

General terms and conditions of Behr Bircher Cellpack BBC Benelux B.V.

I. General Terms and Conditions

1. The legal relationship between the Supplier and the Purchaser in connection with the delivery of goods and/or services by the Supplier (hereinafter referred to as: "deliveries") shall be exclusively governed by these General Terms and Conditions. The General Terms and Conditions of the Purchaser shall only apply if the Supplier has explicitly agreed thereto in writing. The mutual and mutually consistent written declarations of the two parties set the standard for the scope of the deliveries.
2. All cost estimates, drawings and other documents (hereinafter referred to as: the "documentation") shall be subject to Supplier's proprietary rights or copyrights. The Supplier may assert these rights without any restrictions. The documentation may only be disclosed to third parties with the prior consent of the Supplier and, if no order is placed with the Supplier, must be returned immediately at the Supplier's request. Articles 1 and 2 shall also apply to the documentation of the Purchaser. This may, however, be disclosed to third parties if the Supplier has assigned permitted or permissible deliveries to such third parties.
3. In regard to standard software or firmware, the Purchaser cannot claim the exclusive right of use for the version with the agreed features which is present in unaltered form on the agreed devices or equipment. The Purchaser may create a duplicate of the standard software as a spare copy without explicit agreement.
4. Partial deliveries are permitted provided that acceptance thereof may reasonably be expected of the Purchaser.
5. The term "Claim for compensation" in these General Terms and Conditions shall be taken to include a claim for reimbursement of costs incurred unnecessarily.

II. Prices, Incoterms and setoff

1. Prices are subject to the addition of the current statutory turnover tax.
2. The rights and obligations of the Supplier and the Purchaser regarding the delivery and transfer of the goods shall apply in accordance with the INCOTERMS 2020, clause depending on the agreed condition (such as EXW, DDP etc.)
3. Payments by the Purchaser shall be made within 30 days without any deductions, payments shall be made exclusively into the bank accounts indicated by the Supplier and shall only constitute discharge if made in this manner. The risks of "cyber crime" are explicitly pointed out.
4. The Purchaser may only set off payable amounts against uncontested claims or claims recognised in a court decision.

III. Retention of title

1. Delivery shall take place subject to retention of title. The item to be delivered (goods subject to retention of title) shall remain the property of the Supplier until all the claims to which the Supplier is entitled arising from the business relationship have been paid by the Purchaser. If and to the extent that the value of all the security to which the Supplier is entitled exceeds the amount of all claims covered by the security by more than 20%, the Supplier shall release an appropriate portion of the security on the Purchaser's request. The Supplier may choose the security the Supplier wishes to release.
2. As long as the goods are subject to retention of title, the Purchaser may not pledge these goods or transfer the security provided and resale shall be permitted only to resellers in the context of their ordinary business operations and only on the condition that the reseller receives payment from its customers or makes the reservation that ownership shall not be transferred to the customer until the latter has fulfilled its payment obligation.
3. If the Purchaser resells goods subject to the Supplier's retention of title, it hereby as signs by way of security all its future claims against its customer arising from such resale including all accessory rights - including any claims offset - to its Supplier without any further specific declaration being required. In the event that the goods subject to retention as referred to above are resold together with other items without a specific separate price being agreed for these goods subject to retention, the Purchaser shall assign the relevant part of the total receivable to the Supplier, whereby the relevant part shall correspond to the price for the relevant goods subject to retention invoiced by the Supplier.
4. a) The Purchaser may process goods subject to retention or mix or combine them with other items. This processing shall be for the benefit of the Supplier. The Purchaser shall hold the resulting new item in safekeeping for the Supplier and shall act in accordance with sound commercial practice in this regard. The new item shall be subject to the provisions for "goods subject to retention of title" in this respect.
b) The Supplier and the Purchaser hereby agree that - in the event of connection to or mixing with other goods not belonging to the Supplier - the Supplier shall in any case become the joint owner of the new item. The share follows from the ratio between the value of the connected or mixed goods subject to retention and the value of the other goods, whereby values shall be used that were applicable at the time of connection or mixing. The new item shall be subject to the provisions for 'goods subject to retention' in this respect.
c) The provision concerning assignment of the claim as referred to in Article 3 shall also apply to the new item. However, the assignment shall apply only up to the amount corresponding to the value of the processed, connected or mixed goods subject to retention invoiced by the Supplier.
d) If the Purchaser connects the goods subject to retention with land or movable property, the Purchaser shall also assign its claim including all accessory rights, to which it is entitled as remuneration for the connection, by way of security to the Supplier without any further specific declaration being required, in an amount that reflects the ratio of the values of the connected goods subject to retention and the values of the other connected goods, whereby the values shall be those applicable at the time of connection.

