

## General Business Conditions

### 1.0 General Terms

**1.1** The conditions in the following apply to the entire business relationship, even if they have not been explicitly agreed upon in an individual case.

**1.2** A contract is deemed to have been established, if no special agreement is reached, by the written confirmation of order of the supplier.

**1.3** Our deliveries are based on these conditions. Amendments and additions or special verbal agreements require our written confirmation. They do not affect the rest of the conditions.

**1.4** The supplier retains proprietary right and copyrights on patterns, cost estimates, drawings and similar information of a physical or immaterial nature, which also includes the electronic form, which may not be made accessible to third parties.

**1.5** All prices are to be understood ex works. The individual sales tax as laid down by law will be added to the prices.

**1.6** The pictures in our catalogues and leaflets reflect the version of our products at the time when the pictures are taken. Over time, modifications to the products can be made, resulting in deviations from the pictures. The purchaser or orderer cannot derive any rights from or make any objections on the basis of such deviations. The quoted weights, capacities, performances, outputs and other technical parameters are only approximative and non binding. Upon request, binding capacities, performances and outputs can be agreed upon, these requiring the written form in all cases.

**1.7** The place of performance for both delivery and payment is Hiddenhausen- Eilshausen.

### 2.0 Applicable law, venue

**2.1** The law of the Federal Republic of Germany applicable to the legal relationship among domestic parties is exclusively valid for all legal relationships between the supplier and the orderer.

**2.2** The venue is the court competent for the registered address of the supplier. However, the supplier is entitled to file a lawsuit at the headquarters of the orderer.

**2.3** Our GBC's have exclusive validity; contradicting conditions or those deviating from our GBC's are not accepted by us, unless expressly consented to by us in writing. Our GBC's are also valid if we carry out the delivery without reserve, despite of contradicting conditions of the customer or conditions deviating from our business conditions are known to us.

### 3.0 Use of software

**3.1** In as far as our delivery includes software, the orderer is granted a non-exclusive right for the use of the supplied software including its documentation. It is supplied for its intended use on the delivery object. The use of the software on more than one system is prohibited.

**3.2** The orderer is only entitled to copy, revise, edit or convert the software from the object code to the source code in the legally permissible scope (§§69 a ff.[German]UrhG).

**3.3** The orderer undertakes not to remove or to change manufacturer information, especially copyright remarks, unless the supplier has previously expressly consented to such doing beforehand.

**3.4** All other rights concerning the software and documentation as well as its copies remain with the supplier or the software supplier respectively. The granting of sub-licenses is not permitted.

### 4.0 Delivery

**4.1** Transport is at cost and risk of the orderer, even if made on 'delivered free' terms. 'Delivered free' only applies as a special price agreement; also in this case the delivery is made at the cost of the order, but the freight costs paid in advance by the orderer will be deducted from the invoice.

**4.2** If at all possible, delivery schedules will be strictly met.

**4.3** Possible impediments, such as cases of Force Majeure, mobilization, war, insurgency, worker's rebellions, not only in the own business but also in those of the main material suppliers, a large and important piece of work becoming reject, delays in transport, interruptions of operations etc. entail a respective extension of the delivery time and entitle us, depending on the type of the impediment, to fully or partially cancel delivery obligations.

**4.4** The delivery time derives from the contractual agreements. It being met by the supplier requires that all commercial and technical questions between the contractual parties are clarified, and that the orderer has fulfilled all of his obligations (such as, for instance, presentation of required official certificates or permits, or down payment). If this is not the case, the delivery time will be reasonably extended. This does not apply if the delay can be attributed to the supplier.

**4.5** Prerequisite for meeting the delivery date is the correct

receipt of supplies by the supplier on time. If delays are foreseeable, the supplier shall notify the orderer as soon as possible.

**4.6** The delivery time is deemed to be kept, when the delivery object has left the supplier's premises or when the cargo-ready notification has been transmitted. If acceptance is required, except in cases of justified refusal to accept, the acceptance date is decisive, or, as a substitute, the notification of acceptance readiness. If the dispatch or the acceptance of the delivery object are delayed for reasons to be attributed to the orderer, he will be invoiced the costs generated by the delay, starting one month after the cargo-ready notification or readiness for acceptance.

**4.7** In the case of a delay to be attributed to the supplier, the orderer is entitled to claim compensation for each full week of the delay in the amount of 0.5 %, however, maximum 5 % of the price for the part of the delivery that due to the delay could not be commissioned for the intended purpose, prerequisite being that the orderer can substantiate that the delay has caused damages. Both claims for damages on part of the orderer due to a delayed delivery and claims for damages instead of the performance exceeding this compounded damage due to delay, are excluded for all cases of delayed performance, even after the expiry of a delivery deadline the supplier has possibly been set. This does not apply if in cases of intent, gross negligence or injury to life, body or health liability is mandatory. The orderer can only withdraw from the contract within the framework of the legal regulations, in as far as the delay in delivery is to be attributed to the supplier. The regulations mentioned above do not include the alteration of evidence to the disfavour of the orderer.

