

## TERMS AND CONDITIONS OF SALE OF ABBT NETHERLANDS B.V. (dba. ARNOTT-EUROPE)

### 1. General provisions

1.1 These terms and conditions ("**Terms and Conditions**") will apply to all offers, orders and agreements of sale concluded or to be concluded by **ABBT NETHERLANDS B.V.** ("**ABBT**") and Buyer and to all advice, works or other services provided by ABBT to the Buyer in relation to any goods sold, offered or made available by ABBT.

1.2 Any oral offers or commitments will bind ABBT only after and to the extent that ABBT has confirmed them in writing. All offers of ABBT, however they are made, will be free of obligation unless provisions to the contrary have been laid down in writing.

1.3 ABBT is allowed to accept and reject orders of Buyer at its sole discretion. An agreement will be deemed to have been concluded after ABBT has confirmed an order placed by the Buyer, or has commenced the execution of that order.

1.4 In the event that an agreement is concluded by e-mail, or in the event that an agreement is concluded through another means of electronic communication (such as the ABBT EDI-system), such e-mail message or statement made through another means of electronic communication is deemed to be equal to a written statement and the principle will apply, without prejudice to the provisions laid down in Article 1.3, that an agreement may be concluded without ABBT having to fulfill any conditions provided by law pertaining to electronic communication.

1.5 ABBT will be entitled to adjust prices agreed upon before delivery in the event of increases in cost-determining factors such as fluctuations in exchange rates, raw materials, labor costs or in the event of government measures, provided that such increases or measures occurred after the conclusion of the agreement but before delivery.

1.6 Any and all images and specifications of goods in catalogues, price lists, advertisements, etc. must be deemed to be representations by approximation only, unless ABBT has explicitly indicated the contrary in writing with regard to a specific delivery.

1.7 ABBT is at all times entitled to effect adjustments in the goods to be delivered, in order to improve them or comply with government regulations.

1.8 The Buyer will be entitled to cancel an order only after receiving written consent from ABBT, which consent may be made subject to conditions as deemed appropriate by ABBT.

1.9 ABBT will be entitled to charge the costs of any packaging separately. The packaging will not be taken back. Should ABBT, however, be obliged by law or any regulations to take packaging back, any costs related to taking back or processing packaging will be borne by the Buyer.

1.10 If ABBT, by virtue of law, is under any obligation, other than resulting from an improper performance, to take back the goods sold, the Buyer shall pay to ABBT all costs related to such taking back of the goods.

### 2. Delivery

2.1 Unless otherwise agreed in writing, ABBT will arrange for transport of the goods to the premises of the Buyer or to any other destination designated by the Buyer. The costs thereof, and any costs and taxes involved therewith or ensuing therefrom (including but not limited to insurances, tariffs and custom duties) will be borne by the Buyer. The Buyer will be obliged to take delivery of the goods upon ABBT's first request. The risk of loss and damage to the goods will transfer to the Buyer at the moment the goods are ready for loading onto the means of transport at ABBT's premises.

2.2 Any delivery times quoted by ABBT may not be considered to be firm deadlines, unless provisions to the contrary have been explicitly agreed upon in writing between the parties. In the event of late delivery, ABBT must be declared to be in default in writing, in which connection ABBT will be granted a reasonable term of at least fourteen (14) working days as of the date of the receipt of notification to fulfill its obligations. In the event that such extended term is exceeded, the Buyer will be entitled to dissolve the agreement or part of the agreement only with respect to the goods not delivered. In such an event, ABBT will not be liable to pay damages, unless such damages are the consequence of an intentional act or intentional omission or of gross negligence of ABBT's executive management.

2.3 ABBT is entitled to deliver the goods sold piecemeal.

2.4 The Buyer is obliged to accept delivery of the goods upon ABBT's first request thereto. If Buyer fails to accept delivery, the Buyer will be liable for all costs and damages resulting therefrom, including but not limited to the costs of storing and re-delivering the goods.

