

General Commercial Terms and Conditions of AZL Aachen GmbH

Clause 1 General

All consignments and services provided by AZL Aachen GmbH are governed exclusively by the terms set out below. Contrary or differing terms adopted by the Client are not recognised by AZL Aachen GmbH unless AZL Aachen GmbH has given them express consent in writing.

Clause 2 Offer, entry into a contract

2.1. AZL Aachen GmbH's offers are non-binding unless a binding offer is expressly made.

2.2. The documents associated with the offer such as illustrations, drawings, indications of weight and measurements as well as information in catalogues and price lists are merely indications and only approximate unless expressly described as binding.

2.3. AZL Aachen GmbH reserves all titles and copyrights to all documents made available by AZL Aachen GmbH. They are confidential in nature and may not be used for purposes other than that specified by AZL Aachen GmbH or be reproduced or made accessible to third parties and nor do they convey any entitlement to reproduce individual sections. Upon request these documents must be immediately returned to AZL Aachen GmbH.

2.4. In any case the contract does not arise until the Client receives our written job confirmation.

2.5. The Client must alert AZL Aachen GmbH to specific regulations and standards relating to the delivery of the consignments and services no later than upon receipt of the offer.

Clause 3 Scope of delivery

3.1. The written job confirmation from AZL Aachen GmbH governs the scope of delivery. Deliveries by instalment are permitted where they are reasonable for the Client.

3.2. In individual cases AZL Aachen GmbH is entitled to make alterations to the construction and, where shortages exist of raw materials, to use other materials where the item to be delivered is not thereby materially altered, this is not opposed by any prevailing interests of the Client notified in advance to AZL Aachen GmbH and the alterations are reasonable for the Client.

Clause 4 Prices, packaging and despatch

4.1. The prices are understood as being in EUR ex works and strictly net, ignoring any deductions and excluding packaging. Statutory Value Added Tax is added to the prices.

4.2. Special requests regarding despatch, transport, packaging and insurance must be notified to AZL Aachen GmbH no later than when the order is placed. Goods are transported at the expense and risk of the Client i.e. incidental costs for freight, insurance, export, transit and import and other permits are for the account of the Client. Similarly, the Client must bear all kinds of taxes, levies, charges, duties and similar that are charged in connection with the contract or consignment or refund them against appropriate evidence from AZL Aachen GmbH, if the latter has been obliged to deliver in this respect. Complaints in connection with the despatch or transportation must be sent by the Client to the last freight forwarder promptly upon receipt of the consignment or of the freight documents. Insurance against damage of whatever kind is a matter for the Client.

Clause 5 Terms of Payment

5.1. Unless other payment terms are expressly agreed in AZL Aachen GmbH's offer or the written job confirmation, invoices are payable in full within 10 days of the invoice date. Deliveries by instalment entitle us to invoice for the relevant instalment. Cheques and bills of exchange require the prior written agreement of AZL Aachen GmbH and only count as payment once they have been cashed in.

5.2. Payments shall be made only to one of the payment points designated by AZL Aachen GmbH. Fees, expenses or other costs incurred by AZL Aachen GmbH e.g. through the cashment of bills of exchange or cheques (which has been specifically agreed to) shall be borne by the Client.

5.3. Where payment is not made within the agreed time frame AZL Aachen GmbH charges late payment interest of 9 percentage points over the base rate as amended from time to time. The interest should be set higher or lower if AZL Aachen GmbH gives evidence of a higher interest rate being charged or the Client gives evidence of a lower charge.

5.4. The Client may apply set off only in relation to those claims which are undisputed or are the subject of a final court order which may not be appealed.

Clause 6 Delivery period

6.1. The delivery period begins on the day on which all commercial and technical requirements for the implementation of the job have been clarified

with the Client, the documents to be obtained by the Client have been received by AZL Aachen GmbH, any required licences and approvals have been issued and agreed prepayments have been credited to a bank account of AZL Aachen GmbH.

