

# GENERAL CONDITIONS OF DELIVERY AND SALES OF OTTO BAIER GMBH

## I. Definition, scope of application

1. The following Uniform Terms and Conditions of Sale and Delivery (hereinafter referred to as "Terms and Conditions") shall apply to the business relations between the Customer and BAIER with registered seat in the Federal Republic of Germany refers to the Terms and Conditions upon conclusion of the contract (hereinafter respectively referred to as "BAIER"). BAIER shall not recognize any **con- flicting or differing terms and conditions of the Customer compared with these Terms and Conditions unless BAIER has expressly approved their validity in writing.** The following Terms and Conditions shall also apply if BAIER accepts the order of the Customer without reservation and / or performs the delivery to the Customer without reservation while aware of terms and conditions of the Customer that **conflict with or differ from BAIER'S Terms and Conditions.**

2. Separately made individual agreements with the Customer (including subsidiary agreements, supplements, and amendments) **take precedence over these Terms and Conditions in every case. A written contract or the written confirmation of BAIER shall be decisive for the content of such agreements.** The contractual parties shall also satisfy the written form requirement by sending documents by fax or by e-mail.

3. In their respective version, these Terms and Conditions shall also apply as a framework agreement for future contracts between the same Customer and the respective BAIER company with registered seat in the Federal Republic of Germany without BAIER having to make reference hereto again in each individual case.

## II. Offers, offer documents, order confirmation

1. All BAIER offers are nonbinding and subject to change without notice and are carried out subject to the reservation of self- delivery.

2. The order for the item of delivery placed by the Customer shall be deemed as a binding contractual offer and may be accepted by BAIER within 4 weeks. The minimum order value is EUR 500, excluding value added tax. A surcharge for shortfall in quantity shall be charged should this not be reached.

3. **A contract for delivery shall only materialize by way of a written order confirmation or order confirmation by means of remote data transmission of BAIER,** at the latest, however, upon delivery. If BAIER can prove by submitting a dispatch report that it sent a declaration by fax or remote data transmission, it shall be presumed that the Customer received the declaration.

4. BAIER reserves the property rights and copyrights to samples, cost estimates, drawings, calculations, and other information of a material and immaterial nature, which is not generally accessible—including in an electronic form. The Customer shall require the express written consent of BAIER before forwarding these to third parties.

## III. Prices, terms and conditions of payment

1. All BAIER prices are deemed "ex works" in accordance with the Incoterms 2010 plus the valid statutory VAT on the date of invoicing. All additional costs, such as packaging, transport, customs duties, support with the execution of customs formalities, taxes, other public duties, or an agreed assembly shall be invoiced separately.

2. Provided that no other payment terms have been agreed, payments are to be made in advance from invoice date without deduction. Payment shall be made by way of a bank remittance. The receipt of payment to BAIER shall be decisive with regard to the timeliness thereof.

3. In case of any payment deadline has expired, the amount shall be deemed in default. In the event of delayed or deferred payment, BAIER shall be entitled to charge interest in the amount of the respective applicable statutory interest rate on default. BAIER reserves the right to assert further damages on default. In addition, BAIER shall be entitled to hold back all deliveries or services until payment is received in full. The entitlement to the commercial maturity interest (§ 355 HGB (German Commercial Code)) shall remain unaffected toward merchants.

4. The Customer may only set off claims against undisputed counterclaims recognized by BAIER or recognized by declaratory judgment. The Customer shall only be authorized to exercise a right of retention in the event that its counterclaim is based on the same contractual relationship.

5. In the event that, upon conclusion of the contract, BAIER becomes aware of circumstances which raise questions about the Customer's creditworthiness, or in the event of a substantial risk of claim to payment due to a deterioration in the Customer's assets, or if the Customer falls into arrears with the payment, then BAIER may demand security with a reasonable deadline and refuse **per- formance until its request or the payment entitlement have been fulfilled. In case of a refusal of the Customer or unsuccessful expiry of the deadline,** BAIER is entitled to cancel the contract in whole or in part and to demand compensation in place of performance.

## IV. Retention of title

1. BAIER reserves the right of ownership to the items of delivery until all payments from the business relationship with the Customer have been received.

