

# TERMS OF SALE AND DELIVERY

## Preamble

The offers made by BAUER GmbH are directed exclusively at entrepreneurs within the meaning of § 14 of the German Civil Code ("BGB"). The conclusion of a contract with consumers within the meaning of § 13 BGB is excluded.

These General Terms and Conditions shall apply to all present and future contracts of BAUER GmbH with companies in accordance with § 14 of the BGB.

## 1. Scope

These General Terms and Conditions shall apply to all current and future orders, unless we have expressly acknowledged deviations from them in writing.

Conditions of purchase or other terms and conditions stated by our respective contractual partner – hereinafter referred to as the customer – are hereby expressly rejected. They shall not bind us even if we do not expressly object to them again upon conclusion of the contract. Conflicting terms and conditions of purchase of commercial customers shall require our express written acknowledgement to be valid.

## 2. Conclusion of contract

Our offers are always – unless otherwise communicated – subject to change. Subject to prior sale. Orders require our written confirmation for their legally binding validity.

## 3. Prices

Our prices are quoted ex works in the amount of the current price list valid at the time the order is placed, plus the statutory value added tax at the rate prescribed by law in each case and apply only to the agreed scope of services and delivery. Any additional and special services will be charged separately by us to the customer.

## 4. Quality/condition

Our specifications regarding the object of the delivery or service, e.g. utility values, application possibilities, load capacity, intended use, tolerances and technical data are descriptions or identifications. Specifications in offers and price lists regarding dimensions and weights and all illustrations are approximate and approximate. Special rights can only be derived from them if we have expressly guaranteed their binding force by contract. Illustrations handed over by us to the customer must be checked for correctness and any necessary changes must be submitted to us immediately. We shall not be liable for defects and their removal in the event of failure to notify changes. Our illustrations may not be copied and may not be disclosed to third parties. All illustrations shall remain our property.

## 5. Shipping and transfer of risk

- 5.1 The place of performance for all obligations arising from the contractual relationship shall be our registered office in 46354 Südlohn, Germany, unless a contractual provision to the contrary exists with the customer.
- 5.2 Shipping instructions given by the customer must be clearly marked in the order. In all other respects, the mode of shipping and the type of packaging shall be subject to our dutiful discretion.
- 5.3 The risks of transport shall be borne by the customer. This shall also apply to partial deliveries or if we have assumed other services (e.g. dispatch or delivery) without having contractually agreed a debt to be discharged at the place of performance with the customer. The risk shall pass to the customer at the latest when the delivery item is handed over to the forwarding agent, carrier or other third party designated to carry out the shipping. The point in time at which loading begins shall be decisive for determining this date. This shall also apply if partial deliveries are made or we have taken over other services (e.g. shipping). If the dispatch or the agreed self-collection should be delayed for reasons not attributable to us but to our customer, the risk shall pass to the customer on the following day after notification of our making the goods available. From this point in time we are entitled to charge the customer for storage costs in proportion to the work involved. In the event of self-collection, the customer or his/her representative shall be responsible for loading the vehicles. Insofar as our employees assist with loading procedures, they shall not act as our vicarious agents, but solely at the behest of the customer.

## 6. Delivery periods

We shall endeavour to comply with contractually agreed delivery periods. If this should not take place, we will inform the customer immediately and name a new delivery time. If this delivery date should also not be adhered to by us, the customer can only exercise his/her legal rights if the delivery or service still does not take place within a grace period set by the customer and reasonable for us. Cases of force majeure and other disruptive events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions, failure to meet delivery deadlines or failure of sub-suppliers, shortages of energy or raw materials, traffic disruptions as well as strikes, lock-outs and official orders), for which we are not responsible, shall release us from the obligation to deliver or perform for the duration of the disruption and to the extent of its effect. If delivery or performance is delayed by more than one month as a result, we shall be entitled to withdraw from the contract with regard to the quantity affected by the delivery or performance disruption. Further claims against us shall be excluded.

