

# General Terms and Conditions for Service and Spare Parts from ARBURG GmbH + Co KG in Lossburg, Germany

# ARBURG

## I. General Stipulations

1. Our general terms and conditions apply only to companies and to corporate bodies under public law and special assets under public law. They do not apply to consumers.
2. Our general terms and conditions apply to all current or future supply agreements for spare parts for ARBURG products (hereinafter "spare parts") and/or to contracts with the customer for services, such as assembly, commissioning, maintenance, service, instruction and repairs in relation to ARBURG products (hereinafter "services"), with the exception of activities for the fulfilment of warranties for defects, without requiring that these should be referred to again in each individual case. Contrary or divergent conditions of the customer not contained in these terms and conditions shall not apply unless we expressly accept them, even if we provide deliveries or services to the customer without reservation in the knowledge of such conditions. Subsidiary agreements, amendments and special agreements require our written confirmation.

## II. Offerings and Conclusion of Contracts, Performance Data

1. Our offerings are made without obligation. Unless a particular acceptance period has been expressly agreed, we may accept orders or contracts within 14 days of receipt. Orders may also be accepted within this time through the unreserved delivery of the ordered spare parts, or provision of the relevant services.
2. Our order acceptance only extends to spare parts and services supplied in Germany.
3. Performance data for spare parts shall only be binding on us if they are based on a currently valid brochure or if they are expressly confirmed by us. We reserve the right to make modifications to the design as a result of technical advances or as we deem appropriate at our discretion.

## III. Customer's Duty to Cooperate

1. The customer shall use, clean and maintain ARBURG products according to the operating instructions and shall inspect them to ensure they are in good working order.
2. In the event of a malfunction in ARBURG products, the measures necessary to protect personnel and property must be implemented and the ARBURG product should no longer be used, unless this is approved by us.
3. The customer shall ensure that it is possible to deliver spare parts or to provide services without obstruction. In particular, it shall ensure that qualified contact persons are in attendance when services are implemented and that the necessary supply connections are available. We reserve the right to charge the customer for costs incurred as a result of wait times for which it is responsible.

## IV. Prices and Payments

1. Prices apply for the scope of services and deliveries listed in the order confirmations. Prices for spare parts are in euros ex works (EXW) and do not include loading, packaging, dispatch, insurance or Value Added Tax, which is payable at the relevant legal rate.

2. Costs for services are not included in the prices quoted for the supply of spare parts. Services and any associated travel expenses shall be charged on the basis of evidence of professional work according to the current overview of rates, which we will be pleased to send you upon request.
3. Changes to the price structure prior to delivery and provision of service shall entitle us to change our prices, provided a period of more than 4 months elapses between the conclusion of the contract and the delivery/provision of service.
4. Unless otherwise agreed, invoices are payable in full within 14 days of the invoice date.
5. Late payments shall be liable to default interest of 9 percentage points above the relevant base rate according to Article 247 (1) BGB (German Civil Code) without further reminder. This shall not affect the right to pursue further compensation claims. Incoming payments shall first be offset against the oldest accounts receivable in the following order: costs, interest, principal. The offsetting or withholding of payments is only permitted on the basis of customer claims that are accepted by us, undisputed or established in law.
6. If, following the acceptance of orders, there is reason to doubt the solvency of the customer, we shall be entitled to require sureties before making delivery or providing services. If the customer fails to fulfil this requirement within 2 weeks of our request or if the debt is not settled, we shall be entitled to withdraw from the contract. In the event that we withdraw, we shall be entitled to demand a fixed compensation of 20% of the amount of the order. The customer is at liberty to provide evidence that no damages or lesser damages have been incurred. This shall not affect the right to pursue further compensation claims or entitlements arising from Article 321 BGB.
7. We are not obliged to accept or execute individual orders from the customer with an order value of less than EUR 25 (excluding the legal rate of Value Added Tax).

## V. Delivery and Performance Period, Default, Part Deliveries

1. Our specifications regarding periods and deadlines are not binding unless a firm deal or other specific delivery and performance dates are expressly agreed in writing. Such agreed delivery and performance deadlines are calculated from the date on which our order confirmation is issued, but shall not precede the fulfilment of the customer's liabilities/obligations. Unless services are required, deliveries are made ex works; the determining factor for adherence to delivery deadlines is that the delivery has left the factory or the delivery has been designated ready for dispatch. If services are required, completion shall determine adherence to the service deadline. If we fail to comply with a delivery or service date which has been agreed in writing, default shall only commence after a suitable period of grace of at least two weeks granted by the customer party has expired.
2. The agreed delivery and performance dates delivery time shall appropriately extend, even within the period of default, in the event of force majeure, especially natural disasters, epidemics, pandemics, war, terrorism, sovereign interventions, industrial disputes

