

Conditions générales de BBC Cellpack GmbH

I. General provisions

1. These General Terms and Conditions shall apply to legal relations between the Supplier and the Purchaser with regard to deliveries and/or services provided by the Supplier (hereinafter referred to as "Deliveries"). The Purchaser's General Terms and Conditions shall only apply if the Supplier has expressly agreed to them in writing. Concordant written declarations from both parties shall determine the scope of the Deliveries.
2. The Supplier reserves, without any restrictions, the right of exploitation under its ownership rights and copyrights of cost estimates, drawings and other documents (hereinafter referred to as the "Documents"). The Documents may only be made accessible to third parties with the Supplier's prior consent and if the order is not placed with the Supplier, shall be returned to the Supplier immediately upon request. Sentences 1 and 2 shall apply accordingly to the Purchaser's documents; however, they may be made accessible to third parties to whom the Supplier has permissibly transferred Deliveries.
3. The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed features without any changes on the agreed devices. The Purchaser may create one backup copy of the standard software without express agreement.
4. Partial Deliveries shall be permitted, provided they are reasonable for the Customer.
5. In these General Terms and Conditions, the term claims for damages shall also include claims for compensation for futile expenditure.

II. Prices, Incoterms and offsetting

1. The prices shall not include the statutory value added tax applicable at the time.
2. The rights and obligations of the Supplier and the Purchaser with regard to the delivery and the handing over of the goods shall be determined in accordance with the INCOTERMS 2020 clause: EXW Carl-Zeiss-Straße 20, D-79761 Waldshut-Tiengen
3. Payments of the Purchaser shall be made without deduction within 30 days. Payments shall be made exclusively to the bank accounts designated by the Supplier and shall only then lead to a debt discharging effect. Express reference is made to the dangers of "cyber crime".
4. The Purchaser may only offset claims that are undisputed or have been legally established.

III. Retention of ownership

1. The Delivery shall be made under reservation of ownership. The items of the Deliveries (goods subject to retention of ownership) shall remain the property of the Supplier until all claims against the Purchaser to which the Supplier is entitled under the business relationship have been fulfilled. If the value of all security interests to which the Supplier is entitled exceeds the amount of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interests at the request of the Purchaser; the Supplier shall be entitled to choose which security interests are to be released.
2. As long as the reservation of ownership exists, the Purchaser may not pledge or assign the goods as security, and the Deliveries may only be resold by resellers in regular business transactions and only under the condition that the reseller receives payment from its customer or makes the transfer of ownership dependant on the fulfilment of the customer's payment obligations.
3. If the Purchaser resells the goods subject to retention of ownership, it shall hereby assign as a security to the Supplier its future claims arising from the resale to its customers with all additional rights, including any balance claims, without this requiring any further declarations. If the goods subject to retention of ownership are resold together with other goods without the individual price having been agreed for the goods subject to retention of ownership, the Purchaser shall assign to the Supplier the part of the total price that corresponds to the price of the goods subject to retention of ownership invoiced by the Supplier.
4. a) The Purchaser shall be entitled to process the goods subject to retention of ownership or mix or combine them with other goods. The goods shall be processed on behalf of the Supplier. The Purchaser shall store the new items created in this process for the Supplier with the due diligence of a prudent businessman. The new items shall be considered goods subject to retention of ownership.
b) The Supplier and Purchaser hereby agree that by mixing or combining the items with other items that do not belong to the Supplier, the Supplier shall in any case be entitled to a share in the co-ownership of every new item in proportion of the value of the mixed or combined goods subject to retention of ownership to the value of the other goods at the time they were mixed or combined. To that extent, the new items shall be deemed goods subject to retention of ownership.
c) The provision concerning the assignment of claims set forth in No. 3 shall also apply to the new items. However, the assignment shall only apply up to the amount of the value invoiced by the Supplier for the processed, combined or mixed goods subject to retention of ownership.
d) If the Purchaser combines the goods subject to retention of ownership with real estate or movable property, it shall assign by way of security to the Supplier its claims for remuneration for the combination, with all ancillary rights in proportion of the value of the combined goods subject to retention of ownership to the other combined goods at the time they were combined, without requiring any further declarations.
5. Until revoked, the Purchaser may collect assigned claims arising from the resale. Where good cause exists to do so, in particular in case of late payments, suspension of payments, start of insolvency proceedings, noting and protest of a bill or substantiated evidence indicating excessive indebtedness or threatening insolvency of the Purchaser, the Supplier shall be entitled to revoke the authorisation of the Purchaser to collect on claims. Furthermore, after prior warning and observing an appropriate notice period, the Supplier may disclose the assignment of security, use the assigned claims, as well as request from the Purchaser that the latter disclose the assignment of security to its customers.
6. The Purchaser shall immediately inform the Supplier in case of seizure, confiscation or other dispositions or interventions by third parties. If the Purchaser can substantiate a legitimate interest, the Purchaser shall immediately provide the Supplier with the required information to assert its rights against the customers and to submit the necessary documents.
7. If the Purchaser violates its obligations, in particular if payments are delayed, the Supplier shall be entitled to not only have the Deliveries returned but also to withdraw from the contract if an appropriate period of time granted to the Purchaser to fulfil its obligations has lapsed without result; this shall be without prejudice to the statutory provisions to set deadlines. The Purchaser shall surrender the Deliveries. Taking back the Deliveries or asserting claims of retention of ownership or seizing the Deliveries subject to retention of ownership by the Supplier shall not be considered

