

Terms and conditions

I. Scope of validity

These terms of delivery apply to all purchase contracts including consulting services and other contracted services rendered by BLACKFORXX. The customer's conditions of purchase as well as any modifications to or deviations from these terms of delivery or any ancillary agreements are only binding for BLACKFORXX to such an extent as they have been confirmed by BLACKFORXX in writing.

II. Conclusion of contract

Both parties are bound by the content of the purchase order and its written confirmation. If a deadline is set to the customer to accept the offer, the contract will only materialize when it has been accepted within the period stipulated. Should the customer not accept the contract in the stated form or within the period stipulated, the contract will only materialize when the written order confirmation conforms to the offer. The customer shall be bound to the purchase offer for four weeks, this period commencing on the day when the written order has been received by BLACKFORXX.

III. Deliveries and services

The documents accompanying the offer, such as illustrations and drawings, as well as details as to the weight and the measurements, such as speeds, the fuel consumption and operating costs, are deemed to be approximate values with tolerance ranges and do not represent guaranteed quality features.

The quality and nature of the delivery items are specified in the contract and will not be guaranteed. Deviations require the written form. The customer shall point out in writing if the required operating and ambient conditions of the items delivered deviate from the standard conditions laid down in the purchase documents (especially when specific ambient conditions and locations are required). The above standard conditions of BLACKFORXX shall be applicable in the absence of any such notification.

Cost data, drawings and technical documents or any other technical information shall neither be used without the approval of BLACKFORXX, except for the purpose of assembling, putting into operation, operating and servicing the delivery item, nor be copied, reproduced, made available to third parties or disclosed in any other way. BLACKFORXX reserves the right of ownership of and the copyrights on all these documents.

BLACKFORXX is entitled to constructive modifications as part of the ongoing further development of the delivery items and as a result of internal procurement policy decisions taken.

IV. Prices and payments

1) Prices

Unless agreed otherwise, the prices for the delivery item are ex warehouse of BLACKFORXX, excluding statutory sales tax (VAT) and packaging, but including loading. The packaging will only be taken back if agreed so by special agreement. BLACKFORXX shall be entitled to raise the price to the level of the new sales price, if the sales prices relevant for the customer change until the delivery is made.

2) Due date

Unless any specific agreements have been concluded, BLACKFORXX delivers only against payment in advance. The price shall be due and cashless paid without any deductions within 14 days after receipt of the proforma invoice. The discount costs as well as the charges made on bills and cheques shall be borne by the customer. In the event of defaulting the agreed payment period, the statutory interest after the due date will be charged until the default date and the statutory penal interest thereafter, without any further reminder being issued to the customer concerned. In case of a delay of payment BLACKFORXX shall be entitled to claim a contractual penalty of ten Euro for every written reminder. The right to assert any further claims for damages shall not be affected.

3) Default in payment

The customer shall not be entitled to retain payments on the grounds of disputed and not legally established counterclaims, i.e. offsetting any such claims shall thus be excluded.

If BLACKFORXX believes that it will not receive the full purchase price from the customer or not on time, BLACKFORXX shall be entitled to refuse the contractual performance by pleading insufficient security, until the consideration due has been effected or the security been provided. If the customer does not effect the consideration due or provide the relevant security within a reasonable period demanded in writing, BLACKFORXX may cancel the contract.

BLACKFORXX shall also be entitled to withdraw from the contract after having set a reasonable period in writing, if the customer seriously and finally refuses to accept the ordered goods or in case payment in advance is agreed if he does not make payment in advance on time.

In the event of cancelling the contract, BLACKFORXX shall also be entitled to demand damages including lost profits amounting to at least 20 % of the purchase price, unless it can be proved that the damage is lower.

4) Sales tax

The sales tax is based on the applicable sales tax law. In the event of cross-border deliveries, BLACKFORXX will make use of the existing tax exemptions.

The customer shall notify BLACKFORXX immediately about the relevant turnover ID number if cross-border deliveries are made within the EU and furnish all other proof

to such an extent as necessary to obtain a tax exemption under the German or foreign sales tax laws. In particular the customer shall be obliged to confirm the arrival of the shipment in the EU-member state and he shall adhere to the procedure and / or use the form BLACKFORXX provides to him. If the arrival of the shipment in the EU-member state is not confirmed by the customer, the German VAT applicable at the time of delivery will be charged subsequently.

