

General Terms and Conditions of Buckau-Wolf GmbH

1. Scope and Conclusion of Contracts

- 1.1 The following General Terms and Conditions shall be applicable for all deliveries and sales of Buckau-Wolf GmbH ("Supplier") as well as for every other performance by Supplier, so far as these have not been made expressly subject to other general terms and conditions of the Supplier to customers who are entrepreneurs in the meaning of Section 14 of the German Civil Code (BGB) or which are legal entities under public law and public law special funds. These General Terms and Conditions apply to all future sales and services of Supplier to the Customer.
- 1.2 Except when expressly agreed otherwise, the following General Terms and Conditions apply. Deviating agreements – before or at the conclusion of the contract – need to be in writing to be deemed valid. Unless agreed to in writing by Supplier, Customer's conflicting conditions, if any, are not accepted and are hereby rejected.
- 1.3 Conclusion of the contract requires – unless agreed otherwise - the written order confirmation by Supplier.

2. Offer

- 2.1 Offers by Supplier are non-binding. Orders and confirmations are only binding for Supplier, if they are confirmed in writing.
- 2.2 Documents pertaining to the offer such as illustrations and drawings and specifications with regard to weight, performance and measures rank only as approximations unless they are expressly specified to be binding. In particular, they do not contain any warranted qualities. Warranties or guaranties have to be made in writing and are expressly denoted as such. Unless limits for permissible deviations are expressly stipulated in the confirmation of order and denoted as such, customary deviations (fabrication tolerances) are permissible.
- 2.3 Supplier retains title and copyrights to models, estimates, drawings and other information in tangible or intangible form – also in electronic form; they may not be made accessible to third parties without the express permission of the supplier.
- 2.4 Supplier is obligated not to make accessible to third parties without Customer's consent those plans Customer has designated to be confidential.

3. Scope of Delivery

- 3.1 The scope of delivery is determined by Supplier's written confirmation of order.

4. Prices and Payment

- 4.1 In the absence of a special agreement, the prices shall be ex works including loading but excluding packaging, insurance and freight. Value-added tax in the respective statutory amounts shall be charged additionally.
- 4.2 In the absence of a special agreement, payment is to be made in cash without any discount free Supplier's paying office, namely:
 - (a) 1/3 down-payment upon sending of the confirmation of the order,
 - (b) 1/3 at half time of the offered delivery time,
 - (c) 1/3 immediately upon notification of readiness for shipping.
- 4.3 Customer shall have no right of set-off or retention, except to the extent that the counterclaim has

not been disputed by Supplier or been determined by a final and binding decision.

- 4.4 All invoices are payable in Euros.
- 4.5 In the case of deliveries within the area of the European Community, Customer must inform Supplier of its value added tax identification number and must submit to Supplier all necessary documentation (vouchers, acknowledgements of receipt etc.) by way of proof of any applicable tax-exempt intra-Community delivery.
- 4.6 If Supplier is charged with a back payment of turnover tax on account of incorrect or incomplete information by Customer, Supplier is entitled to debit Customer with that sum. If the incorrect or incomplete information is the fault of Customer, it is obliged to pay Supplier damages.
- 4.7 The acceptance of drafts and cheques requires the prior express consent of Supplier and will only be accepted on account of performance. Regarding such means of payment the date of payment is deemed to be the day on which Supplier can dispose of the equivalent sum. Any discounts, charges or fees are to be borne by Customer.

5. Terms of Delivery, Delivery delay

- 5.1 The terms of delivery shall begin with the posting of the confirmation of the order but not before all commercial and technical questions have been resolved between the parties and Customer has fully fulfilled its obligations, e. g. submitted the documents, approvals and releases to be supplied, nor prior to the receipt of the agreed down-payment. In the event that Customer fails to fulfil any of its aforementioned obligations, the terms of delivery shall be reasonably extended. However, this shall not apply should Supplier be responsible for the delay.
- 5.2 Adherence to the terms of delivery is subject to the correct and punctual deliveries by Supplier's sub-suppliers. Any looming delays will be notified to Customer as soon as possible. The period for delivery has been observed if the item to be delivered has left the plant before the period has ended or if Customer has been notified that it is ready for dispatch.
- 5.3 The terms of delivery shall be reasonably extended in the event of measures taken due to industrial disputes – especially strikes and lockouts – or if unforeseen obstacles should occur which lie outside Supplier's command, if said obstacles can be demonstrated to have a substantial influence on the completion or delivery of the item to be delivered. The same shall apply if such circumstances occur at a sub-supplier. Supplier shall notify Customer of the beginning and end of such obstacles as soon as possible.
- 5.4 Should Customer suffer damages because of a delay resulting from Supplier's own culpability, it shall be entitled to claim default compensation, whereby further claims shall be excluded. For each full week of delay, such compensation shall be 0.5 % of the value of that part of the delivery which can either not be used in time or in accordance with the contract, however, not more than a total 5 % thereof. The exclusion of liability pursuant to the first sentence above shall not apply insofar as Supplier, its legal representatives or management have caused the delay through intent or gross negligence or the timeliness of performance has been negotiated as a principal covenant (commercial transaction where time is of the essence of the contract).
- 5.5 Should delivery be delayed at Customer's request or due to circumstances attributable to it, beginning one month subsequent to notification of the readiness for dispatch, it shall be charged for the resulting costs; in the event of warehousing at Supplier's plant, at least 0.5 % of the invoiced amount shall be charged for each month. Supplier is entitled, however, to otherwise dispose of the item of delivery after the expiration of a reasonably determined period or to supply Customer within a reasonably extended period.
- 5.6 The observance of the terms of delivery is contingent upon Customer's fulfilment of its contractual duties.

