

General Sales Conditions of bAKA Handling Solutions GmbH

1. Scope of Application

1. These general sales conditions shall apply for the entire business correspondence between bAKA Handling Solutions GmbH (hereinafter: "**bAKA**") and the orderer, even if they are not mentioned anymore in later contracts. They shall apply accordingly to work and services. Acceptance of the delivered products shall be replaced by the acceptance of work and receipt of the service in case of services.
2. Conditions of the orderer that are contrary, additional to or deviating from these sales conditions shall not become part of the contract unless bAKA has agreed to their application in writing. These general sales conditions shall apply even if bAKA performs a delivery to the orderer knowing of the contrary, additional or deviating conditions.
3. Agreements between bAKA and the orderer for execution of a contract that is contrary, additional to or deviating from these general sales conditions must be recorded in the contract in writing. This shall also apply to any revocation of this requirement of written form.
4. Rights that bAKA has according to the statutory provisions or other agreements beyond these general sales conditions shall not be affected.

2. Conclusion of the Contract

1. Offers by bAKA are subject to confirmation and non-binding
2. Figures, drawings, weight, dimension, performance and consumption indications, as well as other descriptions of the projects from the documents that are part of the offer, shall only be approximates unless they are expressly called binding. They are not an agreement or guarantee of a corresponding property or durability of the products unless expressly agreed on as such in writing.
3. Expectations of the orderer regarding the products or their use shall also not be a property of the products unless they have been expressly agreed on as such in writing.
4. bAKA reserves all property, copyrights and other protective rights in all offer documents. Such documents must not be made accessible to third parties. The orderer shall release all offer documents to bAKA without delay on the request of bAKA if they are no longer needed in the proper course of business. This shall apply accordingly specifically for all other documents, drafts, samples, patterns and models.
5. An order shall only become binding when confirmed by bAKA by written order confirmation within an appropriate period of time or when bAKA performs the order, specifically when bAKA performs the order by sending out the products. An EDP-supportedly generated order confirmation, in which the signature and reproduction of the name are missing, is deemed binding. Where the order confirmation contains any obvious errors, writing or calculation errors, it shall not be binding for bAKA.
6. The silence of bAKA upon offers, orders, requests and other statements of the orderer shall only be deemed consent when this has been agreed in writing beforehand.
7. If the asset situation of the orderer essentially deteriorates or if the justified application for opening insolvency or comparable proceedings over the assets is rejected due to lack of assets, bAKA shall have the right to declare rescission of the contract wholly or in part.

3. Scope of the Delivery

1. Written order confirmation from bAKA shall be essential for the scope of the delivery. Changes to the scope of the delivery by the orderer shall require written confirmation from bAKA to be effective. Construction and form changes to the products are reserved where they are deviations common in the industry or where the deviations are within the DIN tolerances or where the changes are not considerable and are reasonable for the orderer. This shall apply accordingly for the selection of the material, the specification and the build.
2. Delivery in parts is permissible.

4. Delivery Time

1. The agreement of delivery periods and dates shall require written form. Delivery periods and dates shall be non-binding where not first designated as binding by bAKA in writing.
2. The delivery period shall commence with dispatch of the order confirmation by bAKA, but not before complete provision of the documents, approvals and releases to be procured by the orderer, clarification of all technical questions and the proper provision of agreed collateral (e.g. Letter of Credit) or the receipt of an agreed downpayment. If there is a delivery date, the delivery date shall be moved appropriately if the orderer does not provide the documents and approvals to be procured by him in time, does not grant releases on time, if not all technical questions are answered completely in time, if the orderer does not properly provide agreed collateral (e.g. Letter of Credit) or if the agreed downpayment is not received in full by bAKA. Compliance with the delivery time shall require the timely and proper performance of the other obligations of the orderer.
3. The delivery time is complied with if the products have left the factory by its end or bAKA has reported readiness for collection or shipment. Where the performance of acceptance is agreed on in writing from case to case, the delivery time is complied with when bAKA has informed the orderer of the readiness for acceptance by its end. Compliance with the delivery time shall be subject to the reservation of proper, specifically timely, supply of bAKA, unless bAKA is at fault for the reason of the improper supply. If not properly supplied itself, bAKA shall have the right to declare rescission of the contract. bAKA will inform the orderer without delay when bAKA makes use of its right to rescission and returns any previous services rendered by the orderer.
4. In case of default of delivery, the orderer shall have the right to rescission of the contract in case of default of delivery after unsuccessful expiration of an appropriate grace period that he has set for bAKA after occurrence of the default of delivery.
5. If bAKA has entered into a framework contract for future deliveries with fixed delivery periods with the orderer and the orderer does not call the products in time, bAKA shall have the right to deliver and invoice the products after unsuccessful expiration of an appropriate grace period set by bAKA, or to claim damages or reimbursement for expenses. The obligation to pay damages or reimburse for expenses shall not apply if the orderer is not at fault for the non-timely call of the products.

