

General Terms of Sale and Delivery of Bulmor industries GmbH



1. Contractual relationship

1.1. We, BULMOR Industries GmbH, Kickenau 1, 4320 Perg, Austria, companies' register no. FN 214090 p, sell all goods, such as, in particular, machinery, accessories, replacement parts, operating materials and other goods, and provide all deliveries and services to our customers exclusively on the basis of the below General Terms of Sale and Delivery (hereinafter, "GTC"). Unless agreed otherwise, these GTC shall also apply in the future to all of our sales, deliveries and services to the customer, even if they were not agreed to separately.

1.2. These General Terms of Sale and Delivery do not apply to deliveries and/or services provided to consumers.

1.3. Regardless of reference by the customer to general terms and conditions of the customer, if any, and regardless of the date of receipt by us of such terms of the customer, if any, such general terms and conditions of the customer shall not be a component of the contract. This also applies in particular if we do not object to general terms and conditions of the customer or if we provide services without reserve while aware of opposing, supplementary or differing conditions of the customer.

1.4. Our offers as well as all of our information in our price lists, catalogs, displays, advertising documents, on the Internet and the like are always non-obligatory and non-binding, unless indicated otherwise.

1.5. An order of goods by the customer is considered to be a binding contractual offer that we may accept within 30 days of receipt. A contract is concluded only once we have accepted the contractual offer of the customer by a written order confirmation or by handing over the goods.

1.6. Our information on the object of the delivery or service (information regarding weight, volume, quality, quantity and other details on the delivery or service, as well as sample(s) of quality) and our description of the same (images and graphics) in order confirmations, delivery notes and the like are non-binding, unless they are expressly indicated to be binding.

1.7. We reserve all copyrights and - unless these are part of the delivery scope - property rights to offers, cost estimates, graphics and technical documents; they may not be provided to third parties without our written consent.

2. Delivery terms

2.1. Unless agreed otherwise, the following applies to deliveries: The delivery is made "EXW" (INCOTERMS 2010), with our plant/warehouse at Kickenau 1, 4320 Perg, Austria being decisive. We will provide the goods to the customer in our warehouse according to the deadlines or dates agreed under Item 2.3. and notify the customer. From this point on, all risks, in particular the risk of accidental destruction, accidental impairment, accidental loss, accidental damage and/or theft of the goods pass to the customer. We are not subject to any obligation to load the goods onto the fetching means of transport.

2.2. If, in deviation from Item 2.1., we agree with the customer in writing that we will ship the goods, this shall always be done at the expense and risk of the customer. Deadlines and dates according to Item 2.3. refer to the time of handover to the freight forwarder, hauler or other third party charged with the transport. A transport insurance policy shall be concluded only at the express request of the customer. If the goods are ready for shipment, we will notify the freight forwarder, hauler or other third party designated to execute the shipment and the customer at the same time. From this point on, all risks, in particular the risk of accidental destruction, accidental impairment, accidental loss, accidental damage and/or theft of the goods pass to the customer. In any case, these risks pass to the customer no later than upon the handover of the goods to the first freight forwarder, hauler or other third party designated to execute the shipment, with the start of the loading process being decisive. This shall also apply if partial deliveries are made or we have undertaken the provision of other services as well (e.g. installation). If the shipment or handover is delayed due to a circumstance attributable to the customer, the risks are passed to the customer starting from the day on which the goods are ready for shipment and we have indicated this to the customer.

2.3. We will share the deadlines or dates for performing our deliveries or services with the customer upon acceptance of the order; these may be designated as binding or non-binding. Deadlines begin with the dispatch of the order confirmation or the notification of dispatch, but not before the timely and proper fulfillment of the customer's cooperation duties that enable us to comply with our obligations in the first place.

2.4. We are entitled to make partial deliveries or to render partial services, and issue a corresponding partial invoice if:

- these can be utilized by the customer as part of the contractual intended use;
- the delivery of the remaining ordered goods is ensured; and

c) this will not result in any considerable additional expense or additional costs for the customer (unless we have declared ourselves ready to take on these costs).