5. Until revocation, the Purchaser may collect its assigned receivables from the resale. The Supplier may revoke the Purchaser's right to collect the receivables for serious reasons, in particular in the event of delayed payment, default in regard to payment, invocation of suspension of payments, protest of a bill or other reasoned indications of overindebtedness or the imminent insolvency of the Purchaser. In addition, the Supplier may, after prior warning and notification of a specified deadline, disclose the assignment of security, demand the assigned claims and demand the disclosure of the assignment of security by the Purchaser to the customer.
6. The Purchaser shall immediately inform the Supplier of the existence of a pledge, seizure or other dispositions or interventions by third parties. If the Supplier can demonstrate a legitimate interest, the Purchaser shall immediately provide the Supplier with the information and documents required to assert its rights against the customer.
7. In the event that the Purchaser fails to fulfil its obligations, in particular in the event of default of payment, the Supplier may withdraw from the agreement upon the unsuccessful expiry of a payment deadline imposed on the Purchaser. This shall not affect the legal provisions regarding the necessity to set a deadline. The Purchaser must surrender the goods. In the event that the Supplier revokes or invokes the retention of title or the pledge on the goods subject to retention of title, withdrawal from the agreement shall not occur unless the Supplier explicitly states that it will withdraw from the agreement.

IV. Time limits for deliveries; delay

1. Adherence to delivery times presupposes the timely receipt of all documentation to be supplied by the Purchaser, the necessary permits and releases, in particular drawings, as well as adherence by the Purchaser to the agreed terms of payment and other obligations. Delivery times shall be extended reasonably if these conditions are not fulfilled in good time. This shall not apply if the Supplier is responsible for the delay.
2. Time limits shall also be extended reasonably where non-compliance with time limits is caused by
 - a) force majeure, such as but not limited to mobilization, war, epidemics, government-imposed supply restrictions, material and product shortages, terrorism, riots or similar events (e.g. strike, lockout);
 - b) virus attacks or similar attacks by third parties on the IT system of the Supplier, insofar as they occurred despite observance of the customary care with regard to the security measures taken;
 - c) obstacles on the basis of Dutch, German, American (i.e. the United States of North America) as well as other applicable national, EU or international laws and regulations regarding foreign trade or on the basis of other circumstances for which the Supplier cannot be held responsible; or
 - d) late or incorrect delivery to the Supplier. The Supplier shall be relieved of its delivery obligation if the circumstance for which the Supplier is responsible lasts more than four (4) weeks.
3. If the Supplier is in default, the Purchaser may, if and to the extent it demonstrates that it has suffered a loss, demand compensation of 0.5% for each full week of default. If and to the extent it can plausibly demonstrate that it has suffered a loss, the Supplier may demand compensation of 0.5% for each full week of delay, but in total not more than 5% of the price of the deliveries which it was unable to use as intended due to the delay.
4. Claims for compensation by the Purchaser due to delayed delivery as well as claims for compensation in lieu of delivery that exceed the limits set in paragraph 3 shall be excluded, even after the expiration of any delivery period granted to the Supplier. This shall not apply to the extent that liability cannot be excluded in cases of intent or gross negligence or in the event of death, physical injury or damage to health. The Purchaser may only withdraw from an agreement within the scope of the legal provisions if the Supplier is responsible for the delay of a delivery. No reversal of the burden of proof to the disadvantage of the Purchaser shall be associated with the provisions referred to above.
5. At the request of the Supplier, the Purchaser shall be required to declare within an appropriate period of time whether it wishes to withdraw from the agreement due to the delay in delivery or whether the Purchaser wishes the delivery to take place.
6. If dispatch or delivery is delayed at the request of the Purchaser for more than one month after notification of readiness for dispatch, the Purchaser may be charged a storage fee in the amount of 0.5% of the price of the item to be delivered with a maximum of 5% in total for each month started thereafter. The contracting parties are free to provide proof of higher or lower storage costs.

V. Risk transfer

1. The risk is transferred to the Purchaser according to the INCOTERMS 2020 clause and depending on the agreed condition (such as DDP, EXW etc.)
2. The risk shall also pass to the Purchaser if dispatch, delivery, the start or execution of installation or assembly, the acceptance into own operations or trial operation is delayed for reasons for which the Purchaser is responsible or if the Purchaser fails to accept the goods for other reasons.

