

General terms and conditions of sale Boehlerit GmbH & Co. KG

(Application and conclusion of contract; Specification)



Unless other provisions have been agreed on in writing, the following terms and conditions as well as the Incoterms in their most recently valid form shall apply to all sales concluded on our part. Unless other provisions have been expressly agreed on, all business shall be concluded on the basis of the following conditions which the commissioning party shall accept as binding upon the placement of the order. We are not bound by any terms and conditions of our business associates, even where we do not expressly contradict them. All commissions and verbal agreements, including those concluded by our representatives, as well as verbal agreements made over the telephone shall only become binding once they have been confirmed by us in writing.

Our offers shall always be subject to change and non-binding, unless we have expressly and in writing designated them as such, and shall only become binding for us once we have confirmed the order in writing. Unless agreed otherwise, delivery times shall be calculated from the date of the order confirmation. Unless agreed otherwise, the call-off date for call-off orders shall be the last day of the month following the notification of readiness of dispatch. Once we have accepted it, the customer may only modify the specification of an order with our express written consent.

1. **Copyrights, drawings, samples:** The ordering party shall be responsible for ensuring that the execution of his specifications regarding quality and other characteristics or the use of drawings, matrices, samples and other design regulations and aids does not violate national or international copyrights of third parties, in particular patent rights, trademark rights and design rights. The ordering party shall hold us harmless against any claims arising from the fulfilment of his order specifications. We shall accept no responsibility for the loss or damage of drawings, samples etc. and shall only conclude insurance cover for such items if expressly ordered to do so and at the expense of the ordering party.
2. **Resale:** The export or further transport of goods not expressly for export by the buyer or his downstream buyers requires our prior consent. If we so wish, the buyer shall have to provide information on the location and final destination of the goods.
3. **Quantity deviations:** Unless agreed otherwise, surplus or short-fall deliveries of up to 10 (ten) percent of the ordered quantity or weight shall be admissible. The weight determined by our calibrated factory scales shall take precedence. The individual weights determined in the delivering factory or warehouse shall take precedence for the correctness of the part weights.
4. **Prices and terms of payment:**
 - a. Unless agreed otherwise, prices are ex factory or warehouse as valid on the day of delivery, without packaging and calculated as a base rate plus any standard or otherwise agreed surcharges or premiums. All prices are net prices. For deliveries and other services supplied nationally, sales tax shall be invoiced separately at the current rate.
 - b. Unless agreed otherwise in writing, invoices shall be payable 14 days after delivery or after the notification of readiness for dispatch has been made. The invoiced amount is payable net, in cash, and without deductions for expenses to Kapfenberg. Deductions or set-offs shall be excluded.
 - c. In case of late payment, and without prejudice to any other legal consequences, default interest and other expenses shall be passed on to the buyer. The interest shall be 1% above the interest charged for operating loans by the main Austrian banks.
 - d. Bills of exchange that are eligible for discount and have been duly charged shall only be accepted as means of payment if this has been expressly agreed on in advance. Credits for received bills of exchange or cheques shall be valid only sub-

ject to the actual amount being paid. Any expenses and interests arising herefrom shall be at the expense of the buyer.

- e. All our invoices shall be payable immediately, independent of the term of validity of any accepted and credited bills of exchange, if the terms and conditions of payment have not been complied with or if we are informed of circumstances that, in our opinion, devalue the creditworthiness of the buyer. As a consequence, we shall also reserve the right to perform any outstanding services only if these are paid for in advance. Furthermore, we shall reserve the right to forbid the resale and processing of the delivered goods and demand their re-transfer at the expense of the buyer.
 - f. Where sales are concluded in a foreign currency, the conversion shall be performed on the basis of the exchange rate announced by the Austrian National Bank on the date of our order confirmation, with the buyer bearing the exchange risk. If the agreed payment method or payment route cannot be complied with, the buyer shall have to make the payment according to a method of our choice.
7. **Reservation of proprietary rights :** Until the invoiced amount has been paid in full, the goods shall remain our property. The buyer shall only have the right to resell goods to which we still hold the proprietary rights with prejudice to the fact that all claims arising from the resale shall be transferred to us. The buyer shall have the right to collect receivables arising from the resale until cancellation at call by us. The buyer shall not have the right to cede the right to such receivables to a third party. If we so request, the buyer shall inform his purchasing party that claims have been ceded to us. The buyer shall notify us immediately of any attachment or other third-party claims on the goods.
 8. **Tools:** Any tools and devices that the Supplier has to produce or to procure to fulfil the Contract shall remain the property of the Supplier. The costs of production or procurement shall be borne by the Customer, irrespective of the intent of any additional supply agreement referring to such tools or devices. Tools and devices will be stored for a period of three years after completion of the final order.
 9. **Place of performance:** The place of performance for the delivery shall be the factory or warehouse that we envisaged for the delivery. Place of performance for the rendering of the purchase price shall be the seat of our bank.
 10. **Delivery:** Unless agreed otherwise, our delivery times shall be understood as non-binding guidelines only. They initiate upon the date of our order confirmation. Our duty to delivery shall be considered fulfilled at the point when the goods leave our factory or warehouse. It shall also be considered fulfilled if the goods could not be dispatched in time through no fault of our own, although the notification of readiness for dispatch was made in a timely manner. We shall reserve the right to provide partial deliveries. For sales relying on ongoing deliveries, the partial quantities shall be specified at the time the quote is drawn up. If such a specification has not been made, we shall reserve the right to specify a delivery schedule and deliver the goods without an extension of the delivery deadline or to withdraw from the part of the contract that has not yet been fulfilled and claim damages accordingly.
 11. **Warranty and liability:** Without prejudice to well-reasoned warranty claims, all of which shall be reported and proven on the basis of the following provisions, all goods shall be considered dispatched ex factory in a proper condition and delivered according to contract based on our dispatch notes. Any defects shall be reported immediately once they have been discovered, but no later than 14 days in case of visible defects (e.g. number of units, weight, surface damage etc.), and no later than 3 (three) months after receipt of the goods in case of interior defects, under exclusion of all other claims. To prove the defect, the findings reported by our