2.5. We are not liable if the delivery is impossible or delayed to the extent that this has been caused by force majeure or other circumstances that were not foreseeable at the time the contract was concluded (e.g. breakdowns of all kinds, difficulties with procuring materials or energy, transport delays, strikes, legitimate lockouts, lacking workforce, energy or raw materials, difficulties with obtaining the necessary official approvals, official measures or lacking, improper or untimely self-delivery by suppliers) and for which we are not responsible. We will notify the customer of such circumstances without delay. If such circumstances significantly impede our delivery or make it impossible and the duration of the hindrance is not just temporary, we are entitled to withdraw from the contract. In the event of withdrawal, we will reimburse consideration paid by the customer without delay. In the event of a temporary hindrance, the delivery deadlines shall be extended or postponed by the length of the hindrance plus an appropriate start-up period. If acceptance of the delivery is not expected of the customer due to the delay, the customer can withdraw from the contract vis-à-vis us with an immediate written declaration. Statutory rights of withdrawal remain unaffected by this Item 2.5.

2.6. If we are in default with a delivery or service or if it is impossible for us to make/provide a delivery or service, regardless of the reason why, our liability is limited to indemnification as per the stipulation in Item 9.

3. Lump-sum indemnification

3.1. In the event of unjustified cancellation of or withdrawal from the contract or prevention by the customer of contract performance, the customer is obliged to pay a lump-sum indemnification of 30% of the net order value in question if the customer is culpable for the cancellation, withdrawal or hindrance. This will not apply if the customer maintains evidence that the related damage incurred by us is significantly lower. We reserve the right to assert a claim for higher damage. Other claims that are due to us according to the contract or under the law remain unaffected by this.

4. Prices

4.1. Unless stated otherwise, all prices are understood to be the net price ex works ("EXW") plus the costs for packing, the statutory VAT, customs for export deliveries as well as the costs for the repositioning and proper exploitation and disposal of electric and electronic waste devices for commercial purposes within the meaning of the Ordinance on Handling Waste Electrical Equipment [*Elektroaltgeräteverordnung*, EAG-VO]. Any discounts or reductions vis-à-vis catalog prices granted or promised to the customer shall always apply only on the condition of the complete and timely payment of the relevant invoice. If we are contracted by the customer to load or ship the goods, the customer shall bear all costs arising in connection with this, in particular freight, transport insurance as well as any duties including import and export duties.

5. Payment terms

5.1. Unless agreed otherwise, all invoices are payable immediately in their net amounts and without deductions. Payments are considered to be made only upon their receipt in our account. The place of fulfillment of any payment obligation is our company headquarters.

5.2. We are not obliged to accept bills of exchange or checks. If we accept a bill of exchange or check, this will always be done for processing only. The customer must reimburse us for all costs of redemption.

5.3. If the customer is entirely or partially in default with a payment, a bill of exchange or check of the customer is not redeemed, or facts become known that could significantly diminish the creditworthiness of the customer or a motion to initiate insolvency proceedings is filed, then we have the right to demand immediate payment of all open invoices (even if they are not yet payable) and to request prepayment for all remaining deliveries. We may specify an adequate period within which the customer shall at its discretion pay the consideration for the service reciprocal and simultaneous or provide collateral. After unsuccessful expiration of the period, we are entitled to withdraw from the contract. However, we do not have the right to withdraw if the customer files a motion to initiate insolvency proceedings. The customer can avoid the obligation to premature payment and prevent our right of withdrawal by providing adequate collateral. We are also due the above-mentioned rights if the enterprise of the customer is dissolved or liquidated or it ceases its business activities, if significant portions of the enterprise are transferred or compulsory enforcement measures are initiated on the assets of the customer.

6. Offsetting, retention

6.1. The customer is entitled to offsetting only if its counterclaim is indisputable or determined without further legal recourse. The customer is due a right of retention only if its counterclaim is indisputable or determined without further legal recourse.

7. Title retention

7.1. Each delivered good shall remain our property until the complete fulfillment of the purchase price claim resulting from its delivery. Moreover, we reserve ownership of all goods until receipt of all payments arising from the business relationship with the customer. This also applies in each case for receivables that may arise in the future and contingent claims, e.g. from acceptability changes, and also if payments are made on specifically designated receivables. The goods, and the goods that replace them according to the following provisions, which are subject to the title retention, are referred to hereinafter as "goods subject to reservation."

7.2. The customer must store the goods subject to reservation separately from other items with commercial diligence and sufficiently insure them at its own expense against all risks, such as, in particular, damage during operation, fire, burglary, theft and water damage. The customer must designate the goods subject to reservation as our property in an appropriate manner.

