

General Terms & Conditions of Sale of Buhr Industrieberatung und -vertrieb GmbH

Section 1

Scope

1.

Any contract shall only be concluded on the basis of the General Terms & Conditions of Sale, Supply and Payment of Buhr Industrieberatung und -vertrieb GmbH. Any conditions of the purchaser that are contrary or deviating from the Terms & Conditions of Sale will not be recognised, unless Buhr Industrieberatung und -vertrieb GmbH has explicitly consented to those in writing. The Terms & Conditions of Sale of Buhr Industrieberatung und -vertrieb GmbH shall apply also if the goods are supplied to the purchaser without reservation, being aware of contrary or deviating conditions of the purchaser.

2.

The General Terms & Conditions of Sale, Supply and Payment of Buhr Industrieberatung und -vertrieb GmbH shall apply for future business with the purchaser, even if no explicit reference to them is made under future contracts.

3.

These terms and conditions of sale shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

Section 2

Conclusion of contract and content

1.

The sales offers of Buhr Industrieberatung und -vertrieb GmbH are made on a non-binding basis. The purchaser is bound to the purchase order within a period of 2 weeks. The contract is concluded by the order confirmation made by Buhr Industrieberatung und -vertrieb GmbH within this period, or by a delivery made directly in response to the purchase order. Any order confirmation by web-based means and/or fax are deemed to fulfil the written form. Verbal agreements or verbal amendments or any verbal additions to orders require the explicit confirmation by Buhr Industrieberatung und -vertrieb GmbH in written or text form to be legally effective.

2.

Buhr Industrieberatung und –Vertriebs GmbH reserves the right to make insignificant modifications in respect of manufacturing or technical progress and variations that are customary in the trade in quantity, weight, measurements, material composition with the sample, offer in brochures, price lists of the contract insofar as these are in the nature of the used materials, do not affect the intended use or the usability and are acceptable to the purchaser.

3.

Buhr Industrieberatung und -vertrieb GmbH is entitled to withdraw from the contract in part or in total if:

- The execution of the contract is impeded for a considerable period by the effects of *force majeure* (natural disasters, civil unrest, war, government actions, transport disruptions, strike, lock-outs, operational disruptions);
- the product ordered is not available, because Buhr Industrieberatung und -vertrieb GmbH has not been supplied with the product by its distributor without its personal negligence though Buhr Industrie und –vertrieb GmbH has cared for self delivery by means of a congruent covering contract.
- Insolvency proceedings or similar proceedings according to local law are filed over the assets of the purchaser.

Upon the occurrence of an event like this, Buhr Industrieberatung und –vertrieb GmbH shall inform the purchaser immediately that the ordered merchandise is not available and will promptly refund to the purchaser any payment he may have made.

Section 3

Place of performance

1.

Place of performance is Neuwied/Rhine. Delivery and shipping of the merchandise shall be done ex dispatch warehouse at the purchaser's expense. Buhr Industrieberatung und -vertrieb GmbH is entitled to notify the purchaser of any other location as the agreed place of performance (delivery location). If a foreign place of performance is chosen, the stipulations in Sections 14 and 15 remain in effect for the applicable law and place of jurisdiction.

2.

Buhr Industrieberatung und -vertrieb GmbH is entitled to make partial deliveries and invoice those separately.

Section 4

Time of delivery

1.

Delivery deadlines are nonbinding insofar as Buhr Industrieberatung und –vertrieb GmbH has not explicitly agreed them to be binding. Binding delivery deadlines require an agreement in written or text form. Meeting of the agreed delivery deadlines is subject to timely receipt of all documentation, required approvals, permits and releases to be submitted by the purchaser, in particular plans, as well as fulfilment of the agreed payment terms by the purchaser. Failure to fulfil these preconditions in time will result in a reasonable extension of deadlines, unless Buhr Industrieberatung und -vertrieb GmbH is responsible for the delay.

2.

Relevant for timely delivery is the date on which the merchandise is handed over to the contracted transport company. If acceptance is not made in time as a result of the purchaser's fault, Buhr Industrieberatung und -vertrieb GmbH is entitled at its discretion to either demand immediate payment regardless of the initially agreed payment term (arrears invoice) after setting a grace period of 14 days, or to withdraw from the contract and demand damages for non-performance.

3.

