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## **Bals Elektrotechnik GmbH & Co. KG**

### **General Terms and Conditions of Business, Sale and Delivery**

#### **1. Scope of applicability, master agreement, contract conclusion**

- 1.1 The following Terms and Conditions shall apply exclusively for our deliveries and services to entrepreneurs (§ 14 of the German Civil Code (BGB)). Any purchasing terms and conditions to the contrary are not legally enforceable, even if we do not explicitly reject them. By placing an order and/or accepting the delivery thereof, the buyer acknowledges acceptance of our terms and conditions.
- 1.2 An order becomes binding for us once we have issued a written confirmation or upon having begun to fulfil the order. All agreements concluded between us and the ordering party for the purpose of performance of this contract are recorded in writing in this contract.
- 1.3 The following terms and conditions apply to existing business relationships as well as to future business dealings which do not specifically make reference to them.

#### **2. Offers, cost estimates, prices and the reserved right to make price changes**

- 2.1 Our offers, as well as the prices and delivery options stated in our catalogues, printed materials, letters, etc. are subject to change without notice; cost estimates are non-binding.
- 2.2 All orders shall only be accepted on the basis of prices valid at the time of order placement. Our prices are understood to be in euro (Incoterms® 2010), ex works, exclusive of the respective VAT, and excluding freight, customs duty, additional import fees, packaging and insurance, which may possibly have to be charged separately.
- 2.3 With respect to all orders – including call-off orders and multiple delivery contracts – for which the delivery, as provided for in the contract or at the request of the ordering party, takes place later than four months after order placement, we are authorised within the scope of the order and as compensation to pass along to the ordering party any material and labour price increases occurring between contract conclusion and actual delivery.
- 2.4 For new orders (including follow-up orders), we are not obligated to any previous prices.

#### **3. Commercial and intellectual property rights**

- 3.1 The sales documents made available by the selling party – such as drafts, drawings, advertising and video material – shall still remain property of the selling party even if proportional costs have been remunerated for this purpose by the buyer.
- 3.2 The selling party unrestrictedly reserves all of his commercial rights, intellectual property rights and exploitation rights to cost estimates, drawings and other documents (hereinafter referred to as: Documents). The documents may only be made accessible to third parties upon the prior consent of the selling party, and must be – in the event that the order is not issued to the selling party – promptly returned to the selling party at his request. Clauses 1 and 2 apply correspondingly to documents of the buyer; these may however be made accessible to those third parties whom the selling party has permissibly commissioned to carry out deliveries.

#### **4. Shipping, costs, transfer of risk**

- 4.1 The shipping shall take place on the account and risk of the buyer. We bear no liability – also not in the case of carriage paid delivery – for damage or losses incurred during transport. If nothing else has been agreed, we shall decide on the type of packaging and means of shipping.
- 4.2 If shipment is delayed due to circumstances for which we bear no responsibility, then the transfer of risk shall take place on the day that the buyer has been notified of the readiness for shipment.

#### **5. Packaging**

- 5.1 Insofar as nothing to the contrary has been agreed, we shall select the packaging, mode of shipment and the shipping route.
- 5.2 If the goods have been billed according to weight, then the usage of packaging and wrapping material shall be calculated at a price according to the

gross weight.

5.3 Special, not commercially customary packaging material shall be charged extra.

5.4 Upon the written request of the buyer, the goods shall be insured at his own expense against risks to be determined by him.

## 6. **Delivery deadlines and liability provisions, acceptance obligation in case of blanket orders and call-off orders, return deliveries**

6.1 The delivery period shall begin as soon as all delivery details have been clarified, both parties agree on all of the terms and conditions of the transaction and the ordering party has effected payment of an agreed instalment, if applicable. The delivery deadline has been complied with if, until it expires, either the delivery item has departed the plant or the ordering party has been notified as to its readiness for shipment.

6.2 The adherence to our delivery obligation within the agreed delivery deadline further presupposes the prompt, correct and complete fulfilment of all obligations on the part of the buyer. The right to objection of the non-fulfilment of contract remains reserved.

