



## General Terms and Conditions

### Translation liability

The following is a translation of ASE's German General Terms and Conditions (AGB) made to the best of the translator's knowledge and belief and in accordance with the principles of due diligence. This translation is provided for your convenience. Should the English text differ from the German or should disputes arise in connection with the General Terms and Conditions, the German version, as the legally binding version, shall prevail.

### I. Scope of validity

The following General Terms and Conditions shall exclusively apply to all business dealings between ASE AG (hereinafter referred to as „ASE“) and their customers (hereinafter referred to as „ordering party“). Differing or additional agreements, in particular the ordering party's terms and conditions for purchasing and delivery shall only be binding for ASE if they have been expressly confirmed in writing by ASE. The following sale and delivery conditions shall also apply for all future business dealings between the ordering party and ASE.

### II. Offers

- 2.1 Technical data contained in the documents belonging to the offer, such as pictures, drawings, indications of weight, measures, illustrations, descriptions and performance, only represent approximate values in principle. They only serve to describe the product and shall be regarded as guaranteed qualities of the product ordered only if explicitly indicated as such in the offer. Notwithstanding those provisions the goods ordered are at any time subject to alterations or modifications.  
ASE reserves the right to alter the technical concept of an offer due to technical progress, provided the performance and quality of the contractual item is not being vitiated.
- 2.2 ASE solely retains the ownership and the copyright of all drawings, software-programs and other documents. Without ASE's authorization they must not be made accessible to third parties and they must be returned on demand.
- 2.3 Unless otherwise expressly stated all prices are subject to the addition of VAT.
- 2.4 In the case that the installation of devices shall be performed by the ordering party and this may require an official or private approval, the ordering party is obliged to procure such approvals in time before the installation and to submit them to ASE unsolicited.
- 2.5 Unless stated otherwise, offers will be deemed binding by ASE for a period of 14 days from their date of issue. In any case, the prices quoted by ASE in the order confirmation plus the applicable value added tax shall apply.

### III. Conclusion of contract

- 3.1 In case that ASE did not submit a written offer, the conclusion of a contract between ASE and ordering parties shall only be constituted by written notification of order acceptance or by delivery of the ordered goods. Alterations and additions to the contractual agreement require ASE's express acknowledgement in writing in order to be legally valid.
- 3.2 The production and delivery terms stated by ASE are without obligation unless they are expressly declared as binding delivery and production terms by ASE. Moreover, the precondition for the beginning of a delivery term is that all technical details have been clarified between the contracting parties.
- 3.3 The delivery deadline shall be deemed to have been met if the goods have left the plant/warehouse at the agreed time, or if the ordering party has been informed of our readiness to dispatch. The delivery period shall be extended in the case of trade disputes, particularly strikes and lock-outs, as well as in the case of the occurrence of unforeseeable obstacles due to any cause beyond ASE's reasonable control, including, but not limited to, any delay caused by any act or omission of the ordering party, acts of God, war or delay of essential materials or services, insofar as such obstacles demonstrably have a material bearing on the delivery of the contractual item. This also applies if such circumstances occur at sub-suppliers. The delivery period shall be extended by the duration of the hindrance plus an adequate start-up period. ASE is entitled to postpone the delivery by the duration of the hindrance plus an adequate start-up period or to withdraw, completely or partly, from the contract due to the not yet fulfilled part. The ordering party shall be notified of such and similar hindrances and their end as soon as possible.
- 3.4 We shall be authorised to make part deliveries or services if they can be made without substantial detriment to the ordering party.

### IV. Scope of performance, prices and delivery

- 4.1 The delivery obligation includes all goods and services confirmed by ASE. ASE reserves the right to have its contractual obligations performed by appropriate third parties, provided that there will be no detriment to the contracting party.
- 4.2 Unless otherwise agreed our prices are ex works excluding packaging, transport and insurance. ASE is not obliged to insure the items that are the subject of the contract. In case that the insurance of the items is expressly required by the ordering party, ASE is authorized to separately charge the arising insurance costs. The dispatch type will be chosen by ASE unless an express agreement between the contracting parties has been made.
- 4.3 ASE reserves the right to increase prices due to registered cost increases (e.g. as a consequence of wage agreements or increase of material costs) within contracts containing a fixed delivery period of more than four months. If the price increase exceeds 5% of the agreed price, the ordering party shall have the right to terminate the contract.
- 4.4 The ordering party shall bear any taxes, duties, fees, charges or other assessments of any nature assessed by any governmental authority outside the

Federal Republic of Germany relating to any sale, delivery, transfer, use, import, export or possession of any product sold in connection with this agreement or any purchase order.

