

# **General Terms and Conditions of Sale**

of

**bebro electronic GmbH**

**Frickenhausen**

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## **1. General**

- 1.1 Our General Terms and Conditions of Purchasing shall apply exclusively. We shall not accept any general terms used by the customer that contradict or deviate from ours unless we have given our express written consent to their validity. Our General Terms shall apply even if we have been informed of any general terms used by the customer that contradict or deviate from ours and still carry out the order without reservation.
- 1.2 All agreements made between us and the customer for the purpose of executing this contract are laid down in writing in this contract.
- 1.3 Our General Terms shall only apply towards companies within the meaning of Article 14 of the German Code of Civil Law if the contract forms part of the company's operation, and towards legal entities under public law and special assets under public law within the meaning of Article 310 paragraph 1 of the Code of Civil Law.
- 1.4 Our General Terms shall also apply to all future transactions with the customer.

## **2. Offers and documentation**

- 2.1 Our offer shall always be non-binding until the final order confirmation has been issued.
- 2.2 The customer's order shall always be a binding offer to purchase. Confirmation of receipt shall be issued within one week, and the confirmation of the order as soon as the material is available.
- 2.3 We shall retain unrestricted title to and commercial copyright over cost estimates, drawings, and other documentation. These documents shall not be made accessible to any third party without our prior consent. The technical data contained therein, including weights and dimensions, are drawn up with all due care but errors and omissions are accepted. The same shall apply to information in our sales literature. Such data shall not be construed as creating any guarantee obligations, which shall never come into existence except through our express confirmation.
- 2.4 We reserve the right to make modifications in the interests of technical progress even after the order has been confirmed.

## **3. Prices**

- 3.1 Unless anything in the confirmation of order dictates otherwise, our prices shall be defined as ex-works including loading onto a vehicle in the works but excluding packing, freight, transfer, insurance, customs duty, or any Value Added Tax.
- 3.2 We reserve the right to increase our prices accordingly if 6 weeks have elapsed after the parties have entered into the contract and there are increases in the price factors, particularly any resulting from collective wage agreements or from the prices of materials. We will substantiate any such changes if the customer so requests.

## **4. Payment terms**

- 4.1 Unless anything in the confirmation of order dictates otherwise, our invoices shall be payable within 14 days with 2 percent prompt-payment discount or net within 30 days. Invoices for repairs, development work, and prototypes shall be due for payment immediately upon receipt of invoice.
- 4.2 No payment shall be deemed to have been made until the amount is freely available to us.
- 4.3 Unless any other payment terms have been agreed, the customer shall be deemed to be in arrears 30 days after issue of invoice. Interest shall be charged on arrears at a rate 8 percentage points above the basic rate of interest as defined in Article 247 of the Code of Civil Law. The foregoing shall not exclude our right to claim further damages.
- 4.4 Cheques and bills-of-exchange shall only be accepted in order to expedite payment and subject to encashment; the customer shall bear the cost of discounting and collection. If we accept a bill-of-exchange we reserve the right to return it if it is refused by the State Central Bank.
- 4.5 The customer shall only be entitled to rights of offset if his counter-claims have been confirmed by a court, or are undisputed, or we have acknowledged them. The customer shall also only be entitled to exercise his right of retention if his counterclaim is based on the same contractual relationship. He shall not be entitled to any right of retention on the grounds of partial performance under Article 320 Article 2 of the Code of Civil Law.
- 4.6 If goods or services could be delivered free of VAT the customer shall be under an obligation to submit the necessary substantiation or alternatively to co-operate in obtaining it. For deliveries within the European Union under Article 6a of the Income Tax Act the customer shall state his VAT identification number and substantiate his capacity as a businessman as well as co-operating in providing the booking and voucher substantiation that the goods have been exported

If the Tax Office does not recognise the transaction as being exempt from VAT the customer shall absolve and release us from VAT, interest, arrears surcharge, and any ancillary costs, or else reimburse us for them, unless we are to blame for the refusal of recognition.

We shall be under an obligation to appeal against any such ruling at the customer's request but only if he absolves and releases us in the manner stated above and also provides an appropriate advance towards the costs of the appeal proceedings.

- 4.7 If facts come to our notice after the order has been received that raise legitimate doubts as to the customer's solvency, we shall be entitled to require payment in full or the appropriate collateral, or to cancel the contract once if an appropriate period of notice has expired to no avail. In addition to any arrears of payment that may have arisen, evidence of a major deterioration in the customer's asset situation can in particular consist of information obtained with the diligence of a prudent businessman from a bank, a credit-rating organisation, or a company that already has a business relationship with the supplier.

