

## **General Terms and Conditions (GTC) of Bender GmbH engineering (BE)**

### **§ 1 Scope of Application**

These Business Terms and Conditions apply to the offer, offer acceptance, order confirmation and sales of all products by BE to businesses in the meaning of sec 14 German Civil Code (BGB) and legal entities of the public sector. Any purchaser's terms and conditions of purchase or purchaser conditions which amend the contract based on these GTC are rejected; they are effective vis-à-vis BE only if BE gives its written consent to such purchaser's terms and conditions.

### **§ 2 Offer, Order, Acceptance**

1. Offers by BE are always non-binding and subject to change until accepted.
2. An order of the purchaser is deemed to be accepted only if it is confirmed in writing by BE or delivery is made to the purchaser. Verbal agreements require the written confirmation by BE in order to become binding. Written form also includes fax and email.
3. Additional provisions concerning the description of the goods – such as ‘approximately’ or ‘as delivered in the past’ – only refer to the quantity and quality of the goods, not to the price. This applies to both, BE and the purchaser, accordingly.
4. Specifications for the goods are binding only if BE confirms the specifications in writing. The confirmation only provides a specification guarantee by BE if explicitly described as such. BE reserves the right to change the specification of the goods to the extent that legal requirements have to be taken into account, provided that such change does not result in any deterioration of the goods in terms of quality or usability.
5. If the goods are manufactured or otherwise processed by BE and the purchaser has provided a specification for this, the purchaser must indemnify BE against all damage which BE has to pay or is prepared to pay because the contractual processing of the goods on the basis of the purchaser's specification proves to constitute a breach of a third-party intellectual property right (e.g. patent, trademark, design patent, utility patent).
6. BE retains title and copyright to product descriptions, cost estimates and other documents. Such documents may not be disclosed to others without the express written consent of BE and must be promptly returned on request.
7. BE shall, if required by the purchaser, furnish free of charge to the purchaser at the commencement of the Warranty Period information and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant.

### **§ 3 Prices, Payment Terms**

1. In the absence of an agreement to the contrary, prices are ex works, excluding packaging, transport and any value-added tax which may be payable.
2. If there are more than four months between the date on which the contract is entered into and the agreed and/or actual delivery date and BE's own costs or the prices of suppliers have increased (e.g. because of rises in material costs and/or wages, increased import duties and taxes), BE is entitled to increase the prices for this delivery reasonably. If the price increase is more than 5% compared to the price applicable at the time BE and the purchaser entered into the respective contract, the purchaser is entitled to withdraw from the contract by means of a written declaration within one week from receipt of notification of the price increase.
3. In the absence of an agreement to the contrary in the written confirmation by BE, payments must be made in EUR. Unless otherwise agreed between BE and the purchaser, the due date for the payment of the purchase price is 14 business days upon receipt of the goods and invoice. In the case goods are to be produced in accordance with specifications provided by the

customer, the complete purchase price plus value-added taxes and any other costs (e.g. packaging) must be made as advance payment before the goods leave the production plant. Payments should be made by bank credit transfer. BE is not obliged to accept checks or bills of exchange.

4. The purchaser is entitled to set off against payment claims only with counterclaims that either are recognized by declaratory judgment or were undisputed or recognized by BE. The purchaser can exercise any retention right only if it is based on the same contractual relationship.
5. If the purchaser fails to make due payment by the agreed due date, BE is entitled to charge interests from the relevant due date at a rate of 8 percentage points above the respective applicable base rate of the European Central Bank. The right of BE is reserved to pursue claims for further default damages.
6. If the purchaser fails to meet its payment obligations, in particular suspends its payments or other circumstances come to the notice of BE which might reduce the purchaser's creditworthiness, BE will be entitled to demand immediate payment of open receivables. In the aforementioned circumstances, BE will also be entitled to demand advance payment or provision of security before making any outstanding deliveries under the respective contract or any other contracts with the purchaser.

#### **§ 4 Delivery**

1. Delivery dates are subject to change unless expressly confirmed as binding by BE.
2. If, at no fault of BE and at no fault of the supplier which is attributable to BE, circumstances arise for BE or one of its suppliers which mean that BE cannot permanently or temporarily deliver under reasonable economic conditions (e.g. material procurement difficulties, disruption of operations, strikes, lockouts, lack of transport facilities, official decrees and all cases of force majeure), BE will be released from its delivery obligation for the period of the hindrance and its consequences. BE has to immediately inform the purchaser about the occurrence of any of the aforementioned events. If the hindrance lasts longer than three months, each party will be entitled, after allowing a reasonable additional period of grace, to withdraw from the contract with regard to the part not yet performed at this time by written declaration vis-à-vis the other party. Any received performances (pre-payments, deliveries) with respect to the not performed part of the contract have to be immediately returned to the other party.
3. The purchaser must cooperate in acceptance of the goods or inform BE in good time about any difficulties regarding delivery.
4. If dispatch or handover of the goods is delayed for reasons attributable to the purchaser, BE will be entitled to invoice the costs incurred for storage for each full or part month of storage starting one month after notification of readiness for dispatch/ delivery.

