

## Terms and conditions for the sale and repair of industrial trucks, spare parts, and replacement parts

### I. Scope of application and form

- 1) Unless otherwise agreed in writing, these general terms and conditions for sales and repairs ('**TCSR**') govern the sale of industrial trucks, spare parts, and replacement parts ('**Goods**') and the provision of repair services ('**Repairs**') by BlackForxx GmbH, Harpstedter Strasse 85, 28816 Stuhr ('**BlackForxx**'). Where the subject matter of a contract within the scope of applicability of these TCSR relates to the sale and/or supply of movable property, these TCSR apply irrespective of whether BlackForxx manufactures the relevant movable property itself or procures it from suppliers (cf. sections 433 and 650 of the German Civil Code (BGB)).
- 2) These TCSR apply to the exclusion of all other terms and conditions. Any diverging, contradictory, or supplementary general terms and conditions of the contractual partner ('**Client**'; the '**Parties**' for joint references to BlackForxx and Client) become part of the contract only if and to the extent BlackForxx has expressly consented to their application in writing. This requirement of consent applies under all circumstances, including, but not limited to, cases where BlackForxx is aware of Client's general terms and conditions and performs its contractual obligations to Client without reservation.
- 3) These TCSR apply to
  - a) any natural person, legal entity, or partnership with legal capacity that concludes a contract with BlackForxx in the performance of their trade, business, or profession (entrepreneur as defined by section 14 BGB) and
  - b) any legal entity incorporated under public law or any special-purpose fund under public law (*öffentlich-rechtliches Sondervermögen*).
- 4) Unless otherwise agreed, these TCSR apply as in effect at the time when the order was placed or the offer accepted by Client, or in the latest version made available to Client in text form (as defined in section 126b BGB); they also apply as a framework for equivalent future contracts without the need for BlackForxx to explicitly refer to these TCSR again in each individual case.
- 5) Legally relevant declarations and notifications by Client in relation to the contract (e.g. specifications of deadlines, notifications of defects, notifications of withdrawal from the contract, or purchase price reduction), must be made in writing within the meaning of these TCSR, i.e. in written form or text form (e.g. by letter, email, fax). Statutory requirements of form and other verification requirements, especially in case of doubt concerning the authentication of the issuer of a declaration or notification, remain unaffected.
- 6) Any reference to the applicability of statutory provisions is made purely for the avoidance of doubt. Statutory provisions thus also apply where no reference to this effect has been made, to the extent that they are not directly varied or explicitly excluded by these TCSR.

### II. Formation of contract

As a rule, a contract is formed when BlackForxx issues a written confirmation of an order placed by Client; ('**Formation of Contract**'). If acceptance by Client of an offer is subject to a deadline, a contract is formed only if the offer is accepted before expiry of the deadline. If Client's acceptance is not submitted in time or does not match the offer, it is treated as the placement of a new order by Client with BlackForxx and a contract is formed only if this order is confirmed in writing by BlackForxx. If Goods are purchased for resale by Client to consumers, BlackForxx must be informed accordingly in writing before the contract is formed.

### III. Delivery of Goods and performance of services

- 1) The contractual obligations of BlackForxx are set out in the order confirmation or offer, in conjunction with these TCSR. Any ancillary agreements or modifications are valid only if

they are agreed in writing. Specifications relating to BlackForxx Goods, for example in advertisements, data sheets, catalogs, on BlackForxx's web pages, or in documentation forming part of any offer (**'STILL Information on Goods'**), including, but not limited to, images and illustrations, weights, and metrics such as speed, fuel consumption, and operating costs are estimates with a certain margin of tolerance and do not guarantee any specific properties.

2) BlackForxx Information on Goods, cost estimates, drawings, and technical documentation or other technical information must not be used without BlackForxx's consent (except to install, take into service, operate, and maintain the Goods) nor copied, reproduced, shared with third parties, or published. BlackForxx retains the copyrights on all documentation.

#### **IV. Prices and payment**

1) Subject to the provisions of subclause 2), current prices at the time of the Formation of Contract apply. Prices for Goods are specified as FCA Storage Location (Incoterms 2020), excluding VAT at the applicable statutory rate. For the purposes of these TCSR, **'Storage Location'** refers to the BlackForxx location that has been specified in the order confirmation or offer as supplying the Goods for pick-up or shipping. BlackForxx is entitled to charge a € 10.00 administration fee for orders with a value of less than € 50.00. Where Goods are to be shipped by BlackForxx (**'Shipment Sale'**), Client bears the cost of transport from the Storage Location or from the warehouse and the cost of any transport insurance that Client may wish to take out, unless agreed otherwise. The cost of transport and any insurance premiums are either invoiced to Client by the transport service provider instructed by BlackForxx, if Client has a contract account with the provider, or invoiced to Client by BlackForxx and stated as a separate item on the order invoice.

