

## Terms and Conditions

### BAUR GmbH, A-6832 Sulz/Austria

#### 1. Scope

- 1.1 These terms and conditions apply for legal transactions between companies, namely for delivery of goods and accordingly also for providing services.
- 1.2 Deviations from the conditions mentioned in point 1.1 are only effective in case of written approval by BAUR.

#### 2. Offer

- 2.1 Offers from BAUR are subject to change.
- 2.2 Any offer and project documents may not be reproduced nor accessed by third parties without BAUR's approval. They may be claimed back at any time and need to be given back to BAUR immediately, if the order is placed elsewhere.

#### 3. Conclusion of the contract

- 3.1 The contract is concluded if BAUR sends a written order confirmation or a delivery after receipt of the order.
- 3.2 The information contained in catalogues, brochures, etc. as well as other written or oral statements are only relevant, if reference is expressly made to them during order confirmation.
- 3.3 Subsequent amendments and additions to the contract must be made in writing to be effective.

#### 4. Prices

- 4.1 BAUR's ex-works prices apply and are exclusive of value added tax, loading, disassembly, withdrawal and orderly recycling and disposal of electrical and electronic devices. If fees, taxes or other charges arise in the context of delivery, these need to be borne by the purchaser. If agreed terms include delivery to the purchaser, then delivery as well as transport insurance desired by the purchaser is separately invoiced; this however does not contain unloading.
- 4.2 In case of an order which differs from the total offer, BAUR reserves the right to make a corresponding price modification.
- 4.3 Prices are based on costs at the time of the first price offer. If costs increase until the time of delivery, BAUR has a right to modify the prices accordingly.
- 4.4 In case of repair contracts, services which are considered to be appropriate are provided by BAUR and invoiced on the basis of the expense incurred. This also applies for services and extra work whose suitability first becomes evident during the execution of the contract, in which case no special notification to the purchaser is required.
- 4.5 Expenses for generating repair offers or expert opinions are included in the invoice to the purchaser.

#### 5. Delivery (based on INCOTERMS 2010)

- 5.1 The delivery period starts with the last of the below points in time:
  - a) Date of order confirmation
  - b) Date of fulfillment of all technical, commercial and other conditions incumbent upon the purchaser;
  - c) Date on which BAUR receives an advance payment or a deposit to be made before delivery of goods.
- 5.2 Official licenses and any licenses required from third parties for implementing systems need to be obtained by the purchaser. If such approvals are not received on time, the delivery deadline will be delayed accordingly.
- 5.3 BAUR is authorised to carry out part or advance deliveries and to invoice them. If the delivery terms agreed to be "on call orders", the goods are considered as called for 1 year after the order at the very latest.
- 5.4 To the extent that unforeseeable circumstances or those independent of the will of the party occur, e.g., all cases of force majeure, which prevent the adherence to the agreed delivery deadline, the same is extended by the period of these circumstances; in particular, these include armed conflicts, official interference and prohibition, transport and customs clearance delays, transport damage, power and raw material shortage, work disputes and the failure of an important supplier, who is difficult to re-

place, to deliver. The above mentioned circumstances also justify the extension of the delivery deadline if they occur with suppliers.

#### 6. Transfer of risk and place of delivery

- 6.1 Usage and risk are transferred to the purchaser when the delivery has left the works, independent of the price arrangement agreed to for the delivery (e.g., CPT, CIF, etc.). This also applies if delivery or transport is realised or organised and managed by BAUR.
- 6.2 The place of delivery for services is where the service is provided. Risk for a service, or a partial service agreed upon, is transferred to the purchaser, once it is provided.

