

# Sales and delivery conditions BENZ GmbH Werkzeugsysteme, D-77716 Haslach

## II. General

1. The following conditions apply to our offers, sales and deliveries. Conditions of purchase of the orderer or otherwise are only binding for us if they were confirmed in writing by us.
2. Considering his conditions of purchase, references or counterconfirmations of the orderer are hereby expressly disagreed upon.

## II. Offer and conclusion of contract

1. Our offers are subject to change until acceptance by the orderer and can therefore be cancelled by us at any time until receipt of a written acceptance or until delivery of the article of sale.
2. Orders are binding only through our written acceptance of order or through our delivery of the articles of sale. The orderer is bound to his order/his offer for 14 days. This period starts with time of receipt of order. During this 14-day period we are authorised to decline the conclusion of this contract. If we do not make a denial during this period, or if the goods are delivered before the end of this period, the contract effects without our written confirmation of order.
3. Descriptions about weights, measures, capacities, prices, services mentioned in catalogues, brochures, newsletters, advertisements, illustrations, price lists and such are non-binding unless specifically mentioned in the contract. We are only bound to meet DIN-norms, designs, weight and measurement specifications, plans, if expressly agreed upon in writing. Otherwise the contracted characteristics of our products solely comply with our product description. One-sided expressed notions from the buyer remain out of consideration as well as advertising messages and other public comments of our company or of one of our suppliers.

## III. Prices

1. Prices are quoted ex works additionally to the appropriate value added tax in the Federal Republic of Germany. Additional costs for packing, transport, insurance, duty, etc. are billed at cost prices. This also applies to agreed partial deliveries and express items.
2. The prices mentioned in our offers/confirmations of order are subject to the existing calculations at the time of bidding. Should a considerable change of the commodity prices – at least 10 % - arise after conclusion of the order, we are entitled to raise the agreed prices by the proportionate additional expenses. Hereof the orderer receives notice.
3. The minimum order value is 50 Euros.

## IV. Deliveries

1. Our indications made in the confirmation of order are relevant for the volume of the deliveries, as long as there is no confirmation of order.
2. The orderer takes full responsibility for the accuracy of the documents to be delivered, like designs, devices, examples and such. All indications regarding measurements and such thing require written confirmation.
3. Examples are only delivered at extra cost.
4. Alterations due to technical development are reserved to the seller.

## V. Delivery time, delay, impossibility, purchase by issuing release orders, flat-rate compensation

1. Delivery time is the date that is set out in writing in our confirmation of order. Should the orderer not provide the documents in time, delivery time extends accordingly to the period of delay.
2. Delivery time is met, if the delivery item has left our factory before expiration of delivery time or we have provided the delivery items and informed the orderer of readiness for dispatch.
3. As far as the orderer suffers damages caused by our gross fault, our leading employees or our assistants, the orderer receives a flat-rate compensation to the exclusion of further claims including compensation for consequential damages for every full week of delay 0.5 %, but not more than 5 % total of the value of the specific part of the total delivery, which was not delivered in time due to the delay. Proof of a lower damage is reserved to us. For the rest cipher X applies.

## VI. Vis major/Right of self delivery

1. If we are inhibited with the fulfilment of our obligation after conclusion of contract caused by the occurrence of unpredictable, uncommon circumstances, which we could not prevent with reasonable care, specifically business disruptions, official penalties and interventions, delivery delays of essential resources, difficulties regarding energy supply, the delivery date extends - as far as these circumstances lead to a delay - to an adequate extent. If delivery turns out to be impossible because of these circumstances, we are free of delivery commitment.
2. In case of strike or lockout the delivery time extends adequately, if these events cause a delay. If delivery turns out to be impossible, we are free of delivery commitment.
3. If we prove that despite of our careful choice of suppliers and despite of conclusion of the required contracts at appropriate terms our suppliers do not deliver on time, the delivery date extends for the period of delay, which was caused by the delayed deliveries of our suppliers. In case of impossibility of delivery by the supplier we are entitled to withdraw from the contract.
4. If the obstruction in the cases of ciphers 6.1 to 6.3 lasts longer than 2 months, both contract parties are entitled to withdraw from the not fulfilled parts of the contract.

