

## General Terms and Conditions of Sale and Delivery of Baerlocher (M) Sdn Bhd

### 1. Scope of Application

- 1.1 All sales and deliveries of Baerlocher are made exclusively under the General Terms and Conditions of Sale and Delivery (GTC of Sale) which will apply to future transactions with customers. Customers are deemed to acknowledge the validity and applicability of these terms by placing the order or accepting the delivery. The GTC of Sale can be found on Baerlocher's website at [www.baerlocher.com.my](http://www.baerlocher.com.my)
- 1.2 Baerlocher rejects any conflicting terms and conditions unless Baerlocher has explicitly consented to the customers term and conditions in writing or in text form. Baerlocher's failure to object to any reference made by the customer in the documents submitted by the customer must by no means constitute consent to the customer's terms and conditions. These terms also apply if Baerlocher delivers without reservation while being aware of the conflicting general terms and conditions of the customer's business.

### 2. Offer and Contract Conclusion

- 2.1 Baerlocher's offers are non-binding and subject to change or modification and do not give rise to any obligation on the part of Baerlocher. They can be modified at any time with prior notice until a contract according to the General Terms and Conditions is concluded.
- 2.2 Upon confirmation of an order by Baerlocher sent in text form to the address the customer has provided, a contract is consummated whereby the content is exclusively dictated by the order confirmation. Oral agreements or promises of the contract need to be confirmed by Baerlocher to be valid.
- 2.3 If there is an excess delivery, the quantity actually delivered is considered as the quantity agreed upon unless the customer complains about the excess delivery. Purchasing price is increased by the amount that would have to be paid for the excess quantity delivered.

### 3. Delivery Times and Dates

- 3.1 Delivery times and dates are binding if confirmed by Baerlocher and the customer has communicated respectively all the information and documents required for the execution of the delivery and made down-payments, if any.
- 3.2 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the customer.
- 3.3 If a delivery period has not been expressly agreed upon, a reasonable delivery period shall apply beginning from the time that the Agreement is formed.
- 3.4 Unforeseeable events that are unavoidable by Baerlocher such as force majeure especially pandemics, lockdowns, war, natural disasters, lack of raw materials, epidemics, industrial action, labour disputes or other disturbances of the production facilities exempts Baerlocher from its obligation to deliver in due time. Compliance with agreed delivery dates and times depend on correct and timely supply to Baerlocher by its pre-suppliers.
- 3.5 If the agreed delivery times are extended by the duration of delay, the customers will be informed by Baerlocher of the delay through a written notice, specifying its nature and anticipated duration. Parties could withdraw from the contract if the delay is not foreseeable or if it has exceeded 3 months.
- 3.6 Where the customer requests and Baerlocher agrees to postpone delivery or where delivery is postponed without default by Baerlocher, Baerlocher shall pay upon demand all reasonable costs and expenses including reasonable storage and transport costs. The customer shall pay for the products in accordance with these conditions as if the same had been delivered on the due date.
- 3.7 Partial deliveries can be made if there is legitimate cause that such delivery is in the customer's interest and is reasonably acceptable for him.
- 3.8 If there is delay in the delivery, the customer is only entitled to withdraw from the contract if Baerlocher is responsible for the delay and a grace period granted by the customer in a warning letter threatening non-acceptance of the delivery has expired. If partial deliveries have been made, customers will only be entitled to withdraw from the contract as a whole if the partial deliveries are of no interest to them.
- 3.9 Baerlocher will be entitled to properly store the goods to be delivered at the risk and expense of the customer and to withdraw from the contract after expiry of an adequate grace period granted to the customer if the customer breaches any obligation to cooperate.

### 4. Dispatch, Passing of Risk

- 4.1 Subject to special arrangements with the customer, Baerlocher is entitled to carry out the dispatch using a route of dispatch in its discretion.
- 4.2 Any packages provided by Baerlocher are left to the customer for up to two months from delivery of goods. An adequate package rent is paid in such duration and the customer is obliged to discharge the packages provided by Baerlocher without undue delay. Baerlocher is obliged to collect the packages within a reasonable period after notice of readiness for collection has been given.
- 4.3 The risk of accidental loss and accidental deterioration shall pass to the customer or in the case of sale to destination on delivery of the merchandise to the carrier, freight forwarder or other person appointed to ship the merchandise.
- 4.4 The cost and replacement/ repair are on the customer if the packages get lost or are returned in unusable condition.
- 4.5 The risk passes to the customer upon hand-over of the goods to be delivered to the carrier or the customer himself. This also applies in the case that Baerlocher by exception agreed to bear the dispatch cost. If the hand-over is delayed for reasons imputable to the customer, the risk passes to the customer from the day when notice of readiness for dispatch is given.
- 4.6 The weight of the goods is calculated solely on the basis of the weight measured upon dispatch at the Baerlocher supply plant.
- 4.7 If Baerlocher and the customer agrees that Incoterms Provisions shall apply, Incoterms 2020 are deemed to apply.