2. In the event that the Customer acts in breach of the contract, in particular in the event of non-payment of the due purchase price, BAIER shall be entitled to withdraw from the contract in accordance with the statutory regulations and/or demand that the items of delivery be returned on the basis of the retention of title and resale. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, BAIER shall be entitled to merely demand the return of the items of delivery and reserve the right to withdraw from the contract. In the event that the Customer does not pay the due purchase price, BAIER may only assert such rights if BAIER has previously and unsuccessfully set the Customer a reasonable deadline for payment **or if the setting of such a deadline is superfluous in accordance with the statutory regulations.**

3. An application to commence insolvency proceedings concerning the assets of the Customer shall entitle BAIER to withdraw from the contract and to demand the immediate return of the items of delivery.

4. The Customer shall be entitled to resell the items of delivery within the ordinary course of business; the Customer hereby now assigns to BAIER all claims incurred by the Customer from the resale in the amount of the purchase price agreed between BAIER and the Customer (including VAT), regardless of whether the delivery items are resold without being fabricated or after being fabricated; BAIER hereby accepts the assignment. The Customer is authorized to collect such claims after they have been assigned. This shall not affect BAIER'S authorization to collect the claims itself; however, BAIER undertakes not to collect such claims provided the **Customer properly fulfills its payment obligations and is not in default of payment. In the event, however, that this is not the case,** BAIER shall be entitled to demand that the Customer disclose the assigned claims and their debtors, provide all information required for collection, surrender the related documents, and inform the debtors (third parties) of the assignment.

5. The processing or conversion of the items of delivery by the Customer is always carried out for BAIER. If the items of delivery are processed with other items of delivery, which do not belong to BAIER, then BAIER shall acquire the joint title to the new items of delivery in the proportion of the value of the items of delivery to the other processed objects at the time of processing.

6. In the event that the items of delivery are inseparably mixed or joined with other objects not belonging to BAIER, then BAIER shall acquire the joint ownership to the new object in proportion of the value of the objects of delivery to the other mixed objects. The Customer shall hold the joint title in safe custody free of charge on behalf of BAIER.

7. The Customer may neither pledge the items of delivery nor transfer title to such items by way of security and has to label these as BAIER property. The Customer has to inform BAIER immediately in case of attachments as well as seizures or other third-party dispositions, and provide BAIER with all the information and documents available to it, which are necessary to safeguard its rights. **Enforcement officers or third parties are to be informed of the title of BAIER.**

8. BAIER hereby agrees to release the securities to which it is entitled upon the request of the Customer to the extent such securities **do exceed the value of the claims to be secured by BAIER by more than 10%, provided, such has not yet been satisfied.** BAIER shall be responsible for selecting the securities to be released.

## V. Deliveries, delivery period

1. Delivery and service deadlines are approximate deadlines and nonbinding insofar as BAIER has not described these as binding in writing. **Agreed delivery and service deadlines presume that all technical and commercial questions have been clarified between the contractual parties and payments or other obligations of the Customer are available or have been fulfilled in time; agreed delivery and service deadlines shall only apply under these prerequisites.** If this does not take place, the delivery deadline shall be adeq- uately extended. This shall not apply insofar as BAIER is responsible for the delay.

2. The compliance with the delivery period is subject to BAIER'S self-delivery being correct and received promptly. BAIER shall inform the Customer as soon as possible if there are any indications of delays.

3. The delivery period shall be deemed complied with if the item of delivery has left the BAIER factory by its expiry or BAIER has reported that the goods are ready for dispatch. **Insofar as an acceptance is to be carried out – except with the justified refusal of acceptance – the acceptance date shall be decisive or alternatively the notification that the goods are ready for dispatch by BAIER.**

4. In the event that dispatch or the acceptance is delayed at the Customer's request, then the item of delivery shall be stored at BAIER at the Customer's risk. The costs incurred through the delay, in particular the storage cost, shall be charged to the Customer.