## VII. Payment

1. As long as the orderer is not in delay of payment from previous deliveries and as long as there is no considerable deterioration of the capital measures of the orderer, which would jeopardise our claim to payment, the orderer is entitled, to make his payment within 30 days starting with the particular date of invoice.
2. In case of unpaid invoices of the buyer, payments are used to cover the latest due claims.
3. If the buyer should fall behind, we are entitled, starting with the concerned date, to charge interests in the amount of the charged interest rate by the commercial bank for unpaid overdrafts, at least 3% above the particular baselending rate of the German Central Bank. These are to set lower, if the buyer can prove a lower debit.
4. If the buyer is in payment delay from previous deliveries or there is a considerable deterioration of the capital measures of the buyer after conclusion of the contract, which would jeopardise our claims for consideration, matching payment with delivery is to be made. The buyer can prevent matching payment with delivery by providing a security in the amount of the purchase price.
5. The orderer is not entitled to add up claims against us, provided that this claim is not indisputably or legally declared.

## VIII. Reservation of title

1. The delivered goods remain our title until payment of the full purchase price.
2. The buyer is entitled to resale of goods subject to retention of title in regular business connections; he is only entitled to a forfeiting or chattel mortgage with our agreement.
3. The claim of the buyer resulting from the resale of the goods subject to retention title the buyer assigns it to us; we accept the assignment. Albeit of the assignment and of our entitlement to collection the buyer is entitled for collection as long as he fulfils his obligations and does not fall into dwindling of asset.
4. On our demand the buyer has to make the required indications for a collection regarding the assigned claim, especially to inform us with a list of names and addresses of debtors, the amount of the claim and the date of invoice issue and to inform the debtors regarding the assignment.
5. The buyer makes a possible machining and processing of the goods subject to retention of title for us without resulting in obligations for us. With processing, combination and blending of the goods subject to retention of title with other, not to us belonging goods, we are entitled to a co-ownership share of the new object in relation to invoice value to the remaining converted goods at the time of processing, combination or blending.  
If the buyer acquires the exclusive ownership of the new object, the contract parties agree, that the buyer entitles us to co-ownership in relation to invoice value of the processed or combined or blended object and stores it free of charge.
6. If the retained goods are resold together with other goods and namely even if without or after processing, combination or blending, the above agreed assignment in advance is valid only for the amount of the invoice value, which is resold together with the other goods.
7. The buyer has to inform us immediately about foreclosure procedures through third parties of the retained goods or about the previously assigned claims by transfer of the necessary documents for an intervention.
8. The authorisation of the buyer for disposal of the retained goods and for collection of assigned claims expires in the case of the buyer's payment delay, bill protest, check protest, as well as dwindling of asset – especially with application of a composition and/or file for insolvency – of the buyer. In these cases we are especially entitled to take over ownership of the retained goods and the buyer is obligated to deliver the retained goods, without our obligation to declare the rescission from the contract. The buyer is also obligated to deliver the retained goods, if he has connected them with other moveable objects and a disassembling is required for delivery. This obligation is not valid only then, if our delivery item has become an essential part of a unitary object in terms of § 947 BGB. If the buyer is a general merchant, the retraction of the retained goods is only then a rescission from the contract, if stated by us explicitly.
9. We commit ourselves to release the owing deposits from the preceding provisions by our choice on buyer's request insofar, as its value does not exceed the claim at 10% or more.

