

bauer + bauer International GmbH General
Terms and Conditions

1. These general terms and conditions of sale and delivery (the “Terms”) shall apply to all deliveries, sales, and services that bauer + bauer International GmbH, with its registered office in Vienna, Austria, provides to its customer (the “Client” or “Purchaser”). These Terms shall apply to our entire business relationship with the Client, including to any later deliveries and services, even if such later deliveries and services do not expressly refer to these Terms.
2. The scope and content of any contracts which we conclude with the Client, any order confirmations which we issue to the Client, and these Terms shall together govern our obligations towards the Client entirely. In the event of an inconsistency between the terms of any individual contract and these Terms, the terms of the individual contract shall prevail.
3. We conclude contracts exclusively subject to these Terms. Any conflicting terms and conditions of the Client shall only apply if we have expressly agreed to them in writing in advance. Silence on our part with regard to any other terms and conditions of the Client shall not in any event be deemed to constitute consent to or acceptance of such terms and conditions. Any commercial practices or usages which conflict with these Terms shall have no legal validity.
4. No oral side agreements shall have any legal validity. Any amendments and/or additions to any individual contracts, including these Terms, must be made in writing in order to be valid.
5. Any offers which we make shall be subject to amendment and shall not be binding. Nor shall any information which we provide in catalogues, plans, brochures, or other materials be binding. Any illustrations, drawings, weights and measurements, information about our services, and the like which we supply with regard to our goods and services shall not be relevant unless we expressly refer to them in an order confirmation.
6. Orders shall not bind us unless and until we confirm them.
7. Unless otherwise agreed in an individual case, our prices shall be subject to amendment without notice, shall exclude value-added tax, packaging, and insurance, and shall be ex works (“EXW” in accordance with the then current version of the Incoterms rules). We shall charge for packaging at cost price, including statutory disposal fees, and shall not be required to take it back.
8. The prices which we quote shall be based on the price and cost levels prevailing at the time of contract conclusion. Any direct or indirect changes in the cost structure which occur after conclusion of a contract (including any changes in the cost of materials, energy, transport, third-party work, wages and salaries, or financing) shall entitle us to make corresponding adjustments to our prices.
9. We generally calculate our prices in euros. In the case of foreign currency transactions, we shall be entitled to adjust our prices to reflect any changes in the exchange rates. The Purchaser shall be responsible for any additional costs (such as freight, insurance, taxes, fees, duties, permits, or notarisations).
10. Information about delivery times shall always be deemed approximate and non-binding unless we agree otherwise in writing. The delivery period for a contract shall commence on the day it is concluded, after all technical and commercial details have been clarified and we have received any agreed advance payment. We shall be deemed to have delivered the goods to the Client when we notify the Client on a timely basis that they are ready for dispatch, even if their dispatch proves to be impossible for any reason other than our fault.

11. In the event of force majeure, or other events which hinder and/or delay our production and delivery of the goods through no fault of our own, we shall be entitled to extend the delivery period for as long as the operational hindrance or delay lasts and, exceptionally, if the specific circumstances require it, to cancel our delivery obligation in whole or in part. A delay in delivery through no fault of our own shall not entitle the Purchaser to revoke an order.
12. The Client shall be deemed to have approved in advance any other objectively justified and reasonable changes to our performance and delivery obligations, including exceeding the delivery period, and shall not be entitled to assert any claims of any kind in respect of such changes. If we exceed the delivery date by more than 30 days for reasons which are within our control, the Client shall be entitled to revoke the contract by registered letter after setting a further grace period of at least 90 days. In this case, in the absence of any other claims, we shall only be required to refund the advance payment, if any, to the Client.
13. If the Purchaser defaults in accepting the goods, we shall be entitled to charge the Purchaser for any storage costs we incur, at least, however, 0.1% of the gross invoice amount per started calendar day. Risk and coincidence shall pass to the Purchaser at the time the Client begins to default in accepting them. The Client's default in acceptance shall not postpone the due date of our invoices, and the Client must pay them promptly.
14. We may make partial deliveries unless we have agreed otherwise in writing. If we agree to store the goods for the Purchaser, it must collect and pay for them in full within the agreed period and at the latest within 90 days.
15. Assembly and commissioning of the goods are not included in the scope of our delivery and service obligations, unless we expressly agree otherwise in an individual case.
16. We shall transport the goods at our own expense and risk in the case of Delivered Duty Paid (DPP) deliveries (in accordance with the then current version of the Incoterms rules).
17. Transport shall be at the Purchaser's expense and risk in all other cases. However, the Client agrees that we should also take out appropriate transport insurance in the Client's name and for its account for these orders. We shall choose the means of transport if the Purchaser does not give us precise shipping instructions. The recipient must ensure that any damage or loss in transit is identified and certified by the railway authorities or the carrier, while asserting any claims it may have, immediately upon its acceptance of the goods. Damage in transit must be recorded on the bill of lading and the delivery bill and confirmed with a signature by the forwarder or transport company or the driver who delivered the goods. If such confirmation is refused, the Purchaser must draw up a detailed report of the damage it has identified, stating the time, name of the driver, etc. The Purchaser must send us photocopies of these documents without delay. The Purchaser may not refuse to accept the goods on the grounds of damage in transit or a shortfall in quantity. We shall transfer all risks to the Purchaser when we hand the goods over to the collector, forwarder, or carrier, and at the latest when the goods leave our warehouse.
18. The Purchaser must inspect the goods immediately after their delivery and notify us without delay of any defects which it identifies. The Purchaser must notify us of any obvious defects immediately after delivery.

