

Terms of Sale and Delivery of BAUER MAT Slurry Handling Systems, Branch Office of BAUER Maschinen GmbH Effective 01.04.2018

§ 1 Conflicting general terms and conditions

The customer's general terms and conditions of business – even if used by it at a later date – become an integral part of a contract without the written approval of BAUER MAT Slurry Handling Systems Branch Office of BAUER Maschinen GmbH (hereafter referred to as BAUER MAT) only if such terms and conditions do not conflict with these Terms of Sale and Delivery. Conflicting general terms and conditions shall not affect the legal validity of the concluded contract. In the event of conflicting terms and conditions, legal provisions shall apply.

§ 2 Offer, conclusion of contract, offer documents

1. The customer's order is a binding offer that BAUER MAT can accept by sending an order confirmation or by starting to execute the order. Offers submitted previously by BAUER MAT are without obligation and free of charge, unless otherwise agreed.
2. The content and scope of the contract are based on the written order confirmation of BAUER MAT if issued. Unless otherwise agreed, the information provided in the offers submitted by BAUER MAT are relevant for the intended purpose. Documents on which offers are based only become part of the contract if expressly included. The right to make amendments is reserved if this does not jeopardise the purpose of the contract and the amendments are not of a fundamental nature.
3. The assignment or any other transfer of any and all rights and claims of the customer against BAUER MAT is excluded. This also applies to all future claims and rights. BAUER MAT may consent to an assignment or a transfer in writing in an individual case.
4. All agreements, irrespective of whether they were made upon or after conclusion of contract, must be in writing. Verbal agreements are legally binding only if confirmed in writing by BAUER MAT.
5. Technical consulting is not subject of the contract; it is binding only if provided in writing. It does not release the customer from its obligation to use BAUER MAT products appropriately and in a professional manner.

§ 3 Scope of delivery

1. Drawings and details on weight, dimensions, consumption and performance are without obligation, unless expressly designated as binding in the order acknowledgement. BAUER MAT reserves the right to incorporate changes and improvements to the design, materials used and workmanship, provided that these do not adversely affect the usefulness of the item of delivery.
2. The customer is responsible for the completeness, accuracy and timeliness of final planning documents on execution which are to be procured or prepared by it. If these are sent to BAUER MAT by electronic means, they are binding only if full receipt thereof is expressly confirmed by BAUER MAT.
3. The customer is also the customer and contractual partner of MAT if delivery to third parties is agreed.
4. BAUER MAT reserves the rights of ownership and copyright to illustrations, drawings, calculations and other documents. This also applies to written documents marked as "confidential". The customer requires the express written consent of BAUER MAT before passing these on to third parties.

§ 4 Price and payment

1. All prices apply ex works excluding loading and packaging by BAUER MAT. The prices of spare parts do not include their installation. Value-added tax at the rate valid on the date of delivery is added to the prices.
2. In case of deliveries exceeding a value of EUR 50,000.00, 1/3 of the purchase price shall be payable when placing the order, 1/3 becomes due upon notification of the readiness for dispatch and 1/3 within 30 days of the invoice date. In case of deliveries for less than this value, payment shall be made net within 30 days after the date of the invoice. A discount of 2% for payment within fourteen days of the invoice date shall be allowed only if expressly agreed.
3. If prices are increased between the contract date and delivery date, BAUER MAT shall be entitled to claim the higher prices provided that the contractually agreed delivery is to take place more than four months after the contract date and there is no delay in delivery on the part of BAUER MAT at the time of the price increase. If price increases of more than 20% are claimed, the customer shall be entitled to withdraw from the contract. If the customer fails to accept the goods offered on the date named in the order acknowledgement, the prices valid at the time of delivery shall apply.
4. In case the customer fails to comply with the terms of payment or in case of circumstances of which BAUER MAT gains knowledge after conclusion of the contract which are suitable for lessening the creditworthiness of the customer, all receivables of BAUER MAT become immediately due and payable, irrespective of any payment extensions granted or the maturity of the bills accepted. In this case BAUER MAT shall be entitled to perform outstanding services only against advance payment or provision of adequate security and – after a reasonable period of grace – to withdraw from the contract or to claim damages for non-fulfilment and, without prejudice to the aforementioned rights, to take back the items delivered under reservation of title at the expense of the customer.

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5. The retention of payments or the offsetting of any counterclaims of the customer shall be permissible only if such counterclaims are undisputed or have been declared legally valid by a court of law and if the counterclaim in case of retention is based on the same contractual relationship.
6. In case of payment default, interest at 8% p. a. above the respective basic interest rate shall be charged. MAT reserves the right to claim further default damage. The customer is reserved the right to furnish proof that BAUER MAT did not suffer any damage or much less damage as a result of the payment default.