6.3 If our delivery does not take place in adherence to the deadline and also not within an extended deadline – which must consist of at least 20 workdays – set by the ordering party, due to reasons for which we bear responsibility, then the ordering party is entitled to void the ordered delivery.

6.4 In the event of subsequent order amendment, we are no longer bound to the originally assured and confirmed delivery deadline.

6.5 Subsequent order amendments, quantity changes and cancellations can only be accepted if they do not entail any costs for us; otherwise, we shall be compelled to charge the buyer for the costs.

6.6 In case of contracts with continuous delivery, the arrangement according to class and type must be communicated to us in due time. If call-offs of partial quantities are not communicated in due time, we shall be authorised to – after first having set an indisputable extended deadline – designate and deliver partial quantities ourselves, or alternatively to withdraw from the nonfulfilled portion of the contract as per the further prerequisites of Paragraph 6.8 and to require indemnification as restitution for the ensuing loss that we suffer. The right to enforcement of further damage claims as might possibly arise remains undiminished.

6.7 The regulation in Paragraph 11 shall apply for compensation claims due to delayed fulfilment or non-fulfilment in lieu of performance.

6.8 If force majeure or circumstances for which we cannot be held accountable (e.g. operational disruptions, strikes) hinder us in the punctual fulfilment of the order, we are then entitled in order to fulfil assumed obligations to reasonably postpone delivery or, if the hindrances consequently make contract performance impossible, to withdraw from the contract in whole or in part. The same holds true if we have not received delivery of material at all, or with delay, from our suppliers which we have ordered from them and which is required for fulfilment of the order, due to reasons for which we cannot be held accountable. The prerequisite for a withdrawal is that we promptly inform the ordering party about the unavailability and, as the case may be, immediately refund any consideration provided by the ordering party. Claims for indemnification of any kind are hereby excluded.

6.9 Partial deliveries are permissible.

## 7. **Quality guidelines for production and delivery**

7.1 Tolerances:

As a rule, we apply quality assurance methods to our production, which as a minimum comply with ISO 9001 requirements. Production is carried out based on the respectively applicable testing and assessment guidelines, as well as the tolerances for weight, dimensional and quantity variations specified therein.

7.2 Production processes

The selling party thereby reserves the right to change the production processes insofar as the buying party has not required any restrictions or information obligation with regard to them.

## 8. **Retention of title**

8.1 We shall retain title to the delivery item (goods subject to retention of title) until all of our accounts receivable due from the ordering party from the business relationship, including any accounts receivable which might arise in the future – comprising those contracts concluded at the same time or at a later date, have been settled. In case of running accounts, the retained title and all rights apply as collateral for our entire current account balance claims, together with interest and costs. In the event of seizures or other intervention by third parties, the ordering party must immediately inform us.

8.2 The ordering party is authorised to process and resell the delivery item in the ordinary course of business. This authorisation shall end if the ordering

party is in payment default, or additionally in case of the cessation of payments by the ordering party, or if the opening of insolvency proceedings has been filed against the assets of the ordering party (default / enforcement event). The ordering party is obliged to resell the item delivered under reservation of title only under the condition of title retention and to ensure that the accounts receivable derived from the resale are transferred to us as per 8.5. Also regarded as resale is if the goods subject to retention of title are used to fulfil works contracts and works-supply contracts. The ordering party is not entitled to any other dispositions regarding the goods subject to retention of title, particularly the pledging of goods or transfer of security. An assignment of accounts receivable from the transfer of our goods subject to retention of title is not permitted, unless it is a matter of an assignment within the course of true factoring, which must be shown to us and for which the value of the factoring proceeds exceeds the amount of our secured receivables. Our accounts receivable are due immediately once the factoring proceeds have been credited.

