

General Terms and Conditions of BaLoWa Engineering GmbH

I. General

1. Our deliveries and services occur solely on the basis of the following General Terms and Conditions insofar as nothing else is expressly agreed in writing.

2. If the Principal wishes to contradict to the General Terms and Conditions, this is to be declared in writing within 3 workdays. Deviating terms and conditions of the Principal are hereby contradicted unless they have been recognised by us in writing.

II. Contract Conclusion

1. Our offers are subject to change and non-binding.

2. A contract only arises when the order of the Principal has been confirmed by us in writing or we have begun with implementation.

3. Objects handed over by us to the Principal before the contract (e.g. software, plans) are our intellectual property; they may not be reproduced or made available to third parties. If no contract arises, they are to be returned and deleted and may not be used. The deletion is to be proven.

4. Preliminary services that we provide in the scope of an offer upon request of the Principal can be invoiced to the customer even if no contract arises.

III. Scope of Performance / Changes to Order

1. The scope of performance principally arises from our order confirmation. We are entitled to partial performances unless the Principal has no interest in this. Partial performances are to be remunerated separately.

2. Desired changes demanded by the Principal after the ordered work has been presented the first time will be confirmed by us in writing. They will only be executed if they compatible with the state of the art and do not cause unreasonably high effort for us. Any additionally arising work is to be remunerated separately.

3. Should we confirm the desired changes of the Principal in writing or present the effects of the changes on the ordered work then the change offer is considered accepted after two weeks, even in the event of silence on the part of the Principal.

4. Should we announce in writing the scope in which the provisions of the contract are changed by the desired changes of the Principal, then the changed conditions are considered accepted for the contract even in the event of the silence of the Principal after two weeks.

5. Insofar as there is no agreement about the changes, the work will be continued pursuant to the existing contract. The Principal can demand that the work be interrupted in full or in part or cancelled completely. It shall ensure we are in the same economic position as would have been in the case for execution of the Contract.

IV. Price and Price Adjustments

1. Unless there is another written agreement, all remuneration is based on our respectively applicable price and condition list or our company remuneration rates plus shipping and packaging and the value-added tax applicable on the day of dispatch. Hourly remuneration is also to be paid for travel time. Travel costs, expenses, ancillary costs, etc. are to be reimbursed as well as our regular company rates.

2. We are entitled to increase the price in a reasonable manner pursuant to the increase in cost if there are more than six weeks between the conclusion of the contract and the agreed delivery date and if the wages, material costs, or market procurement prices increase or exchange rates change between the conclusion of contract and completion.

V. Payment, Set Off / Retention, Subcontracting

1. Insofar as nothing else is agreed, the contractually agreed remuneration is due immediately upon handover of the object of purchase, acceptance of the work, or after performance of the service.

2. Insofar as the Contract has partial performances that can be separated out, partial payments on the total remuneration become due pursuant to the share of the partial performance in the total performance after the partial performance has been carried out. Remuneration for our ongoing or recurring performances will be billed monthly ahead

of time and is due immediately unless something else has been agreed.

3. The Principal can only exercise a right to set off or retention if its claims are not disputed or have been established by court of law. Warranty claims to not entitle it to refuse payment unless they concern notifications of defects that have been recognized by us in writing.

4. We are entitled to use subcontractors to fulfil our duties to perform.

VI. Delivery and Delivery Dates

1. (Delivery) dates are non-binding insofar as we have not designated them as binding in writing.

2. The risk of an accidental loss or deterioration of the goods is passed to the Principal upon their being handed over, in the event of shipment with the delivery of the goods to the freight forwarder, the carrier or any other person commissioned with the shipment.

VII. Duties of the Principal

1. The Principal shall make reasonable security provisions before implementing the ordered work in its operations. It will test the ordered work for its usability for the intended purpose before using it operatively. It will ensure that its data and other technical facilities are secured pursuant to the state of the art.

2. The Principal obligates itself to announce all changes to the data made available to us without delay.

VIII. Acceptance

Insofar as acceptance is legally or contractually stipulated, the work is to be accepted in writing within a week; if one of the contractual parties demands a formal execution of the acceptance, the performance is considered to have been accepted with the expiry of two weeks after the transfer of risk. Notices of defects that have already been made are considered reservation of the rights of the Principal in the event of defects. Insignificant defects do not lead to the entitlement to refuse acceptance. Known defects are to be claimed within a time limit of two weeks.

IX. Warranty

1. In the event of a defect in the delivered goods, the Principal shall demand subsequent improvement within a reasonable period of time.

2. If the defect cannot be rectified within a reasonable period of time or if the subsequent improvement or replacement delivery can be considered to have failed for other reasons, the Principal can, according to its choice, demand a reduction in remuneration or withdraw from the contract. The failure of the subsequent improvement is only to be assumed if we have been given two attempts at subsequent improvement without the desired success being achieved, if the subsequent improvement and replacement delivery is impossible, if it is refused or unreasonably delayed by us, if there is well-founded doubt regarding the chances for success, or if it is unreasonable for other reasons.

3. The Principal is only entitled to the right of withdrawal if it has set a grace period of at least four weeks after the failure and it has lapsed without success.

