Article 1 - General Terms and Conditions

1. The General Terms and Conditions of Sale set out herein (“General Terms and Conditions of Sale”) shall apply 1) in respect of all quotations, estimates and order confirmations issued by Drew Aebersold Deutschland GmbH, Ashland Deutschland GmbH and Valdevine (Deutschland) KG (“Supplier” or “Vendor”), and also 2) in respect of contracts as specified below between the Supplier and (potential) Purchaser (“Purchaser” or “Orderer”). The Purchaser shall only accept the General Terms and Conditions of Sale, unless other terms are expressly agreed between the Vendor and the Purchaser. The Purchaser, by or on its behalf, confirms its acceptance of the General Terms and Conditions of Sale by or on its behalf, confirms its acceptance of the General Terms and Conditions of Sale, unless otherwise stated by the Supplier in writing, the General Terms and Conditions of Sale shall prevail over all conflicting or additional terms and conditions referred to by the Purchaser.

Article 2 - Prices

1. The Supplier’s prices quoted, estimated, published or announced by the Supplier are non-binding and subject to changes, which can be made at any time and without notice, and in particular can be changed to take account of increased costs incurred by the Supplier as a result of import and other tax, duties or levies imposed or charged by government or other bodies.

2. All prices stated shall be understood to be excluding tax, packaging and carriage and are based on delivery “ex works” in accordance with the Incoterms 2000.

3. All charges shall be invoiced for importation, export duties, tax, levies, charges and other applicable costs, together with all costs incurred in the course of exports for the completion of custom formalities.

Article 3 - Payment Terms

1. All payments shall be made without any deductions and in the currency shown on the invoice, unless specified otherwise in the Order Confirmation. The sale price for the goods and/or services must be paid in full by the Purchaser.

2. The Orderer shall only have a right to offset or withhold if its countersignatures have been ascertained by a court, are not disputed or have been recognized by the Orderer.

3. In the event of delayed payment by the Orderer, the Vendor shall be entitled to demand default interest of 8% points above base rate according to § 1 of the Discount Rate Act. This shall not affect the Vendor’s right to further claim for damage caused by the delay.

Article 4 – Reservation of Title

1. The goods supplied shall remain the property of the Vendor until such time as all current and past claims of the Vendor and the Orderer have been met, insofar as such claims are connected to the goods supplied.

2. The Orderer shall be entitled to sell on the goods belonging to the Vendor (provisional goods) in the ordinary course of business. However, the Orderer shall have no rights to claim arising out of the said selling on to the Vendor, irrespective of whether the provisional goods were sold on before or after being processed or whether or not they are associated with real or movable property. If, after processing or in conjunction with other goods not belonging to the Vendor, the provisional goods are sold on or associated with real or movable property, then the Orderer’s claim against its customer shall be deemed to have been assigned to the Vendor up to the delivery price of the provisional goods agreed between the Vendor and the Orderer.

3. The Vendor shall remain entitled to exercise this right to object after the event has taken place. This shall not affect the Vendor’s right to exercise the claim itself. However, the Orderer undertakes not to exercise the claim as long as the Orderer continues to comply with the conditions of the Orderer. If the Orderer exercises this right to claim, the Vendor shall be entitled to the proceeds obtained up to the amount of the delivery price of the provisional goods agreed between the Vendor and the Orderer.

4. If the goods are irrevocably mixed with other property not belonging to the Vendor, then the Vendor shall acquire joint ownership of the new item in that proportion which the value of the item sold (final invoice amount, including VAT) bears to the other mixed property at the time of mixing. If mixing occurs in such a way that the Vendor’s item can be viewed as the provender, then the Vendor’s claim against its customer up to the delivery price of the provisional goods agreed between the Vendor and the Orderer.

5. The Purchaser undertakes, upon request from the Vendor, to release the available security, where the realizable value of the security exceeds the claims to be secured by more than 10%.

Article 5 - Delinquency

All duties under the contract shall be subject to the Incoterms 2000/any subsequent versions thereof published by the International Chamber of Commerce, and to all special delivery conditions for products set out in the order in confirmation. In the event of a conflict between the Incoterms and a provision of the contract, the latter shall prevail.

2. The Supplier shall make every effort to deliver the goods and/or services on the dates specified in the Order Confirmation, however the Supplier shall not be liable for delays or changes made on time, whatever the reason. The Supplier shall be entitled to make partial deliveries.

3. The Supplier’s weights and measurements shall apply, unless there is proof that these are not correct.

4. The Purchaser shall check goods and/or services for quality and quantity immediately upon receipt.

Article 6 - Transfer of Risk

When the goods are handed over to the forwarding agent, carrier or other transporters, the risk of loss or damage shall pass to the Purchaser. This shall also apply in the case of delivery free to the Purchaser’s dock.

Article 7 - Packaging

Where an order confirmation states that the packaging of products is/remains the property of the Supplier and is to be returned to the Supplier, the Purchaser shall deliver the said packaging empty and at its own risk and expense to the place specified by the Supplier and shall notify the Supplier of the date of sending. All packaging which is not returned properly and in good condition within a reasonable period shall be replaced by the Purchaser at the Supplier’s standard replacement cost.

Article 8 - Health Risks and Safety

The Vendor shall take all necessary precautions to ensure that the goods to be supplied under the contract pose a risk to health and/or the environment.