7.3. If the customer is a dealer, then the customer is entitled to resell the goods subject to reservation only in the ordinary course of business. The customer herewith assigns the purchase price claims arising from the resale of goods subject to reservation to us in advance. The customer shall note this assignment in its books. The same applies to other receivables replacing the goods subject to reservation or otherwise result with regard to the goods subject to reservation, such as insurance claims or claims arising from unauthorized action in the event of loss or destruction. The customer shall not sell the goods subject to reservation to a purchaser that has excluded or limited the assignment of payment claims against it. We herewith accept the assignment in advance. We authorize the customer to collect the receivables assigned to us in its own name; which authorization is revocable.

7.4. We are entitled to revoke the authorizations to dispose of the goods subject to reservation and to collect the receivables assigned to us if the customer is in arrears with payment or facts become known that could significantly diminish the customer's creditworthiness. At our request, the customer is obliged to provide all of the information on the assigned receivables that is necessary for collection, including the documents necessary to execute the collection, and to indicate the assignment to its debtors.

7.5. Any other disposal of the goods subject to reservation or the receivables assigned to us - in particular pledging, or assignment or conveyance as security - is prohibited. In the event of seizure, confiscation or other disposal of the goods, the customer must inform the third party immediately of our ownership and notify us immediately to enable us to exercise our property rights. If the third party is not in the position to reimburse us for the judicial or extrajudicial costs arising in this context, then the customer shall bear these.

7.6. In the event that the customer acts in breach of contract, in particular delay in payment, we are entitled to claim back the goods after a written reminder, and the customer is obliged to surrender them. The request to surrender the goods shall not entail a notice of withdrawal, unless one is expressly declared. With regard to the repossession of goods subject to reservation at the location of the customer, the customer shall irrevocably grant us the right to enter its business and storage facilities where it has stored the goods subject to reservation unhindered during normal business hours and to take the goods subject to reservation. The customer shall reimburse us for all costs arising in connection with the repossession of the goods subject to reservation.

7.7. The customer shall carry out any processing and reprocessing of the goods subject to reservation for us as a manufacturer without this resulting in any obligation for us. In the event that the goods subject to reservation are reprocessed, combined, blended or mixed with other goods that do not belong to us, we will be due the resulting co-ownership share in the new items in the proportion of the invoice value of the goods subject to reservation to the other goods. If the customer obtains sole ownership of the new items, it shall grant us co-ownership and store the items for us at no charge. If the goods subject to reservation are resold together with goods subject to reservation belonging to other suppliers, whether or not the goods have been reprocessed, combined, blended or mixed, then the assignment in advance agreed above shall apply only in the amount of the invoice value of our goods subject to reservation that are resold together with the other goods subject to reservation.

7.8. If the value of our collateral exceeds the amount of our receivables by more than 20%, then, at the request of the customer, we are obliged to release collateral to this extent at our option.

8. Maintenance, service, repairs

8.1. The customer is obliged to have all maintenance, service and inspection work that is stipulated or recommended in the product descriptions for the goods subject to reservation timely performed and have all resulting repairs made properly and immediately by us or by a specialist workshop designated and authorized by us at its own expense, to handle the goods subject to reservation with care as well as to refrain from taking any measures that could impair the value of the goods subject to reservation.

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8.2. If the customer violates its obligation from Item 8.1, we are entitled to withdraw from the contract after setting a grace period.

9. Warranty, guaranty, liability

9.1. The customer shall examine the goods immediately after they are delivered to it or to the third parties designated by it. The goods shall be considered to be accepted by the customer if complaints regarding obvious or recognizable defects are not indicated to us immediately, but no later than within 7 days from receipt of the goods, or within 7 days from discovery of hidden defects, in writing and with a precise description of the defect(s). Timely dispatch of the notification is sufficient for compliance with the time limit.

9.2. We are subject to guaranty obligations only if and to the extent that we have expressly undertaken to be subject to them.

9.3. A delivery of used items agreed with the customer in an individual case shall be made excluding any guaranty and/or warranty rights of the customer vis-à-vis us regarding defects as to quality, unless expressly agreed otherwise in writing.

9.4. With regard to goods which have been manufactured by us based on specifications of the customer we are not obliged to review the content of the specifications given by the customer and therefore do not guarantee their feasibility or usability.

