

# General Terms of Sale and Delivery of BINDER GmbH (Germany) for all Deliveries outside of Germany

The following terms shall apply to all BINDER Sales and Deliveries unless agreed otherwise in writing as long as customer is a business(man) or enterprise according to the provisions of the German Civil Code (BGB) with respect to all deliveries outside of Germany. Customer's terms of business only apply if we expressly approve them in writing.

## 1. Quotation and Conclusion of Contract

- 1.1 Our quotations are non-binding. They are solely an invitation to place an order.
- 1.2 Customer's orders are only considered as accepted after we have confirmed them in writing. Our written order confirmation is decisive for the scope of the delivery.
- 1.3 Supplementary agreements and/or modifications require our written confirmation.
- 1.4 We reserve all rights of ownership and copyright in all illustrations, drawings and other documents (collectively described as "documentation"); documentation may not be made accessible to third parties. Documentation belonging to quotations must be returned to BINDER immediately upon request or if an order should not be placed.
- 1.5 In case we should carry out technical alterations on our devices after receiving a quotation, we may deliver the technically altered version. In this respect, we are entitled to deviate from illustrations, drawings, descriptions, colour, information pertaining to dimensions, weight and quality and any other specifications, insofar as this is in the interest of both parties and at the same time reasonable.

## 2. Prices

- 2.1 For deliveries to other countries than Germany prices are "free carrier" (FCA, Incoterms 2000).
- 2.2 If a service should be performed later than four (4) months following the conclusion of the contract, we may cover any price increases with respect to wages and/or material incurred after receipt of customer's quotation by requesting an appropriate surcharge.

## 3. Payments

- 3.1 Our invoices have to be paid within 30 days after the date of invoice without any deduction. Payments made within 14 days after the date of invoice will receive a 2 % discount. Services provided and spare parts deliveries are due for payment immediately as cash purchase.
- 3.2 Bank transfer payments are only considered as having been made when the funds are cleared by our bank. Settlement of invoice by cheque and/or draft only occurs on account of payment and, in the case of drafts, requires our explicit prior consent. The customer shall bear all costs associated with payment by draft or cheque. We accept no liability for timeliness of protest.
- 3.3 If customer should not keep to the payment deadline according to article 3.1 above and should fall into arrears with its payment, customer shall pay interest in the amount of 12 % per annum. Our right to claim higher damages remains reserved.
- 3.4 The customer is only entitled to offsetting if his counterclaims are established and undisputed or explicitly acknowledged by us. The customer also has no right of retention on account of disputed counterclaims.

- 3.5 If well-founded doubts arise with regard to customer's ability to pay or if an application is made to open insolvency proceedings with regard to his assets, all monies outstanding from our business relationship will become due immediately. In addition, we are entitled to request advance payment or payment by means of cash on delivery or letter of credit or good-faith deposit.

#### **4. Delivery Periods**

- 4.1 Our delivery times are only binding if we expressly confirm them in writing. The delivery time starts when the order confirmation is sent, but not before receiving all documents to be obtained from the customer. Observance of the delivery time requires the fulfilment of all contractual obligations by the customer.
- 4.2 The delivery period or the delivery date are kept if the delivered goods are handed over to the shipping company prior to expiry of the delivery date or period.
- 4.3 Partial deliveries are feasible to a reasonable extent.
- 4.4 We are not obliged to deliver in case of and for the duration of Force Majeure ("Act of God"), operational faults, strikes or other hindrances for which we are not responsible, at our premises or those of our suppliers. Should delivery already be delayed, delay is not extended through the occurrence of one of the before mentioned circumstances.

#### **5. Passing of Risk and Dispatch / Shipping and Packaging / Transport Damages**

- 5.1 Within Germany the risk of accidental destruction and/or damage of the delivered goods passes over to the customer when the goods arrive at customer's premises („Lieferung frei Haus“); in case the place of delivery should be outside of Germany the risk of accidental destruction and/or damage of the delivered goods passes over to the customer when the goods are handed over to the carrier (FCA, Incoterms 2000). This also applies if partial deliveries are made or if we have taken over other services, e.g. dispatch or transportation.
- 5.2 If dispatch is delayed as a result of circumstances for which customer is responsible, the risk passes to customer from the date of readiness for dispatch. In these cases we store the goods at customer's expense. We are entitled to charge customer at least 0.5 % of the invoice amount for the stored delivery for each month that has begun up to a maximum of 10 % of the relevant invoice. At customer's request and at his expense we will insure the goods against ordinary risks.
- 5.3 We select the packaging and method of dispatch at our discretion. Customer shall check the delivered goods immediately on receipt and shall inform the delivering freight carrier immediately on site about any visible transport damages. Additionally, customer shall inform us immediately in writing, at the latest within 5 work days after receipt of the goods, about any visible transport damages. If customer does not stick to this obligation the delivered goods shall be deemed as approved with respect to transport damages.

