

# ARABIAN AFRICAN

## General Terms of Sale of ARABIAN AFRICAN GmbH & Co. KG

### 1. Scope

- 1.1. These general terms of sale regulate the entire business relation between ARABIAN AFRICAN GmbH & Co. KG (hereinafter referred to as "**ARABIAN AFRICAN**") and the buyer, even if they are not referenced in any contracts at a later date. They apply accordingly for performed work and services. Taking delivery of goods is replaced by a final inspection in case of performed work and by acceptance in case of services.
- 1.2. Neither conflicting, or additional terms nor terms differing from these general terms of sale of the buyer will become part of the contract, unless expressly agreed to in writing by ARABIAN AFRICAN. These general terms of sale apply even if ARABIAN AFRICAN executes an order of the buyer without any reservation and although being informed of such conflicting, additional and differing terms.
- 1.3. Any additional agreements or agreements differing from these general terms of sale entered into by ARABIAN AFRICAN and the buyer regarding the fulfilment of a contract must be stipulated in writing in such contract. This also applies for suspending this requirement of written form.
- 1.4. Additional rights to which ARABIAN AFRICAN is entitled under the statutory provisions or other agreements, beyond these general terms of sale, remain unaffected.

### 2. Conclusion of contract

- 2.1. Quotations from ARABIAN AFRICAN are subject to change and non-binding.
- 2.2. Any images, drawings, weights, measures, performance and consumption information and other product descriptions in documents relating to the quotation are of an approximate nature only if not expressly identified as binding. They do not represent any agreement or warranty of a specific quality or condition of a product.
- 2.3. ARABIAN AFRICAN reserves all titles, copyrights, and other proprietary rights to all and any quotation documents. Such documents and other information must not be disclosed or made accessible to third parties.
- 2.4. An order will become binding only after being confirmed in writing by ARABIAN AFRICAN or if ARABIAN AFRICAN executes such order. Silence on the part of ARABIAN AFRICAN in reply to quotations, orders, requests or other statements of the buyer shall be deemed con-

sent only if this was agreed in writing in advance. If an order confirmation contains obvious errors, typos or miscalculations it shall be non-binding for ARABIAN AFRICAN.

- 2.5. If the buyer files for institution of insolvency or comparable proceedings for its own assets or if a justified third-party petition in insolvency or comparable proceedings for the assets of the buyer is denied for insufficiency of assets ARABIAN AFRICAN is entitled to withdraw from contract in full or in part.

### **3. Scope of delivery**

- 3.1. Relevant for the scope of delivery is the written order conformation by ARABIAN AFRICAN. Changes to the scope of delivery through the buyer must be confirmed in writing by ARABIAN AFRICAN to become effective. We reserve the right to make changes to the design or form to the extent that such changes are not material and reasonable for the buyer.
- 3.2. Partial deliveries are allowed.

### **4. Delivery time**

- 4.1. Delivery periods and deadlines must be agreed in writing. Delivery periods and deadlines are not binding, unless they have been agreed in writing by ARABIAN AFRICAN and identified as binding.
- 4.2. The delivery period starts with sending of the order confirmation through ARABIAN AFRICAN. Meeting the delivery time is based on and requires the timely and proper fulfilment of all obligations of the buyer, including but not limited to the provision of all documents, permits and releases to be supplied by the buyer and clarification of all technical issues and receipt of any agreed down-payment.
- 4.3. Delivery time is deemed met if the products have left the producer's site by this time or if ARABIAN AFRICAN has notified the buyer of their readiness for shipment or pick-up. Meeting the delivery time is subject to timely and proper supply to ARABIAN AFRICAN.

### **5. Terms of delivery and payment, passing of risk**

- 5.1. Terms of delivery and payment and the passing of the risk shall be in accordance with the agreed INCOTERMS.
- 5.2. Lacking specific agreements, the sales price is payable within 14 days from date of invoice, without deduction. Deduction of a cash discount is subject to the buyer having paid all and any due accounts payable from such business relation in due time. The payment date shall

be the day on which ARABIAN AFRICAN can dispose of the sales price. In case of delay in payment, the buyer is to pay late payment interest in the amount of 8 percentage points above the relevant base rate p.a. Any further claims by ARABIAN AFRICAN remain unaffected.

