



B+R Maschinenbau GmbH
Blasformtechnik
Rationalisierung

General terms and conditions of the
B+R Maschinenbau GmbH

§ 1 Scope of validity

- (1) Our general terms and conditions apply for all present and future privities of contract between us and our customers. Herewith we contradict explicitly our contractual partner's terms and conditions which are opposed to our-ones even insofar as our terms and conditions do not include regulations and the terms and conditions of the purchaser are opposed to legal regulations, lift or repeal them.
- (2) Our general terms and conditions apply also for all future business with our customers.
- (3) As far as regulations are not included in our terms and conditions, German law applies exclusively excluding the laws of the international purchase of chattels even if the customer resides abroad.
- (4) All agreements made between us and the purchaser in order to realize this order are put into writing in this contract.

§2 Clause requiring written form

- (1) Our offers are without engagement and obligation. The order of our contract partner is a binding offer.
- (2) We can accept this offer at our option within 4 weeks by sending an order confirmation.
- (3) For the content of the contractual agreement only the written order of the customer and the order confirmation as far as such a confirmation has been sent to the customer are decisive. The customer is obliged to control immediately the order confirmation and to inform in written form about possible deviation of his order.
- (4) For all explications of the contractual partners relating to the realisation of the respective contract the written form is expressly agreed. It is supposed that the customer's order or the order confirmation contains all contractual agreements.

§3 Prices

- (1) Our prices are quoted ex works, packing excluded, as far as the order confirmation does not contain another arrangement. The packing is invoiced separately.
- (2) The legal VAT is not included in our prices. It will be shown separately in the invoice with its legal rate on the day of invoicing.
- (3) Taking cash discount requires a particular written agreement.
- (4) Unless otherwise agreed, the amounts invoiced after the acceptance of the work performances will be payable immediately without discount.

As far as between us and our customers a term of payment will be agreed, the customer will be automatically behind schedule by expiration of the term of payment without the need for a further reminder (§286 art. 2 no. 2 BGB (=German Civil Code)). The amount invoiced will be interest-bearing after expiration of the term of payment with the legal interest rate of 8% above the base rate.

If there is not any agreement on the term of payment, the delay of payment occurs either by reminder or 30 days at the latest after maturity and receipt of the invoice. For each further reminder the customer has to pay an amount of 10,00 EUR as far as we do not prove a higher, or the customer a lower claim. §353 HGB (*German Commercial Code*) will remain unaffected.

- (5) The costs of discounting and collection for the acceptance of bills of exchange and of checks are to be paid by the customer.
- (6) The customer is entitled to the right to set-off only if his counterclaims are legally assessed, undisputed or accepted by us. Furthermore he is authorized to exercise a right of retention only insofar as his counterclaim is based on the same contractual relationship.

B+R Maschinenbau GmbH	Amtsgericht Siegburg	Bankverbindungen	Konto Nr.	BLZ	IBAN:	BIC
In der Brückenwiese 12	HRB Nr. : 7235	Postbank Dortmund	77 83 82 466	440 100 46	DE23 440100460778382466	PBNKDEFF
D - 53639 Königswinter	Ust-Id-Nr.: DE 1 59 85 61 97	Kreissparkasse Köln	80 00 934	370 502 99	DE83 370502990008000934	COKSDE33
Telefon +49 (0)2244-9183-0	Steuer Nr.: 222-5701/0457	Volksbank Bonn eG	70 20 54 010	380 601 86	DE59 380601860702054010	GENODE1BRS
Telefax +49 (0)2244-81390	Geschäftsführer: Guido Schmitz					



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- (7) For all deliveries and services realised within the 6 months after ordering our prices indicated in the order confirmation are fixed prices. If during the 6 months after ordering it comes to price increases in the salary and material fields, the prices will rise respectively for the services and deliveries to be realised after expiration of the 6 months.