or similar cases beyond our control that occur without our fault, for the duration of the aforementioned event or its effects. This also applies if such impediments occur with presuppliers, suppliers, carriers or subcontractors. ARBURG shall communicate the beginning and end of such impediments to the customer as soon as possible. If the impediment continues for more than three (3) months, or if it is certain that it will continue for more than three (3) months, both the customer and ARBURG can withdraw from the agreement. In this case, any claims for damages of customer are excluded, but only if ARBURG has informed the customer immediately upon notification of the consequences of the unforeseen impediment.

3. If altered or additional services are performed during the execution of the contractual services, the delivery and performance deadlines shall be extended in line with the length of time spent in providing such services. If necessary, we shall notify our customer of this in good time.

4. We are entitled to make partial deliveries within the agreed delivery periods if this is reasonable for the customer.

#### **VI. Transfer of Risk and Delivery of Spare Parts**

1. Risk is transferred to the customer no later than the point at which the spare part delivery is handed off to the transport or shipping company or other third party designated to complete dispatch (determined by the start of the loading process). Transport shall be at the expense and risk of the customer, even if our own transport personnel are used. The transfer of risk also applies if we have also undertaken other services through a special agreement (e.g. dispatch or dispatch costs, insurance, etc.), but not if we are also responsible for additional services in relation to the delivery. In the latter case, the risk is transferred when all completed work has been accepted.

2. It is a matter for the customer to insure the spare parts against insurable risks from the point at which risk has been transferred.

#### **VII. Title Retention and other Safeguards**

1. We reserve title to delivered spare parts until the full payment of the agreed price, including incidental charges.

2. The customer is obliged to treat the goods under title retention with due care and to insure these against loss, damage and destruction at its own expense. The customer hereby assigns to us all claims arising from insurance agreements as a priority share equivalent to the agreed price of the goods under title retention. We hereby accept this assignment. The customer shall inform us immediately of any damage or loss, as well as other disposals by a third party.

3. The customer may process and resell the goods under title retention as part of orderly and normal commercial transactions, but may neither pledge the goods nor assign them by way of security.

4. The customer hereby assigns to us the entitlements to the claims in relation to the goods under title retention arising from resale or reprocessing or any other legal ground, including the accepted balance from a current account agreement. We hereby accept this

assignment. The customer is authorised to collect claims assigned to us in its own name until this right is revoked. The authorisation to collect claims can only be revoked if the customer fails to fulfil its payment obligations in an orderly manner. This assignment of claim serves to secure all claims, including future claims, arising from business links with the customer.

5. If requested by the customer, we undertake to release the securities to which we are entitled, to the degree that the realisable value of the securities exceeds the secured accounts receivable with respect to the customer by more than 10%. The selection of the securities to be released is incumbent upon us.

6. If the goods are processed, connected or combined with other items, we shall acquire the joint ownership of the new item in proportion to the value of the goods under title retention supplied by us to the other processed items, at the time of processing. Otherwise, the same rulings which apply to the supplied goods under title retention also apply to the item created in this manner.

7. The customer's entitlement to resell and use the goods under title retention and its authorisation to collect assigned claims shall lapse in the event that insolvency proceedings or out-of-court settlement proceedings are initiated. This shall not affect the legal rights of an insolvency administrator, even one appointed on a temporary basis.

#### **VIII. Warranty**

1. We grant a 12-month warranty on new spare parts and a 3-month warranty on used spare parts. The warranty periods begin from the day of delivery. Warranty claims for poor quality services shall lapse 12 months after acceptance. The above stipulations do not apply if longer periods are required by law.

2. Our warranty is limited to design, production and material defects in spare parts, with the exclusion of warranty cover for wearing parts, in particular relays, heater bands, fuses, seals, filters, all plasticising parts and other parts particularly affected by wear.

3. The customer shall report defects in spare parts or services of all kinds (with the exception of hidden defects) within eight days of delivery or provision, otherwise the spare parts/services shall be deemed approved. Hidden defects shall be reported immediately after their discovery, but no later than within eight days, otherwise the spare parts/services relating to these defects shall be deemed approved, but no later than 12 months after the transfer of risk. Negotiations in relation to a complaint shall not indicate a waiver of the right to assert that a complaint has been filed too late, is insufficient or unjustified.

