

General Terms and Conditions of Sale of BENTELER Maschinenbau GmbH

Version April 2019

I. Application / Offers

1. These General Terms and Conditions shall apply to all contracts and future contracts concluded with companies, legal entities under public law and special funds under public law for supplies and other services of the "BENTELER Maschinenbau GmbH" (hereinafter: "BENTELER"), including contracts for work and services, under excluding repair and maintenance work via remote access. Any conditions to the contrary, in particular Buyer's purchase conditions, shall not be binding even if BENTELER does not expressly object to them again after their receipt.
2. All offers from BENTELER are non-binding. Any verbal agreements, assurances and guarantees given by BENTELER sales staff before or at conclusion of contract shall not be binding unless confirmed by BENTELER in text form.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in BENTELER price lists effective at the time when the contract is concluded, plus freight, packaging costs, statutory VAT and import duties, if any.
2. In the event that BENTELER's external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, BENTELER shall be authorised to modify the price accordingly as of the beginning of each calendar month concerned.
3. In the event that the adjusted price exceeds the initial price by more than 15%, the Buyer shall have the right to withdraw from the contract with regard to the quantities affected by the price adjustment upon the price adjustment taking effect. The right of rescission may only be exercised within one week of the price adjustment becoming known or possible to become aware of.

III. Payment and Set-Off

1. Unless otherwise agreed upon or stated in BENTELER's invoices, the respective price is payable without deduction as follows:
 - 30 % with order
 - 65 % with indication of readiness for delivery by BENTELER
 - 5 % at first commissioning by Buyer

The payments are due 10 days after invoice date. Irrespective of commissioning, the total price will be due no later than 60 days after BENTELER's notification of readiness for delivery. The timeliness of the payment shall be determined by the receipt of the complete invoice amount at BENTELER.
2. The Buyer must bear all payment costs. The Buyer shall be in default after 10 days from the due date of BENTELER's receivables. A formal overdue notice shall not be required.
3. Should the Buyer exceed the payment term or default in payment, he will be liable to pay interest at 9% above the basic interest rate, unless higher rates have been agreed upon. Additionally, BENTELER charges a default allowance of EUR 40,00. BENTELER reserves the right to claim additional damages resulting from late payment.

4. Should it become evident after the conclusion of the contract, that payment is jeopardized by the Buyer's lack in financial means, or should the Buyer be in default with a significant portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the contract has been concluded, BENTELER shall be entitled to exercise the rights arising from sec. 321 BGB (German Civil Code), to refuse performance and to make due any and all of BENTELER's not yet due accounts receivable deriving from the business relationship. This also applies in case the performance of BENTELER's contractual obligation is not yet due.
5. A discount agreed in an individual case always refers only to the invoice value excluding freight and presupposes the complete settlement of all due liabilities of the Buyer at the time of the discount. Unless otherwise agreed, discount periods commence from the invoice date.
6. The Buyer may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship (in particular claims for defects) or are undisputed or have become legally binding.

IV. Execution of deliveries, delivery times and dates, Force Majeure

1. BENTELER's commitment to deliver is subject to BENTELER's own correct, timely and contractual self-delivery, unless BENTELER is responsible for the deficient, late or non-contractual self-delivery.
2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of BENTELER's order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.
3. Any agreed delivery time or date shall be considered to be met if the goods have left the works or the warehouse at such time or date. If and in so far, the goods fail to be dispatched at the agreed time for reasons not attributable to BENTELER, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for shipment.
4. In the event of delay in delivery, the Buyer may set BENTELER a reasonable grace period and, after its unsuccessful expiration, withdraw from the contract to the extent that the contract has not yet been fulfilled. In such cases, claims for damages shall be governed by Section IX. of these Terms and Conditions.
5. Within events of force majeure BENTELER shall be entitled to postpone deliveries for the period of the impediment and for a reasonable time necessary for adaptation. The same shall apply to such events which arise during prevailing delays. Force majeure shall include measures affecting currency, trade policy and other governmental acts, strikes, lockouts, operating shutdowns not caused by BENTELER (e.g. fire, machinery and rolls breakdown, deficiency in raw material or energy), obstruction of traffic routes, delay in customs/import clearance, as well as any other circumstances which, not due to BENTELER's fault, either substantially jeopardize the deliveries and services or make them impossible to fulfil, no difference whether such circumstances will affect BENTELER or BENTELER's supplier(s). In the event, in consequence of the aforementioned circumstances, the performance of the contract becomes unreasonable to fulfil to one of the contractual parties, such party may then, subject to the expiry of a reasonable grace period, declare withdrawal from the contract.