§ 4 Delivery and delivery time

- (1) Unless otherwise agreed in the order confirmation, the delivery is quoted ex works.
- (2) With the goods' readiness for shipment the risk is transferred to the purchaser.
- (3) The purchaser commits to controlling the completeness and intactness of the incoming deliveries. The warranty claims of the purchaser require that he has met correctly his obligations to inspect and to make a complaint due to §§ 377, 378 HGB. Evident deficiencies have to be notified within 3 days in written form. For latent defects the period of time begins after their detection. Complaints notified after that time will not be considered.
- (4) The freight carrier will be responsible for transport damages. Those damages are to be detected in the presence of the freight carrier and immediately to be notified in written form to the transport company and to us.
- (5) The dates of delivery indicated in the order confirmation are without obligation.
- (6) The assembly and setting up operations of the manufactured work at the place of destination will only be realised if expressly and separately desired by the customer in written form. Costs arising through this will be invoiced separately.
- (7) If the purchaser comes to default of acceptance or if he does not fulfil his obligations to co-operate we are authorized to demand the making up for a damage possibly arising for us, including possible additional expenditures. We reserve the right of further claims.

§5 Acceptance

- (1) The acceptance of the manufactured work has to take place in our plant. In doing so a written acceptance certificate has to be made.
- (2) If the customer does not accept the services judged basically to be free of defects in spite of a corresponding written demand within a delay of 10 working days, the work is considered to be accepted after expiration of the time limit. But this is only effective if the customer has been bound to the acceptance.
- (3) The refusal of acceptance is only allowed in case of essential defects.

§6 Warranty for defects

- (1) The agreed character of the goods to be fulfilled by us results exclusively from the contractual agreements with our customers and not from any other promotional statements, flyers, consultations or similar. The acceptance of a guarantee f. ex. in terms of § 443 BGB is not associated with this.
- (2) Excluding all further claims we are liable for defects as followed:
- (a) If our customer makes a complaint about a defect, he has to give to our representative the opportunity to inspect and to check the objectionable subject of the contract. If this possibility is refused to our representative any warranty claims concerning the defects object of the complaint cease to exist.
- (b) From delivery on we issue a guarantee of 1 year for the correctness of the goods, unless there is an obligatory longer legal warranty period.
- (c) We do not guarantee damages resulting from following reasons:
 Unqualified and improper use, incorrect assembly or setting up by the customer or third persons, wear and tear, incorrect or careless treatment, unsuitable equipment, exchange material, insufficient construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences provided that they are not to trace back to our fault.
- The supplementary performance is realised at our option and by removing the defect or delivering an object free of defects. For the removal of defects our customer has to guarantee reasonable time and opportunity. If this is refused any warranty claims against us cease to exist. If the supplementary performance fails several times our customer can withdraw from the contract or demand a reduction.
- (e) If because of a defect part of the delivered machine we are obliged to repair it, this obligation to repair turns out at our option in such a way that we either realise ourselves the repairing or have it repaired or send the spare part to the customer at our charges and bear the fictive assembly costs to be charged in Germany at our location for the assembly of the spare part. For the decision the circumstances accepted according to § 439 art. 3 BGB for a right to refuse work are decisive. A further obligation to repair is excluded. If the supplementary performance fails the customer's rights remain unaffected. If a spare part is delivered, the customer is obliged to return the defective object or spare part at his own expense.
- (f) We are not obliged to remove defects as long as the customer does not fulfil his obligations.



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- (3) Beyond the claims he is entitled to by those regulations, the customer cannot assert any claims for compensation, especially no claims for damages, even not for non-contractual liability or other rights because of possible disadvantages resulting from the delivery, against us, no matter which legal ground he refers to. This exclusion of liability does not apply in case of intention, cross carelessness of our business owner or our executive employee and in case of culpably violation of essential contractual obligations. In case of culpably violation of essential contractual obligations we are liable only for the reasonably foreseeable damage typical for this contract – except in cases of intention and the cross carelessness of our business owner or executive employee. Furthermore the exclusion of liability does not apply in cases in which according to the Product Liability Act for errors of delivery objects there is a liability for damages to persons or damages of property of privately used objects.
- (4) Claims for damages of our customers are excluded too insofar as the customer can call on us according to § 478 art. 2 BGB for the compensation of expenses which the customer himself had to pay to the consumer or another enterpriser. The claim of compensation of expenses according to § 478 art. 2 BGB only exists if the customer has obliged efficiently his customer in turn according to § 4 art. 3 of those terms and conditions. If the goods delivered by us are treated, processed or modified in another way by our customer, we are not supplier anymore in terms of § 478 art. 2 BGB so that our customers are not entitled to claims for compensation of expenses resulting from this regulation.
- (5) Further claims of the customer especially to compensation for damages which are not occurred on the delivery object itself, are excluded.
- (6) As far as the liability for damages towards us is excluded or limited, this applies too with regard to the personal liability for damages of our employees, members of staff, representatives and auxiliary persons.