5. The delivery period shall be extended by the duration of the strikes in case of force majeure or other events, which are beyond the scope of influence of BAIER, e.g., industrial disputes (incl. strikes and lockouts – also at BAIER), delays in the delivery of essen- tial raw materials, difficulties with energy supply. **BAIER shall inform the Customer of the start and the end of such circumstances as soon as possible.** If the aforementioned impediments last longer than six months, both contractual parties are entitled to cancel the contract with regard to the part, which has not yet been fulfilled. **BAIER is not obliged to substitute procurement. Claims for damages of the Customer against BAIER due to the previously mentioned im ediments are excluded.**

6. Partial deliveries shall be permissible provided no disadvantages for use arise thereby.

7. BAIER reserves the right to excess and shortfall in deliveries up to 10%.

## VI. Delay in delivery

1. The occurrence of our delay in delivery is determined in accordance with the statutory regulations. In each case, however, a reminder is required from the Customer.

2. BAIER shall be liable for delay in delivery in accordance with Section X.3. of these Terms and Conditions. However, the liability of BAIER is limited to the compensation of the foreseeable, typically occurring damages.

3. **Dispatch, transfer of risk, acceptance**

1. **Unless otherwise specified in the order confirmation, delivery "ex works" is agreed in accordance with the Incoterms 2010.** Dispatch is at the Customer's risk and expense. This shall also apply to partial deliveries as well as returned goods. Insofar as an acceptance is to be carried out, this is decisive for the transfer of risk. It must be carried out immediately as of the acceptance date or alternatively after BAIER'S notification concerning the goods/readiness for acceptance. **The Customer may only refuse ac- ceptance if there is a significant defect.**

2. In case of separate agreements, the items of delivery can be shipped to another place of destination at the Customer's expense (contract of sale involving the carriage of goods); BAIER is entitled to determine the type of the shipment (in particular transport company, dispatch route, packaging, and insurance) itself.

3. The risk of accidental loss and the accidental deterioration of the items of delivery shall pass with the provision of the item of delivery at the agreed location and at the agreed time, by no later however than with the handover to the Customer. With the contract of sale involving the carriage of goods, the risk of accidental loss and the accidental deterioration of the items of delivery as well as the risk of delay shall pass with the delivery of the items of delivery to the carrier, the freight forwarder, or the persons otherwise determined for the execution of the shipment. Insofar as an acceptance has been agreed, this shall be decisive for the transfer

of risk. If the Customer is in default of acceptance, the risk shall also be transferred. If the shipment/the acceptance/the handover is delayed or it is not carried out at all in full, owing to circumstances, which are not attributable to BAIER, the risk shall transfer to the Customer **from the day of the notification that the goods are ready for shipment or acceptance.**

4. In the event that the Customer is in default in accepting delivery, omits an act of cooperation, or if a delivery from BAIER is delayed for other reasons for which the Customer is responsible, BAIER shall then be entitled to demand compensation for any damages arising therefrom, including additional expenses (e.g., storage costs). For this purpose, BAIER shall charge a lump sum compensation in the amount of 0.5% of the net price (delivery value) per calendar week up to a maximum total of 5% of the delivery value, **beginning with the delivery period or – in the absence of a delivery period – with the notification that the item of delivery is ready for shipment.** BAIER will not request any lump sum with which the damages, which are expected in accordance with the customary progress, are exceeded. The proof of higher damages and statutory claims (in particular, reimbursement of additional expenses, reasonable compensation, termination) of BAIER remain unaffected; the lump sum is, however, to be offset against further monetary claims. **The Customer is permitted to prove that BAIER did not suffer any or only significantly fewer damages than the above mentioned lump sum.**

## IX. Warranty

BAIER shall assume warranty for material defects to the delivery as follows:

1. **The Customer's claims for defects presume that the Customer has satisfied its statutory obligations for inspection and to report a complaint (§§ 377, 381 HGB). Should any defect be found upon inspection or thereafter, BAIER must be notified immediately. The notification is deemed as immediate if effected within two weeks; the timely dispatch of the notification is sufficient in order to safeguard the deadline. The notification must be in writing. Irrespective of the above obligation pertaining to inspection and notification of defects, the Customer has to report obvious defects (including wrong delivery or shortfall in delivery) within two weeks from the delivery; the timely dispatch of the notification of a defect is sufficient in order to safeguard the deadline. The notification must be in writing. Should the Customer fail to provide the notifications of defect specified above, any liability of BAIER is excluded for the unreported defect.**

2. Decisive for the design, measurements, weight, and suitability is solely the agreement of the condition reached concerning the item of delivery (the first sample sent to the Customer for examination and testing, the construction drawing of BAIER, or the agreed performance specifications). **If no agreement exists concerning the condition, BAIER warrants that the material and workmanship are free of defects in compliance with the respective state of the art.**

3. BAIER is entitled to create deliveries and services in deviation of the agreed condition insofar as this is required for production technology reasons at BAIER and the modification is deemed reasonable for the Customer.

