



Terms of Sale and Delivery

I. Formation of the contract

1. The following Terms of Sale and Delivery are authoritative for all offers, deliveries and performance of BAE Batterien GmbH.
2. These Terms of Business shall also apply to all future business relations of a comparable nature between the customer and us, irrespective of whether reference is expressly made to the said terms once again upon the formation of the contract.
3. Unless otherwise expressly stipulated in the offer, all our offers are made without obligation. A contract shall only come into existence if we confirm the customer's purchase order in writing or execute the delivery (or performance) without separate confirmation.
4. Supplements, amendments or ancillary agreements to these terms, unless they are effected by the management or executives of the user, must be confirmed in writing to be effective. This shall also apply to the rescission of the requirement of the written form.
5. Unless otherwise expressly stipulated, we reserve technically necessary or advisable alterations as well as customary deviations and DIN tolerances within the scope of customary commercial practice and taking due account of the customer's interests.

II. Dates and deadlines

1. Dates and deadlines for our deliveries are only binding if we have expressly confirmed them to be binding. Delivery periods shall commence as soon as agreement has been reached on all details of the execution and the customer has provided the documents, details, permits and clearances which are to be obtained by the customer. Failure to cooperate and alteration wishes by the customer shall result in a reasonable extension of the delivery periods and dates.
2. Unforeseeable and unavoidable events (e.g. war, war-like situations, energy or raw material shortages, strikes, lock-outs and other interruptions to production for which we are not responsible) shall release us for the duration from the obligation to effect delivery (and performance), namely also if they occur during an already existing delay. Delivery periods and delivery dates shall be extended in a reasonable manner. This shall also apply to deliveries or performance which are not made in due time or which are not made in a due and orderly manner by our suppliers for which we are not responsible. If the customer cannot reasonably be expected to accept the delay, taking due account of our interests, then it shall be entitled to withdraw from the contract by written declaration. The same shall apply accordingly to withdrawal by us. If a delivery (or performance) date is culpably exceeded by us and if a reasonable additional period, which is to be set thereafter by the customer, has elapsed without delivery or performance being effected, then the customer can withdraw from the contract. In the case of a delay with regard to a part delivery (or performance), this shall, however, only apply if the partial performance is of no interest to the customer.

III. Delivery and passing of risk

1. Place of performance is our works or warehouse. Risk shall pass to the customer as soon as the goods leave our works or warehouse, namely also if part deliveries are effected or if we have assumed other services (e.g. shipment or the assumption of the shipping expenses). The respectively agreed option of Incoterms 2000 shall apply to foreign transactions.
2. We are entitled to effect part deliveries (or performance).
3. The customer is obliged to accept the deliveries. If delivery cannot be effected for reasons for which the customer is responsible or if it does not accept a delivery without adequate reason, then it shall bear the expenses for the unsuccessful offer and for the safekeeping (also in the form of storage) and maintenance of the subject-matter of the delivery. After the fruitless expiry of a reasonable additional period which is to be set by us, we shall be entitled – notwithstanding our other rights – to withdraw from the contract or to demand damages due to non-performance. Section IV.7. shall apply accordingly. We are entitled to charge storage and delivery costs as well as other expenditure at a flat rate of 0.5 % of the invoice sum for every commenced month, unless a lesser loss is proved.

If the delivery cannot be effected due to reasons in the responsibility of the customer, the BAE Batterien GmbH shall be entitled to render account.

4. Unless as otherwise proved, the values determined by us before the readiness for shipment shall be authoritative for unit numbers, weights and dimensions of the deliveries.

IV. Prices and payments

1. Our prices are net prices. Unless otherwise expressly agreed, they do not include the respective statutory turnover tax, duties, carriage, special packaging, erection, assembly and additional insurance.
2. Unless otherwise expressly agreed, the prices are binding for a period of three months after the date of the confirmation of order (Section I.3.). We shall thereafter be entitled to invoice additional costs incurred by us – to a reasonable degree – according to the current price lists to the customer.
3. Unless otherwise agreed, payments are to be made within 30 days after the invoice date without deduction. The time from when we can freely dispose of the effected payment shall be authoritative. Bills and cheques shall only be accepted by special arrangement and free of costs and charges for us.
4. In the case of default in payment by the customer, we shall be entitled – at our option – to demand interest rates amounting to the main refinancing rate of the ECB + 5 % or substitution of the exactly stated loss incurred by us as a result of the default.
5. If the customer is in default in payment and if a reasonable additional period set by us has elapsed in vain and also in the case of the refusal to effect performance by the customer, we shall furthermore be entitled – at our option – to withdraw from the contract, to demand flat-rate damages in the amount of 30 % of the agreed order value or reparation of the exactly stated loss caused by the non-performance. If we assert the flat-rate damages, the customer shall be entitled to prove a lesser loss.
6. The customer shall only be entitled to a right of set-off or retention against our claims if its counter-claims are undisputed and have been recognised by declaratory judgment.
7. We are entitled to assign the claims from our business relations. Place of jurisdiction shall in this case at our option be the seat of the BAE Batterien GmbH.

