

## **Terms and Conditions of Sale and Delivery of the Baier GmbH**

### **1. General**

Our deliveries shall be carried out solely on the basis of the following conditions. We expressly repudiate the buyer's terms and conditions of purchase. The buyer shall not legally bind us, even if we do not expressly do so at the time of the conclusion of the contract. Our terms and conditions of sale and delivery shall be deemed accepted at the latest upon taking delivery of our goods.

### **2. Exclusive Applicability and Acknowledgement of our Terms and Conditions**

The buyer acknowledges our terms and conditions by placing the order or accepting a service not only for the transaction in question but also for all future transactions.

### **3. Offers and Conclusion of the Contract**

3.1. Our offers are not binding. Promises, undertakings and warranties on our part or agreements that deviate from these terms and conditions in connection with the conclusion of the contract shall only become binding with our written confirmation.

3.2. We reserve all property and copyrights for documents (such as images, drawings, dimensions, weights) enclosed to our offers. They must not be disclosed to third parties and have to be returned upon request or in case you do not award us the contract. Unless expressly agreed otherwise, the information published by us in product catalogues or other publications, be it written or pictorial specifications, (for example descriptions, illustrations, drawings) shall conclusively illustrate the quality of the goods delivered by us and their respective uses. All further information provided is not binding either. Our descriptions do not constitute a warranty on durability or workmanship and reflect our current knowledge. We cannot be held liable for the suitability of the goods for a specific use, unless such suitability was explicitly assured. We reserve the right to introduce changes because of technical progress. Drawings, images, dimensions, weight, or other technical data are only binding if expressly agreed upon in writing.

### **4. Prices and Payment**

4.1. All prices are quoted in Euro and ex warehouse and they include the respectively valid statutory sales tax. The buyer shall bear the necessary packaging, transport, loading and shipment costs as well as customs duties and insurance costs. We shall only be obliged to accept the return of used packaging if expressly agreed.

The buyer shall be responsible for the competent and environmentally compatible disposal of waste materials. In case we are ordered to do so, the buyer shall pay adequate compensation to the extent agreed, lacking an agreement on wage pay by taking over the costs that have actually been incurred.

4.2. The agreed prices are based on the material, wage and energy costs at the time of the conclusion of the contract.

4.3. Unless otherwise agreed, payment for our performance shall fall due within 30 days after execution of the contract at the latest. If the buyer is in default with any payments, we are entitled to claim default interest on all sums due from the buyer at 8 % p.a. above the actual base rate (§ 352 UGB [Austrian Business Code]). We reserve the right to claim further damages as well as the necessary and appropriate costs for legal prosecution.

4.4. The buyer does not have the right to offset any amounts against our claims for payment or to effect a right of retention with respect to amounts due to us. The foregoing does not apply to offsetting with respect to undisputed claims, claims that are final or claims legally relating to claims of the buyer.

4.5. The entitlement to deduct a discount requires an express written agreement.

If the buyer fails to make a payment under any other contract signed with us when said payment is due, we have the right to discontinue performance of our obligations under this contract until we receive the outstanding payment.

In this case, we are also entitled to immediately demand payment on all debts for performance of our contractual obligations from the current business relationship with the buyer.

If the buyer fails to make payment on the due date, even if only in respect to one part performance rendered by us, all reimbursements (discounts) shall forfeit and be added to the invoice.

The buyer undertakes, in case they get into arrears, to indemnify us for the necessary and appropriate costs for the recovery of debt (costs for dunning, collection charges, lawyer fees, etc.).

## **5. Credit Rating**

- 5.1. The buyer gives their express consent – which is revocable at any time – that their data (name/company, date of birth/register number, address) may be transferred to the state preferential creditors protection associations *AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft* and *Österreichischer Verband Kreditreform* and *Kreditschutzverband 1870* for the exclusive purpose of creditor protection.

