

# **General Standard Terms and Conditions of the Company BAUER KOMPRESSOREN GmbH for Sales and Work Performance Contracts**

## **I. General Points and Scope of Application**

1. These General Terms and Conditions (GTC) are the sole conditions pertinent to all sales contracts and contracts for work and services agreed in connection with products and devices, including accessories and spare parts, sold by BAUER KOMPRESSOREN GmbH (hereinafter referred to as "BAUER"), as well as to services such as installations, maintenance and training courses. They shall apply to contracts for work and services accordingly, insofar as their application is not ruled out due to the nature of the contract for work and services. Stipulations differing from these GTC, in particular any Customer's terms and conditions which contradict these GTC, shall only be deemed to be agreed if they are specifically confirmed in writing by BAUER as being applicable in place of these terms and conditions. These GTC shall also apply if BAUER supplies to the Customer without reservation, despite being aware of contradictory or differing Customer terms and conditions.
2. These GTC shall not apply in a personal respect to consumers in accordance with Section 13 BGB (German Civil Code).
3. In the event of an ongoing business relationship, the valid version of these GTC shall also apply to all future business transactions without specific notification of this or reference to it. This shall apply particularly in the event of call-off or follow-up orders.
4. These GTC have also been recorded in German. In case of doubt, the German version of these General Terms and Conditions shall prevail. This translation is just for information purposes.
5. Business correspondence, such as order confirmations, invoices, credit notes, account statements and payment reminders, printed by BAUER by means of data processing or sent by e-mail are valid and legally binding even without a signature.

## **II. Offers and Conclusion of a Contract**

1. Offers of BAUER are non-binding and are subject to appropriate supplies to BAUER, insofar as nothing to the contrary has been specifically agreed in writing. Orders shall only become binding on the basis of written order confirmations unless the performance ordered has already been provided by BAUER or has been invoiced.
2. With respect to electronic business dealings, the parties hereby waive application of the stipulations in Section 312e, Paragraph 1, Sentence 1 no. 1 to 3 BGB. Confirmation of the receipt of electronic orders (e-mail) does not constitute binding acceptance of the order. However the confirmation of receipt may be sent together with the declaration of acceptance. In the event of orders by electronic means, the text of the contract will be stored by BAUER and will be sent to the Customer together with these GTC by e-mail, if the Customer requests.
3. In the event that BAUER requires an export license to fulfill its obligations, the contract shall be concluded subject to the condition precedent that an export license is granted. BAUER shall undertake to apply for the relevant license from the appropriate authority. Should the application be refused, BAUER shall not be subject to any further obligations.
4. Property rights and copyrights, especially rights with respect to reproduction and distribution, concerning illustrations, drawings, costings and other documents which the Customer obtains in connection with an offer from BAUER, shall remain with BAUER. These documents shall not be made available to third parties, unless in case of an admitted resale, and are to be returned to BAUER on request if the contract does not become effective or fails.
5. The Customer shall be liable for the correctness of the documents to be provided by the Customer, such as samples and drawings. If production of the goods based on drawings, samples or other information provided by the Customer involves a breach of third party property rights, the Customer shall indemnify BAUER against all claims made by the owner of the property rights.

