

General terms and conditions

Published 01/2019

§ 1 VALIDITY OF CONTRACT CONDITIONS

1) For quotations, performances and deliveries made by ARGES GmbH, also for contractual obligations prior to contract conclusion, these general contract conditions shall exclusively apply for the entrepreneurial dealings unless something else has been agreed. Any other contract conditions shall not become subject matter of the contract, even if ARGES GmbH does not expressly contradict the same.

2) Even if upon the conclusion of similar contracts the same advice is not given again, the general contract conditions of ARGES GmbH shall apply, namely in the version retrievable under www.arges.de at the moment of making the statement by the orderer or by the contractual partner unless the contractual partners expressly agree something else in writing.

§ 2 QUOTATIONS, CONTRACT CONCLUSION, PRELIMINARY CONTRACTUAL MATTERS, PRICES, PAYMENT TERMS

1) The quotations of ARGES GmbH shall be without engagement, non-binding, and subject to prior sale unless expressly agreed as binding in writing. A legal obligation shall only materialise by a mutually signed contract or by a written order confirmation by ARGES GmbH as well as by the fact that ARGES GmbH starts with the rendering of performances under the contract. ARGES GmbH can demand written confirmations of oral contractual statements of the orderer.

2) Also, any samples, specimens, records, illustrations, drawings and weight specifications, price lists and other advertising material as well as any printed matter of ARGES GmbH shall be non-binding unless something else has been agreed.

3) Any changes of the product caused by technical progress, for instance a higher product version, through which the product fulfils its essential contractual properties, shall be reserved by ARGES GmbH; this results

If therefore any general and other terms and conditions of the orderer contradict these present General Terms and Conditions or the special conditions of a quotation of ARGES GmbH, then the conditions of the orderer shall only be valid if and to the extent to which this is expressly acknowledged in writing by ARGES GmbH. The acceptance of deliveries from ARGES GmbH or the silence about the following conditions shall be deemed as approval on the part of the orderer.

3) Even if ARGES GmbH grants it to companies affiliated with it to enter into the contract with the orderer instead of or additionally to ARGES GmbH itself in an authorised manner, then the present General Terms and Conditions shall continue to be valid in their entirety.

neither in a different subject nor in a defect when it comes to the contract conclusion.

4) All prices shall be understood as net prices ex works Wackersdorf, unless something else has been agreed in writing. The respectively valid turnover tax shall be added to all net prices. Any increases in material and labor costs, freight, duties, etc. shall be borne by the Customer. Fixed prices shall require express agreement in writing, prices for deviating quantities are subject to change. In the case of an export of the product, the respective provisions for intra-community deliveries between entrepreneurs or the export regulations shall be valid when a proof of export and a record in the books is at hand so that the turnover tax, if applicable, does not have to be calculated. Any packaging costs, insurance costs, travel expenses, charges, accessories and other incidental costs shall additionally be paid for on a time and material basis. The packaging costs shall be calculated at the cost price.

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From case to case we shall reserve to demand full or partial advance payment, in particular where this concerns custom-made products or large order volumes. The agreed remuneration shall be due after delivery of the product and receipt of the invoice at the orderer without deduction and shall be payable within 14 days. In the event of payment default and without the need for a prior reminder, a default interest of 8 percentage points above the prevailing base interest rate shall be payable.

5) The orderer can only set off against claims which ARGES GmbH does not contest or which have been determined in a final and absolute manner; only in such cases can he assert a right of retention or demand a reduction. Apart from the domain of § 354a German Commercial Code,

§ 3 PERFORMANCE TIME, DELAYS, SUPPLIES, PASSING OF RISK, PLACE OF PERFORMANCE

1) Any indications as to delivery and performance times shall be non-binding unless such are indicated as binding on the part of ARGES GmbH in writing. Delivery deadlines shall be understood exclusive of the transport duration. ARGES GmbH can render partial performances if the delivered parts are reasonably usable for the orderer, and the company can also make its deliveries before maturity.

