

# **GENERAL CONDITIONS OF SALE AND DELIVERY OF BAHNTECHNIK BRAND-ERBISDORF GMBH**

**- applicable as of June 8<sup>th</sup>, 2017 –**

## **I. Scope of Application**

(1) These General Conditions of Sale and Delivery (hereinafter: "Conditions") shall apply exclusively to all sales and deliveries of goods, accessories and spare parts (hereinafter: "Goods") by Bahntechnik Brand-Erbisdorf GmbH (hereinafter: "BT BED"). Conflicting and/or supplementary general terms and conditions of the Customer (orderer or buyer) shall be invalid in respect of BT BED. This shall apply even if BT BED does not expressly object to those conditions or complies with its contractual obligations unreservedly.

(2) Contained within the document of which these Conditions form an integral part are all of the contractual provisions entered into with the Customer. There shall be no ancillary agreements.

(3) These Conditions shall also apply to all future business transactions conducted with the Customer.

## **II. Offers**

(1) All offers submitted by BT BED are without obligation. They represent merely an invitation to the Customer to submit an offer for his part.

(2) Public statements by BT BED, by the manufacturer of the delivered Goods or by his vicarious agents, particularly in advertising or labeling, do not constitute any description of the nature of the Goods or any guarantee regarding the same.

## **III. Export Control**

(1) The Customer undertakes toward BT BED to adhere to all applicable national, European and US American export control regulations, including all European or US American sanction lists and other embargos against particular individuals (together referred hereinafter to as "export control regulations").

(2) The Customer undertakes toward BT BED to provide information of its own

accord, stating the actual export list or Export Control Classification Number, in case goods or their components that are to be delivered are included on the export list, in Appendices I and IV, or the Commerce Control List.

(3) The Customer is obligated to give immediate written notification to BT BED concerning any circumstances becoming known to him after conclusion of the contract which give reasons to assume a possible or actual infringement of export control regulations. In the event of BT BED establishing circumstances after conclusion of the contract which substantiate a possible or actual infringement of export control regulations, BT BED shall notify the Customer of this in writing.

(4) In any event in which circumstances become known which give reasons to assume a possible or actual infringement of export control regulations, any delay in delivery by BT BED for a reasonable period of time, in order to give BT BED the opportunity for verification, shall be excluded.

(5) Should actual infringements of export control regulations be established or there be no possibility to exclude them, BT BED may, at its discretion, withdraw from the contract or demand the cancellation of those part-deliveries that give reasons to assume an infringement. The Customer undertakes to indemnify BT BED against any damages incurred due to a deficiency or failure on the part of the Customer to fulfill his undertaking under this paragraph and subparagraphs. The scope of the damages to be indemnified shall also include reimbursement of all necessary and reasonable expenses incurred to BT BED, in particular the costs and expenses of any legal defence, as well as any fines imposed by the authorities.

## **IV. Prices**

The prices of BT BED valid at the time of order confirmation shall apply to all sales. All prices are exclusive of value added tax at the statutory rate at the time of delivery. In the event of cost increases beyond the

responsibility of BT BED occurring at least six weeks after order confirmation and prior to delivery, such as increases in material and labour costs, public charges or other costs, BT BED shall be entitled to adjust the prices accordingly. Upon request, BT BED shall substantiate such cost increases to the Customer.

## **V. Terms of Payment**

(1) Where the contract provides for payment by letter of credit, the Customer is obligated to open such letter of credit and hand it over to BT BED within seven (7) days.

(2) Under no circumstances is BT BED obligated to fulfill the contract before receiving the letter of credit.

(3) Upon performance, the Customer shall pay the purchase price within 30 days of receiving the invoice, failing which he will be in default pursuant to § 286 section 2 no. 2 BGB (German Civil Code). The legal consequences shall be determined by § 288 BGB.

(4) If the Customer should fail to comply with his payment obligations, BT BED shall be entitled to refuse performance, wholly or in part, until payment of the due amounts is effected or security provided.

(5) If advance performance by BT BED is required and, after conclusion of the contract, a substantial deterioration in the financial situation of the Customer occurs that places the payments of the purchase price at risk, in particular if the Customer ceases payments or an application is made to open insolvency proceedings regarding the assets of the Customer, BT BED may refuse delivery until payment of the purchase price is effected or security provided. BT BED shall be entitled to withdraw from the contract if the Customer fails to pay the purchase price or provide security within a reasonable period.

(6) The Customer shall have the right of set-off or retention only if his counterclaims have been recognized by declaratory judgment or are undisputed.

(7) The Customer is not entitled to assign any rights or claims arising from this

contract to third parties without the prior written consent of BT BED.

(8) If the customer defaults on payment, all other claims shall become immediately payable without any special notice being necessary.

