

BAIR-Technology and Systems

General Business Terms and Conditions of Sale

I. Quotations, orders and obligation to deliver

1. A quotation by BAIR-TECHNOLOGY AND SYSTEMS does not constitute an offer. BAIR-TECHNOLOGY AND SYSTEMS reserves the right to withdraw or revise a quotation at any time prior to its acceptance of the customer's order and to reject any order in whole or in part.
2. The scope of supply (goods or/and services) shall be as defined in BAIR-TECHNOLOGY AND SYSTEMS's written order acknowledgement. Verbal understandings or warranties and conflicting or additional purchasing conditions shall have no force or effect unless expressly confirmed by BAIR-TECHNOLOGY AND SYSTEMS in written form.
3. BAIR-TECHNOLOGY AND SYSTEMS shall reserve the right to suspend deliveries in the event that the customer is in default with payment for any prior shipment.
4. BAIR-TECHNOLOGY AND SYSTEMS shall not be liable in any case for delay caused by circumstances beyond its reasonable control, including labour disturbances without limitation, shortage of raw materials, inundation, fire, accidents and failure on the part of BAIR-TECHNOLOGY AND SYSTEMS's suppliers to supply products or services duly ordered to fulfil the customer's order. Such circumstances shall entitle BAIR-TECHNOLOGY AND SYSTEMS at its sole option to postpone performance for a reasonable period of time or to rescind the contract.

II. Prices and terms of payment

1. Unless otherwise stated all prices shall be for delivery ex works Wolnzach (Munich) – Germany, exclusive of any turnover taxes (VAT and/or Customs-Taxes/Fees) and insurance.
2. All payments shall be made by remittance to one of the bank accounts stated in BAIR-TECHNOLOGY AND SYSTEMS's invoice and shall be deemed punctual when the full amount of the invoice has been credited to the account before expiration of the due date. All bank fees shall be charged for the customer's account.
3. Overdue balances shall be subject to interest at the rate currently charged by BAIR-TECHNOLOGY AND SYSTEMS's bank on overdrafts. Interest charged to the customer shall be subject to turnover tax (VAT).
4. The customer may set off only such counterclaims as shall have been finally adjudicated or expressly accepted by BAIR-TECHNOLOGY AND SYSTEMS in written form as to nature and amount. Rights of lien may be exercised by the customer only with respect to the contract giving rise to them.

III. Retention of title (conditional sale)

1. All present and future amounts owed to BAIR-TECHNOLOGY AND SYSTEMS by the customer by reason of any business transacted between them (including all current account balances due to BAIR-TECHNOLOGY AND SYSTEMS) shall be secured as set forth below. Where the value of such securities exceeds BAIR-TECHNOLOGY AND SYSTEMS's aggregate receivables from the customer by more than 20% for other than a temporary period BAIR-TECHNOLOGY AND SYSTEMS shall on request release securities, the choice of which shall be in BAIR-TECHNOLOGY AND SYSTEMS's sole discretion.
2. BAIR-TECHNOLOGY AND SYSTEMS shall retain title to the goods supplied. Any processing or transformation of the goods shall be deemed performed on behalf of BAIR-TECHNOLOGY AND SYSTEMS but shall not obligate BAIR-TECHNOLOGY AND SYSTEMS in any way. It is hereby agreed that where BAIR-TECHNOLOGY AND SYSTEMS's (joint) title is extinguished by combination of the goods with other goods, such proportion of the customer's (joint) title to the homogeneous product thereby created as is equivalent to the amount of BAIR-TECHNOLOGY AND SYSTEMS's invoice shall automatically pass to BAIR-TECHNOLOGY AND SYSTEMS. Goods to which BAIR-TECHNOLOGY AND SYSTEMS has (joint) title shall be possessed and held in safekeeping by the customer at the customer's own cost and expense. Goods to which BAIR-TECHNOLOGY AND SYSTEMS has (joint) title are hereinafter referred to as "conditionally sold goods".

3. The customer may process or sell conditionally sold goods in the ordinary course of its business provided it is not in default with any payments but may neither pledge them nor transfer ownership of them by way of security. The customer hereby assigns to BAIR-TECHNOLOGY AND SYSTEMS all rights and receivables relating to the conditionally sold goods and arising out of their resale or accruing to the customer on any other legal grounds, including without limitation insurance and tort (and including all current account balances due to the customer in respect of resale of the conditionally sold goods). The customer shall be authorised to collect the assigned receivables in its own name on BAIR-TECHNOLOGY AND SYSTEMS's behalf. BAIR-TECHNOLOGY AND SYSTEMS may revoke this authorisation in the event that the customer defaults in performance of its payment obligations.
4. If any attempt to obtain possession of conditionally sold goods is made by a third party the customer shall advise the party concerned that the goods are BAIR-TECHNOLOGY AND SYSTEMS's property and shall notify BAIR-TECHNOLOGY AND SYSTEMS of the attempt without delay. All costs, expenses and damage incurred in connection with such event shall be for the account of the customer.
5. In the event that the customer defaults in performance of any of its obligations to BAIR-TECHNOLOGY AND SYSTEMS, in particular in performance of its payment obligations, or its credit standing has materially deteriorated, BAIR-TECHNOLOGY AND SYSTEMS may repossess the conditionally sold goods or, where applicable, require the customer to assign to BAIR-TECHNOLOGY AND SYSTEMS the rights to recover the goods from third parties. Except as may be provided by the German Law Relating to Deferred Payment Sales (Abzahlungsgesetz), repossession or attachment of conditionally sold goods by BAIR-TECHNOLOGY AND SYSTEMS shall not constitute rescission of the contract.
6. Where goods are shipped to a country in which further measures are required to effect BAIR-TECHNOLOGY AND SYSTEMS's security interests or in which retention of title does not have the same effect as under German law the customer shall co-operate with BAIR-TECHNOLOGY AND SYSTEMS in taking the action required to protect BAIR-TECHNOLOGY AND SYSTEMS's interests under local law and shall furnish any appropriate substitute securities which may become necessary.