The Purchaser must notify us of any other defects no later than two weeks after delivery if it could not make an earlier complaint despite an immediate inspection. The Purchaser must in any case inspect the goods and notify us by registered letter or fax of any defects, giving exact details of the defects it has identified, before processing the goods. In addition to this notification, the Client must send us a sample of the goods complained about, without delay, if we so request. If the Purchaser does not comply with the above provisions, it shall forfeit all warranty and damages claims which it might otherwise have. Clause 5 applies to damage in transit.

19. In the case of delivery of samples or specimens, warranty claims due to hidden defects are also excluded if the delivered goods correspond to the samples or specimens. The Purchaser shall not be entitled to any warranty if a defect results from material which it has itself provided.
20. In the event of a warranty claim, we shall be entitled, at our discretion, to bring the defective goods into conformity with the contract either by improving them or exchanging them for goods which are not defective. If both improvement and replacement are impossible or would involve a disproportionately high expense or effort, we may reduce the price or, if the defect is material, cancel the contract. After we have made three unsuccessful attempts within a reasonable period of time to improve or replace the defective goods, the Purchaser may require cancellation of the contract or, in the case of material defects, a price reduction.
21. The Purchaser shall not be entitled to any further claims, including compensation for consequential damages, lost profits, or other damages, for any legal reason whatsoever, unless we are guilty of intent or gross negligence.
22. Any warranty claims that the Purchaser may have shall expire six months after delivery of the relevant goods. Claims for damages of any kind shall become statute-barred 12 months after delivery of the relevant goods, irrespective of when the Purchaser became aware of the damages.
23. In any event, we shall only be liable to the Client for damages to the extent that we are guilty of intent or gross negligence.
24. Unless otherwise agreed, the Client must pay our invoices net without any deductions immediately after receipt of the invoices. The Client shall not be deemed to have made a payment until we have received the appropriate amount without any deductions. Payments must always refer to the invoice number and date. We shall accept bills of exchange on account of payment only by special agreement. We shall only accept credit notes for bills of exchange or cheques subject to their being honoured and without prejudice to an earlier due date for payment of the purchase price in the event of the Purchaser's default. The Purchaser shall be responsible for any account assignment and cheque collection costs.
25. If the Purchaser defaults in payment, it must pay interest at a rate of 12% per annum. The Purchaser must also reimburse us for any warning and collection expenses and any pre-litigation costs which we incur.
26. If the Purchaser does not comply with the terms of payment or we become aware of circumstances that reduce its creditworthiness after conclusion of a contract, we shall be entitled to
 - (i) suspend our deliveries or any other outstanding deliveries until the Purchaser has fulfilled its obligations, (ii) withdraw from the contract, without granting the Client a grace period, and claim damages, or (iii) demand security from the Client for any outstanding deliveries.

27. The Client shall not be entitled to withhold payments due to incomplete delivery, warranty or guarantee claims, or any other complaints.
28. The Client is also not entitled to set off any alleged counterclaims against our claims unless its counterclaims have been established in a court of law or we have acknowledged them in writing.
29. We shall retain title to any delivered goods until the Client has paid their purchase price, including any ancillary costs, in full.
30. All technical documents, such as drawings, illustrations, and descriptions, shall belong to us. The Client may not make them accessible to third parties, copy or reproduce them, or use them for self-production. The Client may not pledge or transfer them by way of security in favour of any third parties without our consent. The Purchaser must inform us without delay if any third parties attach or otherwise endanger our property.
31. The Purchaser shall be entitled to treat or process goods which we have delivered to it. Such treatment or processing must not result in any obligations for us. If the Client treats or processes the delivered goods and combines them with other goods that do not belong to us, we shall be entitled to a co-ownership share in the item which such treatment or processing creates in the ratio of the value of the delivered goods to the value of the other processed goods at the time of the processing and combining. If a new item is created through treatment or processing or through combination with other goods, the Purchaser shall grant us co-ownership of the new item in the ratio of the value of the processed or combined retained goods to the value of the new item and shall store it for us free of charge. If the Client (as a conditional purchaser) resells the delivered goods for cash, any proceeds which it receives up to the amount of the still outstanding purchase price, including any ancillary costs, shall belong to us and not to the Client. The Client must keep such portion of the proceeds separately and transfer them to us without delay.
32. In the event of any other resale, the Purchaser shall assign to us the claim that it has against its customer as a result of the resale up to the amount of the purchase price, including any ancillary costs, which is outstanding at that time and shall notify us of such resale and the customer's name without delay. The Client's assignment of such claim shall be disclosed to third parties by including a note in its business books, delivery bills and invoices.
33. The place of performance for all obligations arising from our delivery relationship with the Client is our company's registered office, which is currently at A-1140 Vienna, Holzhausenplatz 1, Austria.
34. The exclusive place of jurisdiction for all disputes arising from contracts concluded with the Purchaser and for the question of the existence and legal validity of concluded agreements, including these Terms, shall be the seat of our company, i.e. currently Vienna.
35. All legal relations with the Purchaser shall be governed exclusively by Austrian law to the exclusion of international agreements such as the United Nations Convention on Contracts for the International Sale of Goods (CISG or UNCITRAL) dated 11.4.1980. German shall be the language of any contracts with the Client. Insofar as the contracting parties use an additional language, the German wording shall have priority.

36. The Client must notify us of any changes of address as long as any concluded legal agreements have not been completely performed by both parties. If the Client omits to notify us of any such changes, it shall be deemed to have received any declarations which we send to it at its last known address.
37. If any individual provisions of these General Terms and Conditions of Sale and Delivery or other contractual agreements are or become invalid, this shall not affect the validity of the remaining provisions of any concluded legal agreements. In this case, each invalid provision shall be replaced by a valid provision which comes as close as possible to the meaning and purpose of the invalid provision.