

Terms and Conditions of Delivery of the Company BARTEC BENKE GmbH

I. General Stipulations

1. The mutual written declarations shall be authoritative for the scope of deliveries or services (hereinafter: "Deliveries"). However, General Terms and Conditions of Business of the Orderer shall only apply in so far as the supplier or performer (hereinafter: "Supplier") has expressly consented to them in writing.
2. The Supplier shall retain, without limitation, its rights of exploitation under property and copyright law in respect of cost estimates, drawings and other documents (hereinafter: "Documents"). The Documents shall only be made accessible to third parties with the Supplier's prior consent. If the order is not placed with the Supplier, the Documents shall be returned to the Supplier without undue delay on request. Sentences 1 and 2 apply mutatis mutandis to Documents of the Orderer. However, such Documents may be made accessible to third parties whom the Supplier has permissibly appointed to make deliveries.
3. The Orderer shall have the non-exclusive right to use standard software with the agreed performance features in unaltered form on agreed equipment. The Orderer shall be permitted to create a backup copy even without express agreement.
4. Delivery by part performance shall be permissible in so far as the Orderer can be reasonably expected to accept delivery instalments.

II. Prices and Payment Terms

1. The prices are understood to be ex works, excluding packaging, subject to addition of the respective applicable statutory value-added tax.
2. If the Supplier has assumed responsibility for installation or assembly and nothing to the contrary is agreed upon, the Orderer shall, in addition to paying the agreed remuneration, bear all essential incidental expenses such as travel expenses, costs for transporting tools of the trade and personal luggage, as well as separation allowances.
3. Payments shall be made free of charge to the Supplier's point of payment.
4. The Orderer shall only be entitled to set off with receivables which are uncontested or have been determined with legal finality.

III. Securing Retention of Title

1. The Supplier shall retain title to all delivery items until receipt of all payments arising from the business connection with the Orderer. This reservation also relates to any recognised balance arising from an open account relationship.
2. The Orderer shall be entitled to on-sell the purchase item in the ordinary course of its business. However, the Orderer assigns to the Supplier here and now, in the sum of the final invoiced amounts of the Supplier's receivables, all receivables accruing to it against its purchasers or third parties from on-selling, regardless of whether the purchase item has been on-sold without having been processed or after having been processed. The customer shall remain empowered to collect those receivables even after their assignment. The Supplier's power to collect the receivables itself remains unaffected by the foregoing.
3. The Supplier undertakes not to collect the receivable in its own name as long as the Orderer meets its payment obligations in relation to the Supplier, does not default on payment and, in particular, no petition for opening of insolvency proceedings is filed. If this is the case, however, the Supplier shall be entitled to demand that the Orderer inform the Supplier of the assigned receivables and the debtor, provide all information essential for collecting the receivables, hand over the pertinent documents and notify the third party of the assignment.
4. Whilst this retention of title is in effect, the Orderer shall be prohibited from pledging delivery items or transferring ownership by way of security. In the event of levy of execution or any other form of intervention by a third party, the Orderer shall notify the Supplier without undue delay, so as to enable the Supplier to bring an action according to section 771 of the German Code of Civil Procedure [ZPO]. In so far as the third party is not in a position to reimburse the Supplier for the judicial and extrajudicial costs in connection with an action according to section 771 of the Code of Civil Procedure, the Orderer shall be liable for the loss incurred by the Supplier.
5. Processing or remodelling of delivery items by the Orderer shall always be carried out for the Supplier.
6. If delivery items are processed together with other items not belonging to the Supplier, the Supplier shall acquire joint ownership in the new item in the ratio of the value of the Supplier's delivery item in relation to the other processed items at the time of processing. Moreover, the terms applicable to the items delivered under retention of title shall equally apply to the item created by processing.
7. If the delivery item is inseparably mixed with other items not belonging to the Supplier, the Supplier shall acquire joint title in the new item in the ratio of the value of the delivery item (final invoiced amount including value-added tax) in relation to the other mixed items at the time of mixing. If mixing is effected in such a manner that the Orderer's item is to be regarded as the main item, transfer of joint ownership to the Supplier on a pro-rata basis shall be deemed agreed upon.
8. The Orderer shall hold in safekeeping for the Supplier the sole or joint ownership created in such a manner. To secure the Supplier's claims against the Orderer, the Orderer also assigns to the Supplier the receivable accruing against a third party as a result of the purchase item having been connected to a piece of real estate.
9. The Supplier undertakes to release, at the Orderer's request, security interests to which the Supplier is entitled, in so far as the realisable value of the Supplier's security interests exceeds by more than 10 % the claims to be secured. Selection of the security interests to be released shall be incumbent upon the Supplier.