- 4.5 In case of delayed delivery the orderer shall grant ASE a reasonable period of grace of at least four weeks. If ASE is in default, liability for compensation is limited to 30% of the foreseeable damage, unless ASE has acted with intent or gross negligence.
- 4.6 Passage of risk to the ordering party shall occur at the latest on dispatch of the goods to be supplied including those cases where partial deliveries are made and ASE has agreed to perform other services such as payment of the cost of dispatch or delivery and installation. If the goods are ready for dispatch but dispatch or delivery/acceptance is delayed on the instruction of the ordering party or his representative, passage of risk to the ordering party shall take place on receipt by the latter of notice of readiness of dispatch.
- 4.7 If industrial property rights of third parties are violated with the construction of the contractual item due to the use of drawings, samples or other documents of the ordering party, the latter indemnifies ASE against all claims arising from the violation of such industrial property rights.
- 4.8 ASE's compliance with delivery and service obligations is subject to the ordering party's timely and proper fulfilment of his obligations.

### V. Payment terms

- 5.1 All invoices are due upon receipt, but not later than 14 days from the date of invoice. They are payable without discount, offset or abatement to the paying agent appointed by ASE.
- 5.2 Is a transfer of payment at the time of maturity not possible in the country where the payment is supposed to be made from, the ordering party nevertheless is obliged to deposit the equivalent value of the owed amount in due time in a bank in this country. If payments are made in a currency other than agreed the ordering party shall offset any loss on the part of ASE arising from exchange rate fluctuations.
- 5.3 In the event of late payment, ASE, irrespective of further claims, is entitled to charge interest at the rate of 4% above the current discount rate of the Deutsche Bundesbank or of ASE's choice of the European Central Bank, however not less than 8%. ASE reserves the right to claim greater actual losses due to delay.
- 5.4 The ordering party can only offset against such claims or only assert retention rights to an adequate extent for claims that are acknowledged by ASE, or claims that are legally imposed.
- 5.5 Bills of exchange shall only be accepted on account of fulfilment and only after issue of written agreement and on condition that they are discountable. Discount charges will be charged from the due date of the invoiced amount. Discounting and other bill costs shall be charged to the account of the ordering party.
- 5.6 Should it come to ASE's attention that there is a fundamental deterioration in the ordering party's financial situation constituting reasonable doubt about its solvency ASE is entitled to demand sufficient security, advance payment or payment immediately upon delivery. If the ordering party does not meet or does not timely meet ASE's justified demand ASE shall be entitled to withdraw from the contract or to demand compensation for damages due to nonfulfilment.

### VI. Retention of title

- 6.1 All goods supplied shall remain the property of ASE until such time as the ordering party has paid all claims which ASE has against it.
- 6.2 The ordering party may sell the goods to which ASE has retained title or co-title within the normal course of business unless it is in arrears with payments or has stopped payments. The ordering party may not pledge the goods or assign them by way of security.  
If the contract is governed by law other than German law and if according to that law the retention of title is not legally effective in the aforesaid form, the ordering party shall contribute to the establishment of a respective retention right corresponding to the legal regulations of his country.
- 6.3 If the ordering party violates its contractual obligations, in particular its payment obligations, ASE shall be entitled to take back the delivered goods and the ordering party shall be obligated to hand out said goods or to assign his replevin rights on said goods against third parties. If ASE exercises the right of retention or seizes the delivered goods, this shall not be deemed a withdrawal from the contract unless such withdrawal is expressly stated by ASE in written form.
- 6.4 If the ordering party does sell reserved goods, then it hereby assigns to ASE its rights against its customers on the basis of the sale – including all ancillary rights, security rights and retentions of title – until such time as the ordering party has settled all claims of ASE. ASE can demand that the ordering party informs his customers about this assignment and provide ASE with all information and documentation necessary for collection. The ordering party may, however, collect the claims assigned to ASE, provided it is not in arrears with, or has stopped, payments. If the ordering party's claims from the resale of the reserved goods are put into a current account, then the ordering party hereby assigns to ASE its claim to payment from the respective or the acknowledged balance in that amount in which the balance contains claims from the resale of the reserved goods. If ASE has only co-title to the goods resold, the above assignment shall only apply to the value of ASE's co-owner's share. The ordering party shall reimburse ASE for any costs that incur in connection with the exercise of the retention rights.
- 6.5 If reserved goods are processed or altered by the ordering party, this procession or alteration shall be deemed to be performed on behalf of ASE. If reserved goods are processed or altered, even compounded with other items that do not belong to ASE, then ASE shall be entitled to co-ownership of the new item according to the proportion of the invoice value of the reserved item to that of the new item at the time of such processing or alteration. In other respects such items



