



## 1. Applicability

1.1 The following set of general terms and conditions of business shall apply to all items of equipment supplied, all repair work performed, and all other types of services rendered by EBARA unless otherwise mutually agreed by the parties in writing. Any terms and conditions of business of ordering parties shall not be binding upon EBARA to the extent that they depart from those stated hereunder. Acceptance of delivery of items of equipment and of services rendered shall constitute acceptance of EBARA's terms and conditions of business, regardless of any prior objections thereto that may have been entered. Any contrary statements by ordering parties referring to their own terms and conditions of business or purchase are herewith refuted and rejected.

1.2 In the event that a provision complying with "INCOTERMS 2000" shall be mutually agreed upon, then same shall apply only insofar as no provisions of those terms of sale shall disagree with the general terms and conditions of business stated hereunder.

1.3 To the extent that the general terms and conditions of business stated hereunder shall fail to regulate any matter, then said matter shall be subject to applicable legal regulations, rather than any general terms and conditions of business of ordering parties.

1.4 The following terms and conditions in their then currently valid forms shall apply to all future supply of equipment and rendering of repair work and other types of services by EBARA, even though said terms and conditions shall not be retransmitted to ordering parties in each such case and no further reference shall be made to same.

## 2. Quotations and Purchase Orders

2.1 In cases where no binding periods shall be expressly stated in quotations submitted by EBARA, then EBARA shall not be bound by said quotations, and said quotations shall become binding upon EBARA only upon EBARA's written acknowledgement of orders placed based upon same. Any samples or articles submitted for testing are for information and guidance only, and shall not bind EBARA in any way.

2.2 Any orders placed without quotations by EBARA shall, in accordance with 2.1 hereof, become binding upon EBARA only upon written acknowledgement by EBARA. This same provision shall apply in cases where ordering parties have altered quotations submitted by EBARA.

2.3 EBARA shall be entitled to effect partial deliveries at its discretion.

## 3. Documentation

3.1 All statements and specifications appearing in catalogs, brochures, and data sheets, as well as in items of documentation submitted with quotations, are advisory only, and thus shall not be construed as binding upon EBARA, except in those cases where they shall be specifically identified as such.

3.2 EBARA shall be entitled to alter the designs and constructions of items of equipment and to substitute alternative materials in the event certain raw materials shall be in short supply, except in cases where overriding interests of ordering parties known to EBARA shall have precedence.

3.3 EBARA shall retain all rights of ownership and all copyrights respecting any and all items of documentation supplied by EBARA. Said items of documentation shall not be employed for any purposes other than those specified by EBARA, shall not be duplicated or otherwise made available to third parties, and their transmittal shall not be construed as constituting authorization to copy components or items of equipment.

3.4 All items of documentation provided by EBARA shall be returned immediately upon receipt of a request to do so, and shall be returned without need for any such request being submitted in the event that no order shall be placed with EBARA.

## 4. Pricing, Packing, Transport Insurance, Shipment

4.1 Applicable pricing and terms shall be those in effect on the date equipment is shipped or services are rendered, and shall be understood as exclusive of any value-added taxes or other levies on commercial transactions applicable at the time. All pricing stated is net, ex our plant or the respective equipment manufacturer's plant (cf. INCOTERMS 2000), and is exclusive of all charges for packing, freight, assembly, postage, delivery, installation, and conduct of initial runs. Packing shall be invoiced at our actual cost.

4.2 EBARA shall organize shipments of goods in accordance with its own best judgment, and all such shall be at the expense of recipients, who shall assume all liability in conjunction with same.

4.3 Any shipment instructions of ordering parties shall be binding upon EBARA only to the extent that EBARA has been advised of same and has acknowledged same in writing.

4.4 EBARA shall insure ordered goods against the usual transportation risks, including breakage, at ordering parties' expense, unless the latter shall stipulate otherwise in writing.

4.5 EBARA shall be entitled to exceed schedules of work stated in cost estimates by as much as ten percent (10%) without prior consultation with ordering parties, insofar as EBARA shall deem the additional work involved essential on technical grounds.

