

## **General Terms and Conditions of Sale (GTCS) of “Bilstein & Siekermann GmbH + Co. KG” (hereinafter: “BSH”)**

### **1. General Terms and Conditions - Scope of Application**

1.1 The following terms and conditions of sale shall exclusively apply to all our present and future offers, deliveries, services, as well as to all contracts. Any contravening or deviating terms and conditions on the part of the customer shall be excluded without exception and shall not apply, unless we had laid out such contravening or deviating terms and conditions in detail or expressly confirmed them in writing. This shall also apply when we do not object to the customer’s terms and conditions contravening or deviating from these GTCS in the course of business or when we carry out any kind of deliveries and services, without reservation.

1.2 All offers are subject to change and are non-binding. They shall become binding within the deadline determined by us, with the contents of our written confirmation. Any declarations made by our agents only receive full effect upon our written approval. Any errors or calculation mistakes which are obvious and recognisable to a customer with high expertise shall not constitute any right to claims on the part of the customer.

1.3 All agreements concluded between BSH and the customer are laid out in these terms and conditions as well as in the documents referred to in writing (specifications, drawings, calculations, etc.). Any arrangements made verbally require BSH’s and the customer’s written confirmation. If deliveries on call have been agreed with the customer, each call has to be confirmed by BSH in writing, while each establishes its own delivery contract.

**1.4 According to article 23 EuGVVO (European Jurisdiction and Enforcement Regulation) as well as to article 8 CISG (UN Sales Law), these GTCS shall be submitted to any supplier in cross-border trade as a stand-alone document applying to the entire business relationship. In the cross-border business relationship Section 21 applies.**

1.5 We reserve the right to modify these GTCS. Modified GTCS shall become valid upon notification of such changes.

### **2. Contractual product, product nature:**

2.1 The nature of the goods to be delivered by BSH shall be finally determined by the specifications agreed upon in writing as well as the drawings expressly referred to and the documents

specified. Should product release procedures for example according to VDA 2 or PPAP apply to the goods, the nature agreed upon shall be finally determined by the product released for production by the customer. Any characteristics of the product nature which have not expressly been specified, for example to meet expectations that had not been expressly described, to conform to any usual form or application suitability not expressly agreed upon, shall be excluded without exception.

2.2 Any details given in catalogues, brochures, offer documents and other printed material as well as general advertising statements or details posted on the internet or through other media shall serve as general presentations and not as characteristics of the product nature. Without an express written agreement, these shall under no circumstances become parts of the contract.

2.3 Warranties shall only be considered agreed upon if they are expressly designated as such in writing.

### **3. Prices:**

3.1 Prices are invoiced in Euro and quoted "ex works", excluding packaging and transportation costs; these will be invoiced separately.

3.2 In the case that prices have been agreed upon for a certain period of time, BSH shall be obliged to deliver at these prices, also for call-offs from the customer, only for such period. No continuing obligation has been agreed for such period of time. For the time after expiry of such temporal price fixing agreement, a delivery obligation shall only exist if new prices have been agreed upon for the following time. Should the customer demand continued delivery without any new price arrangement, BSH shall be entitled to request securities at BSH's own discretion until a new price arrangement has been agreed upon.

3.3 Section 3.2 shall also apply respectively if the period of time is determined by a specific product series. Should the duration of a series previously determined be changed, for example through change in part numbers for an otherwise identical product or through its application as equivalent part or carry-over part, prices must be adjusted for such altered duration.

3.4 If prices have been agreed on a time-related and volume-dependent basis, BSH shall have the right to adjust these in the case of any volume decrease of more than 10% of the original volume. The right to adjust shall also apply retroactively, if a determined volume could not be achieved during the preceding period of time, unless the customer undertakes to balance the shortfall of orders for the following period.

3.5 Unless agreed otherwise, prices shall always be subject to adjustment to raw material prices following market volatilities at the relevant raw material trading venues such as LME etc.

### **4. Default**

4.1 If BSH can be held responsible for non-compliance with an agreed deadline for delivery, the customer may, in the case it has actually suffered an evidenced damage, claim compensation for delay for each completed week of the delay of up to 0.5 % of the respective supply value. In any case, any customer's claims for compensation exceeding 5 % of the delivery value affected by the delay shall be excluded for all cases of delayed deliveries that are not caused intentionally or by gross negligence. Any damages caused by default and suffered by the customer shall be off-set against other claims for compensation of any kind based on the same delivery contract. The liability for default for loss of profit and damages caused by the interruption of operations as well as for consequential damages to third parties shall be excluded under the same conditions.

