

General Delivery and Payment Conditions

of BBM Bergbau GmbH, Dieter-aus-dem-Siepen-Platz 1, 45468 Mülheim an der Ruhr, for use with a natural person or legal entity acting in the capacity as a commercial enterprise or as an independent contractor at the time the contract is concluded (business person, hereinafter "Purchaser").

I. General provisions

1. Any and all deliveries, services and offers of BBM Bergbau GmbH (hereinafter "BBM") are exclusively carried out on the basis of these General Delivery and Payment Conditions ("Sales Conditions"). They shall also apply to all future deliveries, services or offers to the Purchaser, even if these are not agreed upon separately. Deviating, conflicting or amending conditions of the Purchaser shall not become part of the contract even if BBM unconditionally accepts the order despite having knowledge of the Purchaser's conditions. Individual arrangements concluded by the Parties in specific cases may override the respective provisions of these Sales Conditions.
2. Material declarations (e.g. setting of deadlines, notifications of defects, statements of withdrawal or abatement) the Purchaser makes after the signing of the contract are required to be in written form to be valid. With exception of directors and authorised officers, employees of BBM are not empowered to conclude verbal agreements deviating from these Sales Conditions. Such verbal agreements must be approved in written form to be valid.

II. Offer and conclusion of contract

1. Offers by BBM shall be subject to confirmation and are non-binding, unless BBM has explicitly qualified them as binding in writing.
2. The Purchaser's order constitutes a legally binding offer for the conclusion of a contract. The delivery contract only comes into existence through written order confirmation by BBM. The purchase contract concluded in writing between BBM and the Purchaser and/or BBM's offer, the Purchaser's order as well as BBM's written order confirmation, including these Sales Conditions, are the sole basis for the legal relationship between BBM and the Purchaser and represent any and all agreements between the contractual parties regarding the contractual object at the time of conclusion of the contract. Verbal commitments made by BBM prior to the conclusion thereof are not legally binding, and any verbal arrangements made before shall be replaced by the written contract.
3. Any information provided by BBM about the delivery item or the service (e.g. weight, dimensions, utility value, stress capacity, tolerances and technical data) as well as any representations (e.g. drawings and illustrations) are only approximations, insofar as the usability for the contractually intended purpose does not require exact compliance therewith. These are not guaranteed qualities, but descriptions or markings on the delivery or service. Deviations customary in the trade and deviations resulting from legal provisions or which constitute technical improvements, as well as the replacement of components by equivalent parts, shall be admissible, insofar as they do not impair the usability for the contractually intended purpose.
4. BBM retains ownership and the copyright regarding all offers and cost estimates provided by it; the same shall apply to all drawings, representations, calculations, brochures, catalogues, models, tools and other documents and aids provided by BBM. The Purchaser may not make these objects themselves or their content accessible to third parties, nor release information about them or use or copy them or allow third parties to do so, without BBM's express consent. The Purchaser must return these objects in full upon request by BBM and destroy copies, if any, if the Purchaser no longer needs them in the ordinary course of business or if the negotiations do not result in the conclusion of a contract.
5. In the event of any export from the EU, goods may be subject to US re-export authorisation and/or European or German export authorisation because of, among other things, their final destination and purpose of use. BBM's fulfilment of contract is subject to the fact that no obstacles exist due to national or international regulations under Foreign Law on Trade and Payments or due to embargoes and/or other sanctions.

III. Prices and payment conditions

1. The prices shall cover the scope of services and deliveries as per the order confirmation. Additional or special services or deliveries shall be invoiced separately. Prices are quoted in euro ex-works, plus packaging and the respective VAT, in case of export deliveries plus customs, fees and other public charges.
2. Changes to prices shall be admissible, if more than 12 months have passed between conclusion of contract and the delivery date agreed. If, subsequently, until the completion of the delivery, wages, costs of material or market cost prices increase, BBM shall be entitled to raise the price appropriately in line with cost increases. The Purchaser is entitled to withdraw from the contract if the price increases more than insignificantly proportional to the cost of living increased within the period of time between the date of order and the date of delivery.
3. The invoice amounts must be paid within 30 days from the date of invoice without deduction, unless otherwise agreed. Payment shall be considered received at the date on which BBM or any third party that has a claim against BBM may dispose of the payment amount.
4. The Purchaser shall only have a right of retention and/or set-off, if its counter-claims have been established in a legally binding form, are undisputed or recognised by BBM. The Purchaser shall be entitled to exercise a right of retention only insofar as its counterclaim is based on the same contractual relationship.
5. Purchaser shall be in default of payment (in addition to cases pursuant to the law) if BBM after the due date of payment issues a respective payment reminder. If a certain date is fixed for payment, the Purchaser is in default of payment regardless of the reminder. If the Purchaser is in default of payment, BBM shall be entitled to retain any and all deliveries or services regarding the same legal relationship and may charge interest for delay of payment at the interest rate pursuant to German law.

