

besecke GmbH & Co. KG

Standard Terms and Conditions of Sale and Delivery

Last revised: August 2017

These terms and conditions shall apply to all deliveries made by besecke GmbH & Co. KG (hereinafter referred to as the "Supplier"). They shall also apply to all services agreed to be provided in addition to the delivery as auxiliary services (such as the erection, installation and commissioning) or, independently, as primary services (hereinafter collectively referred to as "Services"). These terms and conditions of sale and delivery shall apply also in cases where the Supplier delivers goods or performs Services without reservation although it is aware of conflicting or deviating terms and conditions of the purchaser. Any deviating agreements, in particular conflicting terms and conditions of the purchaser as well as side agreements shall be subject to the express written consent of the Supplier in order to become an integral part of the contract.

1. Offer and conclusion of contract

- 1.1 Offers of the Supplier are non-binding. The Supplier reserves all rights, including but not limited to proprietary and copyrights to offers, samples, cost estimates, drawings, technical information and other documents (hereinafter referred to as "Documents"). The Documents may not be disclosed to third parties unless the Supplier has given its prior written consent.
- 1.2 Contracts are entered into by written confirmation of order of the Supplier. This confirmation shall also be binding with respect to the scope of the delivery/Service unless the purchaser immediately objects to deviations from its order, if any.
- 1.3 The Supplier reserves the right to make changes to the design, materials, or the form of the object of the contract to the extent that the object of the contract is not fundamentally changed thereby, and the change is reasonable to the purchaser.

2. Prices

- 2.1 Prices are in EUR and apply ex works (EXW, Incoterms® 2010) exclusive of packaging and all taxes, customs duties or fees payable under applicable law. The purchaser agrees to pay or reimburse Supplier for taxes, customs duties or fees charged to the Supplier or its suppliers.
- 2.2 In cases where deliveries and/or Services are made or performed, respectively, more than four (4) months after the conclusion of the contract, the Supplier shall be entitled to increase prices in accordance with cost increases that may have occurred in the meantime due to collective bargaining agreements or material price increases, freight increases or a rise of the statutory value-added tax.
- 2.3 If the Supplier has assumed the erection, installation, or other on-site services, the purchaser shall pay, in addition to the agreed-upon remuneration, all ancillary costs (i.e. in particular travel expenses, living allowances, and costs for official permits) incurred in connection with the Services, unless agreed otherwise.
- 2.4 If the purchaser requests changes of the technical specifications or of the periods of delivery or performance of the work after the contract has been entered into, the Supplier shall be entitled to request adequate additional remuneration (also in cases where a fixed price was agreed upon).

3. Payment terms

- 3.1 Payments must be made to the Supplier's paying agent with all fees paid, or to the bank account specified by the Supplier.
- 3.2 Unless agreed otherwise, invoices are payable immediately and shall be paid without deduction no later than fifteen (15) days after the invoice date.
- 3.3 If the purchaser is in default of payment, the Supplier may - notwithstanding other statutory or contractual rights - charge interest in the amount of nine (9) percentage points above the Deutsche Bundesbank base rate.
- 3.4 The Supplier shall also be entitled to the payment of a EUR 40.00 flat fee in the event of default of payment by the purchaser. This shall also apply if the payment in question is a progress payment or any other kind of installment. If the default makes the purchaser also liable to damages, the flat fee shall be deducted from the amount of damages to the extent that the damage is based on the costs of bringing an action.
- 3.5 The purchaser may not refuse payment due to non-essential defects.

4. Retention of title

- 4.1 Supplier retains title to all delivery items until the complete fulfillment of all obligations under the business relationship ("Conditional Goods").
- 4.2 While the retention of title is in place, the purchaser may neither pledge the Conditional Goods nor transfer ownership thereto by way of security.
- 4.3 The purchaser may resell the Conditional Goods as part of the ordinary course of its business and subject to the provisions of Clause 4.3.4. This permission may be revoked. The purchaser is also allowed to process or transform the Conditional Goods, while such processing or transformation shall be on behalf of the Supplier. The purchaser shall keep the new item in safe custody for the Supplier, employing the diligence of a prudent businessman. The new item shall also be considered Conditional Goods. If the Conditional Goods are combined or blended with other items not belonging to the Supplier, the Supplier acquires the title thereto on a pro-rata basis of the value, and the new item shall be considered Conditional Goods only to that extent.
- 4.3.1 The purchaser shall assign its claims from the resale of the Conditional Goods for the amount of the purchase price claim (including VAT) to the Supplier now in order to secure the Supplier's claims resulting from this business relationship.
- 4.3.2 The purchaser is entitled and obligated to collect the claims assigned to the Supplier, subject to revocation. The Supplier has the right to revoke the authorization to collect the claims if the purchaser is in default of payment, has suspended payments, or files for insolvency proceedings to be instituted.
After such revocation, the Supplier may collect those claims itself. Upon request of the Supplier, the purchaser must provide the Supplier with the details of the assigned claims and the debtors thereof and must communicate all information required for the collection of the claims, hand over the relevant documents for this purpose, and inform the debtors of the assignment.