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resulting from processing or alteration shall be subject to the same conditions as those applying to reserved goods.

- 6.6 In case that reserved goods are inextricably blended with other items that do not belong to ASE, ASE shall be entitled to co-ownership of the new item according to the proportion of the invoice value of the reserved item to that of the other items at the time of such blending. If the item of the ordering party is considered to be the main item, then ASE shall be entitled to proportional co-ownership. The ordering party shall store the items of which we have co-ownership at no cost to ourselves.
- 6.7 The ordering party may not pledge the goods or assign them by way of security. If the reserved goods or other objects or claims to which ASE has rights are seized by third parties or if any other impairment is to be feared, the ordering party shall inform ASE immediately by the quickest possible method – enclosing the relevant documents – and object to any such seizure. The ordering party shall reimburse ASE for any costs that incur in connection with any such incidents.
- 6.8 If the value of the reserved goods and the other security rights granted to ASE exceed ASE's claims against the ordering party by more than 20%, ASE shall be obligated to release the excess if requested to do so by the ordering party.

### VII. Installation and assembly

- 7.1 Incurred assembly costs are invoiced by ASE against evidence. The ordering party shall remunerate ASE at the charge rates agreed at the conclusion of contract for labour including extra charges for overtime, night, Sunday & Holiday work as well as for planning and tracing. In addition, travelling and transportation expenses as well as costs for overnight stays of ASE's personnel away from home shall be borne by the ordering party. Unless fixed charge rates are agreed, the usual remuneration shall be deemed agreed to.
- 7.2 The ordering party shall incur and supply at his own expense: All building, scaffolding and other outside industry work including scaffoldings, hoisting gears and other apparatuses as well as full access to the installation site for appropriate vehicles. The ordering party shall provide for the proper environment, electrical and network connections for the installation of the equipment. Furthermore, he shall make available a lockable room suited for the storing of electronic control and data devices.
- 7.3 ASE is not liable for operations performed by its assembly personnel if and to the extent to which operations are not related to the delivery, installation or assembly of the contractual item or insofar as such operations are initiated by the ordering party without ASE's acknowledgement.

