

## **GENERAL TERMS AND CONDITIONS of BEZNER Anlagen- und Maschinenbau GmbH Version 08/2013**

### **§ 1 General – Scope of Applications**

The Supplier's delivery conditions apply exclusively, also for all future deliveries to the Buyer. Changes to the delivery conditions only become applicable when the Buyer is informed thereof. The Buyer's Terms and Conditions of Business do not apply. All additional contracts made between the Supplier and Buyer must be made in writing. Agreements made individually apply solely to each individual delivery made. Delivery conditions apply only for business persons or companies in the sense of §§ 14, 310 I German Civil Code (BGB).

### **§ 2 Offer – Offer Documentation – Technical Amendments**

The Supplier's offer is subject to change, if not otherwise provided for in the order confirmation. The object of sale is exclusively the installation sold with the components listed, as well as characteristics and features and their intended use in accordance with the order confirmation and sales documentation forming a basis for it. The Supplier reserves the right to ownership and copyright of images, drawings, data on weight and dimensions as well as calculations. The Supplier reserves the right to make technical amendments, if they serve technical advancement, improved use and operating safety.

### **§ 3 Prices – Conditions of Payment**

In the absence of any special agreements, prices are valid "ex works" excluding packaging, which shall be paid separately. Value added tax will be added to the prices at the respective statutory amounts. Payments are to be made without discounts free of charges to the Supplier's paying agent, corresponding to deadlines and conditions agreed on an individual basis. Acceptance of cheques or bills of exchange shall be for the purposes of payment only and the Buyer shall bear the costs of collection and discounting. Should payments be delayed or deferred, default interest shall be calculated at the rate of 8% above the base rate of interest, §§ 247, 288 II BGB, without a separate notice of default becoming necessary. The right is reserved to claim for further damages. Offsetting with counterclaims is excluded, unless these are undisputed or have been declared as legally valid. The Supplier reserves the right to make reasonable price changes, if costs are reduced or raised after order confirmation, provided that proof of these can be given the Buyer upon request.

The reservation also includes adjustment of the total price if the amount of valued added tax is changed.

### **§ 4 Delivery Period**

The delivery period begins when the order confirmation is sent, however, not before all technical details have been settled. Compliance with the delivery period requires prior and timely fulfilment of all the Buyer's obligations regarding partial payments and duty to cooperate. Should the fulfilment of these obligations be delayed by the Buyer, the delivery period will be at least correspondingly postponed by the duration of the delay. The delivery period shall be delayed for a reasonable time in case of unforeseeable external events outside the Supplier's sphere of influence if it can be proven that these considerably affect the completion or delivery. This includes temporary hindrances to services by subcontractors or suppliers beyond the Supplier's control. In the event of proven fault, the Supplier is liable, with the exclusion of further claims, for compensation for the delay per completed week in the amount of 0.5%, however, for a maximum of 0.5% of the purchase price. Should dispatch be delayed for reasons within the Buyer's sphere of influence, the Supplier can charge for costs arising from storage, if the goods are stored at the Supplier's works, of at least 0.5% of the invoice sum per month as from one month after notification of dispatch readiness. Furthermore, the Supplier is entitled, after a reasonable deadline has been set and the deadline has elapsed to no effect, to make other use of the delivery item and to supply the Buyer again using a new delivery deadline. Partial deliveries are permissible.

### **§ 5 Transfer of Risk**

Risk is transferred to the Buyer when the parts are dispatched at the latest, also then, when partial deliveries are made or the Supplier has undertaken to provide other services, for example, dispatch costs, delivery or assembly. If the Buyer requests this, the Supplier shall arrange transport insurance for the delivery at Buyer's cost.

### **§ 6 Guarantee**

The rights of the customer with regard to defects are subject to his having duly met his responsibilities to check the consignment and to provide notification of defects as required by § 377 German Commercial Code (HGB).

were used in accordance with their usual purpose in a building and which cause the defect. These limitation periods also apply to

If there is a defect in the delivery, the Supplier is initially obliged, at his discretion, to remedy it by way of subsequent performance or supply defect-free items. The Buyer shall give the Supplier sufficient time and opportunity to carry out the necessary remedy of defects as well as to allow full access. The Supplier is obliged to remedy defects during his normal business hours only. The Supplier shall bear necessary expenses required for the subsequent performance, if these are not increased by the item having been transported to a different location than the Buyer's registered business address after delivery. If subsequent performance is not successful, the Buyer is entitled to withdraw or to demand a price reduction at his discretion. For essential outside products/outside spare parts and their faulty material, the Supplier's liability is limited to the assignment of the liability claims that he is entitled to from the supplier of the outside goods. In the event of a withdrawal, the Supplier is entitled to demand reasonable compensation for the use obtained by the Buyer from the object of the contract until the withdrawal has been realised.

Compensation for use is calculated on the basis of an overall utilisation period for the object of the contract, after deduction of an appropriate reduction corresponding to the extent to which the use was restricted. Liability is excluded for consequences ensuing from changes or maintenance work carried out improperly by the Buyer or third parties without previous consent from the Supplier, especially for installation or use of spare parts or accessories which were not bought from the Supplier. The guarantee for material defects is also excluded for the case that assembly work requested by the Buyer, and not carried out by the Supplier or his vicarious agents, is improper, and for the case that technical instructions for use or maintenance recommendations from the Supplier are not followed. If the Buyer makes an unjustified claim for defects, the Buyer shall carry the costs for remedying the defect, if he was not aware of it not being a guarantee claim due to gross negligence.