withdrawal from the contract unless the Supplier expressly declares withdrawal.

IV. Delivery deadlines; delays

1. Adherence to the delivery deadlines shall require that Purchaser supplies all documents, necessary approvals and releases, in particular of plans, in good time as well as that the Purchaser adheres to the agreed terms of payment and other obligations. If these conditions are not met in good time, the deadlines shall be extended for an appropriate period of time; this shall not apply if the Supplier is responsible for the delay.
2. If the deadlines cannot be met due to
 - a) force majeure e.g. although not limited to, in cases of mobilisation, war, epidemics, official delivery restrictions, material and product shortages, acts of terrorism, riots or similar events (e.g. strikes, lockouts)
 - b) viruses or other attacks by third parties on the Supplier's IT system, provided these occurred despite due diligence with regard to using protective measures,
 - c) hindrances due to German, American or other applicable national, EU or international provisions of the foreign trade and payment law or due to other circumstances for which the Supplier is not responsible, or
 - d) late or improper delivery by the Supplier, the deadlines shall be extended accordingly.The Supplier shall be released from its obligation to deliver if the circumstance for which the Supplier is not responsible continues for more than four (4) weeks.
3. If the Supplier fails to meet the deadline, the Purchaser, provided there is evidence that damages occurred, may demand damages of 0.5% for each full week of delay but no more than 5% in total, of the price for the part of the Delivery that could not be used for its specific purpose due to the delay.
4. Purchaser's claims for damages due to delayed Delivery as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Delivery, even after the time period the Supplier was granted to deliver the goods has lapsed. This shall not apply to cases of intent, gross negligence or injury to life, limb or health. The Purchaser may only withdraw from the contract within the scope of statutory provisions to the extent that the Supplier is responsible for the delay in delivery. Any changes to the burden of proof to the disadvantage of the Purchaser shall not be linked to the provisions set forth above.
5. At the Supplier's request and within an appropriate notice period, the Purchaser shall be obliged to declare whether it shall withdraw from the contract due to the delay of the delivery or insists that delivery be carried out.
6. If shipments or deliveries are delayed at the request of the Purchaser by more than one month after notification that the Deliveries are ready for delivery, the Purchaser may be invoiced storage fees in the amount of 0.5% of the price of the items to be delivered for each storage month started, but no more than a total of 5% of the price. It shall be left to the Contractual Parties' discretion whether evidence of higher or lower storage costs should be presented.

V. Transfer of risks

1. The transfer of risk shall be based on INCOTERMS 2020 clause: EXW Carl-Zeiss-Straße 20, D-79761 Waldshut-Tiengen
2. If shipment, delivery, start and execution of the installation or assembly, receipt at the Purchaser's location or trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser delays accepting the Deliveries for other reasons, the risk shall be transferred to the Purchaser.

VI. Installation and assembly

- Unless otherwise agreed in writing, the following shall apply to installation and assembly:
1. The Purchaser shall provide at its own costs and in good time:
 - a) all earthworks, construction work and other additional work from other sectors, including skilled and unskilled staff, building materials and tools required,
 - b) the items and materials required for assembly and start-up, such as scaffolding, hoists and other equipment, fuels and lubricants,
 - c) energy and water at the point of use, including connections, heating and lighting,
 - d) at the installation site, sufficiently large, suitable, dry and lockable rooms for storing machine parts, apparatus, equipment, tools etc. and suitable work and recreation rooms, including sanitary facilities for the assembly staff that are suitable under the respective circumstances; additionally, the Purchaser shall take the same measures to protect the property of the Supplier and the assembly staff at the building site it would take to protect its own property.
 - e) Protective clothing and equipment that are required due to certain conditions at the installation site. Before the start of the assembly work, the Purchaser shall provide the necessary information about the location of concealed electricity lines and gas and water pipes or similar installations as well as necessary structural data, without being requested to do so.
 2. Before the start of the installation or assembly, the materials and items required to carry out the work must be available at the installation or assembly site and all preparations must be completed to the extent that the installation or assembly can be started as agreed in the contract and carried out without interruptions. Access routes and the installation or assembly site must be levelled and cleared.
 3. If the installation, assembly or start-up is delayed due to reasons beyond the Supplier's control, the Purchaser shall bear the costs for any waiting time and any additional necessary journeys of the Supplier or assembly staff to a reasonable extent.
 4. The Purchaser shall provide evidence to the Supplier of the length of time that the assembly staff work on a weekly basis as well as immediately report the completion of the installation, assembly or start-up.
 5. If the Supplier demands that the Delivery be accepted after completion, the Purchaser shall do so within two weeks. If the Purchaser allows the two-week deadline to lapse or if the Delivery is put into use, as the case may be, after an agreed test period has ended, acceptance shall be deemed to have incurred.