4.6 EBARA reserves the right to adjust pricing stated in order acknowledgements in order to allow for altered manufacturing costs due to varying materials costs, wages, or other factors beyond EBARA's control.

## 5. Payment Terms

5.1 Payments shall be due within thirty (30) days of invoice date, net, insofar as no alternative payment terms appear in EBARA's quotations or order acknowledgements. Partial shipments shall represent separately invoiceable transactions, and shall entitle EBARA to invoice items shipped. In the event that payments shall be submitted in currencies other than Euro (€), the receivables involved shall be regarded as having been paid in full only if the foreign currencies received, converted into Euro (€), and credited to one of EBARA's bank accounts shall be equal to the agreed Euro (€) amounts.

5.2 Bills of exchange or checks shall be accepted subject to collection only. Ordering parties shall assume any and all charges involved in the discounting and collection of same.

5.3 Payment terms for orders involving custom-built items of equipment shall be negotiated between the parties.

5.4 Payments shall be remitted exclusively to a banking address designated by EBARA in writing, and shall be remitted on or before their due dates, with no discounts deducted and all charges prepaid by remitters. All fees, charges, and other costs incurred by EBARA as a consequence of special agreements to accept bills of exchange or checks in payment shall be at the expense of ordering parties. Payment due dates shall be reckoned either from invoice dates, or from the dates on which ordering parties are notified that goods are ready for shipment. For payments of all kinds, their dates of receipt shall be those dates on which the full amounts of funds involved become available to EBARA.

5.5 Payments due EBARA may be withheld by invoices or offset against counterclaims only if said counterclaims shall be undisputed, or shall represent valid, legally established, amounts due invoices.

5.6 Interest at an annual rate of three percent (3%) in excess of the German Federal Bank's current discount rate shall be added to all overdue amounts in the event that invoices suspend payments or are in arrears, i.e., if payments are overdue.

5.7 EBARA reserves the right to claim damages and pursue other forms of legal regress in the event that invoices shall be in arrears in their payments.

5.8 EBARA shall be entitled to declare all amounts owing immediately due and payable, and/or to demand submission of collateral deposits, including such for goods that have not yet been delivered, to withhold all or part of any outstanding shipments due under the orders involved, or under any other orders placed by the ordering parties involved, to have unpaid shipments returned at the expense of ordering parties, or to withdraw from valid sales contracts in the event that invoices shall be in arrears in their payments, or that there shall be reasonable doubts regarding their abilities or intentions to pay amounts due.

## 6. Installation and Initial Operation

In addition to those terms and conditions stated herein, supplementary, associated, terms and conditions issued by EBARA, copies of which are available upon request, shall apply in all cases where installation, supervision of installation, or conduct or supervision of initial runs are to be performed by EBARA.

## 7. Delivery Dates and Schedules

7.1 Negotiated delivery schedules for goods and services to be supplied by EBARA shall commence on the date of the most recent valid order acknowledgements by EBARA, insofar as all open business and technical matters essential to filling orders have been settled with ordering parties, all items of documentation to be supplied by ordering parties have been received by EBARA, any approvals or releases that may be required have been granted, and any advance payments agreed upon have been credited to one of EBARA's bank accounts. Delivery schedules shall be regarded as having been met if the goods to be supplied have been transferred to the initial freight forwarder to be involved, or if ordering parties have been notified that goods are ready for shipment on or by the final dates of delivery schedules, provided that ordering parties have met all of their binding contractual obligations. Partial shipments shall be permissible within reasonable bounds. Ordering parties shall accept delivery of items exhibiting minor flaws, defects, or shipping damage, in which case delivery schedules shall be regarded as having been met.

