



BF Engineering GmbH - Wallensteinstraße 5 - D 82538 Geretsried

General Delivery and Payment Terms and Conditions of BF Engineering GmbH **Last updated January 2023**

1. Scope

1.1 The following payment and delivery terms and conditions apply exclusively to all deliveries, services, contracts and offers (further "deliveries") and only in relation to companies, legal entities governed by public law and special funds under public law within the meaning of Section 310 Paragraph 1 of the German Civil Code. We hereby expressly reject any of our customer's contrary terms and conditions; they apply only where we have expressly accepted them in writing. Also, in case we participate in a customer's electronic platform and activate any dialogue boxes requested by the system, such activation does not constitute an acceptance of terms of use or any other general terms and conditions of the customer.

1.2 These delivery and payment terms and conditions apply in the version as amended from time to time as a framework agreement with the same customer for future contracts for the sale and/or delivery of movable property even if they are not expressly re-agreed; we shall promptly inform the customer of any changes to our delivery and payment terms and conditions where such occur.

1.3 These delivery and payment terms and conditions are deemed accepted by the customer upon placement of an order and in any case no later than acceptance of the merchandise or service. The customer's general terms and conditions of business which depart from, contradict or supplement these delivery and payment terms and conditions are only incorporated into the contract if and to the extent we have expressly agreed to their application. This requirement for agreement applies in any case; for example, also where we, being aware of the customer's general terms and conditions of business, carry out unconditional delivery to the customer. The same applies to our installation guidelines, which are the sole basis on which we send out requested fitters.

1.4 Legal statements and notices which the customer is required to give us following entry into the contract (e.g. the setting of deadlines, notifications of defects, cancellation or payment reduction notices) are not effective unless they are in writing.

1.5 References to the application of statutory provisions are only intended by way of clarification. The statutory provisions therefore apply even without such clarification unless they are directly modified in these delivery and payment terms and conditions or expressly excluded.

1.6 Should any provision of the present General Delivery and Payment Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions thereof.

2. Offer, entry into a contract and supporting documentation, industrial property rights

2.1 Our offers are subject to confirmation. The placement of an order for merchandise by the customer is treated as a binding contractual offer. Unless otherwise provided in the order, we are entitled to accept this contractual offer within 21 days following its receipt by us. A contract shall only come into force upon our order confirmation in writing or text form. If the order is not confirmed by us in writing or in text form the contract shall come into force upon performance of the order at the latest. Individual arrangements made with the customer for specific cases (including collateral agreements, additions and amendments) shall in any case take precedence over these delivery and payments terms and conditions. The content of such arrangements is determined by way of a written contract or our confirmation in writing or in text form.

2.2 We point out that our sales staff are not authorised to enter into verbal collateral agreements or to give verbal assurances which go beyond the content of the written arrangements. Such telephone or verbal clarifications by our representatives are therefore not legally valid unless we have confirmed them in writing.

2.3 The documents and information associated with the offer such as, for example, drawings, assembly diagrams, illustrations, descriptions, measurements and weights or other performance data in books of samples, price lists, brochures

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or other printed materials are values that are provided to the best of our knowledge, but which only become binding when fixed in the order confirmations.

2.4 We reserve all proprietary rights and copyrights to cost estimates, concepts, designs, drafts, drawings and other documents; these may be modified or made available to third parties only with our explicit approval. Drawings and other documents provided as part of an offer must be returned to us upon request at any time and in any event if the order is not placed with us.

2.5 In the case of call off orders we are entitled to acquire materials for the entire order and to manufacture the entire amount of the order immediately. Any amendment requests on the part of the customer can therefore no longer be taken into account once the order has been placed unless this has been expressly agreed.

2.6 In case of doubt the Incoterms, as amended from time to time, govern the interpretation of commercial terms.

3. Statement of work

3.1 The properties of the delivery and performance items are conclusively described using performance indicators expressly agreed (e.g. specifications, markings, disclaimer and other information). We are not bound by any standards of delivery and performance other than those expressly agreed. No warranty for a specific application or a specific suitability for use, usage period or shelf-life following the transfer of risk is provided except where expressly agreed; for the rest, the risk relating to the item's suitability for purpose and application is the exclusive responsibility of the customer. We reserve the normal commercial or technically unavoidable variations in physical and chemical measurements including colours, formulae, methods and the application of raw materials, as far as this is not unreasonable towards the customer.