2) Unless specifically agreed otherwise, payments for industrial trucks are due against advance payment and payments for spare parts, replacement parts, rent or Repairs are due in full forthwith upon receipt of the invoice; payment must be made using the BlackForxx bank account details specified on the relevant invoice. Discounting and collection costs are borne by Client.

3) Failure to comply with the aforementioned payment periods or an agreed payment date puts Client in default without the need for a demand notice to be issued. For the duration of the default, interest at the statutory default interest rate is applied to the amount due. Claims to commercial default interest (pursuant to section 353 HGB) remain unaffected. The right to assert further claims for loss or damage incurred as a result of the default remains reserved. BlackForxx also reserves the right to charge an additional fixed default penalty of €40.00. This penalty is offset against the amount of compensation for damages owed if and to the extent the claim for damages is based on legal costs.

4) Client has a right of retention in respect of claims raised by BlackForxx only to the extent that Client's counterclaim has been confirmed by a non-appealable court decision, is undisputed, or has been accepted by BlackForxx. The right to offset claims of BlackForxx is limited to counterclaims of Client that arise from the same contract, or, if arising from other contractual relationships, to counterclaims that are undisputed, have been confirmed by a non-appealable court decision, or have been accepted by BlackForxx. In the event that deliverables are defective, Client's counterclaims, especially those set out in clause IX. 2) sentence 4 of these TCSR, remain unaffected.

5) Client may not assign its claims against BlackForxx to anyone else.

6) If it becomes clear after Formation of Contract that BlackForxx's claim to the agreed consideration is at risk due to Client's inability to meet its obligations, BlackForxx is entitled to withdraw from the contract in accordance with the statutory provisions concerning refusal of performance and – where applicable – after setting a deadline.

#### **V. Delivery period**

1) The delivery period for Goods commences upon Formation of Contract, but not until Client has made available all required documentation, authorizations, and information,

and/or made any required advance payments or down payments. Delivery is deemed to have been made in time if, before the end of the delivery period, the Goods are available for collection FCA Storage Location (Incoterms 2020) from BlackForxx (**'Readiness for Collection'**) or, in case of a Shipment Sale, the Goods are available for shipping (**'Readiness for Shipping'**), and Client has been notified of Readiness for Collection or Shipping. Adherence to the delivery period requires Client to meet its contractual obligations and obligations to cooperate.

2) BlackForxx reserves the right to amend the delivery period if changes concerning the Goods that constitute the subject matter of the contract are requested by Client after Formation of Contract.

3) The delivery period is extended appropriately in the event of labor disputes (especially strikes and lockouts) or unforeseen, unpreventable incidents outside BlackForxx's control (e.g. disruption of operations, disruption of telecommunications, government intervention, delays in the supply of key raw materials, seizure of assets, disruption of energy supply, war, unrest, embargo, epidemic, pandemic, or natural disaster) that have a demonstrable, material impact on the production, completion, delivery, or handover of the Goods. The same applies if such circumstances arise at a sub-supplier's business. BlackForxx cannot be held responsible for delays in connection with the aforementioned circumstances even if it was already in delivery default when these circumstances arose. In the event that BlackForxx is unable to meet an agreed delivery period, BlackForxx must notify Client without undue delay and specify the expected revised delivery period. If it is impossible to perform the contractual obligation even within the revised delivery period, BlackForxx is entitled to withdraw from the contract in full or in part; any consideration already executed by Client will be refunded by BlackForxx without undue delay.

4) If collection or shipping (in the case of a Shipment Sale) is delayed at the request of Client, the resulting warehousing cost will be charged to Client starting one month after notification of Readiness for Collection or Readiness for Shipping; the minimum charge is 0.5 percent of the invoice amount per month (charges may be calculated pro rata) if the Goods are being stored at the Storage Location and the total charge is capped at 5 (five) percent of the invoice amount, but BlackForxx reserves the right to assert claims for higher warehousing costs that will be offset against any costs that have already been charged. Client has the right to provide evidence of lower warehousing costs for the Goods. However, after setting an appropriate deadline and notifying Client of it in writing, BlackForxx has the right to otherwise dispose of the Goods.

