

General Terms and Conditions of Sale of

BAZ GmbH

§ 1 Scope of Application

(1) Where the Customer is acting in the course of his business or is a corporate body under public law the following standard terms and conditions shall govern all goods and services supplied by us to the Customer. Any terms of the Customer which contradict or deviate from the terms and conditions below shall not apply except where we have expressly agreed to the same in writing.

(2) These terms and conditions or the then current version thereof shall apply as a framework agreement for future contracts for the sale or supply of movable goods with the same Customer irrespective of the absence of an express indication to such effect for any future single transaction with the Customer; we shall inform the customer of any changes these terms and conditions without delay.

(3) Any individual agreements made with the Customer (including ancillary agreements, supplements or changes) shall take precedence over these terms and conditions. A written contract or our written confirmation shall be definitive in terms of the content of any such agreement.

§ 2 General Terms

(1) Any material declarations or notifications submitted by the Customer after the contract date (e.g. deadlines, notification of defects, rescission or a price reduction) must be made in writing.

(2) Any indications made as to the application of statutory provisions are for the sake of clarity only. In the absence of any such indication the statutory provisions still apply except where such statutory provisions are amended or expressly excluded.

§ 3 Contract Conclusion

(1) Our quotations are without obligation. This shall also apply where we provide the Customer with catalogues, technical documentation, (e.g. drawings, plans, calculations, cost estimates, referrals to DIN standards) and any other product descriptions or documents – including where they are provided in electronic form – to which we retain all proprietary rights and copyright.

(2) A contract shall be concluded where we acknowledge the order in writing or text form or where orders are executed by us.

(3) Where trade terms in accordance with the International Commercial Terms (INCOTERMS) are agreed, the INCOTERMS 2010 shall apply.

§ 4 Prices

(1) Except where otherwise agreed our prices are subject to the price list valid at the date of the contract. They are EXW (ex works) our stores, and do not include packing, freight, customs duties, ancillary import charges, insurance and VAT. VAT shall be charged at the rate current at the date of performance.

(2) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Customer and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event. In relation to framework agreements with a price clause the three month period shall begin to run upon the effective date of the agreement.

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§ 5 Terms of Payment

(1) Except where otherwise agreed the Customer shall remit payment of the agreed price without deduction within 14 days after supply of the goods or services. Upon expiry of the payment term the customer shall be deemed in default of payment.

(2) Cheques and bills of exchange shall only be accepted as conditional payment, bills of exchange by special agreement only. All charges incurred for bills of exchange and other ancillary payment cost shall be for the account of the Customer and are due immediately.

(3) Where after the contract date it becomes apparent that our claim to the price is at risk due to the inability of the Customer to remit payment (e.g. due to institution of insolvency proceedings), we shall be entitled to rescind the contract in conformity with the German statutory provisions, where appropriate upon the expiration of a reasonable deadline. For contracts for the manufacture of fungible goods (custom made items) we shall be entitled to rescind the contract with immediate effect; any statutory provisions as to dispensability of a deadline shall remain unaffected.

(4) The Customer may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Customer shall only be entitled to rights of retention in so far as these are based on the same legal transaction

§ 6 Delivery Date / Term

(1) The commencement of the delivery term quoted shall be subject to clarification of all technical matters and proper and timely performance by the Customer of his obligations.

(2) Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Customer shall grant us an extension in writing of not less than 3 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Customer desires to rescind the contract or demand damages in lieu of performance, the Customer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Customer is obliged at our request to declare within a reasonable period

whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

(3) In the event of act of god we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. The same shall apply in relation to shortages of energy or raw materials, strikes, governmental decrees, disruption of operations or infrastructure or where, for the above reasons, a sub-supplier fails to supply us properly, on time or at all.

§ 7 Shipment, Transfer of Risk, Default of Acceptance

(1) We supply our goods and services EXW our stores, which is also the place of performance. At the request of the Customer and for his account we will ship the goods to another delivery location (sale by delivery). Except where otherwise agreed we are entitled to determine the method of shipment (to include without limitation the freight forwarder, route of shipment and packaging).

(2) Supply of goods or services by installment is permitted except where unreasonable for the Customer

(3) The risk of loss or deterioration of the goods shall pass to the Customer upon delivery of the goods latest. In cases of sale by delivery the risk of loss or deterioration of the goods as well as risk of delay shall pass to the Customer upon surrender of the goods to the carrier, freight forwarder or to any other person or firm engaged to effect shipment.

(4) In relation to make and hold orders approximately the same quantities shall be called off each month except where otherwise agreed in writing. The entire order quantity shall be deemed called off one month after the expiration of the call off deadline, or in the absence thereof twelve (12) months after the contract date. Where the Customer fails to assign goods ordered to a certain delivery within one month after the expiry of the deadline for such assignment, or in the absence of an agreed deadline, within one month of our request for such assignment, we reserve the right to assign the goods at our discretion and deliver the same.

