

General Terms and Conditions for Delivery and Performance of BOWA-electronic GmbH & Co. KG

1. Scope of Application of Terms

- (1)** Our terms and conditions of sale shall only apply to transactions with entrepreneurs. They shall also apply to future transactions with the contractor, hereinafter also referred to as customer or buyer.
- (2)** Our general terms and conditions of sale shall apply exclusively. The customer's conflicting terms and conditions of sale which deviate from ours shall not be accepted by us, not even implicitly by executing the contract without reservations.
- (3)** Agreements made between us and the customer for the purpose of execution of the contract must be recorded in writing in this contract or in an amendment.
- (4)** Unless these general terms and conditions of sale provide otherwise, the terms and definitions of INCOTERMS 2000 shall be governing.

2. Conclusion of Contract

- (1)** Our offers are subject to change without notice. Technical descriptions and other statements in quotations, brochures and other information shall at first also be considered non-binding.
- (2)** We reserve title to and copyright of any illustrations, drawings, cost estimates and other documents. They must not be made accessible to third parties.
- (3)** If the purchase order is to be qualified as an offer according to §145 BGB [German Civil Code], we may accept it within a period of twelve (12) working days. This period shall start on the day of receipt of the purchase order. The purchasing agreement shall be deemed to have been concluded when the seller confirms acceptance of the purchase order for the specified object of purchase in writing or by facsimile or effects delivery within the period of twelve (12) working days. The seller shall, however, be obliged to promptly notify the customer if the seller is unwilling to take delivery of the ordered products.
- (4)** Statements in terms of paragraph (1) as well as public remarks on our part, by the manufacturer and its vicarious agents (Section 434 I 3 BGB [German Civil Code]) shall only become part of the performance specifications if explicitly referenced in this contract.

3. Prices and Terms of Payment

- (1)** The purchasing price and price of ancillary performance shall be payable in cash on surrender of the object of purchase and service or receipt of invoice unless the customer is required by individual agreement to advance.
- (2)** Other terms of payment shall be subject to written agreement. The customer shall bear any costs which may be incurred by either party as a result of changes in terms of payment.
- (3)** Buyers with whom the seller maintains an ongoing business relationship effect payment within thirty (30) days of the date of invoice. This shall not apply if the buyer concerned is in delay with payment of the seller's previous shipments and/or if the buyer's financial situation has deteriorated to such an extent that the seller's claims for payment are in jeopardy.
- (4)** In derogation from the buyer's conflicting terms and conditions, we are entitled to initially offset payments against the buyer's previous debts and shall inform the buyer about the set-off manner. If expenses and interest have already been incurred, we shall be entitled to initially set off payment against the costs, then against interest and ultimately against principal.

- (5) Unless specifically agreed otherwise, our prices are ex works excluding packaging, customs and other costs of shipment and transportation, costs of assembly as well as taking into operation and excluding value-added tax relevant for the Federal Republic of Germany. Additional expenses, i.e. for taking out insurance, shall be at the customer's expense.
- (6) Cash discount may only be deducted upon prior written agreement.
- (7) Payment shall only be deemed to have been effected when we have it at our disposal. In case of payment by cheque, payment shall be deemed to have been effected after the cheque was honoured.
- (8) If we become aware of circumstances which call the buyer's creditworthiness into question, particularly if a buyer's cheque is not honoured or if a buyer suspends payments or if we become aware of any circumstances which call the buyer's creditworthiness into question, we shall be entitled to call for payment of the complete amount outstanding even if we have accepted cheques. In this case, we shall also be entitled to request advance payments or collateral.
- (9) In the event that we produce and/or deliver contractual purchasing objects on the basis of tools made by us, reimbursement of the proportional tooling cost shall be deemed to have been included in the price for special products produced therewith. This means that the customer shall not obtain any title to these tools. They remain our property.
- (10) If the customer is in delay with payment, the customer shall be obliged to pay 8% interest on arrears above the base rate. The seller reserves the right to assert additional interest on arrears.
- (11) The buyer shall only be entitled to offset, retain or reduce the purchasing price, even upon notice of defects or assertion of counter claims, if the counterclaims concerned are undisputed or have been determined by virtue of a final and absolute judgement. The buyer may also assert a right of retention for counterclaims from the same contractual relationship.