4.3.3 The security furnished pursuant to Clause 4.3.1 above shall be released by the Supplier if the realizable value of such security exceeds the claims to be secured by more than 20% or its estimated value by 50%.

4.3.4 The permission of sale set forth in Clause 4.3 shall be void if the purchaser is in default of payment, or culpably fails to comply with its obligations arising from the retention of title including the assignment of claims, or if insolvency proceedings are instituted with regard to the purchaser's assets.

In these cases, the residual debt shall become due in full immediately, and if not paid immediately, the right of the purchaser to use the Conditional Goods shall be void. After the expiration of a grace period of fourteen (14) days, or if the purchaser's assets become the subject of a motion for the institution of insolvency proceedings, the Supplier shall be entitled, after having rescinded the contract, to claim return of the Conditional Goods without any right of retention on the part of the purchaser, and to pick up these goods from the purchaser. All costs resulting from the taking of possession and realization of the Conditional Goods must be borne by the purchaser.

4.4 The purchaser must notify the Supplier without delay of any attachment or confiscation of the Conditional Goods or any other matters affecting the owner's interest therein.

4.5 Should special rules for the effectiveness of the retention of title apply in the country where the delivery item is located (such as registration or notarization), the purchaser shall, at its expense, take all measures necessary for the title to the delivery item to be effectively retained and for that effectiveness to be upheld.

If a retention of title is not permitted in the country where the delivery item is located but other rights to the delivery item are, the purchaser shall, at its expense, take all measures necessary for other rights to the delivery item to become effective instead of the retention of title, and for that effectiveness to be upheld.

5. Dates and time limits, delivery

5.1 Dates and time limits are binding on the Supplier only if their binding effect has expressly been agreed upon in the contract in writing. Otherwise, any statements as to periods or dates shall be considered estimates only, and the reasonable dates and periods anticipated by the Supplier taking into account the nature and scope of the Service or the delivery, or the difficulty of the task, etc., shall apply. Any dates and time limits agreed upon are based on the work hours applicable at the Supplier's facilities in accordance with collective bargaining agreements.

5.2 The delivery is made ex works (EXW, Incoterms® 2010). Partial deliveries are allowed.

5.3 Timely delivery or performance of Services - to the extent that a date or period for the Service was agreed upon - shall be subject to the complete and timely fulfillment of all duties and obligations of cooperation of the purchaser, such as (i) the timely delivery of documents, information, or permits, (ii) the timely availability of the object to be worked in a condition ready to be worked, and clarification of all commercial questions (including the agreement on the price) and technical issues, as well as (iii) receipt by the Supplier of all payments that are due. Time limits and dates agreed upon shall be extended by the period by which payments due arrive late, even if the Supplier has not claimed any right of retention or right to withhold performance, or by the period of non-fulfillment of the purchaser's duties and obligations of cooperation and other circumstances specified in the contract.

5.4 If the scope of delivery or Service is changed or augmented, the dates and time limits shall be changed in accordance with the additional time required therefor. This shall also apply to unforeseen conditions and obligations imposed by authorities and/or, where Services for a ship/ship under construction are concerned, also for unforeseen conditions and obligations imposed by the classification society.

5.5 Force majeure and other events outside the control of the Supplier, such as labor disputes, machine break down, shortages in raw materials supply, governmental actions or omissions, insolvency or the institution of insolvency proceedings affecting a subcontractor or sub-supplier, and traffic disruptions, regardless of whether the Supplier or its suppliers are affected thereby, shall release the Supplier from the performance of its contractual obligations for the duration of the effects thereof, or permanently if the Service cannot be provided at all. Where Services are performed for a ship/ship under construction, this shall also apply to measures taken in accordance with the International Ship and Port Facility Security Code (ISPS Code).

5.6 If the Supplier is in default of performance with regard to its Services, the purchaser, if it has demonstrably suffered damage, may regardless of its right to rescind the contract where provided under the law, claim default charges of 0.5% of the contract price for each complete week of default, but no more than 5% of the contract price; all further claims for damages and rights are excluded. This limitation shall not apply if the default is based on willful misconduct or gross negligence, or the violation of other obligations that are essential to the contract.

