

## General Terms and Conditions for Deliveries and Services (ABLL 2017) of the

**-WEHRLE-WERK Aktiengesellschaft (Public Company), Emmendingen**  
**- Wehrle Umwelt GmbH (Limited Company), Emmendingen**  
**- WEHRLE BioEnergie GmbH, Emmendingen**  
**- Envirotech Umwelttechnik GmbH, Emmendingen**

### I. General conditions

#### 1. Scope

The conditions outlined below apply to all current and future tenders submitted and contracts concluded as well as deliveries or services (below: deliveries) by WEHRLE-WERK AG (plc), WEHRLE Umwelt GmbH, WEHRLE BioEnergie GmbH and ENVIROTECH Umwelttechnik GmbH (below: Supplier). They are further only applicable to entrepreneurs ("Unternehmer") pursuant to section 14 of the German Civil Code (BGB), public-sector legal entities or special bodies or funds under public law (below: Buyer). Any General Terms and Conditions of the Buyer will only become an integral part of this contract if and insofar as the Supplier expressly agrees to their validity in writing (as set out in X. paragraph 5).

#### 2. Tenders, contents of the contract and conclusion of the contract

2.1 Unless expressly designated as binding or furnished with a specific period for acceptance, the Supplier's tenders are subject to change. Contract conclusion and further forms of agreement are only binding once confirmed in writing by the Supplier (as set out in X. paragraph 5).

2.2 The contents of the contract, in particular the scope of performance, is solely determined by the contract concluded in writing, which completely reflects all agreements between the contracting parties regarding the object of the contract. Oral agreements between the contracting parties and commitments made by the Supplier before the conclusion of the contract are not legally binding and shall be replaced by the written contract. Supplements and amendments to the agreements made, including these General Terms and Conditions, require written confirmation to be deemed binding (X. paragraph 5). With the exception of managing directors or holders of a general power of attorney ("Prokurist"), the Supplier's employees are not entitled to make different oral agreements.

2.3 The Supplier's description of the item to be delivered or the service to be provided (e.g. weights, dimensions, performance and consumption values, load capacity, tolerances and technical data) as well as depictions of the aforementioned (e.g. diagrams and illustrations) are only approximately representative insofar as the contractually foreseen application does not require exact correlation. Data of this kind provided do not constitute agreed or guaranteed characteristics of state but instead descriptions and characterisation of the delivery or service. Deviations customary in the trade, in particular necessary construction-related deviations or deviations that are required by legal provisions or that represent technical improvements, are permissible so long as they do not prejudice the contractually foreseen application and do not stand in the way of the Buyer's typical contractual interest in receiving unchanged performance.

Prototypes and samples are – unless expressly designated as outturn samples or otherwise agreed – non-binding demonstration materials and shall be regarded as approximate reference points in terms of their characteristics and technical values.

2.4 The Supplier retains all ownership and copyright rights to all tender documents, cost estimates, illustrations and other documents (including in electronic form; below: documents). The documents may only be made available to third parties, made public, or used or reproduced by the Buyer itself or by third parties with the express prior consent of the Supplier. Should the Supplier not win the contract or the Buyer no longer require the documents in the due course of business, then the documents are to be promptly returned to the Supplier upon request and any duplicates are to be deleted or destroyed. Saving data that has been made available electronically for the purposes of customary data protection is excluded from this.

Unless an agreement to other effect has been reached, the Buyer retains all ownership and copyright rights to its own documents; the documents in question may only be shown to third parties with the Buyer's express consent. The Supplier is permitted to allow third-party access to the Buyer's documents to companies it legitimately plans to involve as sub-contractors.

3. The Buyer has the non-exclusive right to the use of standard software with the agreed performance features on the equipment agreed pursuant to the software producer or Supplier's terms and conditions.

4. The Supplier is only permitted to undertake partial deliveries if:  
– the partial delivery is utilisable for the Buyer for the application contractually foreseen,  
– the delivery of the remains of the order is guaranteed  
– such partial deliveries are reasonable for the Buyer and do not result in substantial additional expenditure or additional costs for the Buyer (unless the Supplier is prepared to bear these costs).

#### II. Prices and conditions of payment

1. Unless otherwise agreed, the prices are valid ex works (EXW, Incoterms 2010) and exclude customs and other public duties as well as shipping and packaging. They are also subject to the respectively valid legal VAT.

2. If the Supplier has agreed to perform assembly or installation, unless agreement to other effect has been reached, the Buyer in addition to the agreed payment further bears all relevant auxiliary costs such as travel expenses, transportation expenses for tools and personal baggage and accommodation allowances.