IV. Time Limits for Delivery; Default

1. The prerequisite for compliance with time limits for delivery is timely receipt of all documents to be supplied by the Orderer, timely receipt of all essential approvals and clearances, particularly of plans, and compliance with the agreed payment terms and other obligations by the Orderer. If those prerequisites are not fulfilled in due time, the time limits shall be extended appropriately. This shall not apply, if the Supplier is responsible for the delay.
2. If non-compliance with the time limits is due to force majeure, for example mobilisation, war, insurrection or similar events, for example strike or lockout, the time limits shall be extended appropriately.
3. If the supplier is in delay, the Orderer shall be entitled - in so far as it satisfactorily shows that it has incurred a loss as a result thereof - to demand compensation at the rate of 0.5 % for every full week of default, but in total no more than 5 % of the price for the part of the deliveries which could not be put to the intended use due to default.
4. Damage claims of the Orderer on account of delayed delivery, as well as damage claims in lieu of performance, which go beyond the limits stated in no. 3 shall be excluded in all cases of delayed delivery, even after expiration of any time limit which the Supplier has been set. This shall not apply where liability is mandatory in cases of intent or gross negligence or on account of injury to life, body or health. The Orderer shall only be entitled to withdraw from the contract under the statutory stipulations, in so far as the Supplier is responsible for the delayed delivery. No change of the burden of proof to the disadvantage of the Orderer shall be associated with the above provisions.
5. The Orderer shall, at the Supplier's request, be obliged to declare within a reasonable period whether it will rescind the contract on account of delayed delivery or will insist on delivery.
6. If, at the Orderer's request, dispatch or delivery is delayed by more than one month after notification of readiness for dispatch, the Orderer may be charged, for every commenced month of delay, a storage charge at the rate of 0.5 % of the price of the delivery items, but no more than 5 % in total. The parties to the contract shall remain free to prove higher or lower storage costs.

V. The passing of Risk

1. Even where delivery is on a carriage-paid basis, the risk shall pass to the Orderer as follows:
 - a) at the time of dispatch or collection in the case of deliveries which exclude installation or assembly; the Supplier shall insure deliveries against customary transportation risks at the request and expense of the Orderer;
 - b) on the day of assumption of possession at the Orderer's own business establishment, or upon completion of an unobjectionable trial operation in so far as agreed upon, in the case of deliveries which include installation or assembly.
2. If dispatch, delivery, commencement or execution of installation or assembly, assumption of possession at the Orderer's own business establishment or the trial operation is delayed for which the Orderer is responsible for, or if the Orderer defaults on taking delivery for other reasons, the risk shall pass to the Orderer.

VI. Installation and Assembly

Except where otherwise agreed upon in writing, installation and assembly shall be governed by the following stipulations:

1. The Orderer shall undertake/provide in due time at its expense:
 - a) all excavation work, building work and other incidental work alien to the Supplier's branch of industry, including the skilled and unskilled labour, building materials and tools required in this connection,
 - b) the items and materials essential for assembly and commissioning, such as scaffolding, lifting gear and other devices, fuels and lubricants,
 - c) energy and water at the point of use, including connections, heating and lighting,
 - d) adequately sized, suitable, dry and lockable rooms for storing machinery parts, apparatus, materials, tools etc. at the assembly site, as well as appropriate workrooms and recreation rooms for the assembly personnel, including sanitary facilities which are appropriate in the circumstances; the Orderer shall moreover, for protecting the Supplier's possessions and the possessions of the assembly personnel at the building site, take all measures which it would take to protect its own possessions,
 - e) protective clothing and protective devices which are essential due to the particular circumstances prevailing at the assembly site.
2. Prior to commencement of the assembly works, the Orderer shall make available, unprompted, necessary information on the routing of concealed power, gas and water lines or similar installations, as well as essential statics-related information.