Wars, strikes, lockouts, shortages of raw materials or energy, lack of transportation, traffic and operational disruptions, acts of authorities (also in the case of suppliers of Buhr Industrieberatung und -vertrieb GmbH) free Buhr Industrieberatung und -vertrieb GmbH from the obligation of delivery in the duration of the disruptions and the extent of their consequences and will lead to reasonable extension of the delivery period, as far as such causes and events hinder the performance of the delivery obligation. Buhr Industrieberatung und -vertrieb GmbH shall notify the purchaser immediately regarding the reason of the impediment as soon as it becomes clear that the agreed delivery deadlines can not be met. If the duration of the impediment exceeds 5 weeks, both parties are entitled to withdraw from the contract, without the purchaser getting the right of compensation for damages.

Section 5

Grace delivery period and damage due to delay

1.

No transactions for delivery at a fixed time shall be conducted.

2.

For damages claimed by the purchaser in the event of delayed delivery, which also include claims for reimbursement of expenses in terms of Section 284 German Civil Code (BGB), Buhr Industrieberatung und -vertrieb GmbH shall only be liable if the delayed delivery was caused wilfully or by gross negligence. This limitation of liability shall not apply in the event of injury of life, body or health, breach of legally binding covenants as well as in the event of malicious conduct and gross negligence. Furthermore, in the event of infringement of contractually material obligations, damage claims shall be limited to contract-typical foreseeable damage.

Section 6

Obligation of acceptance

In the event that the purchaser does not accept the merchandise as a result of his fault, has indicated refusal of acceptance already prior to delivery as a result of his fault, or returns delivered merchandise without good reason and as a result of his fault, or where Buhr Industrieberatung und -vertrieb GmbH is entitled to non-delivery in terms of Section 11 hereunder, Buhr Industrieberatung und -vertrieb GmbH has the right to request the purchaser to fulfil the contract within a period of 14 days. After expiry of this period, Buhr Industrieberatung und -vertrieb GmbH is entitled to make other use of the merchandise and to charge the damage incurred at a lump sum rate of 33% of the agreed purchase price, or at its discretion to claim the proven actually incurred loss of revenue. The purchaser has the right to prove any lower actually incurred damage.

Section 7

Inspection for defects

The purchaser is obliged to inspect the merchandise immediately after receipt and to notify any defects – which also includes delivery of merchandise deviating from the purchase order – within an exclusion deadline of 7 days from receipt of the merchandise. In any case, the delivered merchandise must be inspected for defects before any installation is carried out. For latent defects, the deadline starts from the date of discovery. Field sales staff of Buhr Industrieberatung und -vertrieb GmbH is not entitled to receive any complaints for defects. After expiry of the deadline, any complaints shall be excluded – also by means of recourse in terms of Section 478 German Civil Code (BGB). The same applies if the merchandise has been altered by the purchaser.

Section 8

Liability for defects

1.

Rights in respect of material defects shall only apply for defects that are not insubstantial. Any customary or minor deviations in quality, measurements and weight that are technically unavoidable shall not apply as defects. Public statements, promotions or advertising by the manufacturer shall not apply as specifications agreement.

2.

If the purchaser has proven that he has fulfilled his obligations in terms of Section 377 German Trade Code (HGB), for justified complaints Buhr Industrieberatung und -vertrieb GmbH has the right to rectify the merchandise at its discretion or to make a replacement delivery. Buhr Industrieberatung und -vertrieb GmbH is entitled to supplementary performance. If the supplementary performance fails, the purchaser shall have the right to either withdraw from the contract or to reduce the purchase price, however, limited to the rejected merchandise only.

3.

Without prejudice to the right to vote under subsection 2, the costs of supplementary performance is disproportionate to the significance of a defect within the meaning of section 439 subsection 4 sentence 2 Alt. 2 German civil code (BGB), if the supplementary performance costs are more than twice as high as the deficiency caused by the inferior value. This is the case when the loss in value due to the defect is only half as great as the costs required to remedy it. The specified value limit, up to which supplementary performance is owed, increases by up the 30 percent, if Buhr Industrieberatung und –vertrieb GmbH is responsible for the defect.

4.

Rights in respect of material defects shall not apply for natural wear and tear of the purchase object, or for damages arising after transition of risk due to wrong or negligent handling, excessive stress, inadequate consumables or as a result of particular exterior factors that are not provided for under this contract. If the purchaser or any third parties should make unqualified alterations or repairs, these and any consequences arising from such action shall also be excluded from claims in respect of material defects. If it turns out that any complaint for defects has been unjustified, the purchaser shall be obliged to reimburse all expenses incurred (transport cost, inspection cost, etc.).