Any German or foreign sales tax to be paid over by BLACKFORXX will be invoiced in addition to the net price and shall be borne by the customer. If sales tax is generated on the basis of payments made before the delivery has been effected (or the service rendered), it will be invoiced separately. The sales tax is due for payment together with the net price.

V. Delivery period, Reservation of fulfilment

The delivery period begins when the order confirmation has been dispatched, but not before all documents to be furnished by the customer have been received, all technical details have been clarified and in case payment in advance is agreed, the payment in advance has been remitted.

The delivery deadline is deemed to have been met when the delivery item is available for acceptance at the warehouse of BLACKFORXX before the delivery period expires or when such notification is made that the goods are ready for shipment within this period. Meeting the delivery deadline requires the customer to fulfil his duty to cooperate and to perform the contract.

The delivery period will be reasonably extended in the event of industrial actions, especially strikes and lockouts, and when unforeseen events are encountered (e.g. operation disturbances, governmental interference, delays in the supply of important raw materials, attachments, difficulties with the energy supply, war, riots, embargoes, military requisitions and natural catastrophes), that will evidently and considerably affect the completion or supply of the delivery item. This shall also apply if these circumstances affect a sub-contractor. Nor shall BLACKFORXX be responsible for the above circumstances if they occur during the delay that has already been existing. BLACKFORXX shall inform the customer about the beginning and the end of any such major obstacles as soon as possible.

If the customer requests a delay of the shipment, he will be charged the storage costs or at least 0.5 % of the invoiced amount for each month or parts thereof if the goods are stored at the premises of BLACKFORXX, commencing one month after the customer has been notified that the goods are ready for shipment. The right to claim higher storage costs shall be reserved, while the customer has the right to prove that the storage costs are lower. However, BLACKFORXX is entitled to dispose of the delivery items otherwise after having set a reasonable period in writing and to arrange for a new delivery to the customer on the basis of the agreed terms of delivery and after having agreed a new delivery period.

The contract fulfilment shall be under the reservation that the delivery is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other sanctions. The contracting parties shall be obliged to provide all information and documentation needed for the export/ intra-

community shipment/ import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question. Any claims for damages related to this or to the above mentioned exceeding of deadlines, shall be excluded.

VI. Transfer of risk

Deliveries are made from the premises of BLACKFORXX, where goods can be collected or from where they may be dispatched. If the customer or his appointed representative does not collect the goods on the specified delivery date, which will have to be agreed with BLACKFORXX at least one week in advance, BLACKFORXX shall be authorized to dispatch the delivery item at the customer's risk and expense. In both cases, the risk passes to the customer as soon as BLACKFORXX has handed over the delivery item to the customer or his authorized representative, or to the freight carrier or haulage company.

If the shipping is delayed for reasons for which the customer is responsible, the risk shall pass to customer on the day when he is notified that the goods are ready for shipment. The risk also passes to the customer when partial deliveries are dispatched or when BLACKFORXX has been commissioned with other services (e.g. the dispatch, the shipment, the installation, the assembly or the instruction/familiarization of the staff). Shipments are basically made on the customer's account, and the customer also bears the risk when he defaults the acceptance of the delivery items.

Irrespective of the rights referred to in Article VIII below, goods supplied to the customer shall also be accepted by the latter if they have minor defects.

As for the rest, the agreed delivery clauses shall be construed in accordance with the incoterms valid at the time of signing the contract. If a specific agreement is missing, the incoterm FCA shall apply.

VII. Reservation of ownership

1) BLACKFORXX reserves the right of ownership of the delivery items until all payments from the business relation with the customer have been received. If payment by cheque or bill has been agreed, the reservation of ownership shall also cover the payment of the bill as accepted by BLACKFORXX and shall not expire when the check is credited by BLACKFORXX. The reservation of ownership shall continue when the account receivable has been charged to an open account and when the account has been balanced and acknowledged.

2) The customer shall treat the delivery items with utmost care and carry out any necessary repair, maintenance and inspection work right in time and at his own expense. BLACKFORXX is entitled to insure the conditional commodities against theft, a breakdown of the machine, water, fire and other damage, unless the customer can prove that he has taken out the relevant insurance himself.

