

General Conditions of Sale and Delivery of BBG Baugeräte GmbH

I. Formation of contract

Our following conditions apply to all our sales unless otherwise agreed upon in writing. Any terms and conditions of purchase and special instructions submitted by the Buyer which stand in contradiction with our conditions shall only be deemed binding if they are expressly accepted by us in writing for each individual order and shall apply to that particular order only. The absence of contradiction on our part does not imply acceptance. Our offers are only binding when confirmed expressly by us in writing. No order shall be deemed binding unless and until the order has been accepted by our written Order Confirmation. Unless otherwise agreed the delivery period shall run from the date of our official Order Confirmation. Unless otherwise agreed, for orders on call the final date for call is the last day of the month following the advice that goods are ready for dispatch. As soon as an order has been accepted by us, the specification may only be altered with our written consent.

II. Patent rights, drawings, patterns, designs, models

The Buyer shall be liable for and indemnify us against and from all liabilities, proceedings, claims, costs and expenses that may result from an infringement of any letters patent, registered design, trade mark, copyright or similar industrial property rights of third parties both in Austria and abroad, arising from any work done or method employed by us in the execution of the Buyer's order or from meeting the Buyer's specifications relating to certain properties or characteristics or from our use of any drawings, patterns, designs, or similar expedients placed at our disposal. Whilst every care will be taken with drawing, patterns designs, model, etc. we will not accept any responsibility for loss of or damage to them. If requested by the Buyer, we will at his expense insure these items against loss or damage. We reserve the right to destroy without previous notice to the Buyer any drawings and samples etc. in our possession which have not been used for three years.

III. Price and conditions of payment

- Unless otherwise agreed upon prices are quoted „ex works“ or „ex warehouse“ packing excluded. These prices shall be considered as basic prices to which extras or surcharges as customary in trade or stipulated in each particular contract may be added. Goods will be invoiced at the current prices as at the date of shipment.
- Unless specifically otherwise agreed invoices shall be paid net in cash free of any charges or discounts (free of charge Vienna) not later than the 15th day of the month following shipment or advice to the Buyer that the goods are ready for shipment.
- In case of delay of payment the customer will be debited with all interest accumulated and with all other expense incurred in connection with the delay without prejudice to any other legal consequences. The rate of interest payable to us shall be one per cent above the rate of interest payable on operational credits granted by the big banking establishments of Austria. All foreign bank charges will have to be paid by the Buyer.
- Discountable and duly stamped bills of exchange will not be accepted in lieu of payment unless specifically agreed upon beforehand. Bills of exchange and cheques will be credited to the Buyer only upon receipt of correct payment. Any interest and charges incurred as a result will be debited to the Buyer's account.
- Notwithstanding the term of a bill of exchange accepted and entered, all accounts receivable by us become due forthwith whenever our terms and conditions of payment are not observed or circumstances are brought to our knowledge which we deem in our sole discretion affect the Buyer's solvency. In such cases we reserve the right to withhold further deliveries until payment in advance has been made.
- Furthermore we shall be entitled in such circumstances to prohibit resale and processing of goods shipped and to demand their return at the Buyer's expense.
- In the event of a business transaction having been concluded in foreign currency, then conversion shall be made using the official rate of exchange fixed by the Österreichische Nationalbank AG. on the date of our Order Confirmation and all exchange risks shall be borne by the Buyer.
- In the event that the Buyer is unable to make payment according to the terms and conditions agreed upon, he shall effect payment in the manner we elect.
- Invoicing: High-Tech-Park West 6, A-8605 Kapfenberg, Austria
We are asking you to indicate in your correspondence the invoice number.
Payable in Vienna and actionable in Leoben. After delivery of the goods to the Buyer the ownership thereof shall remain in ourselves until the Buyer shall have paid in full to us the invoice price of those goods and any ancillary costs payable in respect thereof. Also if dispatch is free of charge the risk arising therefrom shall be borne by the Buyer. For eventual loss, damages or mix-up the official confirmation necessary for claiming compensation has to be demanded immediately at receipt of goods.

IV. Ownership of goods

After delivery of the goods to the Buyer the ownership thereof shall remain in ourselves until the Buyer shall have paid in full to us the invoice price of those goods and any ancillary costs payable in respect thereof. The Buyer is only allowed to resell the goods in which we have retained ownership if the claims resulting therefrom are passing to us. The Buyer is allowed to collect payments resulting of the resale until revoked by us, which we may do at any time. However, the Buyer is not allowed to assign such payments to third parties. If required by us the Buyer is obliged to inform its customer of the assignment of payments to us. The Buyer shall inform us immediately of a seizure or an other utilization of the goods by third parties.

V. Place of performance Incoterms:

The Incoterms of 2000 shall apply to all business concluded by us. Where shipment is to be effected by us the place of performance shall be our works or warehouse; as regards payment by the Buyer, Vienna shall be the place of performance.

VI. Deliveries, part shipments

Unless otherwise agreed, the deliveries indicated by us are approximate and not binding. They are deemed to commence on the date mentioned in our Order Confirmation. Our delivery obligations are fulfilled on the day, on which the goods leave our works. Delivery commitments shall be deemed fulfilled if the goods cannot be dispatched in time through no fault of ours even though advice that they are ready for shipment has been duly given. Part shipments shall be allowed. For contract orders involving shipments at periodic intervals the quantities to be shipped in each part shipment, shall be stipulated in the invitation to tender. In the absence of such stipulation we shall be entitled to determine the quantities to be included in each part shipment and to effect final delivery, or to withdraw from that part of the contract which has not yet been fulfilled and to claim damages.