(5) Where the Customer is in default of acceptance, fails to perform any obligation on time or where shipment is delayed for reasons attributable to the Customer, we shall be entitled to demand reimbursement of any additional expense incurred as a result (to include without limitation storage costs). We shall charge a lump sum fee of 75.00 Euro per calendar day from the delivery date or – in the absence of a delivery date – from the date of notification of readiness for shipment. We reserve the right to adduce evidence of additional damages and our statutory rights (to include without limitation recovery of additional expenditure, reasonable compensation, termination) shall remain unaffected. The Customer shall be permitted to adduce evidence that the damage we have incurred is considerably less than the lump sum charged or that no damages have been incurred at all.

§ 8 Retention of Title

(1) Goods sold shall remain our property until payment of all claims under the business relationship has been received from the Customer.

(2) If the Customer works or processes the goods our reservation of title shall be extended to cover the whole of the new article. In the case of processing, combining

or mixing with external goods by the Customer we shall acquire title in the fraction that corresponds to the invoice value of our goods to that of the other objects used by the Customer at the time the processing, combining or mixing took place.

(3) If the goods subject to reservation of ownership are combined or mixed with a principle good belonging to the Customer, the latter hereby assigns in addition his rights in the new good to us. If the Customer combines or mixes the goods subject to reservation of title with a principle good belonging to a third party against payment, he hereby assigns his claims for payment against the third party to us.

(4) The Customer may resell goods subject to reservation of ownership in the framework of due business activities. If the Customer sells these goods without receiving the full purchase price in advance or contemporaneously with the surrender of the item purchased, he shall agree a reservation of title with his customers in accordance with these conditions. The Customer hereby assigns to us his claims under this resale and the rights under the reservation of title agreed. He agrees at our request to notify the assignment to Customers and to provide us with the information required to claim our rights against the Customers and to hand over documents. Irrespective of the assignment the Customer shall only be authorised to collect payments under the resale as long as he complies duly with his obligations to us.

(5) If the value of the securities provided to us exceeds our claims by more than 10 percent, we undertake to release securities of our choice on demand by the Customer.

(6) In the event that the above retention of title clauses are void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed

§ 9 Customer's Rights in the case of Defects

(1) The goods supplied by us correspond to the German regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Customer to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.

(2) The Customer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal.

(3) Where the goods delivered by us are defective and the Customer has notified us of the same in writing not later than 28 days after the delivery date we shall at our option deliver a replacement or remedy the defect. The Customer shall grant us a reasonable period of not less than 15 working days to carry out the same.

(4) The Customer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original

shipment location unless the purpose for which the goods are intended requires the same. Where it subsequently becomes apparent that the Customer has no justified claim to reimbursement we retain the right to demand reimbursement of any monies paid.

(5) In the event that we are not in a position to remedy the defect or deliver a replacement the Customer is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Customer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

(6) The Customer shall retain a statutory right of recourse against us insofar as the Customer has not agreed terms with its customer which exceed the statutory liability for defects.

§ 10 Damages

(1) Except where otherwise provided below any claim of the Customer for damages other than those claims set out in § 9 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly we do not accept liability for any damage not incurred by the goods themselves nor do we accept any liability for loss of profit or any other pecuniary loss suffered by the Customer. To the extent that our contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.

(2) The aforesaid limitation of liability shall not apply where the damage incurred has been caused by willful default or by gross negligence, due to fraudulent misrepresentation as to the absence of a defect or breach of guarantee or where personal injury has been suffered or where damages are claimed under the product liability act.

(3) Where we are in negligent breach of a material term of the contract our liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Customer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Customer relied or could be reasonably expected to rely.

(4) Beyond the aforesaid we shall only be liable to the extent of our insurance coverage insofar as the damage which has been incurred is insured and subject to payment of the insurance benefit

(4) Any other liability in damages is hereby excluded.

(5) Any assignment of the Customer's claims provided for in § 9 and 10 above is not permitted, insofar as this prohibition is permissible at law.

§ 11 Limitation

(1) The limitation period for claims based on the supply of defective goods and services (§9) as well as for claims for damages (§10) is one year from the date of delivery or acceptance.

(2) The limitation period aforesaid shall not apply in relation to claims based on wilful default, gross recklessness, fraudulent misrepresentation of the absence of a defect, breach of

guarantee or to personal injury claims and to claims under product liability laws (§10 sub-para. 2). The limitation period aforesaid shall further not apply where longer limitation periods are prescribed by law.

§ 12 Choice of Law, Jurisdiction

(1) For Customers whose principle place of business is situated in the European Union all disputes arising out of these terms and conditions shall be resolved before the courts in Siegen, Germany. We reserve the right to sue the Customer at its principle place of business.

For Customers whose principle place of business is situated outside the European Union all disputes arising out of these terms and conditions shall be finally settled in accordance with the Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany.

(2) The laws of the Federal Republic of Germany shall govern all the legal relationships between us and the Customer.

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