If delivery has already taken place, the invoice sums in question will be payable immediately and irrespective of the agreed-upon payment terms. Acceptances shall possibly be returned.

## 5. Delivery time and arrears of delivery

- 5.1 Delivery periods shall start on the date of the confirmation of order provided that the customer has by then fully and properly met his obligations, meaning in particular any obligations he may have taken on to provide any documentation, approvals, licences, and/or materials, and to make any agreed advance payment.
- 5.2 Delivery periods and dates shall be deemed to have been met if the goods have left the works or the delivery warehouse or the customer has been informed that they are ready for despatch by the time they expire or are reached. The foregoing shall not apply if the contract stipulates final inspection and approval or the delivery and installation of the goods.

- 5.3 In the event of *force majeure* or any other unforeseen and extraordinary hindrance for which we are not to blame and that we could not avert even after taking all the care that could reasonably be expected in the circumstances, and if they prevent our fulfilling our obligation on time, the delivery time shall be prolonged by the duration of the hindrance plus an appropriate lead time. The foregoing shall be deemed to cover in particular any obstacle arising after the order has been accepted such as difficulties in purchasing materials, interruptions to operations, strikes, lock-outs, shortage of staff, shortage of transport facilities, and orders from the authorities. We will inform the customer as soon as possible in major cases about the beginning and end of any such circumstances.

If any of the foregoing circumstances make it unreasonable or impossible for us to supply goods or services, we shall be released from our obligation to supply. No claim to compensation shall accrue to the customer as the result of the delivery period being prolonged or of our being released from this obligation. If we are released from our obligation we shall return to the customer any payments or materials he may have provided.

- 5.4.1 Any later amendments to the contract that could affect the delivery period shall prolong them accordingly unless any separate agreements are made on this point.
- 5.5 If a call-off order has been placed with a latest date for the last call-off, we shall be under no obligation to deliver once this latest date has passed. If no such date has been stipulated, and if nothing to the contrary has been agreed, when a year has elapsed from the date of the customer's order we shall be free to set the customer a reasonable extension period in which he has to call off the remainder. If he fails to do so we shall be entitled to cancel the contract in its entirety or in any part or to claim damages.
- 5.6 *If we fall into arrears of delivery and the customer can demonstrate that he has suffered a loss as a result he shall be entitled to charge flat-rate compensation for arrears equal to 0.5 percent of the value of the delivery, subject to a maximum of 5 percent of the value of the delivery. The customer shall have no claims to compensation for loss or expenses over and above the foregoing.*

*This shall not apply if the delay in delivery is due to the violation of any major contractual obligation, or if we have acted with intent or in gross negligence, or if we mandatorily bear liability for loss of life, physical injury, or impairment of health. The foregoing shall not be construed as reversing the onus of proof.*

- 5.7 The foregoing shall likewise not affect the customer's statutory right to cancel the contract provided always that we are to blame for the delay. The customer shall be under an obligation to declare to us on request and within a reasonable period of time whether, assuming the delivery period expires to no avail, he intends to cancel the contract on the grounds of arrears of delivery and/or claim damages in lieu of delivery and/or claim reimbursement of expenses, or whether he will still insist on delivery.

## 6. Delivery, transfer of risk, and despatch

- 6.1 Part-consignments shall be permissible to a reasonable extent.
- 6.2 Risk shall be transferred to the customer when the goods are transferred to the haulier or forwarder and in no case later than when they leave the works or the delivery warehouse. This shall apply even if the delivery has been agreed as carriage paid. Despatch shall be carried out on the customer's behalf.
- 6.3 We shall select the despatch route at our own free discretion and shall provide no guarantee that the least expensive route has been selected.
- 6.4 If despatch is delayed for reasons for which the customer is responsible, risk shall be transferred to the customer on the day on which he is notified that they are ready for despatch.
- 6.5.1 If the customer so requests we will insure the shipment at his expense against theft, breakage, or damage in transit or by fire or water, and against any other insurable risks.