2) Any delivery and payment deadlines shall be prolonged by the period in which the orderer is in payment default under the contract, and by the period in which ARGES GmbH is hindered to perform deliveries or performances by circumstances the latter is not responsible for; those deadlines shall also be prolonged by an adequate lead time after the termination of the reason for hindrance. Such circumstances shall also include force majeure and labour disputes. Any deadlines shall also be

the orderer can assign claims to third parties out of this contract only after having obtained the prior written approval from ARGES GmbH. The orderer shall only be entitled to a right of retention or to a defence of lack of performance in the context of this contractual relationship.

6) If discounts are granted, such shall only be valid in the case of a call order if the contractually agreed minimum quantity is purchased per time segment; otherwise such discounts shall lapse, including any already granted discounts on the units delivered until that moment.

7) We must reserve any acceptance of discountable bills of exchange or cheques. Any bank, discount and collection expenses accruing therefor shall be borne by the orderer.

deemed prolonged by such period in which the orderer, contrary to contract, does not render any cooperation, e.g. if he does not furnish a certain piece of information, make for access, deliver a supply or make available employees.

3) The orderer shall be accountable for the serviceability and suitability of supplies; unless expressly agreed in writing, ARGES GmbH shall thus not carry out any incoming goods inspections or suitability tests of supplies. If the supplies of the orderer are unserviceable or unsuitable for the product, and if this is not obvious for ARGES GmbH, then there shall be no warranty or liability claims of the orderer towards ARGES GmbH in this respect. The customer shall compensate ARGES GmbH for the damage caused by the unserviceability or unsuitability of supplies and, in addition, reimburse the company for any expenses incurring.

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4) If the contractual partners subsequently agree on different or additional performances having an effect on any agreed deadlines, then those deadlines shall be prolonged by an adequate period of time.

5) Any dunning letters and deadlines of the orderer shall be in writing in order to become effective. The expiry of binding deadlines shall entitle the orderer to assert the statutory rights he has, however, only after a fruitless expiry of a proper rectification deadline set by him. The contracts concluded between ARGES GmbH and the orderer shall be, as a rule, made with regard to special products which are not available in free trade and which are subject to a continuous development. When it comes to products developed by ARGES GmbH, those deadlines shall thus be deemed appropriate which are to be determined when considering the technical circumstances and particularly the actual possibility of development and replacement purchase; such deadline may vary, depending on product, module or error occurring; in the case of deviations, for instance in the optical sector, the deadline may even amount to up to four months.

6) If the orderer wishes that the products be sent later than originally agreed, then ARGES GmbH may, as from the declaration as to the readiness for dispatch to the orderer, invoice the costs arising through the storage; and, if the products are directly stored at ARGES GmbH, the latter may charge, however, at least 0.5 % of the invoice amount for each started period of storage of four weeks.

7) The risk of deterioration or loss of the product shall pass on the orderer upon the sending of the products on the part of ARGES GmbH; this shall also apply in the case of partial deliveries or takeover of other additional performances (e.g. delivery and setup), also in the case of supplementary performance by ARGES GmbH, each time irrespective of whether ARGES GmbH itself handles the sending or if the latter commissions a third party or uses the services of a third party. In the case of delay of shipping as a result of circumstances ARGES GmbH is not responsible for, or specifically upon request of the customer, the risk shall pass on to the orderer as from the day of notification of readiness for shipment. Even if products show inessential defects, they shall be accepted by the orderer irrespective of the warranty rights of the latter.

8) The place of performance for all performances arising from and in connection with this contract shall be the registered office of ARGES GmbH.

9) With respect to deliveries and performances of a different type (e.g. delivery of hardware, administration, training, setup and installation, development and process development on the premises of the orderer), separate contracts shall be concluded.

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§ 4 RESERVATION OF TITLE

1) The ownership in the products delivered by ARGES GmbH shall only pass on to the orderer as soon as the entire payment of the contractual remuneration is effected. Prior to that, he shall only have a preliminary, revocable right of use in personam.

2) If a case of reserved goods arises, the orderer shall be obliged to insure the same at his own cost against theft, breakage, fire, water and other damages. The orderer shall inform ARGES GmbH about the taking out of an insurance and, upon request of ARGES GmbH, shall also sufficiently substantiate that an adequate insurance is at hand. Should the orderer not comply with his obligation, then also ARGES GmbH, at the cost of the orderer, shall be authorised to take out the corresponding insurance regarding the reserved goods.