5) Fulfillment of the contract is subject to the performance of contractual obligations not being impeded or blocked by national or international regulations including, but not limited to, export control regulations, embargoes, and other sanctions. The Parties undertake to provide all the information and documents required for export/shipment/import. In the event of delays caused by export checks or license procedures, delivery periods and delivery dates are suspended. If the required licenses are not granted, the contract is deemed to have not been formed with regard to the parts affected; in that case and in the case of delivery delays as described in clause XI. of these TCSR, claims for compensation will not be allowed.

## **VI. Packaging**

1) The taking back of packaging material is excluded for packaging that is required to be disposed of via Germany's official dual waste disposal system (*Duales System*) or a similar system (system-integrated packaging) that has been authorized by the competent local authority in accordance with the German Packaging Act (VerpackG) as amended. The taking back of packaging material is also excluded in cases where BlackForxx uses a suitable waste removal company for disposal in accordance with the VerpackG as amended. In such cases, Client is obliged to retain the packaging and hand it over, completely emptied, to the waste removal company.

2) If it is agreed between BlackForxx and Client that Client waives its right to the taking back of packaging by BlackForxx in exchange for payment of a fixed disposal fee, Client is required to hand over the packaging to an authorized waste disposal company that

guarantees proper disposal in accordance with the provisions of the VerpackG.

## **VII. Transfer of risk**

- 1) Delivery is made from the Storage Location, either by handover of the Goods to Client or Client's transport agent ('**Collection**') or by handover to a transport agent specified by BlackForxx ('**Shipping**'). The FCA 'Storage Location' (Incoterms 2020) delivery terms apply. For the purposes of these TCSR, the term '**Transport Agent**' describes anyone instructed to transport the Goods (e.g. a transport company or freight forwarder) or any other person or organization that has been appointed to transport the Goods.
- 2) For both Collection and Shipping, the risk of accidental loss and accidental deterioration and the risk of delay is transferred to Client as soon as the Goods have been handed over to Client or the Transport Agent. The same applies in the event of partial deliveries or if BlackForxx is also providing other services.
- 3) If the Collection is not made on the agreed date, BlackForxx has the right to ship the Goods at the expense and risk of Client.
- 4) If the Collection or, in the event of a Shipment Sale, the Shipping is delayed due to circumstances for which Client is responsible, the risk is transferred to Client on the day that Client was notified of Readiness for Collection or Readiness for Shipping.
- 5) If Client falls into default of acceptance or payment default, or if Client refuses to accept the ordered Goods definitively and in earnest, BlackForxx has the right, after issuing a written demand notice and setting an appropriate deadline, to withdraw from the contract and claim for damages.
- 6) Goods that are ready for Collection or have been shipped must be accepted by Client even if they have defects, provided that such defects are not material; the rights set out in clause IX. of these TCSR remain unaffected.

## **VIII. Retention of title**

- 1) BlackForxx retains title to the sold Goods until all current and future amounts payable under the contract of sale and any ongoing business relationship ('**Secured Claim**') have been paid in full ('**Reserved-Title Goods**'). The retention of title continues even when amounts payable are part of a running account and the account balance has been calculated and accepted.
- 2) Client is obliged to treat Reserved-Title Goods with care and insure them, at its own expense, against theft, machinery breakdown, water, fire, and other damage. Client must ensure that maintenance work and inspections are performed at the required intervals at Client's expense.
- 3) Reserved-Title Goods must not be pledged to third parties or assigned to third parties as collateral until the Secured Claims have been paid in full.
- 4) Client must notify BlackForxx in writing, without undue delay, of any attachment, seizure, or other disposition of Reserved-Title Goods by third parties. Client bears the cost for removing such measures.
- 5) Within the course of ordinary business, Client has the right to sell on Reserved-Title Goods or to transfer them to third parties for use against a consideration, subject to retention of title by Client. However, Client hereby assigns to BlackForxx all claims it may have against its buyers or third parties from the onward sale or transfer for use, with such claims being either for the invoice amount of the original sale of the Reserved-Title Goods (including value added tax) or for an amount equivalent to the proportionate ownership stake of BlackForxx plus 10 percent, depending on whether or not the Reserved-Title Goods were further processed before being sold or transferred; no further declaration of assignment will be required on a case-by-case basis. BlackForxx accepts the assignment. The obligations of Client stated in clause VIII. 4) of these TCSR also apply to the assigned claims. Client retains the authority to collect payment in respect of the assigned claims including after the assignment has taken effect. BlackForxx's right to collect payment in respect of such claims itself remains unaffected; however, BlackForxx will exercise this right only if Client does not fulfill its payment obligations towards BlackForxx, if Client's ability to perform its contractual

