

## General Terms of Delivery and Payment of BINDER Inc.

The following terms apply to all our sales, deliveries and quotations, unless agreed otherwise in writing.  
The purchaser's terms of business only apply if and insofar as we have expressly approved them in writing.

### 1. Quotation and Conclusion of contract

- 1.1 Our quotations are non-binding and to be considered solely as 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 estimates, drawings and other documents (collectively described as "documentation"); documentation may not be made accessible to third parties. Documentation belonging to a quotation must be returned to us immediately upon request, if the order should not be placed.
- 1.5 Should technical alterations be carried out on the devices after supplying quotation, we may deliver the technically altered version. In this respect, we are entitled to deviate from illustrations, drawings, descriptions, color, information pertaining to dimensions, weight and quality and any other specifications, provided they are acceptable to the purchaser considering both parties' interests.

### 2. Prices

- 2.1 All prices are ex works our warehouse in Farmingdale, New York (Incoterms 2000).
- 2.2 For services performed later than 4 months following the conclusion of the contract, we may charge customer with any wage and material price increases incurred after the supply of our quotation by requesting an appropriate surcharge.

### 3. Payment

- 3.1 All invoices are to be paid net 30 days after the date of invoice without any deduction. 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 check and/or draft only occurs on account of payment and, in the case of drafts, requires our express prior consent. The purchaser bears all costs associated with payment by draft or check. We accept no liability for timeliness of protest.
- 3.3 The statutory default regulations of the applicable law apply and interest shall be paid on invoices remaining unpaid after thirty (30) days after date of invoice at the rate of one and one half percent (1.5%) per month. This does not affect our right to claim further damages caused by default going beyond this.
- 3.4 The purchaser is only entitled to offsetting if his counterclaims are established and undisputed or explicitly acknowledged by us. The purchaser also has no right of retention on account of disputed counterclaims.
- 3.5 If well-founded doubts arise with regard to the purchaser'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, payment by means of cash on delivery or letter of credit or good-faith deposit.

### 4. Delivery Dates

- 4.1 Our delivery dates are only binding if we expressly confirm them in writing. The delivery time starts when the order confirmation is sent, but not before we have received all documents to be obtained from the purchaser. Observance of the delivery time requires the fulfillment of all contractual obligations by the purchaser.
- 4.2 With respect to deliveries outside of United States of America, delivery time is met when the goods are passed on to the freight carrier.
- 4.3 Force majeure, operational faults, strikes or other hindrances, for which we are not responsible, at our premises or those of our suppliers, release us from the delivery obligation for the duration of the disturbance and its effects. Should we be in delay with delivery, delay shall not be extended through the occurrence of one of the aforementioned circumstances.

### 5. Passing of Risk and Dispatch

- 5.1 The risk of accidental destruction and/or damage of the goods pass over to the purchaser when the goods are handed over to the carrier at our U.S.-warehouse in Farmingdale, New York. This also applies if partial deliveries are made or if we undertake other services, e.g. dispatch or transportation.
- 5.2 If dispatch is delayed as a result of circumstances for which the purchaser is responsible, the risk passes to the purchaser from the date of readiness for dispatch. In these cases we store the goods at the purchaser's expense and are then entitled to charge the purchaser at least 0.5 % of the invoice amount for the stored delivery for each month that has begun. At the purchaser's request and at his expense we will insure the goods against the usual risks.
- 5.3 Partial deliveries are permissible to a reasonable extent.
- 5.4 We select the packaging and method of dispatch at our discretion. Purchaser shall check the delivered goods immediately on receipt with respect to damages caused by transportation and shall inform the delivering freight carrier immediately on site about any visible transport damages. Additionally, purchaser shall inform us immediately in writing, at the latest within 5 work days, about any visible transport damages. If purchaser does not comply with this obligation, the delivered goods shall be deemed approved with respect to transport damages.

### 6. Guarantee/Complaint

- 6.1 We warrant that at the time of delivery all products will be free from defects in materials and workmanship.
- 6.2 The warranty period is one year starting with the delivery date. Should all service and repair works be carried out by us or service stations authorized by us within this period, we shall grant additional warranty for a period of additional 12 months.  
Neither included in the first 12-months-warranty nor in our additional 12-months-warranty are:
  - wearing and consumable parts;

- transport damages;
- damages following improper treatment, operation or use and improper use; damages due to purchaser's fault;
- damage due to chemical, electrical 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 purchaser or third-party;
- damage due to faulty installation or commissioning by the purchaser or third-party.