3.2 Neither such product information nor the performance indicators/applications expressly agreed release the customer from the obligation to test that the merchandise is suitable for its intended purpose.

3.3 Information as to our merchandise's properties and options for use contains no guarantees, particularly not under Sections 443 and 639 of the German Civil Code, unless these are expressly designated as such.

4. Delivery, delivery period, transfer of risk, delivery default, acceptance and acceptance default

4.1 Unless an order confirmation has been promptly made available, the delivery date, kind and volume is derived from our order confirmation or, in case of a time-restricted offer and acceptance of the offer, within the prescribed period.

4.2 Delivery is from the warehouse which is also the location of the place of performance. The merchandise may be sent to a different destination (sale by dispatch) at the customer's request and expense.

4.3 Unless otherwise agreed, we are ourselves entitled to specify how items are dispatched (in particular the transport company, the dispatch route, packaging). Packaging is invoiced at cost price. We do not take back transport and other packaging material falling under the provisions of the German Packaging Regulation [Verpackungsverordnung]. With the exception of transport pallets this becomes the property of the purchaser. Merchandise is insured at the customer's request and expense.

4.4 The risk of accidental loss and of accidental damage to the merchandise passes to the customer no later than upon transfer. However, upon a sale by dispatch, the risk of accidental loss and of accidental damage to the merchandise, as well as the risk of delay, passes to the customer as soon as the merchandise is delivered to the dispatcher, the carrier or other person or institution designated responsible for shipping the items. Where acceptance is agreed this shall be decisive for the transfer of risk. For the rest, the statutory provisions of German law on contracts for works and services shall apply accordingly to an agreed acceptance. If the customer is late in accepting the item, this is equally deemed to be a transfer or acceptance.

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4.5 Delivery times are – even where a delivery date is agreed with the customer – only approximate and nonbinding unless the delivery date has been expressly agreed as fixed, i.e., it has been specified in writing that the customer has no continued interest in delivery once the specified date has passed. The delivery period commences when the order confirmation is sent but not before the technical data, supporting documentation, approvals and releases to be obtained by the customer have been provided or before receipt of an agreed advance payment. The delivery period is deemed complied with if the item to be delivered has left the works or notice of readiness for dispatch has been sent before such period expires. Compliance with the delivery period requires the customer to have met its contractual obligations.

4.6 This is without prejudice to the customer's rights under Clause 7 of these general delivery and payment terms and conditions or to our statutory rights, in particular in case of an exclusion of a performance obligation (e.g. on grounds of impossibility or unreasonableness of performance and/or subsequent performance).

4.7 In case the customer becomes subject to insolvency proceedings, or comparable proceedings under foreign law, provides a formal information of financial status (Vermögensauskunft) according to Sec. 807 German Code of Civil Procedure (ZPO), experiences payment difficulties or in case we become aware of a significant deterioration of the customer's financial situation, we shall be entitled to suspend deliveries immediately and to refuse the fulfilment of current contracts unless the customer provides the respective consideration or, upon our request, provides appropriate securities.

4.8 In case the customer is in default of acceptance or in culpable breach of any accessory obligations, the customer shall pay us for any damages caused and any additional costs related thereto. Further claims and rights shall remain unaffected. In case of the customer's default of acceptance or payment, the risk of accidental loss and damage of the products shall pass to the customer.

5. Warranty (Claims for defects)

5.1 Unless otherwise specified below, the statutory regulations apply in relation to the customer's rights in case of material defects and defects of title (including wrong delivery and short delivery, improper assembly / installation and errors in the assembly/installation manual). In all cases this is without prejudice to the statutory special regulations governing the ultimate supply of the merchandise to a consumer.

5.2 The basis of our liability for defects is primarily the agreement made regarding the properties of the merchandise. The product descriptions designated as such, which are provided to the customer prior to its order, or which are incorporated into the contract in the same way as these delivery and payment terms and conditions, are treated as an agreement on the properties of the merchandise.

