

## Terms and Conditions BAUR GmbH, A-6832 Sulz/Austria

Status: October 2024

### 1. Scope

- 1.1 These terms and conditions apply for legal transactions between companies, namely for delivery of goods and accordingly also for providing services.
- 1.2 Deviations from the conditions mentioned in Article 1.1 are only effective in case of prior written approval by BAUR.

### 2. Offer

- 2.1 Offers from BAUR are non-binding and subject to change.
- 2.2 Any offer and project documents may not be reproduced nor accessed by third parties without BAUR's approval. They may be claimed back at any time and need to be given back to BAUR immediately, if the order is not given to BAUR or placed elsewhere.

### 3. Conclusion of the contract

- 3.1 The contract is deemed concluded if BAUR sends a written order confirmation or delivers the ordered goods after receipt of the order.
- 3.2 The information contained in catalogues, brochures, etc. as well as other written or oral statements are only relevant, if reference is expressly made to them in the written order confirmation.
- 3.3 Subsequent amendments and additions to the contract must be confirmed in writing to be effective.

### 4. Prices

- 4.1 BAUR's ex-works prices apply and are exclusive of value added tax, loading, disassembly, withdrawal and orderly recycling and disposal of electrical and electronic devices. If any fees, taxes or other charges incur in the context of delivery, these are for the account of the purchaser. If agreed terms include delivery to the purchaser, then delivery as well as transport insurance desired by the purchaser is separately invoiced; this however does not include unloading of the goods or any additional services.
- 4.2 In case of an order which differs from the total offer, BAUR reserves the right to make a corresponding price modification.
- 4.3 Prices are based on costs at the time of the first price offer. If costs increase until the time of delivery, BAUR has a right to adapt the prices accordingly.
- 4.4 In case of repair contracts, services which are considered to be appropriate are provided by BAUR and invoiced on the basis of the expenses incurred. This also applies for services and extra work if suitability only becomes evident during the execution of the contract, in which case no special notification to the purchaser is required.
- 4.5 Expenses for generating repair offers or expert opinions are invoiced to the purchaser.

### 5. Delivery (based on Incoterms® 2020)

- 5.1 The delivery period starts with the last of the below points in time:
  - 5.1.1. Date of order confirmation
  - 5.1.2. Date of fulfillment of all technical, commercial and other conditions incumbent upon the purchaser;
  - 5.1.3. Date on which BAUR receives an advance payment or a (payment) security to be made before delivery of goods.
- 5.2 Official licenses and any licenses required from third parties for implementing systems need to be obtained by the purchaser. If such approvals are not received on time, the delivery deadline will be delayed accordingly.
- 5.3 BAUR is authorised to carry out part or advance deliveries and to invoice them separately. If the delivery terms agreed to be "on call orders", the goods are considered as called for 1 year after the order at the very latest.
- 5.4 To the extent that unforeseeable circumstances or those independent of the will of the party occur, e.g., all cases of force ma-jeure, which prevent the adherence to the agreed delivery dead-line, the same is extended by the period of these circumstances; in particular, these include armed conflicts, official interference and prohibition, transport and customs clearance delays, trans-port damage, power and raw material shortage, work disputes and the failure of an important hardly replaceable supplier.

The above mentioned circumstances also justify the extension of the delivery deadline if they occur with (sub-) suppliers. If delivery is not possible or inadmissible due to interventions or prohibitions of authorities or changes of law for a prolonged period, BAUR is entitled to withdraw from the contract and to invoice all costs incur in accordance with Article 10.

### 6. Transfer of risk and place of delivery

- 6.1 Usage and risk are transferred to the purchaser when the delivery has left the works, independent of the delivery conditions agreed / Incoterms® (e.g., CPT, CIP, etc.). This also applies if delivery or transport is realised or organised and managed by BAUR.
- 6.2 The place of delivery for services is where the service is provided. Risk for a service or a partial service agreed upon, is transferred to the purchaser upon provision.

### 7. Payment

- 7.1 If not otherwise agreed in writing, the purchaser is obliged to pay the entire invoiced amount to a bank account selected by BAUR within 30 days of receipt of the invoice. Payments need to be made without any deduction in the currency agreed.
- 7.2 The purchaser is not authorised to withhold or offset payments due to warranty claims or other counterclaims.
- 7.3 A payment is considered to be made on the date when fully available to BAUR.
- 7.4 If the purchaser delays a stipulated payment or another settlement from this or other transactions, BAUR is entitled, without prejudice to its other rights,
  - 7.4.1. to postpone fulfillment of its own obligations up to the time that this payment or other settlement is made and claim a suitable delay in the delivery date,
  - 7.4.2. to declare all other amounts in relation to this contract or any other transactions are due and payable and to invoice default interest in the amount of 1% per month for these amounts plus value added tax, from the corresponding due date, provided BAUR cannot provide evidence of additional exceedings. In any case, BAUR is authorised to invoice for pre-procedural costs, especially reminder fees and lawyer's fees.
- 7.5 Granted discounts or volume-based rebates are subject to the timely settlement of the complete payment.
- 7.6 Retention of Title: BAUR reserves ownership rights on all goods delivered until receipt of full payment for the invoiced amounts including interest and costs. The purchaser herewith assigns its right of a sale of retained goods to BAUR in order to guarantee the invoiced amount, even if goods are processed, reshaped or mixed, and is obliged to apply a corresponding entry in its books or on his invoice. Upon request, the purchaser needs to inform BAUR of the assigned rights and the respective debtors and to make all information and documents necessary for the forfeiture of its right available and to notify third party debtors about the assignment. In case of a garnishment or another claim, the purchaser is obliged to refer to BAUR's ownership right and to immediately inform BAUR.