5.

Claims for restitution of expenses by the purchaser due to the expenses required for the purpose of supplementary performance, in particular transport, labour and material costs, shall be excluded to the extent that the expenses were incurred or increased as a result of the object of delivery having been removed to any other place than the place of handover, unless such removal constitutes a contractual use.

6.

The warranty period is 1 year starting from the date of transfer of risk. This period is a limitation period and applies also for claims with respect to damages that have not occurred on the actual delivery object itself, however not for claims due to unlawful acts or malicious conduct claimed against Buhr Industrieberatung und -vertrieb GmbH. Where the law provides for longer warranty periods, e.g. in Section 438 Subsection 1 No. 2 German Civil Code (BGB), those longer periods shall apply.

Section 9

Limitation of liability

1.

Any claims by the purchaser above and beyond those conceded in Section 8, regardless on which – even if wrongful – legal ground, shall be excluded. Buhr Industrieberatung und -vertrieb GmbH shall not be liable for damages occurring not on the actual delivery object itself or for any lost profit or other asset damages suffered by the purchaser.

2.

Where the liability of Buhr Industrieberatung und -vertrieb GmbH is excluded or limited, this shall also apply for the personal liability of any legal representative, employee, operator, officer and agent of Buhr Industrieberatung und -vertrieb GmbH.

3.

The limitation of liability in terms of Paragraph 1 and 2 above shall not apply for injuries of life, body or health, where a damage has been caused wilfully or by gross negligence, where Buhr Industrieberatung und -vertrieb GmbH has given a guarantee for the specification of the merchandise or made a covenant with respect to its characteristics, and where malicious conduct can be claimed against Buhr Industrieberatung und -vertrieb GmbH. It shall also not apply for any claims in terms of Sections 1 and 4 of the German Product Liability Act (Produkthaftungsgesetz). Where Buhr Industrieberatung und -vertrieb GmbH may have negligently infringed a principle obligation or contractually material obligation, the replacement obligation shall be limited to the contract typical foreseeable damage.

4.

Buhr Industrieberatung und -vertriebs GmbH isn't liable for damages by goods passed on unchecked by the purchaser, as well not for the suitability of the delivered product for the purposes taken by the purchaser in view if these purposes neither have been agreed by contract nor fit the contractually required or typical use.

Section 10

Payment

1.

The invoice is issued on the date of delivery of the merchandise, or on the date when it is made available. Invoices shall be due and payable net.

2.

Where Buhr Industrieberatung und -vertrieb GmbH stipulates prices in a foreign currency, those shall not be influenced by changes in the official exchange rate of the Euro in relation to the foreign currency. Payment must be made in the foreign currency to the amount stipulated in the invoice.

3.

For cheque payments, the date on which the cheque is cashed, for bank transfers, the date on which the amount is credited to Buhr Industrieberatung und -vertrieb GmbH's account shall be relevant.

4.

Payments shall always be offset for settling the oldest due outstanding amount plus any accrued interest for late payment.

5.

The prices of Buhr Industrieberatung und -vertrieb GmbH do not include statutory value-added tax (VAT). VAT as is legally applicable on the date of invoicing is stated separately in the invoice.

Section 11

Delayed payment

1.

In the event of late payment, Buhr Industrieberatung und -vertrieb GmbH has the right to charge default interest of 9 percentage points above the prime interest rate or any higher default damage as may be proven.

2.

In the event of payment default as a result of exceeding the payment term, Buhr Industrieberatung und -vertrieb GmbH has the following additional rights:

a)

Buhr Industrieberatung und -vertrieb GmbH is entitled to refuse any further deliveries under active contracts.

b)

Buhr Industrieberatung und -vertrieb GmbH may exercise the rights agreed under Section 13 (Retention of title) and/or withdraw from all existing contracts in part or in full.

3.

Buhr Industrieberatung und -vertrieb GmbH is entitled to the same rights if a material deterioration occurs in the purchaser's asset situation (e.g. non-payment towards other parties, filing of insolvency proceedings, execution proceedings, bank drafts or checks being returned unpaid, closure of business).

4.

In the event of payment default, the purchaser shall carry any related costs and fees that Buhr Industrieberatung und -vertrieb GmbH may incur. Furthermore, the purchaser shall be responsible for all costs that Buhr Industrieberatung und -vertrieb GmbH may incur by mandating a German or foreign attorney, including a communicating lawyer.

