

# General Conditions of Sale

## 1. Scope

Any orders to and contracts made with Bauer shall be subject to the Terms and Conditions set out in the following except those consented to and agreed by Bauer in writing. Bauer will not accept any conditions of purchase to the contrary the Client may propose even if Bauer should not expressly object to such conditions. The Conditions of Sale shall apply to any enterprise, persons of public law and to any special entity of public law as there may be.

## 2. Offers and contracts

Any of Bauer's offers are subject to change until accepted by the Client. Bauer will not accept and perform against any of the Client's orders unless confirmed to the Client in writing. Any verbal stipulations shall be binding to Bauer only if confirmed in writing. The minimum value of any merchandise order shall be €100,-, even for orders amounting to less than that. Any information and illustration shall be considered approximate only unless Bauer expressly confirms them in writing to be binding.

## 3. Pricing

Any of Bauer's prices shall be in Euro ex works and shall be considered valid as on the day of contract. Such prices will not include any sales tax, packaging, freightage, postage and insurance.

If, for delivery times agreed to be longer than four (4) months following the date of contract, any of Bauer's acquisition and/or production costs (as a consequence of increasing or decreasing wage or material costs or public taxes or levies) should change and such change can be evidenced then Bauer shall have the right of adjusting the price correspondingly.

## 4. Long-term and call contracts

Either party observing a six (6) months' period of notice may terminate any contracts made for indefinite periods of time. In the event that any aggregate order quantity cannot be agreed on then Bauer will have the right of basing its pricing upon on the target quantity value anticipated by the Client for a definite period of time. If the Client should buy less than such target requirement then Bauer may increase the unit prices proportionately. If the Client should buy more than such target requirement then Bauer will examine the possibility of adequately abating the unit price provided that the Client announces such additional requirement not less than six (6) months prior to the date of despatch. In the case of delivery by call the Client, unless otherwise agreed, shall notify Bauer thereof not less than three (3) months prior to the delivery date due before each call of any definite requirement. Any additional costs caused by the Client as because of delayed call or subsequent modification in terms of time or quantity shall be at the Client's expense and shall be accounted for on the basis of Bauer's pricing,

## 5. Delivery

Unless otherwise agreed, Bauer will ship the merchandise ex works. Delivery time shall commence on the forwarding date of Bauer's order acknowledgment. Observance of such time of delivery shall be contingent on the timely receipt of any and all documentation, approval, clarification and approval of the Client's drawings and upon the Client's observance of any agreed mode of payment and any other obligation. In the event that any of such prerequisites should not be met the delivery time shall be extended adequately. Bauer may supply partial shipments to a reasonable extent, such partial shipments to be invoiced separately. Bauer may supply shortage or overage lots in reasonable quantities within a range of ten (10) per cent of the total order value if warranted by the prevailing production situation, the total price then varying in proportion to such quantities. In the event of force majeure or acts of God according to Article 13 hereof such delivery time shall be reasonably extended. The Client shall be entitled to withdraw therefrom only if Bauer is responsible for such delay of delivery and if the Client has fruitlessly notified Bauer to repair or make good such delay within four weeks following such delay. Upon expiration of such period the Client shall, upon Bauer's demand, declare within a reasonable period, whether the Client would either elect to withdraw therefrom and/or require damages in place of Bauer's performance hereunder or if the Client insists on such performance. Any claim for damages resulting from such delay and for damages in place of the performance hereunder shall be limited to a contract-typical, rea-

sonably foreseeable amount of damage except in cases of gross negligence on the part of Bauer's legal representatives or agents.

## 6. Shipment, risk and acceptance

The risk during transit shall be borne by the Client even if freight-prepaid shipment has been stipulated. The Client's risk shall begin at the time the shipment has left Bauer's premises. If any shipment has been delayed by the Client's request or fault, the risk shall pass to the Client at the time of Bauer's notice of despatch. Bauer will neither be responsible nor liable for any loss or damage during transit. Bauer will effect its shipments to the best of its expertise and not necessarily by the least costly way, unless special modes of shipment have been stipulated. The shipment shall be insured for damage in transit only on the Client's request and at the Client's expense. Any packaging and crating materials will be charged to the Client at cost prices, and the material will not be refundable. If some acceptance procedure has been stipulated such procedure shall be carried out at Bauer's premises immediately after Bauer's notice of despatch, with the Client bearing the cost of such acceptance. If such acceptance is performed, not performed promptly or incompletely, then Bauer shall have the right to ship the merchandise without the Client's acceptance inspection or to warehouse the merchandise without such inspection at the Client's cost and risk. The risk in such cases beginning from the time of despatch or warehousing, shall be borne by the Client.