**4.8** On request of the supplier, the orderer is obligated to declare within a reasonable period of time whether he will withdraw from the contract because of the delay in delivery or if he insists on the delivery.

**4.9** Should on request of the orderer the dispatch or delivery be postponed for more than one month after the cargo-ready notification, the supplier is entitled to invoice the orderer a storage fee for each month started in the amount of 0.5 % of the price of the goods, however, not more than a total of 5 %. The contractual parties still have the right to provide evidence of higher or lower storage costs.

### 5.0 Transfer of risk, acceptance

**5.1** Even when shipped at 'delivered free' terms, the risk is transferred to the orderer as follows:

**5.1.1** at the time of delivery, excluding set-up or installation, if the goods are dispatched or collected. Upon request and at the cost of the orderer, deliveries will be insured by the supplier to cover the general transport risks;

**5.1.2** at the time of delivery including set-up, excluding installation, at the date of take-over in our own company or, if agreed upon, after a successful trial run.

**5.2** The risk shall pass on to the orderer, if the dispatch, the delivery, the commencement, the set-up or installation, the take-over in the own company or the trial run is delayed for reasons to be attributed to the orderer, or if the orderer defaults in taking delivery for any other reason.

### 6.0 Warranty

**6.1** The suppliers is liable for material defects as follows:

**6.1.1** All parts or services will be repaired, newly delivered or rendered again, at the discretion of the supplier, which show a material defect within the period of limitation, irrespective of the time of operation, if the cause of these defects was already given at the time of transfer of risk.

**6.1.2** Claims for defect of quality come under the statute of limitations after 12 months. This does not apply as far as the (German) law according to §§ 438 Para. 1 No. 2 (building structures) and components for structures), 479 Para. 1 (claims of recourse) and 634a Para. 1 No. 2 (construction defects) BGB provides longer periods, or in cases of injury to life, body or health, in the event of a malice or gross negligent violation of duty on part of the supplier and fraudulent conceal of a defect. The legal rules regarding the suspension of the running of a time, suspension and new start of the periods remain unaffected.

**6.1.3** The orderer is obligated to immediately contest material defects to the supplier in writing.

**6.1.4** In the case of notices of defect, the orderer is entitled to withhold payments at a value that reasonably reflects the magnitude of the material defects encountered. The orderer is only entitled to withhold payments, if a notice of defect is brought forward which leaves no doubt about it being justified. If the notice of defect was unjustified, the supplier is entitled to claim a refund from the orderer for the expenses incurred.

**6.1.5** Supplementary performance with a reasonable period of time.

**6.1.6** Should the supplementary performance fail, the orderer can withdraw from the contract or reduce payment, notwithstanding any claims for damages according to No. (x).

**6.1.7** Defects can neither be claimed in cases of only minor deviations from the condition agreed to, of negligible impairment of usability, of natural wear or damage that have occurred after the transfer of risk as a result of misuse or negligent treatment, abuse, unsuitable equipment, deficient construction work, poor subsoil or of special external influences that are not mentioned in the contract as a prerequisite, nor for software errors that cannot be remedied. Should the orderer or third parties carry out improper changes or repair work, claims for defects are for such action and the resulting consequences are excluded.

**6.1.8** Claims by the orderer relating to the expenditure incurred for the purpose of supplementary performance, especially transport costs, errand, work and material costs, are excluded, in as far as such expenditure increases as a result of the delivery object having been transported to a location other than the branch/company site of the orderer afterwards, unless this is in compliance with the goods' intended use.

**6.1.9** Claims for recourse on part of the orderer against the supplier in accordance with the German § 478 BGB (recourse of the contractor) only exist in as far as the orderer has not reached agreements beyond the legal claims for defects with his customers. The scope of the claim for recourse on part of the orderer against the supplier according to the German § 478 Para. 2 BGB is also subject to No. 8 accordingly.

**6.1.10** No. ... (y) (Other claims for damages) applies to claims for damages Further reaching or other claims of the orderer against the supplier and his vicarious agents on grounds of a material defect laid down in this paragraph are excluded.

## **7.0 Other claims for damages**

**7.1** Claims for damages and indemnity by the orderer (in the following termed claims for damages), despite on which legal ground, especially resulting from breaching obligations arising from the contractual obligations and from unauthorized action, are excluded.