4. Duty to Deliver and Cooperate

- (1) The seller's statements in the acknowledgement of order and, if no acknowledgement of order was issued, the statements in the seller's quotation shall be decisive for determining the scope of delivery. We reserve the right to implement engineering-induced design, shape and colour changes based on an improvement or modification of engineering standards or legal requirements unless such modifications are major and the customer cannot be expected to tolerate them.
- (2) If the customer can be expected to take partial delivery, such partial delivery may be effected and invoiced.
- (3) Fixed delivery dates shall only apply subject to an explicit written agreement between the parties.
- (4) Terms of delivery, even if agreed explicitly and in writing, shall as a general rule be indicated subject to the proviso of the customer's contractual assistance. The customer's duty to cooperate shall, in particular, comprise the provision of all documents to be procured by the customer, approvals, import permits and payment approvals as well as compliance with pertinent EU regulations. Compliance with our delivery obligations shall be conditional upon punctual and appropriate performance of the customer's obligations. Terms of delivery shall be extended by the duration of the buyer's failure to comply with its duty to cooperate. The same shall apply if the buyer fails to satisfy its payment obligations.
- (5) The term of delivery shall be deemed to have been observed if the object to be delivered has left the seller's plant before expiry; if the buyer is responsible for initiating and/or executing transportation, terms of delivery shall be deemed to have been observed when the seller has indicated readiness for shipment to the buyer within the time limit.

- (6) If we ourselves are not supplied although we have placed equivalent orders with reliable suppliers, we shall be released from our duty to perform and may withdraw from the contract. We are required to promptly notify the customer about non-availability of performance and shall promptly reimburse any consideration already provided by the customer.
- (7) If it turns out after conclusion of contract that the customer does not offer sufficient security for its solvency and our claim to payment is in jeopardy, we are entitled to refuse delivery until the customer has effected payment or provided collateral for it. If the payment is not effected and collateral is not provided within twelve (12) working days of receipt of a corresponding request, we shall be entitled to withdraw from the contract.
- (8) The aforementioned paragraph (7) shall apply mutatis mutandis if the buyer is in delay with payment for previous shipments made by the seller.

5. Delays in Delivery

- (1) We shall not be held responsible for any delays in delivery and performance caused by force majeure and events which substantially interfere with our ability to deliver or even make delivery impossible, unless this is only a temporary phenomenon – including strike, lock-out, orders by authorities etc., even if they have occurred at one of our suppliers or their sub-suppliers – even if binding delivery dates and/or terms of delivery were agreed upon. In this case, we shall be entitled to postpone delivery or performance for the duration of disturbance plus a reasonable start-up period or to withdraw from the contract in part or in whole with a view to the part of the contract not yet performed.
- (2) If the disturbance prevails for more than two (2) months, the buyer shall, after setting a reasonable period of grace, be entitled to withdraw from the contract regarding the part of the contract not yet performed. The buyer may not assert any claims for damages from extension of the term of delivery or our withdrawal from the contract. We may only assert this right of withdrawal from the contract and extension of the term of delivery if we have promptly notified the buyer of the existence of such a disturbance.
- (3) If we are responsible for non-observance of committed and binding terms and deadlines or if we are in delay, the buyer shall be entitled to ½% of interest on arrears for every completed week of delay up to a maximum of 5% of the invoice value of the performance and shipments with which we are in delay. The customer shall be entitled to prove that higher loss or damages were actually incurred. We reserve the right to prove that no loss or damage or a lower amount of loss or damages was incurred. The customer may set a reasonable period of grace of at least fifteen (15) working days in writing or by facsimile. This period of grace shall not start until receipt of the respective notice by us. After such period of grace has lapsed without effect, the customer may withdraw from the contract or claim damages instead of performance. Liability for damages shall be limited to 50% of the loss or damage caused.
- (4) Paragraph (3) shall not apply if the delay was caused by wilful intent, gross negligence or breach of an obligation which is of the essence of the contract. Neither shall it apply if a commercial fixed transaction had been agreed upon.

