



GENERAL TERMS OF BUSINESS of Astaro AG

I. General – Area of Validity

- (1) Our General Terms of Business shall apply exclusively. Conflicting conditions or conditions which deviate from our General Terms of Business will not be recognized by us unless we have agreed to such exclusively in writing. Our General Terms of Business shall also apply even if we carry out delivery to the customer in the knowledge of the customer's conflicting conditions of business or of customer's conditions which deviate from our General Terms of Business.
- (2) All agreements concluded between us and the customer for the purpose of execution of this contract are contained in writing in this contract.
- (3) Our General Terms of Business shall apply only to companies as defined in § 310, Paragraph 1 of the German Civil Code.

II. Offer

The customer's order shall be deemed as a binding offer. At our option, we can accept the offer by delivering an order confirmation within two weeks or by forwarding the ordered goods to the customer within that same period.

III. Price and Conditions of Payment

- (1) Insofar as no deviating agreement is made in a separate contract, our prices are in Euros or US dollars and apply "ex works", excluding costs for packaging and shipment, which will be invoiced separately.
- (2) Statutory value added tax is not included in our prices; such tax will be shown separately at the statutory rate prevailing on the day of invoice issue.
- (3) Deduction of any cash discount shall require special written agreement.
- (4) Insofar as is not otherwise agreed in a separate contract, payment must be made net (free of all deductions) plus statutory value added tax within 14 days of invoice date. Consequences of payment default shall be governed by statutory regulations.

- (5) The customer shall only be entitled to set off cross claims if such cross claims have legal force, are undisputed or have been acknowledged by us. Furthermore, the customer shall only be entitled to withhold payments if his cross claim is based on the same contractual relationship.

IV. Delivery

- (1) The beginning of the delivery period specified by us assumes that all technical questions have been clarified.
- (2) The observation of our delivery obligation is also subject to the punctual and orderly satisfaction of the obligations entered into by the customer. We reserve the right to plea non-fulfilment of the contract.
- (3) Unless otherwise expressly agreed, all deliveries shall be made by the courier service specified by us. According to the forwarding conditions of the courier service, goods are currently insured up to a value of € 250.00. For goods shipments whose insurance value is to exceed € 250.00 on the request of the customer, a prior written confirmation is necessary. Any consequent additional transportation costs incurred must be paid solely by the customer.
Specific delivery dates shall only apply if they have been confirmed or agreed in writing by us.
- (4) Should the customer be in default in accepting the ordered goods or culpably infringe any other duty to cooperate, then we shall be entitled to demand payment of any associated damages, including additional costs which may have been incurred, as compensation. We reserve the right to assert claims which go beyond that.
- (5) Insofar as the conditions specified in Item (4) arise, the risk of accidental loss or deterioration of the purchased goods shall be transferred to the customer at such time as the customer becomes in acceptance or payment default. In other cases, the risk of loss or of deterioration of the goods to be delivered shall be transferred to the customer at such time as the goods to be delivered leave our premises.
- (6) We shall be liable in accordance with statutory provisions insofar as the contract upon which the transaction is based is a fixed-date transaction as defined in § 286, Paragraph 2, No. 4 of the German Civil Code or in § 376 of the Commercial Code. We shall also be liable in accordance with statutory provisions if, as a consequence of any delay in delivery for which we are responsible, the customer is entitled to assert the right that his interest in the continued fulfilment of the contract has ended.
- (7) Furthermore, we shall be liable in accordance with statutory provisions if any delay in delivery is the result of a wilful or grossly negligent infringement of the contract for which we are responsible; culpability of our representatives or agents shall be attributed to us. Insofar as the delay in delivery is not based upon a wilful contractual infringement for

which we are responsible, our liability to pay compensation shall be limited to foreseeable damages which typically occur.

- (8) We are also liable in accordance with statutory provisions insofar as the delay in delivery for which we are responsible is based upon a culpable infringement of an important contractual obligation; however, in such a case, our liability to compensate for damages shall also be limited to foreseeable damages which typically occur.
- (9) Apart from the above, in the case of delay in delivery, we shall be liable in the form of a lump sum compensation for delay in the sum of 3 % of the value of the delivery for each full week of delay, but subject to maximum compensation of 15 % of the value of the delivery.
- (10) Further statutory claims and rights on the part of the customer shall be reserved.