3. Prior to commencement of installation or assembly, the supplies and items essential for starting the works must be at the place of installation or assembly and all preliminary works prior to the commencement of set-up must be in such a state of progress that installation or assembly can begin as agreed upon and be carried out without any interruption. Accessways and the installation or assembly site must have been levelled and cleared.
4. If installation, assembly or commissioning is delayed due to circumstances the Supplier is not responsible for, the Orderer shall, to a reasonable extent, bear the costs for waiting time and additionally necessary travel on the part of the Supplier or the assembly personnel.
5. The Orderer shall, without undue delay, certify to the Supplier on a weekly basis the duration of the assembly personnel's working time and completion of installation, assembly or commissioning.
6. If the Supplier demands an acceptance of the delivery upon its completion, the Orderer shall carry out such an acceptance within two weeks. If this does not occur, acceptance shall be deemed to have been effected. Equally, acceptance shall be deemed effected, if the delivery is - at the end of an agreed test phase where applicable - put to use.

VII. Taking Receipt

The Orderer shall not be permitted to refuse to take receipt of deliveries due to immaterial defects.

VIII. Liability for Defects

1. The prerequisite for the Orderer's right based on defects is that the Orderer must have properly complied with its examination and its requirements to give notice of defects obligations owed according to section 377 of the German Commercial Code [HGB].
2. In so far as the delivery item is defective, the Supplier shall, at its option, be entitled to render supplementary performance in the form of defect elimination or deliver a new item free from defects. In the case of supplementary performance, the Supplier shall be obliged to bear all expenditures essential for the purpose of defect elimination, particularly transportation costs, transport infrastructure charges, labour costs and costs of materials, except where these costs rise as a result of the delivery item having been transported to a place other than the place of performance.
3. If supplementary performance fails, the Orderer shall be entitled to demand withdrawal or reduction of the price, at its option.
4. In the event of defect-related complaints, the Orderer must only withhold payments to an extent which is reasonably proportionate to the defect complained of. If a defect-related complaint is made without good reason, the Supplier shall be entitled to demand from the Orderer reimbursement of the expenditures incurred by the Supplier.
5. The Supplier shall be liable under the statutory stipulations, in so far as the Orderer asserts damage claims based on intent or gross negligence, including intent or gross negligence on the part of the Supplier's representatives or on the part of the Supplier's persons employed in performing an obligation for whom the supplier is vicariously liable. In so far as no intentional breach of contract is imputed to the Supplier, the damage claim shall be limited to foreseeable losses typically occurring.
6. Liability on account of culpable injury to life, body or health remains unaffected. This also applies to mandatory liability under the German Product Liability Act [Produkthaftungsgesetz].
7. Except where otherwise provided for above, liability is excluded.
8. The limitation period for defect-related claims is 12 months, calculated from the passing of risk.
9. The limitation period in the case of supplier recourse according to sections 478 and 479 of the German Civil Code [BGB] remains unaffected. It is five years, calculated from delivery of the defective delivery item.