9.5. Any warranty and/or guaranty claims of the customer shall lapse within a year of delivery or acceptance of the goods or the service.

9.6. We shall meet our warranty/indemnification/guaranty obligations exclusively through repair and/or exchange of a defective part. If the good is defective, we shall have the exclusive right to choose between rectification and exchange. The customer shall not have a right to price reduction, conversion or reimbursement. In order for us to perform our warranty/indemnification/guaranty obligation, the customer shall transfer the defective goods to our plant at its own expense and risk upon our request. In the event of a justified notice of defects we will compensate the costs for the most cost-effective transport route; this shall not apply if the costs increase because the goods are located in a place other than the stipulated place of use. If the goods are exchanged, the customer shall return the defective goods and compensate for the previous use of the goods. The compensation for use shall be calculated on the basis of the value of the goods according to the ratio of the actual duration of use compared to the expected possible total useful life, that is, the pro rata temporis linear depreciation. If we provide compensation or exchange parts for the returned goods, ownership of the replaced article or exchange parts shall transfer to us.

9.7. We are entitled to make the owed rectification or exchange conditional upon the customer paying the purchase price due. However, the purchaser is entitled to retain a portion of the purchase price that is appropriate in relation to the defect.

9.8. Our liability for indemnification claims of any kind whatsoever, in particular arising from impracticality, default, defective or erroneous delivery, breach of contract, violation of duties during contract negotiations, unlawful act and from violation of duties by persons for whose culpability we are responsible as per the law is limited to intent and gross negligence. Any indemnification obligation for slight negligence is excluded. Compensation for consequential damage, for merely financial losses, for loss of profit and/or for indirect damage is also completely excluded. Product liability for damage to items that the end buyer uses predominantly in its enterprise is entirely excluded. To the extent our indemnification liability is excluded or limited, this also applies in view of the personal indemnification liability of our staff, employees, colleagues, representatives and authorized agents [Erfüllungsgewähr].

9.9. Any warranty/indemnification/guaranty obligations on our part are entirely excluded in the event of the following defects/damage to service/repair work and/or replacement parts:

a) for any defects/damage associated with natural wear owing to use and/or consumables and/or expendable parts (e.g. on seals, sealing gaskets, oil seals, lubricants, tires, hoses, pipes, brake disks, brake shoes, brake linings, belts, glass

components, nuts, screws, disks, washers, split pins, lifting chains, fittings and the like);

b) for any defects/damage to a device for which the customer or a third party did not perform the stipulated maintenance and services properly, professionally and/or in a timely manner according to the maintenance instructions, operating manuals and/or documentation, whereby the customer shall prove to us that the maintenance and services have been performed;

c) for any defects/damage to parts, that become defective as so-called consequential damage due to delayed or improper repairs;

d) for any defects/damage associated with use that is contrary to stipulation and/or otherwise improper and/or due to the customer or a third party overloading a device, such as, in particular, in the event of non-compliance with operating manuals and/or documentation and/or associated with a poor general state of the device;

e) for any defects/damage associated with the use of a fuel or operating supply that is inappropriate or not of the kind stipulated, in particular a fuel or operating supply other than designated in operating manuals and/or documentation, by the customer or a third party;

f) for any defects/damage associated with delayed or improper repairs or associated with the use of inappropriate or impermissible repair materials by the customer or a third party, in particular in non-compliance with the instructions in operating manuals and/or documentation or other instructions;

g) for any defects/damage associated with unilateral changes to a device or parts thereof (in particular components, accessories or attachment parts) made by the customer or a third party without our prior written consent;

h) for any defects/damage associated with unilaterally installed components, replacement parts, accessories, attachment parts and/or other parts of a device made by the customer or a third party without our prior written consent;

i) for any defects/damage to parts or associated with parts that the customer or a supplier designated by the customer has provided to us for construction or conversion;

j) for any defects/damage to parts or associated with parts that neither come from us nor were obtained by us;

k) for any defects/damage associated with trauma to or insufficient care or malicious treatment of the device;

l) for any defects/damage associated with force majeure, such as, in particular, thunderstorms, flooding, freezing temperature and other natural events;

m) for any defects/damage associated with improper transports, other improper behavior of the customer or a third party, malicious or malevolent treatment of or theft of the device;

n) for any defects/damage of a device that the customer has lent out to a third party;

o) for any defects/damage that arise(s) while the customer is in default with payments due to us.