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factory shall take precedence. In principle, all our goods shall be considered dispatched in a proper condition. Any damage shall be considered as originating from transport unless proven otherwise. Where the damage has occurred within the scope of our risk assumption as specified by the terms of delivery (Incoterm), the buyer shall preserve our rights against the carrier or transport insurance provider, on pain of forfeiture of any claims against us. We shall accept liability for our products to the extent that we shall repair items where material or production defects have been clearly proven that rule out the utilisation of the items, using methods of our choice, or take them back at the calculated price, or replace them free of charge ex factory with items that correspond with the original order specifications once the defective items have been returned. Any returns of goods require our prior consent. All liabilities exceeding this regulation, e.g. replacement of processing costs etc., and all claims for damages or lost profits shall be expressly excluded as far as legally admissible. Where we function as sub-contractors, we shall be liable for execution defects that are our responsibility to the amount of the labour costs invoiced by us.

shall be subject to Austrian law. In case of disputes, both parties shall refer to the responsible court in Bruck/Mur or Leoben, depending on the value of the claim.

- 15. Partial effectiveness:** If any of these provisions should become invalid, the remaining provisions shall remain unaffected.

- 12. Acceptance, dispatch and risk transfer:** After an agreed acceptance procedure performed by the buyer, his representatives, or an inspection body jointly commissioned by us and the buyer, the report of defects that could have been detected during the agreed acceptance procedure shall be excluded. If the acceptance procedure is not performed in a timely or complete manner, despite the timely announcement of the date, the buyer shall be considered as having defaulted on acceptance. At this point, the risk shall transfer to the buyer. In this case, we shall have the right to dispatch or store the goods as we see fit without acceptance, at the expense and risk of the buyer. From this point, the goods shall be considered as having been duly delivered according to the contract. The buyer shall then have to pay any receivables for or arising from the delivery immediately. Unless agreed otherwise, loading and dispatch shall be handled as we see fit. If, in case of call-off orders, the call-off has not taken place within 14 calendar days after the agreed call-off date, we shall have the right to dispatch or store the goods as we see fit without acceptance at the expense and risk of the buyer. With this date, the goods shall be considered as having been duly delivered according to the contract. Unless special packaging provisions have been expressly agreed on, standard packaging shall be provided. The individual weights determined in the delivering factory or warehouse shall take precedence for the correctness of the part weights.

- 13. Force majeure and additional terms of delivery:** Industrial disruptions and supply difficulties of all kinds as well as events due to force majeure shall entitle us to extend the delivery deadline or to withdraw from the duty to deliver partially or in full. Force majeure includes strike, lockouts or other circumstances (for instance import and export bans imposed after the conclusion of the contract) that would make delivery extremely difficult or impossible. Whether such events happen to us or one of our suppliers shall be irrelevant. We shall in any case inform the buyer immediately of any such circumstance. If the buyer is obliged to withdraw from the contract due to force majeure or similar acceptance obstructions, the accrued costs and expenses shall be equally shared between the two contractual partners. If the circumstances in which a contract was concluded have changed to such an extent that it can reasonably be assumed that the contract would not have been concluded under these changed circumstances, or only on different terms, we shall, according to the individual case, reserve the right to refuse the fulfilment of the contract or require that the terms of the contract are modified to take into account these changed circumstances, e.g. payment in a different currency, with the application of an escalator clause, or with amended terms of delivery etc.

- 14. Applicable law and place of jurisdiction:** Unless the parties have concluded other written agreements, all sales concluded by us