

# **General Conditions of Sale of Bergers Technik und Maschinenbau GmbH**

## **1. Validity**

1.1 All deliveries, services and offers of Bergers Technik und Maschinenbau GmbH (hereinafter referred to as the "Seller") shall be provided exclusively on the basis of these General Terms and Conditions of Sale. These constitute part of all agreements that the Seller enters into with their contractual partners (hereinafter referred to as the "Customer") concerning the deliveries or services that it offers. They shall also apply to all future deliveries, services or offers to the Customers, even if they are not agreed upon again separately.

1.2 The terms and conditions of the Customer or of a third party shall not apply, even if the Seller does not separately object to their validity in individual cases. Even if the Seller refers to correspondence that includes the terms and conditions of the Customer or of a third party or refers directly to these, this shall not constitute consent to the validity of these terms and conditions.

## **2. Offer and conclusion of agreement**

2.1 All of the Seller's offers are subject to confirmation and are non-binding, insofar as they are not expressly designated as binding or include a particular term of acceptance. An agreement that is binding on the part of the Seller shall only enter in force when the Seller issues a written order confirmation or the invoice or carries out the order.

2.2 The legal relationship between the Seller and the Customer shall be governed solely by the written purchase agreement, including these General Terms and Conditions of Sale. This fully reflects all agreements between the contracting parties concerning the subject matter of the agreement. Verbal assurances given by the Seller before concluding this agreement are legally non-binding and verbal agreements between the contracting parties shall be replaced by the written agreement, unless it is expressly stated in each case that they remain binding.

2.3 Additions and amendments to the agreements made, including to these General Terms and Conditions of Sale, shall require the written form in order to become effective. With the exception of managing directors or legal representatives, the Seller's staff are not authorised to reach verbal agreements that deviate from the written agreement. Transmission by telecommunication, in particular by fax or email, is sufficient for compliance with the requirement to use the written form, provided that the copy of the signed declaration is transmitted.

2.4 The Seller's information on the product (e.g. weights, dimensions, utility values, load capacity and tolerances) as well as our representations of the product (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires an exact conformity. They are not guaranteed characteristics, but are descriptions or labels of the product. Variations that are customary in the trade and those that result from legal provisions or that represent technical improvements, as well as the replacement of parts with equivalent parts, are permissible as long as they do not impair the usability for the contractually intended purpose.

2.5 Orders placed by the Customer may not be transferred in whole or in part to third parties without the written consent of the Seller.

## **3. Prices and payment**

3.1 The prices are valid for the scope of performance and delivery stated in the order confirmation. Additional or special services shall be charged separately.

3.2 Products delivered within thirty (30) days from the date of the Seller's order confirmation shall be invoiced at the price indicated by the Seller in their quotation. Unless otherwise stated in the order confirmation, the price of products delivered later than thirty (30) days from the date of the Seller's order confirmation may be increased by Seller. The Seller shall notify the Buyer of such a price increase in writing, no later than ten (10) days before the date on which the price increase is to occur. If the Buyer fails to inform the Seller in writing that they will cancel their order for the products affected by the price increase, the price increase shall take effect on the date indicated in the Seller's notification.

3.3 Invoice amounts shall be payable within twenty (20) days from the end of the month of invoicing without any deduction, unless otherwise agreed in writing. The receipt of payment by the Seller is decisive for the date of payment. If the Customer fails to pay on the due date, the outstanding

amounts shall be subject to interest at the applicable statutory rate of interest on arrears from the day of the due date; the assertion of higher interest and further damages in the event of default shall remain unaffected.

3.4 The offsetting with counterclaims of the Customer or the retention of payments due to such claims is only permissible if the counterclaims are undisputed or legally binding.

3.5 If the Customer is in default of payment with an invoice or if circumstances become known after conclusion of the agreement that are likely to significantly reduce the creditworthiness of the Customer, or if the Customer exceeds the approved credit limit, the Seller may, at their discretion, either demand payment of all due and not yet due invoices and/or cancel all outstanding orders and refuse further deliveries, provided that the Customer does not provide sufficient security.

#### **4. Delivery and delivery time**

4.1 Deliveries and services shall be provided at the place agreed upon by the Seller and the Customer. The Incoterms 2000 shall apply.