6.3 The purchaser must check the goods for defects immediately after receipt. Complaints about visible defects can only be taken into account if they are asserted in writing within 10 days after receipt of the goods, unless para. 5.4 above applies with respect to transportation damages. Hidden defects must be notified in writing immediately after discovery.

6.4 Insofar as a defect of the delivered good is actually discovered within the 12-months-warranty period, the purchaser shall send us written notice within seven (7) days of such discovery. In this case, our sole and exclusive liability shall be to decide, at our option, whether to either deliver a new product free of defects or to repair the defective product. In the case of repair we shall carry all costs necessary for the purpose of rectifying the defect, especially transport, travel or labor costs, provided they are not increased by the fact the product was brought to another location than the place of delivery and provided the defect occurs within 12 months after delivery date (see above para. 6.2). All parts replaced in the course of a repair pass into our property. They are to be sent back to us upon request at our expense. Should our remedy fail, the purchaser is entitled - at his discretion - to withdraw from the contract or to ask for a reasonable price reduction due to the defect.

6.5 Should the defect occur after expiry of the initial 12 month-period and our additional 12-months warranty be relevant (see above 6.2), purchaser must send the defective product at his cost primarily back to BINDER or secondarily to the company where purchaser has bought our product. Our sole and exclusive liability shall be to decide, at our option, whether to deliver a new product free of defects or to repair the defective product. Should the shipping entail unreasonably high costs, we may repair the defective product at purchaser's site. Should our remedy fail, we shall consider a reasonable price reduction.

6.6 THE FOREGOING WARRANTY IN THIS SECTION 6 IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED ON OUR PART. WE DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE NEITHER ASSUME NOR AUTHORIZE ANY OTHER PERSON, FIRM OR CORPORATION TO ASSUME FOR US ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF PRODUCT. WE SHALL NOT BE HELD RESPONSIBLE FOR DAMAGE TO PERSON OR PROPERTY, CONSEQUENTIAL LOSS, LOSS OF PROFIT, LOSSES ON GOODS IN STORE, OR THE LIKE WHICH MIGHT ARISE OUT OF THE FAILURE OF THE EQUIPMENT DELIVERED, IRRESPECTIVE OF THE CAUSE (INCLUDING FAULTY MANUFACTURE).

## **7. Purchaser Withdrawal**

If the purchaser withdraws from the contract without reason or if he does not fulfill his part of the contract, we can request and purchaser agrees to pay 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 the purchaser has settled all monies outstanding from our business relationship. The purchaser may only sell the reserved goods in regular business dealings and may neither pawn them nor transfer them as security; he must notify us immediately of any access by third parties. The purchaser is required to protect our rights of reservation when reselling the goods on credit, and in particular to pass on the reservation of title to his customers.

8.2 The reservation of title shall be effective up until complete exemption from contingent liabilities (e.g. in the case of extended payment by check or draft), which we have entered into in the purchaser's interest.

## **9. Place of Performance**

The place of performance for deliveries from our US warehouse is Farmingdale, New York.

The place of performance for payment is Citibank N.A. Lake Success, New York.

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

If our deliveries also include software programs which we have developed (e.g. APT-COM™), then the following applies for the resale of product by the purchaser which has such programs installed:

- the purchaser is authorized to resell the product with the software installed; but neither the purchaser himself nor the respective customer of the purchaser will obtain the right of utilization (license) in the software program developed by us, as a result of such (re)sale;
- the purchaser must point out to the customer that the latter will only obtain the utilization permit after entering into a further contract with us (so-called software license contract); to do this, the customer must complete and return to us the enclosed registration card; the purchaser will expressly explain the registration card system to his respective customer.
- the purchaser consigns the software package (consisting of software CD-ROM, additional hardware components, Operating Instructions, our General Terms of Business for Software License Contracts and registration card) to the customer as received from us.
- the purchaser must notify us in writing of the names of the customers to whom he has sold product which has our software installed. Furthermore, we shall grant to purchaser 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. The purchaser may not duplicate, revise or translate the software. The granting of sublicenses is not permitted.

## **11. Governing Law and Venue**

All sales by BINDER Inc., and disputes arising therefrom, and these General Terms of Delivery and Payment shall be governed by and construed in accordance with the laws of the State of New York of the United States of America. All claims in connection therewith shall be brought by purchaser before the courts of the State of New York, county of New York or county of Suffolk. BINDER Inc. may commence an action against purchaser before such courts or the courts in the county in which purchaser has its principal place of business, or the county in which the equipment is located.