6. Place of Performance and Passage of Risks

- (1) The seller's registered office shall be considered the place of performance for payments and destination of shipments.
- (2) Unless specified otherwise in the order confirmation or contractual agreement, delivery shall be effected "ex works".
- (3) If the goods are sent to the buyer at its request, the risk of accidental loss and accidental deterioration of the object of delivery shall pass to the buyer upon surrender of the object of delivery to the forwarding agent, carrier or shipping agent. This shall also apply if goods are not shipped from the place of performance and/or if the seller bears the freight charges.
- (4) If the goods are ready for shipment and dispatch is delayed for reasons for which the buyer is responsible, risks shall pass to the buyer upon receipt of the notification of readiness for shipment.

7. Acceptance of Subject Matter of Contract

- (1)** If the customer is in delay with acceptance, collection or call-off of the object of purchase or if the customer can be held accountable for a delay in shipment or service, we shall, in addition to other claims, be entitled to charge a cost allowance totalling the storage charges common at the respective site, regardless of whether the goods are stored by us or a third party. The customer has the right to prove that no loss or damage was caused or that the actual amount of loss or damages is lower.
- (2)** If the customer is more than fourteen (14) days in delay (as from receipt of the notification of readiness for shipment) with acceptance of the object of purchase with wilful intent or gross negligence, the seller may set the buyer a period of grace in writing or by facsimile, stating that acceptance would be refused after this period has expired. After the period of grace has lapsed without effect, we are entitled to withdraw from the purchasing agreement by virtue of a written statement or a statement by facsimile message and/or request damages instead of performance. No period of grace has to be set if the customer seriously and finally refuses to take delivery or is obviously unable to pay the purchasing price within this period.
- (3)** If we claim damages in line with paragraph (2) above, damages shall total 15% of the agreed purchasing price excluding value-added tax and ancillary services. A higher or lower amount of damages shall be applicable if we prove that actual loss or damage is higher or the customer proves that actual loss or damage is lower.
- (4)** The provisions of paragraphs (2) and (3) above shall only apply if the parties have expressly agreed that the duty of the buyer to take delivery of the purchase object is one of the main obligations of the buyer from the purchasing agreement, together with the duty to pay the purchasing price.

8. Retention of Title

- (1)** The seller reserves the right to retain title to the object of delivery until receipt of payments for the object of delivery. The retention of title shall also apply to claims which the seller may have to the buyer from an ongoing business relationship. On the buyer's request, the seller shall be obligated to waive retention of title if the buyer has satisfied all claims relating to the object of purchase and an adequate collateral exists or has been rendered by the buyer for other claims from ongoing business relationships.
- (2)** The buyer is entitled to sell the reserved goods on in normal business transactions; the buyer shall not, however, be entitled to pledge the goods or transfer ownership of the goods by way of security. The buyer shall have a duty to secure the seller's rights when selling the reserved goods on credit.
- (3)** The buyer already today assigns to the seller the buyer's claims from resale of reserved goods; the seller accepts such assignment. Regardless of assignment and the seller's collection right, the buyer shall with revocable effect be entitled to collect receivables on the seller's behalf for as long as the buyer satisfies its obligations to the seller, its payment obligations in particular, and does not suffer from a financial collapse. On the seller's request, the buyer shall provide the seller with information required for assignment of claims and notify the debtors of assignment. The buyer shall not be entitled to assign claims for the purpose of collection of receivables by way of factoring unless the factor simultaneously assumes an obligation to effect counterpayment to us in the amount of receivables until all of our claims to the buyer have been settled.

