

## **General Terms and Conditions of Business and Delivery of BARTEC BENKE GmbH**

### **I. General provisions**

1. The following terms and conditions shall govern all deliveries made and performance given to our commercial customers.
2. Our terms and conditions of business and delivery shall apply to the exclusion of any others. No other terms and conditions shall be applicable to any transaction, even if we have not expressly excluded them. Other terms and conditions shall only be applicable should we expressly consent thereto in writing. Our terms and conditions of business and delivery shall also apply if we accept without reservation and with knowledge of any conflicting or derogating terms and conditions the delivery/performance of a customer. Neither a failure to object to the terms and conditions of business of a third party nor the making of any payment nor any acceptance of goods shall constitute an acknowledgement of the terms and conditions of business of a third party.

### **II. Prices, payments and set-off**

1. The price stipulated shall be EXW (ex works, Incoterms 2010) from our registered office or directly from the distribution centre or registered office of the upstream supplier, plus any VAT payable, should nothing have been agreed to the contrary in an individual case.
2. Payments shall be made to our payments office.
3. A customer shall only have a right to set off any claims it may have if such claims have been judicially confirmed or if they are undisputed.
4. In the event of late payment we shall be entitled to charge interest at a rate eight percentage points above the base rate. Claims in respect of any loss above and beyond such an amount may be brought. Should the customer be a merchant, we reserve the right to charge interest on any amounts due and payable.

### **III. Deliveries/completion and transfer of risk**

1. The timely receipt of any documents, necessary permits and authorisations, and in particular any plans, to be provided by the customer, as well as the customer's compliance with the agreed payment terms and any other obligations imposed on it, shall constitute a pre-condition to our compliance with any deadlines in respect of delivery or completion. If such conditions are not satisfied in a timely manner, deadlines shall be extended accordingly; this shall not apply should the delay be attributable to us.

2. Partial deliveries shall be permissible, to the extent that they are reasonable from the perspective of the customer.
3. Goods and works shall be provided EXW (see section II 1).
4. If shipping, delivery, the commencement and the execution of installation or assembly, commissioning or the operational trial is delayed for a reason attributable to the customer or if the customer's acceptance is delayed for any other reason, risk shall be transferred to the customer.

#### **IV. Force majeure and deliveries by our suppliers**

1. Governmental action, uprisings, strikes, lock-outs, fires, machinery breakdowns, bottlenecks in the supply of materials or energy, obstacles to shipping and any other events which are beyond our control and which lead to a delay in normal production or shipping shall constitute events of force majeure and shall entitle us to postpone the delivery date by the corresponding period: we shall be obliged to inform the customer of any such circumstances immediately upon becoming aware of them. Should it not be reasonable to expect either one of the parties to accept delayed performance as a result of the events listed above, such party shall be entitled to withdraw from the contract.
2. Our performance shall be subject to our suppliers making correct and timely deliveries to us.

#### **V. Installation and assembly**

The following provisions, to the extent that nothing is agreed to the contrary, shall be applicable to installation and assembly:

1. The customer shall bear the cost of:
  - a) any earthworks, construction works and other ancillary works unrelated to the subject-matter of the contract, including the costs of any necessary specialists and unskilled personnel, construction materials and tools;
  - b) the equipment and materials required for assembly and commissioning, scaffolding, lifting gear and other devices, fuels and lubricants;
  - c) energy and water at the point of use, inclusive of connections, heating and lighting;
  - d) sufficiently suitable spacious, dry and lockable storage areas at the assembly site, machine parts, equipment, materials, tools etc.;
  - e) appropriate working areas and staff rooms for the assembly personnel, including the appropriate sanitary facilities; in addition the customer shall be required to take those steps to protect our personnel and the assembly personnel on the construction site which it would take to protect its own property;