5. Border-Crossing Deliveries

1. At border-crossing deliveries, the orderer shall make any statements towards the relevant authorities and take any actions that are required for export from Germany and import into the target country, at least where they affect him, and shall specifically procure the documents required for customs treatment and the and meet the requirements of any export controls or other limitations of marketability.
2. The deliveries are made subject to the reservation that there are no obstacles to performance due to national or international provisions, specifically export control provisions or embargoes or other sanctions.
3. Delays due to export controls put delivery times out of effect.

6. Prices and Payment

1. Where nothing else has been agreed on in writing, the prices shall apply ex works and contain no shipping, packaging, unloading costs, insurances, statutory taxes, customs fees or other charges. The costs arising in this respect, specifically the costs for packaging and transport of the products, are invoiced separately. Statutory VAT shall be indicated separately in the invoice at the statutory amount applicable on the day of invoicing.
2. Orders for which fixed prices have not expressly been agreed on and for which the delivery time is specified to a specific point of time that is at least two months after conclusion of the contract shall be charged by bAKA at the list prices applicable on the day of the respective delivery.
3. The delivery price shall be payable net within 14 days of the invoice date unless something else has been agreed on in writing. The payment day is the day on which the respective amount is finally credited to bAKA;

specifically, in case of payment by direct debit, the fulfilment effect shall arise with crediting without reservation, subject to the dissolving condition that the posting is not reversed. In case of default of payment, the orderer shall be liable for default interest at 9 % points above the respective basic interest rate p.a. Further claims of bAKA remain unconsidered.

4. For foreign transactions, the payment shall take place before delivery, deviating from paragraph 3, unless something different was agreed on in writing before.
5. Cheques and payments by credit card or acceptance of collateral, specifically a Letter of Credit, shall be in lieu of performance. The performance effect shall only occur when the respective amount has been finally credited to bAKA. The orderer shall assume the costs arising due to payment by cheque, specifically cheque expenses.

7. Acceptance

1. The orderer shall be obliged to accept the products if acceptance is agreed on in writing. Either party shall have the right to demand partial acceptances. The parties draw up an acceptance log about the acceptance, which must be signed by both parties.
2. Written acceptance shall be equal to the orderer not accepting the products within an appropriate period set by bAKA even though he is obliged to do so, or if he takes the products in use or sells them on.
3. Acceptance must not be refused for any inessential defects. The orderer specifically must not refuse acceptance when any agreed acceptance criteria are met.

8. Passing of Risk

1. The risk of accidental destruction and accidental deterioration shall pass to the orderer at the latest when the products are handed over to the person performing the transport or when they leave the warehouse of bAKA for the purpose of shipment. In case of collection by the orderer, the risk shall pass to the orderer when readiness for collection is reported. Sentences 1 and 2 shall also apply if the delivery is made in parts or if bAKA has assumed further services, i.e. the transport costs, setup or assembly of the products at the orderer's site.
2. If the orderer enters default of acceptance, bAKA may demand reimbursement for the resulting damage, including any additional expenses. Specifically, bAKA shall have the right to store the products at the expense of the orderer during default of acceptance. The costs for storage of the products are determined at 0.5% of the net invoiced amount per started calendar week as a flat rate. Further claims of bAKA remain unconsidered. The orderer shall have the right to prove that bAKA has incurred no or lower costs. This shall also apply if the orderer violates any other contribution obligations, unless the orderer is not at fault for the violation of other contribution obligations. The danger of accidental destruction or accidental deterioration of the products shall pass to the orderer at the latest at that time at which he enters default of acceptance. bAKA shall have the right to dispose of the products otherwise after unsuccessful expiration of a period set by bAKA and to supply the orderer with an appropriately extended delivery period.
3. If collection or shipment is delayed or if acceptance is agreed on in writing due to circumstances that are not due to the fault of bAKA, the risk passes to the orderer when readiness for collection, shipment or acceptance is reported.
4. The products are to be accepted by the orderer notwithstanding his claims for defects even if they have inessential defects.