7.2 Delivery schedules shall be binding upon EBARA only once they have been expressly acknowledged in writing by EBARA.

7.3 EBARA shall, at its discretion, be entitled to place goods to be supplied in storage at the risk of ordering parties, commencing with the fourteenth (14th) day following the date on which ordering parties were notified that goods were ready for shipment, and to invoice ordering parties charges for said storage at a rate equal to one-half of one percent (0.5%) of the total amount invoiced for said goods for each month, or portion thereof, commencing with the date on which said goods were ready for shipment, said goods remain in storage, in the event that shipment of same shall be delayed at the request of, or due to the fault of, ordering parties, or if ordering parties shall fail to promptly pick up goods to be transported by them or under their direction. EBARA shall retain the right to demand from ordering parties payment of any excess storage charges that may apply upon submission of documentary evidence of same. EBARA shall further retain the right to, at its discretion; make alternative use of said stored goods upon expiration of a reasonable period, and to supply ordering parties with other goods in accordance with a commensurately extended delivery schedule.

7.4 Late deliveries shall not entitle ordering parties to withdraw from sale contracts or to enter claims for damages, except in cases where same shall be due to deliberate actions or gross negligence on the part of EBARA.

7.5 EBARA shall not be liable for any conventional contractual penalties in the event of late deliveries.

7.6 Insofar as late deliveries shall be due to matters or events beyond EBARA's control (*force majeure*), delivery schedules shall be commensurately extended, but in no case by more than six (6) months. Furthermore, EBARA shall be entitled to postpone its performance under sales contracts for the duration of said delays or hindrances, but in no case for more than six (6) months, or to withdraw from sales contracts in the event that

said delays or hindrances shall persist, without incurring any liability for damages. *Force majeure* shall be construed as including, but shall not be limited to, interruptions of manufacturing operations, or of traffic to/from, EBARA or its suppliers, issuance of cease and desist orders by, or other measures instituted by, government agencies, civil commotion, strikes, lockouts, sabotage, essential work pieces being rejected or falling due to no fault of EBARA's, failure to receive, or late granting of, government-agency approvals, as well as any and all other types of unpredictable events.

## 8. Liability, Transferral of Liability

8.1 All risks shall be transferred to ordering parties in accordance with the provision of INCOTERMS 2000 agreed upon by the parties. Otherwise, all risks shall be transferred to ordering parties as soon as ordered goods leave EBARA's warehouse. This same provision shall apply to partial shipments, and in the event that EBARA has assumed further obligations, such as payment of shipping charges, local delivery charges, or transfer charges.

8.2 When goods are ready for shipment, or if their shipment shall be delayed due to causes beyond EBARA's control, then all risks shall be transferred to ordering parties as soon as EBARA has submitted written or oral notification that goods are ready for shipment.

8.3 Goods delivered to ordering parties shall be accepted by same, even if defective, regardless of their rights under warranties.

## 9. Retention of Ownership

9.1 Goods delivered to ordering parties shall remain the property of EBARA until such time as their purchase prices, as well as all existing or forthcoming receivables arising from business relations of the parties, regardless of their nature or the reasons therefor, have been paid in full. In addition, EBARA reserves the right to retain ownership of products of its own manufacture ("reserved-right goods") pending payment in full of all amounts currently due, overdue, or to fall due to EBARA at some time in the future under its business relations with ordering parties. In the event that ordering parties shall fail to meet their contractual obligations or shall fail to comply with contractual provisions, in particular, if they shall fail to submit payments when due, or shall fail to pay the full amounts due, then EBARA shall be entitled to demand return of, or to take possession of, the goods involved, and ordering parties shall be obligated to surrender same to EBARA. EBARA's exercise of its rights to retention of ownership as well as the seizure of the delivered goods shall not be construed as indicating its intention to withdraw from the sales contracts involved in the event the Consumer Credit Act [German "Verbraucherkreditgesetz"] shall prove inapplicable.

9.2 Ordering parties shall handle and safeguard all "reserved-right goods" with the due care of professional business people on behalf of EBARA.

9.3 Ordering parties may resell "reserved-right goods" exclusively in the course of their normal business transactions, and exclusively under terms that entitle them to retain ownership of same.

9.4 Ordering parties herewith assign to EBARA in advance all receivables arising from their resale of "reserved-right goods," or to any other kind of future legal transactions affecting same that may arise in conjunction with properly conducted business transactions, as collateral for all of EBARA's claims against them arising from EBARA's current and future business relations with them. Ordering parties shall be entitled to collect said receivables, although said entitlement may be withdrawn by EBARA at any time.

