

General Terms and Conditions of BSS heavy machinery GmbH (hereinafter BSS)

1. Scope of the General Terms and Conditions

1.1 Any contract or any agreements based on such contracts concluded between BSS and the client are exclusively subject to the following General Terms and Conditions. Consequently these conditions remain exclusively applicable even if the client includes his own terms and conditions when confirming the contract, insofar as the conclusion of the contract itself is not put at risk through this.

1.2 Client terms and conditions which differ are rejected. An explicit rejection statement is not required even if BSS unconditionally hands over the delivered goods in the knowledge of client terms and conditions which differ.

1.3 Any change to these Terms of Sale will be notified to the client. The change will become part of the contract, if the client does not object within one month following notification of the change.

1.4 The following terms of sale are only valid for agreements with natural or legal persons or a legally valid business partnership which performs its commercial or independent professional activity by way of conclusion of a legal transaction (an entrepreneur in the sense of § 14 BGB).

2. Conclusion of the contract

2.1 A contract only comes into being upon written acceptance by BSS.

2.2 Additions, changes and other ancillary agreements will also only become effective upon written confirmation by BSS. Clause 1.3 remains unaffected.

3. Delivery and delays in delivery or acceptance

3.1 Delivery takes place through the provision of the delivery item for collection at the headquarters of BSS or at the manufacturer's works. Dispatch of the delivery item to another location will take place only at the request, expense and risk of the client.

3.2 Delivery dates are approximate. However, a delivery time is binding if it is expressly agreed in writing as a firm deal.

3.3 Delivery dates are subject to the timely delivery of parts which, in addition, are to be fitted by BSS at the client's request. If the object of sale is new, the delivery date is subject to timely delivery by the manufacturer.

3.4 The delivery time is met if the goods have left the warehouse of BSS or the manufacturer's works before the expiry of the delivery period or readiness of the delivery item for dispatch to the client has been demonstrated.

3.5 If there are exceptional, temporary obstacles which are not the responsibility of BSS during the agreed delivery period, then the delivery period will be extended by a reasonable period. The delivery period will also be appropriately extended in cases where a preliminary service to be provided by the client has not been implemented, especially if documents required for delivery, such as permits and drawings, have not been provided to BSS in full and in good time.

Exceptional obstacles in the sense of Clause 1 include in particular labour disputes, civil unrest, natural disasters or other events of force majeure. An extension of deadline in accordance with Clauses 1 and 2 cannot be considered if BSS is in a position to meet the delivery date in spite of the obstacles, given due diligence or reasonable efforts.

3.6 In the event of delay in delivery BSS will not be liable for lost profits or losses due to business interruption by the client or a third party, or other indirect damages. In addition, any claim for damages by the contract party due to a delay in delivery is limited to 0.5% for each full week of delay, with a maximum of 5% of the order value. A limit for

damage caused by delay in accordance with Clause 1 or Clause 2 is excluded if the delay in delivery is based on gross negligence or wilful breach of duty by BSS or by a legal representative or agent of BSS or any other strict liability under Figures 8.7, 9.1 and 9.3.

3.7 If the client fails to collect the purchased item in good time (Figure 6.1), he will be liable to BSS for each week of delay for an amount of 0.1% of the order value.

(Liquidated damages for storage costs). This applies only insofar as the client cannot prove that no damage or lesser damage occurred, or where BSS proves higher damages.

3.8 Partial deliveries are permitted.

3.9 The client cannot refuse to accept the delivery of an item provided or shipped simply on account of insignificant faults.

3.10 Inadequate performance is not considered to be late delivery.

4. Transfer of risk, dispatch

4.1 Dispatch from the place of delivery specified in Figure 3.1 takes place only at the request and expense of the client.

4.2 Once the item has been delivered to the carrier, the haulier or any other person or institution instructed to perform the dispatch, but at the latest on leaving the warehouse or manufacturing plant, the risk of accidental loss and accidental deterioration passes to the client.

4.3 BSS can specify a transport company in the name and on behalf of the client for the dispatch of the delivery item. BSS is not a contract partner of the transport company. In any case, in the internal relationship between BSS and the client BSS is exempt from any liability to the transport company.

5. Obligations of BSS

5.1 BSS is required to inform the client as soon as significant delays occur.

6. Obligations of the Client

6.1 Unless dispatch is agreed, the client is required to collect the purchased item within 5 business days of receipt of the notification of readiness.