9. Claims for Defects

1. The rights for defects of the orderer require that he inspects the delivered products without delay on receipt and, if acceptance is agreed on in writing, that he inspects them at acceptance, where reasonable also by test processing or test use, and that he reports any unresolved defects to bAKA without delay and no later than two weeks after receipt or, if acceptance is agreed on in writing, no later than two weeks after acceptance of the products. If acceptance has been agreed on in writing and the orderer has recognised any defects at ac-

ceptance, the orderer's right to subsequent performance, own performance, rescission and reduction due to recognised defects also requires that the orderer has reserved such rights for defects at acceptance. Hidden defects must be reported to bAKA in writing without delay after discovery. The orderer shall describe the defects in writing when reporting to bAKA. The orderer's claims for defects shall also require that planning, construction, assembly, connection, installation, commissioning, operation and maintenance of the products take place in compliance with the specifications, notes, directives and conditions in the technical notes, assembly, operating and usage instructions, planning design directives and other documents of the individual products, and that specifically maintenance is performed and documented properly and recommended components as well as recommended operating equipment such as oils and other lubricants are used.

2. If defects are documented on the products, bAKA shall have the right to subsequent performance by removal of the defect or delivery of a defect-free product, at his own choice. In case of subsequent performance, bAKA shall be obliged to assume the expenses required for subsequent performance, specifically transport, travelling, work and material expenses, where they do not increase by products having been taken to any other site than the delivery address. Staff and material costs the orderer asserts in this context shall be charged as incurred. Replaced parts shall become the property of bAKA and shall be returned to bAKA.
3. Where bAKA is not ready or able to perform subsequent performance for a documented defect, the orderer may, at his discretion, declare rescission of the contract or reduce the delivery price, notwithstanding any damages or expense reimbursement claims. This shall also apply if subsequent performance fails, is unreasonable for the orderer or delays beyond the appropriate periods for reasons due to the fault of bAKA.
4. The right to rescission of the orderer shall be excluded if he is unable to return the service received and if this is not due to the return being impossible according to the nature of the service received, due to the fault of bAKA, or if the defect only showed up at processing or conversion of the products. The right of rescission shall also be excluded where bAKA is not at fault for the defect and where the orderer is liable to pay reimbursement for damages instead of return.
5. There shall be no claims to defects for defects due to natural wear, specifically of wear parts, unsuitable or improper treatment, use, assembly, commissioning, use or storage or improperly performed changes or repairs of the products by the orderer or third parties. This shall also apply if the orderer uses any unsuitable operating media, specifically any unsuitable oils or lubrication grease, or if the orderer makes any constructional changes to the control, mechanics or electronics of the product that influence the product's function or has them performed by any third parties, or if the orderer uses the product on an unsuitable basis as well as for any defects due to the orderer's fault or if they are due to any other technical cause than the original defect or chemical, electrochemical or electrical influences that are not due to the fault of bAKA.
6. Claims of the orderer for reimbursement for expenses in lieu of damages instead of performance shall be excluded where the expenses wouldn't have been incurred by a reasonable third party as well.
7. bAKA shall not assume any guarantees, specifically no property or durability guarantees, where nothing else has been agreed on in writing from case to case.
8. The period of expiration for the orderer's claims for defects shall be one year. Where the defective products have been used for a building according to their common manner of use, and have caused it to be defective, or where there is a defect in a building, the period of expiration shall be five years. This shall also apply to any claims from tort due to defect of the products. The period of expiration shall commence at delivery of the products or, if acceptance is agreed on in writing, at acceptance. The reduction of the period of expiration shall not apply to the unlimited liability of bAKA for damage from violation of a guarantee or violation of life, body or health, for wilful intent or gross negligence or for product errors or where bAKA has accepted a procurement risk. A statement of bAKA for a claim for defects asserted by an orderer shall not be deemed entrance into negotiations about the claim or the circumstances founding the claim if the claim for defects is rejected by bAKA.

10. Liability of bAKA

1. bAKA shall be liable without limitation for any damage from the violation of guarantees or the violation of life, body or health. This shall also apply to wilful intent and gross negligence or where bAKA has accepted a procurement risk. For simple negligence, bAKA shall only be liable where essential obligations are violated that result from the nature of the contract and that are of special importance for achievement of the contractual purpose. In case of violation of such obligations, default and impossibility, the liability of bAKA shall be limited to such damage that must be typically expected in the scope of this contract. Mandatory statutory liability for product errors shall be unaffected.
2. Where the liability of bAKA is excluded or limited, this shall also apply to personal liability of the employees, workers, colleagues, agents and servants of bAKA.

