



### General Terms and Conditions for Sales and Deliveries 08/05

#### I. Scope

These General Terms and Conditions for Sales and Deliveries shall apply to sales contracts, work contracts and contracts for work and material governing the entire business relationship between us and the Customer. They shall apply exclusively as far as not the application of other terms and conditions has been explicitly agreed upon in writing with the Customer. Any terms and conditions of the Customer shall only apply from case to case if they have been granted explicit written approval by us in advance. The following provisions for deliveries shall apply to other types of services accordingly.

#### II. Offers, Conclusion of Contract

1. We will render initial offers being not binding and being free of charge as far as nothing else is explicitly said in the offer.
2. The documentation with the offer - such as pictures, drawings, weight and measures - shall be mere indications and shall be not binding as far as they are not explicitly marked to be binding.
3. Our order confirmation sent to the Customer shall be binding for the obligations of both contract parties if the Customer has not explicitly objected in writing within three working days as from receipt of the order confirmation. Fixtures and agreements - in particular with regard to the extent and time of the delivery obligation - shall become binding only with our written confirmation being granted to the Customer, even in case such fixtures and agreements have been concluded by representatives.
4. The INCOTERMS as amended at the time of conclusion of the contract shall apply to the interpretation of customary commercial trade clauses.

#### III. Plans and technical documentation

1. We reserve our rights of ownership and copyrights as to any plans and documentation of physical and non-physical type - also of electronic type - which we hand over to the Customer. The Customer shall treat plans and documentation which he received from us confidentially and shall not pass them on to third parties or use them beyond the scope of the contract with us without our prior written consent. We undertake not to disclose information and documentation - which the Customer has classified as confidential - to third parties without the consent of the Customer.
2. We reserve the right to change the specification which is the basis of the order, as far as not our performance or the quality of the product to be delivered is substantially impaired.

#### IV. Period and date of delivery

1. Any agreed period of delivery shall commence with the date of our order confirmation but not before entire clarification of all details of the order and the supply of inland and/or foreign official permits and/or certificates which may be necessary.
2. As long as nothing else has been agreed upon, the delivery periods and dates shall be deemed met if - at the date of expiry - either the essential parts of the product to be delivered have left our works or if we have notified their readiness to be shipped or the risks of loss or damages have been transferred to the Customer.
3. Precondition for meeting a period or date of delivery and the expiry of such period or date is the fulfilment of any contractual obligation of the Customer *vis-à-vis* us; in particular, this shall apply in case it is the Customer's obligation to provide us with construction documentation/plans, in case of Customer's duties to cooperate and contribution as well as in case of an agreed payment in advance. As far as the

fulfilment of our delivery/service obligations requires services of other contractors of the Customer, these other contractors shall be deemed vicarious agents (*Erfüllungsgewährten*) of the Customer within the contractual relationship between us and the Customer. The period or time of delivery shall be extended or shifted - notwithstanding our rights against the Customer, in particular regarding delay in performance (*Verzug*) - by a reasonable period of time but at least by the period of time which the Customer including his vicarious agents is in delay in performance *vis-à-vis* us.