9.5 In the event the value of collateral assigned to EBARA shall exceed the total amounts of receivables due EBARA by more than twenty percent (20 %), ordering parties shall be entitled to demand partial relinquishments of said collateral.

9.6 In the event that "reserved-right goods" are sold by ordering parties together with other goods, then ordering parties shall assign those portions of the resulting receivables represented by values of said "reserved-right goods" to EBARA, and EBARA shall accept such assignment. Assignments of said receivables shall be treated as inactive collateral as long as ordering parties continue to meet their contractual obligations. Ordering parties shall provide EBARA with statements of information required for collecting said assigned receivables upon request, and shall inform their debtors of said assignments.

9.7 Ordering parties may rework or process "reserved-right goods" on behalf of EBARA without incurring any obligations on their part. Insofar as the goods supplied are reworked using, joined to, or blended or mixed with, items that are not the property of EBARA (cf. §§ 947, ff., of the [German] Federal Civil Code ["Bürgerliches Gesetzbuch" (BGB)]), EBARA shall be entitled to co-ownership of those portions of final products defined by the ratios of the values of goods supplied by EBARA to the total values of all other goods employed prior to reworking, joining, blending, or mixing. In the event that ordering parties shall acquire sole ownership of "reserved-right" goods under applicable law, they herewith grant EBARA proportionate co-ownership of such worked/processed goods, and shall handle and safeguard same on behalf of EBARA. The provisions stated hereunder shall apply analogously to said co-ownerships.

9.8 Ordering parties shall be not be entitled to pledge or otherwise encumber "reserved-right goods" in manners that would prejudice or jeopardize EBARA's rights with respect to same without prior authorization by EBARA. Ordering parties shall immediately notify EBARA of any efforts by third parties to take possession of, or acquire title to, "reserved-right goods" or to any of those receivables assigned to EBARA as collateral, and shall concurrently supply EBARA with all items of documentation required for filing a third-party demurral suit. All costs of any such third-party demurral suits shall be borne by the respective ordering parties involved.

9.9 In the event that retention of ownership shall be disallowed or void under the laws of the nation or state in which goods reside, then submitting the requisite amount of collateral shall be regarded as agreed. In the event that justifying submission of this collateral shall require the collaboration of ordering parties, they shall immediately, and at their expense, undertake any and all such measures in said conjunction as shall be demanded by EBARA.

9.10 Ordering parties shall insure all "reserved-right goods" against theft, breakage, fire, water damage, and other hazards at their expense, and shall provide EBARA with proof of said insurance upon request. In the event that requested proof of insurance shall not be presented within a reasonable time span, EBARA shall be entitled to insure said goods at the expense of their ordering parties.

## 10. Warranties, Warranty Claims

10.1 Ordering parties shall report any defects immediately upon receipt of goods, in any case no later than three (3) weeks after delivery or the date goods are placed in storage under the provisions of 7.3 or 8.3 hereof. Later reporting of defects shall void all rights to submit warranty claims. Excluded herefrom are any defects that shall remain undetectable upon close examination of the goods supplied, which defects shall be reported immediately upon their discovery. Included in such reporting shall be the nature of the defects detected, and statements as to whether same were noticed immediately upon receipt of the goods, or only once they had been worked or processed. EBARA shall be entitled to have any defects reported inspected by its personnel.

10.2 Warranty periods shall equal those specified in applicable law, and warranty services shall be confined to repair (upgrading) or replacement, at EBARA's discretion, of any items deemed defective. Tolerant of repeated attempts to repair items shall be regarded as mutually agreed.

10.3 EBARA shall bear those costs immediately related to said repairs or replacements,

costs for replacement parts, shipping costs for same, plus reasonable costs for removing and replacing defective items, as well as, where reasonably demanded by the particular circumstances of specific cases, costs for providing the services of its personnel, insofar as reports of defects shall prove justified and shall have been duly submitted. All other costs shall be borne by ordering parties.