VII. Acceptance

The Purchaser may not refuse to accept deliveries due to minor defects.

VIII. Material defects

The Supplier shall be liable for material defects as follows:

1. At the Supplier's discretion, all parts or services that exhibit a material defect shall be repaired, replaced or provided again free of charge, provided the cause of the defect already existed at the time risk was transferred.
2. Claims for subsequent performance shall expire 12 months after the starting date

of the statutory limitation period; the same shall apply to withdrawal and reduction of price. This period shall not apply if longer terms are required by law pursuant to §§ 438 Paragraph 1, No. 2 (buildings and items for buildings), 479 Paragraph 1 (recourse claim) and 634a Paragraph 1, No. 2 (construction defects) BGB (German Civil Code) in the case of intent, deliberate concealment of the defect as well as non-compliance with a quality guarantee. The legal provisions regarding suspension of the statute of limitations, suspension and recommencement of the term shall remain unaffected.

3. The Purchaser shall submit any notices of defects immediately in writing. Failure to give notice of defects shall lead to the loss of the Purchaser's defect rights.
4. In the case of notices of defects, the Purchaser may withhold payment to an extent that is in reasonable proportion to the material defects that have occurred. The Purchaser may only withhold payments if a complaint in respect to a defect is filed and if there are no doubts that the defect exists. The Purchaser may not withhold payments if its claims for defects are time-barred. If a notice of defect is unjustified, the Supplier shall be entitled to compensation by the Purchaser for the expenses incurred in connection therewith.
5. The Supplier shall be granted the opportunity to carry out subsequent performance within an appropriate time period. Any delays (Art. IV of these General Terms and Conditions) shall be taken into consideration.
6. If the subsequent performance fails, the Purchaser shall have the right to withdraw from the contract or to decrease remuneration, without prejudice to any claims for damages pursuant to No. 10.
7. No claims for defects shall be asserted in the case of insignificant deviation from the agreed conditions, insignificant impairment to usability, natural wear and tear or damages caused after the transfer of risk as a result of incorrect or careless use, excessive use, unsuitable equipment, defective workmanship, unsuitable foundation soil or other particular external influences not provided for in the contract, as well as in the case of software errors that cannot be reproduced. If the Purchaser or a third party incorrectly makes changes or repairs, no claims for damages may be asserted for those or for consequences resulting therefrom.
8. Claims made by the Purchaser regarding expenses required for the subsequent performance, in particular transport, travel, work and material costs, shall be excluded if the expenses are increased because the Delivery was delivered to another place than the Purchaser's location, unless this suits the intended purpose.
9. The Purchaser may only make recourse claims against the Supplier pursuant to § 478 BGB (recourse by the employer) if the Purchaser has not made any agreements with its customers exceeding the statutory claims for defects. No. 8 shall apply accordingly to the scope of the Purchaser's recourse claim against the Supplier pursuant to § 478 Paragraph 2 of the BGB.
10. The Purchaser may not assert any claims for damages due to material defects. This shall not apply in the case of deliberate concealment of the defect, non-compliance with the quality guarantee, in the case of injury to life, limb or health, and if the Supplier violates its obligations wilfully or due to gross negligence. Any changes to the burden of proof to the disadvantage of the Purchaser shall not be linked to the provisions set forth above. Any further claims or claims other than those stipulated in Art. VIII by the Purchaser due to a material defect shall be excluded.