### **III. Prices and Conditions of Payment**

1. If no other agreements have been made to the contrary, the prices stipulated by BAUER refer to unpacked goods, ex works, in Munich. Packaging and shipping costs shall be borne by the Customer. For transactions with businessmen, the prices indicated are net prices, plus statutory VAT.
2. Unless anything to the contrary has been specifically agreed, if the valid book price at the time of supply is higher than that agreed with the Customer, the higher book price shall apply if the items are supplied more than four months after the contract has been concluded for reasons answerable for by the Customer, unless the invoice has already been issued and has been paid by the Customer. Confirmed prices are valid only upon purchase of the confirmed amount.
3. The purchase price shall be payable net without deductions within seven days of the invoice date. Deviating periods for payment will be shown in the invoice. Payments have been made exclusively to BAUER. BAUER reserves the right to request prepayment.
4. The acceptance of bills of exchange and cheques requires the consent of BAUER and is only deemed as payment, if these documents can be cashed in successfully. Provisions and charges shall be borne by the Customer.
5. If the customer gets in default with due payments, BAUER is entitled to retain deliveries of other orders of the customer. As far as payment of delayed amounts is effected, BAUER may deliver retained goods as appears fair with regard to further delivery commitments (Section 315 German Civil Code).
6. If the customer does not meet his obligation to pay (e.g. if he does not cash in a cheque or bill of exchange) or if the Customer is in danger of insolvency or declared bankrupt, BAUER is entitled to accelerate maturity of the whole claim for payment immediately, disregarding the period of accepted bills of exchange. Moreover BAUER shall then be entitled to retain due deliveries until receipt of prepayment or securities. If BAUER does not receive prepayment or securities after giving the customer an appropriate deadline, BAUER may withdraw from the contract with regard to goods and services not yet delivered. In such case, all claims of the customer concerning these goods and services shall become extinct. Instead of declaring the withdrawal from the contract, BAUER may also claim damages or assert its rights from the retention of title according to Section V. hereinafter.
7. Any offsetting by the Customer with claims neither accepted by BAUER, nor established by declaratory judgement shall be excluded. Any right of retention or any other right of the Customer to refuse performance shall be excluded, unless it derives from the same contract as the related claim of BAUER. Each single order shall be considered a separate contract. A notice of defect, of which kind ever, does not entitle the Customer to retain payment, unless the defect is undisputed, accepted by BAUER or established by declaratory judgement.

### **IV. Performance Data Tolerances**

1. The product description from BAUER and/or the manufacturer shall hereby be accepted as defining the nature of the goods or services. Any guarantee or warranty shall only be valid, if explicitly indicated as such in writing. BAUER shall only be answerable for public statements, in particular those in connection with advertising, if BAUER has instigated them and if the Customer's decision to buy was actually influenced by them. Information, drawings, illustrations, performance descriptions, dimensions, weight information or other performance data contained in catalogues, price lists, brochures, flyers, other advertising material, other publications or in the documents related to the offer are, within the framework of accepted practice in the industry, approximate in their correctness and are therefore limited in their authority. They only contain guarantees if they are specifically designated as such by us in writing. References to DIN standards are only intended to describe the goods in more detail and do not constitute a guarantee unless this has been specifically agreed.
2. Reasonable deviations (tolerances) from performance data do not constitute a fault. This applies in particular to the following tolerances.

1. Delivery quantity for respiratory air compressors: measured with cylinder filling from 0-200bar- +/-5%
  2. Delivery quantity for industrial air and gas compressors: measured in accordance with VDMA 4362 with flow meter against 0.8-fold final pressure -  $\pm 5\%$
  3. Power consumption: KW  $\pm 5\%$
  4. Compressor speed: 1/min  $\pm 5\%$
  5. Operating pressure (final pressure): bar  $\pm 5\%$
  6. Safety valve set pressure: bar  $\pm 5\%$
  7. Operating voltage: Volt  $\pm 10\%$ , frequency Hz  $\pm 1\%$
  8. Sound pressure in decibels at a distance of 1m:  $\pm 2$  db
  9. Net weight: kg  $\pm 10\%$
  10. Dimensions: m  $\pm 10\%$
3. BAUER reserves the right to make design modifications to devices without prior notice, if they are usual for the industry and are reasonable for the contractual party. The Customer cannot demand the retrofitting of devices which have already been supplied in the event of design modifications within an ongoing batch.

