

# **International Terms and Conditions of Sale of Becker Sonder-Maschinenbau GmbH**

## **§ 1 Applicability of these International Terms and Conditions of Sale**

- (1) The terms and conditions set out in these International Terms and Conditions of Sale shall form an integral part of the sales contract (“Contract of Sale”). These International Terms and Conditions of Sale apply exclusively. The buyer’s terms and conditions which conflict or differ from these International Terms and Conditions of Sale and/or from the legal provisions do not apply, even if we do not object to them or render performance or accept the buyer’s performance.
- (2) The buyer declares that the goods are not bought for personal, family or household use.

## **§ 2 Formation of the Contract of Sale**

- (1) A Contract of Sale requires a written order from the buyer, unless the Contract of Sale is concluded by the fact that our order confirmation (“Order Confirmation”) must be signed by the buyer. Instead of placing an order, the buyer may also make the agreed down payment in response to our Order Confirmation and thereby accept our Order Confirmation.
- (2) We may accept the buyer’s written order with our Order Confirmation within ten (10) calendar days after receipt of the buyer’s order. The conclusion of the Contract of Sale may also be made conditional upon the buyer signing our Order Confirmation, in which case the Contract of Sale shall be concluded exclusively on the terms and conditions contained in the Order Confirmation and any documents referred to therein, including these International Terms and Conditions of Sale.

## **§ 3 Applicable Law**

- (1) The Contract of Sale and these International Terms and Conditions of Sale are governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals. The provisions of the CISG also apply to contracts where the preponderant part of our obligations consists in the supply of labour or other services; such contracts also constitute a Contract of Sale as defined in these International Terms and Conditions of Sale.
- (2) Should commercial terms be used the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

## **§ 4 Specifications of the goods; Third party rights**

- (1) The goods to be delivered have to conform to the specifications and quality requirements set out in our Order Confirmation. The specifications and quality requirements stated therein are conclusive. We do not warrant that the goods are fit for a particular purpose and/or for a purpose for which goods of the same kind are commonly

used. It is the buyer's responsibility to check whether the goods are suitable for the purpose intended by the buyer or the actual use. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.

- (2) Should the buyer intend to use the goods in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment, the buyer has to inform us in writing about these intentions before concluding the Contract of Sale.
- (3) Deviations that are customary in the trade and deviations that occur due to legal regulations or constitute technical improvements or are based on new technical knowledge, as well as the replacement of components with equivalent parts, are permissible insofar as they are reasonable for the buyer.
- (4) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

## **§ 5 Obligation to deliver; Passing of risk**

- (1) We have to deliver the goods referred to in the Order Confirmation including a packaging that is suitable for the means of transportation.
- (2) Delivery and the place of performance shall be determined by the Incoterm-clause of the Incoterms® 2020 as stated in our Order Confirmation.
- (3) Adherence to the delivery date respectively the delivery period stated in the Order Confirmation is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.
- (4) All delivery dates and delivery periods are dependent upon the buyer performing all of his obligations in due time. In particular, the buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (5) If we are unable to meet contractually agreed binding dates and/or deadlines for reasons for which we are not responsible (so-called "non-availability of performance"), we are entitled to postpone our performance for the duration of the impediment and we shall inform the buyer of this without delay and at the same time notify the buyer of the expected new delivery period or the new delivery date. If the fulfilment of our obligations is also non-available within the new delivery period or on the new delivery date for reasons for which we are not responsible, we shall be entitled to avoid the Contract of Sale in whole or in part; we shall immediately reimburse any payments already paid by the buyer. If we are not supplied by our suppliers for reasons for which we are not responsible despite having concluded an adequate matching purchase agreement (i.e. despite contractual agreement with our supplier by which the buyer's claim to request delivery can be fulfilled in accordance with the terms of the Contract of Sale in terms of quantity, quality and time of performance), this shall in particular constitute a nonavailability of performance. Events of force majeure of more than insignificant duration (i.e. with a duration of longer than 14 calendar days) shall also constitute a non-availability of performance. Force majeure shall include strikes, lock-outs, illnesses, pandemics, official interventions, subsequent loss of export or import possibilities, shortages of energy and raw materials through no fault of our own, transport shortages or obstacles through no fault of our own, operational hindrances through no fault of our

own (e.g. due to fire, water or machine damage) and all other hindrances which, viewed objectively, have not been culpably caused by us.