obligations is compromised, or if BlackForxx asserts its retention of title by exercising any of the rights set out in clause VIII. 8) of these TCSR. From the point in time at which a payment default occurs, BlackForxx is entitled to demand that the debtor of the claim pay the amount owed to BlackForxx into an escrow account. BlackForxx may also demand that Client's debtors make payments to BlackForxx, that Client disclose to BlackForxx for this purpose the names of the debtors of the assigned claim, and that Client hand over the relevant documents and notify the affected debtors of the assignment. In this scenario, BlackForxx is also entitled to revoke Client's right to sell on or process the Reserved-Title Goods.

6) If the claim relating to an onward sale cannot be assigned to the extent specified above because the claim is subject to a running account arrangement between Client and its customers, the netted balance of this running account arrangement is treated as having been assigned to the same extent that the claim from the onward sale ought to be assigned under the above provisions. This security arrangement remains in place until all claims of Client against the third party have been settled.

7) The retention of title also extends to the full value of any products created by processing, combining, mixing, or blending the Reserved-Title Goods, with BlackForxx being treated as the manufacturer. If Client processes, combines, mixes, or blends Reserved-Title Goods with other items that are not property of BlackForxx, BlackForxx acquires an ownership stake in the resulting product that reflects the proportion of value that the Reserved-Title Goods accounted for relative to the other processed items at the point when they were processed, combined, mixed, or blended. In all other respects, the same provisions apply to the newly created product as to the Reserved-Title Goods; it is treated as a Reserved-Title Good for the purposes of these terms and conditions.

8) In the event of a breach of contract by Client, especially in case of a payment default, BlackForxx has the right to withdraw from the contract in accordance with statutory provisions and to demand the return of the Reserved-Title Goods under the retention of title. The demand for return does not constitute a declaration of withdrawal in and of itself; rather, BlackForxx has the right to demand the return of the Reserved-Title Goods while merely reserving the right to withdraw from the contract. The expiry of the delivery period is suspended in this scenario. In the event of a failure by Client to pay the purchase price owed, BlackForxx is entitled to exercise these rights only if an appropriate payment deadline issued by BlackForxx to Client has expired without payment being made, or if statutory provisions apply that dispense with the need to set such a deadline.

9) BlackForxx reserves the right to make a delivery to Client subject to reinstatement and resumption of the agreed delivery period, once the impediment to the performance of contractual obligations has been resolved or collateral has been provided.

10) In the event that the recoverable value of the collateral provided to BlackForxx exceeds the value of the claims protected by the collateral by more than 10 percent, BlackForxx will release collateral assets of its choice if requested to do so by Client.

#### **IX. Claims in connection with defects of quality and defects in title, limitation period for defects of quality**

1) BlackForxx is a trading company for used Goods. BlackForxx does not assume any warranty for used Goods.

2) In case BlackForxx sells new Goods in exceptional cases (e.g new spareparts), the following under 2) – 11) shall apply: Goods are free of defects of quality if, at the point in time when the risk is transferred, they match the contractually agreed quality (*Beschaffenheit*), are suitable for the contractually agreed use, and are handed over with any agreed accessories and instructions (including assembly and installation instructions) (**Subjective Requirements**). Where Goods require assembly, the Goods are deemed free of defects of quality if they meet the Subjective Requirements and have been assembled properly, or, in the event that they have not been assembled properly, if this fact is neither attributable to incorrect assembly by BlackForxx nor to any flaw in the instructions provided to Client by BlackForxx. Subjective Requirements are binding for BlackForxx only to the extent that they

have been agreed in writing in the order confirmation or offer. If no Subjective Requirements have been agreed, the Goods are deemed free of defects of quality if they meet the objective requirements upon transfer of risk. In derogation of section 434 (3) nos. 1–4 BGB, the **'Objective Requirements'** are based exclusively on the specification for the Goods that constitute the subject matter of the contract, as made publicly available by BlackForxx on <https://www.BlackForxx.de> (including sub-pages) at the time of Formation of Contract. If no specification for the Goods that constitute the subject matter of the contract is publicly available at the time of Formation of Contract, the Goods are deemed to meet the Objective Requirements if they are suitable for their usual purpose (section 434 (3) sentence 1 no. 1 BGB). For Goods that involve digital elements or other digital content, BlackForxx is obliged to provide and (as applicable) update the digital content only to the extent that this has been expressly included in an agreement on product specifications in accordance with this subclause 1).