### 5. Price/ Terms of Payment

- 5.1 The price calculated on the basis of the price list of Baerlocher valid at the time of contract conclusion applies unless a certain price is agreed upon.
- 5.2 Baerlocher prices are ex works, exclusive of the legal value-added tax and costs of packaging and dispatch. For delivery abroad, public charges and custom duties incurred in connection with the import of goods to be delivered are at the customer's expense.
- 5.3 Baerlocher shall be entitled at any time on written notice to make a reasonable adjustment to the price in the event of any alteration in quantity, design or specification requested by the customer.
- 5.4 Baerlocher reserves the right at any time prior to delivery and on written notice to increase the price if there is any increase in the cost of materials, labour, transport, utilities, foreign currency fluctuation or alteration of duties or if Baerlocher's costs are increased by any other factor beyond Baerlocher's control.
- 5.5 If the agreed delivery date exceeds four months after contract conclusion and an unforeseeable increase in the costs is incurred by Baerlocher such as wages, material or energy costs, Baerlocher can increase the price initially agreed upon in its discretion. Baerlocher will prove the increase in costs to the customer upon their request and customer could withdraw from the contract if there is a request of an adjustment of the price in the form of an increase. This has to be declared to Baerlocher within 1 week from receipt.
- 5.6 All Baerlocher invoices have to be paid within 30 days from invoice receipt. If the time limit expires without payment, the customer is in default of payment. The payment obligation is fulfilled if the payment is timely credited to the account indicated by Baerlocher. For default of payment, Baerlocher is entitled to claim default interest at the statutory rate without prejudice to any further claim for damages.
- 5.7 Cash discounts are inapplicable if the customer is defaulting in payment of any amount of any other invoices of Baerlocher that are due for payment.
- 5.8 Payment by bill of exchange or cheque is only accepted after prior written agreement and on account of performance.
- 5.9 Concerning the customer's ability to pay or creditworthiness or when customer is in default of payment of other invoices, Baerlocher is entitled to request prepayment or the provision of security before delivery is made.
- 5.10 If customer is in default of payment, Baerlocher is entitled to suspend without notice all further deliveries on any contracts, to charge interest on a daily basis after as well as before judgment, on any amount outstanding.
- 5.11 Customer is only entitled to set-off if their counter claim is undisputed or is established by a final-non appealable court decision. They are entitled to retention to the extent that the counter claim is based on the same contract and is undisputed or has been established by a final non appealable court decision.
- 5.12 All payments made by the customer to Baerlocher under any contract subject to these conditions shall be made free of any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any contract subject to these conditions or otherwise.

### 6. Electronic transmission of invoices (e-invoicing)

- 6.1 The customer agrees to the electronic transmission of invoices (e-invoicing). There is an agreement that hard copy invoices for sale and deliveries of Baerlocher will not be received by customer.
- 6.2 Baerlocher can transmit electronic invoices to the customer if the authenticity of the origin of the invoice and the integrity of the content are guaranteed by a qualified electronic signature or by electronic data interchange.
- 6.3 Baerlocher can transmit electronic invoices by email if the authenticity of the origin of the invoice and the integrity of the content are guaranteed by internal control procedures of Baerlocher which guarantees reliable audit trail between invoice and delivery.
- 6.4 Baerlocher is not obliged to transmit electronic invoices and may in its discretion decide to transmit its invoices as hard copy invoices constantly or from time to time especially in the case of technical problems or if the legal regulations of the recipient's country conflict.
- 6.5 The customer will communicate to Baerlocher a suitable electronic address for receiving invoices to enable electronic voice transmission. There is obligation to inform Baerlocher without undue delay of any change in address. The customer guarantees that he is ready to receive invoices under the respective address.
- The customer is responsible for the verification of the authenticity of the origin, integrity (verification) and the storage of the electronically transmitted invoices consisting a PDF File, a verification report and an XML file with the verification formats. He is responsible for compliance with the statutory obligations regarding accounting/ bookkeeping and archiving. If the invoice recipient concludes after verification that the authenticity of the origin and the integrity of the content of the invoice are not guaranteed, the invoice recipient will inform Baerlocher to that effect without undue delay.
- Accordingly, the customer will specify to Baerlocher by electronic message those details which led to a negative result of the verification. The same approach is to be chosen if the invoice is incorrect as regards to the content. The correction of an invoice by Baerlocher is carried out by electronic means in accordance with these terms. The costs of the correction of the invoice are at the customers expense provided that the incorrectness of the invoice is imputable to him.