6. Shipment and Passing of Risk

- 6.1 Shipment and the type of shipment shall be chosen by Supplier, Customer shall bear the costs thereof.
- 6.2 Risk shall pass to Customer not later than upon the sending of the items to be delivered even in the event of partial deliveries or when Supplier undertook additional services, e. g. shipping costs or delivery and installation. At the request of Customer, Supplier shall insure the shipment at Customer's expense against theft and breakage, transport, fire and water damage as well as other insurable risks.
- 6.3 Should a shipment be delayed or fail due to circumstances for which Customer is responsible, risk shall pass on the day Customer was notified of the readiness of the shipment; however, Supplier shall obtain the requested insurances at Customer's expense.
- 6.4 Notwithstanding the rights under Section 8 delivered items are to be accepted by the Customer even if they have insignificant defects.
- 6.5 Partial deliveries are permissible insofar as they are reasonable for Customer. This is in particular the case, when (i) the partial delivery can be used by Customer in accordance with the contractually intended use; (ii) delivery of the remaining contractual items is ensured and (iii) Customer incurs no considerable additional expenses or extra costs.

7. Retention of Title

- 7.1 Supplier shall retain title to the item delivered until all payments arising from the Delivery Contract have been received. If the retention of title stipulated above is not legally effective in the country in which the goods subject to retention of title are delivered or in which they have been processed, it is hereby agreed that it will be replaced by the closest legally valid form of security in accordance with the law of the country in question.
- 7.2 Supplier is entitled to obtain insurance for the item delivered at Customer's cost against theft and breakage, fire, water and other damages insofar as Customer has not itself demonstrated that it has taken out insurance.
- 7.3 As long as Supplier holds title to the item delivered, Customer may neither sell, pledge nor give as security the item and shall handle it with due care. In the event of attachments and seizures or other disposals by third parties, Customer must point out Supplier's title and inform Supplier thereof without delay to ensure that Supplier may enforce its property rights. Should the third party be unable to refund the judicial or extrajudicial costs incurred by Supplier in this regard, then Customer shall be liable for those costs.
- 7.4 Any processing of the item delivered is always carried out for Supplier as owner. In the event of processing, combination or intermixture with other items by Customer, Supplier shall become co-owner. The shares are determined by the relationship of the value of the items at the time of processing, combination or intermixture. In the event that the delivered item is combined or intermixed with a main item of Customer or a third party, Customer already assigns any rights it may have regarding the new item to Supplier. In the event that Customer combines or intermixes the delivered item for remuneration with a main item of a third party, Customer hereby already assigns his claim for remuneration against the third party to Supplier. Customer also assigns all claims that arise against a third party in the event of a combination of the delivered item with a plot of land to Supplier. Supplier accepts the aforementioned assignments.
- 7.5 If Customer is in breach of contract, especially by means of default with payments, Supplier is entitled to repossession after giving notice of default and Customer is obligated to surrender the respective item. The assertion of the retention of title and the seizure by Supplier of the item delivered are deemed to be a rescission of contract.