### **3. Payment**

3.1 Unless otherwise agreed in writing, all prices are quoted exclusive of VAT, transport and insurance costs and all other costs, to be determined in accordance with these terms and conditions. All payments must be made in euros.

3.2 Unless otherwise agreed in writing, the Buyer will pay the entire purchase price in advance.

3.3 If for any reason buyer receives product without full payment in advance and the Buyer fails to pay within thirty (30) days after the invoice date, it will be in default and all claims of ABBT will become fully due and payable immediately. In that event, ABBT will also be entitled to compensation of the statutory interest (as it applies to trade agreements) plus 2%, with respect to the outstanding amount until the date of payment in full. The amount subject to this contractual interest will, as the case may be, be calculated after the end of each year, and increased by the interest owed over that year.

3.4 In the event of untimely payment, ABBT will be entitled to compensation of all extra-judicial costs, including but not limited to costs involved in sending reminders, one or more notices of default or demand notices, which extra-judicial costs will amount to at least fifteen percent (15%) of the total amount payable, subject to a minimum of EUR 500.

3.5 ABBT will be entitled to require the Buyer to effect advance payment of an amount to be determined at ABBT's discretion before it commences the execution of an order or commission.

3.6 In the event that ABBT is fully or largely successful in legal proceedings against the Buyer, the Buyer will be obliged to compensate all costs incurred by ABBT in connection with such proceedings, even to the extent that such costs exceed the cost award made by the court. ABBT may invoke this clause irrespective of whether the Buyer has appealed against the relevant judgment at the court of appeal or the Supreme Court.

### **4 Retention of title**

4.1 ABBT will retain title to all goods delivered and to be delivered to the Buyer until full payment of all purchase amounts has been received, as well as any amounts owed by the Buyer pertaining to work performed by ABBT in connection with such purchase agreements and any claims pursuant to any failure in the performance of such agreements on the part of the Buyer.

4.2 The Buyer will be obliged to store the goods delivered under retention of title with due care, ensuring that they are recognizable as the property of ABBT. In addition, it will be obliged to insure such goods against, inter alia, fire and water damage and theft. The Buyer will pledge to ABBT any claims it has pursuant to such insurance policies upon ABBT's first request, as additional security with respect to ABBT's claims against the Buyer.

4.3 In the event that the Buyer fails in the performance of any obligation vis-à-vis ABBT, or in the event that ABBT has good reason to fear that the Buyer will fail in the performance of its obligations, ABBT will be entitled to recover the goods delivered under retention of title or to have such recovered, even when the goods have to be detached. The Buyer will cooperate accordingly. The Buyer will bear the costs of recovery, without prejudice to ABBT's right to further damages.

### **5. Force majeure**

5.1 If ABBT fails in the performance of its obligations due to an event of force majeure, it will not be liable. To the extent that the circumstance making performance impossible is not of a permanent nature, ABBT's obligations will be suspended. In the event that the period during which performance is not possible due to force majeure exceeds two (2) months or is expected exceed two (2) months, both parties will be entitled to cancel the agreement, without any obligation to pay the damages that may arise as a result.

5.2 In the event that ABBT has already partially fulfilled its obligations upon the occurrence of the situation of force majeure, or is only able to fulfill its obligations in part, it will be entitled to separately invoice the part already supplied or the part that can still be supplied and the Buyer will be obliged to pay that invoice as if it pertained to a separate agreement.

5.3 A situation of force majeure affecting ABBT within the meaning of this article will be deemed to have occurred in the event of, inter alia, strikes, a shortage of raw materials, delay, transport problems, war or threat of war, full or partial mobilization, riots, sabotage, floods, fire or other forms of destruction within ABBT's company, lockouts and industrial actions, breakdowns of machines or tools or other breakdowns within ABBT's company. A situation of force majeure must also be deemed to have occurred on the part of ABBT in the event that one or more of the above-mentioned circumstances occurs within the companies of ABBT's suppliers and ABBT cannot or could not perform its obligations, or cannot or could not perform such in good time, as a consequence.