- 3) The customer must neither pledge nor assign the delivery items as a security.
- 4) The customer shall immediately inform BLACKFORXX about any attachments, seizures or other acts of disposition effected by third parties. The costs of lifting such measures shall be borne by the customer.
- 5) The customer is entitled to re-sell the delivery items in the ordinary course of business with the title to the ownership being reserved or to allow third parties to use them for valuable consideration. He assigns herewith to BLACKFORXX all claims against his customers or third parties arising from the resale of the goods or the transfer of use, such claims amounting to the sum invoiced for the initial sale of the conditional commodity plus 20 %, irrespective of, whether the delivery items are passed on without being processed or after the processing, and without the transaction requiring any specific notice of assignment in individual cases. The customer is authorized to collect these accounts also after the assignment has been made, although it does not affect BLACKFORXX's power to collect these accounts itself. BLACKFORXX may exercise this right if the customer does not meet his payment commitment towards BLACKFORXX or if insolvency proceedings against the customer have been applied for. If a default in payment occurs BLACKFORXX can demand that the amounts due to BLACKFORXX shall be paid into an agency account named by BLACKFORXX. Moreover, BLACKFORXX can also demand that the customer's debtors make their payments to BLACKFORXX, that the customer shall inform BLACKFORXX about the names of the debtors of the assigned accounts for this purpose and that the assignment be disclosed to the debtors.
- 6) If the account receivable from the re-sale cannot be assigned to the above extent, because the amount involved comes under a current account agreement between the customer and his customer, the balance of the current account relationship shall be deemed to have been assigned after the netting out in as much as the receivables from the resale are to be assigned in accordance with the above provisions. This security shall continue to exist until all claims of the customer against the third party have been settled.
- 7) Should the customer process, connect, mix or blend the conditional commodity with other goods not belonging to BLACKFORXX, BLACKFORXX shall acquire the co-ownership of the new commodity in the proportion of the conditional commodity's value compared with that of the other goods processed. As for the rest, the same provisions referring to the conditional commodity shall apply to the new goods as well, which become a conditional commodity in the sense of these terms of delivery.
- 8) If the customer violates the contract, especially by defaulting the payments, BLACKFORXX shall be entitled to claim the goods back after a written notice has been issued. Although the customer is under the obligation to hand the goods over, taking them back does not automatically imply a withdrawal from the supply agreement. In this case, the delivery period is suspended and BLACKFORXX reserves the right to resume the supplies after the cause of the frustration has been removed or the customer has provided a security, with the delivery period then being reconfirmed and reinstated.

9) At the customer's request, BLACKFORXX shall undertake to release any securities to which BLACKFORXX is entitled in excess of 20 % of the value of the claims to be secured.

10) If the law governing the territory where the delivery items are located does not allow the implementation of the above agreement on the provision of collateral, and if the law allows BLACKFORXX to secure other rights of the delivery item, BLACKFORXX may exercise all rights of this kind.

11) The customer shall assist BLACKFORXX with the implementation of all measures that BLACKFORXX may take to protect its property rights or any other right as regards the delivery item.

VIII. Liability for defects, Liability

1) Used items are not under warranty, except if BLACKFORXX and the customer agree otherwise in writing in the contract.

2) Any claims for damages of the customer, irrespective of the legal grounds on which they are based, shall be excluded, including damage not affecting the delivery item as such (e.g. the loss of use and production, lost profits or any other consequential damage). This exclusion of liability shall not apply in the event of malicious intent or gross negligence on the part of BLACKFORXX and when essential contractual duties have been violated. If essential contractual duties have been violated, BLACKFORXX shall only be liable for the contract-typical and reasonably foreseeable damage, except in cases of malicious intent or gross negligence.

The exclusion of liability shall not apply to those cases, where as a result of a faulty delivery item the liability for personal injury or damage to privately used objects is covered in accordance with Articles §§ 1 and 4 of the [German] Product Liability Act (Produkthaftungsgesetz). Nor shall the exclusion of liability apply when certain conditions have been guaranteed and this guarantee is intended to insure the customer against damage not directly affecting the delivery item.

And finally, the exclusion of liability shall not apply if BLACKFORXX has culpably violated its duties and caused harm to the objects of legal protection human life, limb and health.

X. Governing law

All contracts are governed by German law, with the UN agreement about contracts for the international sale of goods (CISG) being excluded.

XI. Place of jurisdiction and performance

The civil courts of Hamburg shall be responsible for all and any disputes arising from the contract, also for bill and cheque enforcement proceedings as well as arrest and injunction proceedings. This shall not apply if an exclusive place of jurisdiction is

specified. BLACKFORXX is also entitled to opt for a court having jurisdiction over the customer.

The place of performance for the services to be rendered by both contracting parties is Stuhr.

BLACKFORXX GmbH
Stuhr