#### **6. Guarantee / Complaint**

- 6.1 We guarantee faultlessness (in accordance with the current state-of-the-art) of construction, production and material as well as manufacture of the goods in accordance with the technical standards valid in Germany.
- 6.2 The warranty period shall be twenty-four (24) months, starting with customer's delivery to the end user (presupposed that customer is a dealer). Customer shall inform BINDER in writing about end user's address immediately after delivery. Additionally, customer shall submit to us the serial number of the delivered device in writing. If customer should not submit the aforementioned data to BINDER immediately after delivery to the end user, warranty period shall start with our delivery to the customer.

Excluded from the warranty are:

- consumable parts
- transport damage in case of deliveries to other countries
- damage following improper treatment, operation or use; damage due to customer's fault
- damage due to chemical, electronic or weather-related influences
- damage caused by spare parts that are not original BINDER (spare) parts
- damage due to unauthorized changes/alterations to devices by the customer or third-party
- damage due to faulty installation or putting into operation by the customer or third-party.

6.3 Customer must check the goods for defects immediately after receipt. Complaints about visible defects can only be taken into account if they are reported to us in writing within 10 days after receipt of the goods, unless article 5.4 above applies with respect to transport damages.

Hidden defects must be notified in writing immediately after discovery.

6.4 If a defect is actually discovered within the warranty period, customer has the right to ask for additional remedy. In this case, BINDER shall decide to either deliver a new product free of defects or repair the defect. In case of repairing the defect BINDER shall carry all costs necessary for the purpose of rectifying the defect, especially transport, travel or labour costs, provided that those costs are not increased by the fact the product was brought to another location than the place of delivery and provided the defect is discovered within 24 months after delivery to the end user respectively the delivery date (see article 6.2 above). All (used) parts replaced in the course of remedy of defects pass into our property. They have to be sent back to BINDER upon request at BINDER's expense.

Should BINDER's attempt to rectify the defect fail twice within the warranty period of 24 months, the customer is entitled - at his discretion - to withdraw from the contract or to ask for a reasonable price reduction.

6.5 We shall not accept any liability for consequences resulting from repair work (maintenance and/or repair) which has been carried out incorrectly by customer or by third parties without our explicit prior consent in writing.

## **7. Liability**

7.1 We accept liability in accordance with the legal requirements of the governing law, insofar as the customer claims damage compensation based on our culpable behaviour (including that of our auxiliary staff and legal representatives) and – additionally – our behaviour results in damage to life, body or health.

7.2 We also accept liability for damages resulting from our or our auxiliary person's or legal representative's intentional or gross negligent violation of customer's objects or property.

7.3 Insofar as we (or our auxiliary staff or legal representatives) violate an essential contractual obligation – i.e. an obligation being vital for the performance under this contract – merely negligently, our damage compensation obligation is limited to the reasonably foreseeable and typically occurring damage. We do not accept any liability for slight negligent violation of contractual obligations, insofar as we do not violate obligations which are essential for the performance under this contract ("Kardinalpflichten").

7.4 Any further liability, particularly on account of lost profit or other damages such as punitive or exemplary damages shall explicitly be excluded unless we act with malice intent or gross negligence.

7.5 Any claims arising from the German Product Liability Law ("Produkthaftungsgesetz") remain unaffected by the aforementioned liability limitation.

- 7.6 If customer should withdraw from the contract without reason or if customer should not fulfil its part of the contract, we can demand 25 % of the order amount as damage compensation. The right of both parties to prove higher or lesser damages remains reserved.

## **8. Reservation of Title**

- 8.1 We reserve the right of ownership of the delivered goods until customer has settled all monies outstanding from our business relationship.

Customer may only sell the reserved goods in regular business dealings. Customer may neither pawn them nor transfer them as security. Customer must notify us immediately of any access to the reserved goods by third parties. Customer is required to protect our rights of reservation when reselling the purchased goods on credit and in particular to pass on the reservation of title to its customers.