4.2 Deadlines and dates for deliveries and services set by the Seller are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed.

4.3 Without prejudice to their rights arising from a delay on the part of the Customer, the Seller may demand from the Customer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the Customer fails to meet their contractual obligations to the Seller. The Seller may also provide the deliveries and services before the specified delivery date if the Customer is informed of this in sufficiently good time.

4.4 The Seller shall not be liable for the impossibility of delivery or for delays in delivery, insofar as these have been caused by force majeure or other events that were not foreseeable at the time that the agreement was concluded (e.g. operational disruptions of any kind, difficulties in material or energy procurement, transport delays, strikes, lawful lockouts, a shortage of labour, energy or raw materials, difficulties in obtaining the necessary official approvals, official measures or missing, incorrect or untimely delivery by suppliers) and that are not the fault of the Seller. Insofar as such events make delivery or performance significantly more difficult or impossible for the Seller and the hindrance is not just of temporary duration, the Seller shall be entitled to withdraw from the agreement. In the event of temporary hindrances, the delivery or performance deadlines shall be extended or the delivery and performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the Customer cannot be expected to accept the delivery or service as a result of the delay, they may withdraw from the agreement by immediate written declaration to the Seller.

4.5 The Seller is entitled to make partial deliveries if

- the partial delivery can be used by the Customer within the scope of the contractually intended purpose,
- the delivery of the remaining ordered products is ensured and
- the Customer will not incur any significant additional expenditure or additional costs as a result of this (unless the Seller agrees to bear these costs).

In the case of legitimate partial delivery, each partial delivery shall be treated as a separate partial agreement. In the case of a legitimate partial delivery, the Customer shall not be entitled to refuse fulfilment of the agreement in all other respects and to withdraw from the remainder of the agreement. If the Customer does not accept a legitimate partial delivery, the Seller may withdraw from the agreement in this respect. Such partial withdrawal shall not affect the remainder of the agreement.

4.6 If the Seller defaults on a delivery or performance, or if it becomes impossible for them to provide a delivery or service for whatever reason, the Seller's liability is limited to compensation for damages in accordance with Clause 8 of these General Terms and Conditions of Sale.

4.7 The weight measured by the Seller at the places of shipment shall apply, unless the Customer provides evidence of a lower weight.

4.8 The Seller reserves the right to have the Customer's order fulfilled by another supplier.

4.9 Insofar as circumstances occur before delivery that hinder or restrict the free exchange of currencies or products between the Customer's country and the country of origin of the delivery item,

the delivery may be postponed by the Seller until such circumstances have been resolved or the agreement may be terminated by both parties.

4.10 Reusable pallets or containers that are delivered together with the goods but that are not sold on the basis of the agreement are the property of the Seller and, at the Seller's discretion, shall be returned by the Customer either undamaged as freight to the place of destination specified by the Seller or made available for collection by the Seller at a time determined by the Seller. Insofar as the Customer provides security for the pallets or containers, this security shall lapse if the pallets and containers are not returned undamaged within the set period. If no security is provided, the Customer is obliged to pay compensation to the Seller.

4.11 At the request of the Customer, the Seller shall endeavour to provide professional advice and support with regard to using the products. Such advice or support is provided without liability, however. The Customer uses the advice and support at their own risk.

## **5 Place of performance, shipping, packaging, transfer of risk**

5.1 The place of performance for all obligations arising from the contractual relationship shall be Hamm, unless otherwise specified.

5.2 The mode of shipment, the shipping companies and the packaging are subject to the Seller's due discretion. The Customer shall bear the costs of special shipping conditions that they request, including costs incurred as a result of the Customer refusing or delaying acceptance of products already in transit on the date of delivery indicated by the Seller.

5.3 The risk shall transfer to the Customer at the latest upon delivery in the manner owed by the Seller. This shall also apply if partial deliveries are made. If the delivery is delayed in the manner owed by the Seller as a result of a circumstance whose cause lies with the Customer, the risk shall transfer to the Customer from the day on which the delivery item is ready for shipment and the Seller has notified the Customer of this.

5.4 Storage costs (including insurance costs) after the transfer of risk shall be borne by the Customer.

5.5 The shipment shall only be insured by the Seller against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at the Customer's expense.