- (4) The buyer shall process and machine reserved goods on behalf of the seller without the seller having to assume associated obligations. If the reserved goods are processed, connected to, mixed or mingled with other goods not owned by the seller, the seller shall obtain a proportional share in the new object thus created; such proportional share shall be the invoice value of the reserved goods relative to the other processed goods at the time of processing, connection, mixing or mingling. The parties to the contract have mutually agreed if the buyer obtains sole title to the new object, the buyer shall grant the seller proportional co-ownership rights in the new object and shall store the new object free of charge on the seller's behalf. The proportional co-ownership rights shall be determined on the basis of the invoice value of the processed or connected, mixed or mingled reserved goods relative to the other materials making up the new object.
- (5) If the reserved goods are sold on together with other goods, no matter whether they are sold on with or without processing, connection, mixing or mingling, the above-mentioned advance assignment shall be applicable in the amount of the invoice value of the reserved goods which are sold together with the other goods.
- (6) If a third party imposes execution upon the reserved goods, the buyer shall promptly notify the seller and surrender documents required for intervention and point out to the third party that the seller has a title to the reserved goods.
- (7) The buyer shall be required to treat the reserved goods with care and take out insurance (theft, breakage, fire, water and other loss or damage) for the reserved goods at its expense. On the seller's request, the buyer shall submit to the seller evidence of insurance for the reserved goods.
- (8) If the buyer fails to observe its obligation to treat the reserved goods with care or if the buyer breaches any other duties of care relative to the object of delivery and in case of delay with payment or if the buyer's assets have been subjected to composition or bankruptcy proceedings, the seller shall be entitled to take back the reserved goods and, if applicable, request assignment of the buyer's claim to third parties to request surrender. The buyer is required to return property. Assertion of proprietary rights and the levy of execution upon the object of delivery by the seller shall not be interpreted as cancellation of contract.
- (9) The seller undertakes to release any of the collateral it is entitled to according to the provisions above, at its discretion, if the value of the collateral is 20% higher than the receivables to be secured.
- (10) If the buyer acts in violation of the contract, particularly if the buyer is in delay with payment, we are entitled to cancel the contract and request return of the goods. The customer herewith grants us the irrevocable right concerning return of goods to enter the customer's business and warehouse premises without opposition and take the goods with us.

9. Defects as to Quality

- (1) As far as defects as to quality are concerned, the customer shall initially have the legal duty to inspect and notify of defects according to Section 377 HGB [German Commercial Code].
- (2) The customer may not assert any other rights for defects as to quality which have no or only a minor effect on the value and fitness of the goods for the purpose apparent for us; moreover, the buyer may not derive any rights from normal wear and tear of object of purchase. In case of defects as to quality resulting from the failure of the buyer to observe the seller's operating or maintenance instructions, changes in the products by the buyer, replacement of parts by the buyer or use of consumables by the buyer which are not in line with original specifications, the buyer may not assert any other rights either.
- (3) If there is a defect as to quality in the goods upon passage of risks, we are entitled and obligated to repeat performance. Repeat performance shall at our discretion be effected by rework or substitute delivery. In this case, we will bear the costs of repeat performance, particularly transport costs, infrastructure expenses, labour costs and material expenses. If these costs account for more than 50% of the consignment value excluding value-added tax and ancillary services, we are entitled to refuse to render repeat performance.

