

**§1 Scope, form**

(1) These General Terms and Conditions of Sale (GTCS) apply to all our business relations with our customers ("Buyers"). These GTCS only apply if the Buyer is an entrepreneur as defined in §14 of the German Civil Code (BGB), a legal entity organised under public law, or a special public fund.

(2) These GTCS apply in particular to contracts for the sale and/or delivery of movable objects ("Goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTCS in the version last communicated to the Buyer in text form, shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) Our General Terms and Conditions of Sale apply exclusively. Any differing, conflicting or additional General Terms and Conditions of Business of the Buyer will only become a part of the contract if we have expressly agreed to their validity. This requirement for consent shall apply in every eventuality, even, for example, if we agree without reservation to make a delivery in full knowledge of the Buyer's General Terms and Conditions of Business.

(4) Any individual agreements made with the Buyer (including ancillary agreements, addenda and amendments) shall always take precedence over these GTCS. Subject to evidence to the contrary, a written contract or written confirmation on our part shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications of the Buyer that relate to the contract (e.g., setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, that is, in written or text form (e.g., letter, email, fax). Any statutory formal requirements and further proof, in particular in cases of doubt as to the legitimization of the declarant, remain unaffected.

(6) These general terms and conditions are a translation from the original German version. In case of doubt the German version shall prevail - downloadable document: <https://www.baercoil.com/pdf/agb.pdf>

**§ 2 Conclusion of the contract**

(1) Our offers are non-binding and entail no obligation. This is also the case if we have provided the Buyer with catalogues, technical or other documentation (e.g., drawings, figures, photographs, plans, calculations, references to DIN norms), other product descriptions or documents – including in electronic form – for which we reserve all property and copyrights.

(2) When the Buyer places an order for Goods, this is considered a binding offer to enter into a contract with us. Unless otherwise stated in the order, we are entitled to accept this offer to enter into a contract within one week of its receipt.

(3) Receipt of the Goods may be declared either in writing (e.g., by way of an order confirmation) or by delivering the Goods to the Buyer.

**§3 Delivery deadline and delays**

(1) The delivery deadline is agreed individually or is stipulated by us when we accept the order. If this is not the case, the delivery deadline is approximately two weeks from conclusion of the contract.

(2) If we cannot meet binding delivery deadlines for reasons that are beyond our control ("non-availability of the service"), we will notify the Buyer of this immediately and indicate the expected new delivery deadline at the same time. If the delivery cannot be made within the new delivery period, we are entitled to withdraw from the contract in whole or in part; any considerations already made by the Buyer will be refunded immediately. For these purposes, the following, in particular, shall be considered "non-availability of the service": if our supplier is late in making its delivery to us, if we have made a congruent transaction to cover our expected orders, if neither our supplier nor we are responsible for the delay, or if we are not otherwise obliged to procure the delivery in that particular instance.

(3) Whether or not we are in default of our delivery obligations is governed by the statutory provisions. In any case, the Buyer must first issue us a reminder. If we are in default of delivery, the Buyer may demand a flat amount of compensation for damages due to delay. The lump-sum compensation equals 0.5% of the net price (order value) for each completed calendar week of delay up to a maximum of 5% of the order value of the delayed goods. We reserve the right to provide evidence that the Buyer has not incurred any damage or has incurred considerably lower damage than the above lump sum.

(4) The Buyer's rights pursuant to §8 of these GTCS and our legal rights, in particular, in the event that obligation to make a delivery is excluded (for example, because said delivery and/or supplementary performance thereof is impossible or unreasonable), shall remain unaffected.

**§ 4 Delivery, transfer of risk, acceptance, failure to receive delivery**

Deliveries shall be made ex warehouse, which shall also be the place of performance for the delivery and any supplementary performance thereof. At the Buyer's request and expense, the Goods will be shipped to another destination ("Sales by Dispatch"). Unless otherwise agreed, we are entitled to ourselves determine the type of shipment (in particular, the transport company, shipping method, and packaging).

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest when the good are handed over to the Buyer. However, in the event of Sales by Dispatch, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall pass to the Buyer once the Goods are handed over to the forwarding agent, carrier or other person or organisation carrying out the shipping. If acceptance of the Goods has been agreed upon, this shall determine the point at which risk is transferred. In all other respects, the statutory provisions under the law for work contracts and services shall apply to any agreed acceptance of the Goods. Handover or acceptance shall be deemed rendered even if the Buyer fails to take receipt of the delivery.

(3) Partial deliveries are permitted. If partial deliveries are made at the Buyer's request, we shall charge shipping costs for every partial delivery.

**§5 Prices and payment terms**

(1) Insofar as no agreement has been made to the contrary in any individual case, our prices as valid at the time of conclusion of the contract shall apply, which shall be ex warehouse prices plus statutory value-added tax.