3) The orderer shall neither pledge the reserved goods nor transfer the same by way of security. Any resale or combination of reserved goods shall only be permitted in the ordinary course of business.

4) In the case of a combination or mixing of the reserved goods with movable items in terms of §§ 946 et seqq. German Civil Code, ARGES GmbH shall acquire a co-ownership in the occurring uniform product or the occurring uniform object, namely at the ratio of the invoice value of the reserved goods compared with the value of the occurring uniform product or occurring uniform object. In the case of processing or transformation of the reserved goods in terms of § 950 German Civil Code, the ownership of ARGES GmbH in the reserved goods does not lapse, rather, the legal consequences of the above section shall also be valid with respect to the occurring new product or the occurring new object. Any uniform or new products or objects ARGES GmbH acquires a co-ownership portion in under the above provisions of this section shall also be deemed reserved goods in terms of this regulation in § 4 „Reservation of title“.

5) If the orderer sells reserved goods under a nongratiuitous transfer of ownership to a third party, then the orderer shall already now assign his payment claims out of the sale transaction towards the purchaser in the amount of the payment claims still existing on the part of ARGES GmbH towards the orderer out of the underlying contract and out of any prior contractual relationships to ARGES GmbH, the latter accepting such assignment. That assignment shall automatically occur upon the moment of conclusion of the sale transaction as to the reserved goods between the orderer and the third party. The orderer shall revocably be authorised to collect assigned claims on behalf of ARGES GmbH, whereby any amounts collected shall immediately be forwarded to ARGES GmbH. The orderer shall not be entitled to a free of charge transfer of ownership of the reserved goods to third parties.

6) In the case of a conduct of the orderer which is contrary to contract, in particular in the case of default of payment, ARGES GmbH shall be authorised to take back the reserved goods at the cost of the orderer and/or to demand the assignment of any possible claims for return of the orderer towards third parties and/or to demand damages from the orderer.

7) As far as ARGES GmbH in terms of section 6 of this paragraph is entitled, the orderer shall concede to it and its agents the irrevocable right to enter his premises at usual business hours for collection purposes, if applicable, also with vehicles.

8) In the case of attachments, confiscations or the implementation of debt enforcement measures by third parties, the orderer shall immediately inform ARGES GmbH in writing about such actions. The costs for asserting and enforcing the claims of ARGES GmbH with respect to the reserved goods shall be borne by the orderer.

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9) If the value of the existing securities exceeds the claims of ARGES GmbH against the orderer from the underlying contract and from any previous business relationships between ARGES GmbH and the orderer by more than 20 %, then ARGES GmbH shall be, upon request of the orderer, obliged to release corresponding securities at the discretion of ARGES GmbH.

§ 5 WARRANTY, WARRANTY FOR SOFTWARE

1) The product shall have the agreed quality and shall be apt for the contractually intended use; lacking a corresponding agreement, the product shall be apt for common use. It shall satisfy the criterion of practical serviceability and shall have the quality normal for products and software of this kind; as a rule, software is not faultless. Any functional impairment of the product and/or of the software which is based on hardware defects, environmental conditions, maloperation or the like shall not be deemed a defect. Any minor reduction of quality shall remain unconsidered. The product shall have the properties and the intended use mentioned in the contract agreement and/or the product description enclosed to the contract with the orderer. Any other or further properties or a purpose of use going beyond this shall only be deemed agreed if such are expressly confirmed in writing by ARGES GmbH. Any changes of construction and design which neither impair the serviceability nor the value of the ordered object shall be reserved and shall not entitle to raise complaints. If the operational or maintenance instructions of ARGES GmbH are not adhered to, if changes to the product are made, for instance if parts are exchanged or consumption items are used which do not comply with the original specifications, or if a product seal is broken, then any warranty shall be inapplicable. Any warranty for a closed equipment system shall only exist in cases where that system was delivered by us at the same time and in a complete manner. The

10) ARGES GmbH shall also reserve property rights and copyrights with respect to samples, specimens, records, illustrations, drawings or price lists. They shall be deemed intellectual property and business and trade secrets of ARGES GmbH. Such shall not be made accessible to third parties beyond the business relationship and shall be kept secret in accordance with § 11 of these conditions. If the order is not placed, upon request of ARGES GmbH, any and all material shall be immediately returned.

commissioning of a part of the plant or product shall be prohibited as long as, after such has been built into the entire plant or product, all requirements of the EC Machinery Directive (2006/42/EC) with regard to safety and health have been fulfilled and the necessary safety facilities have been installed. Any warranty for optical elements and normal wear and tear shall, as a rule, be excluded. For disturbances resulting from a special machine periphery, so-called EMC disturbances (electromagnetic compatibility), we shall not give any warranty. The removal of EMC disturbances shall be handled by rectification under our direction or under force-account works. The costs therefor shall be borne by the orderer.