## **V. Title Retention**

1. BAUER shall retain the title to moveable items until the purchase price has been paid in full.
2. In the event of an ongoing business relationship with the Customer, BAUER shall retain the title to moveable items until all the receivables ensuing from the business relationship have been paid.
3. Within the framework of normal business activities, the Customer is entitled to resell or transfer the goods supplied by BAUER. The Customer shall hereby assign his receivables from the resale of the goods supplied by BAUER to the latter. In the event that the Customer places the receivables from the resale of the goods into a current account, the Customer shall assign the receivables from the final balance to BAUER, the amount of which shall be limited to BAUER's purchasing price claim for the items resold by the Customer. BAUER shall accept these assignments of receivables.
4. In the event that the Customer processes the items supplied by BAUER, BAUER shall retain the title of the new moveable items produced. If the items produced are not manufactured solely from items of BAUER, BAUER shall receive co-ownership of the items produced. The share in the co-ownership of BAUER shall be determined in line with the ratio of the value of its own items in comparison to the value of the other items which were used to produce the new item.
5. Within the scope of normal business activities, the Customer is entitled to resell or transfer the new items produced in this way. The Customer shall assign his receivables from a resale of this nature to BAUER, to the proportion of BAUER's co-ownership share of the item sold. In the event that the Customer places his receivables into a current account, the Customer shall assign his receivables from the final balance to BAUER, the amount of which shall be limited to the part of the Customer's receivables which corresponds to BAUER's co-ownership share of the item sold. BAUER shall accept this assignment of receivables.
6. BAUER shall grant the Customer the revocable authorization to collect the receivables assigned to BAUER. This collection authorization shall be terminated even without retraction if the Customer becomes insolvent, is threatened with insolvency, if he becomes heavily in debt or if his assets diminish considerably. In the event that the collection authorization is terminated, the Customer shall undertake to notify the third party debtors in writing immediately of the assignment of the receivables to BAUER and to notify BAUER of this notice of assignment. The Customer shall also undertake to provide BAUER with all information and documentation required to assert the assigned claims, if requested to do so.

7. If requested by the Customer, BAUER shall surrender its security interests if the recoverable value of the items still owned by BAUER and the receivables assigned to BAUER exceed 110 % of BAUER's receivables from the ongoing business relationship with the Customer. BAUER shall take the legitimate interests of the Customer into account when selecting the securities to be surrendered.

## **VI. Warranty**

1. The customer is obligated to examine the goods upon receipt with due care. He shall make notes on all discernible defects, false amounts or false goods on the delivery note or consignment note immediately upon receipt of the goods. He shall inform BAUER in writing no later than five working days after receipt and in any case before processing or installation of the defect or false goods. Failure to inform BAUER of defect or false goods will be deemed as approval.
2. The warranty period shall be one year commencing with the passing of risk according to Section VIII. The regulations on the limitation of action concerning the right of recourse against the supplier according to Section 479 BGB shall not be affected.
3. Defects resulting from unsuitable or improper use, false or improper installation or operation by the Customer or by third parties, natural wear and tear, false or negligent treatment, use of unsuitable means of operation, improper storage and climatic, chemical, electrochemical or electrical influences shall be excluded, unless caused by a fault of BAUER. The same shall apply to defects resulting from the non-observance of directions for installation, operation and maintenance, improper changes or repairs by the Customer or third parties, influences of parts manufactured by third parties and continued operation despite the occurrence of obvious defects.
4. Warranty obligations can only arise, if the installation of the good has been executed competently. The warranty extinguishes immediately, if the delivered good is changed by unauthorized persons or by the installation of parts manufactured by third parties, unless the reported defect has not been caused by such changes. The warranty also extinguishes, if the Customer disregards instructions for the installation and operation and thereby causes a defect.
5. Warranty obligations will lapse, if the customer, after having informed BAUER of the defect, does not ensure that BAUER gets the required time and access to the good, to carry out the necessary inspections, repairs and replacements, even if the good is firmly installed. Provided that BAUER will get immediately informed of a defect, the Customer shall have the right to rectify that defect himself or by a third party and to claim compensation of the necessary expenses from BAUER only in urgent cases of jeopardized security of men, to avert excessive imminent damages or if BAUER is in default with the rectification of the default.
6. The warranty is limited either to rectification (repair) or the replacement of the good at the discretion of BAUER, which shall be free of charge and, within the European Union and the European Economic Area, free of transport costs. In case of replacement, the title in the defect good shall pass to BAUER, as soon as BAUER accepts the complaint. Additional expenses deriving from obstructed access to the good or insufficient workspace or delivery outside the territory of the European Union or the European Economic Area shall be borne by the Customer. If the customer should receive faulty instructions for installation, he can only claim the delivery of faultless instructions, provided that the fault hinders a proper installation.
7. If the rectification of a defect fails and the Customer chooses to withdraw from the contract, any additional claim for damages shall be excluded. If he chooses to claim damages, the good will remain with the Customer, if reasonable. In that case, the damage will be calculated as difference between purchase price and value of the faulty good, unless BAUER has caused the breach of contract fraudulently. The customer can claim damages only under the provisions of Section IX.
8. For defects to unascertained items, BAUER shall only be liable to the same degree as for defects to ascertained items. In particular, BAUER's procurement obligation shall not constitute a no-fault responsibility on the part of BAUER for damages related to the defect.