4. In case we are not able to meet a period or date of delivery due to circumstances which are not our fault, such period or date shall be extended or shifted reasonably but at least by the period of delay. In case periods or dates of delivery have already expired such periods or dates shall be replaced by reasonable new periods or dates of delivery. Circumstances are particularly not our fault in case the performance or one of our contractual obligations is delayed due to circumstances which occur after conclusion of the contract and which have been subjectively and/or objectively unpredictable at the time of conclusion of the contract and/or such circumstances are beyond the scope of our influence. Such circumstances may comprise: natural catastrophes, fire, acts of public authorities, statutory prohibitions, lack of transport facilities, general lack of supply of consumer goods and raw materials, restrictions in energy consumption, refusal of important raw materials or semi-finished products, industrial disputes, theft and vandalism as well as *force majeure* in general. We will notify the Customer of the commencement and the end of such circumstances as soon as possible.
5. In case the delivery or service is subject to an export permission and/or other official permissions being granted, we shall be released from delivery and service obligations if such compulsory permission may not be obtained or may be withdrawn without our fault.
6. Should we get in delay of performance of a delivery/service under the contract and should this result in the Customer evidently suffering damages, the Customer may claim a lump sum compensation (liquidated damages) from us. Such liquidated damages shall be - as long as nothing else is agreed upon - 0.5 per cent for each complete week of delay but in the aggregate not more than 5 per cent of the net contract value of the respective part of the total delivery/service which could not be used in time or not as contractually agreed due to the delay. Minor delays and/or minor impairments of the usage of the product of delivery and/or the service shall not be taken into account. We reserve the right to establish that the damages actually suffered were less than the liquidated damages.
7. In case the Customer - taking the statutory exemptions into consideration - decides to set a reasonable period for delivery/service after such delivery/service became due and we fail to meet such period of time, the Customer shall be entitled to rescind from the contract within the rules of law.
8. The Customer may rescind from the contract without setting a reasonable period if the entire delivery/service becomes finally impossible before transfer or the risks. In addition, the Customer may rescind from the contract if the performance of a part of an order becomes impossible and the Customer has a rightful interest to object against part delivery. Should that not be the case, the Customer shall be obliged to pay the appropriate proportion of the contractual price for the part delivery. The same shall apply in case of our inability to perform.



9. Further claims in case of delay in performance shall be exclusively dealt with as per no. X.2 of these Terms and Conditions.

### V. Acceptance (*Abnahme*), Transfer of Risks

1. In case an acceptance is compulsory by contract or by law, such acceptance shall effect the transfer of risks. The Customer shall declare acceptance at the agreed date of acceptance but without undue delay after our notice of readiness for acceptance at the latest. In case the Customer does not declare refusal of acceptance in writing with a statement of reasons without undue delay after completion of our services or within a reasonable period of time set by us, the acceptance shall be deemed effected.

The refusal of acceptance has the same effect as the timely notice of defects has. Minor impairments of the product of delivery/service shall not entitle the Customer to refuse acceptance.

By means of acceptance, we are released from liability for visible defects as long as the Customer did not reserve his right to file notice of certain defects with his acceptance.

2. The Customer may ask for acceptance surveys only if such surveys are explicitly provided for in the contract. In case of an acceptance survey, acceptance shall be deemed effected if the Customer does not lodge justified complaints without undue delay after completion of the survey.
3. Personal and material costs of acceptance shall be borne by the Customer. We shall invoice the material costs of acceptance as per our price list as amended.
4. In case the Customer waives his right to an agreed acceptance survey or in case he stays absent despite timely notification, the survey carried out by us shall be deemed as acceptance.
5. Should the shipment and/or the acceptance be delayed or not effected due to circumstances which are not our fault, the risks shall be transferred to the Customer at the date of notice of readiness for shipment and/or acceptance. The Customer shall bear the additional costs incurred by the delay, in particular the costs of storage and – if applicable – of the conservation of the product to be delivered as well as any related miscellaneous expenses – such as insurance premiums. This shall also apply in case we are not able to provide readiness of acceptance of the delivery/service for reasons which are not our fault.
6. In case of deliveries without erection and without our explicit written obligation for the shipment, the risks shall be transferred to the Customer at the time the goods are handed over into the custody of the freight forwarder or carrier as long as nothing else was agreed upon as per INCOTERMS.

In case of deliveries including erection, the risks shall be transferred to the Customer at the date of the material parts of the product of delivery/service being handed over on the premises of the Customer as long as nothing else was agreed upon as per INCOTERMS.

In case a test run has been contractually agreed, the risks shall be transferred to the Customer after the test run was successful in all material aspects. We assume that the test run and/or the take-over on the premises of the Customer shall be carried out without undue delay after the ready-to-run installation.

In case the mounting and/or the test run comprised by our delivery and service obligations and/or the hand-over on the premises of the Customer are delayed due to reasons which are not our fault, the risks shall be transferred not later than 3 (three) months after our notice of readiness for shipment to the Customer. The costs incurred by such delay and/or extension of the test run and/or the delay of the hand-over on the premises of the Customer shall be borne by the Customer – unless the delay was our fault.