(9) It is expressly agreed regarding deliveries and services performed for the Customer that all costs, both in and out of court, of action brought by BT BED in case of default in payment by the Customer shall be at the expense of the Customer.

## **VI. Set-off Clause**

(1) BT BED shall be entitled to offset any receivables owed to BT BED by the Customer against any receivables owed to the Customer by BT BED.

(2) BT BED shall also be entitled to offset any receivables owed to it by the Customer, for whatever the cause in law, against any receivables owed to the Customer by companies in which BVV Bahntechnik GmbH (Holding) has a direct or indirect majority interest.

(3) The customer will readily receive information upon request concerning the number of companies within the meaning of the previous paragraph 2.

## **VII. Delivery and Delayed Delivery**

(1) Deadlines, in particular delivery times specified by BT BED, shall be binding only if they have been expressly agreed as binding by BT BED. Dispatch ex works in Brand-Erbisdorf shall be relevant with regard to adherence to deadlines or delivery times. BT BED shall in no way be under any obligation to adhere to confirmed delivery times if information, contributions or finalized product requirements from the Customer needed for the dispatch or delivery of the Goods are received only after the dispatch of the order confirmation.

(2) The delivery times shall be extended commensurately in those cases in which there are obstacles to delivery that are beyond the control of BT BED. This shall apply particularly to power supply interruptions or traffic holdups, imposition of embargoes, business disruptions, industrial

disputes, or late or non-effected selfdelivery. If it should become impossible for BT BED to fulfill the contract for the mentioned reasons, the order in question shall be deemed cancelled. BT BED shall inform the Customer of any such obstacles to delivery without delay.

(3) BT BED is entitled to make part-deliveries.

(4) If the Customer falls behind in accepting the contractual delivery, BT BED shall be entitled, subject to any other claims, to place the Goods in storage at the risk of the Customer and to receive, from the Customer, reimbursement of the additional expense (e.g. storage costs) incurred because of the delayed acceptance.

(5) Should the Customer fail to accept the delivery despite a reasonable period of grace elapsing, BT BED shall be entitled to sell the Goods elsewhere, subject to freedom from third-party rights, and to invoice 20% of the purchase price to the Customer as minimum compensatory damages, unless the customer demonstrates that the actual loss or damage was considerably less.

### **VIII. Dimensions, weight, quality**

Deviations in dimensions, weight and quality shall be permissible within the framework of agreed railway authority standards, RUs, DIN (German Industrial Standards), or customary practice. The theoretical weights shall be determined by type on calibrated scales of BT BED and be relevant with regard to invoicing. Subject to agreement, proof of the weight can be provided by presenting a weighing slip. Unless individual weighing is performed, the total weight of the consignment shall apply in each case. Differences in relation to the calculated individual weights shall be spread proportionately among the latter.

### **IX. Packing and Packaging Costs**

(1) Where required technically, BT BED shall deliver the Goods packed in special shipping crates, support frames or on pallets and protected against corrosion.

(2) The Customer shall bear the packaging costs. The support frames serving as packaging will not be taken back. Shipping crates shall remain the property as shown on the labels and be deemed as on-loan packaging in circulation.

### **X. Transfer of Risk and Place of Performance**

All deliveries shall take place "ex works" (EXW) BT BED, Brand-Erbisdorf, pursuant to INCOTERMS 2010. The Customer shall provide fiscal proof as regards any act of cooperation in the transfer of risk.

### **XI. Liability for Defects**

(1) Should the delivered Goods contain a material defect, BT BED shall, at its own option, remedy the defect or deliver defect-free Goods (subsequent performance). If the subsequent performance should come to nothing, or be unacceptable to the Customer, then the customer may reduce the purchase price or withdraw from the contract. Any further claims by the customer, with the exception of the claims stated in Clause XII (Liability) shall not be considered.

(2) After delivery, the limitation period with regard to liability (warranty) for defects is 60 months for all Goods subject to railway application conditions, and otherwise 24 months.

### **XII. Liability**

(1) BT BED shall be liable for damages only if a) liability is compulsory under applicable law, such as under the Product Liability Act (ProdHaftG), or in cases of injury to life, limb or health, b) BT BED culpably violates an essential contractual obligation (cardinal obligation) or a guarantee, or c) the damage or loss is due to grossly negligent or willful behavior on the part of BT BED.

(2) In all other cases, the liability of BT BED for damage or loss, whatever the legal basis, shall be excluded. In particular, BT BED shall bear no liability for indirect loss or damage, loss of profit, and other financial losses of the Customer.

(3) Liability shall be limited in any case to the damage which BT BED was or might have been able to reasonably foresee on the basis of the circumstances and facts to which it had access when the contract was concluded. This limitation of liability shall not apply in the cases of paragraph (1), sub-paragraph (a) of the present Clause.