## 7. Retention of title

- 7.1 The delivered goods shall remain our property until full settlement of the due invoice amount including all ancillary claims by the customer. In the case of a current account, the retention of title shall serve as security for our balance claim. Goods already paid for shall remain our property as long as we are still entitled to claims against the customer. If goods subject to retention of title are combined or mixed with other goods, our ownership shall remain as co-ownership. The customer shall take the goods into customary commercial custody on our behalf. He/she shall be required to store and label them separately. He/she must insure the goods against all risks at his/her own expense. Any insurance claims made by the customer against the insurer shall be considered to have been assigned to us.
- 7.2 The customer shall be free to dispose of the goods subject to retention of title in the ordinary course of business. Pledges and transfers by way of security in particular are expressly prohibited. We must be notified immediately of any liens and other impairments of the goods subject to retention of title by third parties. If the customer makes use of the goods subject to retention of title, e.g. by selling them, he/she hereby assigns to us all claims against his/her contractual partners arising from the use of the

goods up to the amount of all our claims, including all ancillary claims, until the complete fulfilment of all our claims arising from the business relationship with him/her. Despite the above assignment, the customer is authorised to collect the claims until revoked in writing. Our authorisation to collect shall remain unaffected by this authorisation to collect granted by the customer. We will not collect the claims as long as the customer duly meets his/her payment obligations. If the value of the securities exceeds the secured claims in total by more than a share of 20 %, we shall be obliged at the customer's request to release securities at our discretion to this extent.

## 8. Liability for defects

For the goods delivered by us, the statutory liability for defects exists in accordance with the following provisions:

- 8.1 The warranty period shall amount to one year from delivery or, if acceptance is required, from acceptance.
- 8.2 The delivered items must be carefully examined by the customer immediately after delivery to the customer or to the third party designated by him/her. They shall be deemed to have been approved if we receive no written notification of obvious defects or other defects that could have been detected during an immediate, careful inspection within five working days after delivery of the delivery item, or otherwise within five working days after detection of the defect or the point in time at which the defect was detectable for the customer during normal use of the delivery item without closer inspection. The delivery note must be enclosed. At our request, the delivery item complained about must be returned to us carriage paid. In the event of a justified notice of defect, we shall reimburse the costs of the most favourable shipping method; this shall not apply if the costs incurred are increased because the purchased item is located at a place other than the place of intended use by the customer.
- 8.3 Otherwise, the statutory provisions shall apply.

## 9. Liability

Our liability for damages, regardless of the legal basis, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with the following provisions, insofar as fault is involved in each case.

- 9.1 We shall be liable without limitation for damages arising from injury to life, body or health due to a negligent breach of duty by us or an intentional or negligent breach of duty by our legal representative or our vicarious agent and in accordance with the German Product Liability Act ("Produkthaftungsgesetz").
- 9.2 If the customer asserts claims against us for other damages, we shall only be liable insofar as these are based on our intent or gross negligence or are the subject of a quality or durability guarantee. If there is no intentional breach of contract on our part, such a claim for damages shall be limited in amount to the foreseeable, typically occurring damage.
- 9.3 If we violate any of what are known as cardinal obligations (i.e. those obligations which make the proper execution of the contract possible in the first place and which the customer may rely on being complied with), we shall be liable for damages. However, the obligation to pay compensation shall be limited to the foreseeable, typically occurring damage.

## 10. Payment

Our employees or third parties shall only be authorised to collect payment if they can prove that we have given our express written consent. In the event of default of payment and justified doubts about the solvency or creditworthiness of the customer, we shall be entitled, without prejudice to other rights, to demand advance payment for deliveries or services not yet carried out and to make all claims arising from the business relationship due immediately. Our obligation to perform shall be suspended as long as the customer is in default with a due payment. In the event of default of payment, we may charge interest at the respective statutory rate. According to § 288 para. 5 BGB we shall be entitled to charge a flat charge collection fee of €40 for reminder and collection costs. The calculation of further damages caused by delay shall remain unaffected by this flat charge. The customer may only offset or assert a right of retention against our claims if the counterclaim is undisputed and has been legally established. In the event that we assert claims for damages against our customer from a contractual relationship, we shall be entitled to demand 20%, based on the net order/goods value, as compensation. The same applies to the replacement of a reduction in value. In this case, the customer shall be expressly permitted to prove that no damage or reduction in value has occurred at all or that it is significantly lower than the flat charge.

## 11. Final provisions

The entire legal relationship between the customer and us shall be governed exclusively by German law. The application of the UN Sales Convention is excluded. The place of jurisdiction for all possible disputes arising from the business relationship between us and the customer is our registered office in 46354 Südlohn, Germany. The right to also call upon the court at another legal place of jurisdiction shall remain unaffected by this. Should individual parts of the above General Terms and Conditions be invalid or void, the remaining terms and conditions shall retain their validity, unless adherence to the contract would represent an unreasonable hardship for the customer.

Südlohn, March 2020