The customer shall receive corresponding written notification if the claims against a customer are assigned.

In these cases, all payments are to be effected in satisfaction of the debt to the party to which the current and future claims from our business relations with this customer were assigned.

Our reservation of title shall pass in these cases to the party to which the claims were assigned.

If the purchaser is in default in respect of us with any payment obligations whatsoever, then all existing claims shall fall due immediately.

8. All payment deferrals, irrespective of whether they were expressly or tacitly (e.g. by the acceptance of a cheque or bill) agreed, shall become void in the case of default in payment, cessation of payments or bill or cheque protests.

If the customer's financial situation markedly deteriorates after the conclusion of the contract, if we only become aware of a previously occurred deterioration after the conclusion of the contract as well as in the case of the non-compliance with payment dates from the same legal relationship (all claims within an ongoing business relationship), we shall be entitled only to undertake outstanding deliveries or performance against advance payment or the provision of security.

V. Warranty

1. We warrant within the scope of the following provisions that the supplied articles and the rendered performance are free from defects at the time of the delivery or performance which cancel or more than only insignificantly reduce the value or the suitability for the customary use or for the use presupposed according to the contract and that any guaranteed characteristics are provided. We afford no warranty for wear and tear due to normal use and for defects caused by improper use or improper storage or processing. The warranty right shall expire in the case of interventions or other manipulations by the customer or by third parties commissioned by it.
2. Unless expressly denoted to be a "guaranteed characteristic", all details on our products, especially the illustrations, drawings, weights, dimensions and performance details contained in our offers and printed material, are not guaranteed characteristics, but rather only descriptions or denotations. The same shall apply accordingly in the case of the delivery of samples or specimens.

3. If samples or specimens were previously provided, the customer must examine the goods without delay after delivery and must inform us without delay in writing of any thus recognised defects. Defects which cannot be discovered upon delivery, even with careful checking, must be notified to us without delay in writing after discovery. Otherwise, the goods shall be regarded to be authorised.
4. We shall provide warranty – at our option – in the form of subsequent rectification or substitute delivery of the faulty articles which prove to already have been faulty during the period of warranty and shall assume the accordingly incurred shipment, travelling, labour and material costs provided that the cause of fault already existed at the time of the passing of risk. The expenses for shipment, transport, labour and material will be borne by us in this case. If the expenses are increased due to the fact that the articles have been taken to a place after delivery other than the customer's commercial place of business, the customer shall bear the additional expenses, unless the removal of the articles corresponds to due and orderly use.
The costs incurred by unjustified complaints shall be exclusively borne by the customer.
5. Unless an installation has been agreed, the warranty period shall start at the time of the collection of the goods by the customer or the dispatch of the goods ex works. Claims for material defects shall become time-barred after 12 months.
6. We shall provide warranty – at our option – in the form of subsequent rectification or substitute delivery of the faulty articles and shall assume the accordingly incurred shipment, travelling, labour and material costs. If the expenses are increased due to the fact that the articles have been taken to a place after delivery other than the customer's commercial place of business, the customer shall bear the additional expenses, unless the removal of the articles corresponds to due and orderly use.
The costs incurred by unjustified complaints shall be exclusively borne by the customer.
6. If the subsequent rectification or substitute delivery fails, the customer shall be entitled to demand a reduction of the remuneration or the rescission of the contract. Instead, the customer can demand damages if guaranteed characteristics are lacking. If several articles are to be supplied, the rescission of the contract can only be demanded regarding the faulty articles, unless the delivery articles are sold as one unit.
Unless otherwise stipulated in these Terms of Sale and Delivery, more extensive claims are excluded.
7. Defects shall only entitle the customer to withhold payments if they are undisputed or have been recognised by declaratory judgment and in so far as the withheld sum is proportionate to the defect.
8. The use of the supplied articles shall be the sole responsibility of the customer. Unless otherwise expressly stipulated, application-related advice, information and assistance are non-binding.