V. Liability for Defects

- (1) Any claims for defects by the customer are conditional upon the customer fulfilling his obligations in terms of examination and complaint in accordance with § 377 of the Commercial Code.
- (2) As it is not possible with the current state of technology, or at least not possible through reasonable means, to produce computer hardware and computer software which works perfectly in all applications and in all combinations, a fault in the delivered goods shall only be deemed to exist if such hardware or software can generally not be used in the way intended in the programme description and user instructions. Furthermore, we make no guarantee that the hardware or software is suitable for the requirements or purposes of the customer, or that it will achieve the business success strived for by the customer or that it will work in conjunction with other programmes selected by the customer.
- (3) Insofar as a defect in the delivered goods is established, we shall be entitled at our option either to remedy the defect by carrying out a repair or by supplying a new product which is free of defects. In the case of remedying a defect, we undertake to bear all costs necessary to remedy the defect, including in particular any transportation costs, travelling costs, labour costs and material costs which may be incurred, as long as such costs are not increased by the fact that the purchased goods have been removed to a location other than the original place of fulfilment.
- (4) Should the remedy fail, then the customer shall be entitled, at his own discretion, to withdraw from the contract or demand a reduction in price.
- (5) We shall be liable in accordance with statutory provisions insofar as the customer asserts claims for compensation for damages which are based upon malice aforethought or gross negligence on our part, including any wilful or gross negligence of our representatives or agents. Insofar as we are not accused of wilful contractual

infringement, then the liability for compensation for damages shall be limited to foreseeable damages which typically occur.

- (6) We shall be liable in accordance with statutory provisions insofar as we infringe an important contractual obligation; however, in such a case, compensation for damages shall also be limited to foreseeable damages which typically occur.
- (7) Insofar as the customer is entitled to claim for compensation for damages instead of contract performance, our liability shall, within the framework defined in Item (5), be limited to foreseeable damages which typically occur.
- (8) Liability arising from culpable injury to life, body or health shall remain unaffected; this shall also apply for compulsory liability in accordance with product liability law.
- (9) Insofar as has not been agreed otherwise above, liability is excluded. In particular, we shall not be liable if the customer does not use the goods in accordance with operating instructions or carries out modifications to the goods on his own account. The same principle shall apply for loss of data resulting from the customer not carrying out careful data backups. The customer is at all times obliged to protect himself from data loss by making backup copies. Furthermore, we take no responsibility for the written material which accompanies the software.
- (10) The period of limitation for defect claims shall be 12 months, calculated from the time of risk transfer.
- (11) The period of limitation in the case of delivery recourse as defined in §§ 478, 479 of the German Civil Code shall remain unaffected; such period of limitation shall be five years, calculated from the time of delivery of the defective goods.

VI. Joint Liability

- (1) Liability for compensation for damages which goes beyond that envisaged under Section V. is excluded, regardless of the nature of the claim being asserted. This shall apply in particular to claims for compensation for damages arising from culpability when concluding the contract, or on account of other obligation infringements, or of unlawful claims for compensation for damage to property as defined in § 823 of the German Civil Code or on account of indirect damages or consequential damages which arise as a result of using the delivered goods.
- (2) Insofar as liability on our part for compensation for damages is excluded or limited, then such exclusion or limitation shall also apply with respect to the personal liability for compensation for damages of our employees, workers, representatives and agents.

VII. Disposal

- (1) Insofar as the delivered goods consist of electrical equipment or electronic equipment as defined by the Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), the customer shall take over the obligation of disposing of the delivered goods, in an orderly fashion and in accordance with statutory regulations, at his own cost after he has finished using them. The customer shall indemnify us against any obligations which may arise in accordance with WEEE and thereby against any claims which may be made by third parties in connection with WEEE.
- (2) The customer shall also contractually obligate commercial third parties to whom he passes on the delivered goods to dispose of them in an orderly manner, in accordance with statutory regulations and at their own cost, after they have finished using the goods; and if the goods are again passed on, to also impose the same obligation on the respective recipients. If the customer omits to contractually oblige commercial third parties to whom he passes on the delivered goods not only to take over the disposal obligation, but to contractually obligate to the same effect any further party to whom he may pass on the goods at a later date, then he shall take back the delivered goods at his own cost after they have finished being used and dispose of them in an orderly manner in accordance with statutory regulations.
- (3) Our claim for the customer to take over the goods and to indemnify us as above shall not be subject to the statute of limitations before expiry of a period of two years following the final conclusion of use of the delivered goods (suspended expiry). The two-year period of limitation of the suspended expiry shall begin at the earliest with receipt by us of a written notice of end of usage issued by the customer and addressed to us. In individual cases, we reserve the right to conclude a separate agreement with the customer, one which deviates from this provision, on the taking-back of old equipment.