2) In the case of material defects, ARGES GmbH can initially perform supplementary performance but also carry out a replacement delivery. Such supplementary performance shall be effected upon choice by ARGES GmbH either by removing the defect, by delivering software which does not have the defect or by ARGES GmbH showing possibilities to avoid the effects of that defect. If a defect occurs, at least three attempts of rectification shall be acceptable. A homologous new product and/or programme version or the homologous prior product and/or programme version which does not include the error shall be taken over by the orderer if this is reasonable for him. Any possible rectification works shall not institute a new warranty period.

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3) The orderer shall support ARGES GmbH in analysing the error and removing the defect, especially by concretely describing any problems occurring, by informing ARGES GmbH comprehensively and by granting the company the time and occasion necessary to remove the defect. In particular, the orderer shall create a periphery which ensures the reproducibility of the error occurring. ARGES GmbH can carry out the removal of defect on site or on its own premises. ARGES GmbH can also render its performances by way of remote maintenance. At his own cost, the orderer shall take care of the necessary technical prerequisites and grant to ARGES GmbH access, after a corresponding prior information, to all correspondingly necessary locations, in particular to his EDP plant and to the production facility, up to the plant concerned.

4) The warranty period shall be one year and commences on notification of readiness for dispatch. This shall apply accordingly in the event of replacement of a product. No warranty will be assumed for any defects or damage arising after the transfer of risk and due to circumstances not attributable to ARGES GmbH. The same shall apply in the case of delay acceptance.

Any defective contract products are to be returned freight paid to ARGES GmbH after receipt of written authorization. Where ARGES GmbH

§ 6 PROPERTY RIGHTS

1) ARGES GmbH shall guarantee that the use according to contract by the orderer is not opposed by any rights of third parties. In the case of defects of title, ARGES GmbH shall warrant in that it makes available to the orderer, at its discretion, a legally flawless exploitability of the product or of an equivalent product. If this is only possible through inadequate expenditures, then ARGES GmbH shall be entitled, instead

concludes with its customers agreements for contractual products that are expressly designated as in the experimental or developmental phase, ARGES GmbH shall not assume any warranty for such products.

5) ARGES GmbH can demand additional charges if the product or the software was changed, used outside of the intended periphery or mal-operated. It may demand the reimbursement of expenses if no defect is found. The orderer shall have the burden of proof. § 254 German Civil Code shall apply correspondingly. Any extra costs arising through the fact that the purchased object is located at a place other than the delivery address stated in the order confirmation shall be borne by the orderer. Should, upon request of the purchaser, warranty works be carried out at a third location (a location other than the place of performance and the delivery address of the orderer), then the orderer shall bear the costs for working time and travel costs at the standard rates of ARGES GmbH, whilst those parts covered by the warranty shall not be calculated. Any replaced parts shall be handed over upon our request or shall be returned at no cost.

6) Only the orderer or his legal successor shall be entitled to any warranty claims directly after purchase and taking over the product; such claims shall not be otherwise ceded or assigned by him.

of the procedure mentioned in clause 1, to return to a status ex tunc in terms of § 346 German Civil Code with regard to the contract concluded with the orderer and to take back the products against reimbursement of the purchase price paid by the orderer, after the deduction of a proper compensation fee for the period during which the orderer was in possession of the product.