## **7. Retention of title**

- 7.1 We shall retain title over the goods we deliver until all payments under the business relationship have been made in full. Any transfer of outstanding payments to a current account and the striking and acknowledgement of a balance shall have no effect on the retention of title. We shall be entitled to recover the retained goods in the event of any behaviour on the part of the customer that does not comply with the contract, meaning in particular if he falls into arrears of payment. No such recovery or enforcement of retention of title shall require us to cancel the contract, nor shall any such recovery or attachment be construed as a cancellation of the contract unless we have declared it specifically and in writing. Any proceeds from the sale of the recovered goods shall be used to offset the customer's debt to us, minus an appropriate charge for the administrative costs of the resale.
- 7.2 The customer shall be under an obligation to handle the goods we deliver with all due care and to insure them adequately against damage for the duration of the retention of title if we so request. The customer hereby transfers to us any claims that may arise against the insurers.
- 7.3 The customer shall inform us without delay and in writing if any third party should seize, attach, or in any other way interfere with the goods so that we can raise an action under Article 771 of the Code of Civil Law. If the third party is unable to meet the court and out-of-court costs of such an action, the customer shall bear legal liability for the loss we thus incur.
- 7.4 The customer shall be entitled to resell the goods in the normal and proper course of his business but shall be deemed to have transferred to us here and now all claims to payment up to the level of our invoice total (including VAT) that accrue to him against his customers or any third party through the resale regardless of whether the goods we have supplied were processed or not prior to their resale.
- The customer shall continue to be authorised to collect these accounts even after the claims have been assigned to us, but this shall not affect our authorisation to collect them ourselves. However, we undertake not to collect them so long as the customer meets his payment obligations from the revenue that he collects and does not fall into arrears of payment, and in particular so long as no application has been made for the opening of insolvency proceedings against him and he has not ceased to make payments. If this undertaking no longer applies we can require the customer to inform us of the claims to payment that he has transferred and the debtors who owe them and to provide us with all the necessary data for collecting them, submit the relevant documentation, and inform his debtors of the transfer.
- 7.5 The customer shall only ever process or convert the goods on our behalf. If the goods we supply are processed together with others not belonging to us we shall acquire co-ownership of the new object in the relationship of the value of our goods to those of the other goods at the time of processing. The same terms shall apply to the object created by the processing as to our retained goods.
- 7.6 If the goods we supply are combined inextricably with other objects not belonging to us we shall acquire co-ownership of the new object in the relationship of the value of our goods to those of the other goods at the time of the combination. If the combination is such that the customer's object has to be regarded as the principal object, it shall be deemed to have been agreed that the customer is transferring co-ownership of it proportionately to us here and now. The customer shall hold the resultant sole or co-ownership in his safekeeping on our behalf.
- 7.7 *To secure our claim to payment the customer shall also transfer all claims including subsidiary rights to which he is entitled from third party and which accrue to him as a result of the goods we have delivered being combined with landed property.*
- 7.8 We shall be under an obligation to release the collateral to which we are entitled, upon the customer's request, to the extent that the realisable value of our collateral exceeds by more than 10 percent of the outstanding account that it secures; we shall be free to select the collateral that is to be released.
- 7.9 If the laws in the region in which the goods that have been delivered do not permit retention of title, then we shall be entitled to exercise all the rights over the goods to which we are entitled. The customer shall be under an obligation to co-operate on all actions taken by us to protect our rights of ownership or any other collateral rights over the object in lieu of retention of title.

## **8. Physical and legal defects**

- 8.1 We shall produce the required goods and/or perform the required services in accordance with the latest state of the technical art at the time the order was placed and with the relevant statutory regulations, and also with the diligence customary in the industry.
- 8.2 If any such goods or services display a physical or legal defect (hereinafter called a "defect") the cause of which already existed at the time that risk was transferred, the customer shall have the right to require us, at our free discretion, either to rework them or to supply a replacement in order to fulfil our obligations. We shall bear all the costs thus incurred such as labour, materials, transport, and travel costs provided always that these costs have not been increased by the goods having been moved later to some place other than the customer's place of business unless this removal is inherent in their normal and proper use. Any parts that are replaced shall revert to our ownership and shall be returned to us.
- 8.3 Should our attempts at rework or replacement prove fruitless, the customer shall be entitled at his free discretion either to reduce the remuneration, without prejudice to any other claims for damages or reimbursement under the terms of sub-clause 9, or – provided our violation of our obligations was not merely trivial – to cancel the contract.