10.4 Ordering parties shall, in concurrence with EBARA, issue the necessary approvals and make available the amounts of time required for completing all repairs and replacements that EBARA shall, at its discretion, deem necessary; otherwise EBARA shall be relieved of its warranty obligations.

10.5 Warranties shall be voided where defects or failures shall be due to abuse, improper installation, improper operation, or failure to comply with all applicable regulations. Rights to claim warranty shall also be voided if ordering parties have modified or repaired items supplied without prior authorization by EBARA. Exempted herefrom are urgent cases where such may be necessary on safety grounds, or in order to prevent disproportionately serious damage to equipment, where EBARA shall be immediately notified in all such instances, or cases where EBARA shall be in arrears in eliminating defects or failures, in which cases ordering parties shall be entitled to eliminate defects or failures themselves, or to have same eliminated by third parties, and to demand that EBARA reimburse them for the costs or charges involved.

10.6 Ordering parties shall be entitled to avail themselves of their legal rights in the event that all efforts to eliminate defects or failures shall fail.

10.7 The statute of limitations for warranty claims due to defective goods shall be twelve (12) months from commencement of initial operation, but shall expire no later than fifteen (15) months from the dates on which goods are delivered or placed in storage, and shall be extended by the durations of any interruptions in the productive operation or utilization of the goods supplied occasioned by repair work.

10.8 Rights to submit warranty claims in respect to any replacement parts supplied or repairs performed shall expire three months from date of supply or completion, or upon expiration of the statute of limitations applying to the goods supplied, if said expiration shall occur later.

10.9 Ordering parties shall not be entitled to submit claims for damages, except in cases where deliberate actions or gross negligence on the part of EBARA shall be involved. Claims shall be confined to real damages. Claims for lost profits or consequential damages are thus explicitly precluded insofar as no deliberate actions or gross negligence on the part of EBARA shall be involved, and no non-waivable rights to enter such claims accrue under applicable product-liability laws.

10.10 In the event that ordering parties shall withhold payments due to defective goods, they shall be obligated to deposit the full amount of any withheld payments in escrow in accordance with applicable legal regulations.

## 11. Cancellation Penalties

In the event that sales contracts shall remain unfulfilled due to failure of ordering parties to meet their contractual obligations or to comply with contractual provisions, ordering parties shall be obligated to pay EBARA penalties equaling those costs incurred by EBARA in conjunction with those sales contracts involved up to that point, but in no case less than ten percent (10 %) of the net total amounts of goods ordered under said sales contracts. In the event that EBARA shall have valid grounds for withdrawing from sales contracts concluded, the ordering parties involved shall be obligated to reimburse EBARA for costs incurred in conjunction with same up to that point.

## 12. Special Terms Applicable to Deliveries and Installations

12.1 Ordering parties shall reimburse EBARA for costs incurred in conjunction with assembly and for flat-rated allowances, in particular, premiums for overtime or working on Sundays or holidays. Time spent on travel and waiting shall be regarded as reimbursable hours worked.

12.2 Ordering parties shall reimburse EBARA for first-class roundtrip rail fare and for charges incurred for transporting baggage

and hand tools. Where journeys involve traveling distances of more than 600 km from EBARA's headquarters, economy-class air fares may be optionally substituted for said rail fares.

12.3 Prior to commencement of any installations of items of equipment or components, all construction work shall be sufficiently far advanced that said work may commence immediately upon arrival of the goods. Rooms in which said work is to be performed shall be adequately protected against weather influences, adequately illuminated, and adequately heated.

12.4 Ordering parties shall provide dry, lockable, rooms equipped with electric lighting that are under surveillance and guarded for storing equipment components, materials, tools, and similar.

12.5 Ordering parties shall provide the following at their expense:

- a) work crews and skilled workers in the numbers deemed necessary by EBARA;
- b) all jigs, fixtures, and materials required for installing items of equipment or components and for operating items of equipment, plus unloading of goods from carriers bringing goods to installation sites. Any time lost due to delays in completing installations or initial runs non-attributable to EBARA shall be considered normal working hours and ordering parties shall reimburse EBARA for same at standard rates. Ordering parties shall assume all transportation risks in conjunction with goods brought along by EBARA personnel or delivered to the site.