V. Retention of Title

1. All goods delivered to the Buyer shall remain BENTELER's property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled in full (current account reservation). This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will affect payments on specifically designated claims. The current account reservation shall not apply in prepayment or delivery vs. payment cases. In these cases, the goods remain BENTELER's property until the purchase price for these goods has been paid in full. As soon as the Buyer has settled his accounts with BENTELER in full, he shall obtain title to those goods which were delivered to him before such payment was affected.
2. The treatment and processing of the Reserved Property are carried out for BENTELER as manufacturer within the meaning of Sec. 950 BGB (German Civil Code) without obligating BENTELER in any way. The treated and processed goods shall be deemed to be Reserved Property acc. to para. 1 above. If the Buyer manufactures, combines or mixes the Reserved Property with other goods BENTELER shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, BENTELER's ownership expires, the Buyer herewith transfers to BENTELER any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. BENTELER's co-ownership rights shall be regarded as Reserved Property within the meaning of para. 1 above.
3. The Buyer may only sell the goods subject to retention of title in the ordinary course of business at his normal terms and conditions and as long as he is not in default, provided that the claims from the resale are transferred to BENTELER in accordance with Nos. 4 to 6. He shall not be entitled to dispose of the reserved goods in any other way.
4. The Buyer hereby assigns to BENTELER any claims resulting from the resale of the Reserved Property. Such assignment is hereby accepted. Such claims shall serve as BENTELER's security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from BENTELER, then any receivables resulting from such resale shall be assigned to BENTELER in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which BENTELER has co-ownership rights according to para. No. 2 above, the assignment shall be limited to the part which corresponds to BENTELER's co-ownership rights.
5. The Buyer shall be entitled to collect any receivables assigned to which result from the resale of the Reserved Property. This right shall expire if withdrawn by BENTELER, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. BENTELER shall exert its right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall, upon BENTELER's request, immediately inform his customers of such assignment and forward to BENTELER any information and documents necessary for collection.
6. The Buyer shall immediately inform BENTELER of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.
7. Should the Buyer default in payment or should he fail to honour a draft and after expiry of a reasonable period of grace BENTELER shall be entitled to take back the Reserved Property and to enter, for this purpose, the Buyer's premises and to resell the Reserved Property best possible by crediting the proceeds to the purchase price. The same shall apply if, after the conclusion of the contract, it becomes evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If BENTELER takes

back the Reserved Property, this shall not be regarded as withdrawal from the contract. The provisions of the German Insolvency Code shall remain unaffected.

8. Should the total invoiced value of BENTELER's collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, BENTELER shall - upon the Buyer's request - release pro tanto collateral at BENTELER's discretion.

VI. Acceptance

1. Where an acceptance of the goods has been agreed upon, the goods must be inspected immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal acceptance costs, whereas the costs of acceptance will be invoiced to him in accordance with BENTELER's price list.
2. If and insofar as the goods have to be made completely or partially ready for operation a second time for a renewed acceptance due to the fact that BENTELER was not, not on time or not completely accepted through no fault of its own, BENTELER shall be entitled to charge the Buyer for the costs and additional expenses incurred thereby. In all other respects Section 640 para. 1 and 2 sentence 1 (German Civil Code) shall apply accordingly.

VII. Dispatch, Passing of Risk, Packaging

1. Unless otherwise agreed, BENTELER shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. Contractual goods reported ready for dispatch or delivery in accordance with the contract must be called off immediately or collected within 3 working days, otherwise BENTELER is entitled, after a reminder, to dispatch them at the expense and risk of the Buyer at the discretion of BENTELER or to store them at its own discretion and to invoice them immediately.
3. If, for reasons not attributable to BENTELER, the goods cannot be shipped or if it becomes substantially difficult to ship them via the designated route or to the designated place within the designated time, BENTELER reserves the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases BENTELER will ask the Buyer for his prior comments.
4. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where BENTELER hands them over to the forwarding agent or to the carrier, at the latest with their departure from BENTELER's warehouse. BENTELER will buy insurance only if and in so far as requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods shall be delivered unpacked and not protected against rust. If customary, BENTELER delivers packed. BENTELER will provide packaging, protective and/or transport aids according to its own experience at the expense of the Buyer. Any packaging or other special protection going beyond the purpose of transport shall only be provided by express agreement. Packaging will be taken back to BENTELER's warehouse. BENTELER shall not bear any costs incurred by the Buyer for the return transport or for his own disposal of the packaging.

VIII. Liability for defects

1. Any properties of the goods, in particular their grade, classification and dimensions, shall be determined in accordance with the agreed and, if not agreed, with the DIN and EN standards effective at the time the contract is concluded, or in absence of such standards, in accordance with trade usage. Any reference made to such standards and similar rules to Test Certificates according to EN 10204 and similar certificates as well as to grade, dimensions, weight and usability of the goods shall not constitute any warranty or guarantee. The same shall apply to declarations of conformity and similar markings such as CE and GS.