5.3 The customer's claims for defects assume that it has complied with its statutory duties to examine the merchandise and obligation to notify defects. We must be promptly notified in writing if a defect becomes evident during or subsequent to an inspection. The notification is deemed prompt if given within two weeks of discovery of the defect in which case, for compliance with the deadline, it suffices that the notification is sent on time. Our liability is excluded in relation to the defects not notified in those cases where the customer omits to carry out the proper inspection and/or notification of defects.

5.4 We give no warranty for defects in construction if the customer makes available drawings and plans or if the defect hinges on the breach of operating, maintenance and installation regulations, unsuitable or inappropriate use or storage, defective or negligent handling, installation or commissioning or natural wear and tear or is attributable to interference by the customer or third parties in relation to the delivery item. The same applies if the defect can be attributed to unsuitable equipment, replacement materials, defective construction work, unsuitable ground for building, chemical, electro-chemical or electrical factors provided we are not responsible for the same.

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5.5 Where the delivered merchandise is defective we can then choose to either carry out a subsequent performance by removing the defect (subsequent improvement) or through delivery of a defect-free item (replacement delivery). This is without prejudice to our right, under certain statutory conditions, to refuse subsequent performance. The customer shall be entitled to reject subsequent performance if this cannot be reasonably expected from him.

5.6 We are entitled to make the subsequent performance owed conditional upon the customer's paying the due purchase price. The customer shall have a right of retention only insofar as it is in due proportion to the respective defect and the expected costs of the subsequent performance, and provided that the customer's counterclaim is based on the same contractual relationship.

5.7 The customer must allow us the necessary time and opportunity to carry out the subsequent performance owed and must, in particular, surrender the rejected merchandise for the purposes of inspection. Where we deliver a replacement item the customer must, under the statutory regulations, return the defective merchandise to us. Subsequent performance covers neither the de-installation of the defective merchandise nor re-installation unless we were originally obliged to carry out such installation.

5.8 Where there is indeed a defect, we bear the costs of inspection and subsequent performance, in particular the costs of transport, roads, labour and materials (but not the costs of de-installation or installation), unless the costs result from the fact that the products have been transferred to a place different from the agreed place of performance after passing of the risk. This exception does not apply in case such transfer corresponds with the normal use of the products known to us. However, we may claim reimbursement from the customer of the costs that have arisen should it transpire that the customer's claim for the removal of defects is unjustified.

5.9 The customer's claims for damages or reimbursement of wasted expenditure only exist as stipulated in Clause 7 and are otherwise excluded.

5.10 We accept no charges or customer invoices nor reductions in the amounts invoiced by us without our prior express agreement. The customer is responsible for providing the relevant proof.

5.11 The customer may not make the aforementioned claims for any products, which, according to mutual agreement, we do not deliver as new products.

6. Industrial property rights of third parties

6.1 Should we be commissioned on the basis of drawings and plans presented by the customer, the customer guarantees that no related industrial property rights, copyrights or other third-party rights exist, that no third-party intellectual property is infringed and that no statutory or official prohibitions are breached.

6.2 The customer is obliged to indemnify us against all claims brought against us by third parties as a result of or in connection with the deliveries.

6.3 The customer's indemnity obligation covers all expenditure incurred by us due to or in connection with any claim asserted by a third party.

7. Liability

7.1. Unless otherwise provided in these terms and conditions, our liability in case of a breach of contractual or non-contractual duties is governed by the applicable statutory regulations.

7.2 Our liability for wilful damage or as a result of gross negligence by us, our legal representatives or our vicarious agents is unlimited.

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7.3 In case of simple negligence we are only liable:

- a) for damage arising from loss of life, personal injury or damage to health for which we, our legal representatives or our vicarious agents are responsible;
- b) for damage resulting from any breach of a material contractual duty (an obligation which, if not performed, renders the proper implementation of the contract impossible and on performance of which the contractual counterparty regularly relies and may rely, the so-called "material contractual obligation") by us, our legal representatives or our vicarious agents. However, in this case our liability is limited, in terms of its basis and extent, to damage that we could reasonably have predicted upon entry into the contract given the circumstances we were aware of at the time.