#### **§ 5 Passing of risk**

1. The risk of accidental damage or loss passes to the purchaser as soon as the goods are handed over to the transport contractor or - if the purchaser is not prepared to accept the goods or in a case of sale "ex works" - on notification of readiness for dispatch by BE. In the case of a sale "ex works", BE must give notice in writing to the purchaser of the date on which the purchaser must take delivery of the plant. The notice of BE must be given in sufficient time to allow the purchaser to take such measures as are normally necessary for the purpose of taking delivery.
2. Any agreements about transport and insurance costs govern only the question of who bears the costs and not the question of passing of risk.
3. If requested by the purchaser, the consignment is insured against damage in transit at the expense of the purchaser.
4. If INCOTERMS are agreed, the latest version at the relevant time applies.

## **§ 6 Warranty**

1. The warranty period shall be twelve months upon delivery of the product.
2. The goods supplied by BE shall immediately be inspected after receipt by the purchaser with regard to quantity and characteristics, if necessary by means of test processing. They are deemed to be approved unless a complaint is received by BE in writing immediately after receipt of the goods or, if the defect was not detectable in the course of immediate careful inspection, immediately after the defect is discovered but in this case not later than 1 year upon delivery of the product. Complaints about defects without a precise description of the delivery, the affected items and the nature of the defect are ineffective. The defective goods must at the choice of BE be kept for inspection by BE - or returned to BE - in the condition in which they were at the time the defect was detected.
3. Unless otherwise agreed, the purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and BE.
4. Defective parts replaced shall be placed at the disposal of BE.
5. BE will at its own discretion repair or replace the defective goods or refund the purchase price for goods returned. If the repair or replacement is unsatisfactory, the purchaser will be entitled at its own discretion to withdraw from the contract or reduce the purchase price in accordance with the seriousness of the defect.
6. In the case of unjustified complaints, BE is entitled to invoice the inspection costs to the customer.
7. Warranty rights are attributable only to the direct purchaser and cannot be assigned.
8. If a claim is pursued against the purchaser because of an infringement of intellectual property rights by the goods delivered by BE, the purchaser is obliged to keep BE informed at all times about all matters relating to the claim and in particular to make available to BE all necessary information and documents. In addition to this, the purchaser is free to instruct another lawyer.

## **§ 7 Product liability**

1. In averting claims with regard to product liability and preventing damage or loss, the purchaser will support BE in every reasonable way.
2. The purchaser will inform BE promptly about any claims or other unusual matters in connection with the products, e.g. dangerous test results or harmful events.

## **§ 8 Retention of title**

1. BE retains title to the goods until all claims of BE for whatever legal reason are settled (goods subject to retention of title). Goods under retention of title may neither be pledged nor transferred as securities. The purchaser shall inform BE immediately in writing in the event of third parties attempting to take possession of the goods. In case of breach of contract by the purchaser including, without limitation, default in payment, BE is entitled to take possession of the goods.
2. The purchaser is entitled to resell or otherwise use the goods subject to retention of title - or to undertake to do so - only in the ordinary course of business and on terms which are customary to the sector, but only if it is not in default and no circumstances are evident which would mean that their use jeopardizes the claims of BE. With respect to such a resale, the purchaser hereby assigns to BE, and BE hereby accepts, as security all of the future claims, including subsidiary claims, the purchaser will have against its customer in consideration for the resale of the goods. BE is entitled to collect the assigned claims on its own behalf if the purchaser is in default with its payment obligation concerning the goods, if a petition for the initiation of insolvency proceedings has been filed against the purchaser or in case of another lack of the

purchaser's capacity of performance from which BE can deduce a potential threat to the realization of its claims. In such events, BE may request that purchaser discloses and provides to BE all required information about the assigned claims and the respective debtors, hands over all documents related thereto and notifies the respective debtors (third parties) of the assignment.