- 5.3. If the buyer defaults in acceptance ARABIAN AFRICAN may demand compensation for the damage incurred, including any additional expense. The same applies if the buyer fails to exercise any duty to cooperate, unless such failure to exercise any duty to cooperate is not in the responsibility of the buyer. The risk of accidental loss or accidental deterioration of the products will pass to the buyer when the buyer defaults in acceptance or violates other duties to cooperate, at the latest. ARABIAN AFRICAN is entitled to dispose of the products otherwise, if any fixed grace period has lapsed without success. The delivery term for the buyer will then be extended appropriately.
- 5.4. If delivery is delayed due to circumstances beyond the control of ARABIAN AFRICAN risk will pass to the buyer upon notification of readiness for delivery.
- 5.5. Without prejudice to its warranty claims, buyer must accept any delivered products even then if they show minor defects.

## **6. Warranty claims and liability**

- 6.1. The buyer's warranty claims and ARABIAN AFRICAN's liability are subject to the terms and conditions of the producer of the product, of which ARABIAN AFRICAN will notify the buyer immediately upon its request. Otherwise, the following provisions apply.
- 6.2. The buyer's warranty rights are subject to its examination of the delivered products upon receipt, if reasonable by a test run, and its written notification of ARABIAN AFRICAN listing the patent defects no later than two weeks from receipt of the products. Hidden defects must be notified to ARABIAN AFRICAN immediately after their detection, in writing. Buyer must describe the defects in writing in its notification to ARABIAN AFRICAN. In addition, the buyer's warranty rights are subject to compliance with all requirements, notes, guidelines and terms in technical instructions, user manuals and operating instructions and other documentation of each product during commissioning, operation and maintenance, and, including but not limited to, that all maintenance work has been carried out properly and can be proven, and that recommended components have been used.
- 6.3. In case of defective products, it is in ARABIAN AFRICAN's discretion to either remove any such defects or to deliver a product free of defects as remedy. If ARABIAN AFRICAN remedies any defect it is obliged to bear all expenses incurred for this purpose, including but not limited to transport, travel, labour and material expenses, to the extent that these are not increased due to the fact that the products had been transferred to another location as the delivery address. Any personnel and material costs claimed by the buyer in this regard must be

billed at cost. Any replaced parts become the property of ARABIAN AFRICAN and must be returned to ARABIAN AFRICAN.

- 6.4. If ARABIAN AFRICAN is not willing or unable to remedy any defects, it is in the buyer's discretion to either withdraw from contract or reduce the sales price, without prejudice to any damage or compensation claims. The same applies if remedying the defects fails, because it is unreasonable for the buyer or it is delayed beyond any acceptable periods for reasons under the control of ARABIAN AFRICAN.
- 6.5. The buyer's right to withdraw from contract is excluded if buyer is unable to return the deliverables received, and this is not due to the fact that a return of the received deliverables is impossible, is in the responsibility of ARABIAN AFRICAN or the defect has become obvious only while processing or transforming the products. The right to withdraw from contract is excluded too if ARABIAN AFRICAN is not responsible for the defect and if the buyer is to compensate the value of the product instead of returning it.
- 6.6. Defects due to natural wear and tear, including but not limited to wear parts, inappropriate handling, assembly, use or storage or inappropriately carried out modifications or repairs of the products through the buyer or third parties give no rise to warranty claims. The same applies for defects that are due to the buyer or of which the technical cause is not related to the original defect.
- 6.7. Claims of the buyer for compensation instead of damages in place of performance shall be excluded to the extent that a reasonable third party would have incurred such expenses as well.
- 6.8. ARABIAN AFRICAN does not give any warranty, including but not limited to quality or durability guarantees, if not specifically agreed otherwise in writing.
- 6.9. ARABIAN AFRICAN is fully liable, without limitation, for damage resulting from breach of warranty or damage to life, body and health. The same applies for intent and gross negligence. ARABIAN AFRICAN is liable for ordinary negligence only in case of breach of essential duties arising from the nature of the contract and if such duties are of specific importance for achieving the objects of the contract. In case of violation of such duties, default and impossibility, ARABIAN AFRICAN's liability is limited to such damage that must typically be expected in the course of this contract. Any mandatory statutory liability for product faults remains unaffected.
- 6.10. The period of limitation for warranty claims of the buyer is one year. If the faulty products have been used for a building in accordance with their usual application and have caused such building's faultiness or if the claim is about a defective building, the period of limitation shall be five years. Such period of limitation also applies to tort claims resulting from faulty products. The period of limitation begins with delivery of the products. The shorter period of limitation does not apply to ARABIAN AFRICAN's unlimited liability for damage resulting from breach of warranty or damage to life, body and health, for intent and gross negligence and

for product faults. Any statement on the part of ARABIAN AFRICAN on a warranty claim asserted by the buyer shall not be deemed the start of negotiations about the claim or the circumstances giving rise to the claim, if such warranty claim is fully rejected by ARABIAN AFRICAN.