3) If Goods are defective upon transfer or risk, Client's entitlement to subsequent performance extends to BlackForxx's choice of either free-of-charge delivery of Goods that are free of defects (Substitute Delivery) or free-of-charge rectification of the defect (Remedial Action). BlackForxx has the right to refuse to uninstall a defective Good and/or perform the reinstallation, if the installation did not form part of BlackForxx's originally agreed responsibilities; clause IX. 5) of these TCSR remains unaffected. BlackForxx has the right to make its subsequent performance conditional upon Client's payment of the purchase price. However, Client has the right to withhold a share of the purchase price that is proportionate to the defect. Client must always grant BlackForxx the necessary time and opportunity to carry out any Remedial Action or Substitute Deliveries that BlackForxx, at its reasonable discretion, deems to be required, and, in particular, must hand over defective Goods for inspection and facilitate access to the Goods; failure by Client to do so releases BlackForxx from its subsequent performance obligation.

4) BlackForxx is generally not liable for any defects that Client is aware of, or has failed to detect due to gross negligence, upon Formation of Contract. In order to be able to assert claims under warranty – with the exception of claims arising from a contract to provide a specified result (*Werkvertrag*) – Client must have properly fulfilled its duty to inspect the Goods and give notice of defects in accordance with section 377 HGB and, as applicable, section 381 HGB. If Goods are intended for installation or any other form of further processing, the Goods must always be inspected immediately before being processed. If a defect is identified upon handover or delivery, inspection, or at any later point in time, BlackForxx must be notified in writing without undue delay. In any event, obvious defects must be reported in writing within 7 (seven) working days of handover or delivery, while defects that were not discernible when the Goods were inspected must be reported in writing within 7 (seven) working days of being detected. Defects cannot be reported in writing any later than 12 (twelve) months after handover or delivery of the Goods. Outwardly identifiable transport damage must be reported in writing without undue delay upon handover or delivery of the Goods, while transport damage that is not visible from the outside must be reported in writing within 3 (three) days of handover or delivery of the Goods. Client must submit a notification of defects in writing and include any relevant documents and samples as well as photographs, if applicable. BlackForxx is under no obligation to return or store Goods that are sent back to BlackForxx without its advance consent. Client must not notify BlackForxx of defects of quality that are not material. If Client fails to properly inspect the Goods and/or report defects, liability of BlackForxx is excluded for any defects that were not reported in time or in the proper manner, in accordance with the relevant statutory provisions.

5) The following limitation periods apply for rights in relation to defects, with the exception of the cases specified in clause XI. subclauses 1) and 2) of these TCSR and the final seller's right of recourse (*Unternehmerrückgriff*) in cases of final delivery to consumers, which are subject to statutory limitation periods:

BlackForxx offers a warranty (limitation period for claims for defects) of 12 (twelve) months for Goods and Repairs in respect of defects of quality that existed upon transfer of risk.

Any Remedial Action or Substitute Deliveries are not subject to a separate warranty period but rather fall under the warranty period for the original Goods. However, where applicable, the warranty is extended by any interruption of operations caused by the Remedial Action or Substitute Delivery.

6) Insofar as defect of Goods or Repairs actually exists, BlackForxx bears or reimburses necessary and appropriate expenses for inspection and subsequent performance, including, but not limited to, costs for transport, road charges, labor, and materials, as well as deinstallation and reinstallation costs (if applicable), in accordance with statutory requirements. This does not include additional costs arising as a result of the fact that the Goods were subsequently transported to a different location from the contractually agreed place of performance. If the Goods are found to be not defective, BlackForxx may demand reimbursement from Client for costs incurred as a result of the unwarranted demand for rectification of defects (especially inspection and transport costs), unless it was impossible for Client to discern that there was no genuine defect.

BlackForxx may choose to carry out any Remedial Action or Repairs at the premises of BlackForxx, the Client, or the End Customer.

Replaced parts become the property of BlackForxx.

7) Rights of Client to assert claims for damages or reimbursement of futile expenses, including in case of a defect, apply only to the extent provided for in clause XI. of these TCSR and are otherwise excluded.