**7.2** This does not supply, if liability is mandatory, for instance, according to the product liability law, in cases of intent, gross negligence, injury to life, body or health, resulting from the breach of major contractual obligations. The claim for damages for the breach of material contractual obligations, however, is limited to the foreseeable damage typical for the contract, unless in the case of intent or gross negligence, or the liability is in effect because of injury to life, body and health. The regulations mentioned above do not include the alteration of evidence to the disfavour of the orderer.

**7.3** If the orderer is legally entitled to claims of damages in accordance with this paragraph, these will fall under the statute of limitation when the valid statute of limitation for claims of damages according to No. ... Warranty expires. The legal regulations ruling the statute of limitation are valid for claims of damages according to the product liability law.

## **8.0 Payment**

**8.1** Unless anything else has been agreed to the contrary, within the Federal Republic of Germany payments for the entire plant or larger objects are to be made as follows: 30 % with the order, 60% upon cargo-ready notification, and 10% 2 weeks after delivery.

**8.2** The payment for smaller supplies, especially spare parts and repairs, is due immediately.

**8.3** We reserve the right to deliver goods to orderers unknown to us against advance payment or collect on delivery.

**8.4** For foreign countries, the following payment conditions apply: 30% with the order, 60% at cargo-ready notification, 10% 2 weeks after delivery, or against a documentary credit. Setting off against counter-claims of whichever nature is excluded.

## **9.0 Set-up, installation, commissioning/start-up**

**9.1** The following conditions apply to the set-up and installation, unless other agreements have been reached in writing:

**9.2** The orderer has to bear the costs for and provide the following on time:

**9.2.1** all earth and construction work as well as other ancillary work to be carried out by other trades, including the qualified personnel and labour, building material and tools,

**9.2.2** the required equipment and consumables necessary for installation and commissioning/start-up, such as scaffolding, lifting gear and other devices, combustion materials and lubricants, energy and water at the point of use, including connections, heating and lighting, sufficient large, suitable, dry and lockable rooms at the place of installation to store machine components, apparatus, materials and tools, etc., and suitable work and staff-rooms for the installation personnel, including sanitary facilities according to the circumstances; furthermore, the orderer has to take those measures on the building site for the protection of the assets of the supplier and his installation personnel, which he would take or the protection of his own assets, and protection

clothing and protection devices required on the installation site due to special circumstances.

**9.3** Prior to the commencement of installation work, the orderer shall provide the necessary information regarding the position of concealed electric, gas and water lines or similar systems, as well as the required information on statics without being asked.

**9.4** Prior to the commencement of set-up or installation, the required supplies and objects required for starting work have to be made available at the set-up or installation site, and all preparatory work must have advanced prior to installation to a point that set-up and installation can commence as contractually agreed and without interruption. Access paths and the set-up or installation site must be level and cleared.

**9.5** If set-up, installation or commissioning/start-up are delayed by circumstances not attributable to the supplier, the orderer has to bear, to a reasonable degree, the costs for waiting time and additionally required travels of the supplier or his installation personnel.

**9.6** The orderer has to testify the duration of the weekly working time of the supplier's installation personnel as well as the termination of set-up, installation or commissioning/start-up immediately.

**9.7** If the supplier asks for the acceptance of the supply after production is completed, the orderer has to proceed with this acceptance within a period of two weeks. Otherwise, the acceptance is deemed to have been successfully completed. The acceptance is also deemed as carried out, when the supplied goods, upon completion of an agreed test phase, as the case may be, have been taken into use???

## **10.0 Retention of title**

**10.1** The seller retains the title of the supplied goods until full payment ensuing from the business relationship between the seller and the orderer and further ensuing receivables have been received.

**10.2** If spare parts delivered by the seller are installed in a machine, the seller has the right to claim a co-ownership of the machine on a pro rate basis reflecting the value of the spare part(s) supplied by the seller.

**10.3** The orderer may only dispose of the supplied goods in a diligent commercial manner. Other dispositions, especially pledges or assignment as security, are not permitted.

**10.4** Based on these business conditions, the orderer assigns all of his receivables towards his customers generated by any resale, as well as all respective receivables resulting from damage or loss of the goods supplied by the seller to the seller, in an amount commensurate with the claim to be paid to the seller out of the business relationship. The seller is authorised to present the accounts, as soon as the orderer no longer meets his payment obligations.

**10.5** If the value of the securities in favour of the seller exceeds the seller's receivables by more than 20%, the seller is obligated to release securities of a corresponding value on request of the orderer.

**10.6** The orderer is obligated to immediately report third-party access to the goods supplied and subject to retention of title, and to the seller's rights assigned to the seller.

EBM Bergmeier GmbH & Co KG