§ 5 Delivery period

If the shipment is delayed upon the customer's request, BAUER MAT shall be entitled – after the setting and the lapse of a reasonable extension granted – to dispose of the item of delivery in another manner and to supply the goods ordered to the customer after a reasonably extended period.

§ 6 Acceptance, transfer of risk and performance

Unless expressly otherwise agreed, the item of delivery is deemed to be sold "ex works", even if BAUER MAT has accepted delivery "freight paid". The risk passes to the customer upon loading the item of delivery at the works. Delivery is deemed to have been effected at this point in time. Partial shipments shall be permissible, unless this adversely affects the use of the item of delivery. Complaints concerning partial shipments do not release the customer from its obligation to accept the residual quantity of the goods ordered in accordance with the contract.

Acceptance shall be carried out at the works immediately after notification of readiness for acceptance in all cases. The customer shall pay the costs of any experts consulted.

§ 7 Warranty claims

1. The customer shall notify BAUER MAT of any obvious defects within 14 days after receipt of the delivery at the latest. If the contract contains a provision specifying joint acceptance of the item of delivery, obvious defects must be notified immediately. Hidden defects shall be reported immediately after their discovery, however, before the legal warranty period expires at the latest.

If the customer is a merchant, Section 377 of the German Commercial Code (HGB) applies.

2. Where joint acceptance is agreed, the period for filing warranty claims commences upon acceptance, if it is actually carried out; otherwise upon handing over the item of delivery. For new goods, this period amounts to one year from the date of delivery, however this does not apply in cases where longer periods are specified by law according to Section 438 I No. 2 (buildings and items for buildings), Section 479 I (recourse claim) and Section 634 a I No. 2 (construction defects) of the German Civil Code (BGB). Notwithstanding Section 438 I No. 3 of the German Civil Code, the above shorter limitation period does not apply in case of fraudulent intent, for the claims for damages specified in § 7 and for claims based on the Product Liability Act. In these cases solely the legal provisions on limitation apply.
3. The customer shall be entitled to warranty claims only on the following conditions:
 - a) At its option BAUER MAT is entitled to gratuitously repair or replace all those parts or re-provide all those services which have a defect within the limitation period if the cause of such defect already existed at the time when the risk was transferred. BAUER MAT shall initially be given an opportunity to provide subsequent performance within a reasonable period in each case. If according to the content of the contract based on these terms, BAUER MAT is not entitled to provide a replacement or if a rectification of the defect has finally failed despite two attempts at repair, the customer – irrespective of any claims for damages – may withdraw from the contract or reduce the remuneration. However, the customer has no right to withdraw in case of a minor defect.
 - b) BAUER MAT is entitled to make any subsequent performance owed by it contingent on the customer's payment of the purchase price due. However, the customer is entitled to retain a reasonable portion of the purchase price in relation to the defect.
 - c) In case of used equipment and materials, the customer is entitled to inspect and examine the goods at its expense before delivery. Upon delivery of the used item of delivery, the obligations of BAUER MAT are deemed to be completely and duly performed. No complaints shall be accepted at a later stage. The delivery is carried out excluding any liability for defects, unless expressly otherwise pledged in writing. If used consumable goods are purchased, the period of liability for defects is one year from delivery.
 - d) Claims for damages or for the reimbursement of expenses incurred in vain by the customer are possible only subject to § 8, otherwise they are barred.

§ 8 Liability

1. Unless otherwise stated in these terms including the provisions set out below, BAUER MAT is liable in case of any breach of contractual or non-contractual duties in compliance with the relevant legal provisions.
2. BAUER MAT shall be liable for damages – irrespective of the legal grounds – in case of wilful intent and gross negligence. In case of simple negligence BAUER MAT including the representatives and vicarious agents of BAUER MAT shall be liable only
 - a) in case of damage due to death, physical injury or an impairment to the health of another.
 - b) in case of damage caused by a breach of an essential contractual duty; in this case the liability of BAUER MAT is limited to compensation for foreseeable damage which typically occurs.
 - c) for damage arising from impossibility and default due to the breach of cardinal duties.
3. The limitations of liability stated in No. 2 do not apply to the extent that BAUER MAT has fraudulently concealed a defect or has accepted a guarantee for the nature of the goods. The same applies to claims of the customer based on the Product Liability Act.
4. The customer can only withdraw from the contract or cancel the contract due to a breach of duty which does not consist in a defect, if BAUER MAT is responsible for the breach of duty. A free right of cancellation for the customer (in particular in accordance with Sections 651 and 649 of the German Civil Code) is excluded. In other respects, the legal requirements and legal consequences apply.
5. To the extent that BAUER MAT`s liability for damages is excluded or limited, this also applies to the personal liability for damages of the employees, staff, workers, representatives and vicarious agents of BAUER MAT.