VI. Installation and assembly

Unless agreed otherwise in writing, the following provisions shall apply to installation and assembly:

1. The Purchaser shall perform or have the following performed for its own account and in good time:
 - a) all earthworks, construction works and other ancillary works not connected with the industry, including the deployment of professionals and auxiliary staff, materials, tools and resources required to carry out these activities,
 - b) the items and substances required for assembly and commissioning, such as scaffolding, lifting gear and other equipment, fuels and lubricants,

- c) energy and water at the place of use including connections, heating and lighting,
 - d) sufficiently large, suitable, dry and lockable rooms at the installation site for the storage of machine parts, devices, materials, tools, etc.; suitable work and accommodation areas for the engineers including appropriate sanitary facilities. Furthermore, the Purchaser shall take measures to protect the property of the Supplier and the Supplier's engineers at the installation site which it would also take to protect its own property,
 - e) Protective clothing and safety equipment as required by the particular circumstances at the installation site. Prior to the assembly work, the Purchaser shall provide, without being asked, the necessary information about the location of electricity, gas, water and similar supplies or installations which are not visible to the naked eye, as well as the required statistical information.
2. Before commencing the installation or assembly work, the facilities and items required for the performance of the work must be present at the place of installation or assembly. All work prior to assembly must have progressed to the point where assembly can start in accordance with the agreement and can be performed without interruption. Supply routes and the place of installation or assembly must be levelled and cleaned.
 3. If the installation, assembly and/or commissioning is delayed due to circumstances beyond the Supplier's control, the Purchaser shall bear the costs of waiting and the required additional travel by the Supplier or its engineers to a reasonable extent.
 4. The Purchaser shall notify the Supplier of the hours of work of the engineers every week. The Purchaser shall also promptly inform the Supplier of the completion of the installation, assembly or commissioning.
 5. The Purchaser shall accept the delivery within two weeks when the Supplier requests acceptance after notification of completion. Acceptance shall also be deemed to have occurred if the Purchaser allows the two-week period to lapse or if the delivery has been put into operation - possibly after completion of an agreed test phase.

VII. Acceptance

The Purchaser may not refuse to accept deliveries due to insignificant imperfections.

VIII. Defects

The Supplier is liable for defects as follows:

1. All deliveries or services that are defective may, at the Supplier's option, be repaired free of charge or redelivered or provided again, insofar as the cause was already present at the time of the transfer of risk.
2. Claims for subsequent delivery become time-barred after 12 months, calculated from the statutory starting point of the limitation period. The same applies to withdrawal and reduction. This shall not affect the legal provisions regarding procedural steps, hindrances and the restarting of periods.
3. The Purchaser shall immediately report any complaints in writing. Failure to report defects shall result in the forfeiture of the Purchaser's rights with respect to defects.
4. The Purchaser may suspend payments in the event of complaints about defects to an extent which is in reasonable proportion to the material defects which have occurred. The Purchaser may only suspend payment if a complaint about the defect has been submitted and if the legitimacy of the complaint is not in doubt. The Purchaser shall not be entitled to a suspension if its claims regarding defects are time-barred. If a claim regarding a defect is found to be unjustified, the Supplier may demand that the Purchaser reimburse it for its efforts.
5. The Supplier shall be given the opportunity to effect a subsequent delivery within a reasonable period. This period shall take into account any possible delays (Article IV of these General Terms and Conditions).
6. If the Supplier is unable to effect a subsequent delivery, the Purchaser may withdraw from the agreement or reduce the fee - irrespective of any claims for compensation as referred to in paragraph 9.
7. Claims regarding defects shall not exist in the event of a merely insignificant deviation from the agreed characteristics and quality, merely insignificant impairment of usability, natural wear and tear or wear and tear occurring after the transfer of risk as a result of improper or negligent handling, excessive strain, use of unsuitable operating resources, faulty construction work, unsuitable building land or special external factors not provided for in the agreement. The same shall also apply in the event of non-reproducible software errors. If the Purchaser or third parties have carried out improper modifications or repair work, no claims may be derived from such activities and the resulting consequences.
8. Claims by the Purchaser due to efforts required in the context of subsequent delivery, in particular the costs of transport, roads, labour and materials, are excluded to the extent that these efforts have increased because the item to be delivered was subsequently transported to a location other than the Purchaser's place of business, unless such transport is in accordance with the intended use.
9. Claims by the Purchaser for compensation for a material defect are excluded. This shall not apply in the event of malicious concealment of the defect, failure to comply with a guarantee regarding quality or properties, in the event of death, physical injury or damage to health and in the event of intentional or grossly negligent breach of duty on the part of the Supplier. The provisions referred to above shall not entail a reversal of the burden of proof to the disadvantage of the Purchaser. Claims by the Purchaser regarding material damage that go beyond or are different from those stipulated in paragraph VIII are excluded.