6.2. Provided the Client has fulfilled the contractual obligations by which it is bound the delivery period is deemed complied with if the item to be delivered has been handed over to the initial carrier or notice of readiness for despatch has been sent to the Client before such period expires.

6.3. Where late delivery is attributable to force majeure, e.g. mobilisation, war, insurgency, natural disasters, fire or to similar unforeseeable events, the delivery period is extended as appropriate.

6.4. Where the despatch of the delivery item is delayed at the Client's request or for any reason beyond AZL Aachen GmbH's control, AZL Aachen GmbH shall be entitled to store the delivery item at the Client's expense and risk, and invoice it as delivered ex works. Once a reasonable time frame has been set and has expired without delivery occurring, AZL Aachen GmbH is further entitled to dispose of the delivery item elsewhere and to supply the Client based on an appropriately extended time frame.

6.5. Where performance is delayed deliberately or as a result of gross negligence or as a result of loss of life, personal injury or damage to health, AZL Aachen GmbH shall be liable in accordance with the statutory regulations. In other cases of delay in performance AZL Aachen GmbH's liability for damages on top of performance shall be limited to 5% of the cost of such portion of consignments as, due to the delay, could not be used for their specific purpose and, for damages in place of performance, to damage that is typically foreseeable (cf. Clause 11 of these provisions). Further claims by the Client are excluded, even after the expiry of any performance period set for the seller. The Client may only rescind the contract within the framework of the statutory provisions where the delay in delivery is the responsibility of AZL Aachen GmbH. Any change in the burden of proof to the detriment of the purchaser is not linked to the regulations above.

Clause 7 Transfer of risk

7.1. Use and risk pass to the Client no later than upon the departure of the deliveries ex works. This also applies to deliveries by instalment.

7.2. Where despatch is delayed due to circumstances beyond AZL Aachen GmbH's control, risk passes to the Client with the notice of readiness for despatch.

Clause 8 Retention of title

8.1. The delivery item remains the property of AZL Aachen GmbH until all claims it has against the Client from the business relationship have been met. Where the validity of the retention of title is connected in the Client's country to particular formal requirements or other conditions precedent, the Client shall ensure these are complied with and carried out.

8.2. The Client is entitled to sell the delivery items on in the ordinary course of business. However, it hereby assigns to AZL Aachen GmbH all claims up to the value of the remuneration agreed between AZL Aachen GmbH and the Client (including Value Added Tax) which accrue to the Client from the onward sale. Moreover, this is irrespective of whether the consignment items are sold on with or without further processing. The Client remains entitled to enforce these claims even after their assignment. This is without prejudice to AZL Aachen GmbH's authority to enforce the claims itself; however AZL Aachen GmbH undertakes not to enforce the claims while the Client properly complies with its payment obligations and is not in arrears. Otherwise, AZL Aachen GmbH may, however, demand that the Client disclose such information about the assigned claims and the obligors in relation to these claims as is necessary for enforcement of the claims, and demand that the Client notify the (third party) obligors of the assignment.

AZL Aachen GmbH undertakes to release, at the Client's request, the security owed to it to the extent the value of the security exceeds the claims to be secured by more than 10%.

The processing or alteration of the goods by the Client shall always be done on AZL Aachen GmbH's behalf. Where the delivery items are processed or inextricably mingled with other items that do not belong to AZL Aachen GmbH, AZL Aachen GmbH acquires joint title to the new item in an amount equal to the pro rata value of the goods to which title is retained compared with the value of the other processed or mingled items at the time of processing. The Client shall keep the joint property in safe custody for AZL Aachen GmbH free of charge.

8.3. While the retention of title exists the Client may not pledge or assign the delivery items by way of security. In case of pledges, attachments or other third-party disposals, the Client shall immediately notify AZL Aachen GmbH of the same and make all information and documents available to AZL Aachen GmbH as are required for the preservation of AZL Aachen GmbH's rights. Bailiffs or, where relevant, third parties should be advised of AZL Aachen GmbH's title.