- f) the protective clothing and equipment made necessary as a result of specific circumstances on the assembly site; and
  - g) travel, the shipping of tools and personal luggage, as well as a per diem.
2. The steps stipulated by section V.1. must be commenced and completed by the customer in a timely manner.
  3. Prior to the commencement of the assembly works the customer must provide, without being requested to do so, the necessary information relating to the location of concealed electricity lines and gas and water pipes or similar installations/facilities, as well as the required structural data.
  4. Prior to the commencement of the installation and/or assembly, the supplies and items required for the acceptance of the works must be present on the installation and/or assembly site. Furthermore, all preparatory works must have reached, prior to the commencement of installation/assembly, a sufficiently advanced stage so as to make possible the commencement of installation or assembly as agreed and to permit the completion of installation or assembly without interruption. Access roads and the installation and assembly site must be levelled and cleared.
  5. The customer shall be obliged to update us on a weekly basis of the duration of the works, the assembly personnel engaged therein and immediately of the completion of installation, assembly or commissioning.

## **VI. Liability for defects / Warranties (Gewährleistung)**

1. The customer, to the extent that it is a merchant, shall be obliged on receipt of the goods or the work to carry out an immediate inspection thereof and to notify us immediately of any defects discovered. Immediately shall be understood as meaning within a period of eight days, if special circumstances in an individual case do not result in it being reasonable to stipulate a different period. Any breach of this obligation shall result in the acceptance of the relevant goods or work. The provisions relating to the merchant's obligation to notify a defect shall apply *mutatis mutandis* to contracts for work. Should there arise in connection with any product delivered the suspicion that it is affected by a defect which is not entirely non-material, the customer shall be obliged to immediately inform us of its grounds for such a suspicion, even if further investigations must be carried out in order to verify the defect. A wrongful breach of such obligation shall render the customer liable to pay damages.
2. If a defect is discovered and if such defect is notified in accordance with the stipulated formal requirements and within the stipulated period, the customer shall at our discretion be entitled to have work remedying the defect carried out or to have the defective goods replaced. If such

works and/or replacements fail to remedy the defect, the customer shall be entitled to reduce the purchase price by an appropriate amount or to withdraw from the contract.

3. The warranty period shall be one year from the date of delivery. The limitation period in the event of delivery recourse in accordance with sections 478 and 479 of the German Civil Code shall not be affected by this provision. Claims for compensation based on defects arising from gross negligence, intent or a breach of material contractual provisions (in relation hereto see the provisions of clause VII entitled "General Liability") shall not be limited hereby. Furthermore, claims for compensation arising from death, physical injury or damage to health or pursuant to product liability legislation shall not be affected hereby.
4. The customer must satisfy itself on the basis of its own verifications as to the suitability of the goods or the work for its intended use.
5. The customer may not refuse to accept deliveries on account of insignificant defects.

## **VII. General liability**

1. Claims for damages of any nature whatsoever against us and our statutory representatives and servants shall be excluded, save for intent or gross negligence or the breach of a material contractual term.
2. A material contractual term shall be understood in this context as any obligation of which the performance makes possible the due and proper execution of the contract and on the performance of which the customer may duly rely.
3. Liability for the gross negligence of our servants, to the extent that such servants are not management employees, shall however be limited to compensation for typically foreseeable damage. This limitation on liability shall not apply to any breach of a material contractual term within the meaning of the previous section.
4. The above limitations and exclusions of liability shall not apply to any liability incurred pursuant to the German Product Liability Act and any other domestic legislation implementing the EU Product Liability Directive or in the event of death, physical injury or damage to health.