9. Insofar as the parties have not ruled out the Customer's claims for reimbursement of expenditure in accordance with Section 478 Paragraph 2 BGB by granting compensation to the same value, the Customer shall, in accordance with Section 439 Paragraph 3 BGB, undertake to refuse a consumer subsequent performance in the event that the item has been resold to the consumer, if this is only possible at disproportionate cost. In the event that the Customer resells the item to a business person, the Customer shall also undertake to oblige this person to refuse subsequent performance in the event that he resells the item to a consumer, if this is only possible at disproportionate cost. Within the framework of Section 478 Paragraph 2 BGB, BAUER shall therefore only reimburse the Customer the expenditure required for subsequent performance if it is not disproportionate in accordance with Section 439 Paragraph 3 BGB.
10. None of the preceding warranty terms shall constitute a limitation of a merchant's duty to examine the received goods and to give notice of defects according to Section 377 HGB (German Commercial Code).

## **VII. Supply and Acceptance**

1. Dates and terms of delivery or performance stated by BAUER are only roughly binding unless a set date has been confirmed. Stated delivery terms commence with the dispatch date of the written order confirmation, however not before the customer has procured required documents, release declarations, permissions, prepayments or other advance performances.
2. Goods shall be deemed delivered within a set period, if they leave the works or warehouse of BAUER or if readiness for dispatch is announced to the Customer within the term. Within the scope of reasonableness, BAUER is entitled to partly delivery. If acceptance of the completed work is required, the date of inspection and secondarily the date of announcement of readiness for inspection shall be relevant, except for a case of justified refusal of acceptance.
3. If BAUER is unable to comply with agreed supply dates through no fault of his own, e.g. due to force majeure, intervention by public authorities, disasters, war, insurrection, strikes at his own plant, shipping organizations or suppliers, or with respect to means of transport, he is authorized to catch up on supply after the hindrance has ceased. If supply is delayed by more than four months, the Customer is entitled to refuse delivery and withdraw from the contract. The Customer has no other rights or claims for non-supply or delayed supply in the event of causes such as those above, even if these causes only began when the supply deadline had already been exceeded or BAUER was in default.
4. If the Customer should get in default of acceptance, starting one month after announcement of readiness for dispatch, BAUER will charge him 0.5% of the invoiced amount for each month to compensate storage costs. The customer is free to prove and compensate lower storage costs, while BAUER may prove and claim higher damage caused by default of acceptance
5. The compliance with a term of delivery or performance is subject to the Customer's observance of his contractual duties. Upon demand of BAUER, the Customer is obligated to declare in writing the completion of necessary preparatory work and his readiness to accept delivery. His refusal will cause default of acceptance.
6. Deliveries of BAUER will be made ex works. If the parties agree on a different type of delivery, the following shall apply: BAUER will decide on the kind and means of dispatch, the transportation route, the forwarding agent, the carrier, the kind and scope of required securities and the packaging at its sole discretion after due assessment of the circumstances. Due diligence provided, BAUER shall not be liable for losses or damages during transport. If required, BAUER will insure the consignment at the Customer's expenses against theft, breakage and other damages from transport, fire or water and further insurable risks.
7. If the business transaction is based on a contract for work and services, the Customer shall be deemed to default on acceptance of the work and services if he does not carry out the acceptance process within a week of handover, notification of completion or invoicing. Acceptance shall be deemed to have been granted if the work or service is used by the Customer after handover, notification of completion or invoicing for a period of fourteen days without objections and BAUER has pointed out this consequence during handover, in the notification of completion or with the invoice.

