

# SPARE PARTS BUSINESS

## General Terms and Conditions f

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Wilhelm Bahmüller Maschinenbau Präzisionswerkzeuge GmbH  
Wilhelm-Bahmüller-Straße 34  
73655 Plüderhausen

### I. General

1. The following terms and conditions shall apply to all the contracts entered into between ourselves and a Buyer. They shall also apply in those cases in which we do not specifically refer to them in sub-sequent contracts, unless the Buyer is not a registered trader within the meaning of the German Commercial Code [HGB]. The Buyer's general terms and conditions of Business shall not apply to us, even if we have not expressly rejected them.
2. Verbal side agreements must be confirmed by us in writing to be legally valid.

### II. Delivery period

1. The delivery period shall begin when the order confirmation is sent off, but not, however, before the Buyer has furnished any documents, licenses, clearances which may have to be obtained as well as any down payment which may have been agreed has been received by us.
2. We shall have complied with the delivery period if we have notified the Buyer that the goods are ready for dispatch or if the items to be supplied have left our works before the delivery period expires.
3. The delivery period shall be extended if measures are taken beyond our control in the event of labor disputes, in particular strikes and lock-outs as well as the occurrence of unforeseen hindrances, for example, operational disruption, delays in receiving consignments of important materials from sub-suppliers, provided that we can prove that such hindrances exert a considerable impact upon the delivery of an item to be supplied. This shall also apply if our suppliers (the Buyer's sub-suppliers) are affected by the circumstances. The delivery period shall be extended as appropriate for the duration of such measures and hindrances. We shall not be responsible for the circumstances described above even in cases in which they occur while we are already in default. We shall inform the Buyer of the beginning and end of such hindrances as soon as possible in important cases.

4. If the Seller is responsible for failing to meet the delivery dates, he shall only find himself in default, if the Buyer demands delivery once more by setting him a reasonable period of time within which to do so. If the Buyer is a registered trader, a legal entity established under civil law or public law or if the Buyer is a special fund under public law, claims for the reimbursement of default damages in cases of ordinary negligence shall not be admitted. If the Buyer wishes, in addition to this, to withdraw from the contract and / or demand compensation for damages instead of performance, he shall first of all have to set us a reasonable period of time to supply. If the Buyer asserts a compensation claim for damages instead of performance, the restrictions under Number IX b shall apply. If, while we are in default, it, by accident, becomes impossible to supply, we shall consequently be liable in accordance with the liability restrictions agreed above. Liability will not be admitted if the damage would have occurred even had we supplied on time.

### **III. Scope of delivery**

1. The scope of delivery shall be determined by our written order confirmation.
2. During the delivery period we shall reserve the right to carry out modifications to design or shape attributable to technical improvements or to statutory requirements, provided that the item to be supplied is not modified significantly and the Buyer can reasonably be expected to accept the modifications. The same shall apply for amendments to the scope of supply.

### **IV. Impossibility**

Provided that it is impossible for us to supply, the Buyer shall be entitled to demand compensation for damages in accordance with the statutory provisions. The compensation claim for damages in addition to, or instead of, performance and compensation for expenditure incurred in vain shall however be limited to 5 % of the value of that part of the delivery which cannot be used on account of impossibility.

The Buyer shall not be able to assert any additional claims on account of impossibility. This limitation shall not apply provided that impossibility has been caused intentionally or through gross negligence. If impossibility is attributable to force majeure, the Buyer's claims shall consequently not be admitted.

### **V. Cancellation costs**

If the Buyer withdraws from the contract without being entitled to do so, we may demand 10% of the sales price for the costs incurred in processing the order and for lost profit regardless of the option to assert a claim for actual damages incurred in they are in excess of 10% of the sales price. This does not invalidate any claim we may raise for higher actual damages.

## **VI. Packing and Dispatch**

A charge is made for the packaging, which becomes the property of the purchaser. Delivery costs and packaging are charged separately. The choice of method of dispatch shall be made by us in our best judgment.

## **VII. Acceptance and transfer of risk**

1. The Buyer shall be obliged to accept the items supplied. In the absence of an agreement otherwise, (E.g. delivery by us) handover shall take place in our Plüderhausen works. The Buyer shall be entitled to inspect the supplied item within 14 days from receipt of the notification that the goods are ready for dispatch or other notification that the item has been completed and is at the place of transfer. The Buyer is obliged to accept the item within the same period of time unless he is temporarily prevented from effecting acceptance without being to blame for this.
2. If the Buyer does not take delivery of the item to be supplied, the Seller may consequently assert his statutory rights.
3. Risk shall pass over to the Buyer when he takes delivery of the item to be supplied. If the Buyer states that he shall not take delivery of the supplied item, the risk of accidental loss or accidental deterioration of the supplied item shall pass over to the Buyer at the point in time at which he refuses to take delivery of the supplied item.
4. If it is agreed that we are to deliver, risk shall pass over to the Buyer when the thing is handed over to the freight forwarder. The goods shall be insured against damage caused by breakage, transport and fire at the written request and cost of the Buyer.

## **VIII. Price changes**

Prices may be altered if the period between conclusion of the sales agreement and the agreed delivery date exceeds 4 months. If between the expiry of this period and the date on which the goods are ready for delivery, either wages, the costs of materials or the cost price of goods increase, we reserve the right to raise the price appropriately, in line with the increase in costs. The customer may cancel the purchase only if the price increase significantly exceeds the increase in the general cost of living in the period between the placing of the order and the delivery date. If the customer is a trader, or is a legal entity in civil law or a public special estate, price increases on the grounds referred to above are permissible after a period of 6 weeks has elapsed between closure of the sales agreement and the agreed delivery date.