## **6. Warranty, material defects**

6.1 The warranty period is one year from delivery. This period shall not apply to claims for damages by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty on the part of the Seller or their vicarious agents, which shall lapse in accordance with the statutory provisions.

6.2 The delivered items shall be carefully inspected immediately after delivery to the Customer or a third party appointed by them. They shall be deemed to have been accepted by the Customer with regard to obvious defects or other defects that would have been recognisable upon immediate and careful examination, if the Seller does not receive a written notification of defects within fourteen (14) days of delivery. With regard to other defects, the delivery items shall be deemed to have been accepted by the Customer if the Seller does not receive the notification of defects within fourteen (14) days after the date on which the defect became apparent; if the Customer was already aware of the defect at an earlier point in time during normal use, this earlier point in time shall be decisive for the commencement of the notification period. At the Seller's request, a rejected delivery item shall be returned to the Seller carriage paid; without the Seller's consent, a rejected delivery item may not be returned to the Seller or otherwise utilised. In the case of a legitimate notification of defects, the Seller shall reimburse the costs of the most favourable means of shipping; this shall not apply if the costs increase because the delivery item is located at a location other than the place of intended use.

6.3 In the event of material defects in the delivered items, the Seller may, at their discretion and within a reasonable period of time, either repair or replace the goods or grant the Customer a reasonable reduction in purchase price.

6.4 If a defect is due to the fault of the Seller, the Customer may claim damages under the conditions specified in Clause 8.

6.5 In the event of defects in parts from other manufacturers that the Seller cannot remedy for reasons of licensing law or for other reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the

Customer. Warranty claims against the Seller for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Sale if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, for example due to insolvency, has no chance of success. The statute of limitations of the Customer's warranty claims against the Seller is suspended for the duration of the legal dispute.

6.6 If the Customer further processes the delivery item after delivery, the warranty is limited to the condition in which the delivery item was in at the time of the transfer of risk.

6.7 The Seller warrants that the delivery item meets its own specifications. However, this warranty only applies to delivery items of the highest quality class, and not to waste or delivery items that are sold by the Seller as not conforming to the standards. The Seller shall not be liable for defects attributable to illustrations, designs or specifications provided by the Customer.

## **7. Property rights**

7.1 The Seller warrants, in accordance with this Clause 7, that the delivery item does not infringe any patent in the country of origin. Further warranties with regard to industrial property rights or copyrights of third parties are not assumed. Each contracting party shall notify the other contracting party in writing and without delay if claims are asserted against them on account of the infringement of such rights.

7.2 In the event that the delivery item infringes a patent in the country of origin, the Seller shall, at their own discretion and expense, modify or replace the delivery item in such a way that no third party rights are infringed, but the delivery item continues to fulfil the contractually agreed functions, or grant the Customer the right of use by concluding a licence agreement. If the Seller fails to do this within a reasonable period of time, the Customer is entitled to withdraw from the agreement or to make an appropriate reduction to the purchase price. Any claims for damages on the part of the Customer are subject to the limitations set forth in Clause 8 of these General Terms and Conditions of Sale.

7.3 In the event of legal infringements by products from other manufacturers supplied by the Seller, the Seller shall, at their own discretion, assert their claims against the manufacturers and preliminary suppliers for the account of the Customer or assign them to the Customer. Claims against the Seller shall only exist in these cases in accordance with this Clause 7 if the judicial enforcement of the aforementioned claims against the manufacturers and preliminary suppliers was unsuccessful or, for example due to insolvency, has no chance of success.

## **8. Liability for damages due to fault**

8.1 The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort is, insofar as it is a matter of fault, limited in accordance with this Clause 8.

8.2 The Seller shall not be liable in the event of ordinary negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless it concerns a violation of essential contractual obligations. Essential to the contract are the obligation to supply the delivery item in time, its freedom from defects of title as well as such material defects that impair its functionality or suitability for use more than just insignificantly, as well as duties of consultation, protection and care that are intended to enable the Customer to use the delivery item in accordance with the agreement or to protect the life and limb of the Customer's personnel or to protect the Customer's property from considerable damage.

8.3 Insofar as the Seller is liable for damages pursuant to and on the grounds of Clause 8.2 above, this liability is limited to damages that the Seller foresaw upon concluding the agreement as a possible consequence of a breach of contract or that they should have foreseen if they had exercised due diligence. Indirect damages and consequential damages resulting from defects in the delivery item are also only compensable if such damages are typically to be expected when the delivery item is used as intended.