3. Payment, instalment or prepayment is to be made without deduction to the seller's designated account in accordance with the following principles, unless agreement to other effect has been reached:

3.1 Transactions with a contract value of up to EUR 10,000 are to be paid within 14 calendar days from the notice of readiness for shipment and receipt of the invoice by the Buyer.

3.2 For transactions with a contract value of over EUR 10,000  
30% of the contract value within 14 calendar days from the ordering  
70% of the contract value within 14 calendar days from the notice of readiness for shipment

Should the delivery time exceed three months, as a rule, further prepayment instalments will be individually agreed.

3.3 Advance and instalment payments are not interest bearing.

3.4 Unless otherwise agreed, the delivery time for transactions pursuant to paragraph 3.2 starts 30 calendar days after receipt of the first payment, provided that all other relevant contractual conditions have been met.

4. The Buyer may only offset ("zurückbehalten") such claims against our own as are undisputed or have been confirmed by a competent court or which stand in reciprocal contractual relationship with the claims of the Supplier.

The Buyer has no right of retention ("Zurückbehaltungsrecht") in the given transaction based on earlier or separate transactions. An exception to this is the right of retention on account of undisputed claims or claims confirmed by a competent court.

5. Should the Buyer miss the agreed payment dates, then the Buyer is deemed to be in arrears without the need for a formal reminder. Should the Buyer be in arrears, then the Supplier is entitled to demand interest at 9 percentage points above the base rate pursuant to section 247 of the German Civil Code. The above does not exclude enforcement of further compensation claims for damage due to delay in performance.

#### III. Retention of title

1. The items delivered (goods subject to retention of title) remain the Supplier's property until all the Supplier's entitlements arising out of the business relationship with the Buyer have been fulfilled by the Buyer.

2. The Buyer is obliged to treat the goods subject to retention of title with care and, as far as is possible, to store them separately from other goods. The Buyer is obliged in particular to adequately insure the goods at sales price against damage by fire, water, burglary and theft. The Buyer cedes claims against the insurance provider to the Supplier. The Supplier cedes the right to insurance payments back to the Buyer as soon as the retention of title lapses on account of full payment of all receivables by the Buyer. Any necessary maintenance or servicing is to be carried out punctually and at the Buyer's cost.

3. During the period of retention of title, the Buyer is not permitted to pledge the goods as collateral or security. Resale of goods is only permitted to resellers on the basis of standard practice and only on the condition that the reseller receives full payment from the customer or that the reseller only transfers ownership to the customer once all payment obligations have been fulfilled. All claims resulting from the resale of goods under retention of title are ceded to the Supplier in advance as security. The Supplier accepts said assignment. The Buyer retains revocable authorisation to enforce these claims, even once they have formally been ceded to the Supplier. The Supplier's authorisation to enforce these claims itself remains unaffected by the above. The Supplier commits itself not to enforce these claims itself unless the Buyer is in arrears for at least one week and has not filed for bankruptcy. Should one of the aforementioned situations arise, thus risking the Supplier's legitimate interest in obtaining security, then the Supplier is entitled to request that the Buyer reveal the claims ceded and the debtor's identity in addition to all information necessary for collection and that the Buyer inform the debtor (third party) of the fact of cession of claims.

4. The Buyer is obliged to inform the Supplier without delay of distraint, confiscation or other court orders or access by third parties. The Buyer bears all costs required to revoke access and recover the delivered goods.

5. Should the goods subject to retention of title be combined with other items, then the retention of title also applies to the newly created item. The Supplier thus acquires a co-ownership share based on the value of the supplied goods subject to retention of title (invoice value) as a part of the total value of items combined. Should one of the components used be deemed the principal object, then the Buyer cedes to the Supplier co-ownership proportionate to the value of the supplied goods (invoice value) relative to the other components used. The Buyer is obliged to store the new item co-owned by the Supplier free of charge. Furthermore the same conditions applicable to supplied goods subject to retention of title also apply to the item in production.

6. Should the value of the securities owed to the Supplier pursuant to the conditions above exceed the value of the Supplier's legitimate claims by more than 10%, the Supplier will then cede the excess part of the collateral rights on the Buyer's request.

7. If the laws of the country to which the delivery item has been dispatched do not allow or limit retention of title as discussed above, then the Supplier is entitled to retain other rights to the delivery item. The Buyer is obliged to cooperate with all necessary measures (e.g. registration) to ensure realisation of retention of title or other rights in lieu thereof and to participate in protecting these rights and bear all resulting costs.