### VI. Insurance, Supplies, Coordination

1. As long as nothing else has been explicitly been agreed upon, it shall be the obligation of the Customer to take care of transport insurance coverage – if applicable.
2. During the period of construction/erection and commissioning, the securing of the estate shall be effected by the Customer on Customer's account. Any supplies which are not part of our contractual delivery and service obligations shall be rendered free of charge for us on account of the Customer. The Customer shall be obliged to render any means and materials of supply, in particular for erection, commissioning and test run of our deliveries and services. The Customer shall – if applicable - take care at his own costs of the coordination of our deliveries and/or services with deliveries/services of other providers, in particular with regard to interfaces – if applicable. Other suppliers and sub-contractors employed by the Customer shall be deemed as vicarious agents of the Customer *vis-à-vis* us.
3. In case of erection / commissioning / test run within our contractual delivery/service obligations, the Customer shall bear all costs which are incurred by interruptions, extensions or stoppages of delivery or erection, commissioning and/or test run of the product of delivery/service.

### VII. Price and Payments

1. The Customer shall effect payments in accordance with the agreed terms of payment. As long as nothing particular has been agreed upon, invoices shall be payable immediately after receipt without deductions and free of charges. An agreed discount requires the punctual fulfilment of all obligations of the Customer *vis-à-vis* us – also arising from other contractual relationships.
2. The contractual price shall be – if nothing else is agreed upon - ex works exclusive loading and packaging plus mandatory VAT.
3. In case the Customer is in default with payment we may postpone any act necessary to fulfil our contractual obligations until the outstanding payment is effected. In such case, the period of delivery shall be extended as per IV, no. 3.
4. In case of default with payment the Customer shall be obliged to pay statutory default interest as from the beginning of his default. In addition, we have the particular right to withhold - to a reasonable amount and extent - deliveries of other orders of the Customer and - as from the beginning of the default in payment - to carry out such deliveries only against cash in advance or against cash on delivery as well as to declare any outstanding invoice to be due for immediate payment, even in case longer periods of payment had been agreed upon.
5. After expiry of a reasonable period of time set by us, we shall be entitled to terminate the contract without further notice and to call back the goods and services rendered or to claim partial payment. Any further claims for damages remain unaffected.
6. Payments shall be deemed to have been effected at the date we have unfettered disposal of the amount. Bills of exchange will be accepted only in case of prior agreement and only as a mode of payment (not as a substitution of payment) and only subject to the usual reservations. Any costs in connection with the bill of exchange shall be borne by the Customer.
7. In the course of the commercial relationship, the Customer shall be entitled to set-off only in case his counter claims have been determined *res iudicata*, are undisputed or have been acknowledged by us.

The Customer shall be entitled to rights of retention only in case of claims being determined *res iudicata* or being undisputed or because of evident gross violation of our material contractual obligations.



8. In case we obtain knowledge of circumstances which are – within our due discretion – eligible to reduce the creditworthiness of the Customer, we shall be entitled to omit any agreed terms of payment and to make any further deliveries subject to cash in advance or to request prior security of our choice. Following a reasonable grace period, we shall be entitled to rescind from the contract and to claim damages instead of performance. In case administration proceedings are filed, we shall be entitled to rescind from the contract and to request immediate return of the product delivered.
9. In any case, we reserve our statutory rights arising from default in payment.
10. Based upon the power of attorney granted to us by the companies belonging to our group (as per § 18 AktG = German Stock Corporation Act), we are entitled to set-off against any claim the Customer may have against us or any of our group companies with any claim we or one of our group companies may have against the Customer. This shall also apply in case of cash payment for one party and payment by means of bill of exchange for the other party have been agreed upon. Upon request, we will provide the Customer with a list of companies belonging to our group.