### **VIII. Retention of title**

1. We shall retain title in the delivered products until such time as all claims arising from the commercial relationship with the customer are settled in full.
2. The goods in which title is retained by the customer may only ever be processed or modified on our behalf, without this provision imposing any obligation on us. We shall have title to the new items in their processed or modified form, as the case may be. Should the goods in which we retain title be processed, modified, amalgamated, mixed or attached with or to other products which do not belong to us, we shall have joint title to the new items in accordance with the ratio of the invoice price of the goods in which title is retained by us to the invoice price of the other products.
3. The customer may dispose of any goods in which we retain sole or joint title in the normal course of its business; the customer shall not be permitted to grant any pledge over any goods in which we retain sole or joint title, or transfer possession of or title to such goods by way of security for any debt. The customer hereby and in advance assigns to us any claims which may vest in it pursuant to its disposal of the goods in which title is retained, or of the products created pursuant to the processing, modification, amalgamation, mixing or attachment of such goods. This provision shall also apply if the products are disposed of with other products which do not belong to us at an aggregate price. Should any third party, pursuant to any statutory provisions, acquire rights of title or rights of joint title to such products as the result of such processing, modification, amalgamation, mixing or attachment, the customer also hereby and in advance assigns to us its claims against such third party. Assignments within the meaning of this section shall only take place in the amount of the invoice price of the goods in which title is retained. The customer shall have the right to enforce its assigned claims until such time as this right is revoked by us, which we shall be entitled to do at any time.
4. We hereby accept the assignments made by the customer pursuant to this clause.
5. We undertake to release at our entire discretion, pursuant to the request of the customer, the security granted to us in accordance with the above provisions, to the extent that their value exceeds the amount of the secured claims by more than 10%.
6. Should the co-operation of the customer be required to give effect to the retention of title, for instance in the context of any registrations which are required in accordance with the laws of the country of the customer, the customer must take any such action required.
7. Should the customer be in arrears of payment, we shall be entitled to prohibit the customer from disposing of or dealing with the goods in any manner whatsoever or at our discretion impose a partial prohibition, for example by prohibiting any disposal or further processing.

8. Should the objective requirements obliging the customer to instigate insolvency proceedings be satisfied, the customer shall refrain – without it being necessary to serve notice of any such obligation on it – from disposing of or dealing with the goods in which title is retained in any manner whatsoever. The customer shall be obliged to immediately notify to us its stocks of the goods in which title is retained. In such a case we shall be furthermore entitled to withdraw from the contract and to demand the return of the goods in which title is retained. Should the goods in which title is retained have been processed, modified, amalgamated, mixed with or attached to any other products, we shall be entitled to demand the transfer of such products to a custodian. The customer shall be obliged to notify to us all of the co-owners of the goods in which title is retained, along with their company name or name, contact address and the proportion of title held by them. These provisions shall also apply *mutatis mutandis* to any claims which are assigned to us in accordance with the previous sections; in addition the customer must notify to us, without being requested to do so, the names and contact details of all of its debtors and provide to us copies of all of the documents evidencing its claims against such debtors.
9. We shall retain full title to and copyright in any quotes, invoices and other documents (referred to hereinafter as the “documents”). The documents may only be made available to a third party with our prior consent and must be immediately returned to us, should no contract be concluded. The first two sentences of this section shall apply *mutatis mutandis* to the documents of the customer; the documents of the customer may however be made available to third parties should we have validly assigned to them the obligation to make the deliveries.
10. The customer shall have a non-exclusive right to use standard software with the agreed performance features in an unmodified form on the stipulated devices. The customer may produce back-up copies without express permission.

#### **IX. Place of jurisdiction, arbitration agreement and applicable law**

1. The exclusive place of jurisdiction shall be Hamburg, if the customer is a merchant, a legal person incorporated in accordance with public law or a public fund, or if the customer has no general place of jurisdiction in Germany. As an alternative, the plaintiff shall be entitled to instigate proceedings before the German Institution for Arbitration e.V. (DIS). Should this occur, the German Institution for Arbitration shall have exclusive jurisdiction. The arbitration shall take place in Hamburg. The language of the proceedings shall be German.
2. Any contracts concluded shall be governed by the laws of the Federal Republic of Germany alone and the provisions of the United Nations Convention on the International Sale of Goods (CISG) shall not apply.