

General terms and conditions

of the company betacontrol GmbH & Co. KG, measurement and control techniques in 57258 Freudenberg

§ 1 Scope and conclusion of contract

(1) The present general terms and conditions shall apply to the conclusion and execution of all orders of the purchaser exclusively; we do not recognize deviating or conflicting conditions unless we expressly consent to their validity in writing. The general terms and conditions shall apply even if we execute the order of the purchaser unconditionally.

(2) A contract with the purchaser shall become binding only upon receipt of our written order confirmation.

(3) An order which is an offer in the sense of § 145 BGB (German Civil Code) can be accepted by us within a period of two weeks.

(4) The present general terms and conditions shall apply only to contractors in the sense of § 310 Abs. 1 BGB (German Civil Code).

(5) All agreements including additions, changes or special agreements, in particular promises and warranties made between us and the purchaser, are stipulated in writing in this Contract

§ 2 Extent of the obligation of delivery

(1) Documents provided, such as illustrations and drafts, as well as data concerning weight and measurements, are only approximately definitive and only binding for execution if this is expressly confirmed by us in writing.

(2) We reserve rights of ownership and copyright for the aforementioned documents. A passing on to third parties requires our explicit agreement in writing.

§ 3 Prices and terms of payment

(1) The prices apply ex factory, excluding packing, customs and insurance. These are to be invoiced separately.

(2) In addition to the price, the value-added tax in the respective legal amount shall be charged. Such tax is disclosed separately in the bill.

(3) If deviations are not agreed upon in writing, the payments shall be rendered in Euro, in cash with no deductions whatsoever, free domicile to our cashier's office. Thereby one-third of the purchase price is due after receipt of our order confirmation and the remainder within 30 days after delivery. Spare part and assembly bills shall be paid immediately upon receipt.

(4) Set-off rights are entitled to the purchaser only if his potential counterclaims have been legally determined, are undisputed or are recognized by us. The retention of payments due because of counterclaims is only possible if the retention right is based upon the same contractual relationship.

§ 4 Delivery period

(1) The delivery period stipulated by us shall begin as soon as all details of the execution are clear. It corresponds to the completion of the order commodity in factory status in the factory.

(2) Adherence to the delivery obligation further requires the punctual and proper fulfillment of the obligations of the purchaser, in particular such necessary cooperative actions incumbent on him as for example the procuring of documents and releases requisite on the side of the purchaser. The delivery period shall be extended at the occurrence of unforeseen obstacles which lie outside of our intentions, in particular, of operational disturbances or in case of non-delivery by subcontractors. The defense of non-performance of the contract is reserved.

(3) The delivery period begins anew when subsequent changes to the order take place.

(4) The provision of partial deliveries on our part is permissible to such extent as is reasonable for the purchaser.

(5) If the purchaser enters into default of acceptance or if he infringes the obligation to cooperate, then we are entitled to demand damages insofar as resulting losses have been sustained by us, including any resulting additional expenditures. Rights to further claims are reserved.

(6) If we default on delivery, the purchaser may, after setting an appropriate time extension in writing, withdraw from the contract if the time extension is subsequently not observed. Further claims of the purchaser, in particular for replacement of damages of any kind, are excluded, insofar as we are charged only with slight negligence regarding delay of performance. Insofar as proof is provided that we and/or our legal representatives or our vicarious agents have shown gross negligence, the liability for damages due to delay shall be limited to a flat-rate delay compensation at a value of 0,5% for each full week of the delay; maximally, however, to 5% of the agreed-upon order value, unless more inclusive damages for us were predictable at the conclusion of the contract and the preceding restriction contravened the principle of loyalty and good faith.

§ 5 Passing of risk

(1) Insofar as no divergent agreement exists, the risk passes over to the purchaser at dispatch ex factory. This also applies if free-on-board delivery has been agreed upon.

(2) If dispatch is delayed for reasons which lie with the purchaser, then the risk shall already pass to the purchaser on the day the ready-for-dispatch message is sent. This applies in particular if the purchaser is in default of acceptance or culpably infringes the obligation to cooperate.

(3) If the purchaser wishes, we will procure transportation insurance for the shipment at his cost.

(4) The previous arrangements also apply if we conduct the assembly or installation of the machine.

§ 6 Warranty for defects

(1) The purchaser's rights to warranty for defects presuppose that the purchaser has fulfilled his investigative contractual requirement in accordance with § 377 HGB (German Commercial Code) to make a complaint in respect of a defect immediately upon receipt of goods and in writing (also by telefax). The statutory period of limitation for submission of a claim amounts to one year. The period begins with the hand-over of the delivery article.

(2) To the extent that a defect of the consignment is present, we shall be obliged to remedy the defect within a reasonable time limit, either in the form of elimination of the defect or by delivery of an article free of defect, in accordance with our own choice. If a right to refuse performance exists with regard to one type of remedy of defect, we are, however, obligated to furnish remedy according to the other type. The article being rejected shall be sent to us at our demand and at our expense; a cost-bearing obligation according to this regulation does not exist, however, with regard to costs which arise because the article has been transported to a place other than the place of performance and/or the place of the intended use. Insofar as a shipment on demand is not effected, we are beside the legal rights to refusal entitled to refuse the remedy of defect.