4. If the item of delivery is faulty, BAIER can choose whether subsequent performance is provided by remedying the defect (sub sequent improvement) or by delivery of a new item (substitute delivery). The right of BAIER to refuse the subsequent performance under the statutory prerequisites remains unaffected.

5. If the item of delivery is faulty, the Customer has to give BAIER the necessary time and opportunity prior to the start of manuf- acture (processing or installation) to perform all subsequent improvements and/or replacement deliveries that appear necessary to BAIER. In the event the Customer does not satisfy this obligation, BAIER shall be exempted from any liability for the resulting consequences. **The Customer, after prior notification of BAIER, can only remedy the defect itself or have it remedied by third parties and request reimbursement of the necessary expenses from BAIER in urgent cases where an operational safety risk exists or in order to avert disproportionately large damages.** The Customer's right to rectify defects itself or have it remedied by third party shall not exist if BAIER would have been entitled to refuse the remedial work due to statutory regulations.

6. Of the direct costs arising from the remedial work or a replacement delivery, BAIER – insofar as the complaint proves to be justified – shall bear the costs for the replacement part including the shipment. **Costs incurred by the fact that the item of delivery has been taken to another location than the registered seat of the Customer or the contractually agreed place of performance shall be borne by the Customer.**

7. If BAIER – by taking into consideration the legal exceptions – does not successfully meet a reasonable deadline for the remedial work or replacement delivery on account of a material defect, set to it by the Customer, the Customer can accordingly withdraw from the contract within the statutory regulations. **If there is only an insignificant defect, the Customer is merely entitled to reduce the agreed price.** The right to reduction of the price incidentally remains excluded.

8. Further claims are excluded subject to Section X.

9. The Customer shall provide BAIER immediately upon request and at BAIER'S expense, with the parts that BAIER is to replace.

10. Claims based on defects shall in particular not arise if the defect is a result of stipulations of the Customer, violation of opera- ting, service, and installation regulations, unsuitable or improper use or storage, faulty or negligent handling, and natural wear and tear, as well as interventions in the item of delivery carried out by the Customer or by third parties, e.g., improper remedial work of the Customer or a third party as well as changes to the item of delivery without prior consent of BAIER.

11. In the event it is determined that there is no material defect or that the defect is due to circumstances that do not oblige BAIER to assume liability for defects, the Customer shall reimburse BAIER all costs incurred hereby.

## X. Liability

BAIER shall be liable for claims of the Customer for damages and/or fruitless expenses – for whatever legal reasons – as follows:

1. Unless otherwise regulated within another liability provision of these Terms and Conditions, BAIER shall only be obliged to com- pensate for damages incurred by the Customer directly or indirectly as a result of a faulty delivery, due to violation of official safety regulations, or for any other legal cause, which is attributable to BAIER.

2. If through BAIER'S fault as a result of omitted or faulty execution of recommendations, and advice before or upon conclusion of the contract, or by the breach of other secondary contractual obligations – in particular instructions for the operation and mainte- nance of the delivery item – the Customer cannot use the delivery item in accordance with the contract, the regulations of Sections IX and X.3 shall apply accordingly upon the exclusion of further claims from the Customer.

3. a) BAIER shall only be liable – for whatever legal reasons – for damages other than to the item of delivery itself in cases of willful intent, gross negligence of the executive bodies, executives, or vicarious agents, with culpable injury to life, body, health, with defects, which BAIER maliciously failed to disclose, or the absence of which was guaranteed by BAIER, and in accordance with the provisions of the Product Liability Act.

b) **With the culpable breach of essential contractual duties (obligation, the fulfillment of which makes the proper execution of the contract possible at all and the compliance with which the contractual partner as a rule relies and is entitled to rely upon), BAIER shall also be liable in case of gross negligence of nonmanagerial staff and with slight negligence, in the latter case limited to the reasonably foreseeable damages upon conclusion of the contract, which are typical for the contract.**