(2) In the case of Sale by Dispatch (§ 4 para. 1), the Buyer shall bear the costs of transport from the warehouse and the costs of any transport insurance requested by the Buyer. Any duties, fees, taxes and other official levies are to be paid by the Buyer.

(3) The purchase price shall be due and payable within 14 days of issuance of the invoice and delivery or acceptance of the Goods. However, even in the context of an ongoing business relationship, we are entitled at any time to only make a delivery, in whole or in part, against prepayment. We will make such a reservation of our rights known at the latest upon confirming the order.

(4) If the payment deadline passes without receipt of payment, the Buyer shall be in default. The purchase price shall accrue interest at the currently applicable statutory default interest rate for the duration of the default.

(4) The Buyer has no right to offset or retain any amounts unless its counterclaims are undisputed or have been legally determined by a court of law. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected.

**§ 6. Retention of title**

(1) We shall retain title on all Goods sold until full payment of all our present and future claims under the purchase agreement and all ongoing business transactions (secured claims).

(2) The Goods that are subject to retention of title may not be pledged or assigned as collateral to third parties until full payment of the secured claims. The Buyer must notify the Seller in writing without delay if a request is made to open insolvency proceedings, or if third parties gain access (e.g., seizures) to the Goods belonging to us.

(3) If the Buyer acts in violation of the contract, especially in the case of non-payment of the purchase price due, we are entitled, under the statutory provisions, to withdraw from the contract and/or to demand the return of the Goods thereunder on grounds of retention of title. Any demand for the return of goods shall not at the same time constitute a declaration of withdrawal from the contract; rather, we are entitled to demand only the return of the Goods and to reserve the right to withdraw from the contract. If the Buyer does not pay the purchase price due, we may assert these rights only if we have previously set the Buyer an appropriate deadline for payment to no avail or if the setting of such a deadline may be waived under provisions of the law.

(4) Until revocation outline in (c) below, the Buyer is authorised to further sell the Goods that are subject to retention of title or to process them further in the ordinary course of business. In such a case, the following provisions shall also apply.

(a) The retention of title shall extend to the full value of the products that result from the processing, mixing or combination of our products, and we shall be deemed the manufacturer. If, in the case of the processing, mixing or combination of the Goods with goods of third parties, their rights of ownership endure, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined Goods. In all other respects, the same shall apply to the resulting product as to the Goods that are delivered subject to retention of title.

(b) The Buyer hereby assigns to us, by way of security, any and all claims against third parties resulting from the resale of the Goods or of the product in full, or to the extent of any joint ownership in accordance with the preceding paragraph. We hereby accept this assignment. The obligations of the Buyer stated in paragraph 2 shall also apply in respect of the assigned claims.

(c) In addition to us, the Buyer shall remain entitled to collect these claims. We undertake not to collect the claim so long as the Buyer meets its payment obligations to us, there is no defect in its performance, and we do not assert any retention of title by exercising any right pursuant to paragraph 3. However, if this is the case, we may demand that the Buyer inform us of the assigned claims and their debtors, provide us with all information necessary for their collection, hand over the relevant documents, and inform the debtors (third parties) of the assignment. In addition, we are entitled in such a case to revoke the Buyer's authority to further sell and process the goods that are under retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we will, at the Buyer's request, release securities of our choosing.

**§ 7 Warranty claims of the Buyer**

(1) The Buyer's rights in the event of any material defect or defect of title (including any wrong deliveries and short deliveries, as well as any improper or defective assembly instructions) shall be governed by the statutory provisions, unless otherwise stipulated below. In all cases, the statutory special regulations shall remain unaffected when the unprocessed Goods are finally delivered to a consumer, even if the consumer has processed them further (supplier recourse in accordance with §§ 478 BGB). Claims arising from recourse against suppliers are excluded if the defective goods have been further processed by the Buyer or another company, e.g., through being installed in another product.

(2) The basis for any claim for defects shall first and foremost be the agreement made regarding the condition and quality of the Goods. All product descriptions and manufacturer information which are the subject matter of the individual contract or which were made public by us at the time of conclusion of the contract (in particular, in catalogues or on our Internet homepage) shall be deemed to constitute an agreement on the condition and quality of the Goods.

(3) Insofar as the condition and quality of the Goods was not agreed upon, the statutory provisions shall determine whether a defect exists or not (§ 434 para. 1 sentence 2 and 3 BGB). We only accept liability for public statements of the manufacturer or other third parties (e.g., advertising statements) if the Buyer has made us aware that these were decisive for his purchase.

(4) The Buyer's ability to make claims for defects is dependent upon its compliance with its statutory obligation under §§371, 381 HGB to examine the goods and give notice of any non-conformity. In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later point in time, this must be reported to us immediately in writing. In any case, obvious defects must be reported in writing within five working days of delivery, and defects not visible during the inspection, within the same period of time after their discovery. If the Buyer fails to carry out a proper inspection and/or report a defect, then any liability on our part for the defect that was not reported, not reported in time or not properly reported shall be excluded, in accordance with the statutory provisions.