- 8.4 Our liability for defects shall always be conditional upon the following:
- a) that our operating and installation instructions have been followed, that the goods have not been modified, no parts have been replaced, and no materials used that do not comply with the original specifications;
  - b) that the customer has properly met the obligations imposed on him by Article 377 of the Code of Commercial Law to examine the goods and complain of defects. Any such defects shall be reported to us in writing within 10 days of their coming to light.
  - c) that the customer is not in arrears of payment even after taking into account any guarantee retention under the terms of sub-clause 8.8.
- 8.5 The customer, after contacting us, shall give us the necessary time and opportunity to carry out all the corrective work and make all the replacement deliveries that we at our own free discretion consider necessary. We shall otherwise be absolved of all the consequences arising from the fact that we were not given the necessary time and opportunity to carry out all the corrective work and make all the replacement deliveries. The customer shall have no right to rectify any such defects, nor to arrange for any third party to do so, nor to request reimbursement of the resultant costs, except in cases of imminent danger to operational safety and/or to avert disproportionately greater damage; in any such instance he shall inform us immediately about the matter.
- 8.6 Claims based on defects shall become statute barred in 12 months. The foregoing shall not apply in those cases in which Article 438 paragraph 1 sub-clause 2 (buildings and structures and articles for same), Article 479 paragraph 1 (rights of recourse), or Article 634a paragraph 1 sub-clause 2 (defects in buildings and structures) of the Code of Civil Law mandatorily a longer period of time. If parts are replaced or reworked, we shall bear liability to the end of the guarantee period of the original part.
- 8.7 The customer's recourse claims against us shall exist only to the extent that the customer has not made any agreement with his customer on statutory defect claims. Sub-clause 8.2 sentence 2 shall apply in all material respects.
- 8.8 In the event of complaints being made about defects, the customer shall be permitted to withhold payment only to the extent that is proportionate to the identified defects and then only if the customer's claims are not disputed or have been established by a court. If the complaint is not justified we shall be entitled to require the customer to reimburse us for any expenses we have incurred.

## **9. Claims for damages and reimbursement of expenses**

- 9.1 We shall bear liability in accordance with statutory regulations if the customer makes a claim for damages or reimbursement of expenses (hereinafter called "claims for damages") on the grounds of our having acted with intent or in gross negligence, including any alleged against our representatives or vicarious agents.
- We shall also bear liability in accordance with statutory regulations if we have culpably violated a major contractual obligation or in any case in which life or limb or human health have been harmed and if we have made any guarantees.
- 9.2 Compensation for damages for the violation of a major contractual obligation shall be limited to the foreseeable injury, loss, or damage that occurs in typical cases unless a party has acted with intent or in gross negligence or liability is based on harm having been done to life or limb or human health or on our having made any guarantees. To this extent claims for damages shall become statute barred in 12 months.
- 9.3 Claims for damages are barred regardless of the legal nature of the claim being made. To this extent we shall bear no liability for loss or damage except such as occurs to the goods that we supply, meaning for instance that we shall not be liable for forgone profit or consequent damage to the customer's property.
- 9.4 The foregoing shall have no impact on the mandatory provisions of the Product Liability Act.
- 9.5 Claims for reimbursement of the customer's expenses shall be limited to the amount of the interest that the customer has in the fulfilment of the contract.
- 9.6 If our liability is ruled out or restricted, the same shall apply to the liability of our salaried staff, employees, collaborators, representatives, and vicarious agents.

## **10. Development, copyright**

- 10.1 If we carry out special development work for a customer, separately or in connection with a contract for the supply of goods and/or services, the customer shall acquire no inventor's rights over the objects thus developed even if he bears any part of the development costs. In the case of new developments we shall be entitled to charge proportional development costs. Should our development work fail to produce the desired results within the agreed period of time despite all reasonable efforts, we shall be entitled to cancel the contract.
- 10.2 Drawings, samples, designs, and similar material shall remain our property. The customer shall make no further use of them, nor make them accessible to third parties, regardless of whether they are subject to any trademark or patent protection.

**11. Place of execution, place of jurisdiction, and applicable law**

- 11.1 The place of execution for the delivery of goods and the performance of services shall be the production works or if relevant our delivery warehouse. The place of execution for payments shall be our place of business.
- 11.2 The place of jurisdiction shall be Stuttgart, but we shall be entitled to sue the customer at any other statutorily permissible place of jurisdiction.
- 11.3 *The contract shall be subject to the laws of the Federal Republic of Germany, to the exclusion of collision law, uniform UN law for the purchase of goods, and any other conventions on the law on trade in merchandise.*
- 11.4 Should any provision contained in these General Terms or any other agreements made between the parties prove to be invalid, this shall not affect the validity of the rest of the contract. The contractual parties shall be under a mutual obligation to replace the invalid provision with one that comes as close as possible to it in terms of its commercial consequences.

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