VI. Reservation of title

1. We reserve title to the supplied articles and to the articles created from their treatment and processing until the satisfaction of all our, also future, claims against the orderer – also in so far as such claims are only established after the conclusion of the contract. In the case of a current account, the reserved title shall apply to safeguard the balance claim to which we are entitled.
2. Treatment or processing is only permitted within the scope of the ordinary course of business and shall be effected by the customer for us, without us thus incurring obligations. If processing is effected with other products which have similarly been supplied subject to extended reservation of title, then we shall acquire co-ownership of the new articles in proportion to the gross sales price stipulated between us and the customer to the corresponding purchase price of the other products.
The customer already now assigns to us its co-ownership shares which are created by any joining, mixing or combining of our products with other articles.
The customer shall possess the articles in our sole and co-ownership (products subject to reservation of title) as custodian for us with the due care of a prudent businessman.
It must comprehensively insure the products subject to reservation of title and already now assigns to us its claims from the respective insurance policy in proportion to our (co)-ownership share to all (co)-ownership shares of the product subject to reservation of title in question.
3. The customer is – subject to the following sentence – not entitled to transfer the products subject to reservation of title or to pledge them or to dispose of them in another manner. Sale is only permitted in the ordinary course of business and only if it is guaranteed that the thus resulting claims shall pass to us. The customer already now assigns to us by way of security the claims to which it is entitled from the sale or due to another cause in law relating to products subject to reservation of title. If it sells the products subject to reservation of title after treatment or processing or after joining, mixing or combining with other products, or together with other

products, then the assignment of the claim shall only be regarded to be stipulated in the amount of the part which corresponds to the gross purchase price stipulated between the customer and us plus a safety margin of 10 % of this price.

If the assigned claim is included in a current account, then the customer already now assigns to us a share of its respective balance claim, including the final balance, in the amount of the claim.

The customer is authorised to collect the claims assigned to us. We can revoke this authorisation and also the entitlement to resell the products subject to reservation of title at any time if the customer does not meet its obligations towards us.

4. The customer is obliged to provide us at all times with all desired information on the products subject to reservation of title and on the claims assigned to us. At our request, the customer must inform the debtors of the assignment. The customer must inform us immediately, duly submitting the necessary documentation, of seizures of or claims on products subject to reservation of title and assigned claims by third parties. It shall immediately inform the third party of our extended reservation of title. The costs of defensive action against such seizures shall be borne by the customer.
5. If the value of the securities exceeds our claims according to Subsections 1 and 3 on a sustained basis by more than 10 %, then we shall accordingly release the securities of our choice at the customer's request.
6. If the customer is in default with its obligations towards us, then we – notwithstanding our other rights – can take back the products subject to reservation of title and use them and the assigned claims in another manner by way of satisfaction of due claims against the customer. In this case, the customer shall grant us or our authorised representative immediate access to the products subject to reservation of title and shall surrender the said products. Our surrender request or an attachment shall not be regarded to be a withdrawal from the contract.
7. We are entitled to insure in an appropriate manner the products subject to reservation of title at the customer's expense until title passes to it if the customer has not taken out corresponding insurance according to Subsection 2 and has not shown us proof by submitting the insurance policy.
8. If we effect delivery to countries in which the reservation of title does not have the same security effect as in the Federal Republic of Germany, then the customer shall be obliged to create for us without delay a security right which is as close as possible in commercial terms.

VII. Assignment of claims

The assignment of all claims of the customer against us to third parties shall require our express agreement to be effective. Article 354a of the German Commercial Code shall remain unaffected by this agreement reservation.

VIII. Liability

1. We shall only be liable for losses of the customer in so far as we or our vicarious agents are guilty of intent or gross negligence. In addition, we shall be liable in the case of the infringement of essential contractual obligations which the customer can especially trust will be met, also in instances of slight negligence.
2. In the case of the slight negligence of essential contractual obligations and also in the case of intent and gross negligence by such vicarious agents who are not executives, we shall only be liable in the amount of the typically foreseeable loss, taking account of all decisive and recognisable circumstances; liability for consequential losses, such as lost profit, lost savings and other indirect losses as well as for recorded data is excluded.
3. This restriction of liability shall cover all claims for damages irrespective of the cause in law which forms the basis of such claims. It shall not, however, cover the losses incurred by the lack of expressly guaranteed characteristics and such consequential losses caused by a defect against which the guaranteed characteristic was indeed to protect the customer.
4. This limitation of liability shall also be effective in favour of our employees and other third parties commissioned by us.
5. Liability according to the Product Liability Act shall remain unaffected.

IX. Severability clause

The ineffectiveness of individual provisions of these Terms of Sale and Delivery shall not affect the effectiveness of the remaining provisions. Any ineffective provisions shall be replaced by the contracting parties by such provisions which are closest in their commercial purpose to the ineffective provisions.

X. Choice of law and place of jurisdiction

1. The relations between the customer and us shall be governed by and construed according to the law of the Federal Republic of Germany to the exclusion of international sales law (CISG).
2. Unless otherwise agreed, the exclusive place of jurisdiction is our corporate domicile.

XI. Miscellaneous provisions

1. Export certificate

If a purchaser resident outside the Federal Republic of Germany (foreign purchaser) or its authorised agent collects goods or if the purchaser transports or dispatches them abroad, then the purchaser must furnish us with the export certificate required for taxation purposes. If this evidence is not furnished, then the purchaser must pay the turnover tax on the invoice sum which is valid for deliveries within the Federal Republic of Germany.

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