I. General - Scope

JAS exclusively performs deliveries and services according to these General Terms and Conditions. These General Terms and Conditions shall also apply to all future transactions between JAS and the customer, without repeated reference to their inclusion. They shall in particular apply in the event that JAS, being aware of contrary or differing terms and conditions of the customer, performs deliveries or services to the customer without reservation. However, they shall not apply to contracts with consumers within the meaning of Sect. 13 BGB (German Civil Code).

II. Offer, Conclusion of Contract, Content of Performance

1. Offers submitted by JAS to customers are not binding. The purchase order of the customer shall be regarded as a binding offer. JAS will accept this offer within four weeks by, at its option, either sending an acknowledgement of order or unconditional delivery confirmation by way of order acknowledgement or purchase order confirmation or delivery confirmation or performance of services due. Additional agreements and changes require JAS’s written confirmation.

2. Drawings, drawings, plans and other documents which shall only be made available to third parties with JAS’s prior written consent and, on demand, have to be returned to JAS free of charge.

3. All offer-related documentation such as illustrations, drawings, weight and measurement details, service and consumption data as well as technical data and descriptions contained in product information or advertising material are not binding. They neither represent agreed qualified nor quality or durability warranties concerning the goods to be supplied or the services to be rendered by JAS.

4. In the event of sales on approval, JAS only guarantees sample conformity but gives no guarantee as to readiness for dispatch. In the case of sales subject to instalments, JAS reserves the right to refusal of the instalments. If this right of refusal is exercised, any previously made agreements to be concluded shall be cancelled. In this event, the customer shall be entitled to withdraw the goods at no cost. In the event of sales on approval, JAS reserves the right to set by mutually agreed date, the condition set by JAS of readiness for dispatch, having taken into account the material conditions referred to by the customer.

5. JAS shall be entitled to change the materials of the goods offered to customers or the materials agreed with the customers without the customer’s consent unless this change is considered unreasonable for the customer.

6. If any official permit must be obtained, it shall be the customer’s sole responsibility to do so. All costs accruing in this connection shall be borne by the customer.

7. The customer is responsible for loading and unloading and for loading and unloading the supplied product at the customer’s site. It shall be the customer’s responsibility to create the required workplace conditions on the agreed installation and setup date, to guarantee free access to the instruments as well as to provide sufficient workroom(s) and the necessary assistance. Additionally, the customer shall be obliged - especially if the delivered product needs to be integrated into an existing working environment - to place at the disposal of JAS a competent contact person and to provide all necessary information and documentation. In the event that JAS’s work is hindered or prevented by the customer’s fault or negligence, JAS’s right to payment for the work already performed and to be performed by JAS must be integrated into an existing hardware and software environment, it shall be the responsibility of the customer to see to it that the necessary software and hardware are in working order. The workplace conditions have to comply with the specifications as set by JAS and stated in the operating and/or maintenance instructions of the product concerned.

III. Prices, Terms of Payment, Default in Payment

1. Unless a price is expressly determined or if the customer buys at list prices, the prices valid at the time of delivery (according to JAS’s price list) shall apply.

2. Unless otherwise agreed, the prices are ex stock JAS, including loading by JAS, but excluding packaging and other additional costs. All prices are net prices excluding legal VAT.

3. Regarding contracts with an agreed delivery period of more than four months, JAS reserves the right and shall be obliged towards customers to adjust prices in accordance with changes in cost occurred after conclusion of contract and in particular caused by labor agreements, price increases of suppliers or currency fluctuations. On request we will provide the customer with the price changes at the time of acceptance.

4. JAS’s invoices are payable - unless another credit period has expressly been agreed - within ten days from the date of invoice without any discount.

5. JAS shall be entitled to first set off payments received against previous claims, then against costs and interests of the principal claim and finally against the principal claim itself.

6. The customer shall only be entitled to the right of set-off or retention if he has counterclaims which have been declared final and conclusive and which are undisputed and finally established or if the customer has legal title to the claim. Additionally, the customer may only exercise his right of retention notwithstanding his counterclaim is based on the same contract.

7. JAS only accepts cheques and bills of exchange on account of payment and their acceptance by JAS. Additionally, the customer may only exercise his right of retention notwithstanding counterclaims which have been declared final and conclusive and which are undisputed in the amount of the claims which are subject to exclusion.

8. If the customer does not pay invoices due or exceeds the period allowed for payment or if after conclusion of contract the customer’s financial circumstances worsen or if after conclusion of contract JAS obtains information casting doubt on the customer’s solvency and it is evident the customer is not in a position to pay the invoices due and payable, and to demand, by changing the previously made agreements, advanced payment or provision of security or, on completion of delivery, immediate payment of all outstanding claims that are based on the same legal relationship.