7.4 The above limitations on liability do not apply insofar as we maliciously conceal a defect or insofar as we have agreed to guarantee the merchandise's properties. The same applies to claims by the purchaser under the German Product Liability Act.

7.5 We are liable in accordance with the above provisions for any breach of intellectual property rights in association with the sale of our merchandise, if and to the extent such intellectual property rights - applicable within the Federal Republic of Germany and published at the time of our delivery - are breached by us through the contractual use of our merchandise. This does not apply where we have manufactured the merchandise in accordance with drawings, models, samples or other descriptions or information from the customer and did not know or were not obliged to know within the context of the products developed by us that third parties' intellectual property rights would thereby be breached. In this case the customer assumes responsibility for ensuring there is no breach of third-party intellectual property rights and is liable for any breach of intellectual property rights that has already occurred or may yet occur. The customer is obliged to inform us immediately of any potential or claimed breach of intellectual property rights of which it becomes aware and to indemnify us immediately against all third-party claims associated with the documents it has supplied and all costs and expenditure arising. Should third parties, acting in reliance on intellectual property rights, prohibit us in particular from manufacturing and delivering the products manufactured according to the customer's documents within the meaning of Sentence 2 above, then we are entitled, without being obliged to verify the legal situation, to suspend any further activity and claim damages.

7.6 The customer only has a right of recourse against us to the extent that it has not entered into any arrangements with its buyer that go beyond the claims for defects and liability provisions required by law. Unless otherwise agreed in writing, to the extent the customer has any potential right of recourse against us the provisions of Clauses 6 and 7.1. to 7.7 apply accordingly.

7.7 Our liability is otherwise excluded irrespective of the legal grounds for the same.

8 Prices and payment

8.1 Unless otherwise agreed in writing, our prices are understood in EUR ex the works from which the merchandise is delivered, or ex warehouse, plus statutory VAT and packing costs. Our invoices are payable immediately without discount. No deduction may be made from the balance unless previously agreed in writing. We retain the right to transmit invoices electronically. We are not obliged to accept cheques or other promises of payment. Their acceptance is always on account of performance. We do not accept payment by bill of exchange.

8.2 We are entitled to make appropriate price adjustments as a result of any changes to the cost of raw materials, labour, spare parts, energy and other items not anticipated by us and beyond our control. The customer will be given written notice of the relevant adjustment. At the same time, the customer will be expressly advised that unless an objection is received in writing within a term of two weeks from the notification of the adjustment, the relevant adjustment will be incorporated into the existing contract between the parties. If the customer objects, each party is entitled to terminate the contract in writing upon giving ten business [working] days' notice. In terms of the above provision, a price adjustment as far as this relates to an increase in the price for merchandise or services to be delivered or performed is not possible within four months of entry into the contract.

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8.3 In case of part deliveries each delivery may be separately invoiced.

8.4 Payment is deemed received on the date on which the amount becomes available to us or is credited to our bank account. While the customer is in arrears, we may charge interest at the rate of 9% per annum over the relevant base rate, plus a lump sum of EUR 40. This does not prejudice the right to bring further claims for damages or the right to unilaterally alter (or terminate) a legal relationship.

8.5 Interest does not accrue on prepayments or payments on account.

9. Assignment and right of retention; set-off

9.1 The customer is entitled to assign its claims arising from the contractual relationship only with our prior written consent.

9.2 The retention of payments or set-off due to any counterclaims by the customer that are disputed by us or not the subject of a final court judgement is not permissible.

10. Retention of title

10.1 Until settlement in full of all our current and future claims arising from the purchase contract and ongoing commercial relations, including any accessory claims (secured claims), we reserve title to the merchandise sold (merchandise subject to retention of title). In case of an open account the retained title acts as security for our claim for the balance. Should the retention of title need to be entered in a public register or the effectiveness of the retention of title otherwise require the customer's cooperation, the customer consents to the entry of the retention of title and irrevocably authorises us to make the registration, or the customer will undertake the necessary acts of cooperation. The customer bears the costs of such registration or act of cooperation.

