

**Terms of delivery and payment  
of BTM (Europe) Blechverbindungstechnik GmbH  
(hereinafter referred to as BTM)**

**I. General information**

1. All deliveries and services are based on these terms and conditions and any separate contractual agreements. Deviating terms and conditions of purchase of the customer do not become part of the contract, even by acceptance of the order.

In the absence of a special agreement, a contract is concluded with the written order confirmation from BTM.

2. All agreements require written confirmation from BTM to be valid.
3. The dimensions and weights indicated in drawings are not binding. We reserve the right to make design changes. Drawings and associated documents must be returned to us immediately after the decision has been made in the event of non-ordering.

BTM retains ownership and copyright of samples, cost estimates, drawings and similar information of a physical and non-physical nature - including in electronic form. The copyright and the rights arising from § 7 of the Patent Act and § 1 of the Utility Model Act to the drawings and devices together with the associated documents shall remain with BTM. They are only entrusted to the recipient for personal use for the purposes of the respective offer and may not be reproduced or made available to third parties, even in part, without our explicit permission.

BTM agrees to make information and documents designated by the Customer as confidential available to third parties only with the Customer's consent.

**II. Price and Payment**

1. The prices offered are not binding.

In the absence of a special agreement, prices are ex works including loading at the factory, but excluding packaging and unloading. Value added tax at the respective statutory rate will be added to the prices.

2. In the absence of a special agreement, payment shall be made without any deductions á account of BTM, namely:

1/3 initial payment after receipt of the order confirmation,

1/3 as soon as the purchaser has been informed that the main parts are ready for dispatch, the remainder within one month after the transfer of risk.

3. The customer retains the right to withhold payments only to the extent that his counterclaims are undisputed or have been legally established.
4. The right of the customer to offset against counterclaims arising from other legal relationships is only available to him insofar as they are undisputed or have been legally established.

### **III. Delivery time, delay in delivery**

1. The delivery times given by BTM are approximate. Four weeks after the non-binding delivery date has been exceeded, the Customer may request the Seller in writing to deliver within a reasonable period of time.

In all other respects, the delivery time is determined by the agreements of the contracting parties. BTM's compliance with the delivery time shall be subject to all commercial and technical questions between the parties to the contract having been clarified and the purchaser having fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, the delivery period will be extended accordingly. This does not apply if BTM is responsible for the delay.

2. Compliance with the delivery time is subject to correct and timely deliveries from our suppliers. BTM informs the customer as soon as possible of any impending delays.
3. The delivery time is met if the delivery item has left BTM's factory by the end of the delivery time or readiness for dispatch has been notified. If acceptance is required, the acceptance date shall be decisive – except in the case of justified refusal of acceptance – or alternatively the notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the costs incurred as a result of the delay shall be charged to him, beginning one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the delivery time is due to force majeure, labor disputes or other events beyond the control of BTM, the delivery time is extended accordingly. BTM will inform the Customer as soon as possible of the beginning and end of such circumstances.

6. The Customer may withdraw from the contract without setting a deadline if the entire performance becomes finally impossible for BTM before the transfer of risk. Furthermore, the Customer can withdraw from the contract if the execution of part of the delivery becomes impossible for an order and the Customer has a justified interest in rejecting the partial delivery. If this is not the case, the customer has to pay the contract price attributable to the partial delivery. The same applies if BTM is unable to fulfil the order. Otherwise, Section VII.2 of these Terms and Conditions applies.

If the impossibility or inability to fulfil the contract occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, the customer remains obliged to pay the consideration.

7. If BTM is in delay and the Customer suffers damage as a result, the Customer is entitled to demand lump-sum compensation for delay. This compensation amounts to 0.5 % for each full week of delay, but not more than 5 % in total of the value of that part of the total delivery that cannot be used in time or in accordance with the contract due to the delay.

If the Customer sets BTM - taking into account the statutory exceptions - a reasonable deadline for performance after the due date and the deadline is not met, the Customer has the right to withdraw from the contract within the framework of the statutory provisions. At the request of BTM, the Customer is obligated to declare within a reasonable period of time whether it will exercise its right to withdraw from the contract.