IV. Delivery Time, Delay in Performance, Partial Deliveries

1. Agreed delivery periods shall only apply approximately unless a fixed date has expressly been agreed in writing. Specially agreed delivery periods start with the dispatch of JAS’s acknowledgement of order. The deadline shall be deemed met if prior to the agreed date or deadline the item has left the factory or JAS has informed the customer about readiness for dispatch.

2. The fulfilment of JAS’s duty to deliver and to perform requires timely and proper fulfilment of the customer’s obligations and duties. In the event that an advance payment has been agreed or - to enable JAS to deliver and/or perform services - documents, approvals, clearances or parts to be provided must be obtained by the customer or details regarding execution still need to be clarified, the term of delivery will not start before all of the aforementioned requirements have been met. JAS reserves the right to enter a plea of non-performance.

3. JAS shall only be deemed in default after expiration of an adequate additional period (grace period) set by JAS or after conclusion of contract JAS has set by way of post or telegraphic means. In this case, JAS’s liability for damages shall be limited to the amount of direct and unavoidable losses resulting from the customer’s delay.

4. Excluding any further claims and rights of the customer, JAS shall be liable, in case of a culpable delay in delivery, for the damage caused by delay only within the scope of a deviation from the agreed delivery period of 0.5% of the purchase price for each full week of delay, however, up to a maximum of 5% of the agreed purchase price of the delayed part of the complete delivery if and inasmuch as the customer has suffered damage to such an extent at least. Apart from that, in each case of delay, JAS’s liability for damages shall be limited according to the provisions of Section VIII.

5. If, for reasons for which the customer is responsible, delivery is delayed for more than one week from announcement of the readiness for dispatch, JAS may store the ordered goods at its own discretion with the customer bearing the costs and the risk. As compensation for the expenditure caused by the storage, JAS may charge at most 0.5% of the contract price of the stored goods per month. Additionally JAS shall be entitled to demand immediate and without exception payment of all further claims for which the customer is responsible.

6. JAS shall be entitled to effect partial deliveries and render partial services within the agreed delivery period if this is reasonable for the customer.

V. Passing of Risk, Transport and Packaging, Acceptance

1. Unless otherwise expressly agreed in writing between JAS and the customer, delivery will take place ex stock. In this case the risk of accidental loss and the risk of deterioration of the delivery items will pass to the customer on receipt of the notice of readiness for collection by the customer. Otherwise, the risk of accidental loss and the risk of deterioration of the delivery items will pass to the customer on surrender of the carriage document. In the case of partial deliveries, the risk of deterioration of the delivery items in the case of partial deliveries or if JAS exceptionally has agreed to render additional services such as transport or installation, except when delivery is effected with JAS’s own vehicles or own means of transport, further delivery items shall be delivered under reservation of title are inseparably mixed with other items not belonging to JAS, as for the goods delivered under reservation of title. If the products delivered by JAS under reservation of title are inseparably mixed with other items not belonging to JAS, JAS shall acquire co-ownership of the new goods in proportion of the value of the products (total amount invoiced incl. VAT) to the other processed items. The customer shall keep the sole ownership or co-ownership thus created for JAS. Within the scope of regular business operations, the customer shall be entitled to use the new goods resulting from processing, remodelling, mixing or combination as long as he meets his obligations from the business relationship with JAS on time. However, the customer shall not rest productivity from the unsolicited co-ownership by his own or other persons, in the event of insolvency or in case of non-assignment agreement with his purchaser - to pledge or assign security the new goods. The customer hereby already assigns to JAS, as security, his claims resulting from the sale of the newly created goods, in particular the contractual claim for the purchase price and all other current or future claims on the customer that JAS is entitled to. The inclusion of a purchase-money claim into an open account and the recognition of a balance shall not affect the reservation of title.

2. In the case of disputes or other interferences by third parties the customer shall be entitled to use the newly created goods immediately only with the consent of JAS to enable JAS to file a suit according to Sect. 771 ZPO (German Code of Civil Procedure).