## **VIII. Passing of Risk**

1. The risk of fortuitous loss or deterioration shall pass to the Customer upon delivery ex works. If the parties agree on a different type of delivery, the risk shall pass to the Customer upon handing over of the goods to the carrier, the forwarding agent or the collecting person, even if the consignment is free or free at Customer's address. If the transport is executed by BAUER, BAUER shall bear the risk until delivery at the place of receipt. These stipulations shall also apply in case of partly deliveries
2. Notwithstanding his rights in Section VI., the customer is obligated to accept delivered goods except for the case of essential defects. The Customer is obligated to assert transport defects directly vis-à-vis the forwarding agent, the carrier and the insurance companies and to inform BAUER.

## **IX. Liability for Damages**

1. The liability of BAUER is restricted to 5 million Euros for damage to property and to 50,000.00 Euros for financial losses. This liability limitation does not apply
  - a) to claims resulting from loss of life, bodily injury or damage to health, which are connected with a willful or negligent breach of duty on the part of a legal representative or vicarious agent of BAUER;
  - b) to other claims which are connected with a willful or grossly negligent breach of duty on the part of a legal representative or vicarious agent of BAUER;
  - c) to claims which arise from the materialization of a risk typical of the contract, insofar as they were foreseeable with regard to reason and amount;
  - d) to claims based on a defect in the purchased item, if BAUER has provided a guarantee of the nature of the item.

The liability of BAUER in accordance with the law on product liability remains unaffected.

2. BAUER shall not be liable for lost profit, not realized savings, damages resulting from claims of third parties, further indirect or consequential damages and for the loss of stored data, unless a liability of BAUER derives from the principles of reliance. BAUER shall only be liable for the reconstruction of data, if the Customer takes care that lost data can be reconstructed with reasonable effort.
3. The preceding exclusions and limitations of liability shall apply respectively in cases of pre-contractual or non-contractual liability. They do not apply with regard to damages caused by personal injury and with regard to claims according to Section 1 and 4 of the German Product Liability Law.
4. As far as the liability of BAUER is limited or excluded, the personal liability of executives, employees, representatives and agents of BAUER shall also be limited or excluded.
5. The Customer's claims for compensation shall become statute-barred with the expiration of the warranty period according to Section VI. 2., however not later than six months after the claim arises, unless the claim is based on fraudulent conduct, on the German Product Liability Law or on Section 478 Paragraph 1, No. 2 and Section 635 Paragraph 2 BGB.
6. Except for claims according to Section 439 Paragraph 2 and Section 635 Paragraph 2 BGB, this Section IX. shall also apply with regard to claims for compensation for expenses.
7. None of the preceding terms on the liability of BAUER shall constitute any shift of the legal burden of proof.

## **X. Setting off and Right of Retention/ Right to Withhold Performance**

1. The Customer is only entitled to offset against counterclaims if they are beyond dispute, legally ascertained or admitted by BAUER. Any right of retention or any other right of the Customer to refuse performance shall be excluded, unless it derives from the same contract as the related claim of BAUER. Each single order shall be considered a separate contract.