IV. Delivery and delivery time

1. Deliveries are carried out ex-works.

2. Any and all deadlines and dates for deliveries and services envisaged by BBM are approximations, unless a fixed deadline or date has been expressly confirmed or agreed upon. Insofar as shipping is agreed, the delivery deadlines and dates refer to the time when the goods are handed over to the shipping agent, carrier or any other third party commissioned with the transport.
3. Insofar as delivery periods have been expressly agreed upon, these shall commence upon acceptance of the order.
4. The compliance with the delivery and performance dates is subject to the entry of all documents to be provided by the Purchaser and of all approvals and releases required, as well as to the provision of all necessary information and the fulfilment of all other obligations by the Purchaser in due time. In the event that these requirements are not complied with in due time, the deadlines shall be extended for the time the fulfilment of the aforementioned obligations is delayed. This shall not apply if BBM is responsible for such delays.
5. As far as BBM fails to meet binding delivery dates for reasons BBM is not responsible for and that have been unforeseeable at the time the contract was concluded (e. g. force majeure; missing, incorrect or delayed supply to BBM; strikes; business disruptions; official acts, lack of raw materials) despite reasonable efforts to remedy the impediment to performance, BBM shall inform the Purchaser about this without undue delay. If delivery will become impossible or will be hindered disproportionately for the aforementioned reasons not only temporarily (longer than four months), BBM is entitled to fully or partly withdraw from the contract. In the case of temporary obstacles the delivery date shall be extended respectively. BBM shall inform the Purchaser without undue delay about the estimated duration of the obstacles. If BBM should still not be able to keep the new delivery date for the same reason, BBM is entitled to fully or partly withdraw from the contract. In addition, the Purchaser shall be entitled to exercise its rights pursuant to the law.
6. If changes and specifications are agreed to subsequently, the delivery term shall be extended by the time necessary to realise the changes and specifications. Furthermore, BBM shall be entitled to charge the additional costs resulting from these changes.
7. The delivery time shall be deemed to have been complied with, if the respective purchase object has been provided for collection ex-works before expiry of the delivery time, or readiness for shipping has been communicated to the Purchaser. Insofar as an official acceptance (Abnahme) is required, the agreed acceptance date or – if such date is not agreed or missed by the Purchaser – the time BBM gives notice of readiness of acceptance to the Purchaser shall be relevant. This shall not apply if the Purchaser refuses acceptance with good cause. The purchase object is deemed to have been accepted, if the purchase object has been delivered, BBM has informed the Purchaser about making the purchase object available ex-works, has advised him of the deemed acceptance and has requested the Purchaser to accept the purchase object, 12 working days have passed since delivery of the purchase object, or 7 working days have passed since the Purchaser has started to use the purchase object. The Purchaser is not entitled to refuse acceptance because of immaterial defects.
8. In the event that the delivery is delayed upon the Purchaser's request or upon reasons the Purchaser is responsible for, BBM may keep or store the goods at the Purchaser's risk and costs.
9. BBM is only entitled to make partial deliveries if:
 - the Purchaser is able to use the partial delivery for the contractual purpose
 - the delivery of the remaining goods ordered is guaranteed, and
 - thereby no considerable additional work and expenses or additional costs arise for the Purchaser.

V. Passing of risk

1. Upon handover of the purchase object and in the event of default of acceptance, any and all risks, in particular of accidental loss, shall pass to the Purchaser. In the event that dispatch or handover is delayed due to circumstances within the Purchaser's responsibility, the risk shall pass to the Purchaser from that day onwards on which the purchase object is ready for dispatch and BBM has informed the Purchaser correspondingly.
2. In the event delivery shall be made to another location, the risk is passed upon handover to the shipping agent, carrier or any other dispatcher approved or commissioned. In this respect, the commencement of the loading operation shall be decisive.
3. As far as BBM is obliged to take back the packaging used for transport and/or sale in line with the Packaging Ordinance (VerpackV), the Purchaser shall bear the costs for the return transport and reasonable costs for disposal.
4. BBM shall only insure the purchase object against theft, breakage, transport, fire and water damage or against any other insurable risks at the Purchaser's express wish and at the Purchaser's cost.