4. In the event of a justified, timely notification of defects, we shall, by our own choosing, either repair the defect or replace the item with one free from defects. Incomplete or incorrectly performed services shall be completed or remedied free of charge. The customer shall grant us sufficient time and opportunity to carry out all the repair work or make replacement deliveries as appears necessary. Otherwise we shall be released from liability for the resulting consequences. In the event of replacement delivery, the customer is

obliged to return the faulty spare parts. In urgent cases where there is a risk to operational safety and in order to avert disproportionate further damage (of which we are to be notified immediately), the customer shall be entitled to repair the defect himself or to have it repaired by a third party and to require compensation from us for the expenses incurred. If we are unwilling or unable to rectify or repair the defect or to provide a replacement, if this is delayed beyond reasonable deadlines for reasons for which we are not responsible, or if efforts to rectify or repair the defect or to provide a replacement fail, the customer is entitled to withdraw from the contract or to reduce the price insofar as it cannot reasonably be expected to accept further attempts to provide remedial action. The customer can only withdraw from the contract due to a minor defect or due to an installation for which we are responsible with our agreement.

5. Warranty entitlements can only arise if the spare parts have a material defect upon the transfer of risk. Warranty entitlements shall not arise due to unsuitable or improper use, incorrect installation/ commissioning on the part of the customer or a third party, natural wear and tear, incorrect or negligent treatment or handling, inadequate maintenance, non-compliance with the stipulations in the operating instructions, unsuitable service fluids, replacement material, non-compliance with the exclusive use of original parts, faulty building work, unsuitable ground, chemical, electrochemical or electrical influences, insofar as they are not the result of fault on our part. Our warranty shall expire as soon as a domestic client exports our spare parts to a foreign country, unless a surcharge is paid to the amount of the difference between the national sale price and the general sale price in the relevant foreign country in order to cover the greater cost risk. A domestic customer that exports spare parts shall not be entitled to receive service from Germany, even if it is prepared to pay the relevant costs.

6. If the investigation of a notice of defects shows that there is no defect or that the customer is responsible for the defect, we shall be entitled to charge the customer for the costs associated with the investigation and any repairs.

7. For damages due to defects in the spare parts or damages involving the service object itself, or for collateral damage, including loss of use, we shall only accept liability within the limits set down in Item IX.

#### **IX. Liability**

1. We shall accept liability in accordance with the provisions of the German Product Liability Act and in cases of inability or impossibility of performance for which we are responsible. Furthermore, we shall accept liability for damages in accordance with the legal provisions in cases of intent, gross negligence, if any guarantee has been assumed, or in the event of critical or physical injury or impairment of health that was culpably caused by us. Furthermore, if, through simple negligence, we violate a contractual obligation (so-called cardinal obligation), i.e. an obligation the fulfilment of which makes the proper execution of the contract possible and on the observance of which the customer may ordinarily rely, our liability for damages shall be limited to the foreseeable damages typical of a contract of this type. In all other cases of liability, entitlement to

damages due to the violation of a liability arising from the contractual relationship and due to impermissible actions is excluded, so that we shall not accept liability for lost profits or any other financial damages sustained by the customer.

2. If our liability is excluded or restricted by the provisions above, this shall also apply to the personal liability of our office employees, factory workforce, staff members, legal representatives and agents.

#### **X. Data Backup**

We give the customer notice that personal data shall be stored and processed by us in electronic form insofar as is necessary for the pursuit of our business and as permitted under the German Data Protection Act.

#### **XI. Confidentiality**

Our expertise and all our other business and operational secrets, including the contents of the contractual relationship with the customer shall be treated as strictly confidential by the customer. The customer shall take all the appropriate and necessary steps to protect the aforementioned information from unauthorised access, disclosure, reproduction, distribution or other use. The obligations mentioned in this article shall continue to apply even after his contract has been terminated.

#### **XII. Final Provisions**

1. The laws of Germany shall apply exclusively to all legal arrangements between us and the customer and shall exclude the provisions of the Convention on the International Sale of Goods (CISG, UN Sales Convention).

2. The court of jurisdiction and the place of fulfilment for all entitlements and obligations of the contracting parties arising from transactions of all kinds – including disputes about bills of exchange and cheques – shall be Freudenstadt (Germany). However, we shall also be entitled to sue the customer at his local court.

3. If one of the above provisions is or becomes invalid or impracticable, the validity of the other provisions remains unaffected. In this event, the invalid or impracticable provision shall be replaced by a provision that is valid and practicable and that most closely matches the objectives of the invalid or impracticable provision. The same shall apply in the event omissions in the contract.