10.2 The merchandise subject to retention of title may neither be pledged nor transferred by way of security to third parties prior to payment in full of the secured claims. The customer must immediately notify us in writing if and to the extent third parties obtain access to the merchandise which belongs to us.

10.3 In case the customer acts in breach of contract, in particular in case of non-payment of the due purchase price, we are entitled, under the statutory regulations, to withdraw from the contract and/or demand the return of the merchandise on the basis of retained title. The claim for surrender is not simultaneously also notice of cancellation; rather, we are entitled just to demand the surrender of the merchandise and to reserve the right of cancellation. Where the customer does not pay the due purchase price, we may only enforce these claims if we have previously set the customer a reasonable payment deadline or the setting of such a deadline can be dispensed with under the statutory regulations.

10.4 The customer is entitled to dispose of, combine or any other processing of the merchandise subject to retention of title in the context of its normal commercial operations. In this case the following provisions also apply:

10.4.1 The reservation of title also extends to the full value of the products arising as a result of the processing or combining of the merchandise subject to retention of title, whereby we are treated as the manufacturer. Where, in the course of our products processed or combined with goods belonging to third parties the latter's title right continues to exist, we acquire joint ownership pro rata to the invoice values of the goods that have been processed, combined or used in any other way. Otherwise the same shall apply to the resulting product as for the merchandise supplied subject to retention of title.

10.4.2 For security purposes the customer hereby assigns us the claims against third parties arising from the further sale of the merchandise to which title is retained or of the product either in full or in the amount of any share in the joint property under the above paragraph. We accept the assignment. The customer's duties cited in Clause 10.2 continue to apply in view of the assigned claims.

10.4.3 In addition to us, the customer also remains authorised to collect the receivables.

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10.4.4 The authority to further dispose of the merchandise and the authority to collect receivables may be retracted by us with immediate effect if the customer is, either in whole or in part, in arrears to us in the performance of its obligations under this or another contract, experiences cash flow problems due to a material deterioration in its financial situation, does not properly perform the contractual obligations it otherwise owes to us or our security interest is otherwise jeopardised. Should insolvency proceedings be applied for in relation to the customer's assets, any payment be suspended, an affidavit (Vermögensauskunft) under Section 807 of the ZPO be submitted or a change of ownership of the customer's enterprise occur as a result of its cash flow difficulties, the authority to further dispose of the merchandise and to collect receivables automatically terminates. Upon our first written demand, the customer is obliged to disclose the debtors of the assigned receivables as well as to notify the debtors of the assignment.

10.5 The customer must administer the items subject to our (joint) ownership with the due care of a prudent businessperson and is obliged to insure them at its own expense against fire, theft and other usual risks. Should maintenance and inspection works need to be carried out the customer shall implement these promptly at its own expense.

11. Limitation periods

11.1 Contrary to Section 438 Para 1 No. 3 of the German Civil Code the general limitation period for claims in relation to material defects and defects of title is one year from delivery. If the dispatch, deployment or commissioning of the item delivered is delayed for reasons unrelated to a fault on our part, the limitation period will expire no later than 12 months from notice that the item is ready for dispatch. Where an acceptance has been agreed, the limitation period runs from the point of acceptance.

11.2 However, if the merchandise is a structure or something which, in its normal application, is used in construction and resulted in defects in the building (or building material), the limitation period will, under the statutory provisions, be five years from delivery (Section 438 Para 1 No. 2 of the German Civil Code). This is without prejudice to special statutory regulations for claims in rem by third parties for surrender (Section 438 Para. 1 No. 1 of the German Civil Code), malice on the part of the seller (Section 438 Para 3 of the German Civil Code) and for claims for recourse against the supplier in case of the ultimate supply to a consumer (Section 479 of the German Civil Code).

11.3 The above limitation periods under the law relating to the sale of goods also apply to contractual and noncontractual claims for damages asserted by the customer based on a defect in the merchandise unless in the specific case the application of the normal statutory limitation period (Sections 195 and 199 of the German Civil Code) would lead to a shorter limitation period. This is in any case without prejudice to the limitation periods under the German Product Liability Act. The customer's damages claims under Clause 7 of these delivery and payment terms and conditions are otherwise exclusively governed by the statutory limitation periods.

