

# General Terms and Conditions of bomatic Umwelt- und Verfahrenstechnik GmbH

## § 1 Scope of application of General Terms and Conditions

We perform our deliveries, services and offers exclusively on the basis of these General Terms and Conditions. In connection with existing business relationships, they shall also be applicable for future business transactions. We hereby object to any deviating or supplementary standard terms and conditions by the Buyer; these shall be binding only upon our express agreement thereto.

## § 2 Offers and contract conclusion

1. Our offers are not binding and subject to change. The contract only becomes effective upon order confirmation by us. The same applies for supplements to agreements, modifications or amendments.
2. Drawings, illustrations, measurements, weights or other performance characteristics are subject to changes for technical reasons. These are only binding if explicitly agreed upon in the contract.
3. Our offer documentation, illustrations, descriptions, samples and cost estimates may not be passed on, published or reproduced nor made accessible to third parties without our prior consent.
4. Our offers are exclusively aimed at business people as defined by law. Non-business people shall explicitly inform us of the fact that they are not business people as defined by law. The Buyer shall likewise undertake not to supply to non-business people and undertake to bind his Buyers to the same condition.
5. We explicitly object to any right of withdrawal or cancellation on the part of the Buyer based on his standard terms and conditions.

## § 3 Prices, price changes

1. All prices are quoted in euro, and do not include packaging, freight ex warehouse or works and VAT.
2. We remain bound to the prices stated for a period of three months, whereby our order confirmation shall be decisive.
3. Any freight and/or packaging prices stated are based on usual delivery and handing-over conditions. Additional costs incurred by conditions or difficulties with respect to the transport and/or packaging unknown to us, not foreseen by us or unforeseeable at the time of contract conclusion shall be borne by the Buyer. This also applies to dead freight and any potential changes to the transport routes. The Buyer shall inform us of any particularities with respect to the delivery and hand-over known to him.

## § 4 Delivery times

1. The delivery times stated by us are non-binding. We will seek to adhere to the delivery periods stated. However, we do not warrant that these periods will be met. Should the Buyer explicitly wish to receive the goods on a binding date or should the Buyer lose interest in the ordered goods after a certain date, he shall explicitly state this upon ordering of the goods. Binding delivery periods are only deemed agreed upon, if these were explicitly confirmed as being binding delivery periods in the order confirmation.
2. If the delivery is delayed for a reason, for which we are responsible, our liability in this respect is limited to intent and gross negligence and any damage to life, body or health. We are not liable for lost profit or lost production.
3. If the delivery is delayed for reasons, for which we are not responsible (like force majeure, strike, lockout, official orders etc.; also if any of this occurs at our suppliers), we cannot be held liable, even if the delivery periods were declared to be binding. In such cases, we may defer the delivery by the time of the obstruction and an appropriate preparation period or fully or partially withdraw from the contract with respect to the part thereof that has not been fulfilled at that time. We will inform the Buyer of any such circumstances as soon as we gain knowledge thereof. Should the delivery period be extended or should we be released from our duties due to withdrawal from the contract, the Buyer is not entitled to claim compensation.
4. The adherence to (binding) periods is subject to the following conditions: the order must be fully clarified, all approvals granted and the Buyer must have submitted to us all documents, payments and securities that are to be supplied by the Buyer in a timely manner. The delivery times are deferred by an appropriate period of time, if the above mentioned conditions are not met in a timely manner. The delivery time is deemed met, if the goods are ready for shipment within the agreed period of time and a respective notification has been sent to the Buyer.
5. We are entitled to make partial deliveries and part performance.

## § 5 Shipment and passing of risk

1. The risk passes to the Buyer as soon as the goods have been handed over to the person performing the transport or as soon as the goods have left our plant or warehouse for shipment.
2. If the shipment is delayed or not performed for reasons we are not responsible for or upon request by the Buyer, the risk passes to the Buyer upon notification that the goods are ready for shipment.
3. The shipment will only be insured in the name and on account of the Buyer upon the Buyer's explicit request. Taking out of insurance is only deemed agreed upon, if this is stated in the order confirmation.