6.2 The client guarantees and avows that it will not use the purchased item (including software and/or related technology) provided to him under a contract by BSS to disrupt international peace, including the (i) construction, development, production or use of any weapons of mass destruction, such as nuclear, chemical or biological weapons or guided ballistic missiles, (ii) any other military activities or (iii) any support for such activities.

6.3 The client further guarantees and avows that it will not, directly or indirectly, sell, export, provide, license, rent, transmit or make the purchased item (including software and/or related technology) available to a third party in any other way if it knows that the third party or any other party will use it for any of the activities described in the previous clause. The client will procure the same guarantees and assertions from any third party to which it may sell, export, license, rent, assign or otherwise make available the purchased item (including software and/or related technology).

7. Prices and terms of payment

7.1 All prices are ex-warehouse BSS and exclusive of costs for packaging and transport. The applicable sales tax will be added to the prices and shown separately in the invoice. If the item is shipped, the client must cover any additional packaging costs, freight costs, postage, etc..

7.2 All payments must be made in Euros.

7.3 Payment will be due upon submission of invoice unless otherwise agreed.

7.4 If payment is delayed, or there is a significant deterioration of the financial situation of the client, BSS is entitled to assert its claims or to demand collateral. In such instances BSS can also make outstanding deliveries dependent on the prior provision of adequate collateral.

8. Warranty

8.1 BSS gives no warranty in the sale of used items. The sale takes place under the exclusion of material defect complaints.

8.2 With the purchase of new items, the warranty claims expire within one year from delivery of the item unless otherwise agreed.

8.3 Warranty claims are subject to the condition that the client duly meets its inspection and complaint duty in accordance with § 377 HGB.

8.4 If the client is a consumer in the sense of § 13 BGB, Figures 8.1 to 8.3 do not apply. With the purchase of used goods the client's warranty entitlement expires 12 months after delivery of the item.

8.5 In the event of defects in the contractual products BSS will not be liable for lost profits or business interruption damages incurred by the contract partner or a third party.

8.6 If all of the factory-set mandatory inspections under the maintenance schedule have not been performed on time using original spare parts, oils, filters, etc., no warranty claims will exist for any errors caused by using other parts.

8.7 Figures 8.1 to 8.5 do not apply to damages arising through injury to life, body or health or other intentional or grossly negligent damage caused by BSS or a legal representative or by a fulfilment agent or for breach of the essential obligations of this contract whose fulfilment enables the proper realisation this contract in the first place, and on which the client reasonably can and does rely (cardinal obligations) as well as any strict liability under the Product Liability Act.

8.8 BSS may, as it chooses, arrange to remedy the defect or supply a new item.

8.9 Any assignment of the warranty claim is only valid with the written consent of BSS.

9. Other liability

9.1 BSS is liable for damages resulting from injury to life, body or health or other damages based on a grossly negligent or wilful breach of duty by BSS or a legal representative or agent of BSS.

9.2 In cases of damages caused by a minor negligent breach by BSS or a legal representative or agent of BSS, BSS will be liable only insofar as the damage is typical of the contract and foreseeable. In cases of minor negligence, however, BSS will not be liable above an amount equal to 50% of the order value.

9.3 For minor negligence, however, BSS will be liable for the breach of essential obligations of this contract whose fulfilment makes the proper execution of this contract possible in the first place, and on which the client does and can reasonably rely (cardinal obligations) as well as for damages resulting from loss of life, body or health.

9.4 BSS is not liable for damages resulting from the purchase item to legal property of the contractual party or third parties, for example damage to other property, loss of profits and financing costs as well as indirect damage, in particular due to operational standstills.

10. Withdrawal

10.1 Without prejudice to the legal reasons for withdrawal, there is a right of withdrawal for BSS in the following cases:

10.1.1 for supply difficulties due to extraordinary obstacles of considerable duration.

10.1.2 upon default of payment or

10.1.3 upon any application to open insolvency proceedings over the client's assets.

10.2 Without prejudice to the legal reasons for withdrawal within the limits of Figure 8, the purchaser has a right of withdrawal in the event of supply difficulties by BSS due to extraordinary obstacles of considerable duration.

10.3 The client is, however, only entitled to withdraw - for whatever reason - if it has previously given BSS a reasonable deadline for performance in writing, coupled with the threat to refuse the performance after the deadline (the threat of rejection). After this deadline the client can exercise its right of withdrawal within the next 10 business days. If the client does not exercise its right of withdrawal within this period, it is required to give BSS a further reasonable grace period for performance, with the threat of rejection.