## **IX. Warranty / Liability**

1. During a period of time of 12 months from the passing of risk the Buyer shall initially be entitled to subsequent fulfillment (repair or delivery of a spare part). If he chooses to insist on his rights under warranty the Buyer shall have to observe the principle of proportion. In the event that a repair is carried out, we shall be obliged to bear all the expenditure necessary for the purposes of rectifying the defect, provided that the costs are not increased as a result of the purchased item having been moved to another location from the place of fulfillment. Expenditure shall include in particular transport costs, traveling expenses, labor and the costs of materials. Should subsequent fulfillment not be successful or be disproportionate, the Buyer may withdraw from the contract, or reduce the purchase price. The right to withdraw from the contract or to reduce the purchase price may only be asserted provided that he has insisted that we carry out a repair and set us a reasonable period of time within which to do so and the repair has not been successful.
2. Our liability, the liability of our legal representatives or assistants shall be limited to instances of intent or gross negligence. If we are in breach of important contractual duties we shall generally be liable in accordance with the statutory regulations. A compensation claim for damages shall however be limited to foreseeable damages typical for the contract. Liability for damages caused by the subject-matter of the contract to the Buyer's other legal rights is ruled out provided that the damages have not been caused intentionally or as a result of gross negligence. This arrangement shall also cover compensation claims for damages in addition to performance and compensation for damages instead of performance regardless of whatever legal rights upon which they are based, in particular on account of defects, the breach of duties under contractual obligation or on account of an unlawful act. It shall also apply for claims for the reimbursement of expenditure spent in vain.
3. Natural wear and tear shall never be covered by warranty. The same shall apply for minor discrepancies from the agreed condition or damages incurred after the passing of risk as a result of faulty or negligent handling or specific external influences, for which the contract made no provision. In the event of a defect attributable to faulty assembly, we shall only be obliged to honor our warranty if the assembly or installation of the sold thing was carried out professionally. The Buyer shall have to demonstrate and prove that the work was carried out professionally.
4. Damages incurred as a result of the Buyer furnishing insufficient or incorrect information about operational conditions, as a result of improper handling or mounting of contractual goods, as a result of excessive loads or which occur as a result of the Buyer or third parties engaged by him carrying out modifications or repairs to the contractual goods without our consent shall not be covered by the warranty.

## **X. Reservation of title**

1. Goods remain the property of the company until paid for in full.
2. In the event of the Buyer committing a breach of contract, in particular if he is in default with payment, we shall be entitled to demand the return of the subject-matter of the contract and / or to withdraw from the contract.

3. If we assert reservation of title or if we exercise levy of execution on the supplied items, this shall not constitute withdrawal from the contract, unless the statutory provisions stipulate otherwise or if we expressly state our withdrawal from the contract. If we assert reservation of title as well as if we exercise levy of execution on the supplied items against registered traders a legal entity under public law or a public law special fund, the following shall also apply:
4. The Buyer must not pledge the supplied items or assign them as a security. The Buyer shall have to inform us immediately if execution is levied on the supplied items or if they are subjected to other third party disposition as well as if bankruptcy proceedings or composition proceedings are opened on the Buyer's assets. The Buyer shall also have to provide us with all the information and documents we require to protect our rights.

## **XI. Liability as a result of tort / Product liability**

We shall not admit compensation claims for damages based on tort, unless the damage was intentionally caused by us or through our gross negligence. This shall also apply for acts carried out by our vicarious agents and assistants. In the event of death, personal injury or physical harm we shall be liable in accordance with the statutory provisions. In the event of product liability under the German Product Liability Act [ProdHaftG], we shall be liable in accordance with the statutory provisions.

## **XII. Prices, Terms and Conditions of Payment**

1. Prices shall apply ex Works, and invoices shall only be raised in Euros.
2. Prices exclude packing, freight, customs duties, fees incurred in particular for letters of credit, and other ancillary services which shall be invoiced separately. The rate of value added tax in force on the date on which an invoice is raised shall be charged. Payment is to be made as follows: 40% down-payment following receipt of order confirmation, 50% as soon as the Buyer has been notified that the main part of the order is ready for dispatch, the rest within one month of transfer of risk.
3. All payments are to be paid in full and without any deductions whatsoever within 30 days from the date of invoice.
4. The Buyer shall only be entitled to exercise a right to withhold payments and to offset them with counter-claims to the extent that his claims are not disputed are recognized by us or if they have been declared final and absolute in a court of law. Additionally, the Buyer is only authorized to exercise a right of retention to the extent that his counter-claim is based upon the same contractual relationship.

### **XIII. Place of fulfillment and Place of jurisdiction**

1. The place of fulfillment is Plüderhausen, provided that nothing has been agreed otherwise.
2. For all disputes arising from the contract legal action is to be taken at the regional court in Stuttgart if the Buyer is a registered trader, a legal entity under public law or a special fund under public law. We are also entitled to take legal action at the courts having jurisdiction where the Buyer's principal place of business is based.
3. Only German law shall apply while the laws governing the international sale of movable goods shall not be applied even if the Buyer has his principal place of business in a country other than Germany.

### **XIV. Other**

1. The assignment of the Buyer's rights and duties under the contract entered into with us shall be subject to our written consent to be legally valid.
2. Should a provision be or become void, the validity of the remaining provisions shall not be affected as a result.

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