4.2 After fruitless expiry of a reasonable time extension of at least four weeks granted to BSH, the supplier's right to withdraw from the contract shall remain unaffected.

4.3 Short deliveries of up to 5 % of the agreed scope of supply shall not constitute any default.

4.4 After appropriate pre-notice we shall be entitled to carry out partial deliveries, unless such partial deliveries are not tolerable for the customer or it is not interested in such.

## **5. Transfer of risk**

5.1 Delivery shall be agreed as "ex works" (EXW according to INCOTERMS 2010), unless these terms and conditions or the order confirmation state otherwise. The risk shall be transferred to the customer upon provision of the goods by BSH at the place of delivery agreed, even if freight-free delivery has been agreed upon. A transport insurance shall only be taken out upon the customer's instruction and expense.

5.2 Should the dispatch be delayed through the fault of the customer, the risk shall already be transferred to the customer from the date on which BSH declared its readiness to dispatch. For the time of such default of acceptance, BSH shall have the right to take out insurance against all relevant risks at the customer's expense. Any costs caused by such default shall be borne by the customer.

## **6. Goods receipt inspection**

6.1 The customer's obligations according to section 377 of the German Commercial Code (HGB) shall remain unaffected. Any extension of the time frame for inspecting the goods delivered by BSH must be agreed in writing. Should an extension of the time limit for making a claim be agreed, any claims against BSH resulting from such extension-related added value or from consequential expenses on the part of the customer shall be excluded. In the case of deficiencies detected, the customer's claims can only be made to the extent that they would have been possible in the case of a goods receipt inspection without undue delay. The burden of proof is to be borne by the customer.

6.2 BSH shall not be liable for any waiver or limitation of the customer's obligations or duties regarding the inspection of the goods delivered which are based on other provisions, in particular on the product safety law or regulations.

## 7. Liability for defects

7.1 BSH shall only be liable for material defects within the scope prescribed by law, unless otherwise determined by these GTCS. In any case, the customer shall only be able to make material defects claims if it hands over without undue delay the goods complained about to BSH for inspection of the alleged defect as well as all information and documents considered necessary by BSH for the detection of the defect's cause, in particular with regard to the conditions of application and operation under which the defect has been detected or has been said to have occurred. Should the customer not comply with such duty to inform and cooperate within the time frame set by BSH, the customer shall compensate BSH for any evidenced expenses resulting from the complaint. Such obligation to compensate shall also exist if the defect does not exist or if BSH cannot be held responsible for it.

7.2 An 8D report requested by the customer and made by BSH shall only be an exclusively provisional technical opinion based on the time-related level of knowledge and information on the part of BSH subject to further subsequent inspection as well as to the complete supply of information by the customer with regard to causes and corrective measures. Without prejudice to its use of formal terminology, such report does not make any statements concerning contractual or legal claims for liability or compensation. It does not contain or constitute, directly or indirectly, any acknowledgement of fault, obligation, liability or any other claims of any kind against BSH. This shall apply respectively to all declarations given by BSH in the course of complaints processing.

7.3 Insofar as the goods delivered show a defect which had already existed at the time of the transfer of risk, BSH shall have the right either to execute subsequent fulfilment through elimination of such defect or the delivery of new goods that are free from defects. BSH shall bear the necessary costs incurred by the customer for the purpose of subsequent fulfilment, excluding costs for installation and dismantling which are not directly based on the customer's obligation to perform subsequently for its clients, in particular the costs for transport, road, labour and material costs, provided that the customer has given BSH the opportunity to pay for or reduce such expenses beforehand and provided the customer can prove proper goods receipt inspection in which the defects could not have been detected. The customer's compensation claims shall be limited to the reduced value of the goods delivered which is related to the defect, unless BSH performs a new delivery. Any customer's expenses resulting from the transport of the goods to any other place than to the place of performance shall be excluded.

7.4 If subsequent fulfilment fails twice, the customer shall be entitled, at its own discretion, to demand either withdrawal from the contract or reduction of the purchase price. Any further claims of the customer, also because of other violations of duties on the part of BSH, shall be excluded. This exclusion shall not apply if the customer can prove BSH has acted intentionally or by gross negligence.