### 8. Software licenses

- 8.1 BAUR grants the customer a non-exclusive, non-transferrable right to use any software product for which the latter has purchased a license from BAUR. If a device is ceded to a third party, use of the accompanying software is also granted.
- 8.2 The license rights granted by BAUR to the customer may neither be assigned, transferred, pledged, leased, nor may they be handed over, ceded or shared in other forms, to third parties.
- 8.3 Except for a backup copy, any form of reproduction of the software product, documentation, or parts thereof, is subject to BAUR's prior written approval.
- 8.4 Without BAUR's prior written approval, the customer may not modify, transfer (either electronically or in other ways), translate, disassemble, decompile or modify in other ways the software product or the attached documentation.
- 8.5 In the case of purchased and fully paid goods, the customer has the option to obtain an update of the software products from BAUR for a fee during the first 3 years after the transfer of risk. If the customer has also concluded a longer lasting usage contract with the purchase, the update will be carried out for the duration of the paid usage.

## 9. Warranty and responsibility for defects

- 9.1 BAUR is obliged to remove any defect influencing functionality existing at the time of transfer, which results from a construction, material or design error, according to the following stipulations, if payment conditions are respected. No warranty claims can derive from statements in catalogues, brochures, leaflets and written or oral comments not included in the contract.
- 9.2 The warranty period is 12 months, unless for any specific items delivered another warranty period has been agreed upon. The warranty period begins from the time of transfer of risk according to Article 6. The subsequent limitation period is 1 month.
- 9.3 Any warranty claim is subject to the condition that the purchaser has promptly notified the defects. The purchaser has to evidence the defect immediately and especially to provide documents and/or data available to BAUR. In case of a defect covered by warranty according to Article 9.1, BAUR has the own choice either to repair or replace the defective goods, to cancel the contract or to grant an appropriate price reduction. In case of a repair, BAUR has the right to get the goods dispatched for repair.
- 9.4 All supplementary costs arising in the context of removal of the defect (e.g., assembly, disassembly, transportation, disposal, conveyance and travel time) are for the account of the purchaser. For warranty work in the purchaser's premises, the required workers, lifting devices, scaffolding and incidentals, etc., need to be provided free of charge. Replaced parts are BAUR's property.
- 9.5 If one of BAUR's products is manufactured on the basis of assembly information, drawings, models or other specifications of the purchaser, then BAUR's liability only covers to the correct execution.
- 9.6 The warranty excludes those defects which arise from design and assembly not effected by BAUR, unsatisfactory installation, non-observance of installation requirements and conditions of use, straining of parts over the performance measure indicated by BAUR, negligent or incorrect treatment and use of inappropriate operating materials. This is also applicable to defects attributable to material provided by the purchaser. BAUR is also not liable for damage attributable to third party activities, atmospheric discharges, electrical surges and chemical influences. The warranty does not cover replacement of parts subject to natural wear and tear. BAUR assumes no warranty in case of purchase of used goods.
- 9.7 The warranty expires immediately if the purchaser itself without BAUR's prior written approval or a third party not expressly authorised by BAUR carries out modifications or repairs.
- 9.8 Claims according to article 933b ABGB become time-barred in any case upon the expiry of the deadline named in Article 9.2.
- 9.9 Stipulations 9.1 to 9.8 accordingly also apply to any warranty for defects irrespective of the legal basis.

## 10. Cancellation of the contract

- 10.1 The pre-condition for the purchaser to withdraw from the contract is a delay in supply attributable to BAUR's gross default and the unsuccessful expiry of an appropriate grace period notified to and received by BAUR. The withdrawal has to be sent by registered letter.
- 10.2 Regardless of its other rights, BAUR is authorised to withdraw from the contract,
  - 10.2.1. if the execution of the supply and/or the start or the continuation of the service is impossible or is further delayed, despite setting an appropriate grace period due to reasons attributable to the purchaser,
  - 10.2.2. if there are concerns regarding the purchaser's ability to pay and he neither makes an advance payment upon BAUR's request nor does provide a suitable security before delivery, or
  - 10.2.3. if the extension of the delivery time amounts to more than half of the originally agreed upon delivery period, but at least 6 months, due to circumstances indicated in Article 5.4.
- 10.2.4. Withdrawal can also be declared with respect to a part of the delivery or service which is still open due to the above mentioned reasons.
- 10.2.5. In case a bankruptcy procedure is initiated on the assets of a party or an application to initiate a bankruptcy procedure has been turned down due to lack of sufficient assets, the other party is authorised to withdraw from the contract without setting any grace period.
- 10.2.6. Without prejudice to BAUR's claim for damages including pre-process costs, services or partial services already provided will be invoiced and have to be paid in accordance with the contract. This also applies for preparatory activities provided by BAUR, to the extent such delivery or service was not yet accepted by the purchaser. BAUR is also entitled to require return of already delivered objects instead of this.
- 10.2.7. Other consequences of the withdrawal are excluded.