The Supplier shall obtain extensive information about the nature of the health and environmental risks and about the proper and safe way to handle the goods and shall be responsible for keeping itself and all persons handling the said goods after delivery by the Supplier, fully informed about them.

Article 9 - Warranty

1. The Supplier warrants that the goods and/or services supplied comply with the technical specifications set out in the order confirmation at the time of delivery. No other warranties, express or implied, are given by the Supplier in respect of the goods and/or services and the Purchaser has not contested this immediately in writing.

2. The Supplier may reject its quotations and estimates at any time without notice, provided that no contract has yet been entered into between the Supplier and the Purchaser.

3. Cancellations of orders or goods and/or services returned for a credit note, will not be accepted. Orders and/or services, deemed to be binding on the Purchaser and open for acceptance by the Supplier for the periods stated therein or, if no period of validity is stated, for a period of 30 days after they are issued. Any unilateral cancellation by the Purchaser during this period shall not be valid.

4. If a contract is entered into with the Supplier, it will be assumed that the Purchaser has accepted the General Terms and Conditions of Sale. Unless otherwise stated by the Supplier in writing, the General Terms and Conditions of Sale shall prevail over all conflicting or additional terms and conditions referred to by the Purchaser.

5. Where complaints in respect of defects are justified, subsequent performance shall, at the Purchaser’s choice, be rectified at the Purchaser’s expense or the Purchaser shall be entitled to return the goods and/or services to the Supplier and to be reimbursed for all expenses incurred. Claims for defects by the Orderer shall be subject to the Orderer complying properly with its obligations to inspect and report defects in accordance with §§ 377, 378 HGB.

6. Where complaints in respect of defects are justified, the Supplier shall, at the Vendor’s option, take the form of rectification of the defect or the provision of a non-defective item. If the subsequent performance is not successful, the Orderer shall be entitled to reduce the price or, at its option, to terminate the contract.

7. Claims for defects shall become time-barred 12 months after the risk is transferred. This proviso shall not apply where the law specifies longer periods pursuant to § 478 and § 479 BGB.

Article 10 - Exclusion of and Restrictions on Claims for Damages

1. We shall be liable in accordance with the statutory provisions where the Purchaser makes claims for damages which are based on wilful negligence, including the willful or gross negligence of our agents or subcontractors. Provided that we are not held liable for wilful breach of contract, liability for damages shall be limited to the foreseeable damage which might typically occur.

2. We shall be liable in accordance with the statutory provisions where we negligently breach a significant contractual duty. If no significant fault liability for damages shall be limited to the foreseeable damage which might typically occur.

3. This shall not affect our liability for negligent harm to life, limb or health; this shall also apply in respect of presumed liability based on a legal obligation. We shall not be liable unless stated otherwise above.

Article 11 – Duties of the Purchaser

In the event that the Purchaser provides water treatment services, the following shall apply:

a. The Purchaser warrants that it has provided the Vendor with all the relevant information required for issuing a quotation and performing the contract. The Purchaser shall keep the Vendor informed of all changes and extensions to the date of issue of the quotation.

b. The Purchaser shall advise the Vendor of all changes and extensions to the date of issue of the quotation.

c. We shall be liable in accordance with the statutory provisions where we negligently breach a significant contractual duty. If no significant fault liability for damages shall be limited to the foreseeable damage which might typically occur.

Article 12 – Equipment

Where the Vendor has supplied the Purchaser with the equipment for carrying out the water treatment process, unless otherwise stated with or on any other basis, the Vendor shall remain the owner and holder of all other rights to the equipment for the whole of the period at the Vendor’s premises, unless expressly agreed otherwise in writing.

Article 13 – Force majeure

The Vendor shall not be liable for delays or non-performance of a term or condition in the order confirmation, contracts or other obligations, where the said delay or non-performance is caused by the Purchaser or it, its agents or subcontractors. Provided that we are not held liable for wilful breach of contract, liability for damages shall be limited to the foreseeable damage which might typically occur.

The Purchaser shall inform the Vendor in good time of any scheduled total or partial shut down which it has determined shall ensure such access to the Purchaser’s water system.

The Purchaser shall be responsible for obtaining the necessary permits, authorizations and consents from all the authorities, which are required in order to operate the water treatment facilities and to store and use the products supplied by the Vendor at the installations of the Purchaser. The Purchaser shall be responsible for all product and documentation with regard to the authorities; this shall apply even if, at the Purchaser’s request, the Vendor provides the said information and documentation to the authorities and/or the Purchaser.

Article 14 – Confidentiality

Technical, industrial, commercial and other information and details relating to the Supplier’s business, including but not limited to the Supplier’s formulae, product specifications, outputs, technology, systems, procedures, production plans, costs, operational procedures and clients, which the Purchaser, the Purchaser’s associated companies, managers or staff become aware of during the performance of the contract, shall be treated as the confidential property of the Supplier and shall remain the property of the Supplier in or on its premises. Any information supplied to third parties, which shall also include government and other authorities, either during or after the contract, without obtaining the prior written consent of the Supplier in every case.

All written information provided to the Purchaser by the Supplier and other accessible media shall be returned to the Supplier upon delivery to the Supplier or the end customer.

Article 15 - Applicable Law / Disputes

1. All contracts and documents to which these General Terms and Conditions of Sale apply, shall be subject exclusively to German law.

2. The place of jurisdiction for all disputes between the parties to the contract shall be the place where the Vendor has its registered office.


2007 January 08