11. Product Liability

1. The orderer shall not change the products and shall specifically not change or remove any present warnings about dangers at improper use of the products. In case of violation of this obligation, the orderer shall release bAKA from product liability claims of third parties in the internal relationship unless the orderer is not at fault for the error causing the liability.
2. If bAKA has to perform a product recall or warning due to a product defect of the products, the orderer shall contribute to the measures that bAKA considers necessary and suitable at his best efforts if he is not the end customer and support bAKA specifically in determination of the required customer data. The orderer is obliged to assume the costs of product recall or warning unless he is not at fault for the product defect and the damage incurred. Further claims of bAKA remain unconsidered.
3. The orderer shall inform bAKA without delay in writing about any risks that become known to him when using the products and possible product errors.

12. Force Majeure

1. If bAKA is prevented from performing his contractual obligations by force majeure, specifically from delivery of the products, bAKA shall be released from the obligation to perform for the duration of the obstacle and an appropriate start-up time without being obliged to pay damages to the orderer. This shall also apply if the performance of bAKA's obligations is made unreasonably difficult or impossible by unforeseeable circumstances that are not the fault of bAKA, specifically by labour dispute, authority measures, lack of energy, delivery problems of a supplier or essential operating interferences. This shall also apply if these circumstances happen to a sub-supplier. This shall also apply if bAKA has already entered default. Where bAKA is released from the obligation to perform, bAKA shall return any already-rendered previous services to the orderer.
2. bAKA shall have the right to declare rescission of the contract after the end of an appropriate period of time if such obstacle takes more than four months and bAKA is no longer interested in the performance of the contract due to an obstacle. On request of the orderer, bAKA shall declare after the end of the period whether it makes use of its right of rescission or will deliver the products within an appropriate period of time.

13. Reservation of Title

1. The products shall remain the property of bAKA until complete payment of the delivery price and all claims that bAKA is due against the orderer from the business relationship. The orderer shall be obliged to treat the products subject to retention of title with care for the time of the retention of title. Specifically, he shall be obliged to sufficiently insure the products at his expense against fire, water damage and theft. The orderer shall document having taken out the insurance on request of bAKA. The orderer hereby assigns all compensation claims from the insurance to bAKA. bAKA hereby accepts the assignment. Where assignment is not permissible, the orderer hereby instructs the insurer to make any payments to bAKA only. Further claims of bAKA remain unconsidered.

2. Sale of the goods subject to retention of title shall only be permitted to the orderer in the scope of his proper course of business. Apart from this, the orderer shall not have the right to pledge the products subject to retention of title, to provide them as collateral or to make any other disposals that endanger the title of bAKA. In case of seizing or other third-party access, the orderer shall inform bAKA in writing without delay and provide all necessary information, inform the third party of the property rights of bAKA and contribute to the measures bAKA takes to protect the products subject to retention of title. Where the third party is unable to reimburse bAKA for the court and out-of-court costs for enforcing the property rights of bAKA, the orderer shall be obliged to reimburse bAKA for the resulting loss unless the orderer is not at fault for the violation of obligations.
3. The orderer hereby assigns the claims from further sale of the products with all secondary rights to bAKA, independently of whether the goods subject to retention of title are sold on before or after processing. bAKA hereby accepts this assignment. Where assignment is not permissible, the orderer hereby instructs the third debtor to make any payments to bAKA only. The orderer shall be revocably authorised to collect the claims assigned to bAKA as a trustee for bAKA in his own name. The collected amounts shall be paid to bAKA without delay. bAKA may revoke the collection authorisation of the orderer as well as the authorisation of the orderer for further sale for an important reason, specifically when the orderer does not properly meet his payment obligations towards bAKA, enters default of payment, ceases payments or if the opening of insolvency proceedings or comparable proceedings for clearance of the orderer's assets of debts is applied for by the orderer or the justified application of a third party to open insolvency proceedings or comparable proceedings for clearance of the orderer's assets of debts is rejected due to a lack of assets. In case of global cession by the orderer, the claims assigned to bAKA shall be expressly accepted.
4. On demand of bAKA, the orderer shall have the obligation to inform the third-party debtors of the assignment without delay and to provide bAKA with the information and documents required for collection.
5. In case of non-contractual behaviour, specifically at default of payment of the orderer, bAKA shall have the right, notwithstanding his other rights, to declare rescission of the contract after the end of appropriate grace periods set by bAKA. The orderer shall grant bAKA or its officers access to the products subject to retention of title without delay and release them. After the corresponding timely announcement, bAKA may utilise the products subject to retention of title otherwise to meet his due claims against the orderer.
6. Processing or conversion of the products subject to retention of title by the orderer shall always be performed for bAKA. The orderer's expectant right in the products subject to retention of title shall continue in the processed or converted object. If the products are processed or converted with other objects that do not belong to bAKA, bAKA shall acquire joint title in the new object at the ratio of the value of the delivered products to the other processed objects at the time of processing or conversion. This shall also apply if the products are combined with other objects that do not belong to bAKA so that bAKA loses its full property. The orderer shall keep the new objects for bAKA. The object produced by processing, conversion or combination shall be subject to the same provisions as the products subject to retention of title apart from this.
7. bAKA shall be obliged, on the request of the orderer, to release the collateral due to him in so far as the value of the collateral that can be realised exceeds the claims of bAKA from the business relationship with the orderer by more than 15 % under consideration of deductions common among banks. Assessment shall be performed based on the invoiced value of the products subject to retention of title and the rated value of claims. The selection of the objects to be released in detail shall be subject to bAKA.
8. At deliveries into other legal areas where this reservation of title does not have the same collateral effect as in the Federal Republic of Germany, the orderer hereby grants bAKA a corresponding collateral right. Where additional measures are needed for this, the orderer shall do everything to grant bAKA such collateral rights without delay. The orderer shall contribute to all measures that are needed and promote the effectiveness and enforceability of such collateral rights.

