



**General conditions of sale and delivery of the  
Baerlocher GmbH**

**§ 1 Scope**

- (1) All sales and deliveries of the Baerlocher GmbH are accomplished solely according to the provisions of the present general conditions of sale and delivery (in the following called “the delivery conditions”). These delivery conditions are also valid for all future business with the buyer. The buyer recognizes the validity of these delivery conditions by placing an order or by accepting the delivery.
  
- (2) Contradictory provisions or provisions differing from these delivery conditions established by the buyer are not acknowledged by the Baerlocher GmbH, insofar as their validity has not been accepted through a separate agreement by expressly referring to the respective provisions. Especially, the Baerlocher GmbH does not accept conditions of the buyer by not contradicting to references to the conditions of the buyer contained in documents presented by him. The delivery conditions are also valid, if the Baerlocher GmbH accomplishes the delivery without reservation despite knowing contradictory general conditions of the buyer or conditions that differ from its delivery conditions.

**§ 2 Offer and conclusion of contract**

- (1) The offers of the Baerlocher GmbH are without engagement and do not create duties for the Baerlocher GmbH.
  
- (2) A contract is only concluded through a confirmation of order by the Baerlocher GmbH. The content is solely dictated by the confirmation of order. Oral agreements or consents need the confirmation by the Baerlocher GmbH in order to be valid.
  
- (3) If the delivery of the Baerlocher GmbH exceeds the delivery quantity agreed upon for more than a standard minor difference (“Too-much-delivery”), the quantity actually delivered is seen as the quantity agreed upon if the buyer does not object to the delivered quantity by respecting the delay and form prescribed in § 7 phrase 6. The purchasing price is raised by the amount that had to be paid for the quantity delivered in exceed according to § 6 phrase 1.



**§ 3 Delivery days and delivery dates**

- (1) Delivery days and delivery dates are only binding if they have been confirmed by the Baerlocher GmbH and if the buyer has presented all information and documents that are necessary to carry out the delivery in due time and if he has paid the contractually agreed down-payments. Delivery dates agreed upon start with the day of the confirmation of the order. Enlargements or modifications of the order presented later on will prolong the delivery dates by an adequate period of time.
- (2) Unforeseeable events that cannot be avoided and are not within the sphere of influence of the Baerlocher GmbH as e.g. force majeure, especially war, natural disasters, lack of raw materials, work force or other disturbances of the production facilities absolve the Baerlocher GmbH for their duration of its duty to deliver in due time. In case of delivered goods or parts of delivered goods that are not produced by the Baerlocher GmbH itself, the respect of the delivery days agreed upon depends on the receipt of the correct and in due-time delivery of the Baerlocher GmbH itself. The aforementioned phrase 1 and 2 are not valid, if the Baerlocher GmbH is responsible for the delays.
- (3) Delivery dates agreed upon are prolonged in the case of delays in the sense of the aforementioned paragraph 1 by the duration of the delay. The Baerlocher GmbH will inform the buyer in an adequate way if there is a delay. If an end of the delay is not foreseeable or if it persists for more than 3 months, every party has the right to resign from the contract.
- (4) The Baerlocher GmbH can carry out partial deliveries if necessary.
- (5) If there is a delay concerning the deliveries of the Baerlocher GmbH, the buyer only has the right to resign from the contract, if the Baerlocher GmbH is responsible for the delay and if a deadline for the delivery fixed by the buyer by threatening to resign from the contract has elapsed without affect. If the Baerlocher GmbH has already carried out partial deliveries, the buyer can only resign from the whole contract if he is not interested in the partial delivery.
- (6) If the buyer is in default of acceptance, or if he is in breach of other duties to participate, the Baerlocher GmbH has, notwithstanding its other rights, the right to adequately stock the delivered object at the risks and expenses of the buyer or to resign from the contract after an adequate deadline.