IX. Intellectual property rights and copyrights; defects in title

1. Unless otherwise agreed, the Supplier shall provide the Delivery unencumbered of any intellectual property rights of third parties (hereinafter referred to as the "Property Rights") only in the country where delivery takes place. If third parties assert valid claims against the Purchaser due to a violation of Property Rights in connection with Deliveries provided by the Supplier and used pursuant to the contract, the Supplier shall be liable to the Purchaser within the period specified in Art. VIII, No. 2 as follows:
 - a) At its own discretion and costs, the Supplier shall either obtain the right to use the Deliveries concerned, change the Deliveries so that the Property Rights are not violated or replace the Deliveries. If this is not feasible for the Supplier under reasonable conditions, the Purchaser shall be entitled to make use of its statutory right to withdraw from the contract or to reduce the price.
 - b) The Supplier's obligation to pay damages shall be determined by Art. XII.
 - c) The Supplier's obligations set forth above shall only apply if the Purchaser notifies the Supplier immediately in writing of any claims made by third parties, does not acknowledge a violation and the Supplier's rights to take defence measures and engage in settlement procedures are reserved. If the Purchaser ceases to use the Delivery in order to reduce damages or for other good cause, it shall be obliged to notify the third party that the suspension of use is not an acknowledgement of a violation of Property Rights.
2. Claims made by the Purchaser shall be excluded if the Purchaser is responsible for the violation of the Property Rights.
3. Claims made by the Purchaser shall also be excluded if the violation of Property Rights is caused by specific specifications of the Purchaser, by use that was unforeseeable for the Supplier or is caused by the fact that the Delivery has been changed by the Purchaser or is used together with products not delivered by the Supplier.
4. In the case of a violation of Property Rights, the provisions in Art. VIII, No. 4, 5 and 9 shall apply accordingly to claims stipulated in No. 1a) above made by the Purchaser.
5. In the case of other defects of title, the provisions of Art. VIII shall apply accordingly.
6. Any further claims or claims other than those stipulated in Art. IX by the Purchaser against the Supplier and its agents shall be excluded due to defect in title.

X. Conditions for fulfilment

1. The fulfilment of the contract shall be under the reservation that no hindrances due to German, American or other applicable national, EU or international provisions of the foreign trade and payment law, as well as no embargoes, other sanctions or circumstances (e.g. force majeure) which restrict fulfilment.
2. The Purchaser shall provide all information and documents required for export, shipment or import.

XI. Impossibility, contract adjustments

1. If a Delivery cannot be provided, the Purchaser shall have the right to demand damages unless the reasons for the non-provision are beyond the Supplier's control. This shall include, but not be limited to, the cases mentioned in Art. IV.2. However, claims for damages by the Purchaser in cases where he is responsible shall be limited to 10% of the value of the Delivery part that cannot be used for its intended purpose due to the Supplier's inability to provide the Delivery. This limitation shall not apply if liability is mandatory, e.g. due to intent, gross negligence or due to injury to life, limb or health; any changes to the burden of proof to the disadvantage of the Purchaser shall not be linked hereto. The Purchaser's right to withdraw from the contract shall remain unaffected.
2. If events within the meaning of Art. IV No. 2 a) to d) significantly change the economic importance or the contents of the Deliveries or significantly impact the Supplier's

business operations, the contract shall be adjusted appropriately based on good faith. If this is not economically feasible, the Supplier shall be entitled to withdraw from the contract. The same shall apply if necessary export licences are not granted or are not usable. If the Supplier wishes to exercise its right to withdraw from the contract, it shall immediately after realising the significance of the event inform the Purchaser, even if an extension of the delivery time was previously arranged with the Purchaser.

XII. Other claims for damages

1. Unless stipulated otherwise in these General Terms and Conditions, claims for damages by the Purchaser, in particular due to a violation of the contract and illegal activities, shall be excluded, irrespective of the legal basis.
2. This shall not apply if claims are made:
 - a) pursuant to the Product Liability Act,
 - b) in the case of intent
 - c) in the case of gross negligence on the part of the owners, legal representatives or executive staff,
 - d) in the case of fraudulent intent
 - e) in the case of non-compliance with an accepted guarantee,
 - f) due to deliberate injury to life, limb or health, or
 - g) due to culpable violation of important contractual obligations.However, claims for damages arising from a violation of important contractual obligations shall be limited to foreseeable damages typical for the type of contract, provided none of the other cases stated above has occurred.
3. Any changes to the burden of proof to the disadvantage of the Purchaser shall not be linked to the provisions set forth above.

XIII. Place of Jurisdiction and Applicable Law

1. The sole place of jurisdiction for all disputes arising from this contractual relationship, directly or indirectly, shall be the registered office of the Supplier if the Purchaser is a businessman. The Supplier shall, however, also have the right to file suit at the Purchaser's registered office.
2. This contract including its interpretation shall be subject to German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

XIV. Binding effect of the contract

The contract shall remain binding even if individual provisions in its remaining parts become legally invalid. This shall not apply if adherence to the contract would mean unreasonable hardship for one Party.

Date: March 2020

In the event of a dispute over the interpretation of any provision of these Terms and Conditions in the English version, the German version shall prevail.