### 7. Quality

- 7.1 The target quality of the goods to be delivered at the time when the risk passes to the customer is determined exclusively on the basis of the specific arrangements between the parties regarding the quality, characteristics and performance features of the goods to be delivered. The parties undertake to fix the appropriate specifications in writing or in text form (e.g. email).
- 7.2 Any quality guarantees or product specifications need to be explicitly agreed in writing or in text form (e.g. email). In particular information contained in catalogues, price lists and other information material provided to the customer by Baerlocher must by no means deemed to constitute a guarantee warranting a special quality of the goods to be arrived.
- 7.3 With regards to the application of the delivered goods, advice given by Baerlocher orally or in writing are not binding and do not release the customer from his obligation to inspect the goods himself as to whether they are suitable for the intended use. This applies if the delivered goods are generally recommended for a specific purpose of use.

### 8. Warranty

- 8.1 Goods sold hereunder are covered by warranty against defects in material only for a period of twelve (12) months from the passing of the risk.
- 8.2 This warranty is subject to:- (a) Any possible claim related to material quality must be notified to Baerlocher without undue delay upon detection, in writing, and should indicate the number of delivery bill, batch number, item reference code and rejected quantity, the products should be kept available in whole and not used or tempered with, otherwise guarantee provided by law or agreement is not valid; (b) Baerlocher will remedy the defect by elimination of defect or substitute delivery of non-defective goods (referred to "subsequent performance") within a reasonable time of the complaint being made. (c) In urgent situations where Baerlocher is in default of defect, the customer has the right to remedy the defect either by himself or through a third party, subject to prior notice to that effect stating the reasons for such an approach, and to claim from Baerlocher reimbursement of the necessary costs incurred for such a remedy.
- 8.3 This warranty does not apply to reasons imputable to the customer, e.g. improper use, improper application or improper treatment, unless defects are imputable to Baerlocher.

### 9. Liability and Damages

- 9.1 Baerlocher does not exclude liability arising for death or personal injury caused by its negligent or fraudulent misrepresentation.
- 9.2 Baerlocher shall not be liable for any losses, damages, costs and expenses directly or indirectly suffered by customer (including but without limitation to, loss of profits, loss of savings, loss of goodwill, loss of revenue or loss of contracts incurred by customer, whether anticipated or actual, or any special indirect or consequential damages of any nature whatsoever) or any action, claims and proceedings taken against the customer by any third party (e.g. application patents) or parties in connection with, incidental to and consequential upon the purchase, operation and use of the Goods, including but without limitation to, any losses and damages resulting from the interruption or defect in Goods.
- 9.3 Without prejudice, Baerlocher's aggregate liability for all claims made by the customer in relation to any Contract shall not shall not exceed the contract price of the Goods, and the customer agrees to cover claims in excess of such amount.

### 10. Retention of Title

- 10.1 Baerlocher shall retain title in the delivery of goods until all payments specified in the delivery contract have been received by Baerlocher.
- 10.2 The customer shall not sell, pledge, or assign the goods as security to any third party. In the event of attachments, writs of seizure and sale, garnishee orders, confiscations or any other dispositions of the goods by any third party, the customer shall immediately notify Baerlocher of the same. Any application by a third party to commence winding up proceedings against the customer shall entitle Baerlocher to forthwith terminate the contract and demand the immediate return of the delivered goods in the even the delivered goods have not been paid in full.
- 10.3 In case the retention of title will be qualified as invalid in the country to which the goods have been forwarded, such security for the purchase price claim of Baerlocher shall be deemed to have been agreed upon, which can be validly stipulated in the respective country and which corresponds as close as possible to the retention of title from the economical point of view. The customer shall be committed to take and perform all steps and measures insofar as actually or legally necessary.