3. Adaptation, processing or remodeling performed by the customer of products delivered under reservation of title will always be performed for JAS, without any requirements arising therefrom for JAS. If the products are processed with other items not belonging to JAS, JAS shall acquire co-ownership of the new goods in proportion of the value of the products (total amount invoiced incl. VAT) to the other processed items. The customer shall keep the sole ownership or co-ownership thus created for JAS. Additionally, the customer shall be entitled to use the new goods resulting from adaptation, processing, remodelling, mixing or combination as long as he meets his obligations from the business relationship with JAS on time. However, the customer shall not rest productivity from the unsolicited co-ownership by his own or other persons, in the event of insolvency or in case of non-assignment agreement with his purchaser - to pledge or assign security the new goods. The customer hereby already assigns to JAS, as security, his claims resulting from the sale of the newly created goods, in particular the contractual claim for the purchase price and all other current or future claims on the customer that JAS is entitled to. The customer shall keep the sole ownership or co-ownership thus created for JAS. Within the scope of regular business operations, the customer shall be entitled to use the new goods resulting from adaptation, processing, remodelling, mixing or combination as long as he meets his obligations from the business relationship with JAS on time. However, the customer shall not rest productivity from the unsolicited co-ownership by his own or other persons, in the event of insolvency or in case of non-assignment agreement with his purchaser - to pledge or assign security the new goods. The customer hereby already assigns to JAS, as security, his claims resulting from the sale of the newly created goods, in particular the contractual claim for the purchase price and all other current or future claims on the customer that JAS is entitled to.
VII. Rights of the Customer in Case of Defects

1. The customer shall only be entitled to warranty claims if he has properly met the requirement to examine and to give notice of defects (Sec. 377 HGB (German Commercial Code)). This statement applies to apparent defects immediately, however, not later than within 7 workdays from delivery of the goods. Hidden defects need to be advised immediately in writing, however, not later than within 7 workdays after detection. JAS shall not be responsible for defects in the products delivered if they are attributable to the fact that the customer did not perform or did not contract the required maintenance work. In these cases the customer shall not be entitled to warranty claims against JAS. The customer shall not be entitled to warranty claims against JAS either if the defects in the products have been caused by unsuitable materials or parts, especially from third parties, or if the workplace conditions do not correspond to the conditions as specified by JAS or do not comply with the specifications as stated in the operating or maintenance instructions of the product concerned. Upon conclusion of the delivery contract, JAS assumes that the customer will perform operation and maintenance of the instruments and software as described in the product-specific documentation that comes with the product. Especially all routine maintenance work has to be prescribed by JAS.

2. If the customer asserts warranty claims and the defects detected by JAS are due to the fact that the product was not used according to specifications or that the required maintenance and cleaning work was not performed, and JAS cannot be held responsible for that, the customer shall reimburse to JAS the costs caused by the unjustified complaint.

3. On request the defective products shall be returned to JAS for examination.

4. The customer shall not be entitled to warranty rights if he buys used products or products which have been agreed to be downgraded. The same shall apply to variations in color, shape, design, size, topology, weight, performance, or color, which are within the usual tolerances as well as to minor diminutions in value or fitness of the products.

5. In the case of defects in products delivered by JAS, JAS shall only be obliged - at its option - to either repair the product or deliver flawless products (rectification of defects). To perform rectification of defects, JAS has to be enabled to examine the delivered product without limitation under operating conditions. In this case the customer shall immediately inform JAS of any necessary, or at least preliminary measures, such as clearing work performed - even in writing if so requested. If JAS is not prepared or not able to perform rectification of defects, especially if it is delayed beyond reasonable time limits for whatever reason, or if rectification of defects fails for any other reason, the customer shall be entitled - at his option - to withdraw from the contract or demand a reduction of the purchase price. Remedy shall be seen as failed after the third attempt if nothing to the contrary arises from the kind of the matter or the other circumstances. The customer is entitled to withdraw the contract or to request compensation of the additional costs incurred by the change of location.

VIII. General Limitation of Liability

1. JAS shall only be liable for damage or wasted expenditure - regardless of the legal ground - if the damage or wasted expenditure a) has been caused by JAS or one of the persons employed by JAS to perform an obligation by culpably breaching an important contractual obligation or b) is attributable to negligence or intention by JAS or one of the persons employed by JAS to perform an obligation.

Contrary to Section VII.1.a., JAS shall be liable for damage or wasted expenditure caused by advisory and/or information services not to be paid separately, only in case of gross negligence or intention. JAS’s liability for damages shall be limited to the predictable, typically occurring loss. In this case JAS shall not be liable for the customer’s lost profit and unpredictable indirect consequential loss. The above limitations of liability according to Sentence 1 and Section VII.1.b. shall not apply to the limitation of liability of JAS employees or agents as well as their managing directors or key employees.

3. If JAS is liable according to VII. 1. a) for the breach of an important contractual obligation, which is not based on gross negligence or intention, the liability of JAS shall be limited to 100,000 EUR in case of loss.

