

General Terms and Conditions of Delivery and
Payment of BAT Maschinenbau GmbH,
Meinerzhagen
(Edition 09/2020)

I. Scope of application

1. These Terms and Conditions of Sale shall apply to entrepreneurs, legal entities under public law and special funds under public law.
2. Our deliveries and services are provided exclusively on the basis of the following conditions.
3. Terms and conditions of the partner which are not expressly recognised by us shall not be valid.

II. General Provisions

1. The contracting parties shall immediately confirm verbal agreements in detail in writing.
2. Orders shall only become binding with our order confirmation.
3. The information and illustrations contained in brochures and catalogues are approximate values customary in the industry unless they have been expressly designated by us as binding.

III. Long-term Contracts, Price Adjustments

1. Unlimited contracts can be terminated with six months' notice.
2. If, in the case of long-term contracts (contracts with a term of more than 12 months and unlimited contracts), a significant change in wage, material or energy costs occurs, each contracting party shall be entitled to demand negotiations on an appropriate adjustment of the price taking these factors into account.

IV. Confidentiality

1. Each contracting party shall use all documents (including samples, models and data) and knowledge which it obtains from the business relationship only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own corresponding documents and knowledge if the other contracting party designates them as confidential or has an obvious interest in keeping them secret.

This obligation shall start with the first-time receipt of documents or knowledge and end 36 months after the end of the business relation.

2. The obligation does not apply to documents and knowledge which are generally known or which were already known to the contracting party at the time of receipt without the contracting party being obliged to maintain secrecy, or which are subsequently transmitted by a third party entitled to pass them on, or which are developed by the receiving contracting party without exploitation of documents or knowledge of the other contracting party which are to be kept secret.

V. Drawings and Descriptions

If one contracting party provides the other with drawings or technical documents concerning the goods to be delivered or their manufacture, these remain the property of the submitting contracting party.

VI. Samples and Means of Production

1. The manufacturing costs for samples and means of production (tools, moulds, templates, etc.) shall be invoiced separately from the goods to be delivered, unless otherwise agreed. This also applies to means of production which must be replaced as a result of wear and tear.
2. The costs for repair and proper storage as well as the risk of damage or destruction of the means of production shall be borne by us.
3. If the partner suspends or terminates the cooperation during the production period of the samples or means of production, all production costs incurred up to that time shall be borne by the partner.
4. The means of production shall remain in our possession, even if the partner has paid for them, at least until the delivery contract has been settled. Accordingly, the partner is entitled to demand the surrender of the means of production if an amicable agreement has been reached on the time of surrender and the partner has fully complied with its contractual obligations.
5. We shall store the means of production free of charge for three years after the last delivery to our partner. Thereafter, we request our partner in writing to comment on the further use within 6 weeks. Our duty of custody ends if no comment is made or no new order is placed within these 6 weeks.
6. Customer-related means of production may only be used by us for subcontracting to third parties with the prior written consent of our partner.

VII. Prices

Our prices are quoted in euros exclusive of VAT, packaging, freight, postage and insurance.

VIII. Terms of payment

1. Invoices are due for payment net (without deduction) within 30 days of the invoice date. If payment is received within 10 days of the invoice date, we grant a discount of 2 percent. No discount shall be granted for invoices for services. Invoices for services are due for payment net (without deduction) within 7 days of the invoice date.
2. If we have indisputably delivered partially defective goods, our partner is nevertheless obliged to make payment for the defect-free portion unless the partial delivery is of no interest to them. In all other respects, the Partner may only set off counterclaims that have become res judicata or are undisputed.
3. In the event of overdue payments, we shall be entitled to charge interest on arrears at the rate charged by the bank for current account overdrafts, but at least 8 percentage points above the respective base interest rate pursuant to Section 247 of the German Civil Code (BGB).

4. In the event of default in payment, we may, after giving written notice to the partner, suspend the performance of our obligations until the payments have been received.
5. Bills of exchange and cheques shall only be accepted by agreement and only on account of performance and on condition that they are discountable. Discount charges shall be calculated from the date on which the invoice amount is due. A guarantee for the timely presentation of the bill of exchange and cheque and for the lodging of a bill protest is excluded.
6. If, after conclusion of the contract, it becomes apparent that our claim to payment is jeopardised by the partner's lack of ability to pay, we may refuse performance and set the partner a reasonable deadline within which they must pay concurrently against delivery or provide security. In the event of refusal by the partner or unsuccessful expiry of the deadline, we shall be entitled to withdraw from the contract and demand compensation for damages.
7. For small orders with a net goods value of up to 50.00 EURO, we charge a minimum quantity surcharge of 30.00 EURO.
8. If the customer cancels an order, he has to pay a cancellation fee at least 35% of the gross order amount

IX. Delivery

1. Unless otherwise agreed, we deliver "ex works". Decisive for compliance with the delivery date or the delivery period is the notification by us of readiness for dispatch or collection.
2. The delivery period shall commence with the dispatch of our order confirmation and shall be extended appropriately if the prerequisites of section XV. are met.
3. Partial deliveries shall be permissible to a reasonable extent. They will be invoiced separately.
4. Within a tolerance of 10 percent of the total order quantity, production-related excess or short deliveries are permissible. This changes the total price according to its scope.

X. Dispatch and Transfer of Risk

1. Goods reported ready for dispatch shall be taken over by the partner without delay. Otherwise, we shall be entitled to dispatch them at our own discretion or to store them at the partner's expense and risk.
2. In the absence of a special agreement, we shall choose the means of transport and the transport route.
3. The risk shall pass to the partner when the goods are handed over to the railway, the forwarding agent or the carrier or when storage begins, but at the latest when the goods leave the factory or the warehouse, even if we have undertaken delivery.