### 11. Termination

- 11.1 Without prejudice to any other rights or remedies of Baerlocher it shall be entitled in any of the following circumstances to terminate (in whole or in part) the Contract and/or to suspend deliveries and/or to receive upon demand payment of all monies due and payable by the customer:- (a) the customer makes or proposes any voluntary arrangement or any other composition or scheme or arrangement with or assignment for the benefit of its creditors; (b) the customer becomes subject to an administration order or becomes bankrupt or goes into liquidation; (c) the customer has a petition presented for its winding up or has an application made for the appointment of a provisional liquidator or has a creditors meeting convened pursuant to the Companies Act 2016; (d) an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the property or assets of the customer; (e) the customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business; (f) Baerlocher reasonably believes that any of the events mentioned above or any equivalent or similar event under any relevant laws to which the Buyer or any connected person is subject has or may occur; (g) the customer or any connected person commits or allows to be committed any material breach of this Contract.
- 11.2 Baerlocher may be entitled, claim return of the goods subject to clause 10 and, subject to prior warning, use or realize them otherwise for the purpose of satisfying due claims of Baerlocher against the customer.

### 12. Force Majeure

- 12.1 Baerlocher shall not be liable for any failure to perform any of its obligations under the Contract for any reason whatsoever outside its reasonable control including without limitation, acts of God, fire, natural disasters, war, seizure, export ban, embargo or other official measures, strikes, riots, lock-outs, pandemic or other industrial action including trade disputes (whether such dispute involves its employees or not), shortage of raw materials or by any other act, restriction of energy consumption, serious transport accidents, labour disputes and matter or thing beyond its reasonable control.
- 12.2 In the event that Baerlocher does not perform its obligations by reason of any of the causes referred to in Clause 12.1 within six months after the time for performance either party may by written notice terminate the Contract without liability save that the customer shall pay for any Products delivered or completed at the time of termination.

### 13. Confidentiality

- 13.1 The information related to Baerlocher and its products being solely to Baerlocher, regardless of their nature and content and related support. They are strictly confidential and secret. Therefore, any divulgence or use, direct or indirect, of the said information without prior consent of Baerlocher in written form is expressly prohibited.
- 13.2 The chemical composition of samples and goods delivered by Baerlocher must not be analysed for any purpose outside the contractual relationship.

### 14. Data Privacy

- 14.1 For the fulfilment of the contractual relationship the customer data collected in this context shall be processed and used according to Malaysia data privacy law. The data shall be processed and used to solely for the purpose of contract fulfillment and not passed on to unauthorised third parties. However, we reserve the right to have data processed by carefully selected partner companies for the intended purpose.
- "Note if Indemnity Clause is required"** Baerlocher shall not be liable for and the customer shall indemnify Baerlocher against all costs, claims, damages, liabilities and expenses incurred by Baerlocher arising from any use by the customer of Products after the customer became or ought reasonably to have been aware of a defect.

### 15. Compliance with Laws

- 15.1 The customer shall comply with all applicable laws including but not limited to laws and conventions relating to (i) competition law, (ii) anti-bribery, and anti-corruption, and (iii) laws relating to export control and custom regulations such as (i) the rules on embargoed countries, (ii) the restrictions on the sale of products to restricted or denied customers, and (iii) the regime for the control of imports, exports, transfer, brokering and transit of dual-use items. The customer shall not directly or indirectly utilise, sell, ship or otherwise transfer, the products purchased from Baerlocher to or through any country entity or individual as prohibited under national and international regulations.
- 15.2 Without prejudice to the other provisions in this Article, the customer shall comply with all applicable laws and regulations in performing its obligations under the Agreement in a manner consistent with the Baerlocher Code of Conduct. The customer agrees to have read and agrees to the Baerlocher Code of Conduct.

### 16. General/The Final Provision

- 16.1 Baerlocher reserves its right to amend, add or substitute the provisions of these Terms and Conditions from time to time.
- 16.2 A notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the other party giving.
- 16.3 No waiver of or delay or failure by Baerlocher to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 16.4 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.
- 16.5 Nothing in these conditions shall create a partnership, agency or relationship of employment between the parties.
- 16.6 A person who is not a party to this Contract shall have no right to enforce any terms of the Contract.
- 16.7 The parties agree that any disputes arising or in any way connected with the subject matter of these conditions and any Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of Malaysia and the customer and Baerlocher agree to submit to the exclusive jurisdiction of the Malaysian courts in relation to any matter or dispute (whether contractual or tortious) which may arise between them. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.