## 7. Payment

Bauer's invoices shall be paid in full within a period of thirty (30) days following delivery. In cases of default Bauer shall have the right to charge interest in the amount of the rate the bank would charge to Bauer in handling current accounts, but not less than eight (8) per cent above the basic rate promulgated by Deutsche Bundesbank. In addition, the Client shall repair and make good the damage caused by such default. Any bills of exchange or cheques will be honoured only upon prior agreement and only by way of fulfilment and on condition of their discountability. Any discounting and/or other expenses as well as collection costs shall be paid by the Client.

The Client may set off against Bauer's claims any claims it may have, but only if such claims as are undisputed, legally established, ready for decision upon or based on a right of retainment and as pertain to one and the same contract. In the case of default Bauer may suspend, upon written notice to the Client, the fulfilment of its obligations until the end of such default. If Bauer, after termination hereof, should learn from some reliable source that its payment claim could be jeopardised by the Client's inability to pay, the Client is in default with the payment of earlier invoices, bankruptcy proceedings have been instituted, ceases its payments and/or swears an insolvent-debtor's oath, Bauer shall have the right to refrain from supplying further merchandise and to grant the Client a reasonable period of time within which to effect partial payments or offer suitable guarantee. If the Client refuses to comply or upon fruitless expiration of such deadline, Bauer may withdraw herefrom and claim damages in place of its performance hereunder. If any insolvency or bankruptcy proceedings on the Client's assets had been instituted, Bauer may withdraw herefrom without observing any period of notice.

## 8. Reservation of title

Any merchandise supplied by Bauer shall remain Bauer's property until the time the Client has satisfied any and all of Bauer's claims arising from the business done with the Client, including any collateral claims or claims for damages. Where Bauer's merchandise is incorporated in or connected with other movable objects to form one unit, such other object forming the principal unit, the Client shall confer to Bauer in the principal unit a proportionate share in the amount of Bauer's claim, the Client being obliged to safeguard such property. Otherwise, the same shall apply to such combination as does to the separate property.

If the Client is in default, the Client shall render to Bauer the separate property even if Bauer should not withdraw from the Contract. In such event the Client shall irrevocably permit Bauer to recover such property forthwith and for such purpose permit unobstructed access to the Client's premises. The assertion by Bauer of its reservation of title and the lien on the separate merchandise shall not be construed as withdrawal from this Contract. Upon seizing such separate property, Bauer shall have the right to freely dispose of it. Bauer will set off any proceeds gained from such disposal against the Client's debt less any adequate recovery expenses.



If the Client does not sell Bauer's merchandise, processed or not, then the Client shall cede to Bauer on the date of contract any claims accruing to it against any of its customers up to the amount of Bauer's claims.

The Client shall then be entitled to collect any of its claims beyond such amount to the extent the Client meets its payment obligations. In the case of the Client's default, Bauer shall have the right to revoke its collection authorization and to require the Client to lay open such cession to any of its customers and to provide Bauer with any required documentation and information as Bauer may be need for asserting its rights. The Client shall not pledge or offer for guarantee any of the separate property. The Client shall notify Bauer forthwith of any execution proceedings that may be instituted by others to affect such separate property, any claims ceded to Bauer or any other guarantees and to provide Bauer with any documentation and information needed for intervention.

If the total negotiable value of the guarantee for the secured claims exceeds ten (10) per cent, Bauer will, upon the Client's request, release to that extent the guarantees at Bauer's option.

#### **9. Property of documentation; secrecy**

Any drawings, illustrations, samples, sales literature and any other documentation pertaining to the merchandise or its production as may be handed by one party to the other shall remain the property of the rendering party. Any party may use the documentation of the type referred to in Par. 1 hereof and received in the course of mutual business for the common purpose only. Each party shall keep such documentation secret if the other party declares it confidential or if it has an obvious interest in such secrecy. This obligation, however, shall not apply to any documentation that belongs to the public domain or that, at the time of its receipt, had been known to the other party while it had not been aware of such obligation.

#### **10. Samples and production means**

Any production costs for samples and production equipment such as tooling, moulds, fixtures etc. shall be invoiced separately if nothing has been agreed to the contrary. This shall also apply to any production means that must be replaced owing to wear. Such production means, even if paid for by the Client, shall remain Bauer's property. Bauer will safeguard such production means free of charge for a period of three (3) years commencing from the date of the latest shipment to the Client. Bauer's safeguarding obligation shall expire when the Client, in spite of being given notice thereof, does not respond to same within a reasonable period of time or does not place any new order.