VIII. Reservation of Proprietary Rights

- (1) We reserve all rights of ownership of the delivered goods until receipt of all payments arising from the business relationship with the customer. In the case of behaviour by the customer which contravenes the terms of the contract, especially in the case of payment default, we shall be entitled to take back the delivered goods. The taking-back by us of the delivered goods will not represent withdrawal from the contract unless we have made express declaration of such in writing. Seizure of the delivered goods by us shall always represent withdrawal from the contract. Following the taking-back of the delivered goods by us, we shall be entitled to realize their value and the proceeds shall be set against the liabilities of the customer – less appropriate realization costs.
- (2) The customer undertakes to treat the purchased goods carefully and conscientiously; in particular, the customer undertakes to adequately insure them for their new value at his own cost against damages arising from fire, water and theft. Insofar as maintenance and

service work is necessary, the customer must carry out such work in good time and at his own cost.

- (3) In the case of seizure or other third party intervention, the customer must notify us without delay in writing so that we can take legal action in accordance with § 771 of the Code of Civil Procedure. Insofar as the third party is not in a position to reimburse us for court and out-of-court costs of legal action in accordance with § 771 of the Code of Civil Procedure, then the customer shall be liable for the costs incurred by us in pursuing our claim.
- (4) The customer shall be entitled to resell the delivered goods in an orderly business transaction; however, he hereby assigns all claims in the sum of the final invoice amount (including value added tax) of our claim which accrue from the reselling to his purchaser or third party, independent of whether or not the delivered goods are resold after any further processing or without further processing. The customer shall remain entitled to collect the amount owing, even after he has made such assignment. Our entitlement to directly collect the amount owing shall remain unaffected by this. However, we undertake not to collect the amount owing as long as the customer complies with his payment obligations deriving from the monies received, and does not default on payment and in particular as long as no application is lodged for the institution of insolvency or composition proceedings against him or as long as he has not suspended payments. Should any of these aforementioned situations arise, then we shall be entitled to demand that the customer informs us of the assigned claims and the names of the respective debtors, provides all details necessary for the collection of the monies owing, and hands over all associated documentation and informs the debtors (third parties) of the assignment.
- (5) If the delivered goods are mixed in an inseparable way with other items which do not belong to us, then we shall acquire part ownership of the new goods in proportion to the value at the time at which mixing took place of our delivered goods (final invoice amount including value added tax) compared to that of the other items mixed. If such mixing has been carried out in such a way that the customer's goods must be seen as the main products, then it is hereby agreed that the customer assigns part ownership to us in the appropriate proportion. The customer shall look after the solely owned or partly owned property which has been produced in this way on our behalf.
- (6) As security against our claims against him, the customer shall also assign to us claims which he acquires vis-à-vis third parties as a result of the connection of the delivered goods to a property.
- (7) On the request of the customer, we undertake to release securities assigned to us to the extent that the realizable value of our securities exceeds the secured claims by more than 10 %. The choice of which securities should be released shall be at our discretion.

IX. Final Provisions

- (1) Place of fulfilment and legal domicile for business persons for all claims and legal disputes arising from the contractual relationship is our registered place of business. However, in deviation from this, we shall have the right to file an action at the court which is competent for the customer's place of residence or place of business.
- (2) German law shall govern the whole of the legal relationship. The provisions of UN purchasing law shall be excluded.
- (3) Any invalidity of one or more of the provisions of this contract shall not affect the validity of the remaining provisions.
- (4) Any deviation from these conditions or alterations in contractual agreements must be made in writing. The written-form requirement shall also apply to any change or complete waiver of this written-form clause.

As at March 2006