## § 6 Claims arising from defects

1. Should the services rendered by us or the goods delivered by us be defective, we may at our discretion deliver a replacement or remedy the defect. Several attempts to rectify a defect – usually two – within an appropriate period of time are admissible.
2. The warranty does not cover damage and/or defects that are caused by foreign material, misuse, voltage fluctuation and other electric influences and/or wear and tear. We hereby declare explicitly that, due to the difference in materials to be processed and addition of foreign and extraneous materials, we have no influence on the degree of wear and tear and that the wear and tear may be subject to considerable fluctuation.
3. The Buyer's right to assert warranty claims arising from defects shall become statute-barred within 24 months after passing of risk, provided the goods are used in one-shift operation. If the goods are used in multi-shift operation, any warranty claims shall become statute-barred within 12 months after passing of risk.
4. The Buyer shall inform us of any obvious defects in writing immediately, but within two weeks after delivery at the latest. The defective objects shall be kept ready for inspection by us in same the condition they had when the defect was discovered.
5. Marginal, reasonable deviations in measurements and finish, particularly with respect to additional orders, do not entitle the Buyer to assert any claims, unless the strict adherence by said conditions was explicitly agreed upon. Technical improvements and necessary technical changes are deemed contractual, unless the merchantability of the goods is deteriorated thereby.
6. Any warranty shall be excluded, if operation or maintenance instructions by the Company are not followed, the products are changed, parts are exchanged or consumables that do not comply with the original specifications are used, unless the Buyer succeeds in disproving a substantiated averment that one of these circumstances caused the defect.
7. Should subsequent performance prove unsuccessful within an appropriate period of time, the Buyer may at his discretion request reduction of the price or cancellation of the contract. Any liability for production loss and/or lost profit shall be excluded.
8. The above stated provisions in this section do not apply to the sale of used objects. If the Buyer is

a consumer, a period of one year for asserting claims arising from defects shall apply; if the Buyer is a company, used objects are excluded from any warranty claims arising from defects.

## § 7 Limitation of liability

1. Damage claims on the grounds of positive breach of duty, culpa in contrahendo and torts, unless these are simultaneously based on the breach of a principal contractual obligation on our part, shall be excluded both against us and against our vicarious agents or persons employed in the performance of our obligations, unless the damage was caused by intent or gross negligence.
2. Liability for economic loss is excluded. This applies in particular to claims for damages due to lost profit or production.
3. This does not apply to claims for damages resulting from lack of contractually agreed qualifications or fitness for certain purposes that are aimed at protecting the Buyer against the risk from consequential harm caused by defects. Statutory damage claims regarding liability for defective products (German Product Liability Act = PrdHG) as well as the liability for damage to life, body or health shall remain unaffected thereof.