12. Confidentiality

12.1 The customer must not disclose to third parties any information, drawings, models, tools, technical records, procedural methods, software or other technical or commercial know-how or deliverables made available by us or output thereby obtained (further "confidential information") and such information may not be used in the customer's business for purposes which go beyond the specific contractual purpose of the contract entered into with us and may only be made accessible to such persons who must, in the context of the business relationship, have knowledge of the confidential information and are bound by an obligation of secrecy under this provision. All knowledge, information and inventions of a technical and commercial nature - except for advertising material - to which we grant the customer access in the context of commercial relations, in particular cost estimates, drafts, construction drawings, progress reports, process descriptions and analyses of materials, are confidential and may not be amended, duplicated or made directly or indirectly accessible to third parties without our approval. In particular the customer may not itself apply for a patent for these or enable third parties to do so. Otherwise the customer is liable for all damages thereby arising.

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12.2 The duty of confidentiality also applies beyond the duration of the business relationship for as long as and to the extent that the customer is unable to prove that the confidential information was already known at the time it was obtained or that it was or subsequently became public knowledge other than through the fault of the customer. We reserve for ourselves any title and copyrights through documents disclosed by us.

12.3 All drawings and other documents passed on by us in association with offers must be surrendered upon our request at any time and in any case if the order is not placed with us and no later than upon termination of the delivery arrangements. Any type of licence affecting confidential information requires written agreement. The customer has no right of retention in relation to confidential information or corresponding documents or materials.

13. Compliance; export controls

13.1 The customer undertakes not to deal with or otherwise cooperate, neither directly nor indirectly, with any terrorist or terrorist organisations or any other criminal or anti-constitutional organisations. In particular, the customer will establish appropriate organisational measures, to implement applicable embargoes, the European regulations against terroristic and criminal acts and the respective requirements under US law and/or any other law applicable to the business relationship, in particular by implementing adequate software systems. Once the merchandise has left our relevant premises, the customer is solely responsible to ensure compliance with the provisions cited above and will indemnify us against claims and costs based on a legal breach in this respect on the part of the customer, its affiliated company or employees, representatives and/or vicarious agents – including reasonable legal and consultancy fees or court fees or fines resulting from the said legal breaches.

13.2 We refer to the fact that the validity of our offer or the customer's order is subject to the issue of an export permit by the authorities. An agreed delivery date is similarly subject to the availability of an export permit. Therefore, when placing the order the customer should take into account that this could lead to postponements of delivery dates that are beyond our control. In case of any subsequent export the customer must comply independently with the relevant export control guidelines e.g. the verification of the recipient or end user. For the onward export to embargo countries the foreign trade requirements must be observed, in particular with any applicable export control regulations under German, EU and US law.

14. Place of performance, jurisdiction and applicable law, miscellaneous

14.1 The place of performance for all rights and obligations arising from the contractual relations, in particular from our deliveries, is the relevant site from which delivery is made. The courts of Wolfratshausen, Upper Bavaria have jurisdiction over all disputes concerning rights and obligations arising from the contractual relations. We are, however, also entitled at our discretion to sue the customer at any other general or particular place of jurisdiction.

14.2 Where the customer has its registered offices outside the Federal Republic of Germany, then we are additionally entitled, at our discretion, to have all claims, disputes or differences of opinion arising from the business relations with the customer regulated conclusively and in a manner that is binding in accordance with the arbitration court regulation of the Chamber of Commerce and Industry for Munich and Upper Bavaria (IHK Munich). The court of arbitration is based in Munich. The arbitration proceedings will be conducted in German, unless the customer requests them to be held in English.

14.3 The law of the Federal Republic of Germany shall apply exclusively to these general delivery and payment terms and conditions and to the entire legal relations between ourselves and the customer. The application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral or multilateral treaties for the purpose of unifying international sales is excluded.

This is a convenience translation of our German General Terms and Conditions of Delivery and Payment (Allgemeine Liefer- und Zahlungsbedingungen). In case of discrepancies between the German and the English version, the German version shall prevail.