### VIII. Warranty

- 8.1 In the event of defects in the delivered goods, the ordering party can initially demand only that the defects be remedied. Instead of remedying the defects, ASE may deliver replacements. Only those parts of the goods which prove to be defective within 12 months – regardless of the operation period – of the date of delivery as the result of a circumstance that occurred prior to the transfer of risk (e.g. faulty design, faulty materials or processing) or the lack of a warranted quality are to be repaired or replaced. The ordering party must inform ASE in writing without undue delay if any such defects are discovered. ASE's liability shall cease no later than 12 months after the transfer of risk if delivery, installation or entry into operation were delayed for a reason beyond the control of ASE.
- 8.2 ASE shall be given adequate time and opportunity to remedy the defect. If such time and opportunity is refused by the ordering party, ASE shall have no liability for the defect. Upon ASE's request the ordering party shall send back the defective products freight collect and without delay to ASE's head office. ASE shall be entitled to charge the ordering party for any additional costs necessitated by and in connection with the forwarding of the sold products after delivery to a location other than the recipient's branch office unless ASE performed the installation at the respective location themselves.
- 8.3 If an adequate extension period granted to ASE expires without the defect being remedied, the ordering party shall have the right to withdraw from the contract or demand a reduction of the purchase price.
- 8.4 ASE shall not be liable for normal wear and tear or for damage caused by improper installation or putting into operation, or by unprofessional or improper treatment, repair, maintenance, servicing or care on the part of the ordering party or third parties, or by unsuitable operating materials, substitute materials, deficient building work, inappropriate foundation soil, chemical, electrical or electrochemical effects, except where ASE itself is responsible for the damage. The warranty and liability does not cover external influences not assumed under the contract, non-reproducible software errors, or modifications and repairs carried out improperly by the ordering or a third party.
- 8.5 In addition, the warranty does not cover sound and data storage media, films, lamps, reflectors, fluorescent tubes and light-emitting diodes (LED) as well as LCD- and plasma cells, and wearing parts of all kind.
- 8.6 Further claims against ASE on grounds of defects or lack of warranted qualities are excluded, in particular claims for compensation of damages beyond those existing on the contractual subject itself, as well as compensation for consequential loss including loss of profit or lost output.
- 8.7 This limitation of liability is not valid in cases of intent or gross negligence as well as in case of lack of warranted qualities.

### IX. Further Liability

Except as provided herein, any other claims for damages of the ordering party shall be excluded regardless of whether they are based on positive breach of contractual obligations, violation of obligations in contract negotiations, breach of warranty, tort or other legal theory. This exclusion shall not apply where e.g.

under the product liability law or in cases of wilful misconduct, of gross negligence, of the lack of warranted qualities or of the fundamental non-performance of contractual obligations, there is a legally binding liability. However, liability for damages shall be limited to the foreseeable damage normally covered by a contract. This limitation does not imply a change in the burden of proof to the detriment of the ordering party.

### X. Default of acceptance

In the event of the revocation of a confirmed delivery order as well as in the event that the ordering party is in default of acceptance, even after the expiration of a reasonable but at least 10-day period of grace for accepting the delivery granted by ASE in written form, ASE shall be entitled to cancel the contract and claim compensation for the damages incurred in the amount of 30% of the order value, plus any additional damages which may be proven. The ordering party reserves the right to prove a lower damage figure.

### XI. Secrecy

During and after completion of the contract both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information. Both parties shall be bound to have their employees and auxiliary people adhere to this obligation of secrecy.

### XII. Miscellaneous

- 12.1 Should any provision of these General Terms and Conditions be or become wholly or partly invalid, or should there be an omission, this shall not affect the validity of the remaining provisions. The invalid provision shall be deemed replaced by a valid provision which corresponds to the sense and purpose of the invalid one. In the event of an omission, a valid provision shall be deemed agreed upon which corresponds, on the basis of the purpose of these General Terms and Conditions, to what would have been agreed at the outset if the parties had given consideration to the matter. This shall also apply if the invalidity of a provision results from a measure of performance or time set as a standard herein; in such cases, a measure of performance or time which comes as close as legally possible to that originally agreed shall apply.
- 12.2 Any amendments, ancillary agreements or additions to these General Terms and Conditions must be made in writing, in any case they shall require a written confirmation. This shall also apply to the waiving of the formal requirement for the use of the written form of such agreements.
- 12.3 The assignment or pledging of claims against ASE requires ASE's written consent in order to be legally effective.

### XIII. Place of performance, place of jurisdiction, applicable law

- 13.1 The place of performance for all contractual as well as legal claims is Bruchsal, Germany.
- 13.2 Any and all disputes between the parties shall be settled by the courts in Karlsruhe, Germany if the ordering party is a merchant registered in the Commercial Register, a legal person, public corporation or public fund, or has no general place of jurisdiction in the Federal Republic of Germany. ASE shall also be entitled to sue the ordering party at the courts responsible for his place of business.
- 13.3 The legal relations between the contractual parties are governed by the law of the Federal Republic of Germany, to the exclusion of the Uniform Laws for the International Sale of Goods and the United Nations Convention on the International Sale of Goods.

January 2008