- 8.3 Pursuant to Art. 950 of the BGB, the ordering party does not acquire ownership of a new item through the treating and processing of the goods subject to retention of title. The processing or transformation is undertaken for us without obligating us. The treated and processed goods are regarded as goods subject to retention of title.
- 8.4 In the case of processing, combining and mixing of the goods subject to retention of title with other goods, our claim entitlement to co-ownership of the new good amounts to the proportional invoice value of the goods subject to retention of title in comparison with the invoice value the other goods used. If our property rights are rendered null and void through combining, mixing or processing, consequently the ordering party shall immediately transfer to us the property rights and expectancy rights pertaining to the new form of the item to which he is entitled proportionate to the invoice value of the goods subject to retention of title and, in the case of processing, proportionate to the invoice value of the goods subject to retention of title vis-à-vis the invoice value of the other goods used, and maintain custody of it for us free of charge. Our co-ownership rights are regarded as goods subject to retention of title.
- 8.5 The accounts receivable of the ordering party derived from the reselling of the goods subject to retention of title are to be assigned to us now by way of security. These serve as collateral in the same scope as the goods subject to retention of title. If the goods subject to retention of title are resold by the ordering party together with other goods, then the accounts receivable derived from the resale shall be assigned to us proportionate to the invoice value of the goods subject to retention of title vis-à-vis the invoice value of the other goods. In the event of a resale of the goods for which we hold co-ownership shares as per 8.4, a share of the accounts receivable shall be assigned to us corresponding to our coownership share. Other accounts receivable which take the place of the goods subject to retention of title or which otherwise arise with respect to the goods subject to retention of title - such as insurance claims and claims from a breach of duty or an unlawful act - shall also be assigned. The ordering party is irrevocably entitled to collect the accounts receivable assigned to us in his own name. We may revoke the direct debit mandate in the case of a default / enforcement event.
- 8.6 The ordering party authorises us to inform the customer of the assignment and to collect the accounts receivable as soon as the default / enforcement event occurs. We can require a review of the status of the assigned accounts receivable by our agents based on the bookkeeping of the ordering party. The ordering party must provide us with a list of the residual goods subject to retention of title and all information necessary for asserting the assigned accounts receivable, including a list of his accounts receivable from the resale of the goods subject to retention of title with the name and address of the customer.
- 8.7 If the value of the existing collateral exceeds the total secured receivables by more than 10%, then at the request of the ordering party we are obligated to release collateral to that extent, at our discretion and in observance of the interests of the ordering party. The collateral value is regarded as the invoice value for simple and subsequent retention of title at which the ordering party procures the goods from us, and for extended retention of title the invoice value at which the ordering party resells our goods, each with a valuation discount of one third of the subscription price or the nominal value of the assigned accounts receivable.
- 8.8 In the event of cheques or other means of payment, payment is only then regarded as having been made after secured posting of the sum by the ordering party. We shall only accept cheques on account of performance. Payments that have been made against the transfer of a cheque or another means of payment are only then considered as having been remitted once a reversal to us is precluded. Notwithstanding our extended collateral rights, the collateral ceded to us up to this point in time continues to exist.
- 8.9 Based on the retention of title, we can require the possession of the delivery item if we have withdrawn from the contract. We are authorised to withdraw without taking into account any of the further prerequisites of Art. 323 of the BGB, in particular without having to set a deadline, from that point in time at which the ordering party has defaulted on payment in whole or in part. The same holds true if the ordering party has ceased payment or if the opening of insolvency proceedings has been filed against the assets of the ordering party. All costs arising from the repossession of the delivery item shall be borne by the ordering party. We are authorised to freely dispose of the reclaimed delivery item.

## **9. Notification of defects, claims for defects, liability provision**

- 9.1 Notwithstanding the continued duty of inspection, notification, and rejection due in a mutual commercial transaction, the ordering party is obligated to inspect the delivered goods for apparent flaws and report to us in writing any complaints with respect to such apparent flaws – this also applies to incomplete or incorrect deliveries – within one week after having received the goods; and, furthermore, with respect to flaws which only later become apparent, within one week after they have been detected by the ordering party. Otherwise, the goods shall be regarded as having been accepted, also with regard to apparent flaws, and the ordering party can thus not derive any rights therefrom with respect to us. This does not apply to a direct sale to a private consumer. In the event of legitimate notification of defects, we are obligated to rectification of the flaw of the delivered goods free of charge or, at our discretion, replacement delivery. If the rectification or replacement delivery fail despite two attempts, or if we unjustifiably refuse these or cause unconscionable delay, then the ordering party is entitled to abatement of the remuneration or, if construction work is not object of the liability for defects, to require rescission of the contract at his discretion.