Further claims arising from delay in delivery are determined exclusively in accordance with Section VII.2 of these conditions.

8. Test run

If BTM has contractually agreed to carry out a test run of a machine at the purchaser's factory, the purchaser is obliged to take over or provide the following at its own expense and in time:

- a) the components to be joined in sufficient quantity and in the agreed quality (tolerance, material, surface quality, etc.);
- b) auxiliary teams, such as henchmen and, if necessary, also bricklayers, carpenters, metalworkers and other skilled workers in the number we deem necessary;
- c) all earthwork, bedding, construction and scaffolding work including the necessary building materials;

- d) all devices required for installation and commissioning, such as lifting gear, field forges and the necessary equipment and materials such as scaffolding timber, trowels, supports, cement, cleaning and sealing agents, lubricants, fuels, cooling water, drive ropes and belts, including installation and any necessary modifications;
- e) Energy of sufficient quality such as compressed air (pressure, volume flow, purity), electrical energy, possibly coolant, hydraulic energy (pressure, volume flow, purity), heating, lighting and operating power including the necessary connections up to the construction site;
- f) materials, tools, sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, as well as adequate working and recreation rooms for the supplier's personnel.

Before requesting BTM's operating team, the Customer has to ensure that all preparation and installation work undertaken by the Customer within the scope of the order confirmation has been completed.

If the commissioning of a machine is delayed after the departure of BTM's specialist personnel due to circumstances on the construction site for which BTM is not responsible, the Customer has to bear all costs for the waiting time and any additional travel by our personnel that may be required. Apart from this, BTM is only liable for the proper commissioning of the delivered goods.

#### **IV. Transfer of risk, technical approval**

1. The risk passes to the customer when the delivery item has left the factory, even if partial deliveries are made or the supplier has assumed other services, e.g. the shipping costs or delivery and installation. Insofar as an acceptance test is to be carried out, this is decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after notification by BTM that the goods are ready for acceptance. The Customer may not refuse acceptance if there is a minor defect.

Dispatch of the items to be delivered is at the expense and risk of the purchaser. However, BTM arranges a transport insurance policy for the purchaser, the costs of which shall be charged separately to the purchaser at 1% of the order value. The risk passes to the Customer as soon as the Customer has been notified that the goods are ready for dispatch, at the latest, however, when the goods leave our factory. This shall also apply if carriage paid delivery has been agreed.

2. If dispatch or acceptance is delayed or does not take place due to circumstances that are not attributable to BTM, the risk shall pass to the

purchaser on the day of notification of readiness for dispatch or acceptance. BTM agrees to arrange for the insurance requested by the Customer at the Customer's expense.

3. Partial deliveries are permissible, as far as reasonable for the customer.
4. If a Factory Acceptance Test has been agreed at the factory of BTM or its subcontractors
  - the components to be joined are provided by the customer in sufficient quantity and in the agreed quality (tolerance, material, surface quality, etc.) for the test run,
  - the delivery of the components to BTM or its subcontractors is to take place at the customer's expense and at least 6 weeks before the planned acceptance or on the agreed date.

The return transport to the customer or the disposal of the manufactured components is at the expense of the customer.

5. If a Site Acceptance Test at the customer's premises has been agreed upon, the same conditions apply here as for the factory acceptance test. The components must then be ready for the acceptance date, as well as energy in sufficient quantity and quality such as compressed air (pressure, volume flow, purity), electrical energy, possibly coolant , hydraulic energy (pressure, volume flow, purity).