### VIII. Retention of Title

1. All delivered goods stay our property until any claim arising from the business relationship between us and the Customer is entirely paid ("Vorbehaltware" = "retention goods"). In this context, the claims of our group companies have the same legal quality as our claims.
  2. We shall process and manufacture goods, being delivered to us under retention of title, as manufacturers as per § 950 BGB (German Civil Code) without obliging ourselves. In case of manufacturing, connecting or mingling of retention goods with other goods by the Customer, we shall be entitled to co-ownership in the new item as to the proportion of the invoice value of the retention goods in comparison to the invoice value of the other goods used. In case our ownership is extinguished by means of connecting or mingling, the Customer shall – already now – transfer his rights of ownership in the new stock or item as to the extent of the invoice value of the retention goods and shall keep them free of charge for us.
  3. The Customer may resell the retention goods within regular course of business subject to the condition that his claims arising from the resale shall be transferred to us already now. The claims of the Customer arising from the resale of the retention goods shall be assigned to us already now. In case the assigned claims are being taken into a current account, the claim arising from the current account shall be deemed to be assigned to us as to the respective amount, in particular the claim at the final status of account in case of the current account being terminated.
  4. In case the retention goods are resold together with other goods which were not delivered by us, the assignment of the claim shall apply only to the extent of any open amount of the invoice issued for the respective retention goods.
  5. The Customer shall be obliged to notify his buyers immediately of the retention of title agreed between us and the Customer as well as of the assignment to us and to make any information and documentation necessary for collection available to us. The Customer shall be entitled to collect the claim – arising from the resale - assigned to us as trustee for us and to realize ancillary rights. The power to collect and to realize ancillary rights may be revoked in case of any important reason, in particular in case of substantial impairment of the financial situation of the Customer. The aforesaid powers – in particular the Customer's power to collect – shall be extinguished automatically without explicit revocation in case the Customer fails to comply with his payment obligations *vis-à-vis* us, in case of out-of-court or court composition or insolvency proceedings or other comparable international proceedings are being filed or commenced against the Customer or rejected due to lack of funds. The Customer shall not be entitled to disposal of the claims assigned to us without our prior written consent.
6. In case the value of the existing securities exceeds the value of our secured claims by more than 20 per cent, we shall be obliged to appropriately release securities of our choice upon request of the Customer.
  7. The Customer shall be obliged to notify us without any undue delay of any attachment or seizure of property by third parties. In case the Customer gets into default in payment, fails to cash a bill of exchange or a cheque, in case of cessation of payments or overindebtedness or in case of out-of-court or court composition or insolvency proceedings or other comparable international proceedings are being filed or commenced against the Customer or rejected due to lack of funds, the entire remaining debts shall become immediately due for payment, even if bills of exchange with longer periods of payment have been issued. In such case the Customer shall be obliged to provide us – upon request - with a list of any retention goods still in his custody or a list of claims assigned to us with names and addresses of the debtors as well as the amount of each claim. As well, we shall be entitled to take back and to seize the retention goods at the cost of the Customer for the purpose of realization and redemption of the remaining debts. The Customer shall be obliged to provide us with repossession of the goods and to give us or third parties instructed by us access to his business premises during regular office hours. The request for repossession or taking repossession of the goods shall not constitute a rescission from the contract.
  8. Taking repossession of delivered retention goods – even based upon other reasons than the aforesaid – shall not constitute a rescission from the contract and shall not release the Customer from his contractual obligations.
  9. In case the agreed retention of title is deemed invalid or valid only under certain preconditions according to the law which is applicable in the place where the goods are situated, the customer shall notify us accordingly without any undue delay. In such case such security being permissible within the respective jurisdiction shall be deemed as agreed which has the highest similarity to the legal character of a retention of title. As far as certain preconditions have to met in this respect, the Customer shall be obliged to meet such preconditions at his own cost.

### IX. Defect claims, Warranty

We shall give warranty for material and legal defects of the product of delivery/service – subject to exclusion of any further claims (subject to no. X.) - as follows:

1. Defects in Material
  - a) Any parts of the product of delivery/service which prove to be defective as a result of circumstances which have occurred before transfer of risks and which are our fault, shall be – several times if applicable and at our option - rectified or und defectively replaced free of charge within a reasonable period of time. Detection of such deficiencies shall be reported to us without undue delay in writing. Replaced parts become our property. The defect of a product of delivery shall comprise the lack of certain characteristics agreed or guaranteed. Agreed characteristics of a product of delivery/service shall generally be deemed only the product description given in the technical specification of the contract. Public statements, appraisals or advertisements shall not constitute a contractual statement of characteristics of the product of delivery/service.
  - b) The Customer shall give us – after coordination with us - necessary time and opportunity to carry out any rectifications and/or replacements which we think necessary as well as to carry out technical surveys of the product of delivery/service prior to (re-) starting up; otherwise, we shall



be released from liability for any consequences arising therefrom. Only in cases of jeopardy to the safety of operations and/or to prevent unreasonable high damages, the Customer shall be entitled – after written notice to us - to remedy a defect himself or to have it remedied by a third party. In such case we shall bear only such reasonable costs which would have been incurred in case of necessary remedy of defects by us as per lit. c). We shall be entitled to apply constructive changes in the course of carrying out warranty works.

- c) Of the direct costs incurred by rectification and/or replacement, we shall bear – as far as the notice of defect proves to be justified – the costs for the replacement part including shipment costs as well as reasonable costs of removal and reassembly and – if such may equitably be requested from time to time – the costs for sending our technicians and support staff which may become necessary. In case the place of repair is not identical with the place of delivery and this fact incurs higher costs for us, such costs shall be borne by the Customer. The Customer shall not be entitled to claim damages in addition to rectification, unless in case of intention or gross negligence of our organs or our executive staff. This shall apply in particular to consequential damages such as loss of use, loss of production, costs of stoppage or costs of docking.
- d) The Customer shall be entitled to rescind from the contract subject to the statutory rules, in case we – taking the statutory exemptions into consideration – fail to meet a reasonable period for rectification or replacement which was set to us in writing because of a substantial material defect. In case of a minor defect, the Customer shall merely be entitled to reduce the contract price. In any other case, the right to reduce the contract price shall be excluded. Anyway, no. X. of this Terms and Conditions shall apply.
- e) In case the Customer fails to perform his duties to more than minor extent, we shall not be obliged to rectify defects during such period of non-performance of such duties of the Customer. If the Customer opts for rescission from the contract in case of failed rectification of a material defect, he shall not be entitled to damages because of the defect if not the defect or damages were caused by intention or gross negligence of our organs or executive staff or our vicarious agents.
- f) We shall not be liable for defects or damages which occur as a consequence of
- usage, treatment or maintenance being unprofessional, inappropriate or not in compliance with our operating manuals and maintenance plans,
  - excessive load,
  - usage of inappropriate supply material,
  - faulty or unprofessional assembly and/or starting up,
  - faulty, unprofessional of inappropriate rectifications,
  - application of other unprofessional works or any changes or amendments made without our prior written consent,
  - usage of an inappropriate or ineligible foundation ground,

of the product of delivery/service by the Customer or third parties or other circumstances within the sphere of the Customer.

As well, the Customer shall not be entitled to claim defects in case of defects or damages based upon the natural condition and/or the natural or regular wear and tear as well as chemical, electrochemical, electrical, physical or biological influences of and/or to the product of delivery/service.

- g) We shall be entitled to apply constructive changes in the course of carrying out warranty works.
- h) No further claims shall exist, as far as not anything else is provided in no. X.
2. Legal Defects
- a) In case the use of the product of delivery/service evidently infringes any inland industrial property rights/copyrights, we

shall in general provide the Customer at our own costs with to further use or shall modify the product of delivery/service in a way being reasonable for the Customer to such extent that an infringement of industrial property rights/copyrights does not exist any more.

Should that not be possible under economically reasonable conditions and within a reasonable period of time, the Customer shall be entitled to rescind from the contract. Under the said circumstances, we may as well rescind from the contract.

Furthermore, we shall indemnify the Customer from claims of the bearers of the respective industrial property rights/copyrights being undisputed and being determined *res iudicata*.

- b) The obligations laid down in lit. a) shall be concluding for us subject to no. X. in case of infringements of industrial property rights/copyrights.