8.4. In case of breaches of obligation by the Client, in particular in case of late payment, AZL Aachen GmbH is entitled to rescind the contract or take back the goods following the expiry (without payment occurring) of a reasonable time frame set for the Client. This is without prejudice to the statutory provisions on the need to set a time frame. The Client is obliged to surrender the goods. The demand for the surrender of the delivery item does not amount

to notice of rescission by AZL Aachen GmbH unless this is expressly declared.

Clause 9 Guarantee/material defects

9.1. All those parts or services which demonstrate material defects within the limitation period (irrespective of the length of time in operation) shall be made good, re-delivered or repeated free of charge (the choice of remedy is up to AZL Aachen GmbH) where the reason for the defect was already present at the time risk transferred. AZL Aachen GmbH's guarantee in this respect shall be limited to those defects which can be shown to be caused by defects in the material, defective construction or defective performance on the part of AZL Aachen GmbH.

9.2. The limitation period for material claims for defects is 12 months. This does not apply where the law under Section 438(1)(2) (buildings and things used for buildings), Section 479(1) (rights of recourse) or Section 634a(1)(2) (construction defects) of the German Civil Code (BGB) prescribes longer time frames or in cases of loss of life, personal injury or damage to health, in case of a deliberate or grossly negligent breach of obligation by AZL Aachen GmbH or in case of the malicious non-disclosure of a defect. This is without prejudice to the statutory regulations regarding suspension of expiry, stoppage or restarting of time allowed.

9.3. Claims for defects do not exist where the variation from the agreed quality is only insignificant, where the affect on fitness for use is only insignificant, in case of natural wear and tear or damage arising following the transfer of risk as a result of defective or negligent handling, overloading, unsuitable equipment or due to particular external influences that are not provided under the contract. Where the Client makes inappropriate alterations or carries out inappropriate maintenance works then no claims for defects exist for these or the consequences resulting from them. This also applies to all alterations and repairs that are not carried out by AZL Aachen GmbH's own employees or by the specialists designated by it, i.e. all rights in respect of defects expire as soon as persons not designated by AZL Aachen GmbH alter or repair the products.

9.4. The Client must carefully inspect the deliveries and services within 14 days and immediately lodge a written complaint with AZL Aachen GmbH in case of any defects.

For the proper removal of a defect it is necessary for the Client to give an adequate description of the defect and for this to thus be ascertainable for AZL Aachen GmbH.

9.5. Shipments with obvious damage sustained during transport are to be accepted with reservations and this damage immediately indicated to the relevant haulier for the purpose of recording the facts since otherwise the Client loses all its rights in this respect.

9.6. AZL Aachen GmbH is then to be given an opportunity to carry out supplementary performance within a reasonable period.

9.7. Where the supplementary performance is unsuccessful the Client may rescind the contract or reduce the remuneration without prejudice to any damages claims under Clause 11 (Liability) of this contract.

9.8. Where the complaint of a defect was erroneous i.e. where there is no material defect present, AZL Aachen GmbH is entitled to demand that the Client compensate it for expenditure incurred by it.

9.9. Claims on the part of the Client due to expenditure required for the purpose of the supplementary performance, in particular transport and road maintenance charges and costs of work and materials are excluded where the expenditure is increased because the item for delivery was subsequently transferred somewhere other than the Client's place of business unless the transfer is consistent with its use for its proper purpose.

9.10. Damages claims are governed by Clause 11 of these Terms and Conditions. Claims for defects by the Client against AZL Aachen GmbH and its agents that go further than or other than those claims regulated in Clause 9 of these Terms and Conditions are excluded.