Section 12

Set-off and retention

The purchaser may only set off undisputed or legally determined counter-claims. The purchaser has the right to assert retention claims only based on counterclaims from the same contractual relationship.

Section 13

Retention of title

1.

The merchandise shall remain property of Buhr Industrieberatung und -vertrieb GmbH until full payment of all claims from merchandise deliveries under the entire business relationship including ancillary claims or damage claims, and until cheques and bank drafts have been cashed. The retention of title shall also remain in effect if individual claims are made part of a current invoice and the balance is drawn and recognised.

2.

Any processing or treatment shall be done by the purchaser for Buhr Industrieberatung und -vertrieb GmbH without any obligation arising for Buhr Industrieberatung und -vertrieb GmbH. If the conditional merchandise is processed, used or blended with other goods not belonging to Buhr Industrieberatung und -vertrieb GmbH, then Buhr Industrieberatung und -vertrieb GmbH shall be entitled to a *pro rata* share in the new good at the ratio of the factor value of the other processed goods at the time of processing, usage or blending. If the purchaser acquires the sole ownership in the new good, the contracting parties agree that the purchaser grants Buhr Industrieberatung und -vertrieb GmbH a *pro rata* share in the new good at the ratio of the factor value of the processed, joined or blended conditional merchandise and safeguards it for Buhr Industrieberatung und -vertrieb GmbH free of charge.

3.

The purchaser is entitled to sell the merchandise further in the course of ordinary business. He shall, however, already now assign the claim to Buhr Industrieberatung und -vertrieb GmbH with all ancillary rights from the further sale of the conditional merchandise. Buhr Industrieberatung und -vertrieb GmbH hereby accepts this assignment. The purchaser shall remain entitled to collect the assigned claim.

4.

The purchaser may not use the conditional merchandise for the purpose of global assignments to financing institutes or similar institutions, or to pledge or cede it as security in any other way. In the event of attachment, seizure, execution or other interventions by third parties, the purchaser shall immediately notify Buhr Industrieberatung und -vertrieb GmbH in writing, enabling Buhr Industrieberatung und -vertrieb GmbH to assert its rights in accordance with Section 771 of the German Civil Proceedings Code (ZPO). Where the third party is unable to reimburse Buhr Industrieberatung und -vertrieb GmbH the court or out-of-court fees for legal action in terms of Section 771 ZPO, the purchaser shall be liable for the arising damage.

5.

If the purchaser acts in breach of the contract, in particular in the event of late payment, Buhr Industrieberatung und -vertrieb GmbH is entitled to withdraw from the contract and to repossess the purchase item. The purchaser agrees to this already now. After repossession of the purchase item, Buhr Industrieberatung und -vertrieb GmbH is entitled to its utilization whereas the damage incurred can be charged as stipulated under Section 6.

6.

If the value of the securisations of Buhr Industrieberatung und -vertrieb GmbH exceeds the actual claims by more than 20%, Buhr Industrieberatung und -vertrieb GmbH shall release any exceeding securisations at the purchaser's request at Buhr Industrieberatung und -vertrieb GmbH's discretion.

Section 14

Applicable law

It is agreed that the laws of the Federal Republic of Germany shall apply for all legal transactions. The provisions of the uniform United Nations law on the international sale of goods shall be explicitly excluded.

Section 15

Place of jurisdiction

If the purchaser is a merchant, the domicile of Buhr Industrieberatung und -vertrieb GmbH in Neuwied, Germany, shall be agreed as place of jurisdiction, also for bank draft and cheque proceedings. However, Buhr Industrieberatung und -vertrieb GmbH also has the right to take legal action against the purchaser at his company domicile.

Section 16

Severability and ancillary agreements

1.

Should any provision of this contract be or become legally ineffective in part or in total, the other provisions of the contract shall remain intact and in full effect. The same applies if this contract should show to contain any gap. In place of the ineffective or unenforceable provisions or for filling the gap, a provision shall apply which corresponds best to the ineffective or unenforceable provision under economic aspects within the legally permissible, or in the case of the gap what the parties

would have intended according to the spirit and purpose of the contract if they had considered this issue at the time of concluding the contract or at a later inclusion of a provision.

2.

Any ancillary agreements with persons whose authority of representation for Buhr Industrieberatung und -vertrieb GmbH is not stated in the trade register shall be ineffective unless those are explicitly confirmed in writing by Buhr Industrieberatung und -vertrieb GmbH.

3.

Any verbal side-agreements are ineffective.

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