

## 1. Scope and Validity

**1.1.** These "General Terms and Conditions of Sale and Delivery" shall apply exclusively in their respectively valid version to all supplies and/or services of BFT GmbH (hereinafter referred to as "Seller"). Terms and conditions used by the contract partner (hereinafter referred to as "Buyer") shall require the express written consent of the Seller. This also applies to any departure from the written form. These General Terms and Conditions of Sale and Delivery form an integral part of the respective contract with the Buyer and shall apply to all future business transactions.

**1.2.** In case of any evident conflict between the contractual documents, they shall take precedence in the following order unless otherwise specified or the context requires otherwise:

- Special agreements (e.g. as presented in a supply agreement) insofar as these agreements have been confirmed in writing by the Seller;
- General Terms and Conditions of Sale and Delivery of BFT GmbH;
- Offer;
- Dispositive standards of commercial law and civil law.

## 2. Offers and Orders

**2.1.** All offers made by the Seller are non-binding, unless otherwise expressly stated in writing. The acceptance of any order of a Buyer requires the Seller's written order confirmation and shall not be binding otherwise, except if the Seller's dispatched the Buyer's requested goods.

**2.2.** General Terms and Conditions or Purchase Conditions of a Buyer shall not apply, even without an explicit objection by the Seller, no matter the form in which such conditions become known to Seller.

## 3. Prices and Terms of Payment

**3.1.** Unless otherwise expressly stated in writing, Seller's prices are net prices excluding any value-added tax as respectively applicable, and any taxes in the amount prescribed by law. Any prices indicated are to be regarded FCA Kapfenberg pursuant to the INCOTERMS 2010 and solely include standard packaging of the goods and their loading. Costs for transportation, transportation insurance, installation costs, etc. are to be borne by the Buyer separately. Prices are based on the costs calculated at the time of the initial quotation. Seller is entitled to adjust the price in case the period of time between contract conclusion and delivery date agreed is longer than six (6) months, and if any relevant cost elements, especially raw material costs and transportation, have not only changed slightly. Any changes with regard to delivery dates, the specifications, quantity or quality of the goods ordered that are demanded by the Buyer after the conclusion of contract entitles the Seller to make price adjustments.

**3.2.** Unless the terms of payment have separately been agreed in writing, all of the payments are to be paid immediately upon receipt of the invoice without any deduction and free of charge in the currency agreed upon. Payments by the Buyer are only considered as debt discharging once the amount paid is credited to the Seller's bank account.

**3.3.** Partial invoices are due for payment immediately upon receipt of the respective invoice. This also applies to any additional amounts beyond the original contract sum that arise due to subsequent deliveries or other agreements, regardless of the terms of payment agreed for the main delivery.

**3.4.** In the event of a default in payment by the Buyer, the Seller is entitled to charge default interest in the amount of at least 12% p.a., and to invoice all of the reminder fees and collection expenses, pre-litigation costs and attorney's fees as well as any costs related to the collection of the accounts receivable outstanding.

## 4. Delivery and Fulfilment

**4.1.** Unless otherwise specifically stipulated, all deliveries will be made FCA Kapfenberg, Austria, pursuant to the INCOTERMS 2010. The transfer of risk is made in accordance with the above mentioned INCOTERM upon shipment of the delivery (at the time of consignment to the carrier) or, in any case of delay in acceptance on the part of the Buyer, at the time of the Seller's notification of the readiness for dispatch.

**4.2.** Defined delivery deadlines and delivery dates are to be adhered to by the Seller as far as possible and, should binding not have been explicitly agreed in writing, these defined delivery deadlines and delivery dates are to be only approximate and exceeding or falling short of these dates by up to 10 (ten) working days is, however, deemed to be on time. The Seller is obliged to inform the Buyer

immediately upon learning of a delay in delivery by giving the expected term of the delay in delivery.

**4.3.** In the absence of any written agreement to the contrary, delivery deadlines are calculated from the date of order confirmation by the Seller. Any subsequent changes in delivery dates require previous written confirmation by the Seller.

**4.4.** If, for whatever reasons, the acceptance of the goods by the Buyer is not able to take place on the delivery dates agreed upon, Buyer has to inform the Seller immediately, providing the reasons and the expected duration of the delay. In cases of delay of more than 1 (one) month of acceptance of the goods by the Buyer, the Seller is entitled to invoice storage expenses.