§7 Reservations of title

- (1) We reserve the property in our goods deliveries which may only be sold in correct business connections up to the complete fulfilment of all claims of the business relationship, no matter for which legal ground, including possible refinancing or return bills.
- (2) Our claim debtor does not acquire property of the completely or partially manufactured objects by processing those goods. The processing was realised free of charge exclusively for us. If however the reservation of title should expire because of any circumstances our claim debtor and we are agreeing already now about the fact that the property of the objects changes to us at the moment of processing. We do accept the transfer. Our claim debtor remains gratuitous depository of those objects.
- (3) At the processing with goods which are still property of a third party, we acquire the co-ownership of the new objects. The scope of this co-ownership results from the relationship of the invoice value of the goods delivered by us and the invoice value of the remaining goods.
- (4) Herewith our claim debtor cedes the claim of a resale of the goods subject of the reservation of title to us, and even insofar as the goods are processed.
- (5) If the processing product contains in addition to our goods subject to the reservation of title only such items which belong either to the claim debtor or which have been delivered only because of the so called simple reservation of title, our claim debtor will cede the entire claim of purchase price to us. In the other case that means if it comes to an assignment in advance to several suppliers a fraction of the claim shall be owned by us, corresponding to the relationship of the invoice value of our goods subject to the reservation of title to the invoice value of the other processed items.
- (6) As far as our total receivables are doubtlessly guaranteed by such assignments for more than 120%, the surplus of the outstandings will be released on our claim debtor's demand at our option. Our claim debtor can collect the outstandings for himself until recalled as long as he meets his payment obligations towards us. Our claim debtor's right to resale or to process the goods and to collect the outstandings expires in case of cessation of payment, application or declaration of bankruptcy, judicial or extrajudicial composition proceedings, protest of cheque or bill or realised garnishment. Assigned outstandings coming in afterwards are to be collected immediately on a special account. In this case the assignment has to be indicated immediately to the third party debtor. We are also to be immediately informed about the third party debtor.
- (7) Furthermore our claim debtor is obliged to guarantee our claim towards the third party debtor by suitable measures (security mortgages, guarantees, etc.). The assignment in advance and the obligation to guarantee our claim by third party debtors apply for our customers even if they only resale the goods subject to the reservation of title or transfer them to fulfil a contract for services or for work and material.
- (8) As far as our rights can be impacted too by another party coming into contact with the third party debtor, those interferences are to be notified immediately to us. If our claim debtor violates the preceding obligations we are authorized to demand the damage resulting for us, but at least 25% of the still outstanding claim, whereas proving a minor damage is reserved to the debtor.
- (9) A possible taking back of goods is always realised only as a precaution. It does not mean a cancellation of contract even if later partial payments have been allowed.

§8 Cancellation charges

If the customer withdraws unwarrantedly from a placed order, we can claim 10% of the agreed wage for the costs resulting from the treatment of the order and for escaped profit, without prejudice to the possibility to assert a higher actual damage. Proving a minor damage is reserved to the customer.



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§9 Place of jurisdiction and execution

- (1) Place of execution is our place of business.
- (2) For all disputes resulting from the contractual relationship action has to be taken at the court which is responsible for our place of business, if the purchaser is merchant. We are authorized too to take action at the place of our customer's business.

§10 Contract obligation

If one of the preceding regulations is not effective, it will be replaced by another regulation which approaches the economic sense and purpose of the non-effective regulation the most. For the rest all other regulations remain effective.

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