4. The above limitations of liability mentioned in Section VII. 1. to 3. shall not apply insofar as JAS’s liability, due to the provisions of the Product Liability Act, is compulsory or if claims arising from an injury to life, body or health are asserted against JAS. If the product delivered by JAS is missing a guaranteed feature, JAS shall only be liable for such damage the absence of which was subject of the guarantee.

5. A more extensive liability for damage than that provided for in Section VII. 1. to 4 shall be excluded - irrespective of the legal nature of the asserted claim. This shall especially apply to claims for damages from negligence in contracting having formed by JAS according to Sec. 311 Para. 3 BGB (German Civil Code), positive breach of contract according to Sec. 280 BGB (German Civil Code) or due to tortious claims according to Sec. 823 BGB (German Civil Code).

6. Insofar as JAS’s liability for damages is excluded or limited according to Section VIII. 1. to 5., this shall also apply with regard to the personal liability for damages of JAS employees, staff, agents and persons employed by JAS to perform an obligation.

IX. Forfeiture of Claims through the Statute of Limitations

1. Claims of the customer for defects in products delivered by JAS or for work performed by JAS contrary to duty - including claims for damages and for reimbursement of wasted expenditure - shall become statute-barred within one year from commencement of the legal limitation period insofar as nothing to the contrary arises from the following Section IX. 2. to 4.

2. In the case of new products delivered by JAS, which have been used in a building for the usual purpose and have caused it to be defective, the claims of the customer shall become statute-barred within five years from commencement of the legal limitation period. Contrary to Sentence 1, a limitation period of four years shall apply insofar as the customer has used the products delivered by JAS for the completion of contracts in which Part B of the German Standard Building Contract Terms is incorporated. Barring by limitation according to the preceding sentence will occur no earlier than 2 months after the point in time at which the customer has met his contracting partner’s claims from the defectiveness of the building, which was caused by the products delivered by JAS, unless the purchaser could successfully have pleaded the statute of limitations towards his customer/contracting partner. Barring of claims of JAS’s customer on JAS because of defective products delivered by JAS will occur as soon as the claims of the contracting partner of JAS’s customer against JAS’s customer due to defects in the products delivered by JAS to its customer have become statute-barred, however, no later than 5 years after the point in time at which JAS has delivered the product concerned to its customer.

3. If JAS has performed advisory and/or information services - not to be paid separately - contrary to duty, without having delivered products in connection with the advisory or information services or without the advisory or information services rendered contrary to duty representing a defect of quality according to Sect. 434 BGB (German Civil Code) of the products delivered by JAS, the claims arising therefrom against JAS shall become statute-barred within one year from commencement of the legal limitation period. Claims of the customer on JAS from the breach of contractual, pre-contractual or legal obligations, which do not represent a defect of quality according to Sect. 434 BGB (German Civil Code) of the products delivered or to be delivered by JAS, shall also become statute-barred within one year from the beginning of the legal limitation period. Insofar as the above mentioned breaches of obligations represent a defect of quality according to Sect. 434 BGB (German Civil Code) of the products delivered by JAS in connection with the advisory or infor-mation services, barring of claims resulting therefrom shall be subject to the provisions of items 1. to 2. and 4.

4. The provisions of the Sections IX.1. to IX.3. shall not apply to the limitation of claims for injury to life, body or health and, furthermore, shall not apply to the limitation of claims according to the Product Liability Act and for defects in title of the products delivered by JAS which are not excluded by limitation of claims according to Sect. 434 BGB (German Civil Code) of the products delivered or to be delivered by JAS may be claimed. Additionally, they shall not apply to the limitation of claims of the customer which are based on the fact that JAS has fraudulently concealed defects in products delivered by JAS or has committed an intentional or grossly negligent breach of obligations. In these cases the legal limitation periods shall apply.

X. Place of Performance, Place of Jurisdiction, Applicable Law

1. Place of performance and place of jurisdiction for all claims arising between JAS and merchants, legal entities under public law or special funds under public law shall be the principal place of business of JAS unless there are mandatory legal regulations for reserving another place of performance. Barring of claims of JAS’s customer on JAS, as well as also the place of jurisdiction for all claims arising between JAS and third parties shall be the place of business of JAS, however, if JAS has committed an intentional or grossly negligent breach of obligations. In these cases the legal limitation periods shall apply.

2. The legal relationship between JAS and the customer or between JAS and third parties shall exclusively be governed by the law of the Federal Republic of Germany, as applied between German merchants. Application of the Convention on Contracts for the International Sale of Goods (CISG - UN Sales Law) as well as the German International Private Law shall expressly be excluded.

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