## **6. Periods for and Dates of Performance**

- 6.1. Periods for and dates of performance are only approximate, unless expressly confirmed as binding.
- 6.2. A period of performance determined according to its duration shall begin with the day immediately following the day on which full agreement regarding all specifics of the order was reached and, at the earliest, with the acceptance of the order by us. However, the period of performance shall neither commence before the buyer has furnished all documents, permits and releases to be obtained by them nor before, if required, receipt of an advance payment in full to be made by the buyer.
- 6.3. A delivery date or deadline for delivery is regarded as having been met if the goods left our plant or warehouse before the expiration of such date or deadline or, in cases where the goods cannot be or are not to be dispatched, if notice of our supply readiness was dispatched by our plant or warehouse in time.
- 6.4. In case of force majeure, strike, unforeseeable delays on the part of our subcontractors that were not caused by us or other comparable events beyond our control, the dates and deadlines shall be postponed for the duration of such an event. The buyer's right to withdraw from the contract remains unaffected if the delay exceeds a reasonable period of time and makes any further commitment to the contract unreasonable.
- 6.5. The buyer shall not be entitled to claim damages against us if a deadline for performance or a performance date has been exceeded or a performance default occurred, except in cases of wilful intent or gross negligence – also on the part of one of our statutory representatives or vicarious agents – or in cases of injury to life, body or health.
- 6.6. If the buyer defaults in accepting performance, or if they breach any other duty to cooperate, we shall have the right to demand damages for the losses sustained and, after expiry of a reasonable grace period, to dispose freely of the goods.
- 6.7. Partial deliveries, to a reasonable extent, shall be permitted and charged separately.
- 6.8. In case the contract provides for ongoing delivery, call-ups and part type classifications must be supplied in good time. As far as no agreements to the contrary have been made, the total quantity has to be called and classified within one year after conclusion of the contract. If the customer does not meet this requirement, we shall be entitled, after expiry of a grace period set by us, to classify the goods at our own discretion and to deliver them accordingly. This does not affect our right to withdraw from the contract, provided it has not yet been fulfilled, and to demand compensation due to non-performance.

Where the individual calls exceed the total contractually agreed quantity, we shall have the right to deliver the surplus quantity.

## **7. Risk of Loss and Shipment**

- 7.1. The risk of destruction or deterioration of the goods, for which we cannot be held responsible, shall pass to the buyer as soon as we hold the ordered goods ready in our plant or warehouse to be picked up or these goods and/or materials and equipment are handed over to a carrier or hauler. Shipment, loading, unloading and transport are always carried out at the buyer's risk.
- 7.2. The customer shall approve any appropriate form of shipment. Transport insurance will be taken out only upon the buyer's explicit written instruction.

If we do not receive specific shipping instructions, we will ship the goods using the shipping method we deem to be the most cost-effective. The goods will be shipped for the buyer's account and at their risk.

In cases where the goods cannot be or are not to be shipped, the risk shall pass to the buyer with the dispatch of our notice of supply readiness. This shall include cases where carriage-prepaid delivery has been agreed.

- 7.3. We are entitled to collect packaging and shipment costs as well as the purchase price from the buyer on a cash on delivery basis if the buyer is in arrears with a payment due under the existing business relationship with us or if their credit limit agreed with us has been exceeded.
- 7.4. The buyer shall be responsible for the safety of the materials delivered by us and stored at the place of performance. Any losses and damage to goods shall be charged to the buyer.

## **8. Retention of Title**

- 8.1. The goods delivered or otherwise handed over by us shall remain our property until we have received full payment.

Where drafts or cheques are issued, our claim, for which we have accepted the draft or cheque, shall be deemed to be settled only upon payment of the draft or cheque.

- 8.2. Resale shall only be admissible if we have been notified in due time in advance stating the name and exact address of the buyer and if we give our consent to the resale. Where we give our consent, the claim for payment of purchase price shall already now be deemed to have been assigned to us.

- 8.3. Until full payment of the fee or purchase price, the buyer shall include a note about this assignment and/or retention of title in their books and on their invoices and shall inform their debtors. Upon demand, the buyer shall make available to our company any documents and information required to enforce the assigned claims and titles.
- 8.4. The buyer gives their explicit consent that we may access the location where the reserved goods are stored during normal business hours in order to be able to enforce our retained title.
- 8.5. The buyer shall bear any necessary and appropriate recovery and collection costs incurred by the purpose of legal prosecution.
- 8.6. Enforcing the retained title shall only be deemed to be a withdrawal from the contract if this is explicitly stated.
- 8.7. We shall have the right to utilise any returned reserved goods at our own discretion and in the best possible way.
- 8.8. Until full settlement of all our claims, the service/purchase item must not be pledged, assigned as security or be encumbered otherwise with any third-party titles. In the event of attachment or any other utilisation, the buyer shall be obliged to indicate our title to the goods and to inform us immediately.
- 8.9. Until payment of the appropriate invoice amount, the buyer shall be obliged to ensure that the goods subject to retention of title stay in impeccable condition and to protect our title to these goods. The buyer shall be obliged to maintain the service/purchase item delivered in proper condition during the retention of title.
- 8.10. Where our retention of title becomes invalid in the event of delivery abroad or for any other reason, the buyer shall be obliged to immediately grant us a security for the items delivered or any other security for our claims as is effective according to the applicable law at the buyer's head office and comes closest to the retention of title according to Austrian law.