- 9.2 Claims for damages due material defects are governed by the following in Paragraph 11.
- 9.3 Claims for defects are unwarranted if the flaw is traceable back to a violation of the operating, maintenance or installation specifications, unsuitable or improper use, incorrect or negligent handling by the ordering party and natural wear and tear, as well as due to intervention undertaken in the delivery item by the ordering party or third parties.

## **10. Terms and conditions of payment and consequences in case of noncompliance, offsetting**

- 10.1 Insofar as nothing to the contrary has been agreed, our accounts receivable are to be paid free of postage and other charges within 30 days after having received our invoice or an equivalent statement of accounts receivable, at the latest however 30 days after the due date and receipt of the consideration provided. For payments remitted thereafter we shall charge interest at an annual rate of 8%.
- 10.2 In case of drafts and cheques, payment is only then regarded as having been remitted after the sum has been posted. Discounts and charges shall be borne by the ordering party.
- 10.3 We shall only accept drafts and cheques on account of performance, and drafts only upon special agreement. Independent of the term period of accepted drafts or a granted forbearance, our accounts receivable are due immediately if the ordering party does not adhere to the terms and conditions of payment or circumstances that could cast doubt on his creditworthiness become known. Furthermore, in a case such as this we are authorised to only carry out deliveries against payment in advance or the provision of collateral, or to withdraw from the contract after a reasonable extended deadline, and/or to require indemnification.
- 10.4 Only counterclaims that are undisputed or have been legally determined to be valid can be offset by the ordering party vis-à-vis our accounts receivable. A right of retention is excluded unless the counterclaim is undisputed, has been stated as legally binding or is ready for decision.

## **11. Liability for compensation (limitations and exclusions)**

- 11.1 If essential contractual obligations - major obligations whose fulfilment allows the proper execution of the contract and on whose fulfilment the ordering party may rely - are breached, we shall also be liable in the event of simple negligence; however, any claims are limited to compensation for damages which were foreseeable and typical of the contract at the time of the contract conclusion.
- 11.2 Otherwise - unless the breach of an essential contractual obligation is concerned and subject to the following Paragraph 11.4 - our liability for compensation shall be limited to damages resulting from a grossly negligent breach of duty on the part of our legal representatives or agents, regardless of the legal grounds and including an unlawful act, insofar as this involves culpability. Indirect damages or damages resulting from defects to the delivery item are only eligible for compensation if such damages are typically expected from the intended use of the delivery item.
- 11.3 The aforementioned liability exclusions and limitations shall apply to the same extent in favour of our bodies, legal representatives, employees and other agents.
- 11.4 The aforementioned liability exclusions and limitations shall not apply for damages as a result of injury to life, limb or health based on a negligent breach of duty on our part or an intentional or negligent breach of duty on the part of our legal representatives or agents. Similarly, claims from a warranty or according to the Product Liability Act shall not be affected by this.

## **12. Place of performance, competent court of jurisdiction and applicable law**

- 12.1 Place of performance is the location of our supplying factory.
- 12.2 The place of jurisdiction for contracts with merchants, legal entities under public law and separate funds under public law is the registered office of the Bals contracting company. We reserve the right, however, to take action against the ordering party before the competent courts for his registered office.
- 12.3 For all deliveries and services from German Bals companies, German law shall apply for transactions within the EU with the exception of the UN Convention on the International Sale of Goods; the UN Convention on the International Sale of Goods shall apply for international transactions with companies outside of the EU along with German law if the former does not contain any appropriate regulations. For Bals companies which are not based in Germany, the respective law in that country shall apply, with the UN Convention on the International Sale of Goods taking priority.

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