#### IV. Delivery deadlines and default of acceptance

1. Unless a delivery date has been expressly agreed as binding, delivery times are deemed to be only approximate. If shipping has been agreed upon, the delivery deadlines and dates refer to the time of transfer to the forwarding agent, carrier or other third party commissioned to undertake transport.

2. The observation of agreed delivery deadlines is dependent on the punctual provision by the Buyer of all necessary documentation, necessary permits and approvals, in particular plans, as well as the Buyer's further cooperation obligations. If these conditions are not met on time then delivery deadlines are postponed accordingly. This is not the case if the Supplier is responsible for the delay.

3. If non-compliance with delivery deadlines is due to force majeure e.g. mobilisation, war, civil commotion or measures by higher authority or due to similar factors beyond the Supplier's control e.g. strike action, lock outs, energy supply difficulties, shortage of raw materials, cancelled, delayed or incorrect supply by suppliers, and the impediment to performance is of a temporary kind, then the delivery or performance deadlines are postponed by the length of the disruption plus a reasonable start-up period. Both the Buyer's and the Supplier's statutory withdrawal ("*Rücktritt*") and cancellation ("*Kündigung*") rights as well as the statutory regulations on the handling of contracts if a party is no longer obliged to perform a contractual obligation (e.g. impossibility or unreasonableness of performance and/or supplementary performance) remain unaffected.
4. If, at the Buyer's request, dispatch or delivery are delayed for more than one month beyond notice of readiness for shipment, the Buyer may be charged 0.5% of the items' value per month commenced as a storage charge up to a total of no more than 5% of the items' value. Both contractual partners are free to prove that higher or lower storage costs have indeed been incurred.

#### V. Transfer of risk

1. Risk passes to the Buyer as follows, even if freight paid delivery has been agreed:
  - a) in the case of deliveries not inclusive of assembly or installation, risk is deemed to pass to the Buyer when goods have been delivered to or received from the shipper. Deliveries may be insured against the usual transport risks at the Buyer's request and cost.
  - b) in the case of deliveries inclusive of assembly or installation, risk is deemed to pass to the Buyer on the day of takeover onsite or, if thus agreed, after satisfactory trial runs.

Should an acceptance procedure have been agreed, then this determines the transfer of risk. The statutory regulations for contracts on work and labour ("*Werkvertrag*") apply for agreed acceptance procedures accordingly.
2. If dispatch, delivery, start or the performance of assembly or installation, onsite takeover or trial runs are delayed on account of factors for which the Buyer is responsible or if the Buyer delays acceptance, then risk is transferred to the Buyer.

#### VI. Assembly and installation

The following conditions apply to assembly and installation, unless other conditions have been agreed in writing:

1. The Buyer shall bear the cost of and ensure the punctual provision of:
  - a) all earthmoving, construction and other auxiliary works, including procuring the necessary specialist and non-skilled workers, construction materials and tools,
  - b) the necessary materials for assembly and commissioning, such as scaffolding, lifting tools and other apparatus, fuels and lubricants,
  - c) the energy and water supply at the point of use, including the connections, heating and lighting,
  - d) sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, equipment, materials, tools, etc., and appropriate work and recreation facilities for the assembly staff with adequate sanitary facilities; whereby the Buyer is obliged to protect the Supplier's and the assembly staff's property on the building site as the Buyer would protect his or her own property,
  - e) protective clothing and safety devices made necessary by specific conditions at the assembly site.
2. The Buyer is obliged to provide the Supplier with the necessary information about concealed electricity, gas and water mains or similar structures in addition to the necessary structural data by their own accord before commencing assembly work.
3. Prior to assembly or installation, the materials and equipment necessary for work to commence are to be present at the site of assembly or installation and any preparatory work is to have advanced to such a degree that assembly or installation can commence as agreed and be carried out without interruption. Access roads and the assembly or installation site itself must be level and clear.
4. If assembly, installation or commissioning is delayed due to circumstances for which the Buyer is responsible, the Buyer shall bear the costs incurred due to idle time and any additionally necessary visits by the Supplier or assembly staff.
5. The Buyer shall confirm the hours worked by the assembly staff per week and the completion of the assembly, installation or commissioning in writing to the Supplier without undue delay.
6. If the Supplier requests acceptance of the delivery after completion within a reasonable period and the Buyer fails to declare acceptance within this period despite the obligation to do so, then acceptance shall be regarded as granted. Acceptance is also taken to be implied if goods – if applicable, after the completion of an agreed test phase – are taken into use.