BlackForxx does not accept liability for damage caused by

- a) use of force,
- b) improper use,
- c) repair work carried out by personnel not authorized or trained by BlackForxx,
- d) use of oils or operating materials of unsuitable specifications, and
- e) parts not supplied by BlackForxx.

Moreover, BlackForxx accepts no liability for any breakdown of or damage to wearing parts that is attributable to normal wear and tear.

8) If Client is unable to use the supplied Goods for the contractually agreed purpose due to insufficient or inaccurate advice before or after Formation of Contract or as a result of breach of other ancillary obligations under the contract, and if BlackForxx is at fault for this, the provisions under clauses IX. and X. of these TCSR apply to the exclusion of all other claims of Client.

9) If the use of Goods that have not been modified in any way results in a violation of industrial property rights or copyrights, BlackForxx will, at its own expense, secure for Client the right to continue to use the Goods, or will modify the Goods in a way that is acceptable to Client and resolves the violation of industrial property rights or copyrights.

If the above is not achievable in an economically viable manner or within a reasonable period of time, Client has the right to withdraw from the contract. BlackForxx also has the right to withdraw from the contract under the aforementioned circumstances.

In addition, BlackForxx indemnifies Client against any claims of the relevant property right owners that are undisputed or have been confirmed by a non-appealable court decision.

BlackForxx's obligations in the event of a violation of industrial property rights or copyrights are limited to the above provisions.

They apply only if

- a) Client notifies BlackForxx without undue delay of any claims for violation of industrial property rights or copyrights,
- b) Client provides appropriate assistance to BlackForxx in the defense against asserted claims or facilitates the implementation of the modification measures described above,
- c) BlackForxx retains the right to pursue any defensive measures, including out-of-court settlement, and
- d) the defect in title did not arise from an instruction by Client.

10) In the event of a recourse by the final seller, it is assumed that the defect did not exist when the risk was transferred to Client – provided that Client inspected the Goods in

accordance with its duties under clause IX. above and did not report any defects in writing within the applicable notification period – unless such an assumption is incompatible with the nature of the Goods or the nature of the defect. If Client asserts recourse claims, Client must accept being treated by BlackForxx as if Client had exploited all legally permissible contractual options vis-à-vis its counterparty to minimize the effort and financial expense arising from the counterparty's warranty claims (e.g. refusal of subsequent performance on grounds of disproportionality, or limitation of the reimbursement of expenses to a reasonable amount). Claims arising from a final seller's right of recourse are excluded in cases where the defective Goods were further processed by Client or a previous seller, e.g. as a result of the Goods being integrated into another product. Recourse claims can be asserted only to the extent that Client has not made any agreements with its buyer that go beyond statutory provisions in relation to defects.

If the final seller's recourse arises from the final delivery of the Goods to another business, BlackForxx's liability is limited to willful acts and grossly negligent behavior; clause XI. 5) of these TCSR applies with the necessary modifications.

The special statutory provisions relating to the reimbursement of expenses in the case of a final delivery of newly manufactured Goods to a consumer (final seller's recourse pursuant to sections 478, 445a and 445b, and sections 445c, 327 (5) and 327u BGB) remain unaffected in any case, unless an equivalent compensation arrangement has been agreed.

11) If the Goods are equipped with a suitable and operable receiving device, BlackForxx has the right to remedy defects in the software of the Goods via remote access by establishing an 'over-the-air' connection. The same applies for the distribution of updates for such software. Any reduction in functionality occurring during this process does not constitute a defect.

#### **X. Rights of Client to withdraw from the contract or reduce the purchase price**

1) Client has the right to withdraw from the contract if it becomes impossible for BlackForxx to perform its contractual obligations in their entirety before the risk is transferred. If it is foreseeable that BlackForxx's ability to perform its contractual obligations is impeded only temporarily, Client is entitled to withdraw from the contract only if BlackForxx fails to perform its contractual obligations within a reasonable period of time of the impediment being removed.

2) Moreover, Client has the right to withdraw from the contract if part of an order for a number of Goods of the same type becomes impossible to fulfill and it is in the legitimate interest of Client to reject a partial delivery. If this is not the case, Client may reduce the consideration proportionately. Relevant statutory provisions must be applied when calculating the purchase price reduction, and the sole deciding factor for the reduction is Client's interest in the use of the Goods.

