

§ 1 Conflicting general terms and conditions of business

The customers general terms and conditions of business — even if used by it at a later date, become an integral part of a contract only if such terms and conditions do not conflict with these Terms of Sale and Delivery, unless approved by BOHAK in writing. Conflicting general terms and conditions of business shall not affect the legal validity of the contract. In the event of conflicting terms and conditions, statutory provisions shall apply.

§ 2 Scope of delivery

Drawings and details on weight, dimensions, consumption and performance are not binding, unless expressly designated as binding in the order acknowledgement. BOHAK reserves the right to incorporate changes and improvements to the design, materials used and workmanship, provided that these do not adversely affect the serviceability of the item of delivery.

§ 3 Price and payment

1. All prices apply ex works excluding loading and packaging by BOHAK. 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, BOHAK 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 BOHAK 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 BOHAK gains knowledge after conclusion of the contract which are suitable for lessening the creditworthiness of the customer, all receivables of BOHAK become immediately due and payable, irrespective of any payment extensions granted of the maturity of the bills accepted. In this case BOHAK 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.

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.

In case of payment default. Interest at 6% p. a. above the respective basic interest rate shall be charged. BOHAK reserves the right to claim further default damage. The customer is reserved the right to furnish proof that BOHAK did not suffer any damage or much less damage as a result of the payment default.

§ 4 Delivery period

If the shipment is delayed upon the customer's request, BOHAK 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.

§ 5 Acceptance, transfer of risk and performance

Unless expressly otherwise agreed, the item of delivery is deemed to be sold "ex works" even if BOHAK 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.

§ 6 Warranty claims

1. The customer shall notify BOHAK of any obvious defects within eight 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 statutory 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 statutory provisions on limitation apply.

3. The customer shall be entitled to warranty claims only on the following conditions:

a) At its option BOHAK 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, BOHAK 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, BOHAK is not entitled to provide a replacement or if a rectification of the defect has finally failed despite three attempts at repair, the customer may withdraw from the contract, under the condition, that a usage fee has to be paid for the time of the ownership, or reduce the remuneration.

However, the customer has no right to withdraw in case of

1. A minor defect, leaving the product in still operational condition.
2. The product being a custom built, after the clients specifications.

b) 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 BOHAK 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 six months from delivery, without warranty.

c) Claims for damages or for the reimbursement of expenses incurred in vain by the customer are possible only subject to § 7, otherwise they are barred.

d) Repairs outside of Germany, within the warranty period and conditions, are not due in a predetermined time period, waiting times can vary. Bohak does not account for any costs occurring during that waiting period.

e) Full warranty will only be granted, in the case, that the customer follows operating requirements, stated by the instruction manual or representatives of the company Bohak.

f) Warranty will be denied, if the product shows signs of improper handling, or the crew not having been educated enough, to operate the product according to industry standards.

4. The company Bohak provides possible repairs only at the headquarters in D-38536 Meinersen and PL-62200 Gniezno. The liability for consequential damages resulting from disorders during the repair, made by Bohak or any external contractors, such as material defects or total failure of the system are excluded.

On request of the customer reimbursement can be granted by company Bohak for repair jobs, commissioned by the customer, at the site of the product, carried out by external contractors.

§ 7 Liability

1. Unless otherwise stated in these terms including the provisions set out below, BOHAK is liable in case of any breach of contractual or non-contractual duties in compliance with the relevant statutory provisions.

2. BOHAK shall be liable for damages — Irrespective of the legal grounds — in case of wilful intent and gross negligence. In case of simple negligence BOHAK including the representatives and vicarious agents of BOHAK 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 BOHAK 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 BOHAK 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 of a defect, if BOHAK 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 statutory requirements and legal consequences apply.

5. To the extent that BOHAK'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 BOHAK.

§ 8 Reservation of title

BOHAK 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 BOHAK shall be deemed to have been effected only after the bill has been honored by the drawee and BOHAK thus discharged from liability under the bill of exchange.

2. Where goods or products of BOHAK are processed by the customer, BOHAK 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 BOHAK are combined or mixed with other materials and matter, the statutory provisions under Sections 947 and 948 of the German Civil Code apply.

3. BOHAK 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 authorized 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 BOHAK. 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 BOHAK to collect the receivables itself shall remain unaffected. As long as the customer meets its payment obligations in relation to BOHAK, the company waives its right to collect receivables.

BOHAK 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 BOHAK, the customer's claim against the third party shall be deemed to be assigned to BOHAK to the amount of the delivery prices agreed between BOHAK and the customer.

5. BOHAK 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 BOHAK's discretion.

§ 9 Currency

All payments shall be made in Euros, Before shipping.

§ 10 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 BOHAK Bohrtechnik GmbH (BOHAK), Meinersen, Germany.

BOHAK is also entitled to bring legal action at the customer's principal place of business.

§ 11 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 statutory provisions.

§ 12 Applicable law

All contracts shall be governed by the law of the Federal Republic of Germany.