IX. Industrial Property Rights and Copyrights; Legal defects

1. Except where otherwise agreed upon, the Supplier shall be obliged to merely make delivery in the country of the place of delivery free from third-party industrial property rights and copyrights (hereinafter: Property Rights). In so far as a third party asserts against the Orderer justified claims on account of infringement of Property Rights as a result of deliveries made by the Supplier and used in conformity with the contract, the Supplier shall be liable in relation to the Orderer within the period stipulated in section VIII, no. 2 as follows:
 - a) The Supplier shall, at its option and expense, either effect a right of use for the deliveries concerned, alter the deliveries concerned in such a manner that the property right is not infringed or exchange the deliveries concerned. If this is not possible for the Supplier on reasonable terms, the Orderer shall be entitled to the statutory rights of withdrawal or reduction of the price.
 - b) The Supplier's duty to pay compensatory damages shall be governed by section XI.
 - c) The Supplier's obligations stated above shall only apply in so far as the Orderer gives the Supplier, without undue delay, written notification of the claims asserted by the third party, the Orderer does not recognise an infringement and all defensive measures and composition negotiations remain reserved to the Supplier. If the Orderer ceases using the delivery for damage minimisation reasons or for other reasons, the Orderer shall be obliged to point out to the third party that no recognition of a property right infringement is associated with the cessation of use.
2. Claims of the Orderer shall be excluded in so far as the Orderer is responsible for the property right infringement.
3. Furthermore, claims of the Orderer shall be excluded in so far as the property right infringement is caused as a result of special directives issued by the Orderer, as a result of an application not foreseeable by the Supplier or as a result of the delivery having been altered by the Orderer or having been used together with products not delivered by the Supplier.
4. In the case of property right infringements, claims of the Orderer provided for in no. 1 a) shall be additionally governed by the stipulations in section VIII, nos. 4, 5 and 9 mutatis mutandis.
5. If other legal defects are present, the stipulations in section VIII shall apply mutatis mutandis.
6. Claims of the Orderer against the Supplier, or against the Supplier's persons employed in performing an obligation for whom the Supplier is vicariously liable, on account of a defect in title which go beyond or differ from the claims provided for in this section IX shall be excluded.

X. Impossibility; Adaptation of the Contract

1. In so far as delivery is impossible, the Orderer shall be entitled to demand compensatory damages, unless the Supplier is not responsible for the impossibility. However, the Orderer's damage claim shall be limited to 10 % of the value of the part of the delivery which cannot be put to the intended use due to impossibility. This limitation shall not apply where liability is mandatory in cases of intent or gross negligence or in cases of injury to life, body or health. A change of the burden of proof to the Orderer's disadvantage is not associated therewith. The Orderer's right to withdraw from the contract shall remain unaffected.
2. In so far as unforeseeable events within the meaning of section IV, no. 2 substantially change the economic importance or content of the delivery or have a substantial effect on the Supplier's business operations, the contract shall be appropriately adapted in observance of good faith. If and in so far as this is not economically justifiable, the Supplier shall have the right to rescind the contract. If the Supplier wishes to make use of this right of withdrawal, it shall notify the Orderer thereof without undue delay after having become aware of the implications of the event, even if an extension of the delivery period had initially been agreed upon with the Orderer.

XI. Total Liability

1. Liability for compensatory damages beyond that provided for in section VIII. is excluded. This particularly applies to damage claims arising from culpa in contrahendo, to damage claims on account of other breaches of duty and to tortious claims to compensation for property damage under section 823 of the German Civil Code [BGB].
2. The aforestated limitation under no. 1 shall also apply in so far as the Orderer demands reimbursement of expenditures incurred in vain instead of a claim to compensation for damage in lieu of performance.
3. In so far as liability for damages is limited, this shall also apply in respect of the personal liability of the Supplier's white-collar workers, blue-collar workers, employees and representatives and to its persons employed in performing an obligation for whom the Supplier is vicariously liable.
4. In so far as the Orderer is entitled to damage claims under this section XI, these shall become barred by limitation upon expiration of the limitation period under section VIII, no. 8 which is applicable to claims relating to a defect in quality. In the case of damage claims under the Product Liability Act [Produkthaftungsgesetz], the statutory regulations on barring by limitation shall apply.

XII. Place of jurisdiction and applicable Law

1. If the Orderer is a merchant, the sole place of jurisdiction in the case of all disputes directly or indirectly ensuing from the contractual relationship shall be the Supplier's registered office. However, the Supplier shall also be entitled to bring an action at the Orderer's registered office.
2. The legal relations in connection with this contract shall be governed by German substantive law, excluding hereby the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. Binding Nature of the Contract

If individual stipulations of the contract are or become ineffective in law, the other parts of the contract shall remain binding and effective. This shall not apply, if keeping to the contract would constitute unreasonable hardship for one of the Parties.