Within the context of a warranty/guaranty/indemnification, any costs for oils, gasoline, diesel fuel, hydraulic fluid, chemicals, cooling and cleaning materials as well as for contacts, jacks, traction and auxiliary batteries, fuses, bulbs, cable harnesses, glow plugs and similar electrical parts, as well as for wear parts that are replaced during a warranty/guaranty/indemnification claim handling procedure are not eligible for compensation; the same applies to expenditures and materials for fault-finding without lasting removal of the cause.

9.10. The assignment of warranty/indemnification/guaranty rights of the customer to a third party is inadmissible and invalid vis-à-vis us.

9.11. Unless agreed otherwise with the customer in writing, the warranty/indemnification/guaranty period for the supplied devices and parts thereof amounts to one year, but not longer than 1,000 operating hours, whatever occurs first, and begins on the day that we announce readiness for collection, but no later than upon handover of the device to the customer or its representative. If the customer does not assert its claims arising from the warranty/guaranty/indemnification in court within the above-mentioned period (by means of lawsuit or objection), all of these claims of the customer shall lapse. The warranty/indemnification/guaranty period of one year, but not longer than 1,000 operating hours, shall not be extended by out-of-court notification of a defect/damage. Even the repair or

exchange of a component of a device, for any reason whatsoever, shall not extend this warranty/indemnification/guaranty period for the device.

10. Intellectual property rights

10.1. If we manufacture goods on the basis of design details, specifications or other instructions of the customer, the customer shall indemnify us and hold us harmless with regard to all resulting claims of third parties due to alleged infringement of external intellectual property rights, except in case of our intent or gross negligence. We shall always retain the copyright and all other intellectual property rights to the goods, and likewise to plans, sketches, patterns, models, catalogs, images and the like created by us.

11. Labeling of the object of purchase

11.1. The customer shall ensure that all markings and labels applied to the goods, in particular designation of origin, device number, warnings, use instructions and the like, remain undamaged and easily visible. The customer may only apply any markings or labels on the delivered goods upon complete transfer of ownership, this shall not apply to the labeling obligation under Item 7.2.

12. Disposal of electric and electronic waste devices

12.1. If the EAG-VO applies to the goods, the customer shall accept the obligation to finance the collection and handling of electric and electronic waste devices for commercial purposes within the meaning of the EAG-VO in the event that the customer itself is the user of the electric and electronic devices. If the customer is not the end user, the customer shall impose the financing obligation in its entirety on its buyers and document this vis-à-vis us.

12.2. The customer shall ensure that all information is provided to us which enables us to meet our obligations as manufacturer/importer in particular as per Sections 11 and 24 EAG-VO and the Waste Management Act [Abfallwirtschaftsgesetz].

12.3. The customer is liable for all damages and other financial penalties that arise for us due to lacking or deficient fulfillment of the financing obligation and other obligations as per Item 12. The customer shall bear the burden of proof for the fulfillment of this obligation.

13. Miscellaneous

13.1. We are entitled to transfer our obligations vis-à-vis the customer to other companies that are part of our group.

13.2. No oral side agreements exist. Amendments or supplements to the contract must be in written form to be valid.

13.3. The place of performance for all obligations arising from the contractual relationship is our company headquarters, unless stipulated otherwise. If we are also obliged to perform installation, the place of performance is the site where the installation is to take place.

13.4. If a provision or part of a provision of these GTC or a subsequent amendment or supplement should be or become void, invalid or unenforceable, or if these GTC should contain an unintended loophole, the effectiveness, validity or enforceability of all other provisions shall not be affected. Each such void, invalid or unenforceable provision is considered to be replaced and each loophole to be filled by an appropriate provision that, according to the economic purpose and subject-matter of the provision and/or these GTC, and provided that this is legally permissible, comes as close as possible to the original intent of the parties or the intent that the parties would have had if they had considered this subject-matter.

14. Legal venue, applicable law

14.1. The exclusive, also international, legal venue for all disputes arising out of or in connection with the contractual relationship is agreed as Vienna, provided that we are also entitled to lodge claims at the general legal venue of the customer at our discretion. The previous shall not apply if another exclusive legal venue is established by law.

14.2. The laws of the Republic of Austria apply, excluding its conflict of law rules and excluding the UN Convention on Contracts for the International Sale of Goods.