If a complaint turns out to be unauthorized, and if this was recognizable by the purchaser, then the purchaser shall bear the burden of our expenses.

(3) In case of a failure of the remedy of defect, the purchaser, without prejudice to any claims for damages, is entitled, according to his choice, to withdrawal or to reduction.

(4) We are liable in accordance with the legal regulations to the extent that the purchaser asserts a valid claim for damages which bases on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. As far as we are not charged with a deliberate violation of contract, our liability for damages is limited to the foreseeable, typically occurring damages.

(5) We shall be liable according to the legal regulations if we culpably infringe a substantial contract obligation; in this case, however, the liability for damages is limited to the foreseeable, typically occurring damages.

(6) Liability due to culpable injury, to life, to the body or to health shall remain unaffected; this applies also to compelling liability in accordance with the Product Liability Act.

(7) The preceding limitations of liability shall not apply to the extent that we have assured or guaranteed adherence to the date of delivery or the condition of the article or fraudulently concealed a defect.

(8) The statutory period of limitation in case of delivery recourse in accordance with the §§ 478, 479 BGB (German Civil Code) remains unaffected.

(9) Further liability for payment of damages which is more far-reaching than the claims described in Clause § 6 in this document, without regard to the legal character of the validly-made claim, is excluded. This applies in particular to claims arising from faults in contract conclusion, because of other obligation infringements or because of tortious claims on replacement of damage in accordance with §§ 823 ff. BGB. (et seqq. German Civil Code).

(10) Insofar as a liability for payment of damages on our part is excluded or limited, this exclusion also applies regarding personal liability for damages on the part of our employees, workers, co-workers, representatives, vicarious agents and performing assistants.

(11) For damages due to natural wear, no liability shall be assumed; the same applies to damages which occur through inappropriate use or other influences on the part of the purchaser or third parties, which also applies to improvements undertaken upon individual authority.

§ 7 Retention of title

(1) We reserve the property rights to the delivery article until we receive satisfaction of all claims from the supply contract or other business; thus also up to the point of redemption of bills of exchange and checks.

(2) The purchaser may not otherwise exercise rights to the delivery article which remains under our retention of title without our express written consent; in particular neither to mortgage nor to give in pledge as security or otherwise sell. Regardless of our remaining rights, any claims of the purchaser resulting from a possible further sale shall, as of the present, already have been surrendered to us. In case of attachment as well as seizure or other orders by third parties, the purchaser is obligated to inform us immediately. To the extent that a third party is not able to refund us those judicial and out-of-court expenses associated with a legal action in accordance with § 771 ZPO (Code of Civil Procedure), the purchaser shall be held liable for our losses.

(3) The processing or alteration of the delivery article by the purchaser is always conducted for us. If the delivery article is processed with other articles not belonging to us, then we acquire co-ownership in the new article in proportion to the value of the purchase article (invoice total amount, including VAT) to the other processed articles at the time of the processing. For the article arising from the processing, the same conditions apply for the remainder as do for the delivery article delivered under right of retention. We hereby precedently grant to the purchaser an expectant right (remainder) to our co-ownership portion of the new article.

(4) We are entitled to insure the delivery article against all hazards at the expense of the purchaser, in particular against theft, breakage, fire, water and other possible damages, insofar as the purchaser has not taken out and continues to maintain the insurance himself, subject to verification. All claims on disbursement of the insured sum are hereby precedently surrendered to us, effective immediately.

(5) The purchaser is obligated to conduct the necessary maintenance and inspection work on the delivery article at his own expense.

(6) With each instance of non-contractual behavior on the part of the purchaser which entitles us to withdrawal from the agreement, we are entitled to the return of the delivery article, and the purchaser is obligated to surrender it; for this case, the agreement for removal shall be issued to same, effective immediately. A demand for return on our part is considered a withdrawal from the agreement.

(7) We pledge to release the collateral to which we are entitled at the request of the purchaser to the extent that the realizable value of our collateral exceeds the demands to be secured by more than 10%. The selection of the collateral which shall be released is incumbent on us.

§ 8 Rights in case of delay of payment and substantial asset degradation of the purchaser

If the purchaser culpably defaults on his payment obligations or his obligations resulting from retention of title rights to a not insignificant extent, then all our claims shall immediately become due, even if bills of exchange are submitted.

§ 9 Place of performance and area of jurisdiction

Place of performance for delivery and payment is our registered place of business in Freudenberg, provided nothing contrary arises from our confirmation of order. Area of jurisdiction for both parts is Siegen.

§ 10 Applicable law

In case of deliveries abroad, only German law applies to all legal relations between us and the purchaser. The validity of CISG (UN Convention on Contracts for the International Sale of Goods) is not applicable.

§ 11 Inefficacy of one provision

If individual provisions of these general terms and conditions of trade should be totally or partially ineffective, then the remainder of these terms and conditions shall retain their effectiveness in all other respects.