11. Ban on offsetting, right of retention

11.1 The purchaser may only offset undisputed or legally established claims against BSS.

11.2 The rights to refuse performance and of retention are enjoyed by the purchaser only for undisputed or legally recognised claims against BSS.

12. Retention of title, insurance, legal costs

12.1 BSS will retain title of the delivered goods until full payment.

12.2 If the client is a company in the sense of § 14 BGB, BSS will retain title of the delivered item until payment of all existing receivables from the client and all future claims arising out of the business relationship (current account retention). The retention of title does not expire even if the purchase price is paid for certain deliveries designated by the client.

12.3 The client is required to treat the retained goods with care and to maintain them at its own cost. Maintenance and inspection work in this context are to be performed in accordance with the manufacturer's instructions.

12.4 The client is required to secure the retained goods against damage and keep them separated from goods owned by the client or third parties and to mark them accordingly.

12.5 With new goods the client is required to take out machinery insurance at his own expense for the replacement value of the retained goods, including in particular insurance against fire, water, breakage and theft. At the request of BSS, the client is required to provide evidence of valid insurance in accordance with Clause 1.

12.6 With used goods, the client is required to take out machinery insurance at his own expense for the goods retained, at fair value, including in particular insurance against fire, water, breakage and theft. At the request of BSS, the client is required to provide proof of insurance in accordance with Clause 1.

12.7 The client must ensure that markings on the delivered goods remain unchanged, and in particular are not obscured or defaced. At the request of BSS, the client is required to cite the ownership status of BSS by references in the business records and on the delivery item.

12.8 In order to verify the requirements of Figure 12.7, during normal business hours BSS is entitled to inspect the relevant business records of the client and to inspect the goods which are subject to retention.

12.9 If the client is in default with its payment obligation, BSS is entitled, after an appropriate warning, to collect the retained item. The collection of the item in accordance with Clause 1 will only constitute withdrawal if this has been expressly stated by BSS. The client is required to provide all necessary assistance action in accordance with Clause 1, and in particular the client must allow BSS access to the retained goods and eliminate any obstacles to their collection.

12.10 The client is only entitled to resell the retained goods in the ordinary course of business. The client is not entitled to resell the goods if a valid prohibition of assignment has been agreed between him and the purchaser.

12.11 With the sale of the goods, the client will assign all claims due to it from the sale or any other legal claim it has against its customer for the amount of the purchase price, or in the case of Figure 12.3 for the amount of the total claim (current account balance claim) with all ancillary rights, for safety's sake to BSS in advance and in full. The client remains entitled to collect the debt. BSS is entitled to collect the debt if the client fails to meet its payment obligations or an application is made for the opening of insolvency proceedings over the assets of the client. Only in the case of entitlement to collection by BSS must the client provide BSS with all the information necessary to meet the claim.

12.12 If the value of the existing securities exceeds the secured claims by more than 10%, BSS is required to release securities up to this limit at the client's request and at his discretion.

12.13 Without prejudice to Figure 12.10 the client may only transfer, pledge or make other disposition of the retained goods as collateral with the written permission of BSS. In the event of the client's breach of the contract, the entitlement to dispose under Clause 1 may be revoked.

12.14 If the retained goods are processed or remodelled by the client, this will always be for BSS.

12.15 The client is required to inform BSS immediately of any legal or actual hazards in terms of property rights, in particular any attachment or other third party access to the retained goods or damage to and any loss of the retained goods. The client is required to inform the third party of the ownership status of BSS insofar as is possible.

13. Severability clause, written form, additional agreements

13.1 If any provision of these General Terms and Conditions is invalid or unenforceable or becomes invalid or unenforceable after conclusion of the contract, the validity of the remaining provisions will not be affected. The invalid or unenforceable provision must be replaced by a valid and enforceable provision whose effects are closest to the economic aims of the parties in the invalid or unenforceable provision. The same applies in the event that the contract is found to be incomplete.

13.2 Additions, changes and any other ancillary agreements must be made in writing. The same applies to any change of this written form requirement.

14. Place of jurisdiction, applicable law

14.1 If the client is a merchant, a legal entity under public law or a public special fund, the exclusive venue for all disputes arising directly or indirectly from the contractual relationship is Eberswalde.

14.2 Eberswalde is also the exclusive place of jurisdiction if a client has no general place of jurisdiction in Germany, if a client has moved its place of residence or habitual residence abroad or if its domicile or habitual residence is unknown at the time of the proceedings.

14.3 The law of the Federal Republic of Germany is applicable, to the exclusion of the rules on the International Sale of Goods (CISG).

As of August 2014