VI. Reservation of ownership

1. BBM reserves the ownership in the purchase objects until receipt of all payments from the purchase contract.
2. The Purchaser undertakes to insure the purchase object at their replacement value against fire, water and theft at own cost.
3. The Purchaser shall be entitled to resell the purchase object in the ordinary course of business subject to the reservation that in this event all claims of the Purchaser resulting from such resale are hereby assigned in advance to BBM. BBM accepts this assignment. The Purchaser shall be entitled to collect the claim already assigned, as long as the Purchaser fulfils its payment obligations. If the Purchaser is in default of payment, BBM shall be entitled to revoke the collection authorisation. In this case, the Purchaser shall be obliged upon request by BBM to provide any and all information about the collection and to allow an authorised person to verify the existence of the claim assigned in its bookkeeping, as well as to inform the debtors about the assignment.
4. In case the ownership of BBM in the purchase object may extinguish because the purchase object is combined or processed and the Purchaser becomes owner of the purchase object, the Purchaser hereby transfers ownership in advance to BBM of a co-ownership share in the object resulting from the combination, which corresponds to the proportionate value of the purchase object. BBM hereby accepts the offer of transfer of ownership. Handover shall be replaced by free storage.
5. The Purchaser must immediately inform BBM about any third party access to BBM's property. Furthermore, the Purchaser must take appropriate legal measures against such third parties access on its own initiative, in coordination with BBM at its own costs.
6. In the event that the Purchaser is in default of payment, or a petition for the opening of insolvency proceedings has been filed against the Purchaser's assets, or the transfer of expectancy or the transfer of the Purchaser's business operations to a third party has

taken place and if thereby the consideration claim of BBM will be put at risk, BBM shall be entitled to take back the purchase objects delivered, if BBM has set a deadline to the Purchaser and if this deadline has expired without benefit. In the case that BBM takes back purchase objects BBM through this withdraws from the contract. The costs arising from taking back the purchase objects shall be borne by the Purchaser. After the purchase objects subject to reservation have been taken back, BBM shall be entitled to freely dispose of the purchase objects. The corresponding proceeds shall be set off against the Purchaser's liability (less appropriate costs for utilisation).

VII. Examination and notification duties, Warranty

1. The Purchaser must examine the purchase objects received for defects upon arrival. The Purchaser must inform BBM about obvious defects immediately or at least within 10 days following arrival of the delivery. In the case of hidden defects the Purchaser has to inform BBM immediately or at least within 5 days following the discovery of the defect. In any case the notifications of defect shall be in written form. If the Purchaser does not give such notice about a defect to BBM in due time the goods shall be deemed approved under the contract.
2. All defective parts shall at the discretion of BBM either be repaired or replaced by BBM free of charge, provided that the respective parts were defective at the time when the risk passed. BBM gains ownership of the replaced parts. BBM is neither obliged to dismantle the defective parts nor to assemble the new parts, if BBM was originally not responsible for assembling.
3. The Purchaser must give BBM the opportunity to examine the defect and, in particular, must make the respective goods and the corresponding packaging available for inspection by BBM, otherwise BBM cannot be held liable for the consequences arising therefrom.
4. BBM shall not be responsible for normal wear and tear or for any defects for which the Purchaser is responsible and which are causal for the defect. There is no liability of BBM in particular in the following cases (unless these are due to BBM): incorrect operation, incorrect or inappropriate use, assembly or erection by the Purchaser or any third party, false or no reaction following malfunction messages, insufficient or incorrect maintenance, use of inappropriate machinery materials or other inappropriate materials, faulty construction work or inappropriate building ground, chemical, electrochemical or electronic effects.
5. Warranty is excluded, if the Purchaser changes the purchase object or commissions any changes by a third party without consent by BBM if the changes make it impossible or unacceptably difficult to remove the defect. In any case, the Purchaser must bear the additional costs of the defect removal resulting from the change. This shall also apply if the rectification of defects will be performed by the Purchaser or by a third party.
6. In the case that supplementary performance has failed or if the Purchaser has set a deadline BBM to execute its supplementary performance or if such deadline is legally superfluous, the Purchaser shall be entitled to withdraw from the contract or to abate the purchase price. In case of immaterial defects, the purchaser shall only be not entitled to reduce the purchase price.
7. In the case that copyrights or trade mark rights of third parties will be infringed in consequence of using the purchase object, at its discretion BBM shall remodel or replace it in a way that third party rights will no longer be infringed or BBM shall provide the right of use to the Purchaser. These warranty rights of the Purchaser shall only apply if
 - the Purchaser informs BBM without undue delay about every case of third parties assert their copyrights or trade mark rights
 - all legal defensive measures including all extrajudicial agreements will be reserved to BBM
 - the infringement of third party rights is not a consequence of an instruction made by the Purchaser or is not caused by modifications carried out by the Purchaser or does not result from a contractually inappropriate use of the purchase object.
8. In the case that components of other manufacturers are defective and that BBM is not able to remedy these defectives on legal licensing reasons or on factual reasons, at its discretion BBM shall either assign its warranty rights to the Purchaser or assert its warranty rights against the manufacturer or supplier for the account of the Purchaser. In such cases the Purchaser's warranty claims against BBM are only applicable, if the judicial enforcement of the aforementioned warranty claims against the other manufacturers or suppliers failed or has no prospect of success (e. g. in cases of insolvency). For the time of such legal proceedings the period of limitation of the Purchaser's warranty claims against BBM is suspended. In the case that components of other manufacturers are defective and thereby copyrights or trade mark rights of third parties will be infringed, the aforementioned stipulation shall be applicable accordingly.

