14. All other rights or claims are excluded. This limitation of liability does not apply in cases of gross negligence or unlawful intent by the Supplier.

14 General Limitation of Liability and Exclusion of Further Liability of the Supplier

14.1

In all cases of non-performance or improper performance not explicitly covered by these terms and attributable to the Supplier, the purchaser must grant the Supplier a reasonable grace period to fulfill the contract. If this period expires unused due to the Supplier's fault, the purchaser may withdraw from the contract with respect to the affected deliveries and services. If partial acceptance is economically unreasonable, the purchaser may withdraw from the entire contract and claim a refund for payments made against return of any partial deliveries. Apart from that, the Supplier shall have no further obligations.

14.2

Unless otherwise agreed, all cases of contractual breaches and their legal consequences, as well as all claims and rights of the purchaser, regardless of their legal basis, are conclusively governed by these General Terms and Conditions. All other or additional claims are excluded. In particular, all compensation claims not explicitly mentioned, as well as any price reductions or terminations/rescissions of the contract, are excluded. Under no circumstances shall the purchaser be entitled to compensation for consequential damages such as production losses, limited usability, lost third-party orders, third-party claims (e.g. penalties), lost profits, or any other indirect or incidental damages, including damages that do not affect the deliveries themselves—regardless of the legal basis of such claims. The Supplier's liability arising from or in connection with the contract or its improper fulfillment is, in total, limited to the price paid by the purchaser for the delivered goods. This exclusion of liability shall not apply where mandatory legal provisions require otherwise.

15 Right of Recourse of the Supplier

15.1

If actions or omissions by the purchaser or their auxiliary persons result in personal injury or damage to third-party property and the Supplier is held liable, the Supplier shall have a right of recourse against the purchaser.

16 Contract Termination by the Supplier

16.1

If unforeseen events occur that substantially alter the economic significance or content of the deliveries, or significantly affect the Supplier's performance obligations — or if the execution of the deliveries becomes impossible in whole or in part—the contract shall be appropriately adjusted. If this is not economically reasonable, the Supplier shall have the right to terminate the contract or the affected parts thereof.

16.2

If the Supplier intends to terminate the contract, they must notify the purchaser without delay upon recognizing the scope of the event—even if an extension of the delivery period was initially agreed. In the event of termination, the Supplier is entitled to compensation for the deliveries already performed. The purchaser shall have no further claims for damages.

17 Export Control

17.1

The purchaser acknowledges that the deliveries may be subject to Swiss and/or foreign export control laws and regulations, and that such deliveries may not be sold, leased, transferred, or used for purposes other than those agreed upon without an export or re-export permit from the competent authorities. The purchaser undertakes to comply with all such applicable laws and regulations, and acknowledges that they may change and apply in their current form to the contract. The deliveries may not, either directly or indirectly, be used in connection with the design, manufacture, use, or storage of chemical, biological, or nuclear weapons or delivery systems.

18 Data Protection

18.1

The Supplier is entitled to process personal data of the purchaser in the context of contract fulfillment. The purchaser expressly agrees that the Supplier may also disclose such data to third parties in Switzerland and abroad for the purpose of contract execution and relationship management.

19 Final Provisions

19.1

Amendments to the contract, including this Article 19.1, must be made in writing to be valid.

19.2

If any provision of these terms proves to be wholly or partially invalid, the validity of the remaining provisions shall not be affected. The parties undertake to replace the invalid provision with a new one that comes as close as possible in legal and economic effect to the original.

20 Place of Jurisdiction and Applicable Law

20.1

The exclusive place of jurisdiction is the Supplier's place of business, unless mandatory law provides otherwise. However, the Supplier is also entitled to bring action against the purchaser at their place of business.

20.2

The contractual relationship is subject to substantive Swiss law, excluding conflict of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods of 1 April 1980 (CISG, the "Vienna Convention") is excluded.