8. Duty to give Notice of Defects and Liabilities for Defects of the Delivery

8.1 To the exclusion of further claims but without prejudice to Section 11 Supplier is liable for defects in the delivery, including the absence of warranted qualities, as follows:

Material defects

- 8.2 Customer must examine the item of delivery upon receipt and give notice in writing of visible defects without undue delay. Customary or slight deviations or deviations which could not be technically avoided in the quality, colour and form of the goods, also from the descriptions of the goods on offer or from samples, do not count as defects and cannot be made the subject of a complaint. Customer shall report defects which were not visible upon receipt of the goods in writing and without undue delay after they appear. Should Customer not comply with this obligation, all claims of Customer connected to the defect which was not reported shall be excluded, irrespective of the legal grounds on which they are based.
- 8.3 All parts which are found, due to circumstances existing prior to the passing of risk, to be unserviceable or whose serviceability is not insubstantially impaired during the first twelve months after delivery – in particular, due to defective design, poor materials or defective construction – shall be repaired or newly delivered free of charge and at Supplier's option and in its reasonable discretion. Replaced parts shall become the property of Supplier. Supplier's liability for important third-party products shall be limited to the assignment of its claims against Supplier of the third-party product. If Customer is unsuccessful in obtaining compensation from Supplier of the third-party product after fruitless court proceedings, or if such proceedings are to be considered pointless, then Supplier's liability shall be revived.
- 8.4 Customer's right to raise claims because of defects shall become time barred 12 months from the timely notification of the defect; however, not before the guarantee period has expired.
- 8.5 No guarantee shall be assumed for damages which have arisen due to the following circumstances; inappropriate or improper applications; faulty installation or commissioning by Customer or a third party; excessive wear and tear; corrosion, erosion, abrasion and agglomeration; faulty or careless treatment; improper maintenance; unsuitable operating materials; substituted materials; inadequate construction works; unsuitable building site; chemical, electro-mechanical or electrical influences insofar as Supplier is not responsible for them.
- 8.6 By arrangement with Supplier, Customer shall give Supplier the necessary time and opportunity to carry out the improvements or to supply replacements which appear necessary in its reasonable discretion. Customer shall only have the right to remove the defect itself or through a third party and to demand from Supplier compensation for the necessary costs (a) in emergency cases where operating security is endangered or (b) in order to avert disproportionately large damages, in which case Supplier is to be notified immediately, or (c) if Supplier is in default with the removal of defects.
- 8.7 Of the costs directly resulting from the improvement or supply of replacements, Supplier shall bear the costs of the replaced parts including shipping and reasonable costs of removal and installation – insofar as the complaint is proven to be justified – further, the reasonable costs of any necessary provision of its technicians and their assistants, should this be reasonably warranted by the individual circumstances.
- 8.8 The warranty period for the replacement parts and the improvement shall be 6 months; however, it shall at least run until the expiration of the original warranty period for the item delivered. The period of liability for defects in the item delivered shall be extended in accordance with the length of the interruption of operations caused by the repair work.
- 8.9 Liability for the effects of improper alterations, repair or maintenance undertaken by Customer or a third party without Supplier's prior approval is excluded.

Defects of title

- 8.10 Should the use of the delivered item infringe intellectual property rights, Supplier shall, at its expense, obtain the necessary license to essentially ensure the further use of the item by Customer or modify the item in such a reasonable way that there no longer is an infringement. In the event that this is not possible within reasonable economic terms or reasonable time, Customer may rescind the contract. Under the aforementioned conditions, Supplier may also rescind the contract.
- 8.11 Furthermore, Supplier shall indemnify and hold harmless Customer from all - undisputed or determined by a final and binding decision - claims of the rights owner.
- 8.12 The obligations mentioned in Section 8.10 shall be – subject to Section 11 – conclusive for any infringement of intellectual property rights. They only apply when:
- Customer notifies Supplier of any claimed infringement of intellectual property rights without delay;
 - Customer reasonably supports Supplier in its defense against the infringement claim or provides Supplier the opportunity to modify the item according to Section 8.10;
 - the defense against the claims remains at the sole discretion of Supplier, including the possibility of out-of-court settlements;
 - the defect of title was not caused by instructions issued by Customer and
 - the infringement was not caused by either unauthorized changes by Customer to the delivered item or the item not being used in accordance with the contract specifications.

9. Liability for Ancillary Duties

- 9.1 If the item delivered cannot be used by Customer in accordance with the contract because Supplier has culpably failed to implement suggestions and advice given before or after the conclusion of the contract or to perform other ancillary contractual duties – in particular instructions for operation and maintenance of the item delivered – or has done so incorrectly, the provisions of Section 8 and 11 shall apply accordingly to the exclusion of further claims by Customer.