## 11. BAUR's liability

- 11.1 BAUR is liable for damages outside the area of application of product liability law only to the extent that willful intent or gross negligence in the context of legal regulations can be evidenced. To the extent permitted by law, BAUR's liability for slight negligence, for replacement of consequential damages and financial losses, unrealised savings, interest loss and damages from third party claims against the purchaser are excluded.
- 11.2. Non-observance of possible conditions for assembly, commissioning and usage (e.g. as described in operating manuals) or official admission requirements are excluded from any claim for damages.
- 11.3 If contractual penalties are agreed upon, claims over and above the same arising from the corresponding titles are excluded.
- 11.4 To the extent permitted by applicable law, BAUR's liability for whatever legal basis is limited with the amount of the respective contract value.

## 12. Assertion of claims

- 12.1 If not otherwise agreed individually or shorter periods are foreseen by law, all purchaser's claims need to be asserted within 3 years of risk transfer, otherwise the right of claim will forfeit.

## 13. Intellectual property rights

- 13.1 If a product of BAUR is manufactured based on assembly data, drawings, models or other specifications of the purchaser, the purchaser is obliged to indemnify and hold harmless BAUR from any liability in case of any possible infringement of third party rights.
- 13.2 Assembly instructions and drawings, e.g. plans, drafts and other technical documents as well as samples, catalogues, brochures, diagrams, etc., always remain BAUR's intellectual property and are subject to the relevant legal stipulations with regard to reproduction, copying, competition, etc. Article 2.2 also applies to assembly instructions and drawings.

## 14. Sanctions clause – Russia and Belarus

- 14.1 The purchaser shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014. The purchaser shall not sell, export or re-export, directly or indirectly, to Belarus or for use in Belarus any goods supplied under or in connection with this Agreement that fall under the scope of Article 8g of Council Regulation (EU) No 765/2006.
- 14.2 The purchaser shall undertake its best efforts to ensure that the purpose of paragraph 14.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 14.3 The purchaser shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph 14.1.
- 14.4 Any violation of paragraphs 14.1, 14.2 or 14.3 shall constitute a material breach of an essential element of this Agreement, and BAUR shall be entitled to seek appropriate remedies, including, but not limited to:
  - (i) termination of this Agreement and
  - (ii) a penalty of 30% of the total value of this Agreement or price of the goods exported, whichever is higher.
- 14.5 The purchaser shall immediately inform BAUR about any problems in applying paragraphs 14.1, 14.2 or 14.3, including any relevant activities by third parties that could frustrate the purpose of paragraph 14.1. The purchaser shall make available to BAUR information concerning compliance with the obligations under paragraph 14.1, 14.2 and 14.3 within two weeks of the simple request of such information.

## 15. Non-disclosure

- 15.1 Both contractual parties are mutually obligated to treat all the information and data that is disclosed to them in connection with the contract and not publically available as strictly confidential. The data must not be reproduced or made available to third parties. This excludes disclosure as required by law or in the event that other arrangements have been agreed upon between BAUR and the customer. Should one contractual party be legally obliged or authorised through agreements to disclose confidential information, the affected party, unless it is legally prohibited to do so, shall be informed about the disclosure of the information. BAUR retains the right to use the name of the customer, the customer's address and the sales object for reference purposes. The customer may object to this at any time.

## 16. General

- 16.1 If individual stipulations of the contract or these Terms and Conditions become invalid, this will not affect the validity of remaining provisions. The invalid stipulation shall be replaced by a valid one which comes as close as possible to the objective strived for.
- 16.2 In case of contradictions between the English and the German version of the Terms and Conditions or any other document of legal relevance, the German version shall prevail.

## **17. Jurisdiction and law**

- 17.1 All contracts with BAUR shall be exclusively governed by Austrian law. Application of the UNCITRAL treaty of the United Nations on contracts relating to international goods sales is excluded.
- 17.2. Any disputes arising from the contract, including those over its existence or non-existence, with contractual partners with place of business within the European Union or the EFTA, shall be subject to the exclusive jurisdiction of the competent court in 6800 Feldkirch, Austria. As long as this court has not been called upon in a specific dispute, BAUR is, however, entitled to call upon another court with jurisdiction for the contractual partner in this dispute.
- 17.3. For all contractual partners with place of business outside the European Union or the EFTA, all disputes arising from the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of the arbitration court shall be in 6800 Feldkirch, Austria. The language to be used in the arbitration proceedings is the respective contractual language, i.e. German or English. As long as the arbitration court has not yet been called upon in a specific dispute, BAUR is, however, entitled to call upon an ordinary court responsible for the contractual partner in this dispute.

Sulz, October 2024

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