- 8.2 Customer is required to insure the reserved goods during the existence of our right of reservation against loss and damage and provide us with written notification of this. If this does not occur, we are entitled to insure the goods ourselves at customer's expense.

- 8.3 Customer shall assign to us, in advance, its accounts receivable from the resale of the reserved goods in the extent of our ownership share in the sold goods, as security. We proceed on the assumption of this assignment from the outset. Customer is entitled to collect the outstanding monies, provided that customer meets its payment obligations towards us and its financial situation does not deteriorate. If we deem the realisation of our claims to be at risk, customer must enable us to take back the reserved goods upon request or notify its purchasers of the claim assignments and provide us with all necessary information and documentation. In addition, the right of collection lapses if customer's financial situation should deteriorate substantially. A substantial deterioration in the financial situation is presumed for the last 10 days before cessation of payments or before an application for opening insolvency proceedings. The taking back of reserved goods does not amount to a withdrawal from the contract.

The reservation of title and the securities to which we are entitled are effective up until complete exemption from contingent liabilities (e.g. in the case of extended payment by cheque or draft), which we have entered into in the customer's interest.

- 8.4 We undertake to release the securities to which we are entitled insofar as their value exceeds the accounts receivable to be protected - provided that these have not yet been settled - by more than 10 %.

## **9. Place of Performance**

The place of performance for delivery and payment is at our head office (i.e. D-78532 Tuttlingen, Germany).

## **10. Supply of Software Programs**

If our deliveries also include software programs which we have developed (e.g. APT-COM™), then the following applies in case of the resale of such programs by the customer to endusers:

- customer is authorised to resell the software; but neither customer itself nor the respective enduser (our customer's customer) will obtain the right of utilisation (licence) in the software program developed by us, as a result of (re)sale via customer;
- customer must point out to its customer that the latter will only obtain the utilisation permit after entering into a further contract with us (so-called software licence contract); to do this, customer must complete and return to us the enclosed registration card; customer will expressly explain the registration card system to its respective customer.

- customer consigns the software package (consisting of software CD-ROM, additional hardware components, Operating Instructions, our General Terms of Business for Software Licence Contracts and registration card) to its customer as received from us.
- customer must notify us in writing of the names of the respective customers to whom it has sold our software.

Furthermore, we shall grant customer a non-exclusive right of use. The software is intended exclusively for use with the delivered product. Use of the software on more than one system is prohibited.

Customer may copy, revise or translate the software only within the frame of the legally approved scope (paragraph 96 a ff German Copyright Law - Urhebergesetz). The granting of sublicenses is not permitted.

## **11. Taking Back of our Products**

11.1 We will take back all of our goods sold to business customers after August 13, 2005 after the end of use according to the EU Directive 2002/96/EC and the respective German Law. We shall care for the waste disposal of such goods in accordance with the aforementioned provisions. Still, customer has to take over all re-delivery and waste disposal costs and reimburse us. Customer has to inform us in writing about the exact time of the end of use of our product.

Customer's obligation to take over all redelivery and waste disposal costs shall not lapse for two years after the end of use of the good. This two year term shall start - at the earliest - after we have received customer's written information about the exact time of the end of use.

11.2 In case customer is a dealer and resells our products to (end)customers our customer shall - under the condition that the (end)customer is not a consumer - oblige the (end)customer to care for the adequate waste disposal of our goods after the end of use at (end)customer's cost. If the customer should not care for such obligation in its contract with the (end) customer, the customer himself shall care for adequate waste disposal at its cost. We recommend that the customer shall care for that any limitation of customer's claim against the (end) customer to take over the aforementioned costs shall commence after (end)customers end of use of our product.

11.3 In case of deliveries outside of the EU/EEA, we will not take back any of our products after the end of their use.

## **12. Place of Jurisdiction and Applicable Law**

12.1 In the case of all disputes arising from this contractual relationship, if customer is a business man or enterprise, a legal person governed by public law or a public special fund, any action must be brought before the court that is competent for our domicile (currently D-78532 Tuttlingen, Germany). In addition, we are also entitled to take the customer to court at his domicile.

12.2 German substantial law shall apply. The UN-Convention on Contracts for the International Sale of Goods ("Vienna Convention of 1980") shall be explicitly excluded.

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