- 6.11. To the extent that ARABIAN AFRICAN's liability is excluded or limited, this applies for the personal liability of ARABIAN AFRICAN's officers, executives, employees, representatives, agents and servants too.

## **7. Product liability**

- 7.1. Buyer will not make changes to the products, including but not limited to modifying or removing any existing warnings about hazards in case of improper use of the products. In case of violation of such obligation, buyer will indemnify ARABIAN AFRICAN, inter partes, from any third party product liability claims, unless the buyer is not responsible for the fault giving rise to the liability claim.
- 7.2. If ARABIAN AFRICAN is required to call back or issue a warning about a product because of a product fault, buyer will use its best efforts to support ARABIAN AFRICAN in this regard, with measures ARABIAN AFRICAN considers necessary and appropriate, including but not limited to identifying the necessary customer data. The buyer is obliged to bear the costs of such product callback or warning, unless buyer is not responsible for the product fault and the damages incurred under the product liability regulations. Any further claims by ARABIAN AFRICAN remain unaffected.
- 7.3. Buyer will inform ARABIAN AFRICAN immediately of any risks in the use of the products and any possible product faults in writing, of which it gains knowledge.

## **8. Force majeure**

- 8.1. If ARABIAN AFRICAN is prevented from fulfilling its contractual duties by reason of force majeure, including but not limited to delivery of the products, ARABIAN AFRICAN will be released from its duties for the period of time the obstacle exists and any appropriate lead time, without any obligation for paying damages to the buyer. The same applies if ARABIAN AFRICAN's fulfilling of its duties is hindered unreasonably or temporarily made impossible through unforeseeable circumstances beyond the control of ARABIAN AFRICAN, including but not limited to labour disputes, official orders, shortage of energy, supply issues with a sub-supplier or major operational disturbances. The same applies, if such circumstances occur at a sub-supplier's. And the same applies, if ARABIAN AFRICAN is in default already. To the extent ARABIAN AFRICAN is released from its delivery obligation, ARABIAN AFRICAN will redeem any advances made by the buyer.

- 8.2. ARABIAN AFRICAN is entitled to withdraw from contract upon the lapse of an appropriate grace period if such an obstacle exists for more than four months and ARABIAN AFRICAN is not interested in fulfilling the contract because of such obstacle. At the buyer's request, ARABIAN AFRICAN will state upon the lapse of such period whether it intends to exercise its right of withdrawal or if it will deliver the products within an appropriate period of time.

## **9. Retention of title**

- 9.1. Until payment for the sales prices has been received in full, the delivered products and all and any accounts receivable from the buyer to which ARABIAN AFRICAN is entitled from this business relationship will remain in the property of ARABIAN AFRICAN. Buyer is obliged to treat the products under retention of title with care, for the term of this retention of title. Including but not limited to, buyer is obliged to insure the products sufficiently, for replacement value and at its own expense, against fire, water and theft. Buyer must present proof of such insurance on ARABIAN AFRICAN's request. Buyer hereby assigns all and any compensation claims under this insurance to ARABIAN AFRICAN. ARABIAN AFRICAN hereby accepts such assignment. In case such assignment was not permissible, buyer hereby instructs insurer to make any payments to ARABIAN AFRICAN only. Any further claims by ARABIAN AFRICAN remain unaffected.
- 9.2. Any sale of the products under retention of title by the buyer is allowed in the normal course of business only. Buyer is not entitled to pledge or put as collateral the products under retention of title or to make any other arrangement impairing the title to ARABIAN AFRICAN's property. In case of any seizure or other interferences by third parties, buyer must inform ARABIAN AFRICAN immediately in writing and provide all the necessary information, must inform the third party of ARABIAN AFRICAN's ownership rights and cooperate with ARABIAN AFRICAN for the purpose of protecting the products under retention of title. If any third party is unable to reimburse ARABIAN AFRICAN for the court and out-of-court costs incurred by enforcing ARABIAN AFRICAN's ownership rights, buyer is obliged to compensate ARABIAN AFRICAN for any resulting loss, unless such breach of duty is not in the responsibility of the buyer.
- 9.3. Buyer hereby assigns any accounts receivable from the resale of the products to ARABIAN AFRICAN, including all and any secondary rights. ARABIAN AFRICAN hereby accepts such assignment. In case such assignment was not permissible, buyer hereby instructs the third party debtor to make any payments to ARABIAN AFRICAN only. Buyer is revocably authorised to collect in trust the accounts receivable assigned to ARABIAN AFRICAN, in its own name. Any collected amounts must be transferred to ARABIAN AFRICAN immediately. ARABIAN AFRICAN may revoke the buyer's authorisation to collect and the buyer's authorisation to resell for important reason, including but not limited to when the buyer does not properly fulfil its payment obligations to ARABIAN AFRICAN, defaults in payment, ceases to make payments or if insolvency proceedings or similar proceedings for settlement of debts are instituted with regard to the assets of the buyer by the buyer itself or if a third party's jus-