10. Industrial property rights and copyright

10.1. Unless otherwise agreed, AZL Aachen GmbH is obliged to carry out delivery only in the country of the delivery location free of third-party industrial property rights and copyright (further: intellectual property rights). Where a third party makes valid claims for breach of intellectual property rights resulting from deliveries used in accordance with the contract and carried out by AZL Aachen GmbH, AZL Aachen GmbH is liable to the Client within the time frame set in Clause 9.2 as follows:

- a) For the relevant consignments AZL Aachen GmbH shall, at its own expense, either obtain a right of use or alter it in such a way that the intellectual property right is no longer infringed, or replace it, the choice is up to AZL Aachen GmbH. Where this is not possible for AZL Aachen GmbH on reasonable terms, the Client has the statutory rights to rescind the contract or reduce the remuneration.
- b) AZL Aachen GmbH's obligation to pay damages is governed by Clause 11 of these Terms and Conditions.
- c) The obligations of AZL Aachen GmbH cited above only exist where the Client has notified AZL Aachen GmbH promptly (i.e. within 5 working days) in writing of the claims made by the third party. Where the Client suspends use of the shipment for reasons of mitigation or other material grounds it is obliged to notify the third party that the

suspension of use is not related to any acceptance that there has been a breach of any intellectual property right.

10.2. Claims by the Client are excluded where it is responsible for the breach of intellectual property right.

This applies in particular to breaches of intellectual property rights in the case of drawings presented, or statements/specifications made, by the Client. In such case the Client must indemnify AZL Aachen GmbH in full where a third party brings such a claim.

10.3. Claims for defects of title by the Client against AZL Aachen GmbH and its agents that go further than or other than those claims regulated in this Clause 10 are excluded.

Clause 11 Liability, other damages claims

11.1. Any liability going beyond the culpable breach of material contractual obligations, irrespective of the legal grounds for the same, in particular from breach of (other) duties arising from the obligation in tort or contract or from action that is not permitted, is excluded.

11.2. This does not apply where there is a mandatory statutory liability e.g. under the German Product Liability Act, in cases of intent, gross negligence or due to loss of life, personal injury or damage to health.

11.3. Where AZL Aachen GmbH is liable due to a culpable breach of a duty which is a material term of the contract without there being intent or gross negligence or liability for loss of life, personal injury or damage to health, then the liability is limited to foreseeable damage typical of such a contract. In no case shall typically foreseeable damage exceed an amount of EUR 100,000 per instance of damage. In case of an agreed overall remuneration of less than EUR 100,000 AZL Aachen GmbH is, however, liable up to the amount of the total remuneration.

Any change in the burden of proof to the detriment of the Client is not linked to the regulations above.

11.4. The above liability limitations also apply where the fault lies with a representative or agent of AZL Aachen GmbH.

11.5. Where the Client is entitled under this Clause 11 to damages claims, these become time-barred upon expiry of the limitation period that applies to the material defect claims under Clause 9.2 of these Terms and Conditions. The statutory regulations as to limitation apply in case of damages claims under the German Product Liability Act.

Clause 12 Exports, reproduction

12.1. The consignments by AZL Aachen GmbH are intended for use in the designated country. Exports, re-exports or re-imports require the express written agreement of AZL Aachen GmbH. This applies in particular to products that are the subject of an export ban by the Swiss, German or North American government or for equipment containing devices or components which are banned under the applicable laws from being exported, re-exported or re-imported.

12.2. No products sold by AZL Aachen GmbH may be copied, reproduced or replicated without the prior consent of AZL Aachen GmbH or used as a template or model for the same. All copies, reproductions or replicas are subject to a licence fee.

Clause 13 Jurisdiction and applicable law

13.1. The entire legal relationship is governed by German law subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") even where the Client has its registered office abroad.

13.2. The courts of Aachen, Germany shall have exclusive jurisdiction.

Clause 14 Severability

Should a provision of these Commercial Terms and Conditions be or become invalid this shall not affect the validity of the remaining provisions.