IX. Protected commercial rights and copyright; Legal defects

1. If and to the extent not agreed otherwise, the Supplier is only required to conduct the delivery free of protected commercial rights and copyrights of third parties (hereinafter: intellectual property rights) in the country of the place of delivery. If and to the extent third parties assert claims against the Purchaser due to an infringement of intellectual property rights as a result of the deliveries made by the Supplier, the Supplier shall be liable to the Purchaser on the basis of the period stipulated in Article VIII paragraph 2 as follows:

- a) The Supplier shall, at its option and for its own account, either acquire a right of use or modify the delivered item in such a manner that it no longer infringes the intellectual property rights of such third parties or exchange the delivered item. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be legally entitled to withdraw from the agreement or to demand a reduction of the fee.
 - b) The obligation of the Supplier to compensate damage is based on the provisions of Article XII.
 - c) The obligations of the Supplier referred to above shall only apply provided that the Purchaser immediately informs the Supplier in writing of the claims asserted by third parties, does not acknowledge an infringement and the Supplier reserves the right to take all the necessary measures to defend itself or to negotiate a settlement. If the Purchaser discontinues the use of the delivered item to limit the loss or for other significant reasons, it shall draw the attention of the third party to the fact that the cessation of use does not constitute the admission of any infringement of protected proprietary rights.
2. Claims by the Purchaser are excluded if the Purchaser itself is responsible for an infringement of protected proprietary rights.
 3. Claims by the Purchaser shall also be excluded if and to the extent that the infringement of protected proprietary rights was caused by special instructions or specifications of the Purchaser, if the infringement was caused by an application which was not foreseeable by the Supplier or if the infringement was caused by the Purchaser modifying the delivery or using it together with products not supplied by the Supplier.
 4. In the event of a breach of protected proprietary rights, the provisions of §§ 4, 5 and 9 of Article VIII shall also apply to the claims of the Purchaser referred to in § 1a).
 5. In the event of other legal defects, the provisions referred to in Article VIII shall apply.
 6. Claims of the Purchaser against the Supplier and parties engaged by the Supplier in regard to defects, beyond or other than those provided for in this Article IX are excluded.

X. Reservation regarding performance

1. Performance of the agreement is subject to the reservation that there are no impediments under Dutch, German, U.S. (i.e. United States of North America) or other applicable national, EU or international regulations under international trade law and that there are no embargoes, other trade sanctions or circumstances (such as force majeure), which impede performance.
2. The Ordering party shall provide all the information and documents required for export, transport or import.

XI. Impossibility, amendments

1. If a delivery proves to be impossible, the Purchaser shall have the right to demand compensation unless the Supplier is not responsible for the impossibility of the delivery. This includes but is not limited to the cases listed in paragraph IV.2. The Purchaser's claim for compensation shall, however be limited to 10% of the value of the part of the delivery that cannot be used as intended due to the impossibility of the delivery in a case where liability must be accepted. This limitation shall not apply to liability in the event of intent or gross negligence or in the event of death, injury or damage to health. This shall not entail a reversal of the burden of proof to the disadvantage of the Purchaser. This shall not affect the right of the Purchaser to withdraw from the agreement.
2. If and to the extent that events as referred to in Article IV paragraphs 2a to 2d inclusive significantly change the economic importance or the content of the delivery or have a significant effect on the business of the Supplier, the agreement shall be amended in mutual consultation. If and to the extent that this is not economically feasible, the Supplier has the right to withdraw from the agreement. The same applies if the required export licences are not granted or appear not to be usable. If the Supplier wishes to exercise this right of withdrawal, it shall inform the Purchaser without delay after learning of the effects of the event and, of course, also if it initially agreed to an extension of the delivery period with the Purchaser.

XII. Other claims for compensation

1. If and insofar as these General Terms and Conditions do not provide otherwise, claims by the Purchaser for compensation, for whatever legal reason, are excluded, in particular claims which arise from a breach of duty and from an unlawful act.
2. This shall apply in the event of the liabilities listed below:
 - a) under the Product Liability Act,
 - b) in the event of intent,
 - c) in the event of gross negligence of owners, legal representatives or managers,
 - d) in the event of deceit,
 - e) in the event of non-compliance with an issued guarantee,
 - f) due to culpable injury to life, body or health, or
 - g) due to culpable breaches of essential contractual obligations. However, a claim for damages for breach of essential contractual obligations shall be limited to foreseeable damage typical of the agreement if and insofar as none of the other events referred to above have occurred.
3. The provisions referred to above shall not entail a reversal of the burden of proof to the disadvantage of the Purchaser.

XIII. Competent court and applicable law

1. If the Purchaser is a trader, the competent court for all disputes arising directly or indirectly from the contractual relationship shall be the court in the place of establishment of the Supplier. The Supplier shall also be entitled to institute proceedings in the place where the Purchaser is established.
2. This agreement, including the explanatory notes shall be governed by Dutch law.

XIV. Binding nature of the agreement

The legal invalidity of individual articles of this agreement shall not affect the other articles of this agreement. This shall not apply if compliance with the agreement would mean that one of the parties would be hit unacceptably hard as a result. In the event of a dispute with regard to the interpretation of a provision of these terms and conditions in the English version, the Dutch version shall prevail.