tified petition in insolvency or similar proceeding for settlement of debts with regard to the assets of the buyer is rejected for insufficiency of assets. In case of a blanket assignment by the buyer, all and any claims assigned to ARABIAN AFRICAN must be excluded expressly.

- 9.4. On ARABIAN AFRICAN's request, buyer is obliged to inform the third party debtor of the assignment immediately and to provide ARABIAN AFRICAN with all the necessary information and documents for collection.
- 9.5. In case of violations of the contract, including but not limited to buyer's default in payment, irrespective of any other rights, ARABIAN AFRICAN is entitled to withdraw from contract upon the lapse of an appropriate period of grace. Buyer must grant ARABIAN AFRICAN or its agents access to the products under retention of title and surrender them immediately. Upon timely notification, ARABIAN AFRICAN may sell the products under retention of title otherwise to satisfy its due claims against buyer.
- 9.6. On buyer's request, ARABIAN AFRICAN is obliged to release any collateral to which it is entitled if the recoverable value of such collateral, under consideration of reduction in value in line with banking practice, exceeds ARABIAN AFRICAN's accounts receivable from its business relationship with the buyer by more than 15 %. The basis for evaluation shall be the invoice value of the products under retention of title and the nominal value of the accounts receivable. It is in ARABIAN AFRICAN's own discretion to select the objects for release.
- 9.7. For deliveries into other jurisdictions, in which these provisions on retention of title do not have the same securing effect as they have in the Federal Republic of Germany, buyer hereby grants ARABIAN AFRICAN an equivalent security right. If further action is required for this, buyer will use its best effort to provide ARABIAN AFRICAN such a security right without delay. Buyer will cooperate in any action necessary for and supporting effectiveness and enforceability of such security rights.

## **10. Secrecy**

- 10.1. The parties are obliged to keep secret all and any information to which they have access and which is marked as confidential or can be recognised as being trade or company secrets otherwise, for an indefinite period of time, and not to record, disseminate or dispose it, unless such is required under the supply relationship.
- 10.2. The parties will ensure, by suitable agreements with their employees and agents, that these too will refrain from any unauthorised disposal, dissemination or recording of such trade or company secrets, for an indefinite period of time.

## **11. Final provisions**

- 11.1. Assignment of buyer's rights and obligations to third parties requires the prior written consent of ARABIAN AFRICAN.
- 11.2. Buyer is entitled to offset any counter-claims only if such counter-claims are final and undisputed. Buyer may exercise any right of retention only if its counter-claim is based on the same contract.
- 11.3. The legal relations between buyer and ARABIAN AFRICAN are subject to the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.4. Exclusive place of jurisdiction for all disputes arising out of the business relations between ARABIAN AFRICAN and the buyer shall be the registered place of business of ARABIAN AFRICAN. ARABIAN AFRICAN is also entitled to sue the buyer at its registered place of business or in any other competent court.
- 11.5. Place of performance for all deliverables and payments of buyer and ARABIAN AFRICAN shall be ARABIAN AFRICAN's registered place of business.
- 11.6. If any provision of these general terms of sale is or becomes invalid or unenforceable or if a lacuna exists in these general terms of sale, this does not affect the validity of the remaining provisions. Such valid or enforceable provision shall be deemed agreed to replace the invalid and unenforceable provision that comes as close as possible to the purpose of the invalid or unenforceable provision. In case of a lacuna, such provision shall be deemed agreed that is in accordance with what would have been agreed had the contracting parties considered such matter from the beginning, subject to the purpose of these general terms of sale.