## **V. Reservation of proprietary rights, extended and expanded**

1. The delivery item remains the property of BTM until all claims against the purchaser arising from the business relationship have been fulfilled.
2. The Purchaser is permitted to process or modify the delivery item ("Processing"). Any processing is carried out for BTM; however, if the value of the delivery item belonging to BTM is less than the value of the goods not belonging to BTM and/or the processing, BTM acquires co-ownership of the new goods in the ratio of the value (gross invoice value) of the processed delivery item to the value of the other processed goods and/or the processing at the time of processing. Insofar as BTM does not acquire ownership of the new goods in accordance with the above, the Contractor and the Client hereby agree that the Client shall grant BTM co-ownership of the new goods in the ratio of the value (gross invoice value) of the delivery item belonging to BTM to the value of the other processed goods at the time of processing. The above sentence shall apply accordingly in the event of inseparable mixing or combination of the delivery item with goods not belonging to BTM. Insofar as BTM acquires ownership or co-ownership according to these provisions, the

Customer shall hold them in safekeeping for BTM with the diligence of a prudent businessman.

3. In the event that the delivery item or the new goods are sold, the Customer hereby assigns its claim from the resale against its customer, including all ancillary rights, to BTM by way of security, without the need for further special declarations. The assignment applies including any balance claims. However, the assignment shall only apply to the amount corresponding to the price of the delivery item invoiced by BTM. The portion of the claim assigned to BTM shall be satisfied with priority.
4. If the Customer combines the delivery item or the new goods with real estate, the Customer shall also assign, without the need for any further special declarations, its claim, which it is entitled to as remuneration for the combination, in the amount corresponding to the price of the delivery item invoiced by BTM.
5. Until revoked, the Customer shall be entitled to collect the claims assigned to BTM in accordance with these regulations. The Customer shall immediately forward payments made on the assigned claims to BTM up to the amount of the secured claim. In the event of justified interests, in particular in the event of default of payment, suspension of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the Customer, BTM shall be entitled to revoke the Customer's collection authority. In addition, BTM shall be entitled to disclose the assignment of security, utilize the assigned claims and demand that the Customer disclose the assignment of security to its customers after prior warning and within a reasonable period of time.
6. If a justified interest is substantiated, the purchaser shall provide BTM with the information required to assert its rights against the customers and hand over the necessary documents.
7. During the existence of the reservation of title, the customer is prohibited from pledging or assigning the goods as security. The Customer shall inform BTM immediately in the event of seizure, confiscation or other dispositions or interventions by third parties. Resale of the delivery item or the new goods shall only be permitted to resellers in the ordinary course of business and only under the conditions that payment of the equivalent value of the delivery item is made to the Customer. The Customer shall also agree with the purchaser that the purchaser shall not acquire ownership until this payment has been made.

8. If the realizable value of all security rights to which BTM is entitled exceeds the amount of all secured claims by more than 10%, BTM shall release a corresponding portion of the security rights at the request of the Customer. It shall be presumed that the requirements of the preceding sentence are met if the estimated value of the securities to which BTM is entitled reaches or exceeds 150 % of the value of the secured claims. BTM shall be entitled to choose between various security rights for release.
9. In the event of breaches of duty on the part of the Customer, in particular default of payment, BTM shall be entitled, even without setting a deadline, to demand the return of the delivery item or the new goods and/ or - if necessary after setting a deadline - to withdraw from the contract; the Customer shall be obliged to return the goods. The demand for return of the delivery item/new goods shall not constitute a declaration of withdrawal from the contract by BTM unless this is expressly declared.

## **VI. Claims for defects**

BTM shall be liable for material defects and defects of title in the delivery, excluding further claims - subject to Section VII - as follows:

### **Defects of quality**

1. All those parts that prove to be defective as a result of a circumstance occurring before the transfer of risk shall be repaired or replaced without defects, at the discretion of BTM. BTM shall be notified immediately in writing if such defects are discovered. Replaced parts shall become the property of BTM.
2. The Customer shall provide BTM with the necessary time and opportunity to carry out all repairs and replacement deliveries that BTM deems necessary after consultation - otherwise BTM shall be released from liability for the consequences. Only in urgent cases where operational safety is endangered or to prevent disproportionately large damage, in which case BTM shall be notified immediately, the Customer shall have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from BTM.
3. If the complaint proves to be justified, BTM shall bear the direct costs of repair or replacement delivery, including shipping. In addition, it shall bear the costs of removal and installation as well as the costs of any necessary provision of the necessary fitters and assistants, including travel costs, provided that this does not result in a disproportionate burden for BTM.