If performance becomes impossible while Client is in default of acceptance or due to circumstances for which Client is responsible, Client remains obliged to pay the consideration.

3) In addition, Client is entitled to withdraw from the contract,  
a) if an appropriate deadline was issued to BlackForxx in writing for the rectification of a defect of new Goods or Repairs in accordance with the provisions of these terms and conditions and BlackForxx failed to meet its subsequent performance obligation before expiry of the deadline. In such a scenario, relevant order and delivery times for spare parts required for Remedial Action must be taken into account when setting the deadline for the subsequent performance; or  
b) if the subsequent performance has definitively failed, subject to a minimum of two attempts having been granted.

In the aforementioned cases, Client may choose to reduce the purchase price proportionately instead of withdrawing from the contract.

4) Client's right to withdraw from the contract is excluded if any defects remaining after subsequent performance are not material, which is assumed – until proven otherwise – if the new Goods are still suitable for their intended purpose. In this scenario, Client has the right



to reduce the purchase price. Relevant statutory provisions must be applied when calculating the purchase price reduction, and the sole deciding factor for the reduction is Client's interest in the use of the Goods.

5) A breach of obligation that does not constitute a defect provides grounds for Client to withdraw from or terminate the contract only if BlackForxx is responsible for the breach of obligation. The right of Client to terminate the contract without giving notice or reasons ('*freie Kündigung*', especially within the meaning of sections 650 and 648 BGB) is excluded. In other respects, relevant statutory provisions and legal consequences apply.

## **XI. Liability**

1) BlackForxx's liability for payment of damages, irrespective of the legal basis, is limited to willful intent or gross negligence under the rules for fault-based liability. In cases of ordinary negligence, BlackForxx can – subject to statutory limitations of liability (e.g. same diligence as applied to own affairs; non-material breach of obligations) – be held liable only for

- a) damage arising from death or personal injury,
- b) damage arising from the breach of a material contractual obligation (i.e. a contractual obligation, the fulfillment of which is what makes the proper performance of the contract possible and the compliance with which the counterparty habitually relies on and is entitled to rely on); in this scenario, BlackForxx's liability is limited to compensation for the foreseeable, typically occurring damage.

2) The limitations of liability specified in subclause 1) do not apply in cases where a defect was fraudulently concealed, where a guarantee for the quality of the Goods (*Garantie für die Beschaffenheit der Ware*) has been provided (although, in this case, the liability is limited to the extent to which the guarantee aims to protect Client against the specific damage that has been incurred), and where Client asserts claims under the German Product Liability Act.

3) The aforementioned provisions do not reverse the burden of proof.

4) Further claims, including claims for indemnity and claims for compensation for indirect and consequential damage, are excluded, save for the cases specified in clause XI. subclauses 1) and 2) of these TCSR.

5) The limitations of liability set out in this clause XI. also apply for breaches of obligation by persons (including in their favor) for which BlackForxx is responsible in accordance with statutory provisions, and in relation to corporate officers of Client and agents engaged by Client to assist in the performance of obligations (*Erfüllungsgehilfen*).

## **XII. License**

1) Any software included with the Goods ('Embedded Software') and any associated documentation, including, but not limited to, all copyrights, patents, brands, trade secrets, and other intellectual property rights are and remain the exclusive property of BlackForxx or their licensors. The software is licensed, not sold. BlackForxx grants Client a revocable, non-exclusive, non-transferable license for the use of the Software and the associated documentation. This license is granted exclusively in relation to the use of the Goods. If Client is a reseller, Client is permitted to sublicense the Software as part of the onward sale.

2) Client will not, itself or by permission to third parties, (i) copy or use the Software for other purposes than that specified in subsection 1) above or as permitted in a separate license agreement; (ii) modify or create work derived from any part of the Software, disassemble, decrypt, decompile, or reverse engineer any part of the Software, to the extent that applicable laws provide otherwise, and/or (iii) remove, modify, or make unidentifiable any proprietary notices (including copyright and trademark notices) of BlackForxx or its affiliated companies (section 15 of the German Stock Corporation Act (AktG) et seq.). The Software is made available to Client in its current state without any assurances regarding its continuous availability and, unless agreed otherwise in writing, without provision of updates and with any potential errors and defects it may contain.

### **XIII. Data protection**

The Parties undertake to adhere to applicable data protection legislation and to ensure that any processing of personal data for the purposes of the fulfillment of the contract and the performance of contractual obligations is carried out in compliance with such legislation. Further information in relation to the handling of personal data and data protection in general are available at [Rechtliche Hinweise - BlackForxx GmbH](#).