- (6) We are entitled to make partial deliveries and to invoice these separately.
- (7) If the buyer requests changes to the goods after the conclusion of the Contract of Sale, this will lead to an extension of the contractually agreed dates and deadlines, provided that we agree to these changes, which we are not obliged to do. Depending on the order situation, the period of the extension may be longer than would be necessary for the mere implementation of the requested changes.
- (8) The passing of risk takes place with delivery in accordance with § 5 sec. 2. Should the buyer fail to take delivery in accordance with Art. 60 CISG, the risk passes at the time the buyer fails to take delivery in accordance with Art. 60 CISG.
- (9) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the buyer will not perform his obligations under the Contract of Sale, in particular not be able to pay the agreed price in due time.
- (10) Acceptance of the goods by the buyer in the meaning of a confirmation of the proper functioning of the goods is only required if such acceptance is expressly agreed in the Order Confirmation. The buyer's obligation to take delivery of the goods pursuant to Art. 60 CISG shall remain unaffected. The provisions on the passing of risk shall also remain unaffected in this case.

#### **§ 6 Delivery Note, Invoice and other documents**

- (1) We will provide the buyer with a delivery note issued according to our standard.
- (2) Irrespective of the agreed Incoterms®-clause, we are not obliged to clear the goods for export. We will however at the buyer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the buyer has provided us with all necessary information.
- (3) We will provide the buyer only with such documents explicitly stated on the Order Confirmation.
- (4) To the extent that we ourselves bear the risk of the transport in accordance with the agreed Incoterm®-clause but have not performed the transport ourselves, the buyer is obliged to notify the carrier of any loss or damage externally recognisable at the latest upon the handing over to the buyer by the carrier and to mark the loss or damage sufficiently clearly. If the loss or damage is not externally recognisable, the carrier must be notified of the loss or damage at the latest within seven (7) days of handing over and the loss or damage must be adequately and clearly described. The notification shall be made in writing. Notwithstanding the provisions of § 9 of these International Terms and Conditions of Sale, the buyer is obliged to send to us a copy of this notification without delay.

#### **§ 7 Obligation to pay the purchase price and other costs**

- (1) The buyer is obliged to pay the agreed purchase price as well as other agreed costs (e.g. costs of packaging) to the bank account nominated by us. Even in the event of a delivery with a C- or D-clause of Incoterms® 2020, the associated transport costs may, if agreed, be charged to the buyer. The place of payment is 33449 Langenberg/Germany. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Confirmation. A time limit for payment stated

on the Order Confirmation shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Confirmation, payment shall be made within fourteen (14) calendar days after date of invoice. The buyer's acceptance of the goods, which exceeds the requirements of Art. 60 CISG, is no precondition for the payment to become due, unless otherwise stipulated in the Order Confirmation.

- (2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.
- (3) The buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the buyer.
- (4) The buyer may only offset any claims insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (5) If and till such time the buyer is in arrears with payment of the purchase price, the buyer is obliged to pay interest at the rate of nine (9) percentage points above the base rate of the German Central bank per annum.

### **§ 8 Non-Conforming goods; Goods with a defect in title**

- (1) The goods do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 1 to sec. 3.
- (2) The goods are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 4.

### **§ 9 Duty of examination and notification**

- (1) Without prejudice to the legal provisions, the buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the buyer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases after the buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.
- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

### **§ 10 Limitation Period**

The buyer's claims with respect to the delivery of non-conforming goods and goods with a defect in title become time-barred one (1) year after delivery of the goods. If we are obliged to assemble the goods, then deviating from § 10 sentence 1 of these International Terms and Conditions of Sale the warranty period begins with the completion of the assembly, but no later than twelve (12) weeks after delivery if the goods have not been assembled by that time for reasons which we are not responsible for. Acceptance of the goods by the buyer in the sense of confirmation of the proper functioning of the goods is not relevant for the commencement of the warranty period, even if such acceptance has been agreed upon with the buyer. For claims resulting from a malicious, grossly negligent or intentional breach of contract as well as claims due to injury of

life, body or health, the statutory limitation periods apply. For second-hand goods § 4 sec. 1 sentence 6 applies. The delivery of substitute goods or the repair of delivered goods does not lead to a recommencement or suspension of the limitation period.