## 13. Liability for Patent, Copyright, and Trademark Infringements

13.1 Insofar as EBARA shall make no specific statements to the contrary, all goods supplied shall represent, to the best of EBARA's knowledge, the state of the art in the Federal Republic of Germany, and shall not infringe any patents, copyrights, trademarks, or other intellectual-property rights of others.

Regardless thereof, in the event that any items of equipment supplied, or any component or components thereof, shall infringe any patents or other intellectual-property rights already awarded and published, or, in the event that the item involved explicitly includes rights to any process or processes, shall infringe any rights to any processes, as of the date sales contracts are concluded, and court proceedings are therefore instituted against ordering parties, then EBARA shall at its expense, at its discretion, and within a reasonable time period either obtain any and all rights needed for ordering parties to continue to utilize said items of equipment, components, or processes, or shall modify said items of equipment, components, or processes such that they shall no longer infringe said rights patent or intellectual-property rights of others, or shall, at its option, withdraw from the sales contract. EBARA assumes no other liability, in particular, no liability respecting processes, applications, products, or similar.

13.2 In the event that any statements made by, or any drawings provided by, ordering parties shall infringe the intellectual-property rights of others, ordering parties shall assume full responsibility for any such infringements and shall indemnify EBARA with respect to all claims entered in the event that EBARA shall be implicated in any such infringements.

## 14. Applicable Law, Legal Jurisdiction, Point of Fulfillment

14.1 All legal relations between the parties shall be governed by, and subject to, the laws of the Federal Republic of Germany.

14.2 Unified UN purchasing regulations (CSIG) shall not apply to said relations. Neither international nor German laws governing disputes shall apply to any agreements involving foreign contractual partners.

14.3 Point of fulfillment for all supply of goods by EBARA, submission of all payments to EBARA, and fulfillment of all obligations of ordering parties shall be D-63457 Hanau, Federal Republic of Germany.

14.4 All disputes arising in conjunction with contractual relationships and performance under contractual agreements, inclusive of any lawsuits involving checks or bills of exchange submitted in payment, shall be filed with the court responsible for EBARA's headquarters operations, or with the courts responsible for those of EBARA's branch offices that supplied the goods involved insofar as ordering parties shall be regarded as "profes-

sional business people" ["Vollkaufleute"], public-law corporations or similar legal entities, or as public institutions under applicable German law. However, EBARA shall retain the right to file suit at ordering parties' seats of business.

## 15. Supplementary Terms and Conditions

15.1 The above terms and conditions of business, along with any further agreements reached, shall be regarded as constituting the complete and entire agreements between the parties, and shall replace any prior oral or written agreements that may have existed between same.

15.2 The above terms and conditions shall also apply to all of EBARA's employees.

15.3 In the event that any provision or provisions hereof shall prove invalid or contrary to law, all other provisions hereof shall remain unaffected thereby. In such cases, the parties shall be obliged to replace any such invalid or impracticable provisions with valid, practicable, provisions that most closely approximate the business interests covered by said invalid or impracticable provisions.

15.4 Both parties shall be obligated to treat as strictly confidential any and all business and company secrets of the other party that may become known to them in the course of their performances under sales contracts concluded between the parties, and shall not disclose any such to third parties. The parties shall transfer these obligations to any third parties they may engage in the course of their performances under sales contracts involving the parties.

15.5 Any alterations or additions to the above terms and conditions, or to any further agreements concluded between the parties at the times contracts are concluded, shall be in writing. This same provision shall apply to any departures from demands that all agreements between the parties shall be in writing. The same shall apply to the present provision.

### Note:

In compliance with the German Federal Data-Protection Act, all parties involved are herewith notified that EBARA has acquired, and/or will, acquire, and retains, or will retain, on file or otherwise stored, data relating to ordering parties, and that all such data shall be treated in accordance with the German Federal Data-Protection Act.

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