- (4) If repeat performance has failed, is not rendered within the period of grace set by the customer or if the seller has refused to render repeat performance, the customer shall be entitled, at its discretion, to cancel the contract, request reduction of the purchasing price (reduction of the price due to a defect) by the value of the defect or request damages instead of performance within the limits of the paragraphs below. Rework shall be deemed to have failed after the second unsuccessful attempt unless emerging otherwise, particularly from the nature of the object or the defect or the other circumstances.
- (5) If a defect as to quality results in loss or damage, we shall assume liability in line with statutory regulations for personal injury, if the loss or damage is covered by the Product Liability Act (ProdHaftG) or is based on wilful intent or gross negligence.
- (6) If the loss or damage is based on negligent breach of a contractual obligation which is of the essence or a cardinal obligation, we shall only assume liability for loss or damage typical for the contract.
- (7) Additional contractual or tortious claims of the customer shall be excluded. This is why we, in particular, do not assume liability for loss or damage not caused to the object of delivery itself and for lost profits or other financial damage caused to the customer.
- (8) The aforementioned regulations shall not apply to used goods. We shall only assume liability for defects as to quality if we have explicitly assumed a warranty, have committed an offence with wilful intent or gross negligence. This shall not have any effect on the purchasing obligation on delivery of used objects according to Section 377 HGB [German Commercial Code].
- (9) Section 478 BGB [German Civil Code] shall not be affected by paragraphs (2) to (8).

10. Other Liability for Damages

- (1) The provisions of Section 9 Paragraphs (5) to (7) shall also apply to claims for damages for other breaches of obligations.
- (2) If an obligation under a memorandum of understanding is breached or in case of frustration of contract (Sections 311, 11, 311a BGB [German Civil Code]), we may only be held liable for reliance interest.
- (3) As far as our liability in tort is concerned, the provisions of section 9 paragraphs (5) to (7) shall apply accordingly.
- (4) If our liability has been excluded or limited, this shall also apply to personal liability on the part of employees, workers, staff, representatives and vicarious agents.

11. Limitation of Action

- (1) Subject to the provisions of Section 438 paragraph 1 no. 2, 479 BGB [German Civil Code], the customer's claim to repeat performance shall become statute-barred two (2) years after delivery of new goods and one (1) year after delivery of used goods. Accordingly, the right of cancellation of contract and reduction of purchasing price shall be excluded by law.
- (2) Subject to the provisions of Sections 438 paragraph 1 no. 2, 479 BGB [German Civil Code], claims for damages for new goods shall become statute-barred after one (1) year; action for used goods may only be commenced within six (6) months. The time relevant for barring action shall start with delivery of the object of purchase.
- (3) Claims under the Product Liability Act (ProdHaftG) and claims involving wilful intent and gross negligence as well as personal injury, shall become statute-barred within the legal time frames.

12. Development Orders

In case of orders the execution of which is dependent on special development activities, the buyer shall not obtain any rights of inventor to the developed objects as well as the facilities for producing these objects even if the buyer has paid a share of the development and/or production costs.

13. Transferability of Rights from this Contract; Applicable Law; Place of Jurisdiction; Written Form and Partial Invalidity

- (1) The rights of the buyer under this contract may not be transferred.
- (2) The laws of the Federal Republic of Germany shall be the applicable law for these General Terms and Conditions of Sale and Delivery and any legal relationships associated with consignments and performance; United Nations Convention on Contracts for the International Sale of Goods (CISG) and international conflict or choice of law principles shall be excluded.
- (3) The Local Court (Amtsgericht) of Tübingen or the Regional Court (Landgericht) of Tübingen shall be the exclusive place of jurisdiction (forum) for any disputes arising from or in connection with the contractual relationship. If the seller becomes claimant, the seller shall be entitled but not obligated to resort to the court competent for the buyer's registered office.
- (4) Ancillary agreements, reservations, changes and additions shall only be valid if confirmed by the seller in writing.
- (5) If any provision of these General Terms and Conditions of Sale and Delivery or any term or condition contained in any other agreements relating to this delivery contract were to be or become invalid or ineffective, this shall not affect the validity or effectiveness of any other terms and conditions or agreements.

As per: July 2007

Previous terms and conditions of sale, delivery and payment are herewith substituted.

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