IV. Delivery

1. The delivery period shall begin on the date on which written agreement on the order is reached.
2. Partial shipments shall be permissible.

V. Passage of risk

1. Risk of loss, damage and deterioration shall pass to the customer upon dispatch of the goods.
2. In the event that shipment is delayed for reasons for which BAIR-TECHNOLOGY AND SYSTEMS is not responsible the risk shall pass to the customer when the goods are ready for shipment.
3. If requested by the customer, BAIR-TECHNOLOGY AND SYSTEMS shall insure the goods against breakage, storage, transportation risks and fire at the customer's expense.

VI. Warranty and limitation of liability

1. With the exception of the statutory liability for breach of express warranties (Sections 463, 480 (2) and 635 of the German Civil Code) BAIR-TECHNOLOGY AND SYSTEMS's liability for defects, and that of its agents, employees and other persons and entities whose services it utilises in performing its contractual obligations, shall be limited as follows:
 - 1.1 BAIR-TECHNOLOGY AND SYSTEMS shall at its option and expense repair or replace all parts which prove to be unusable or the serviceability of which proves to be materially impaired as a result of circumstances occurring prior to passage of the risk to the customer, in particular as a result of faulty construction, inferior material or bad workmanship. BAIR-TECHNOLOGY AND SYSTEMS shall be notified of the discovery of such defects promptly and in writing. In the absence of any agreement to the contrary the customer's rights in respect of defects shall expire as provided by German law.
 - 1.2 The customer shall return allegedly defective items to BAIR-TECHNOLOGY AND SYSTEMS, transportation prepaid. Where BAIR-TECHNOLOGY AND SYSTEMS determines the item to be defective the cost of remedying

the defect and returning the item to the customer at a location within the Federal Republic of Germany shall be assumed by BAIR-TECHNOLOGY AND SYSTEMS.

- 1.3 In the event that repair or replacement fails to remedy the defect the customer may at its option request a reduction in the purchase price of the item or cancellation of the sale.
 - 1.4 BAIR-TECHNOLOGY AND SYSTEMS shall not be liable for normal wear and tear or for any damage or defects resulting from improper or negligent handling, excessive use, unsuitable operating conditions or chemical, electrochemical or electrical influences which occur after passage of the risk to the customer and which are not due to BAIR-TECHNOLOGY AND SYSTEMS's negligence or intent. BAIR-TECHNOLOGY AND SYSTEMS rejects all liability for the consequences of any alterations or repairs performed by the customer or any third party without due care.
 - 1.5 BAIR-TECHNOLOGY AND SYSTEMS's liability with respect to repair work and replacement parts shall be the same as for the original items but shall subsist only until expiration of the warranty period applicable to the original items.
 - 1.6 BAIR-TECHNOLOGY AND SYSTEMS shall have no liability as defined in the foregoing subparagraphs 1.1 to 1.5 of this section VI. in respect of goods purchased by BAIR-TECHNOLOGY AND SYSTEMS from another supplier until the customer has addressed its claim to such supplier and failed to obtain satisfaction. In the event of claims respecting such goods the customer shall first notify BAIR-TECHNOLOGY AND SYSTEMS. BAIR-TECHNOLOGY AND SYSTEMS shall then name the supplier and assign the rights in respect of the purchased goods to the customer.
2. With the exception of the liability for breach of express warranties referred to in paragraph 1 of this section VI. BAIR-TECHNOLOGY AND SYSTEMS's liability for damages, whether the customer's claims are based on rules of law, tort, contract, breach of contract, "c.i.c" (culpa in contrahendo) or otherwise, shall be limited as follows:
- 2.1 BAIR-TECHNOLOGY AND SYSTEMS, its agents, employees and other persons and entities whose services it utilizes in performing its contractual obligations shall be liable for damage sustained by the customer only in so far as such damage has been caused by intent or gross negligence.
 - 2.2 BAIR-TECHNOLOGY AND SYSTEMS's liability for gross negligence on the part of employees not being senior executives (not being "leitende Angestellte") shall further be limited to damage caused by breach of a principle contractual duty.
 - 2.3 With the exception of damage caused by intent, BAIR-TECHNOLOGY AND SYSTEMS shall in no event be liable for any damage sustained by the customer the nature and extent of which was not foreseeable by BAIR-TECHNOLOGY AND SYSTEMS at the time the contract was formed considering all circumstances of which BAIR-TECHNOLOGY AND SYSTEMS was aware or negligently unaware.

VII. Place of performance, venue and governing law

1. Place of performance for all contractual obligations shall be the city of Munich - Germany. All disputes arising directly or indirectly out of the contract -and not otherwise resolved between BAIR-TECHNOLOGY AND SYSTEMS and the customer shall be resolved in a court of competent jurisdiction in Munich - Germany. BAIR-TECHNOLOGY AND SYSTEMS may also sue the customer in any other court having general jurisdiction over the customer.
2. All contracts shall be governed by the laws of the Federal Republic of Germany with the exception of the Uniform Purchase Law (Einheitliches Kaufgesetz) and the Uniform Purchase Contracting Law (Einheitliches Kaufabschluss-Gesetz) which shall not apply.