## 5. Reservation of Title

**5.1.** The goods will remain the property of the Seller until full payment of the purchase price including default interest, reminder fees, collection expenses and litigation costs which incurred up to that point in time. Buyer is obliged to assign all claims arising out of a resale of the goods, whereby any resale requires the express written consent of the Seller. The consent to a resale is revoked without prior notice as soon as insolvency proceedings are opened on the Buyer's assets.

**5.2.** In the event of claims by third parties on the goods subject to retention of title, in particular in the case of attachment, the Buyer shall state that such goods are property of the Seller, and notify the Seller without delay. The Buyer shall take the full risk for the retained goods, in particular for its destruction, loss or deterioration.

## 6. Warranty

**6.1.** As stated in the following provisions, the Seller is obliged to repair every defect affecting the usability of the goods, provided such defect already existed at the time of delivery and that is the result of defective materials or manufacturing.

**6.2.** The warranty period shall be 6 (six) months from the date of commissioning or 12 (twelve) months from the date of delivery (transfer of risk), insofar as different warranty periods were not agreed upon individually. The Seller's obligations under warranty shall expire in any case after elapse of the warranty period; a special recourse of the Buyer extending beyond this period because of obligations fulfilled by the Buyer under warranty shall be expressly excluded.

**6.3.** The Buyer is obliged to inspect the goods immediately upon receipt and to provide any notice of defects immediately, in any event within 14 (fourteen) days after delivery of the goods in writing and with detailed information on the alleged defect. Failing such notice the goods are to be considered approved. In case of hidden defects, the notice of defects is to be made within a period of 14 (fourteen) days after their detection. The Buyer has further to prove that the defect already existed at the time of the transfer of risk pursuant to provision 4.1.

**6.4.** Seller's warranty obligations do not include normal wear and tear, improper handling or storage, faulty maintenance, force majeure events or damages in transit.

**6.5.** Unless inconsistent with mandatory legal provisions, warranty claims are limited at Seller's option to correction of the deficiency defect or replacement of the goods within a reasonable period or the reduction of the purchase price.

**6.6.** In any event, the obligation for a warranty expires at the end of the warranty period pursuant to provision 6.2. Any unapproved changes or alterations made by the Buyer to the goods delivered, lead to the termination of Seller's warranty obligations.

## 7. General Limitation of Liability

**7.1.** The Seller's liability for damages, with the exception of personal injuries, is expressly limited to those cases that are caused in the sphere of responsibility of the Seller by gross negligence or willful misconduct. The burden of proof for the existence of such behavior lies with the Buyer.

**7.2.** In no event will Seller be liable for any indirect damages and losses or consequential damages of any kind, including but not limited to loss of production, loss of profit, loss of savings and losses that are purely economic, insofar as this is legally enforceable.

**7.3.** The Seller's liability is limited to damages that are foreseeable and typical for this type of contract, to a maximum of the amount of the total order value.

**7.4.** Damage compensation claims shall lapse within 6 (six) months after having obtained knowledge of the damage and of the damaging party, however in any case not later than 2 (two) years after the transfer of risk pursuant to provision

**75** All and any regress claims raised against the Seller by the Buyer or third parties based on product liability in the meaning of the Austrian Law on Product Liability (PHG) are expressly excluded, unless the claimant can prove, that a defect was caused in the sphere of responsibility of the Seller and was caused at least by gross negligence of the Seller.

**76** The limitation and exclusion of liability in these General Terms and Conditions of Sale only apply to the maximum extend permissible under applicable law.

**77** If an order is carried out according to the Buyer's design specifications, drawings or models, the Seller's liability does not extend to the correctness of design and only to the conformity of the design to the Buyer's specifications. The Buyer must indemnify and hold harmless the Seller if any claims are asserted by third parties against the Seller due to an infringement of protective rights of third parties.

## **8 Force Majeure**

**81** The parties shall be released either fully or partially from its obligations to meet deadlines in fulfillment of the contract if they are hindered by an event of force majeure.

**82** Events which are to be considered as a result of force majeure include, without limitation, the following events listed:

- a. strikes authorized by trade unions, disruptions to transport, closed borders, import, export, and transit constrictions, governmental decrees, export embargos or other circumstances that impede delivery;
- b. forces of nature, such as earthquakes, lightning strikes, frost, storms and floods, as well as warlike actions, uprisings/revolutions, terrorism, sabotage, arson, fires, natural disasters;
- c. delays in delivery or delivery failures on the part of suppliers to the Seller as a consequence of energy crises or raw material supply crises, or in the case that the procurement of raw materials with regards to the price and/or amounts cannot be made under economically justifiable conditions and that this had not been predictable upon conclusion of the contract.