10. Right of Customer to Rescission

- 10.1 Customer may rescind the contract if Supplier's performance of all of its contractual duties becomes definitely impossible prior to the passing of risk. Customer may also rescind the contract, if, in the case of an order for similar items, the execution of a part of the delivery becomes impossible as to quantities, and it has a justified interest in rejecting a partial delivery. If this is not the case, Customer shall pay the consideration for the respective partial delivery. The same shall be true in the event of Supplier's subjective incapacity.
- 10.2 If there is a default in performance within the meaning of Section 5 and should Customer grant Supplier, who is in default, a reasonable extension with the express declaration that it will refuse the acceptance of performance after the expiry of this period, Customer is entitled to termination if the extension is not observed.
- 10.3 Should impossibility occur during a delay in acceptance or because of Customer's culpability, the latter shall remain obligated to give consideration.
- 10.4 In accordance with statutory law, Customer shall have a further right to rescind the contract if Supplier culpably fails to remedy a defect or deliver a replacement within the reasonably set time limit – considering the statutory exceptions - regarding a defect within the meaning of the General Terms and Conditions for which it is liable. In the event of only an immaterial defect, Customer shall only have the right to adequately reduce the contract price. Apart from that a reduction is excluded.

11. Exclusion of Liability

- 11.1 Supplier is not liable – on whatever legal grounds – for the ordinary negligence of its legal representatives, employees or persons used to perform its obligations, except in cases of breach of material contract provisions (Cardinal duties). Cardinal duties are those obligations on whose performance the other party to the contract relies and may legitimately rely because they are essential for the proper performance of the contract.
- 11.2 Insofar as Supplier is – on the merits - liable based on the aforementioned, its liability is limited to those damages that Supplier could reasonably foresee at the time of the conclusion of the contract as possible results of a breach or should have foreseen in pursuance of due diligence. Indirect or consequential damage, resulting from defects of the delivered item, are only eligible for compensation if they are to be typically expected under normal use of the delivered items.
- 11.3 In the event of liability for ordinary negligence, Supplier's liability for property damage and resulting further pecuniary loss is limited to the amount of EUR 500.000,00 per case, even if cardinal duties are breached.
- 11.4 The abovementioned limitations of liability also apply mutatis mutandis in favour of legal representatives, employees and other persons used to perform its obligations by Supplier.
- 11.5 The limitations contained in this Section 11 – as well as any other limitation of liability contained in this General Terms and Conditions – do not apply to Supplier's liability for intentional behaviour, warranted qualities, damage from injury to life, body or health or under the product liability law (ProdHaftG).

12. Use of Software

- 12.1 Insofar as software is included in the scope of delivery, Customer is granted a non-exclusive license to use the delivered software as well as its documentation. The software is solely intended for use with the delivered item. Use of the software on more than one system is prohibited.
- 12.2 Customer may only use the software - in particular reproduce, revise, translate or convert the object code into source code - within the limits allowed by statutory law (i.e. Sections 69a et seqq. German Copyright Act (UrhG)). Customer shall not remove or change without express prior approval by Supplier any manufacturer's information, in particular copyright notices.
- 12.3 All other rights regarding the software and its documentation remain vested with Supplier or the respective software supplier. The awarding of sublicenses is prohibited.

13. Safety regulations

- 13.1 Customer is hereby expressly reminded to comply with the respective safety regulations. Insofar as local regulations of the country the item is delivered to apply, in particular regarding approval, maintenance and handling of the delivered items, Customer shall ensure compliance with the respective regulations. In this regard, customer indemnifies and holds harmless Supplier from all claims.

14. Place of performance/place of jurisdiction/applicable law

- 14.1 Place of performance for all obligations in connection with this contract or its rescission is Grevenbroich.
- 14.2 Place of jurisdiction for all disputes concerning the validity, the origin and the termination of the respective contracts between Supplier and Customer and for all disputes concerning the rights and duties from these contracts is at the seat of Supplier, if Customer is a merchant or legal entity

under public law and public law special fund. At its option, Supplier is also entitled to institute legal proceedings at Customer's general legal venue.

14.3 The law of the Federal Republic of Germany is applicable exclusively, with exclusion of the German Private International Law (*IPR*) and the UN-Convention on the International Sale of Goods (CISG).

15. Final provisions

15.1 Declarations and notifications of Customer are only valid if they are made in writing. Supplements and/or modifications or amendments of the respective contracts have to be confirmed by Supplier in writing. This applies also on modifications or the revocation of the requirement of the written form.

15.2 In accordance with the Federal Data Protection Act, Supplier points out that data received on account of the business relations with Customer is stored and processed.

15.3 If any provision of the contract concluded between Supplier and Customer or any of these conditions should be or become ineffective, or if a gap should become apparent, this does not affect the validity of the remaining provisions. A suitable regulation is to be applicable in place of a gap, which – in as far as is legally possible – is closest to what the contract parties wished or corresponds to what they would have wished in keeping with the object and purpose of this contract, had they considered this point.