7.5 In the case of production according to the customer's instructions ("build-to-print") BSH shall only be liable for the execution according to these instructions, unless further obligations have been agreed to in writing. If claims are made against BSH by third parties, regardless of their legal grounds or the law in force under which these are made, the customer shall indemnify BSH against such

claims, unless BSH acted intentionally or by gross negligence. The right to raise an objection of contributory negligence on the part of the customer shall remain unaffected.

7.6 If defects of the goods are based on the quality of the raw material used by BSH or determined by the customer, a material defects liability on the part of BSH shall, with the exception of BSH's right to resupply, be excluded if the raw material and its processing complies with the standards referred to by mutual agreement and if further inspections have not been agreed upon. If after delivery a utilised material proves unsuitable for the application or a presumed product life expectancy, a material defects liability and any other liability on the part of BSH shall in any case be excluded if the customer has not or not sufficiently tested the suitability under actual operating conditions, in particular with regard to the prerequisites of type approval legislation.

7.7 Material defects claims against BSH shall also be excluded if BSH had, following the customer's instructions, a third party process the goods according to the customer's specifications before completion by BSH and therefore cannot be held responsible for any defect detected thereafter, unless the customer provides evidence that such defect has been caused by BSH acting intentionally or by gross negligence. BSH shall not be liable, when such third party has been prescribed or recommended to BSH by the customer (directed parts supplier).

7.8 Defect claims cannot be made in cases of only insignificant deviation from the agreed upon product nature, only irrelevant impairment of the usability, natural wear and tear and in the case of damages caused after the transfer of risk, in particular by improper handling, modifications or repair work by the customer or through the customer's violation of its own operating, maintenance or installation instructions.

7.9 The limitation period for any claims arising from defects shall be one year from the transfer of risk. The preceding provision shall not apply insofar as longer periods have been compulsorily prescribed by law. Any periods during which the customer fails to fulfil its obligations to give information and cooperate shall not be taken into account in the case of suspension of limitation periods for other reasons.

## **8. Liability:**

8.1 Insofar as the customer makes claims for damages or for the reimbursement of expenses according to general liability law, which are based on intent or gross negligence, including intent or gross negligence of employees, workers, staff members, representatives or other vicarious agents of BSH, BSH shall be liable in accordance with the legal provisions. Any other liability shall be limited to the occurrence of foreseeable damages of a typical nature. This shall also apply to the violation of substantial contractual duties.

8.2 Any limitation or disclaimer of liability shall not apply if such liability is based on physical injury to life, body or health or if BSH has given a guarantee for the nature of the goods supplied. In the case of a mandatory strict liability, the legal provisions shall apply.

8.3 Accordingly, BSH's obligation to compensate shall be excluded, insofar as the customer has on its part effectively limited its liability towards its clients. The customer shall make every effort to enter into agreements concerning liability limitations within the scope admissible by law also in favour of BSH.

8.4 Unless otherwise prescribed by the preceding provisions, liability shall be excluded. In particular, BSH shall not be liable for damages which have not occurred with the goods delivered, for lost profit, interruption of business or for any other economic loss on the part of the customer or third parties, nor for any kind of consequential harm caused by defect.

8.5 If the customer's utilisation of the delivered goods leads to a violation of industrial property rights or copyrights of third parties, and if BSH can be held responsible for such violation, BSH shall be obliged to make the possibility of or the right to further usage available to the customer. Should this not be possible under reasonable economic conditions, both the customer and BSH shall be entitled to withdraw from the contract. In the case that the violation of industrial property rights by the customer has been caused by its instructions and specifications in particular, any liability on the part of BSH shall be excluded. The customer shall indemnify BSH against all claims of entitled rightholders.

## **9. Reservation of title:**

9.1 Until satisfaction of all of the customer's incurring accounts receivable, also in the future, the title for the goods delivered shall remain reserved until complete payment of such accounts. This reservation shall also include any new products generated through further processing of BSH's goods.

9.2 In the case that BSH's goods are processed, combined or blended with items that do not belong to BSH, BSH shall acquire co-ownership of such new items proportionately to the invoice value of the goods delivered. The customer shall request these on behalf of BSH. Any goods within the sole property or co-ownership of BSH shall hereinafter be called reserved goods.