**83** The party hindered by an event of force majeure has to inform the other party immediately, however not later than 5 (five) calendar days after the occurrence of the event of force majeure, as to the beginning and expected duration of the delay. If an event of force majeure lasts longer than 4 (four) calendar weeks, the parties shall seek for a solution for handling the technicalities of its effects by means of negotiations. If an event of force majeure lasts longer than 6 (six) calendar months, and no amicable solution can be reached, each party has the right to completely or partially withdraw from the contract.

## **9 Confidentiality**

Unless otherwise agreed in a separate non-disclosure agreement, the following shall apply: By concluding the contract, the Buyer receives access to certain confidential and privileged information from the Seller. Based on this, the Buyer shall keep all contract related information made privy to him by Seller strictly confidential, in particular all technical, commercial and/or business information, including pricing conditions and payment terms, formulas and product confidential ideas, designs, electronically stored data and product samples, etc., whether in verbal, written, electronic or any other form, hereinafter referred to generally as information. Such information shall not be made available fully, partially nor in any manner to a third party without the previous written consent of Seller and may not be used in full or in part for any other purpose other than fulfilment of contractual and/or order-related agreements. This obligation of secrecy shall not apply to the following:

(i) information justifiably known to the Buyer prior to any obligation of secrecy or justifiably made known to the Buyer by a third party without any infringement on any obligations of secrecy or other recognizable violations of law, (ii) at the time of acquiring such information, it had already been publicly known and generally accessible and the Buyer or a third party had justifiably become privy to this information without any infringement on obligations of secrecy or other recognizable violations of law, (iii) the information was independently developed by the Buyer without any use of information from the Seller, (iv) the Buyer was expressly granted permission by the Seller for the further use or publication of the information.

## **10 Export Control Regulations**

**101** All of the Seller's contractual deliveries and services are subject to the explicit reservation that its fulfillment is not prevented by any restrictions arising out of national or international export control regulations, in particular any embargos or any other sanctions. The ordering party is obliged to provide all the information and documentation needed, or that might be needed, for export. Delays occurring as a consequence of export inspections or approval procedures suspend any deadlines and delivery times. In the event that the relevant legal permits can not be obtained or that the delivery and services are not approvable, the contract is considered to be not concluded with regard to the items affected.

**102** The Buyer is obliged to comply with all national and international export control regulations, sanction and embargos.

## **11. Compliance**

The principles and guidelines for a sustainable, ethical/moral and legally compliant behavior in business defined in the Code of Conduct of the Dr. Aichhorn Group (accessible at: [www.bhdt.at/code\\_ofconduct](http://www.bhdt.at/code_ofconduct)), shall be explicitly accepted and approved by the Buyer. In the case of a clear and severe violation of the underlying principles and regulatory contents of the Code of Conduct on the part of the Buyer, which would make any continuation of the business relationship unconscionable, the Seller, on a case-by-case basis, is entitled to terminate the contractual relationship with immediate effect for good cause. In these cases, the Buyer shall indemnify and hold the Seller free and harmless in the event of any damages and detriments arising.

## **12. Taxes and Other Levies**

Deliveries to Buyers in another Member State of the EU may only be invoiced without value-added tax by the Seller, if, at the request of the Seller, the Buyer has immediately provided proof of such so that the Seller is able to prove the tax exemption of the delivery to the revenue authorities as is required by the applicable legal provisions.

## **13. Governing Law and Jurisdiction**

All disputes arising out of or in connection with the present contract shall be finally settled in accordance with the Arbitration Code of the International Chamber of Commerce by one or more arbitrators. The place of jurisdiction is Vienna. The contract is exclusively subject to the substantive Austrian Law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11, 1980.

## **14. Miscellaneous**

### **14.1. Assignment and Offset Rights**

Buyer is not entitled to set off their receivables against the Seller's receivables. Amounts assigned by court decision and debts recognized expressly and in written form by the Seller are excluded from this.

### **14.2. Severability**

If individual provisions of these General Terms and Conditions of Sale and Delivery are declared to be partly or fully void or unenforceable, the validity or enforceability of the remaining provisions of these conditions shall remain unaffected thereby. The parties are obliged in this case to replace the invalid or impracticable provision with such a valid or practicable provision that comes as close as possible in its economic effect of the provision deemed partly or fully void or unenforceable within the scope of the entire contract. In the event of subsequent gaps, the provision that most closely effects what would have been the parties' original intent and purpose in entering into this contract is valid, if there had been no prior consideration of how to resolve issues that are not contractually governed.