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2) The orderer shall inform ARGES GmbH immediately in writing in the case that any third parties assert any property rights (e.g. patents, copy-rights, trademarks or utility models) with regard to the product. Should a third party assert a claim against the Customer due to alleged infringement of intellectual property rights by the products, the Customer shall grant ARGES GmbH sole discretion as to whether to respond to any legal actions arising therefrom. The Customer must not enter into any settlement, or make any other admissions without the prior written consent of ARGES GmbH. The orderer authorises ARGES GmbH to carry on such disputes with a third party on its own. As long as ARGES GmbH makes use of that authorisation, the orderer itself shall not acknowledge any claims of that third party without the consent of ARGES GmbH; ARGES GmbH shall then repel those claims of that third party at its own cost and shall release the orderer from any and all costs in connection with the repelling of those claims unless the claims are based on a conduct of the orderer which is contrary to duty.

§ 7 OBLIGATIONS OF THE ORDERER

1) The orderer shall be obliged to immediately, as from delivery or making available, have any and all delivery items of ARGES GmbH examined by a competent employee in accordance with the provisions under commercial law (§ 377 German Commercial Code) as well as to make a complaint in writing as to any defects detected, describing the defect in detail. Before beginning with the productive use, the orderer shall thoroughly test each individual component for useability in the concrete situation. This shall also apply for software and programmes the orderer receives within the framework of warranty and of a service contract.

3) § 5 section 2 and section 4 of this contract shall apply correspondingly. Any liability on the part of ARGES GmbH for infringements of property rights shall lapse unless the product was used in the form authorised by ARGES GmbH or if it was used along with other products which do not come from ARGES GmbH or which were not authorised by that company in writing or if the product was used or combined, mixed or otherwise processed with such other products.

4) If a product has been built according to drafts or instructions of the orderer, then the orderer shall indemnify us against any and all claims which are raised on the grounds of infringements of industrial property rights on the part of third parties. An appropriate advance payment shall be paid on any possible procedural costs.

2) The orderer shall make proper precautions for the case that the software or the respective programme does not, in whole or in part, function properly (e.g. by way of data backup, failure diagnosis, regular result checks, emergency plans). It shall be in his responsibility to ensure the serviceability of the working periphery of the software or the programme.

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§ 8 PRODUCT MANUFACTURE UPON INSTRUCTION BY THE ORDERER, INFRINGEMENT OF PROPERTY RIGHTS

1) If we manufacture in accordance with drawings, samples, ideas and other templates of the orderer, then ARGES GmbH shall not assume any warranty or liability for the serviceability of the product if an occurring defect can be ascribed to the instructions of the orderer.

2) The orderer shall indemnify ARGES GmbH from and against all claims of third parties for damages which have been caused by the product if the damage can be ascribed to instructions of the orderer. This shall also apply for product liability claims.

§ 9 PRESCRIPTION

The prescription period shall be

a) one year as from delivering the product for claims from repayment after rescission or reduction, however, not less than three months as from making the effective rescission or reduction declaration for defects complained about;

b) one year for other claims for material defects;

c) two years in the case of claims for defects of title if the defect of title does not lie in a real right of a third party due to which right he may demand the surrender of the objects concerned or demand forbearance of use;

3) If ARGES GmbH manufactures according to the instructions of the orderer, then the latter shall guarantee that the manufacture and delivery of the product made under his instructions does not infringe any property rights towards ARGES GmbH, then ARGES GmbH shall be, after hearing the orderer, entitled to rescind the contract and the orderer shall then pay for the work on the product carried out until that moment. As for the rest, § 6 4) shall apply.

d) two years in the case of claims for damages or replacement of futile expenses that are not based on material defects or defects of title, beginning with the moment when the orderer becomes aware of the circumstances the claim is based upon or with the moment when he had to become aware of such circumstances without gross negligence.

e) Prescription shall occur upon expiry of the deadlines mentioned in § 199 German Civil Code at the latest.

f) In the cases of damages or reimbursement of expenses based upon intent, gross negligence, warranty, malice or violation of life, limb and health and in the case of claims under the German Product Liability Act, the statutory provisions shall at all times apply.

