

Think Abele GmbH & Co. KG ■ General Terms and Conditions • As of July 2009

1. Scope

Offers, services and deliveries of Think Abele GmbH & Co. KG are made exclusively on the basis of these terms and conditions. Upon receipt of our goods and services at the latest, these terms and conditions shall be regarded as having been accepted. Differing conditions of the Contracting Party (hereinafter also referred to as the Customer) shall apply only if, and only to the extent that, they are accepted by us and expressly recognized and confirmed in writing by us.

The written order confirmation is conclusive as to the scope of delivery.

In the case of a sustained business relationship, whichever version of these terms and conditions is valid at any given time shall be considered to form part of the contract, even if no express reference is made to it.

2. Scope of services, delivery period, delays

Our offers are always subject to confirmation and are non-binding. Other deals and agreements - especially to the extent that they differ from our terms and conditions - will only become binding after written confirmation by us.

Warranties and warranted properties shall be deemed to exist only when they are explicitly described as such by us. Information regarding standards refers in each case to the latest valid version of the same.

Drawings, illustrations, dimensions, weights and other performance and quality descriptions - including those in catalogues, circulars, advertisements, price lists, offers, contract confirmations, invoices or other representations - are to be understood as non-binding and of a purely descriptive nature. They are subject to technical fluctuations and constitute no warranty as to a property within the meaning of the Civil Code provided that they are not expressly included in the contract or expressly confirmed in writing.

Think Abele GmbH & Co KG reserves without restriction its property rights and copyright in respect of all illustrations, cost estimates, drawings, calculations and other documents (hereinafter: documents). These documents may not be made available to third parties without prior authorization of Think Abele GmbH & Co. and in the event of the contract not being awarded to Think Abele GmbH & Co. KG must be returned immediately upon demand.

The deadline for delivery, which is not binding, is complied with if at the time of its expiry the delivery item has left our warehouse or, in the case of direct delivery, the factory of the manufacturer. Delays in delivery caused by disruption (shortage of material, machinery, strikes, labour shortages, disease, accident, obstruction of roads, force majeure) shall release us from all obligation with regard to the delivery times agreed upon and cannot give rise to a claim for damages. The same applies to delays in delivery caused by changes occasioned by the Customer in the scope of delivery to be carried out as well as the non-receipt of payments on the agreed dates. Partial deliveries by us are possible at any time.

If delivery is delayed at the request of the Customer, six weeks following notification of our supply readiness he can begin to be charged for additional costs incurred, such as storage costs, even if the storage location is the factory of the manufacturer. We are entitled to dispose otherwise of the delivery item after the fruitless expiry of a reasonable set period and to supply the Customer within a reasonable extended period.

3. Prices, conditions of payment

Prices are subject to change and are based on the current state of the offer. Should price differences arise as a result of changes in the Customer's instructions or altered costs (materials, energy, wages, currency adjustments), we reserve the right to make appropriate adjustments when preparing the invoice. The Customer bears the costs of transport and packaging.

VAT is not included in our prices; it is added as a separate item to the invoice at the statutory rate obtaining the day the invoice is issued. In the absence of an agreement in writing to the contrary, payments shall be made immediately and without any deductions.

In case of delayed payment, default interest will be charged annually at the customary banking interest rate for overdraft facilities, at least 8% above the reference rate of the European Central Bank obtaining at the time.

The offsetting and/or withholding of payments due to any counterclaims of the Customer not recognized by us are inadmissible.

Cheques and bank transfers are accepted on account of payment only upon rightful redemption.

We are entitled to demand down payments upon conclusion of the contract (receipt of the order confirmation accompanied by readiness to deliver) and/or the beginning of the assembly work.

In case of partial deliveries or the provision of substantial services, we are entitled to charge pro rata for the services already provided.

Goods will only be custom-produced upon receipt of the agreed payments.