Claims for defects become subject to a limitation period 12 months after delivery, unless we had caused the defects through gross negligence, intent or fraudulent concealment. This limitation period also applies to claims from any guarantees given by us or which bind us, if nothing to contrary arises thereof. The statutory deadlines for the right to recourse in accordance with § 478 BGB remain unaffected; the same applies for longer statutory limitation periods and for the erection of buildings or delivery for goods that consequential harm caused by a defect, provided that these are not asserted on the basis of unlawful acts. Should subsequent

performance be necessary due to a defect in the delivery, the limitation period up to subsequent performance shall only be interrupted and not recommenced.

#### **§ 7 Liability - Compensation**

The assertion of damage compensation claims or claims for expenses (in the following "compensation for damages") due to defects in the goods delivered, (claims for defects) is excluded if the Supplier cannot carry out subsequent performance for reasons beyond his control.

The assertion of claims for compensation for defects and consequential harm caused by a defect resulting from the delivery of defective goods is in principle conditional on the Supplier having caused the defect by intent, gross negligence or a negligent material breach of duties unless otherwise agreed. The same applies for the assertion of compensation claims for a breach of a guarantee of durability given by us or for us (§ 443 Para 2 BGB).

Otherwise, claims for compensation for damages and compensation for expenses ("claims for compensation for damages") are excluded on the part of the Buyer, irrespective of the legal basis, especially due to breach of obligations from and in connection with the contractual relationship, due to any fault prior to or at the time the contract was concluded, or unlawful acts.

This does not apply to claims in accordance with §§ 1, 4 German Product Liability Act, in cases of intent or gross negligence, injury to life, body or health-related injuries, due to the takeover of a guarantee for the existence of a certain quality (quality guarantee) or a negligent material breach of duties. Under no circumstances shall the Supplier be liable beyond statutory obligations.

In the event of simple negligence, the Supplier's liability is limited to foreseeable and typical damages.

If the Supplier's liability is excluded or limited, this also applies for the personal liability of his employees, workers, colleagues, representatives and vicarious agents.

Changes in the burden of proof are not connected to these regulations.

The limitation period of claims between Supplier and Buyer is based on § 6, last paragraph, unless claims from manufacturer's liability in accordance with § 823 ff. BGB or the Product Liability Act are concerned. This limitation period additionally applies in particular for consequential harm caused by a defect.

#### **§ 8 Retention of Title**

The Supplier retains ownership of the delivery item until all claims have been paid for, accrued at the time that the contract is actually concluded, including all claims from follow-up orders, reorders and spare part orders. If the Buyer acts in a way contrary to the contractual obligations, especially if there is a default in payment, the Supplier is entitled to set a deadline for the performance and then to withdraw from the contract. The Buyer is obliged to treat the delivery item with care. The Supplier is entitled to insure the delivery item at Buyer's costs against fire, water, theft – and other damages during the duration of retention of title to cover the replacement value, if the Buyer has not already taken out insurance himself. The Buyer shall carry out maintenance and inspection work during the period of retention of title at his cost and in good time. In the case of seizure of the goods or other interventions by third parties the Buyer shall inform the Supplier in writing without delay, so that the Supplier can proceed in accordance with § 771 Code of Civil Procedure (ZPO). Should the third party not be in a position to reimburse total costs of an action in accordance with § 771 ZPO, the Buyer shall be liable for the loss. The Buyer is only then entitled to resell the delivery item during the period of retention of title, if the Supplier has agreed to this in writing. In the event of this, the Buyer assigns all claims to the Supplier up to the amount of the delivery price agreed between Supplier and Buyer accruing to him from the resale to third parties, including value added tax, regardless of whether the item delivered has been resold without or after processing. The Buyer shall continue to be entitled to collect such claims in favour of the Supplier after they have been assigned, whereby the Supplier's authority to collect the claims himself shall remain unaffected. However, the Supplier agrees not to collect the claims as long as the Buyer fulfils his payment obligations, does not default on payment or become over-indebted, in particular, if no application has been made to begin settlement or insolvency proceedings. Should this be the case, the Supplier can demand that the identity of the assigned claims and the debtors be revealed, all information necessary for collection be given, the appurtenant documents be handed over and the assignment notified to the third party/debtor. The Supplier agrees to release those securities due to him at Buyer's request, to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10%; the Supplier shall be responsible for selecting which security shall be released.

#### **§ 9 Supplier's Reservation to Right of Withdrawal**

The Supplier reserves the right, at his discretion, to withdraw or demand that securities be provided for the delivery, if there has been a deterioration in the Buyer's assets after conclusion of the contract, especially insolvency or over-indebtedness, or if the Supplier, through no fault of his own, subsequently comes to know of a deterioration in the Buyer's assets existing at the time when the contract was concluded. Expenses incurred by the Supplier on the assumption that the contract would be concluded shall be reimbursed by the Buyer.

#### **§ 10 Withdrawal and Termination by the Buyer**

Should the Buyer withdraw from or terminate the contract without justification, he is obliged to pay compensation to the Supplier for all services provided until that time. The Supplier is entitled to demand a lump sum for compensation for damages or compensation for the loss of value of up to 20% of the order sum. The Buyer is expressly permitted to provide evidence that damages or loss of value did not occur at all or are considerably lower than the lump sum demanded.

#### **§ 11 Place of Jurisdiction**

The place of fulfilment for delivery and payment, as well as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Ravensburg. The Supplier is, however, also entitled to bring an action against the Buyer at his registered business address. German law applies exclusively to the contractual relationship.