4. The Customer shall have the right to withdraw from the contract within the framework of the statutory provisions if BTM - taking into account the statutory exceptions - allows a reasonable deadline set for the repair or replacement delivery due to a material defect to expire unsuccessfully. If the defect is only insignificant, the Customer shall only be entitled to a reduction of the contract price. The right to reduce the contract price shall otherwise be excluded.
5. Further claims are determined exclusively in accordance with Section VII. 2 of these conditions.
6. No liability is assumed in the following cases in particular:

Unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - unless BTM is responsible for them.

7. If the Customer or a third party carries out improper repairs, BTM shall not be liable for the resulting consequences. The same shall apply to changes to the delivery item made without the prior consent of BTM.

#### **Defects of title**

8. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, BTM shall, at its own expense, procure the right for the Customer to continue using the delivery item or modify the delivery item in a manner acceptable to the Customer so that the infringement no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the Customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, BTM shall also be entitled to withdraw from the contract.

In addition, BTM shall indemnify the Customer against undisputed or legally established claims by the relevant owners of the industrial property rights.

9. The obligations of BTM mentioned in Section VI. 8. are final, subject to Section VII. 2. in the event of protection or copyright infringement.

They only exist if

- the customer informs the supplier immediately of asserted protection or copyright infringements,
- the Customer supports BTM to a reasonable extent in defending against the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section VI. 8
- BTM reserves the right to take all defensive measures including out-of-court settlements,
- the defect of title is not based on an instruction of the customer and
- the infringement of rights was not caused by the fact that the customer has arbitrarily modified the delivery item or used it in a manner not in accordance with the contract.

## **VII.Liability of the supplier, exclusion of liability**

1. If the delivery item cannot be used by the Customer in accordance with the contract as a result of culpably omitted or faulty suggestions or advice provided by BTM before or after the conclusion of the contract, or as a result of culpable violation of other secondary contractual obligations - in particular instructions for the operation and maintenance of the delivery item - the provisions of Sections VI and VII.2 shall apply to the exclusion of further claims by the Customer.
2. For damage that has not occurred to the delivery item itself, BTM is liable - for whatever legal reasons - only
  - a. in case of intent,
  - b. in the event of gross negligence on the part of the owner / the executive bodies or senior staff,
  - c. in the event of culpable injury to life, limb or health,
  - d. for defects which BTM has fraudulently concealed,
  - e. within the framework of a guarantee commitment,
  - f. in the event of defects in the delivery item, insofar as liability is assumed under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, BTM shall also be liable for gross negligence by non-executive employees and for slight negligence, in the latter case limited to reasonably foreseeable damage typical of the contract.

Further claims are excluded.

### **VIII. Limitation period**

All claims of the purchaser - for whatever legal reasons - are subject to a limitation period of 12 months. For claims for damages according to section VII. 2. a.-d. and f. the statutory periods of time apply. They shall also apply to defects in a building or to delivery items which were used for a building in accordance with their usual use and which caused its defectiveness.

### **IX. Usage of Software**

Insofar as software is included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Purchaser may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69 a ff. UrhG [Copyright Act]). The Customer agrees not to remove or change manufacturer's information - in particular copyright notices - without the prior express consent of BTM.

All other rights to the software and documentation, including copies, shall remain with BTM or the software supplier. The granting of sub-licenses is not permitted.

### **X. Applicable law, place of jurisdiction**

1. All legal relationships between BTM and the Customer are governed exclusively by the law of the Federal Republic of Germany applicable to the legal relationships between domestic parties, excluding the UN Convention on Contracts for the International Sale of Goods.
2. The place of jurisdiction is the court responsible for the respective office of BTM that has concluded the contract. However, BTM is authorized to bring an action at the Customer's headquarters.