9.3 Hereafter, the customer shall assign all accounts receivable arising from the sale of reserved goods of any present and future deliveries of BSH's goods to BSH including all ancillary rights, also insofar as recompense for work is contained, in order to secure BSH's entitlement. BSH shall accept such assignment. If goods are sold to which BSH holds the title of co-ownership, the assignment shall be limited to the share of accounts receivable corresponding to the share of BSH's co-ownership. Should any reserved goods be sold together with other items for an overall price, the assignment shall be limited to the invoice value of BSH's goods.

9.4 Should the value of the securities existing for BSH exceed the value of the receivables to be secured by more than 20 %, BSH shall, upon the customer's request, release securities or arrange the release of securities to such extent.

9.5 As long as the customer properly fulfils its obligations towards BSH, i.e. especially in time, the customer shall be entitled to dispose of the reserved goods in the usual course of business and to

collect the receivables assigned to BSH itself. Any assignments and extraordinary disposals such as pledging or the use of the goods as securities, shall not be admissible. The customer shall inform BSH without undue delay of any third party access to the reserved goods and BSH's receivables.

9.6 If the customer violated its obligations, in particular in the case of default in payment, BSH shall be entitled, even without setting a deadline, to request surrender of the reserved goods and/or to withdraw from the contract. The customer shall be obliged to surrender the goods. BSH's request for surrender of the reserved goods shall not constitute a declaration of BSH's withdrawal, unless such has been explicitly stated.

## **10. Privacy, IT Security, Confidentiality**

10.1 Any storage using automatic data processing of the customer's personal data shall be carried out in accordance with the German Federal Data Protection Act as well as with the EU GDPR.

10.2 In the case of the electronic exchange of information, irrespective of the technology and the technical means used (IT systems), BSH and the customer shall be responsible for the security of their respective IT systems. They shall inform each other without undue delay of any security-related error and any inadmissible attack from outside. The contractual party concerned shall take all measures to eliminate such errors, to protect against attacks and to avoid any repetitions. On request, the execution of such measures and their effectiveness must be proven to the other contractual party. Should the other contractual party consider such measures as insufficient, it shall be entitled to discontinue the electronic exchange of information at its own discretion.

10.3 The parties undertake to treat all commercial and technical details which are not obvious and which became known to them through their business relationship, as trade secrets. They shall treat the other contractual party's trade secrets with at least the same diligence as they would treat their own, and in accordance with the legal privacy standards. Any trade secrets in the other contractual party's custody may only be used and exploited by such party, only and exclusively for the purpose of fulfilling the contract. This restriction shall also apply to affiliated companies of the other contractual party, unless these separately commit to such secrecy obligations to the same extent and in writing.

10.4 Pictures, drawings, calculations and other quotation documents shall remain BSH's property; any third party access to these shall require BSH's written approval.

## **11. Place of Performance, Jurisdiction; Governing Law, Miscellaneous:**

11.1 The place of performance for delivery and payment shall be BSH's place of business.

11.2 The place of jurisdiction for all disputes arising from this contract shall be BSH's place of business, provided the customer is a registered trader. However, BSH shall also be entitled to sue the customer at the court of his or her place of residence. Should any claims be made against BSH and/or

the customer by third parties according to a foreign law and under a foreign legal system, BSH and the customer shall be entitled to take all measures in accordance with such foreign legal system. This shall also apply if a legal dispute between BSH and the customer must be proceeded, on the basis of mandatory law, in accordance with a foreign legal system at a foreign place of jurisdiction.

11.3 Regarding the contractual relations between BSH and the customer, the law of the Federal Republic of Germany shall apply exclusively.

11.4 The contractual language is German. The contractual language is German. If in cross-border business another language is applied by mutual agreement, the English version of the United Nations Convention on Contracts for the International Sale of Goods – CISG shall prevail nonetheless. In the cross-border business relationship the English version of the United Nations Convention on Contracts for the International Sale of Goods – CISG shall prevail.

11.5 Should one or several provisions of these General Terms and Conditions of Sale be ineffective, the validity of the other conditions as well as of the contract as a whole shall remain unaffected. Instead of the ineffective provision, BSH and the customer shall agree upon a provision coming as close as possible to the ineffective one, both in legal and in economical terms.

11.6 Any modifications, supplements, cancellations and terminations of agreements are required to be in writing and to be signed by authorised representatives of BSH and the customer.

11.7 It is understood that each agreement reached on the basis of these GTCS has been negotiated and concluded individually.