§ 9 Reservation of title

1. BAUER MAT reserves title to the item of delivery until settlement in full of all the claims arising from the business relationship against the customer irrespective of their legal grounds or the time they accrued. This shall also apply if individual or all receivables have been included in a current account and the balance has been drawn up and accepted.
Cash payments, payments by cheque and bank transfers against submission of a promissory note of the customer issued by BAUER MAT shall be deemed to have been effected only after the bill has been honoured by the drawee and BAUER MAT thus discharged from liability under the bill of exchange.
2. Where goods or products of BAUER MAT are processed by the customer, BAUER MAT shall acquire title to the newly formed goods to the exclusion of Section 950 of the German Civil Code.
If the goods or products of BAUER MAT are combined or mixed with other materials and matter, the legal provisions under Sections 947 and 948 of the German Civil Code apply.
3. BAUER MAT is entitled to take out insurance cover against theft, breakage, fire, water and other damage for the item of delivery at the expense of the customer, unless the customer furnishes proof that it has taken out such insurance cover itself.
4. The following provisions shall apply for the duration of the reservation of title:
The customer shall be authorised to commission and use the delivered goods within the scope of its normal business operations. Any other form of disposal of the delivered goods by the customer (such as reselling, leasing, pledging, assignment as collateral, etc.) shall be permissible only with the express prior approval of BAUER MAT.
The customer hereby assigns, to the extent permissible, all claims arising for it from the resale to a third party, irrespective of whether the goods subject to reservation of title are resold without or after further processing. The customer shall, however, be entitled to collect these receivables also after the assignment. The right of BAUER MAT to collect the receivables itself shall remain unaffected. As long as the customer meets its payment obligations in relation to BAUER MAT, the company waives its right to collect receivables.
BAUER MAT may demand that the customer discloses all the claims assigned, provides all information required in this connection, submits the relevant documents and informs the third party debtors of the assignment.
If the goods subject to reservation of title are sold together with other goods which are not the property of MAT, the customer's claim against the third party shall be deemed to be assigned to BAUER MAT to the amount of the delivery prices agreed between BAUER MAT and the customer.
5. BAUER MAT undertakes to release security to which it is entitled to the extent its value exceeds the receivables to be secured and not yet settled by more than 20%. The selection of the security to be released shall be left to BAUER MAT's discretion.

§ 10 Export Control

BAUER MAT informs the Buyer that the deliveries or services rendered under this Contract might be prohibited or restricted by any mandatory or non-mandatory national or international law, regulation, administrative decision or court order including any UN-Resolution, embargo, customs regulations, EC-/ US- or state- sanction lists or any regulation on the control of exports, transfer, brokering and transit of dual-use items (hereinafter together the „Export Laws“). The „Information Sheet on Export Control“ as it is set out on the BAUER MAT’s website under http://www.bauer.de/pdf/gstc/exportcontrolinformationsheet_en.pdf shall be an integral part of the Contract and is accepted by the Buyer and the Buyer undertakes to comply with the information contained in it unconditionally. The Buyer shall bind its personnel, subcontractors and agents to comply with the Export Laws.

If delay of delivery or service is caused by such Export Laws, the time agreed for delivery shall be extended by the duration of such delay and also by the time required for resumption of Contract performance. In case the Buyer culpably violates such export Laws, the Buyer shall indemnify the Seller and hold BAUER MAT harmless of any damages or reasonable expenses incurred hereof.

§ 11 Currency

All payments shall be made in euros.

§ 12 Place of jurisdiction

The place of jurisdiction for all proceedings in connection with bills of exchange, cheques and summary procedures to the extent permitted by Section 38 of the German Code of Civil Procedure (ZPO), shall be the principal place of business of BAUER Maschinen GmbH, Schrobenhausen, Germany.

BAUER MAT is also entitled to bring legal action at the customer’s principal place of business.

§ 13 Partial invalidity

If these terms of business are invalid in whole or in part, this shall not affect the validity of the remaining provisions of the contract. In case individual provisions are invalid, the content of the contract shall be governed by legal provisions.

§ 14 Applicable law

All contracts shall be governed by the law of the Federal Republic of Germany to the exclusion of laws on the international sale of goods even if the customer has its place of business or residence abroad.

BAUER MAT/ 910.671.2 BMA

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