VII. Acceptance and inspection

After inspection of the goods as agreed in the contract and conducted by the Buyer or his representative or by an inspection authority nominated by mutual consent between the Buyer and ourselves no claim regarding a defect or deficiency which would have been discernible in the course of inspection shall be accepted. Further no claim is accepted if the Buyer renounces an inspection and has got our inspection certificates. Should the Buyer fail to take delivery and to inspect after having been notified in time of the date in which it is to take place, or should acceptance of delivery or inspection not be carried out on the appointed date, or should delivery or inspection be carried out incompletely, then the risk will pass to the Buyer on the date delivery or inspection should have taken place (as

the case may be). In such a case we shall be entitled at our option either to ship the goods without inspection at the Buyer's risk and expense or to store them as we deem fit. As from such date the goods shall in every respect be deemed duly delivered according to contract. The Buyer is obliged to effect immediately the payments which will be due for such delivery. In the event of the risk passing to the Buyer we shall not take out any insurance for the goods unless this is specifically requested by the Buyer, nor can we be held liable for omitting to insure the goods.

VIII. Shipment and passing of risk

Shipment of goods will be made in accordance with the delivery terms and conditions agreed upon.

For orders on call the goods will either be shipped or stored at our option at the Buyer's expense with the risk passing to him at the time of shipment or storage, as the case may be, unless the goods are called for by the Buyer within a period of fourteen days following our advice that the goods are ready for dispatch. The goods shall then be deemed delivered according to contract on such a date.

Packing will be of the commercial type unless seaworthy packing or rust protection has been specified.

We shall comply with the Buyer's shipping and forwarding instructions as far as these are practicable. Any additional costs and risk arising therefrom shall be borne by the Buyer.

IX. Guarantee and liability for defects

The goods shall be deemed shipped and supplied in proper condition as required by contract when dispatched from our work or warehouse and a dispatch note has been issued.

Any defects found by the Buyer must be reported immediately upon their discovery. Apparent defects such as defects relating to quantity, weight, surface finish etc. must be reported not later than fourteen days, defects inside of the goods not later than three months after receipt of goods, after which period the complaint will not be accepted.

We shall ensure that our goods are shipped in perfect condition and any damage found shall be presumed having been caused in transit until proof is furnished to the contrary. Inasmuch as the damage is our liability (whether in whole or in part) according to the terms and conditions of delivery (Incoterms) the Buyer shall safeguard our rights against the carrier or underwriter; if the Buyer fails to do so, the Buyer will forfeit any claims he may have against us.

In the event of deficiencies in equipment supplied by us we shall be liable to the original purchaser to the extent that according to our choice, we undertake either to repair or to replace, free of charge, by new goods corresponding to the original orders, against return of the unserviceable items, any and all material that can be proved, within six months from delivery ex our works or warehouse, or three months in case of day-and-night operation, to be defective because of poor material quality, inadequate design, or faulty workmanship, such proof to be furnished by our own testing and inspection department.

We do not accept liability unless the Buyer notifies us promptly on discovering any defect, stating at the same time the invoice number of the consignment to which the defective part belonged, and forwarding the part to us without delay, at his own expense.

Our guarantee does not cover ordinary wear and tear, and damage caused by misuse of the equipment or part; neither does it apply to parts which may be expected to wear quickly by reason of the material of which they are made or the purpose for which they are used.

Goods may be returned to us only with our prior consent. We cannot accept any claims for damage for amounts in excess of the cost of replacing or repairing the damaged parts, or for consequential damage, or loss of profit. In particular, we shall not be liable to refund to the Buyer the cost of any repairs he may have carried out without our written consent. Should the Buyer undertake any repairs without our consent or use any spare parts which have not been supplied by us, our liability shall cease forthwith.

For defects or workmanship in subcontracted work for which we are liable, our liability is limited to the amount of the costs of labour invoiced by us.

X. Force Majeure and other events impeding or preventing shipment

We shall have no liability to the Buyer in the event of non-delivery or delay in delivery of the whole or any portion of the goods caused directly or indirectly by stoppages and interruptions, or shortages of any kind or Force Majeure which entitles us to extend delivery periods by a reasonable extent or to withdraw from the contract wholly or partly. Force Majeure shall include strikes, lockouts and other matter (such as embargoes and export prohibition that have been imposed after the conclusion of the contract) rendering shipment difficult or impossible, whether such event affect us, our sub-contractors or our suppliers. We shall immediately notify the Buyer of such an event.

Should the Buyer be entitled to withdraw from the contract as a consequence of Force Majeure or a similar event preventing acceptance of the goods, each party to the contract shall bear their own costs and expenses incurred until that date.

Should the circumstances prevailing at the time the contract was concluded have changed to a such an extent so that it can be assumed that the contract would not have been concluded at all or under different terms and conditions, if those circumstances would have existed at the time of entering into the original contract, then we shall, depending on the nature of the case, be entitled either to refuse performance of the contract or to demand a variation of its terms and conditions to take into account the changed circumstances, such as e.g. payment in a different currency, applying a price escalation clause, varying conditions of supply, etc.

The reason for changed circumstances can also be important change of the personal or business conditions of the Buyer.

XI. Jurisdiction, law applicable

Unless otherwise agreed in writing by both parties to the contract, relations between the parties shall be governed by Austrian law.

Jurisdiction will lie with the competent court in Leoben and any proceedings which the Buyer institutes must be brought in Leoben.

XII. Partial invalidity

In the event of any clause or clauses of the present terms and conditions becoming invalid wholly or in part, the remaining clauses will remain in force.