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§ 10 LIMITATION OF LIABILITY

ARGES GmbH shall pay damages or reimbursement of futile expenses, regardless of the legal ground (e.g. for contractual obligations based on legal transactions or acts similar to legal transactions, material defects and defects of title, breach of duty and tort) only to the following extent: Any liability for intent and warranty shall be unlimited. In the case of gross negligence, ARGES GmbH shall be liable in the amount of the typical damage which could be foreseen at the time of contract conclusion. In the case of non-grossly negligent violation of a duty that is so essential that the attainment of the subject of the contract is endangered (cardinal

obligation as duties the fulfilment of which enable the proper implementation of the contract in the first place and the compliance of which the contractual partner regularly relies upon or may rely upon and the violation of which endangers the attainment of the subject of the contract), ARGES GmbH shall be liable in the amount of the typical damage which was foreseeable upon contract conclusion. ARGES GmbH shall reserve the defence of contributory fault. In the case of harm to life, limb and health and in the case of claims under the German Product Liability Act, the statutory regulations without any limitation shall apply.

§ 11 EXPORT

1) Products and technical know-how delivered by ARGES GmbH shall be destined to be used and to remain in the country of delivery agreed upon with the orderer. The goods delivered shall be, individually or in a system-integrated form, subject to the German export control and embargo regulations as well as to the provisions of the country of delivery. Their export from the Federal Republic of Germany shall be subject to approval, i.e. shall only be permissible with the consent of the Federal Office of Economics and Export Control, BAFA, situated in D-65760 Eschborn/Taunus, or for instance under the US provisions with the consent of the Office of Export Control in Washington D.C.

2) Irrespective of whether the orderer indicates the final destination of the delivered products shall he be obliged to independently make enquiries as to those provisions and to obtain the necessary export permits. Apart from that, the orderer shall undertake to pass on this advice to his clients, thus ensuring the adherence of the provisions all along the way to the end user. ARGES GmbH herewith points out a possible punishability of any infringement.

3) Regarding their legal force, our order confirmations shall also depend on any official permits.

§ 12 SECRECY, OWNERSHIP OF RECORDS, COPYRIGHT

1) The contractual partners shall undertake, prior or upon the carrying out of contract, to treat any and all objects confidential which they receive from or become aware of the other contractual partner, which are protected by law, which contain business or trade secrets or which are classified as confidential, also beyond the contract expiration unless they are already publicly known without any infringement of the secrecy

obligation being at hand. The contractual partners shall store and secure such objects in such a way that any access by third parties is excluded.

2) The orderer shall make such objects accessible only to such employees and other third parties that require the said access in order to carry out their duties. Under the German Data Protection Act and the German

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General Data Protection Regulation (DSGVO), the employees shall be bound to preserve the data secrecy. According to this, the employees shall be prohibited from processing or using any personal data beyond the legal fulfilment of duties. This shall also apply if it is a matter of data which become known to an employee due to his activity for customers or suppliers. This obligation shall also remain in effect if the duties change or if the employment is terminated. Any violations against that secrecy shall be liable to punishment and may have consequences under the labour law.

3) ARGES GmbH shall process the data of the orderer necessary for handling the business by observing the provisions on data protections.

§ 13 FINAL PROVISIONS

1) Any amendments of and supplements to this contract shall be in writing in order to become effective. This written form requirement can only be set aside in writing. In order to adhere to the written form requirement the transmission in pure textual form shall expressly not be sufficient.

2) The laws of the Federal Republic of Germany shall apply, with the exclusion of the UN Sales Convention and of the law on the international sale of goods. The applicability of foreign law to the contractual

4) Any records the orderer receives from ARGES GmbH prior to or upon contract conclusion or even during the handling of contract, in particular cost estimates, constructional drawings, conceptional papers and the like, shall remain the property of ARGES GmbH; the latter shall hold the copyrights thereof unless something else is agreed in writing. Such documents shall not be made accessible to third parties in any form whatsoever. The orderer and ARGES GmbH shall preserve the strict confidentiality of such records among each other. Not even quotations of ARGES GmbH may be passed on or made accessible to third parties. The orderer has the option to compare a quotation from a third party with a quotation of ARGES GmbH within his company, without the third party becoming aware of the contents of the quotation of ARGES GmbH.

relationship shall be excluded. In the case of contracts with businessmen, the place of performance and place of jurisdiction for all disputes arising from and in connection with this contract shall be the registered office of ARGES GmbH.

3) In case of doubt, the remaining conditions shall also remain valid if there is an inefficiency of individual parts thereof. Any ineffective provisions shall be replaced by such provisions which come as close as possible to the intended economic success.