## **6. Complaints and inspection**

6.1 The goods delivered must be checked by or for the Buyer upon delivery with respect to numbers and visible defects and any shortages or visible defects must be reported to ABBT immediately after delivery. The Buyer must report defects not visible upon delivery within 48 hours of their discovery, though in any event within 48 hours after the time that the Buyer should reasonably have discovered them. The Buyer will not be entitled to any claim if the defect results from any incorrect operation, installation, storage, maintenance or from transport or any other event that must be attributed to the Buyer.

6.2 The Buyer will be obliged to perform the inspection or to have the inspection performed with due care, upon receipt of the goods. The Buyer will bear the risk for inspecting the goods by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it - or a third party engaged by it - did not inspect the entire shipment.

6.3 In the event of a complaint on good grounds, ABBT will only be obliged - to be decided at the ABBT's discretion - to repair the defect, to replace the relevant good or to credit or refund the amount charged in connection with the defective good in whole or in part, according to its own reasonable judgment and to the exclusion of any other rights of the Buyer by law.

6.4 Any and all claims for payment of an amount of money and/or repair of the relevant good and/or replacement of the good and/or supply of any missing part, on whatever basis, as well as any right to dissolve the agreement will lapse at the earliest of the following times: a) upon late reporting pursuant to Article 6.1 or b) 12 months after the delivery date.

## **7. Liability**

7.1 Any liability on the part of ABBT on the basis of an attributable failure with respect to the offers and agreements as referred to in Article 1.1 will be restricted to the provisions laid down in Article 6.3.

7.2 ABBT will assume no liability with respect to damage as a consequence of or related to any errors or omissions in advice rendered by it, nor will it assume any liability with respect to damage as a consequence of or related to errors or omissions in the processing instructions recommended by it.

7.3 ABBT will not - irrespective of the legal basis of the Buyer's claim - be liable for any consequential damages, including but not limited to losses due to delays or loss of data, lost profits, missed savings and penalties forfeited by the Buyer.

7.4 Nothing in these Terms and Conditions shall exclude or limit ABBT's liability in the event that the damage is the consequence of gross negligence or willful misconduct on the part of ABBT's executive management.

7.5 The Buyer will compensate and indemnify ABBT against any claims by third parties and all resulting costs in connection with goods supplied by ABBT.

## **8 Suspension and dissolution**

8.1 Without prejudice to ABBT's rights under these terms and conditions or under the law, ABBT will at any event be entitled to suspend (further) performance or to dissolve any agreement concluded with the Buyer, in whole or in part, if (i) any goods made available by ABBT to the Buyer become subject to attachment, (ii) the Buyer is granted a suspension of payments or is declared bankrupt, (iii) any permits or licenses required for the performance of the agreement are withdrawn, (iv) the Buyer fails to fulfill one or more of its obligations ensuing from any agreement with ABBT, (v) ABBT has sound reasons to believe that the Buyer is or will be unable to fulfill its obligations under any agreement, or (vi) the Buyer ceases its business or if a change occurs in the control of that business. Any right of the Buyer to suspend performance is hereby excluded.

**9. Applicable law and dispute resolution**

9.1 The Terms and Conditions and any and all offers and agreements as referred to in Article 1.1 will be governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods ("CISG") does not apply.

9.2 In the event that the Buyer is domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland at the time that proceedings are commenced, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect ABBT's right to submit a dispute to the court that would be competent in the absence of this provision.

In the event that the Buyer is not domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland upon the commencement of proceedings, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled in accordance with the rules of the Netherlands Arbitration Institute [*Nederlands Arbitrage Instituut*, or *NAI*]. Arbitration will take place in Amsterdam, the Netherlands. The case will be submitted to three arbitrators and the arbitration proceedings will be conducted in Dutch.

The above will not affect ABBT's right to submit a dispute to the court that would be competent in the absence of this provision.