#### VII. Receipt of goods

The Buyer shall accept deliveries, even if they exhibit insignificant defects.

#### VIII. Claims for defects („*Mängelansprüche*")

1. Claims for defects asserted by the Buyer are subject to the Buyer's fulfilment of the obligation to inspect and provide notification of defects pursuant to section 377 of the German Commercial Code (HGB).

2. Defective goods or services are to be repaired, replaced or provided again free of charge at the Supplier's discretion. In the case of a replacement delivery, the Buyer is to return the defective objects in accordance with the statutory provisions. The costs of supplementary performance (subsequent improvement or replacement delivery) are to be borne by the Supplier, as long as these have not increased by the fact that the delivered item has been taken to a location other than the original place of delivery.

If the Supplier refuses to provide supplementary performance, if supplementary performance fails or it is unacceptable for the Buyer, if a reasonable deadline set by the Buyer passes without successful supplementary performance or is not required by statutory provisions, the Buyer is entitled to either cancel the purchase agreement or to demand a reduction in purchase price at the Buyer's discretion. Claims for damages remain unaffected in accordance with section IX.

3. Claims for defects are subject to a limitation period of 12 months after the risk passes. If the item sold has been used for a building in accordance with its normal field of use and has caused a defect in the building, then all resulting claims for defects shall be subject to the statutory period of limitation. Statutory warranty periods apply to the construction of buildings and the performance of planning and monitoring services for buildings. Furthermore, statutory provisions for the limitation period of real rights of third parties (section 438, paragraph 1, number 1 of the German Civil Code) and in the case of fraudulent behaviour from the Supplier (section 438 paragraph 3, section 634a paragraph 3 of the German Civil Code) remain unaffected. The 12 month period of limitation does not apply to claims for damages according to section IX., whereby the statutory period of limitation applies in these cases.

A claim for damages on account of breach of obligation to provide supplementary performance can only be made if both a) the Buyer laid claim to the supplementary performance, and b) the Supplier breached the obligation to provide supplementary performance during the above-mentioned period of limitation.

4. If the defect is due to a defective third party product, the Supplier is entitled to cede the claim for defects against the preliminary supplier to the Buyer. In such cases, a claim can only be filed against the Supplier pursuant to the terms above, if the Buyer has failed to legally enforce the claims assigned against the preliminary supplier, or legal enforcement is futile, e.g. due to bankruptcy.
5. Liability for defects in used goods is excluded. Claims for damages remain unaffected hereby in accordance with section IX.

#### IX. Liability

1. The Supplier is liable for a breach of fundamental contractual obligations, i.e. contractual obligations whose fulfilment characterize the contract, whose fulfilment is essential for the due and proper implementation of the contract, and the compliance with which can be trusted by both contractual parties. Insofar as the Supplier is not guilty of grossly negligent or intentional behaviour, the Supplier is only liable for typically occurring, foreseeable damage.
2. In all other cases of breach of an obligation, the Supplier is only liable if the damage is caused by grossly negligent or intentional behaviour of the Supplier's legal representatives ("*gesetzliche Vertreter*") or vicarious agents ("*Erfüllungsgehilfen*"). Assumption of guarantees of injuries to life, body or health are excluded from this limitation, in which cases the Supplier is liable pursuant to statutory regulations.
3. Liability pursuant to the German Act on Liability for Defective Products ("*Produkthaftungsgesetz*") remains unaffected.
4. Claims for damages according to the above points numbered 1 to 3 are subject to the statutory limitation periods.

#### X. Closing provisions

1. If the Buyer is a merchant ("*Kaufmann*"), a legal entity under public law ("*juristische Person des öffentlichen Rechts*"), or a special body or fund under public law ("*öffentlich-rechtliches Sondervermögen*"), the place of jurisdiction for all claims arising directly or indirectly from this contract shall be the Supplier's head office or subsidiary at the Supplier's discretion. The Supplier is additionally entitled to file an action against the Buyer at the Buyer's place of business.
2. The place of performance for all obligations of both contracting parties shall be the Supplier's place of business.
3. Contractual relations are governed solely by German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. The contract shall remain binding even in the event of legal invalidity of individual items. This shall not be the case if adherence to the contract would constitute unreasonable hardship for either party.
5. If these provisions require any clarification in written form, transmission by telecommunication shall suffice, particularly by fax or email, as long as a copy of the signed clarification is transmitted.