**§ 4 Shipment, passing of risk**

- (1) Subject to special agreements with the buyer, the Baerlocher GmbH has the right to carry out the dispatch in a freely chosen adequate way of dispatching. Costs possibly arising for freight charges, additional freight in case of parcels and for air freight dispatch must independently of their reasons be assumed by the buyer. Insurances are only concluded if the buyer wishes to do so and at his expenses.
- (2) Bundles provided by the Baerlocher GmbH are left to the buyer for up to two months. For the duration of the cession, the buyer will pay an adequate rent fixed by the Baerlocher GmbH. The buyer is obliged to immediately discharge the bundles provided by the Baerlocher GmbH and to immediately declare to the Baerlocher plant in Lingen that the bundles are ready for pick-up. The Baerlocher GmbH is obliged to pick-up the bundles within an adequate period of time after notification. Deliveries on Euro palettes are only carried out against delivery of the same number of undamaged palettes without goods.
- (3) If the buyer loses the bundles or palettes or if they cannot be used anymore if he gives them back, he will have to assume the costs of replacement or repair. This is not the case if the buyer is not responsible for the loss or the damage. As long as the obligation to return is not fulfilled properly because of the loss or the damage, the buyer remains obliged to pay the rent for the bundles.
- (4) Returnable packaging especially means of transport provided by the Baerlocher GmbH remains the property of the Baerlocher GmbH. It is expressly forbidden to sell them to others. The returnable packages respectively means of transport have to be treated with care and may not be used for other purposes than for the stocking of goods delivered by the Baerlocher GmbH. The buyer is liable for damages according to the legal provisions.
- (5) The provisions of the rule on packages in its respectively valid form as well as additional agreements are valid for the returning of the packaging, with exception of returnable packaging.
- (6) The risk passes to the transport company respectively to the buyer himself if the delivered object is handed over. If the dispatch or the handing over is delayed because of reasons caused by the buyer, the risk passes to the buyer on the day of the notification that the goods can be dispatched.
- (7) In order to calculate the weight of the goods, only the weight noticed at the moment of dispatch of the goods within the plant of the Baerlocher GmbH is decisive.



- (8) If the Baerlocher GmbH and the supplier agree that the provision of Incoterms are applicable, this agreement always refers to the version of Incoterms that was valid at the moment of the conclusion of the agreement.

## **§ 5 Prices, payment conditions**

- (1) If the contractual parties have not expressly agreed upon a certain price, then the prices resulting from the price list of Baerlocher in the form that was valid at the conclusion of the agreement are valid.
- (2) All prices of the Baerlocher GmbH are exclusive of the legal value-added-tax as well as the packaging and dispatch costs that are calculated separately. In case of a delivery to a foreign country, the buyer will assume the related to the import of the delivered good.
- (3) If the delivery day agreed upon is more than 4 months after the conclusion of the contract and if unforeseeable raises in costs e.g. concerning the remuneration of workers or the prices of raw materials have occurred with regards to the delivered good within Baerlocher GmbH, the Baerlocher GmbH has the right to raise the price agreed upon. The Baerlocher GmbH will prove the raise in costs to the buyer, if he asks for this.
- (4) Every invoice of the Baerlocher GmbH must be paid within 21 days after it has been dispatched. If this deadline elapses without effect, the buyer is in default of payment. Decisive for the fulfillment of the obligation to pay is the entry of the sum on an account that the Baerlocher GmbH will define. If the buyer is in default of payment, the Baerlocher GmbH has the right to so for default interests in the legally defined amount. The enforcement of a further damage caused by the default remains uninfluenced.
- (5) Cash discount deductions agreed upon are invalid if the buyer is partially or completely in default of payment of other due invoices of the Baerlocher GmbH.
- (6) Bills are only accepted after prior written agreement and only on account of performance. Discount charges have to be assumed by the buyer.
- (7) In justified cases, especially if there are doubts concerning the capacity of the buyer to pay or if the buyer is in default of payment of other invoices of the Baerlocher GmbH, the Baerlocher GmbH has the right to claim a down-payment or the provision of a security before delivery.



- (8) The buyer only has the right to set-off if his counterclaim has been established as indisputable or legally binding. The buyer can only claim a right of retention insofar as his counterclaim results from the same contract or has been established as indisputable or legally binding.

## **§ 6 Electronic transmission of invoices (E-Invoicing)**

- (1) The buyer accepts the electronic dispatch of invoices (E-Invoicing). The buyer accepts that he will not receive paper invoices for sales and deliveries of the Baerlocher GmbH.

(a) The Baerlocher GmbH has the right to transfer electronic invoices to the buyer if the authenticity of the origin of the invoice and the integrity of the content can be guaranteed by means of a qualified electronic signature or by means of a qualified electronic signature with accreditation of the supplier according to the law on signatures or by means of electronic data exchange (EDI) according to article 2 of the recommendation 94/820/EG.

(b) The Baerlocher GmbH also has the right to send electronic invoices via e-mail if the authenticity of the origin of the invoice and the integrity of the content can be guaranteed by means of internal control measures of the Baerlocher GmbH, that guarantee a reliable audit trail between the invoice and the delivery.