2. Defects of the goods must be reported immediately after delivery / acceptance or after any agreed acceptance in text form. Defects in the goods which cannot be discovered within this period even after the most careful inspection are to be reported in text form immediately after their discovery, at the latest before expiry of the agreed or statutory period of limitation, with immediate cessation of any processing.
3. If and in so far, the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. If the Buyer is unaware of a defect due to negligence, he can only assert rights due to this defect if BENTELER has fraudulently concealed the defect or has assumed a guarantee for the quality of the item.
4. If the Buyer does not immediately give BENTELER the opportunity to convince himself of the defect, in particular if he does not immediately make available to BENTELER the goods complained about and the information, protocols, pictures etc. required for the determination and analysis of the defect for inspection purposes, all rights due to the material defect shall lapse.
5. Rights due to defects do not exist if, for example
 - the goods are installed, operated, maintained or serviced by BENTELER in deviation from the operating instructions or other product information,
 - a fault is due to other improper use, negligent handling or wear.
6. If and in so far as Buyer's claim for defects is justified and has been made in time, BENTELER may, upon its own discretion, remedy the defect ("improvement") or deliver non-defective goods ("replacement", improvement and replacement hereinafter: "cure"). Should BENTELER fail or decline the cure, the Buyer may, upon the elapse of an adequate additional period of time set by him, withdraw from the contract or reduce the purchase price. In cases where the defect is minor, where the goods have already been processed or transformed, he may only reduce the purchase price.
7. Further claims of the Buyer are excluded (sec. IX of these conditions). This applies in particular to claims for compensation for damage that has not occurred to the goods themselves (consequential damage caused by a defect) and costs for the self-remedy of a defect without the legal requirements being met.

IX. Restriction of liability, limitation period

1. BENTELER's liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract as well as for tortuous acts – including BENTELER's responsibility for its managerial staff and any other person employed in performing BENTELER's obligations – shall be restricted to damages caused by wrongful intent or by gross negligence and, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.
2. The aforesaid restrictions shall not apply to such cases where BENTELER is in breach of its fundamental contractual obligations and where such a breach will endanger the contractual purpose. The aforesaid restrictions shall neither pertain to damages to life, to the body or to health caused by BENTELER's fault nor to any cases where BENTELER has guaranteed certain characteristics of the goods; nor shall such clause affect BENTELER's statutory liability pursuant to the German Product Liability Act. Any contractual obligations shall be considered to be fundamental if they are required to safeguard the due performance of the contract and on which Buyer typically may rely on. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Should BENTELER default on a delivery or performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The

rights of the Buyer for damages instead of performance in accordance with the present sec. IX.1 and IX.2 remain unaffected by the aforesaid.

4. Unless otherwise agreed, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code (BGB) require longer limitation periods, further in cases of injuries to life, body and health, breaches of contract caused by BENTELER's wrongful intent or gross negligence or in cases where a defect is fraudulently concealed.

X. Export certificate

In case of collection of the goods by a Buyer resident outside the Federal Republic of Germany or his representative and in case of transfer to the external territory, the Buyer is obliged to provide BENTELER with the export certificate required for tax purposes. Otherwise, the purchaser undertakes to pay the VAT rate applicable to deliveries within the Federal Republic of Germany.

XI. Software usage / Confidentiality

1. If software is included in the scope of delivery, the Buyer shall be granted a non-exclusive, non-assignable, non-transferable right, which may be revoked upon rescission of the contract, to use the delivered software including its documentation. It shall be made available for use on the delivery item intended for this purpose. Section 69c No. 3 S. 2 UrhG remains unaffected. Use of the software on more than one system is prohibited. The Buyer may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (Sections 69 a ff. UrhG).
2. The Buyer undertakes not to remove manufacturers details - in particular copyright notices - or to change it without BENTELER's prior express consent. All other rights to the software and the documentation, including the copies, remain with BENTELER or with the respective software supplier. Sublicensing is not permitted.

XII. Place of Performance, Jurisdiction, Applicable Law

1. The place of performance for BENTELER's performance shall be, if applicable, the supplying mill or BENTELER's warehouse. The place of jurisdiction is, at BENTELER's discretion, the city of Bielefeld (Germany) or the Buyer's seat.
2. All legal relationships between BENTELER and the Buyer shall be governed, in addition to these Conditions, by the non-uniform laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

XIII. Applicable Version

In case of doubt the German version of these General Terms and Conditions shall prevail.