## IX. Complaints and rights in case of deficiencies

1. The orderer is obligated to inspect our delivery items immediately after delivery for deficiencies. Within this inspection samples have to be taken.
2. Complaints due to incomplete or incorrect deliveries or due to according to cipher 9.1. mentioned obvious deficiencies have to be made immediately in writing and the concerning deficient parts have to be sent back to us on our request. We have to be informed immediately after discovery of hidden deficiencies, which are not visible by taking samples. If we are not informed of complaints or deficiencies in time, the delivery proofs authorised to the exclusion of claims resulting from incomplete, incorrect or deficient delivery.
3. The duty of inspection and notification also extends to assembly instructions and a too big or too small delivery.
4. If the delivery items are deficient or do not have assured characteristics or get damaged within the limitation period of 12 months for deficiency claims (excluded are wear parts), calculated from the date of delivery, we have – after our choice - to repair or deliver replacement in the case of deficiencies under exclusion of further rights of the buyer.
5. If we let expire an adequate additional respite, without having delivered replacement or having fixed the deficiency, or the remedy of defects fails, the orderer can choose between a claim of rescission from the contract or a reduction.
6. BENZ reserves the right to refuse acceptance of unauthorized return shipments to Haslach. Any and all costs associated with such a return are the responsibility of the customer.
7. The orderer has no claims in the case of deficiencies:
  - deficiencies caused by inappropriate handling or overstraining by the orderer or his customers;
  - if legal or our mounting and treatment instructions are not followed by the buyer or his customers, unless the deficiency does not result from this non-observance;
  - if the delivery item has been produced on the basis of the specifications, especially according to drawings, of the orderer, and the deficiency of the delivery item is caused by these specifications/drawings;
  - in case of solution of a construction requirement specified by the orderer, which was state-of-the-art at the time of realisation.

8. If the orderer has drawn on us due to rights in the case of deficiencies, and if it turns out that there is no deficiency or the claimed deficiency is caused by a circumstance, which does not obligate us to a warranty, the buyer has to compensate all caused costs.

## X. Other liability

The liability of the buyer complies solely with the agreements made in the preceding ciphers. All not expressly conceded rights, e.g. on delivery of an object free of deficiency, rescission from contract or reduction, as well as compensation of damages of every description, which were not caused by the delivery item itself, and regardless of which legal ground, are excluded. This exclusion of liability does not apply in the case of intent and gross negligence by legal representatives or assistants and culpably violation of essential contractual obligations (cardinal obligations). The exclusion of liability further does not apply in case of errors of characteristics, which are expressly assured, if the assurance aimed to ensure the buyer against damages, which were not caused by the delivery item and if the damage was caused by a circumstance, we have taken on warranty. The same applies, if a purchasing risk is put into effect, which we have expressly taken on. Finally the exemption from liability does not apply in cases, in which according to applicable country law a liability for damages exists, which cannot be excluded contractually, especially for product liability. The exemption from liability further does not apply to damages for life, body and health. Except for damages for life, body and health and intent and gross negligence of legal representatives or assistants, the extent of the damage, which has to be compensated, restricts to typical, predictable damages.

## XI. Violation of copyrights and industrial property rights of third parties

1. An examination, if the documents provided by the orderer do not violate rights of third parties, especially copyrights, industrial property rights (design patents, patents, samples, trademarks), is the responsibility of the orderer. If a claim is made on us by third parties because of the use, utilisation or duplication of the documents and samples provided by the orderer or because of violation of the law against unfair competition, the orderer has to support us against these violations and compensate all damage (including lawyer's and process costs) caused by this.

## XII. Transfer of perils

1. If the item is sent to the orderer by his request, the jeopardy of accidental loss and deterioration of the item of delivery devolves to the buyer with transfer to the carrier, shipper or haulier. This applies as well, if the delivery is not made from the place of delivery and/or if we carry the freight charges.
2. If the item is ready for delivery and the delivery is delayed for reasons the orderer is responsible for, the jeopardy devolves to the orderer with access of information of readiness for delivery.

## XIII. Place of delivery, applicable law, jurisdiction, written form and void in part

1. Place of delivery for payment and delivery is 77716 Haslach i.K.
2. The law of the Federal Republic of German applies for these sale and delivery conditions, as well as for the privities of contract resulting from this contract between the buyer and us.
3. Jurisdiction for all from this contractual relationship resulting indirect or direct disagreements is Offenburg. If we act as plaintiff, we are entitled – but not obligated – to call the responsible court of the buyer's domicile.
4. Additional agreements, provisions, alterations and amendments require our written confirmation.
5. Should a clause of these sales and delivery conditions or a clause within other agreements regarding the delivery contract be invalid or become invalid, the validity of all other clauses or agreements is not affected.

Commercial Registry: County court Freiburg i.Br. HRB 700693

Managing Directors: Oliver Baur

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