2. The Customer is not entitled to enforce a right to withhold services in accordance with Section 320 BGB or a right of retention in accordance with Section 273 BGB, unless these rights are based on a defect to the purchased item for which BAUER has already received a part of the remuneration corresponding to the value of its performance, or are based on Customer's counterclaims that are beyond dispute, legally ascertained or admitted by BAUER.

## **XI. Copyrights and Industrial Property Rights**

1. The customer shall neither imitate or copy the products of BAUER nor order such imitations or copies. He acknowledges that the products of BAUER are protected against imitation and copy by patent rights and other industrial property rights. The infringement of these rights is liable to criminal prosecution and will result in claims of BAUER for damages and injunctive relief.
2. In case the delivery of BAUER includes system software subject to licence, BAUER grants the customer a non-exclusive right to use the software as released at the time of delivery only in connection with the delivered hardware and only after complete payment of the invoice concerning that delivery. This right may only be transferred together with the delivered hardware. BAUER will submit licence regulations for user software separately. The customer shall install and use software only within the limits of the granted licence.
3. The Customer acknowledges that software may contain or embody trademark-rights, know-how and other intellectual property and that these rights are hold by BAUER or its supplier. Working papers submitted in training courses are protected by copyright and may neither partly nor wholly be duplicated without the explicit written consent of BAUER.
4. The customer shall inform BAUER immediately, if claims arise against him because of an alleged infringement of an industrial property right in the country to which the respective good has been delivered by BAUER. BAUER will either meet or contest the claim or settle the dispute at its discretion. The customer shall grant BAUER any reasonable support in the defence of the claims. BAUER will indemnify the customer from all payment obligations established by declaratory judgement or by settlement with the approval of BAUER including the costs of proceedings. The customer authorizes BAUER to decide on the means of defence and on settlement negotiations and will grant BAUER the required power of attorney.
5. If BAUER arrives at the conviction that a product might become subject of a claim for infringement of industrial property rights, BAUER shall be entitled – at its discretion -
  - to acquire a licence enabling the Customer to continue the use of the product;
  - to replace or alter the product as far as reasonable and required to avoid the infringement of industrial property rights;
  - to take back the product or parts thereof and to reimburse the purchase price or a respective proportion of it, after deduction of an adequate user fee.
6. No obligations of BAUER shall be incurred, if claims of third parties arise because software, hardware or other goods or parts thereof become modified or connected with software or data of the customer or third parties.

## **XII. Prohibition Of Use And Export Restrictions**

1. The Customer shall not use any product of BAUER in connection with the operation or maintenance of
  - a plant or facility using nuclear power,
  - facilities of mass transportation,
  - facilities for the supervision or monitoring of airspace or aircrafts.

This ban does not apply to flight simulators.

2. The delivered goods are destined to be used and retained in the country of delivery and shall not be exported from there without permission. The Customer acknowledges that the export of

the delivered goods including the technical information provided with the delivery may be restricted by the export regulations of Germany and other countries, in particular of the United States of America. If BAUER approves export, the customer shall be obligated to abide with the relevant export regulations.

### **XIII. Place of Performance and Place of Jurisdiction**

1. The place of performance for all claims arising from the business relationship with the Customer is Munich; however, the place of performance for Selling Party supply obligations is the location of the plant or warehouse commissioned with supply by BAUER.
2. German law is the sole law applicable between the two parties. The United Nations stipulations concerning Contracts for the International Sale of Goods (CISG) are ruled out.
3. If the contractual party is a merchant, a legal entity under public law or a public-law special fund, the place of jurisdiction for all claims arising from and in connection with the contractual relationship is, depending at the plaintiff's choice, either Munich or the general place of jurisdiction of the defending party.

As of May 2010