### **§ 11 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability**

- (1) In case of delivery of non-conforming goods, the buyer can claim delivery of substitute goods or declare avoidance of the Contract of Sale only in accordance with the legal provisions.
- (2) To the extent any costs associated with performing remedies are increased by the fact that the buyer has removed the goods to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the buyer's place of business, these costs will be borne by the buyer.
- (3) If case of delivery of non-conforming goods or goods with a defect in title or breach of any other obligation resulting from the Contract of Sale or the business relationship with the buyer, the buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:**
  - a. **We are not liable for damages to which the buyer has contributed.**
  - b. **The buyer has to prove that there has been an intentional or negligent breach of contract for which we are responsible towards the buyer.**
  - c. **If we are liable, and if no deviating individual agreement has been made with the buyer, the liability for late delivery is limited to 0.5 per cent for each full week of delay, up to a maximum of 5 per cent of the net purchase price of the goods delivered late or not at all, and in case of remedies because of delivery of non-conforming goods and/or goods with a defect in title and in case of all other breaches of obligations is limited to 50% of the net purchase price of the goods affected.**
  - d. **Irrespective of § 11 sec. 3 c., we are not liable for loss of profit, damages for interruption of production and loss of usage.** e. **The aforesaid limitations in § 11 sec. 3 do not apply**
    - i. **to injury of life, body or health,**
    - ii. **if we have acted maliciously, grossly negligent or intentionally,**
    - iii. **if we are liable according to mandatory product liability laws, and**
    - iv. **to liabilities which may not be excluded or limited according to the applicable laws.**
- (4) Apart from the aforesaid, the statutory provisions apply.

### **§ 12 Right to use Software; Rights in documents etc.**

- (1) In case the goods include software, with the delivery of the goods the buyer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract of Sale. With the exception of the right to make one backup copy, the buyer is not entitled to copy the software.
- (2) We retain all intellectual property rights to all documents, pictures, drawings etc. (collectively "Documents") which we have created and/or provided in connection with

the performance of our obligations under the Contract of Sale. Such Documents shall belong exclusively to us.

### **§ 13 No Russia Clause**

The resale of listed goods to Russia is prohibited without our consent.

If we become aware of a resale despite our notification, we are legally obliged under EU (Basic) Regulation No. 833/2014 and other relevant regulations to investigate the business relationship and report any violations.

### **§ 14 Other Provisions**

- (1) Title of the goods that have been delivered remains with us until all of our claims against the buyer have been settled. The buyer is obliged to take all measures necessary for the protection of our property and ensure that our title is not prejudiced. If this is necessary for a valid reservation of our title, the buyer in particular undertakes to arrange for any necessary entry in the public registers in the country of location of the goods at its own expense.
- (2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions of Sale.
- (3) There are no side agreements to the Contract of Sale and these International Terms and Conditions of Sale.
- (4) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.
- (5) The buyer is not entitled to assign his rights and obligations against us to a third party.
- (6) The place of performance for delivery is governed in § 5 sec. 2, the place of performance for the payment in § 7 sec. 1. For all remaining obligations the place of performance is agreed to be 33449 Langenberg/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract of Sale, even if an Incoterms®-clause has been agreed upon which stipulates for a place of delivery other than 33449 Langenberg/Germany.
- (7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

### **§ 15 Agreement on jurisdiction and arbitration**

- (1) If the buyer's place of business is located within the European Economic Area and/or within Switzerland, for all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with the Contract of Sale or these International Terms and Conditions of Sale, including disputes about the validity, invalidity, violation or cancellation of the Contract of Sale as well as other disputes arising out of the business relationship between the buyer and us, the state court which has jurisdiction for 33449 Langenberg/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 33449 Langenberg/Germany, we are also entitled to bring an action before the state court of the buyer's place of business.

(2) If the buyer's place of business is located outside of both the European Economic Area and Switzerland, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with the Contract of Sale or these International Terms and Conditions of Sale, including disputes about the validity, invalidity, violation or cancellation of the Contract of Sale as well as other disputes arising out of the business relationship between the buyer and us shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

#### **§ 16 Severability**

If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.

February 2024