Supplementary information and agreements may be required in connection with specific products and appropriate notice of this will be given in advance of the data processing.

### **XIV. Confidentiality**

1) Client undertakes to treat all information that it becomes aware of as a result of the contractual relationship with BlackForxx ('**Contractual Relationship**'), including prices, illustrations, plans, drawings, calculations, instructions for execution, product specifications, and any other information relating to inventions, ideas, concepts, drafts, and designs (collectively '**Information**') as strictly confidential, and undertakes not to share it with third parties, not even if a confidentiality agreement has been concluded with the third party. The German Law on the Protection of Trade Secrets (GeschGehG) applies based on the premise that all Information of which Client has become aware as part of the Contractual Relationship is treated as trade secrets in accordance with clause XV. 3) of these TCSR. Client undertakes to ensure by means of appropriate contractual arrangements that all employees and agents (*Erfüllungsgehilfen*) of Client who are involved in the Contractual Relationship are obliged to maintain confidentiality in accordance with the provisions of this clause XV. Client agrees to provide written proof of this if requested to do so by BlackForxx.

2) Client undertakes to use Information solely for the purposes of the relevant Contractual Relationship, not to use it for any commercial purposes, and not to make it the subject of any industrial property rights.

3) The above undertakings do not apply to Information that Client can prove to have had legitimate knowledge of before BlackForxx shared it with Client, Information that was publicly available before BlackForxx shared it with Client, Information that has become publicly available since BlackForxx shared it with Client (but where Client was not responsible for the Information becoming publicly available), and Information that was shared with Client at any point in time by a third party who, to the best of Client's knowledge, was authorized to do so. The above undertakings also do not apply in cases where Client is required by law to disclose Information as part of judicial, regulatory, or other proceedings.

4) Any reference by Client to an existing business relationship with BlackForxx and any use of the name 'BlackForxx' for advertising purposes is not permitted unless BlackForxx has given its explicit consent in advance.

5) This confidentiality obligation with all applicable limitations continues to apply for a period of 10 (ten) years from the point in time at which the relevant contract concluded between BlackForxx and Client has been fulfilled by both Parties, unless the law provides for even more extensive confidentiality requirements.

### **XV. VAT Treatment**

1) The VAT treatment of the supplies is based on the respective applicable VAT law. In case of cross-border supplies of goods and supplies of services, BlackForxx will make use of existing VAT exemption options.

2) In case of cross-border supplies of goods and supplies of services within the EU, the Client is obliged to inform BlackForxx without delay about the relevant VAT identification number, and in case of supplies of goods and supplies of services outside the EU to provide the relevant tax number, company number. He will cooperate to the extent necessary in providing the further evidence required to obtain VAT exemption in accordance with German or foreign VAT law. In particular, the Client is obliged to certify receipt of the delivery in the EU member state by means of a so-called confirmation of receipt and to use the procedure and/or form provided by BlackForxx. In the event that the confirmation is not provided, the

applicable German VAT will be charged.

3) German or foreign VAT to be paid by BlackForxx will be invoiced in addition to the net price and is to be borne by the Client. The VAT is due and payable together with the net price.

4) If settlement is to be made by means of a VAT credit note, the Client will issue the invoice on behalf of BlackForxx by means of a VAT credit note (self-billing) with all details that ensure the legally correct disclosure of the VAT, within the legally prescribed periods. The VAT for the services rendered shall be incurred at the respective VAT rate in accordance with the currently applicable regulations.

5) If a supply treated as subject to VAT is subsequently qualified as VAT exempt, non-taxable or as reverse charge turnover, STILL will amend the accounting documents, the Client will reimburse the excess turnover tax paid on first demand.

#### **XVI. Governing Law**

The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and excluding the conflict-of-laws provisions.

#### **XVII. Jurisdiction and place of performance**

1) The place of jurisdiction for all legal disputes arising directly or indirectly from the contract, including proceedings relating to an attachment order or interim injunction, is Hamburg. This does not apply in cases where an exclusive place of jurisdiction is provided for. BlackForxx also has the right to choose the court of competent jurisdiction for Client.

2) The place of performance for the contractual obligations of the Parties is the specified Storage Location and, for all other purposes, Stuhr, unless a different place of performance has been agreed in writing by STILL and Client.

BlackForxx GmbH

Last revised: 09/2023