(4) The exclusion and/or limitation of liability stated in the preceding paragraphs shall also apply to the personal liability of the employees and vicarious agents of BT BED.

### **XIII. Force Majeure**

Irrespective of the provisions of Clause XII (Liability), BT BED shall not be responsible or liable for any disruption or delay in the fulfillment of any part of this contract caused by events beyond the responsibility of BT BED, including strikes or industrial disputes. If such events should last more than 30 days, both parties shall have the right to withdraw from the contract with immediate effect by declaring their withdrawal toward the other party, without there being claims for compensation for any damage or losses.

### **XIV. Obligations of the Orderer**

(1) If the Goods have been manufactured in accordance with drawings, designs, labels, trade marks or other specifications of the Customer, then the Customer undertakes to indemnify BT BED from any liability on account of the infringement of property rights such as patents, registered designs or copyrights to which BT BED is subject because the Goods conform to those specifications.

(2) In the event of damage occurring in transit, the Customer shall immediately arrange for ascertainment of the facts by the relevant bodies or agencies.

### **XV. Retention of Title**

(1) BT BED reserves ownership of the delivered Goods (reserved goods) until all - present and future - claims arising from the

business relationship with the Customer are fulfilled.

(2) Any machining and processing shall take place at all times for BT BED as the manufacturer, but without any obligation for BT BED. If

ownership by BT BED should lapse due to processing, etc., BT BED shall acquire ownership of the unitary item in proportion to the value that the delivered items have in relation to the co-processed items at the time of such processing. If the Customer acquires sole ownership through combination or commingling, he shall assign co-ownership to BT BED in proportion to the value that the delivered items have in relation to the other combined or commingled items at the time of the combination or commingling. The co-ownership acquired by BT BED under these provisions shall pass to the Customer under the same conditions as that of the Goods delivered by BT BED.

(3) The Customer shall be entitled to sell the reserved goods in the ordinary course of business. The Customer already assigns to BT BED at the present time all current and future receivables amounting to the value of the invoice (including value added tax) that accrue to him from the resale of these Goods. BT BED herewith accepts such assignment. The Customer remains entitled to collect these receivables also after assignment. This shall not affect the authority of BT BED itself to collect the receivables. BT BED undertakes not to collect the receivables as long as the customer meets his payment obligations from the agreed proceeds, is not in default of payment and, in particular, no application for insolvency proceedings has been filed, and there is no cessation of payments.

(4) The Customer is prohibited from any other exploitation of the reserved goods. In particular, he shall not be entitled to assign ownership of or pledge the reserved Goods as security. The receivables assigned to BT BED may be pledged or assigned as security to third parties only with the prior consent of BT BED.

(5) The Customer shall inform BT BED in writing, without delay, of any intervention by third parties or of any distraint by third parties concerning the reserved Goods. The Customer shall bear the costs necessary to protect the rights of BT BED in as far as they cannot be reclaimed from the third party.

(6) If the Customer should violate a material contractual obligation, in particular if he falls into arrears with payment, BT BED shall be entitled to take back the reserved goods at the expense of the Customer or to demand the assignment of any ownership rights of the customer in relation to third parties. Further, BT BED shall be entitled to revoke the Customer's right of resale as well as any authorization to collect receivables, to collect receivables and to use, exploit or resell the reserved goods.

(7) If BT BED takes back the reserved goods, or resells these goods, this shall not be construed as withdrawal from the contract. BT BED may offset the proceeds from the exploitation of the reserved Goods against the outstanding receivables. The Customer shall be liable for the loss if the proceeds from such exploitation are less than the purchase price.

(8) If the value of the existing securities exceeds the secured receivables by more than 50% in total, BT BED shall, at the request of the customer, be obligated to release the securities at BT BED's discretion.

(9) Where BT BED is entitled to take back the reserved Goods, the customer shall

irrevocably grant BT BED and its representatives access to his commercial premises during normal hours of business and accept removal.

#### **XVI. Proof of Exportation**

If a Customer residing outside the Federal Republic of Germany (extra-territorial purchaser) or a person authorized by him should collect Goods and transport or ship them to that external territory, the Customer shall provide BT BED with the proof of exportation required for fiscal purposes. Failure to provide such proof shall obligate the Customer to pay the rate of value added tax on the invoiced amount applicable to deliveries within the Federal Republic of Germany.

#### **XVII. Applicable Law, Place of Jurisdiction**

(1) The contract relationship shall be subject to the laws of the Federal Republic of Germany. Application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(2) The exclusive place of jurisdiction for any disputes arising from this contract or in connection therewith shall be Chemnitz. Irrespective of the above agreement regarding the legal venue, BT BED shall be entitled to institute legal proceedings against the Customer also at the latter's place of business.