#### **11. Complaints**

The quality of the merchandise will be governed solely by the engineering specification agreed between the parties. If Bauer is required by the Client to deliver in compliance with the Client's own drawings, specifications, samples etc., then the Client shall bear the risk of suitability for the intended use.

Any of the Client's complaints about defects as to weight, number, price and quality shall, if such defects are obvious, be forwarded in writing within eight (8) days after receipt of the respective shipment. Any hidden defects shall be reported eight (8) days after their discovery. This also applies to clients with their registered office in other countries. Otherwise, the merchandise shall be deemed accepted.

The Client shall afford Bauer the opportunity to check upon any complaint and in particular the integrity of the merchandise and its packaging. In the case of refusal of such opportunity Bauer will be exempt from its liability. Bauer will not be liable for any damage to the merchandise caused by natural wear and tear, inappropriate use or handling, abuse or inappropriate modification or repair by the Client or others. The same applies to defects which impair the value or usefulness of the merchandise to a negligible extent only.

If a complaint is justified and founded, the Client may, at Bauer's option, have the merchandise either repaired or replaced without charge. Any merchandise so replaced will become Bauer's property. If such repair or replacement is not feasible, fails or cannot be effected within a reasonable period of time to be defined by the Client, the Client may either terminate the contract or have the purchase price of the merchandise abated. Any claims of the Client arising from expenditures incurred in conjunction with such repair or replacement shall be excluded to the extent such expenditures may increase because the merchandise, after its delivery, had been transferred to a place outside of the Client's premises except if such transfer is warranted by the intended use of the merchandise.

Any further claims of the Client, especially for damages in place of the performance hereunder and for indemnification of any other direct or indirect damage also from fault at the execution of the Contract or from any illicit act and for compensation of expenditures shall be excluded. This shall not apply, however, if Bauer has taken any guarantee for the quality of the merchandise, the damage is caused by intent or gross negligence of our legal representatives or agents or by culpable violation of some essential contractual obligation by our legal representatives or agents resulting in physical injury or loss of life. In the event of property or financial loss, however, Bauer's liability will be limited to the amount of contract-typical foreseeable damage. This shall not affect the legal regulations covering the burden of proof. The clauses herein shall apply correspondingly for the Client's direct claims against our legal representatives or agents. Any claims raised by the Client, including those for damages and expenditures, shall become null and void one year following delivery of the merchandise to the Client. This will not apply if the law provides for a longer period.

#### **12. Intellectual property of others**

If the merchandise is produced according to engineering or design specified by the Client (by means of drawing, sample or particular specifications) the Client shall ensure that such design will not impair or violate any rights of others and specifically patents, registered designs, copyrights and other rights. The Client, upon first written request, shall hold Bauer free and harmless of any claims from others which may arise from such violation of rights.

#### **13. Non-feasibility, force majeure**

Bauer may withdraw herefrom if it should emerge in the course of production that Bauer cannot produce the merchandise owing to the Client's specific requirements. In such event Bauer will forthwith notify the Client of the production problem and will promptly refund the Client with any down payment immediately after such withdrawal. In such event the Client shall not be entitled to any claims for damages or restitution of expenditures except if Bauer knew of such problem or did not realise the problem by gross neglect. In case of force majeure, acts of God, strike, civil commotion, acts of authorities, default of sub-contractors or other grave, unforeseeable, unpreventable events the parties hereto shall be exempt from meeting their obligations for the duration of the disturbance and within the scope of their effect. This shall also apply if such events occur when the party concerned is in default, except that such party had caused such default by intent or gross neglect. In such event the parties shall issue pertinent notice as may reasonably be given and shall adapt in good faith their obligations to the changed circumstances.

#### **14. Protection of data**

All of Bauer's data will be electronically processed within the scope and intent of the Contract. Bauer will comply with the provisions of "Bundesdatenschutzgesetz" (Federal Act for the Protection of Data) when using and processing any person-related data.

#### **15. Final provisions**

The Client may transfer any rights accruing herefrom to others only with Bauer's consent. The contractual relationship between Bauer and any non-German Client shall be governed by the law of the Federal Republic of Germany applicable at Bauer's registered office. The United Nations Convention of 11 April 1980 (CISG) governing contracts on international purchase of goods, however, shall not apply.

The place of performance for the bilateral obligations hereunder and also for bills of exchange and cheques shall be Welzheim. The legal venue shall be, at Bauer's option, the regional court (Landgericht) of Stuttgart, also for cheque and bill-of-exchange actions, if the Client is a qualified merchant, a legal person, a person of public law or a public-legal special property administration. Bauer will also have the right to file any suit or action with a court of justice at the Client's location. The ineffectiveness of any of the above clauses and provisions shall not affect the validity and effectiveness of the remaining clauses.

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