(5) If the delivered Goods are defective, we may first of all elect to render supplementary performance either by removing the defect (subsequent remedy) or by delivering a replacement product free of defects (replacement delivery). Our statutory right to refuse supplementary performance remains unaffected.

(6) The Buyer must allow us the necessary time and opportunity to render the supplementary performance owed and shall, in particular, hand over the defective Good in question for the purposes of inspection. In the case of a replacement delivery, the Buyer shall return the defective products as required by law. The supplementary performance does not include the removal of the defective item or the re-installation if we were originally not obliged to install the product.

(7) We shall bear or reimburse the expenses necessary for the purpose of inspection and supplementary performance, in particular, transport, travel, labour and material costs, as well as any removal and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs arising from the unjustified request to remedy the defect (in particular, inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.

(8) In urgent cases, e.g., when operating safety is put at risk or in order to avert disproportionate damages, the Buyer has the right to rectify the defect themselves and to demand from us reimbursement of the expenses objectively required for this. We must be informed of such independently performed activities as soon as possible, if possible prior to them being carried out. The Buyer's right to rectify defects itself shall not exist if we would be entitled to refuse the equivalent supplementary performance in accordance with the statutory regulations.

(9) The Buyer may withdraw from the contract or reduce the purchase price if supplementary performance fails twice or if a reasonable deadline to be set by the Buyer for the supplementary performance expires without successful result or is not required according to the statutory provisions. This shall, however, be no right to withdraw if the defect is negligible.

(10) Any claims from the Buyer for damages or reimbursement of futile expenses may only be asserted in accordance with § 8, even in the event of defects, and are otherwise excluded.

**§ 8 Other liability**

(2) Insofar as nothing to the contrary is stipulated in these GTCS, including the following provisions, we assume liability in the event of a breach of our contractual and non-contractual duties in accordance with the relevant statutory regulations.

(2) We shall be liable for damages – irrespective of their legal grounds – in the event of intent or gross negligence, within the scope of fault-based liability. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g., exercising care in own affairs, insignificant breach of duty), only a) for damage resulting from injury to life, limb or health, b) for damage resulting from the breach of a material contractual obligation (an obligation whose proper fulfilment constitutes a condition sine qua non for the implementation of the contract and upon compliance with which the customer regularly relies and may rely); in this case, our liability is, however, limited to the reimbursement of foreseeable, typically occurring damages and to a maximum of EUR 5.0 million.

(3) The limitations of liability provided for in paragraph 2 shall also apply in the case of breaches of duty by or in favour of persons whose fault we are responsible for under with statutory provisions. They do not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality and nature of the Goods and for claims of the Buyer under the Product Liability Act.

(4) In the event of any breach of duty other than those which relate to a defect, the Buyer shall only be entitled to withdraw from or terminate the contract if we are responsible for said breach of duty. The Buyer shall have no free right of termination (in particular, pursuant to §§ 650, 648 BGB). In all other respects, the statutory requirements and legal consequences shall apply.

**§ 9 Statute of limitations**

Contrary to §438 para. 1 no. 3 BGB, the general period of limitation for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the period of limitation shall commence upon acceptance. The above periods of limitation shall also apply to any contractual and non-contractual claims for damages made by the Buyer that are based upon a defect in the Goods, unless the application of the regular, statutory period of limitation (§§ 195, 199 BGB) would result in a shorter period of limitation in that specific instance. However, claims for damages of the Buyer under § 8 para. 2 sentence 1 and sentence 2 (a), as well under the Product Liability Act shall only become statute-barred after the statutory periods of limitation.

**§ 10 Rights of third parties**

If we produce the Goods for the Buyer in accordance with their specifications, the Buyer guarantees that the Goods he wishes to be produced do not violate any property rights of third parties. Should such property rights nevertheless be violated, the Buyer indemnifies us from claims for damages by third parties.

**§ 11 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these General Terms and Conditions of Sale and to the contractual relationship between us and the Buyer, to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant or the Buyer's place of residence or habitual residence moves after conclusion of the contract outside the scope of the German Civil Code, or if its place of residence or habitual residence is not known at the time at which an action is filed, then our registered office shall be the exclusive – and international – place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship. The same applies if the Buyer is an entrepreneur, as defined in Section 14 of the German Civil Code (BGB). However, we shall in all cases also be entitled to bring an action at the place of performance of the delivery obligation under these General Terms and Conditions of Sale or any overriding individual agreement, or at the general place of jurisdiction of the Buyer. Statutory provisions that have precedence, in particular regarding exclusive responsibilities, remain unaffected.

**§12 Severability clause**

Should one or more provisions of these GTCS be or become invalid or void, in whole or in part, or should these GTCS contain an omission, the validity of these GTCS in all other respects shall remain unaffected by this. Version: 01.12.2019