VIII. Liability

1. The Purchaser has no claim for damages regardless of the legal grounds. This shall not apply in case of
 - intentional or gross negligence by the directors of procurists of BBM,
 - liability pursuant to the German Product Liability Act,
 - in the event of any culpable injury to body, life or health,
 - BBM having fraudulently concealed a legal defect or defect in quality or having assumed a warranty that a certain defect does not exist or for the condition of the goods.
 - BBM culpably having infringed material contractual obligations ("wesentliche Vertragspflichten", obligations whose fulfilment make the due performance of the contract possible and which the signatory relies on and may rely on compliance)
2. In the case of delay of delivery of the purchase object, the liability of BBM shall be limited to 0,5% of the net order value for each full week of delay, however not more than 5% of the net order value. Claims for damages arising from a breach of material contractual obligations shall be limited to the foreseeable damage which is intrinsic to the contract.
3. The provisions established in the above paragraphs shall correspondingly apply to any and all direct claims of the Purchaser against BBM's legal representatives and vicarious agents.
4. Insofar as the contractual parties have not reached a deviating consent pursuant to the conclusion of the contract, the Purchaser may, independent of other eligibility requirements, only assert claims for damages against BBM for contractual penalties (stipulated penalties, liquidated damage) the Purchaser has to deal with from a third party, if this has expressly been agreed between the

Purchaser and BBM in advance, and if BBM has been informed in writing prior to the conclusion of the contract about the threat of a contractual penalty agreed between the Purchaser and the third party.

5. To the extent that the defective delivery item is a product which has been fully or partially purchased by BBM from a third party, BBM shall be entitled to assign its rights regarding any defect in quality against the upstream supplier to the Purchaser and to refer the Purchaser to the upstream supplier's liability. In such a case, BBM can only be held responsible for the defectiveness of the item, if the claim against the upstream supplier is not enforceable despite an assertion in due time, and/or an assertion is unacceptable in the individual case.

IX. Place of performance, Place of Jurisdiction, Applicable Law, Miscellaneous

1. If not expressly agreed otherwise, the place of performance shall be at the registered seat of BBM.

2. Mülheim/Ruhr shall be the exclusive place of jurisdiction for all disputes arising from the delivery relationships.

3. The Laws of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the German private international laws shall be excluded, as far as legally permissible.

4. The contractual language shall be German. Hence, any and all business correspondence must be carried out in German.

5. In the event any provision of these Sales Conditions or a part thereof is or becomes invalid, the remaining provisions and/or the remaining part of the provisions shall remain unaffected thereof. Insofar as the contract or these Sales Conditions contain a gap, such legally valid regulations shall be deemed to have been agreed to by the parties which they would have agreed in line with the economic purpose of these Sales Conditions, if they had been aware thereof.