XI. Delay in Delivery

1. If we can foresee that the goods cannot be delivered within the delivery period, we shall inform the partner of this immediately and in writing, inform them of the reasons for this and, if possible, state the expected delivery date.
2. If delivery is delayed due to a circumstance listed in section XV. or due to an action or omission on the part of the partner, an extension of the delivery period appropriate to the circumstances shall be granted.
3. The partner is only entitled to withdraw from the contract if we are responsible for the non-observance of the delivery date and they have unsuccessfully set us a reasonable period of grace.

XII. Retention of Title

1. We retain title to the delivered goods until all claims arising from the business relationship with the partner have been settled.
2. The partner is entitled to sell these goods in the ordinary course of business as long as they meet their obligations from the business relationship with us in good time. However, they may neither pledge the reserved goods nor assign them as security. The partner is obliged to secure our rights in the credited resale of the reserved goods.
3. In the event of breaches of duty by the partner, in particular in the event of default in payment, we shall be entitled to withdraw from the contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the partner to perform; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The partner shall be obliged to return the goods.
4. We are entitled to withdraw from the contract if an application is made to open insolvency proceedings against the partner's assets.
5. The partner hereby assigns to us by way of security all claims and rights arising from the sale or any leasing permitted to the partner of goods to which we are entitled. We hereby accept the assignment.
6. Any processing or treatment of the reserved goods shall always be carried out by the partner on our behalf. If the reserved goods are processed or inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the reserved goods to the other processed or mixed objects at the time of processing or mixing.
7. If our goods are combined or inseparably mixed with other movable items to form a single item and if the other item is to be regarded as the main item, the partner shall transfer co-ownership to us on a pro rata basis insofar as the main item belongs to them. The partner shall keep the property or co-property for us. In all other respects, the same shall apply to the item created by processing or combining or mixing as to the goods subject to retention of title.
8. The partner must inform us immediately of any compulsory enforcement measures by third parties against the goods subject to retention of title, the claims assigned to us or other securities, handing over the documents necessary for an intervention. This also applies to impairments of any other kind.
9. If the value of the existing securities exceeds the secured claims by more than 20 per cent in total, we shall be obliged to release securities of our choice to this extent at the partner's request.

XIII. Material Defects

1. The quality of the goods is exclusively determined by the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples, etc. of our partner, the latter shall assume the risk of suitability for the intended use. The decisive factor for the contractual condition of the goods is the time of the transfer of risk in accordance with section X. 3.
2. We shall not be liable for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the partner or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper modifications or repair work carried out by the partner or third parties without our consent. The same applies to defects that only insignificantly reduce the value or suitability of the goods.
3. Unless otherwise agreed, the statute of limitations for material defect claims is based on the law.

4. If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects which the partner could have detected during careful acceptance or initial sample inspection is excluded.
5. We shall be given the opportunity to establish the defect complained of. Goods which are the subject of a complaint must be returned to us immediately on request; we shall bear the transport costs if the complaint is justified. If the partner does not comply with these obligations or makes changes to the goods already complained about without our consent, they shall lose any claims for material defects.
6. In the event of a justified notification of defects within the time limit, we shall, at our discretion, either repair the defective goods or supply a faultless replacement.
7. If we do not fulfil these obligations or do not fulfil them in accordance with the contract within a reasonable time, the partner may set us a final deadline in writing within which we must fulfil our obligations. After the unsuccessful expiry of this period, the partner may demand a reduction in the price, withdraw from the contract or carry out the necessary rectification itself or have it carried out by a third party at our expense and risk. Reimbursement of costs is excluded insofar as the expenses increase because the goods have been taken to another location after our delivery, unless this corresponds to the intended use of the goods.
8. Statutory rights of recourse of the partner against us shall only exist insofar as the partner has not made any agreements with its customer which go beyond the statutory claims for defects. Furthermore, section XIII. 7. last sentence shall apply accordingly to the scope of the recourse claims.

XIV. Other Claims, Liability

1. Unless otherwise stated below, other and further claims of the partner against shall be excluded. This applies in particular to claims for damages due to breach of duties arising from the contractual obligation and from tort. We shall therefore not be liable for damage that has not occurred to the delivered goods themselves. In particular, we shall not be liable for loss of profit or other financial damages of the partner.
2. The above limitations of liability shall not apply in the event of intent, gross negligence on the part of our legal representatives or executive employees or culpable breach of material contractual obligations. In the event of culpable breach of material contractual obligations, we shall be liable - except in cases of intent or gross negligence on the part of our legal representatives or executive employees - only for reasonably foreseeable damage typical for the contract.
3. Furthermore, the limitation of liability shall not apply in cases in which liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivered goods. It shall also not apply in the event of injury to life, limb or health and in the absence of warranted characteristics if and to the extent that the purpose of the warranty was precisely to protect the partner against damage that did not occur to the delivered goods themselves.
4. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.
5. The statutory regulations on the burden of proof shall remain unaffected by this.

XV. Force Majeure

Force majeure, industrial disputes, riots, official measures, failure of our suppliers to deliver and other unforeseeable, unavoidable and serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect.

This shall also apply if these events occur at a time when the contracting party concerned is in default, unless they have caused the default intentionally or by gross negligence. The contracting parties are obliged to provide the necessary information without delay within the bounds of what is reasonable and to adjust their obligations to the changed circumstances in good faith.

XVI. Place of Performance, Place of Jurisdiction and Applicable Law

1. Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.
2. Our registered office shall be the place of jurisdiction for all legal disputes, also within the scope of proceedings relating to bills of exchange and cheques. We are also entitled to sue at the registered office of the partner.
3. The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.
4. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna UN Sales Convention") is excluded.