Deliveries abroad will be made only upon receipt of payment of the total sum of the corresponding contract or agreed instalment.

4. Performance

The place of performance and fulfilment is our place of business. To provide the contractually agreed services, we may avail ourselves in whole or in part of third-parties.

We are entitled to be reimbursed for the costs of orders that we have passed on to third-parties in the context of an agreement with the Customer, provided the Customer has agreed to our passing them on. In addition to our remuneration, we are entitled to charge the Customer for the cost of travelling to and from the Customer's place of business in the context of a possible contractual duty of care.

We reserve exclusively all rights resulting from our authorship, even if the work is created for the Customer. Only simple and non-transferable rights of exploitation, limited to the direct purpose of the contract, are granted to the Customer and only in the context of the validity and duration of the contract.

5. Transfer of risk

The risk is transferred to the Customer at the latest upon dispatch of the delivery item, even if partial deliveries are involved, or we have undertaken further commitments such as the transportation, installation, assembly or delivery costs.

In case of delayed acceptance of delivery by the Customer, the risk is transferred as soon as the goods are ready to ship. The goods will be packaged if at all with the greatest care and shipped in accordance with our best judgement without however any liability being incurred.

Where in the case of an order for custom-produced goods (contracts for work and materials), acceptance of the performance is required, the Customer must proceed to such acceptance without delay upon notification of completion. A performance shall be deemed to have been accepted if 12 (twelve) working days have elapsed since we notified the Customer in writing of the completion of the performance or, in the event that the Customer has made use of the performance or the delivery item, 6 (six) working days have elapsed since such use began.

6. Warranty against defects, Liability

The Customer affirms that he has the requisite expertise to operate the goods delivered. The Customer alone will bear responsibility for ensuring that all legal provisions relating to the operation of the goods are complied with and that the requisite authorization and permits are obtained from the authorities, and in particular that the goods are inspected and approved as and when required by the TÜV and the professional or trade associations responsible for industrial safety and insurance.

The denial or withdrawal of approval by the authorities or else the adoption of regulatory measures confer upon the Customer no right to rescind, terminate or refuse performance of the contract.

The warranty rights of the Customer, insofar as he is a merchant, assume that he has fulfilled his obligations in accordance with §§ 377, 378, 381 HGB to conduct an inspection and provide notification in writing of any defects within 8 (eight) days of receiving delivery.

Where a deficiency is indicated by the Customer, we are entitled to check the delivered items prior to any further processing or assembly. In case of improper handling, any liability claim will become void. In the event of a defect for which we are responsible in any the delivered parts, we shall be entitled at our own discretion either to eliminate the defect or to replace the part. No liability is accepted for damage incurred as a result of any of the following: unsuitable or improper use; faulty assembly or commissioning by the Customer or third parties; natural wear and tear; incorrect or negligent handling; non-compliance with, incorrect implementation of, or the implementation by maintenance personnel not authorized by us of, the maintenance procedures recommended in the product documentation at the recommended intervals; inappropriate tools and materials or replacement parts; electrochemical or electrical influences; and the use of illuminants not supplied by us.

Unless otherwise stated below, all other claims of the Customer – regardless of their legal basis – are excluded. We are therefore not liable for any damage caused to anything other than the delivery item itself; in particular, we shall not be liable for lost profit or other financial loss suffered by the Customer. The above exemption from liability does not apply if the cause of damage is based on intent or gross negligence. If we have negligently breached a cardinal duty or essential term of the contract, our liability to pay compensation is limited to foreseeable harm of the kind typically associated with such contracts.

The warranty period is six months, calculated from the transfer of risk. This period is a period of limitation and also applies to claims for compensation for consequential damage, as far as no claims in tort can be asserted. As far as

our liability is excluded or limited, this applies also to the personal liability of our employees, representatives and vicarious agents.