## c) Further claims are excluded.

4. In the event that a claim is asserted against the Customer due to liability in accordance with a right, which cannot be excluded toward third parties, BAIER shall assume responsibility toward the Customer to the extent that it would also be directly liable. For the compensation of damages between the Customer and BAIER, the principles of § 254 BGB (German Civil Code) shall apply accor- dingly. This shall also apply in the event of the direct assertion of a claim against BAIER. The compensation obligation is excluded insofar as the Customer on its part has effectively limited the liability toward its buyer. The Customer shall make an effort to also agree upon limitations of liability to a legally admissible extent for the benefit of BAIER

5. BAIER shall be liable – as it is legally obliged hereto – for actions taken by the Customer in order to defend damages (e.g., recall action).

6. The Customer shall inform and consult BAIER immediately and comprehensively should the Customer intend to assert a claim against BAIER in accordance with the above regulations. The Customer has to give BAIER the opportunity to examine the damaging event. The contractual parties shall agree about the measures to be taken, in particular in case of settlement negotiations.

## XI. Statute of limitations

All claims of the Customer – for whatever legal reasons – are subject to a limitation period of 12 months after transfer of risk. For claims in accordance with Subclause X.3.b) as well as in cases of willful intent, gross negligence of the executive bodies or execu- tives, with culpable injury to life, body, health, with defects, which BAIER maliciously failed to disclose, or the absence of which was guaranteed by BAIER, and in accordance with the provisions of the Product Liability Act, the statutory regulations shall apply. This shall have no effect on the special statutory regulations for in rem claims of third parties for handover (§ 438 Par. 1 No. 1 BGB) as well as to buildings and building materials (§ 438 Par. 1 No. 2 BGB).

## XII. Design, tools

The tests and inspections stipulated by the Customer shall be decisive for the faultless suitability of the design and the material of the parts to be produced by BAIER insofar as these were accepted by BAIER. All proposals, design drawings and other documents entrusted by BAIER to the Customer shall remain the property of BAIER and shall not be made accessible to third parties without written consent. The Customer shall be liable for the accuracy and lawful nature of the use of the drawings, sketches, models, etc., sent to BAIER.

## XIII. Miscellaneous

In determining the amount of the claims for damages and reimbursement of expenses, which are to be fulfilled by BAIER, the finan- cial conditions of BAIER, type, scope, and duration of the business relationship, possible contributions to cause and/or fault of the Customer, and any especially unfavourable installation situation of the delivered item shall be reasonably taken into consideration in accordance with § 254 BGB for the benefit of BAIER. The replacement services, costs, and expenses to be borne by BAIER must be reasonably proportional to the value of the delivered item.

## XIV. Place of performance, place of jurisdiction, applicable law, severability clause, binding version

1. Unless expressly agreed to otherwise, the registered seat of BAIER shall be the place of performance.

2. If the Customer is a merchant, legal entity under public law or holder of special funds under public law, the place of jurisdiction shall be the court of jurisdiction for the registered seat of BAIER. **However, BAIER shall be entitled to file an action against the Customer at its general place of jurisdiction. The same shall apply if the Customer has no general place of jurisdiction in the dome- stic country, or its place of residence or customary place of abode is unknown on the date of the action.**

3. Exclusively, German law shall apply under the exclusion of all international and supranational (contractual) legal orders, in par- ticular the Convention of the United Nations of April 11, 1980, concerning contracts for the international sales of goods (CISG – "Viennese Law on Sales"). However, the conditions and consequences of the retention of title in accordance with clause IV are subject to the law of the country where the item is stored, insofar as the choice of law in accordance with Sentence 1 is invalid.

4. In the event that a provision or part of a provision of these Terms and Conditions is or shall become invalid, this shall have no effect on the validity of the remaining contract. The contractual parties are obliged to replace the invalid provision with a provision that comes as close as possible to the economic outcome of the invalid provision.

5. This English language version of the Uniform Terms and Conditions of Sale for the Germany based company of the BAIER unit ser- ves exclusively for the purposes of information and translation. In the event of any discrepancies between the terms of the German and the English language version, the German language version shall prevail in all cases. In the event of disagreement or litigation, the German language version shall also be the decisive version for the interpretation of individual provisions of the Uniform Terms and Conditions of Sale for the German based BAIER.