#### 7. Payment

- 7.1 Basically, the purchaser needs to transfer the entire invoiced amount to a bank account selected by BAUR within 30 days of receipt of the invoice. Payments need to be made without any deduction, ex BAUR's paying agent, in the currency agreed upon.
- 7.2 The purchaser is not authorised to withhold or offset payments due to warranty claims or other counterclaims.
- 7.3 A payment is considered to be made on the date when BAUR has access to it.
- 7.4 If the purchaser delays a stipulated payment or another settlement from this or other transactions, BAUR can, without prejudice to its other rights,
  - a) postpone fulfillment of its own obligations up to the time that this payment or other settlement is made, and claim a suitable delay in the delivery date,
  - b) set the status of other open requirements from this or other transactions as called for and invoice interest on late payments in the amount of 1% per month for these amounts in addition to value added tax, from the corresponding due date, as long as BAUR cannot provide evidence of costs over and above these. In any case, BAUR is authorised to invoice for pre-procedural costs, especially reminder fees and lawyer's fees.
- 7.5 Granted discounts or volume-based rebates are subject to the timely settlement of the complete payment.
- 7.6 BAUR reserves ownership rights on all goods delivered until complete payment for the invoiced amounts including interest and costs are received. The purchaser herewith cedes its right of a sale of retained goods to BAUR in order to guarantee the invoiced amount, even if they are processed, reshaped or mixed, and is obliged to apply a corresponding entry in its books or on his invoice. Upon request, the purchaser needs to inform BAUR of the ceded rights and the respective debtors and to make all information and documents necessary for the forfeiture of its right available and to notify third party debtors about the cession. In case of a garnishment or another claim, the purchaser is obliged to refer to BAUR's ownership right and to immediately inform BAUR upon this.

#### 8. Software licenses

- 8.1 BAUR grants the customer a non-exclusive, non-transferrable right to use any software product for which the latter has purchased a license from BAUR. If a device is ceded to a third party, use of the accompanying software is also granted.
- 8.2 The license rights granted by BAUR to the customer may neither be assigned, transferred, pledged, leased, nor may they be handed over, ceded or shared in other forms, to third parties.
- 8.3 Except for a backup copy, any form of reproduction of the software product, documentation, or parts thereof, is only allowed with BAUR's prior written approval.
- 8.4 Without BAUR's prior written approval, the customer may not modify, transfer (either electronically or in other ways), translate, disassemble, decompile or modify in other ways the software product or the attached documentation.

#### 9. Warranty and responsibility for shortages

- 9.1 BAUR is obliged to remove any defect influencing functionality existing at the time of transfer, which results from a construction, material or design error, according to the following stipulations, when payment