We shall only be liable in case

- the Customer notifies us in writing without undue delay of claimed infringements of industrial property rights/copyrights,
- the Customer supports us to an appropriate extent in the defence against the claims brought and/or enables us to carry out the measures of modification as per lit. a.,
- we keep all means of defence including out-of-court settlements,
- the legal defect does not result from an instruction of the Customer,
- the infringement was not caused by the Customer changing the product of delivery/service arbitrary without our prior written consent or by the Customer using the product of delivery/service in an unprofessional manner or in a manner not in compliance with the contract.

No further claims shall exist, as far as not anything else is provided in no. X.

## X. Liability

1. In case the subject of the contract may not be used by the Customer as provided in the contract due to our fault as a consequence of omitted or faulty performance, of recommendations or consultations prior or after conclusion of the contract or as a consequence of the violation of other ancillary obligations – in particular instructions as to the operation and the maintenance of the product of delivery – the provisions of nos. IX. and X. 2., 3. shall apply accordingly and further claims of the Customer shall be excluded.
2. We shall be liable for damages, which have not happened to the product of delivery/service itself and which are our fault, as well as for any other claims of the Customer only in case of
  - intention
  - gross negligence of our organs or executive staff
  - culpably caused personal injury
  - defects which we have fraudulently concealed or which we have guaranteed not to occur
  - defects of the product of delivery, as far as liability is incurred for personal injury or damages to private property under German Product Liability Code (*Produkthaftungsgesetz*).

In case of faulty violation of material contractual obligations, we shall also be liable for gross negligence of non-executive staff and for slight negligence, in the latter case our liability shall be limited to damages which are typical under the contract and which were reasonably predictable.

Any further claims – in particular claims for compensation of pure economic or consequential damages, such as loss of earnings, loss of production or use, docking costs – are excluded, as long as not intention or gross negli-



gence of our organs or executive staff or our vicarious agents caused such damages.

3. As far as our liability is excluded or limited, this shall also apply to the personal liability of employees, workers, staff, representatives and vicarious agents.

### XI. Limitation

Any claim of the Customer – notwithstanding for whatever legal reason – shall become time-barred within 12 months. The statutory limitation periods shall apply to claims for damages as per no. X.2.

### XII. Use of Software

1. In case software is comprised in the delivery package, the Customer shall be granted a non-exclusive right to use the delivered software including its documentation. The software is left to the Customer for the purpose of use on the respective product of delivery. The use of the software on more than one system is prohibited.
2. The Customer shall copy, modify, translate or transfer the software from the object code into the source code only as to the extent provided for by law (§§ 69 a ff. UrhG = German Copyright Act). The Customer undertakes not to remove manufacturer's remarks – in particular copyright remarks – or to change them without our prior explicit consent.
3. Any other rights to the software and the documentation including copies shall remain with us and/or the software supplier. The granting of sub-licences is not allowed.

### XIII. Written Form

Deletions, alteration and amendments of this contract as well as any declaration of the contract parties require the written form in order to become effective. This shall also apply to the alteration of this provision itself.

### XIV. Severability

In case that any of the provisions of these Terms and Conditions is or becomes invalid or unpracticable in part or in whole or in case a gap in these provisions occurs, the effectiveness of the other provisions as well as the effectiveness of the contract concluded with the Customer shall remain unaffected.

The invalid or unpracticable provision shall be replaced by such provision which is legally valid and has the economical effect most similar to the invalid or unpracticable provision. This shall only apply in case the provision concerned is not replaced by statutory law as per § 306 sub. 2 BGB (German Civil Code).

### XV. Place of Jurisdiction, Applicable Law

The courts of law shall have jurisdiction for any dispute arising between the parties in connection with this contract – as long as the Customer is a commercial man ("Kaufmann") as per HGB (German Commercial Code). Place of jurisdiction shall be Hamburg. But we shall have the option to sue the Customer at the place of his branch office or at his principal place of business.

All legal relations arising from and in connection with the contract between us and the Customer shall be governed by the laws of the Federal Republic of Germany which applies to the legal relations between inland parties. Any unified legal regime – in particular the CISG – shall be excluded.

### XVI. EC Value Added Tax

The VAT ID no. of Blohm + Voss Industries GmbH is DE 811 896 549. The customer shall be obliged give us his ID no. without undue delay as far as an intra-Community, cross-border trade of goods is concerned.