3. If the goods subject to retention of title are processed by the purchaser or any third person upon request of the purchaser carried out on behalf of BE, BE is regarded as manufacturer in the meaning of sec 950 German Civil Code (BGB) with respect to any intermediate and end product and receives co-title concerning the intermediate / end product in proportion of the invoice amount of the goods subject to retention of title to the invoice amount of the intermediate / end product. The same applies for any mixture or combination of goods subject to retention of title with other items pursuant to sec 947 and sec 948 German Civil Code (BGB) and their storage; in none of these cases the purchaser has any right to pursue claims against BE.
4. If ownership of the goods subject to retention of title is lost by BE as a result of any type of processing, use or third-party handling of the goods subject to retention of title, the rights with regard to third parties which the purchaser thereby acquires are already wholly or partially assigned by the purchaser to BE at the time the contract with BE is entered into and BE hereby accepts the whole or partial assignment of these claims. Partial assignment will apply if other materials are also used in processing the goods subject to retention of title. In this event, the share assigned to BE will be in proportion of the invoice amount of the goods subject to retention of title to the value of the end product.
5. If the realizable value of the securities provided to BE exceeds the value of BE's claims by more than 50%, BE will to this extent be obliged on request of the purchaser to release securities at the choice of BE up to the amount by which the threshold of 50 % has been exceeded.
6. If the rights of BE with respect to the goods subject to retention of title are or are threatened to be jeopardized, the purchaser must promptly inform BE and, in liaison with BE, take all necessary steps to avoid the jeopardy. If required, the purchaser will on demand by BE assign claims to BE to the extent that this appears conducive to protect the goods subject to retention of title.
7. BE is entitled to demand the surrender of goods belonging to it and in particular to pursue the rights of separation and assignment of the counter performance claim in the case of insolvency proceedings if fulfillment of BE's claims by the purchaser is jeopardized and, in particular, insolvency proceedings are instigated against the assets of the purchaser or there is a significant deterioration in the financial circumstances of the purchaser. Retention of title also secures all liabilities unilaterally determined by the insolvency administrator in the course of performance election. The purchaser is obliged to pay compensation for all damage, loss and costs - including court costs and legal expenses - which are incurred by BE as the result of an infringement of the purchaser's undertakings or as the result of intervention measures against third-party attacks. Repossession in order to establish retention of title does not constitute rescission.
8. The purchaser shall handle the goods with due care, maintain suitable insurance for the goods subject to retention of title and, to the extent necessary and applicable, service and maintain the goods. The purchaser must ensure proper and secure storage of the goods which are subject to retention of title and insure them at its own expense against theft, fire and other material damage. In the event goods subject to retention of title are lost or damaged, the purchaser agrees to assign its insurance claims to BE.
9. If, in a foreign country of destination, retention of title is ineffective or not effective to the stipulated extent, the purchaser must on request provide for the relevant order securities whose effect comes as close as possible to such retention of title.

## **§ 9 Limitation of liability**

1. Claims for compensation for damage or loss of whatever kind (tort, infringement of main or ancillary duties, breach of pre-contractual duties to the extent that they are not already breached before inclusion of these Business Terms and Conditions in the contract, breach of post-contractual duties, etc.) may be pursued against BE only in the case of willful intent or gross negligence, in the case of no-fault liability by force of law, or in the case of breach of material duties which result from the nature of the contract. Even if BE, in accordance with the above, is generally liable, this only applies - with the exception of pre-contractual duties already breached before the inclusion of these Business Terms and Conditions and with the exception of mandatory liability by force of law - in the case of typical, foreseeable damage or loss. Further claims, in particular claims for consequential damage to legally protected interests other than the goods (*Mangelfolgeschaden*), shall be excluded.
2. In particular BE's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the purchaser. BE's liability shall apply only to defects under the conditions of operations provided for the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed. In particular it does not cover defects arising from the purchaser's faulty maintenance or erection or from alterations carried out without BE's consent in writing, or from repairs carried out improperly by the purchaser, nor does it cover normal deterioration. Save as in this Clause expressed, BE shall be under no liability in respect of defects after the risk in the Plant has passed, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract or of loss of profit.
3. The above limitation of liability also applies to the personal liability of parties employed by BE in performance.
4. The warranty provisions in these Business Terms and Conditions are unaffected.

## **§ 10 Severability Clause, Applicable law; jurisdiction**

1. If any of the provisions of these GTC shall become or be held invalid, ineffective or unenforceable in whole or in part, all other provisions hereof shall remain in full force and effect. The invalid, ineffective or unenforceable provision shall be deemed to be automatically amended and replaced by such form, substance, time, measure and jurisdiction as shall be valid, effective and enforceable and as shall accomplish as far as possible the purpose and intent of the invalid, ineffective or unenforceable provision. The aforesaid shall apply mutatis mutandis to any situation not contemplated under of these GTC.
2. The legal relationship between BE and the purchaser is governed by the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. All disputes arising between BE and the purchaser in connection with these GTC shall be subject to the exclusive jurisdiction of the local courts of Siegen.

## Special Terms and Conditions Aviation

By accepting this order, the supplier agrees to the "Special Terms and Conditions Aviation".

- (1) Each shipment must be accompanied by the relevant certificates.
- (2) The supplier confirms that Bender GmbH, its customers and competent authorities have access to the production site, the production/ or quality-relevant documentation at any time for a verification of work- or product quality.  
This right of access is limited to the products and documents concerning the products or contracts of Bender GmbH.
- (3) All requirements of purchase also apply to suppliers or subcontractors.
- (4) The supplier immediately notifies unexpected deviations, non-compliance, changes to the product and / or process, change of supplier, and / or change of production site, to Bender GmbH. Bender GmbH reserves the right to authorize such changes or occurrences before the work may be continued.
- (5) The supplier confirms to take suitable corrective measures if Bender GmbH submits complaints or defect reports to him.
- (6) All records (documents) relating to the manufacture, inspection or testing of the products are archived for a minimum of 10 years.
- (7) The Supplier will comply with all "Global (comprehensive) Ethics Principles of the Aerospace and Defense Industry", both from the Aerospace Industries Association of America (AIA) and the AeroSpace and Defense Industries Association of Europe (ASD), visible on the following: <http://asd-europe.org/sectors-policies/business-ethics>