- conditions are respected. No warranty claims can be derived from statements in catalogues, brochures, leaflets and written or oral comments not recorded in the agreement.
- 9.2 The warranty period consists of 12 months, as long as special warranty periods have not been agreed upon for individual delivery items. The warranty period begins from the time of transfer of risk according to point 6.
  - 9.3 The warranty claim requires that the purchaser has immediately recorded the defects which have occurred in writing. The purchaser needs to immediately proof the presence of the defect, and especially make the documents and/or data that he has available to BAUR. Upon presence of a defect covered by warranty according to point 9.1, BAUR has the own choice either to repair or replace the defective goods, of conversion or to grant a suitable price reduction. In case of a repair BAUR has the right to get them dispatched for repair.
  - 9.4 All supplementary costs arising in the context of removal of the defect (e.g., assembly, disassembly, transportation, disposal, conveyance and travel time) are debited to the purchaser. For warranty work in the purchaser's premises, the required laborers, lifting devices, scaffolding and incidentals, etc., need to be provided free of charge. Replaced parts are BAUR's property.
  - 9.5 If one of BAUR's products is manufactured on the basis of assembly information, drawings, models or other specifications of the purchaser, then BAUR's liability only extends to the correct execution.
  - 9.6 The warranty excludes those defects which arise from design and assembly not effected by BAUR, unsatisfactory installation, non-observance of installation requirements and conditions of use, straining of parts over the performance measure indicated by BAUR, negligent or incorrect treatment and use of inappropriate operating materials. This is also applicable to defects which can be ascribed to material provided by the purchaser. BAUR is also not liable for damage which can be traced back to third party activities, atmospheric discharges, electrical surges and chemical influences. The warranty does not cover replacement of parts subject to natural wear and tear. BAUR assumes no warranty in case of purchase of used goods.
  - 9.7 The warranty expires immediately if the purchaser itself without BAUR's prior written approval or a third party not expressly authorised by BAUR carries out modifications or repairs.
  - 9.8 Claims according to article 933b ABGB become time-barred in any case upon the expiry of the deadline named in point 9.2.
  - 9.9 Stipulations 9.1 to 9.9 accordingly also apply to any guarantee for defects arising from other causes in law.
10. Cancellation of the contract
  - 10.1 The pre-condition for the purchaser to withdraw from the agreement is a delay in supply which can be ascribed to gross default on the part of BAUR and/or the unsuccessful expiry of an appropriate grace period which has been set to the extent that no special arrangement is reached. The withdrawal has to be sent as a registered letter.
  - 10.2 Regardless of its other rights, BAUR is authorised to withdraw from the agreement,
    - a) if the execution of the supply and/or the start or the continuation of the service is impossible or is further delayed, despite setting an appropriate grace period due to reasons, which the purchaser needs to mention,
    - b) if there are concerns regarding the purchaser's ability to pay and he neither makes an advance payment upon BAUR's request nor does provide a suitable security before delivery, or
    - c) if the extension of the delivery time amounts to more than half of the originally agreed upon delivery period, but at least 6 months, due to circumstances indicated in point 5.4.
  - 10.3 Withdrawal can also be declared with respect to a part of the delivery or service which is still open due to the above reasons.
  - 10.4 In case a bankruptcy procedure is initiated on the assets of a party or an application to initiate a bankruptcy procedure has been turned down due to lack of sufficient assets, the other party is authorised to withdraw from the agreement without setting any grace period.
  - 10.5 Without prejudice to BAUR's claim for damages including pre-process costs, services or partial services already provided need to be invoiced and paid contractually in the case of withdrawal. This also applies as long as delivery or service was not yet accepted and for preparatory activities provided by BAUR. BAUR is also entitled to require recovery of already delivered objects instead of this.
  - 10.6 Other consequences of the cancellation are excluded.
11. BAUR's liability
  - 11.1 BAUR is liable for damages outside the area of application of product liability law only to the extent that willful intent or gross negligence in the context of legal regulations can be proved against it. Liability for slight negligence, replacement of consequential damages and damages to assets, not realised savings, interest loss and damages from third party claims against the purchaser are excluded.
  - 11.2 Non-observance of possible conditions for assembly, commissioning and usage (e.g. as described in operating manuals) or official admission requirements are excluded from any claim for damages.
  - 11.3 If contractual penalties are agreed upon, claims over and above the same arising from the corresponding titles are excluded.
12. Assertion of claims
  - 12.1 To the extent that in individual cases no specially agreed upon or legal conditions provide for shorter timeframes, all purchaser's claims need to be asserted within 3 years of risk transfer, otherwise the right of claim will forfeit.
13. Intellectual property rights
  - 13.1 If a product of BAUR is manufactured based on assembly data, drawings, models or other specifications of the purchaser, the latter needs to indemnify and release BAUR from liability in case of any possible infringement.
  - 13.2 Assembly instructions and drawings, e.g., plans, drafts and other technical documents as well as samples, catalogues, brochures, diagrams, etc., always remain BAUR's intellectual property and are subject to the relevant legal stipulations with regard to reproduction, copying, competition, etc.  
Point 2.2 also applies to assembly instructions and drawings.
14. General information
  - 14.1 If individual stipulations of the contract or these Terms and Conditions become ineffective, the effectiveness of other clauses is not affected. The ineffective stipulation needs to be replaced by a valid one which comes as close as possible to the objective strived for.
  - 14.2 In case of contradictions between the English and the German version of the Terms and Conditions or any other document of legal relevance, the German version shall prevail.
15. Court of jurisdiction and law
  - 15.1 All relationships with BAUR shall be exclusively governed by Austrian law. Application of the UNCITRAL treaty of the United Nations on contracts relating to international goods sales is excluded. For deciding any disputes arising from the relationships, including those over its existence or non-existence, the competent court for contractual partners with place of business within the European Union is in 6800 Feldkirch, Austria, exclusively.
  - 15.2 For all contractual partners with place of business outside the European Union all disputes arising from the relationship shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of the arbitration court shall be in 6800 Feldkirch, Austria. The language to be used in the arbitration shall be English.
- Sulz, April 2015  
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