4. We shall not assume the expenses for subsequent improvement that arose because the purchased item was moved to a location other than the commercial location of the recipient unless the movement is in correspondence with the proper use of the item.

X. Limitation of Actions

1. Claims on account of defects of quality become time barred with the expiry of a term of two years after delivery of the item.

2. If the Principal is a business, claims on account of defects of quality become time barred with the expiry of a term of one year after delivery of the item. The statutory time barring of recourse claims (section 479 of the German Civil Code [BGB]) remain unaffected.

3. The deadlines for limitation of actions do not apply in the event of fraudulently hidden defects or insofar as we have

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assumed a warranty for the characteristics of the subject of delivery.

4. Furthermore, the deadlines for limitation of actions named in no. 2 and no. 2 are also not applicable on account of defects of quality in the event of injury to life, limb, or health, in the event of claims pursuant to the German Product Liability Act [*Produkthaftungsgesetz*], in the event of grossly negligent breach of duty, or the culpable breach of significant contractual duties.

XI. Liability

1. We exclude our liability for slightly negligent breaches of duty insofar as they do not concern breaches of duty and claims named in X. no. 4. For the rest, our liability is limited to those damages that one must expect to arise in the scope of such a contract and namely in the amount pursuant to the scope of damage that is covered by conclusion of liability insurance for that reason and amount. Pursuant to this, liability exists up to a maximum amount per damage event of €1,500,000 for property damage and €3,000,000 for personal injury. In the event of the damage or loss of materials that the Principal has handed over to us, the amount of liability is limited to the value of materials.

2. The limitations of liability above also apply to breaches of duty of our agents.

3. With the exception of claims on account of a defect, a deadline of limitation of actions of one year applies to all claims against us for damages or reimbursement of fruitless expenditures except in cases of wilful acts or personal injury. The limitation of actions period begins with the event that causes the damage and comes into effect at the latest with expiry of the maximum periods defined in section 199 para. 3 and 4 *BGB*.

XII. Retention of Title

1. All deliveries of ours are subject to retention of title. The ownership of the delivered goods (goods subject to retention of title) is only transferred to the Principal upon full payment of all existing claims at the time of delivery or those that arise later from the contractual relationship, in the event of payment by cheque or bill of exchange, after their unconditional crediting to our account.

2. The Principal is not entitled to pledge the goods subject to retention of title or assign them as a security before transfer of ownership. It may only sell the goods subject to retention of title in regular business activities.

3. In the event of further sale, the Principal hereby transfers all arising claims against its customers in their full amount to us as a security for our claim. The Principal will announce the access of third parties to the goods subject to retention of title or the claims assigned to us and notify third parties of our rights.

4. The processing or transformation of the goods subject to retention of title by the Principal is always done for us. If the goods subject to retention of title are processed with other objects that do not belong to us, we acquire co-ownership of the new item in the relationship of the value of the goods subject to retention of title to the other items processed at the time of the processing. If the goods subject to retention of title are mixed in a manner that cannot be separated with other objects that do not belong to us, we acquire co-ownership of the new item in the relationship of the value of the goods subject to retention of title to the other items mixed. The Principal shall protect the co-ownership for us.

5. If the Principal is in arrears with one or more payments in part or in whole, ceases payment, or if insolvency proceedings are opened against its assets, the Principal no longer has disposal of the goods subject to retention of title.

6. The goods that we own are to be insured by the Principal against damage, destruction and loss. The rights from these insurance policies will be assigned to us.

XIII. Secrecy/Data Protection

1. The contractual partners obligate themselves to keep all business and operational secrets of which they become aware during execution of the contract and other confidential

information secret and secure them against access by unauthorised parties.

2. We hereby inform the Principal that we collect, store, and process its data in the scope necessary for execution of the contract in observance of the applicable regulations on data security and transmit it to third parties insofar as necessary.

XIV. Reference List

We are entitled to include the Principal in our reference list and make it public by means of publication in the press, electronic media, etc. that we have performed worked for the Principal unless the Principal expressly contradicts this ahead of time.

XV. Final Provisions

1. The Principal is not entitled to assign claims from the contracts concluded in whole or with regard to individual rights and duties or otherwise transfer rights and duties from contracts concluded with us in whole or in part to third parties without our agreement.
2. All contractual agreements are to be made in writing. The requirement for the written form shall also apply to the change to the written form requirement.
3. The invalidity of one or more provisions of these General Terms and Conditions shall not affect the validity of the remainder of the contract. The contractual partners obligate themselves to replace the invalid provision with a valid regulation that comes as close as possible to the economic purpose pursued by the invalid provision. The same applies in the event of a gap in the contract that needs to be regulated.
4. Our duties are to be performed at our business premises insofar as nothing else is agreed.
5. Sole legal venue for all disputes arising from this contractual relationship is Möhnesee.
6. The laws of the Federal Republic of Germany are solely applicable.
7. In the event of a contradiction between the German version and a version in a foreign language, the German version is solely authoritative.

**Möhnesee in November 2011
BaLoWa Engineering GmbH**