14. Software Use

1. Where the scope of delivery contains software and no deviating usage rights have been granted by agreement, the orderer shall receive the simple, non-exclusive right to use the delivered software in the object code, including its documentation, for his own purposes. The software shall be provided to the orderer on a data carrier suitable for intended use. Use of the software on more than one system is forbidden.
2. The orderer must only reproduce, revise, translate or convert from object code to source code at the scope permissible by law (§§ 69 a et seqq. UrhG). The orderer commits to not removing manufacturer's information - specifically copyright notices - or to change it without the advance written consent of bAKA. The orderer shall not have the right to rent out or sublicense the software.
3. Any other rights in the software and the documentation, including the copies, shall remain with bAKA or the respective software supplier.

15. Secrecy

1. The parties are obliged to treat any information that becomes accessible to them and that is designated as confidential or recognisable as business or operating secret according to any other circumstances secret for the term of five years from delivery, and to not record it, pass it on or utilise it unless this is required for the business relationship.
2. The obligation to confidentiality shall not apply where the information has already verifiably been known to the receiving party before commencement of the contractual relationship, or if it was general knowledge before commencement of the contractual relationship or if it becomes general knowledge or generally accessible without any fault of the receiving party. The burden of evidence shall be borne by the receiving party.
3. The parties shall enter into suitable contractual agreements with the employees and officers working for them, specifically their freelancers and the contractors for work working for them, as well as service providers, that they do not utilise, pass on or record such business and operating secrets without permission either for the term of five years from the delivery.

16. Final Provisions

1. The transfer of rights and obligations of the orderer to third parties shall only be possible with the advance consent of bAKA.
2. Counter-claims shall only entitle him to set-off if they have been legally validly determined or are undisputed. The orderer must only assert any right of retention if his counter-claim is based on the same contractual relationship.
3. The legal relationship between the orderer and bAKA shall be subject to the law of the Federal Republic of Germany under exclusion of the convention of the United Nations on the international sale of goods (CISG).
4. The exclusive place of jurisdiction for any disputes from the business relationship between bAKA and the orderer shall be the seat of bAKA. bAKA shall also have the right to raise a claim at the orderer's seat and any other permissible place of jurisdiction.
5. The place of performance for any services of the orderer and bAKA shall be the seat of bAKA unless agreed on differently.
6. The contractual language shall be German.
7. If any provision in these general sales conditions is or becomes wholly or partially invalid or impractical or if there is any gap in these general sales conditions, this shall not affect the validity of the remaining provisions. The invalid or impractical provision shall be deemed replaced by such valid or practical provision that comes as close as possible to the purpose of the invalid or impractical provision. If there is any gap, the provision is deemed agreed that would have been agreed on according to the purpose of these general sales conditions if the parties had considered this matter from the beginning.