6. Assignment, set-off and retention

6.1 The purchaser is not entitled to assign claims and rights made or asserted against it in whole or in part to third parties, unless the Supplier has given its written consent.

6.2 The purchaser may set off counter claims against the Supplier only if they are not contested, have been proven or finally adjudicated.

6.3 The purchaser may not retain payments for any counterclaims if they may have from previous dealings or other transactions under a current business relationship with the Supplier.

7. Defects

- 7.1 The Supplier gives the purchaser a warranty of freedom from defects of the delivery item in accordance with the generally recognized technical standards as of the time of passing of risk, for a term of twelve (12) months since commissioning, but no longer than eighteen (18) months since notice of readiness of shipment. Claims for defects of sold spare parts are statute-barred in six (6) months after putting the spare part into operation, but no longer than twelve (12) months since notice of readiness of shipment. Clause 7.1 shall not apply to deliveries and Services pursuant to Sec. 438 (1) No. 2 German Civil Code (*Bürgerliches Gesetzbuch*; "BGB") and Sec. 634a (1) No. 2 BGB.
- 7.2 The purchaser must examine the delivery items upon delivery without delay and notify the Supplier of any defects immediately in writing. The purchaser is not entitled to retain payment due to defects unless the Supplier has recognized the defects in writing. The Supplier must be granted the opportunity to remedy the defects within a reasonable period.
- 7.3 The cure provided by the Supplier in order to remedy the defect shall, at the discretion of the Supplier, consist of either a new delivery item to be delivered or produced, respectively, or the repair of the item in the Supplier's facility or at the original place of performance/delivery. Parts that have been replaced shall become the property of the Supplier.
- 7.4 The purchaser must grant the Supplier access to the defective items to enable the Supplier to remedy the defect, and shall also uninstall and install items where necessary at no charge to the Supplier. Items that are claimed to be defective must be sent to the Supplier at its request at the purchaser's expense. The Supplier shall assume the costs of the cure provided by it.
- 7.5 If the defect can not be remedied at the Supplier's facility, the purchaser must assume all costs incurred thereby to the extent that they exceed the customary costs of carriage, of labor, and travel and subsistence expenses.
- 7.6 Excluded are all warranty claims for defects that are due to errors or damage based on wear and tear or third party interference, or caused by improper handling, disregard of the operation or maintenance instructions, use of force, misuse of the delivery item, use of the delivery item under extraordinary conditions or operating conditions that are not provided for in the contract.
- 7.7 All costs incurred by the Supplier due to an unjustified claim of defect by the purchaser shall be borne by the purchaser. The use of personnel shall be charged by the Supplier at the customary hourly rates.
- 7.8 Any agreed characteristic or guarantee shall apply only if it has been agreed in writing. The provisions of Clause 7 shall apply accordingly.
- 7.9 If the purchaser is a consumer, the statutory provisions governing warranties shall apply.
- 7.10 Claims for damages shall apply as provided under Clause 8 hereof.

8. Liability of the Supplier

Claims and rights exceeding those covered in these terms and conditions or in the contract entered into with the purchaser are excluded, unless they are based on the provisions of the Product Liability Act, any willful or grossly negligent violation of contractual or statutory obligations by any of the Supplier's corporate bodies or executive officers, damage to health and bodily injury sustained by the purchaser or its employees or representatives due to a violation of duty for which the Supplier is responsible, the assumption of a warranty of the presence of a specific quality, or based on the violation of essential contractual obligations by the Supplier. Obligations that are essential to the contract are those the fulfillment of which allows the Supplier to properly perform its primary contractual obligations in the first place, and in the observance of which the purchaser trusts and may trust as a matter of course. Regardless of the liability events specified above, the Supplier shall, aside from the violation of essential contractual obligations, not be liable for damages sustained by the purchaser that are due to grossly negligent violations of duties, in particular the violation of the obligation of care and supervision of non-managerial persons employed by the Supplier in the performance of its obligations. In the event of the violation of essential contractual obligations by the Supplier, the purchaser's claim for damages against the Supplier shall be limited to the foreseeable damage typical of this type of contract to the extent that there is no liability based on (a) willful misconduct or gross negligence, or (b) damage to health and bodily injury sustained by the purchaser or its employees or representatives, or (c) the assumption of a warranty of the presence of a specific quality. A loss or damage that must be typically expected when the essential contractual obligation has been violated is deemed typical of this type of contract/foreseeable. The essential contractual obligations shall be governed by the provisions set forth under Clause 8 above. The foregoing provisions do not provide for a reversal of the burden of proof at the purchaser's disadvantage.