8.4 In the event of liability for ordinary negligence, the Seller's liability to pay compensation for damage to property and the resulting further financial losses shall be limited to an amount of EUR 2.000.000 per claim, even if it is a breach of essential contractual obligations.

8.5 The above exclusions and limitations of liability shall apply to the same extent to the benefit of the Seller's executive bodies, legal representatives, employees and other vicarious agents.

8.6 Insofar as the Seller provides technical information or acts in an advisory capacity and such information or advice does not form part of the contractually agreed scope of services owed by it, this shall be provided free of charge and to the exclusion of any liability.

8.7 The limitations of this Clause 8 shall not apply to the Seller's liability for wilful misconduct, for guaranteed characteristics, for injury to life, limb or health or under the German Product Liability Act (*Produkthaftungsgesetz*).

## **9. Retention of title**

9.1 The retention of title agreed below serves to secure all current and future claims of the Seller against the Customer from the existing supply relationship between the contracting parties (including balance claims from a current account relationship limited to this supply relationship).

9.2 The goods delivered by the Seller to the Buyer shall remain the property of the Seller until all secured claims have been paid in full. The goods as well as the goods that take their place under the following provisions and that are subject to retention of title are hereinafter referred to as "reserved goods".

9.3 The Customer shall store the reserved goods free of charge for the Seller.

9.4 The Customer shall be entitled to process and sell the reserved goods in the ordinary course of business until the enforcement event (Clause 9.9) occurs. Pledging and assignments as security are not permitted.

9.5 If the reserved goods are processed by the Customer, it is agreed that the processing shall be carried out in the name and for the account of the Seller as manufacturer and that the Seller shall immediately acquire ownership or – if the processing is carried out from materials of several owners or if the value of the processed item is higher than the value of the reserved goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at the Seller, the Customer now transfers their future ownership or – in the aforementioned ratio – co-ownership of the newly created item to the Seller as security. If the reserved goods are combined or inseparably mixed with other items to form a single item and if one of the other items is to be regarded as the main item, the Seller, insofar as the main item belongs to them, shall transfer to the Customer a pro-rata co-ownership of the single item in the ratio specified in sentence 1.

9.6 In the event of resale of the reserved goods, the Buyer shall now assign to the Seller by way of security the resulting claim against the Buyer – in the case of the Seller's co-ownership of the reserved goods in proportion to the co-ownership share. The same shall apply to other claims that take the place of the reserved goods or that otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. The Seller shall confer revocable authority to the Customer to collect the claims assigned to the Seller on their own behalf. The Seller may revoke this collection authorisation only in the case of an enforcement event.

9.7 If third parties access the reserved goods, in particular by way of attachment, the Customer shall notify them immediately of the Seller's ownership and inform the Seller of this in order to enable them to enforce their ownership rights. Insofar as the third party is unable to reimburse the Seller for the legal or out-of-court costs incurred in this connection, the Customer shall be liable to the Seller for this.

9.8 The Seller shall release the reserved goods as well as the items or claims taking their place, insofar as their value exceeds the amount of the secured claims by more than 50%. The choice of the items to be released thereafter is at the Seller's discretion.

9.9 If the Seller withdraws from the agreement in the event of a breach of contract by the Customer – in particular default of payment – (enforcement event), they are entitled to demand the return of the reserved goods.

## **10. Final provisions**

10.1 Notifications to the other party under the agreement or these terms and conditions of sale shall be made in writing to the registered office of that party or to another address indicated by that party.

10.2 Exclusive place of jurisdiction for all disputes arising from the business relationship between the Seller and the Customer is, at the Seller's discretion, Hamm or the location of the Customer's registered offices. Mandatory legal provisions on exclusive jurisdiction remain unaffected by this regulation.

10.3 The relations between the Seller and the Customer are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

10.4 Insofar as the agreement or these General Terms and Conditions of Sale contain loopholes, those legally effective provisions that the contracting parties would have agreed upon in accordance with the economic objectives of the agreement and the purpose of these General Terms and Conditions of Sale, if they had been aware of the loophole, shall be deemed to have been agreed upon in order to fill these loopholes.