## § 8 Retention of title, processing and confusion of goods

1. We retain title to the delivered goods (goods subject to retention of title) until all our claims resulting from any legal grounds whatsoever against the Buyer have been fulfilled in full.
2. The Buyer is obliged to immediately inform us in writing of any attachment of the goods subject to retention of title and to inform the creditor with right of lien of the retained title to the goods. The Buyer is not entitled to dispose of, to pledge or to provide the goods subject to retention of title as security nor to transfer these by way of gift, unless one of the cases described in the following items applies.
3. In the event that the Buyer resells or hires out the goods subject to retention of title as is admissible in the scope of ordinary supplier business, the Buyer herewith and today assigns us the future claims against his customers resulting from the resale or the hire by way of security until all our claims have been satisfied, without this assignment requiring any further or additional declaration. Until cancelled, the Buyer is entitled to collect the assigned claims resulting from the resale or hire; however, the Buyer is not entitled to dispose of the claims in any other way, like for example by assignment.
4. Upon our request, the Buyer is obliged to inform his customer of the assignment and to submit to us all the documents required to assert our claims against the customer, like the invoice, and to provide us with all the required information. The Buyer shall bear all the costs of collection and potential interventions.
5. If the Buyer processes the goods subject to retention of title, remodels or combines them with other objects, such processing, remodelling or confusion is performed on our behalf. We then hold the title of the thing produced by way of processing, remodelling or confusion. The Buyer shall safekeep the new thing on our behalf with the diligence of a prudent businessman. The things produced by way of processing, remodelling or confusion are deemed to be goods subject to retention of title. In the event of processing, remodelling or confusion with objects not belonging to us, we are entitled to co-ownership in the new thing in relation to the share of the value of the goods subject to retention of title that were involved in the processing, remodelling or confusion to the value of the new thing. If the new thing is resold or hired out, the Buyer herewith and today assigns us his claims including all ancillary claims against his customers resulting from the resale or the hire by way of security, without this assignment requiring any further or additional declaration. This assignment is limited to the amount of the invoiced value of the processed, remodelled or confused goods subject to retention of title. The share of the claim assigned to us shall have priority over the remaining claim.
6. If the Buyer partially or fully defaults on his payment obligations or with respect to the encashment of cheques or if the Buyer is over-indebted or has ceased payment or a petition for instituting composition or insolvency proceedings has been filed, we may immediately assert our rights resulting from the retention of title and collect the goods; the same applies for any other material deterioration of the Buyer's economic circumstances. In this event, the Buyer grants us or the persons authorised by us access to all his premises during the normal business hours. The request to submit the goods or the collection of the goods does not constitute withdrawal from the contract. We are entitled to dispose of the goods subject to retention of title with the diligence of a prudent businessman and to satisfy our claims by offsetting our open claims against the proceeds thereof.
7. If the value of the security exceeds the value of our claims against the Buyer resulting from the ongoing business relationship by more than 20% in total, we are, upon the Buyer's request and at his discretion, obliged to release the security objects he is entitled to.

## § 9 Payment

1. Unless otherwise agreed upon, our invoices are payable within 30 days after issuing of the invoice without any deductions. A payment is deemed executed as soon as the amount has been credited to our account and we can dispose of said amount. This refers in particular to payment by cheque.
2. We reserve the right to refuse payment by cheque or bill of exchange. Cheques are only accepted on the proviso that they can be cashed.
3. Should we obtain knowledge of circumstances casting doubt on the Buyer's creditworthiness, particularly if the Buyer fails to cash a cheque or ceases payments, we are entitled to call for immediate payment of the remaining receivables, even if we have accepted cheques. In such a case, we are further entitled to request advance payments or the provision of security.
4. If the Buyer ceases payment entirely and/or insolvency proceedings are opened with respect to his assets, we are further entitled to withdraw from any unfulfilled part of the contract.
5. Notwithstanding deviating provisions on the part of the Buyer, we are entitled to first offset any payments against costs already incurred or interests or older debts of the Buyer.
6. Any offsetting of claims by the ordering party shall be excluded, unless these counterclaims are legally valid and not disputed by the Company. A right of retention on the part of the Buyer, unless resulting from the same contractual relationship, shall be excluded.

## § 10 Applicable law, translations, place of jurisdiction, severability clause

1. The General Terms and Conditions and the entire legal relationship between us and the Buyer is subject to the law of the Federal Republic of Germany excluding application of the CISG.
2. If we offer translations of these General Terms and Conditions or other documents in another language as additional service, the German version shall be exclusively applicable to the contractual relationship and the interpretation of agreements in particular.
3. If the Buyer is a businessperson as defined by the Handelsgesetzbuch [German Commercial Law], a legal person under public law or öffentlich-rechtliches Sondervermögen [separate assets under public law], our registered office shall be place of performance and the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
4. Should a determination of the exclusive place of jurisdiction based on § 10 (2) be impossible due to conflicting standard terms and conditions, our registered office shall be additional place of jurisdiction.
5. Should a provision in these General Terms and Conditions be or become invalid, the validity of the all the other provisions and agreements between the Company and the ordering party shall remain unaffected thereof.