## **9. Third-Party Industrial Rights**

- 9.1. Where delivered items are manufactured by us according to the buyer's documentation (construction details, drawings, models or any other specifications, etc.), the buyer shall bear exclusive responsibility to ensure that the manufacture and/or completion of such delivered items does not infringe any third-party industrial rights and the buyer shall indemnify our company and hold it harmless against any claims.
- 9.2. Where third party industrial rights are asserted, we shall have the right to suspend the manufacture of the delivered items at the buyer's risk until third-party rights have been clarified, unless it is obvious that the claims are unfounded.
- 9.3. We shall also have the right to claim compensation from the buyer for any necessary and appropriate costs incurred by the purpose of legal prosecution.
- 9.4. We shall have the right to demand an appropriate advance on any legal costs incurred.

## **10. Warranty**

- 10.1. The goods must be inspected immediately upon receipt at the place of delivery. A duty to inspect shall also exist if samples have been received. Failure to inspect received goods shall void our warranty obligation for any defective goods.

We provide the agreed services based on the current state of the art applicable at the time of order, in accordance with the applicable legal regulations and observing the care customary in the industry. With regard to product details, quality data and other information as well as technical and commercial descriptions, we shall not provide any guarantee of quality or durability, unless individual information or description is explicitly labelled as "guarantee of quality of durability".

- 10.2. The goods shall be deemed to be accepted by a business buyer if we do not receive any notice of defects within 10 business days after receipt of the goods at the place of delivery. If not agreed otherwise (e.g. formal acceptance), the time of delivery shall be the time of completion of the goods or, at the latest, once the buyer is authorised to dispose of the service or has refused acceptance without giving reasons. In the absence of any justified refusal of acceptance, the buyer shall be deemed to be authorised to dispose of the goods upon the day on which the buyer is notified of the completion of goods. Any remedy of defects asserted by the buyer shall not be deemed to constitute an acknowledgement of such defect.
- 10.3. We shall have the right to carry out any investigation or to have any investigation carried out that we consider to be necessary, even if this renders the goods, components or work pieces unusable. If such investigation shows that there is no mistake for which we are responsible, the buyer shall bear the costs of this investigation based on an appropriate fee.
- 10.4. We shall have the right to refuse any request for rescission of the contract on the basis of improvement/replacement or reasonable discount, unless the defect is substantial and cannot be remedied. The choice of the appropriate warranty remedy shall be incumbent on us.
- 10.5. Where the delivered items are manufactured according to details, drawings, diagrams, models or other specifications provided by the buyer, our warranty shall only apply to the implementation according to specification.
- 10.6. The warranty period for goods delivered by us and for services provided shall be 6 months.

Our goods must be installed and/or used by persons or companies qualified for this purpose properly and according to good professional practice under the sole responsibility of the buyer. We shall not provide any warranty and/or accept liability for any defects and/or damage resulting from improper and unqualified installation and/or improper and unqualified use.

## **11. Liability**

- 11.1. For breach of contractual or pre-contractual obligations, particularly due to impossibility, default etc., we shall only be held liable for financial losses in the event of intent or gross negligence.
- 11.2. Our liability shall be limited to the sum corresponding to the maximum liability amount of a liability insurance taken out by us where necessary.
- 11.3. This limit shall also apply with regard to damage on items accepted by us for processing.
- 11.4. Damages payable for breach of a substantial contractual obligation shall be limited to the foreseeable, typically occurring damage, unless it is a case of intent or gross negligence and unless damages are claimed on the basis of injury to life, body or health or on the basis of any guarantees granted. In this respect, such claims for damages shall become statute-barred within a year.
- 11.5. Apart from that – irrespective of the legal nature of the claim asserted – any liability for damages shall be excluded. In this respect, we shall particularly not be liable for damage which has not occurred on the delivery item itself, e.g. loss of profit and other financial losses incurred by the buyer.

## **12. Severability**

- 12.1. Should any provision of these terms and conditions be or become ineffective or unenforceable, the effectiveness or enforceability of the other provisions shall remain unaffected. The ineffective provision shall be deemed to be replaced with an effective provision which reflects the intention and purpose of the ineffective provision. The same shall apply accordingly to loopholes in these terms and conditions. If necessary, ineffective provisions shall be agreed to have been amended up to the extent permitted by law (reduction of ineffective provisions to preserve validity).

## **13. Miscellaneous**

- 13.1. These terms and conditions shall be governed by Austrian law, to the exclusion of any conflict of law provisions.
- 13.2. The UN Sales Convention shall be excluded.
- 13.3. The place of performance shall be the company's head office (Bruck/Mur, Austria).
- 13.4. The place of jurisdiction for any disputes arising from the contractual relationship or any future contracts between us and the buyer shall be the local competent court at our headquarters, currently in Bruck/Mur, Austria. However, we shall have the right to enforce any claims against the buyer before any other court having jurisdiction over the buyer.
- 13.5. The buyer shall be obliged to immediately inform us in writing about any changes in their name, company, address, legal status or to any other relevant information.

Baier GmbH

Tragösserstrasse 119/89

8600 Bruck/Mur, Austria