9. Proprietary rights

- 9.1 The purchaser is granted a right of use of the delivery item as well as of the documentation accompanying it, which is limited to the operation, maintenance and repair of the delivery item.
- 9.2 To the extent that the scope of delivery includes software, the purchaser is granted a non-exclusive right to use the delivered software including its documentation. The software is provided for use with the delivery item for which it is intended. The use of the software with more than one system is prohibited. Any reproduction, revision, translation or transformation of an object code into the source code is authorized only to the extent permitted by law (Sec. 69a et seq. German Copyright Act (*Urheberrechtsgesetz*; "UrhG"). The purchaser agrees that it will not remove any manufacturer information (in particular copyright notices) or alter such information without the prior written consent of the Supplier.
- 9.3 Unless agreed otherwise, the Supplier must provide the delivery/Services free from industrial property rights and copyrights of third parties only in the country where the place of delivery is located.
- 9.4 The purchaser may transfer software - to the extent it is part of the scope of delivery - to a third party only together with the sale or the transfer of the delivery item concerned, or with the written consent of the Supplier. It may not retain any copies of the software and must transfer to the buyer the restrictions of the proprietary rights in the manner stipulated under this Clause 9 as well.

10. Proviso regarding contractual performance

- 10.1 The performance by the Supplier under the contract is subject to the proviso that the deliveries and/or Services are permitted under national and international export control regulations, that an export permit is granted where required, and that there are no embargos and/or other sanctions precluding it.
- 10.2 The purchaser must obtain in those cases all required documents (such as the required proof of final destination) in a timely fashion prior to the delivery. Should a delivery and/or performance of Services be delayed because the purchaser is late fulfilling its duty of cooperation, the delivery date shall be extended by the duration of that delay. If a required export permit is not granted, the Supplier may rescind the contract. Neither a delay in delivery and/or performance of Services nor a rescission under this Clause 10 entitle the purchaser to claim damages.
- 10.3 Should the purchaser resell the delivery item, it is responsible for compliance with all rules and regulations under foreign trade and payments legislation.

11. Passing of risk, acceptance and default of purchaser

- 11.1 The risk for all deliveries shall pass to the purchaser upon delivery pursuant to Clause 5 or at the moment the purchaser is in default of taking receipt. This shall also apply to partial deliveries or if the Supplier provides auxiliary services in addition to the delivery (such as the erection and commissioning). The purchaser may not refuse to take delivery of items delivered unless the delivered items are manifestly and considerably flawed. The purchaser shall notify the Supplier in writing without delay of this fact and shall protect the delivery items against loss or damage until the Supplier is able to make dispositions regarding these items.
- 11.2 As far as Services are concerned that are not only auxiliary services in addition to the delivery but consist of producing a work, the risk shall pass to the purchaser upon acceptance thereof or at the moment the purchaser is in default of acceptance. Acceptance must immediately follow the notice that the work has been completed or at the acceptance date agreed upon. The purchaser may not refuse acceptance for minor defects. The Services shall be deemed accepted if more than fourteen (14) days have passed since the notice of completion was delivered to the purchaser or since the agreed-upon acceptance date has elapsed, and after the purchaser had the opportunity to test the Services for its functional capability but has not accepted the Services despite its obligation to do so.
- 11.3 If the purchaser is in default of taking delivery or in default of payments that have been agreed upon, the Supplier has the right, after the expiration of a grace period of thirty (30) days, to (partially) rescind the contract and claim damages caused thereby.

12. Place of jurisdiction and applicable law

- 12.1 The competent Local/Regional Court (*Amts-/Landgericht*) of Bremen (courts of the city of Bremen) shall have exclusive jurisdiction in all disputes directly or indirectly arising from this contractual relationship, including disputes from a deed, a bill of exchange, or a check. The Supplier may, however, also sue the purchaser in the courts that have jurisdiction at its place of business. Any mandatory place of jurisdiction under the law shall remain unaffected.
- 12.2 The law of the Federal Republic of Germany shall apply without giving effect to the United Nations Convention on Contracts for the International Sale of Goods.

13. Invalidity

Should any of the preceding clauses or parts thereof be or become ineffective, void or unenforceable, the validity of the remainder hereof shall not be affected thereby. This shall also apply to any lacuna found. A reasonable provision shall apply in lieu of the ineffective, void or unenforceable provision or to fill a gap, where the new provision shall match to the legally possible extent the economic intent of the parties or that which the parties would have wanted given the content and purpose of the contract had they considered this point when entering into the contract or adopting the clause later. This shall also apply if the ineffectiveness of a provision is based on a measure of performance or time (time limit or date). In those cases, such measure shall be replaced by a legally permitted measure of performance or time that corresponds to the closest possible extent to the economic intention of the parties.