7. Installation work

In case of setting-up, installation or commissioning by us of the goods delivered, the following provisions shall apply unless otherwise agreed in writing:

The Customer shall assume the cost of the material and human resources related to the installation and provide them in a timely manner.

Before the start of the installation work, the Customer, without necessarily having being requested to do so, must make available the necessary information on the situation of any concealed electrical power lines, gas pipes or water conduits or similar installations as well as the requisite statistical information.

Before the start of the setting-up, installation or commissioning, all delivery parts needed for the work to start must be in position and any requisite preparatory work prior to the installation sufficiently advanced to allow the staff of Think Abele GmbH & Co. KG to begin the setting-up, installation or commissioning as soon as they arrive and carry it out without interruption. Any necessary working platforms, hydraulic lifts or other aids specifically needed on site must be provided by the Customer at the start of the provision of services.

If the setting-up, installation or commissioning is delayed through no fault of our own, the Customer must bear the costs of the waiting period and any additional travelling expenses incurred by the installation personnel. We are not responsible for the work of our staff or any other vicarious agents unless the work is related to the delivery and the assembly or in as far as such work was ordered by the Customer.

8. Retention of title

We reserve title to the delivered goods until receipt of all payments arising out of the business relationship with the Customer. Alienation of the goods subject to retention of title requires our written approval and may only occur if the claims to appropriate remuneration are ceded to us free from third party rights.

Processing or transformation of the delivered items by the Customer is always deemed to be performed on our behalf. If the items are processed with other objects not belonging to us, we shall acquire co-ownership of the end result in proportion to the ratio of the value of the said items to that of the other processed objects at the time of processing. For the end result of such processing, the same applies in other respects as to the items supplied under reservation.

If the items are inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the end result in proportion to the ratio of the value of the said items to that of the other processed objects at the time the mixing occurs. If the mixing is such that the object of the Customer is to be considered the principal object, it counts as having been agreed that the Customer will transfer pro rata co-ownership of the object to us. The Customer will retain for us the wholly or partially owned object that results in this way. We are entitled to take possession of the partially owned object and bring the co-ownership to an end through the sale of the delivered item.

The installation of the reserved goods in a plot of land or buildings by us or by the Customer is exclusively for a temporary purpose under § 95 BGB.

In the event of a breach of contract by the Customer, we are entitled to take back the goods or demand their return and freely dispose of them summarily - including through use. The exercise of such rights shall not affect the contract, nor in particular shall it be deemed rescission. The Customer receives the proceeds of any exploitation not required to meet either our existing or our foreseeable claims.

9. Design changes

We reserve the right to make design changes at any time; we are not, however, obliged to make such changes to products already supplied.

10. Governing law, place of performance and court of jurisdiction

The law of the Federal Republic of Germany shall apply to these terms and conditions and the entire business relationship between the Customer and ourselves to the exclusion of international law and to the exclusion in particular of the UN Convention on Contracts for the International Sale of Goods (CISG). German is the language in which the contract is negotiated and concluded. The Customer acknowledges that the contractual agreements are not such as to constitute a consumer contract within the meaning of § 29 EGBGB.

Compliance with and implementation of the relevant foreign trade provisions and other laws of the country of origin of the Customer, as well as of the country in which delivery is to be made, fall within the sphere of responsibility of the Customer. The Customer must draw our attention in writing to any unusual aspects or implications of such laws or provisions.

If the Customer is a registered trader, it is hereby agreed that the court with competence for our place of business shall be the court of jurisdiction; we are, however, entitled to sue the Customer at the court of his domicile or place of business.

11. Partial invalidity

Should one or more provisions of these terms and conditions or a provision within the framework of ancillary agreements be or become invalid, the legal efficacy of all other provisions and agreements shall remain unaffected. In place of the legally invalid provision, whatever provision approximates most closely in a manner that is legally permissible to the legally invalid one and corresponds to the commercial purpose of the agreement as well as the presumed will of the contracting parties shall be considered to have been agreed