- (2) The Baerlocher GmbH is not obliged to transmit electronic invoices. Invoices of the Baerlocher GmbH can- according to its own choice- permanently or in single cases be transmitted on paper. This is especially valid in case of technical difficulties or if provisions on invoices in the receiving state contradict the provisions of §6.
- (3) In order to allow for an electronic transmission of invoices the buyer has to give an adapted electronic address for receiving the invoices. The buyer is obliged to immediately inform the Baerlocher GmbH about changes of the address. The buyer guarantees that he is able to receive messages under the address provided.
- (4) The buyer is responsible for the control of the authenticity and integrity (Verification) and for saving (Archiving) the electronically transmitted invoices (which respectively consist of a PDF file, a verification report and an XML file with the verification formats). He assumes the general responsibility for the fulfillment of his legal duties with regards to accountability and archiving. If during control of the received documents, the recipient of the invoice realizes that the authenticity and the integrity of the invoice cannot be guaranteed, he will immediately inform the Baerlocher GmbH about it. In order to do this, the buyer will transfer the details electronically to the Baerlocher GmbH which led to a negative result of the



control, e.g. in form of a verification protocol. The same has to be done if the content of the invoice is not correct (e.g. differences in quantities, prices, conditions). The correction of an invoice by the Baerlocher GmbH is also carried out electronically and under these conditions. The buyer assumes the costs of a correction, insofar as the Baerlocher GmbH is not responsible for it.

## **§ 7 Configuration, warranty rights, inspecting obligation**

- (1) The intended configuration of the object that will be delivered at the moment of passing of risk will exclusively be measured according to the detailed agreement fixed between the parties with regards to characteristics and performance characteristics of the object to be delivered.
- (2) Guarantees with regards to the configuration must expressly be fixed in writing. Especially, information contained in catalogues, price lists and other information material given to the buyer by the Baerlocher GmbH as well as information describing the product cannot be understood as guaranties for a special configuration of the object too be delivered.
- (3) Advice given orally and in writing by the Baerlocher GmbH with regards to the application of the delivered objects is not binding and does not liberate the buyer of his duty to control the delivered objects with regards to their appropriateness for the intended aim. This is also valid if the delivered objects are generally recommended for a certain aim.
- (4) Notwithstanding the warranty rights the buyer might possibly have according to the following provisions, he is obliged to accept a delivered object with insignificant defects.
- (5) Minor differences usual in trade of the delivered object do not cause warranty right for the buyer.
- (6) In order to have warranty rights the buyer must control the delivered object after handing – over and that he immediately informs the Baerlocher GmbH about existing defects, but at the latest within 5 working days including the day of the handing-over. The Baerlocher GmbH must immediately after they have been detected be informed in writing about hidden defects. In any case of notification of defects, that Baerlocher GmbH has the right to see and control the respective object delivered. The buyer will give the Baerlocher GmbH the possibility and enough time to do so. The Baerlocher GmbH can also ask the buyer to send back the respective object or a model of it at his own expenses so that the Baerlocher GmbH can control it.



- (7) The Baerlocher GmbH will, according to its own choice, delete defects by deleting the defect without costs for the buyer or by delivering a product without defects (in the following both ways are called “remedial action”). The buyer will give to Baerlocher GmbH enough time and possibility to carry out the remedial action. Only in urgent cases of endangering of the operational reliability or in order to avoid inappropriately severe damages or if the Baerlocher GmbH is in default with regards to the deletion of the defect, the buyer has the right to delete the defect himself or to make a third party delete the defect and to force the Baerlocher GmbH to pay the costs of this, after having informed the Baerlocher GmbH about it by mentioning the reason for the defect.
- (8) Warranty claims of the buyer are omitted if defects are caused by reasons the buyer is responsible for, e.g. because of inappropriate use or deficient treatment as far as the Baerlocher GmbH is not responsible for the defects.
- (9) If the remedial action fails, if it is unacceptable for the buyer, or if the Baerlocher GmbH denies to do so because it would only be possible by causing inappropriate costs, the buyer can – according to his own choice- resign from the contract or reduce the price according to the legal provisions.
- (10) The warranty claims of the buyer (§ 437 Abs. 1 und 3 BGB) lapse after a period of 12 months starting with the passing of risks according to § 4 Abs. 6. In case of compensation claims of the buyer for reasons other than defects of the delivered object as well as with regards to the rights of the buyer in case of maliciously hidden defects or defects that have been caused on purpose by the Baerlocher GmbH, the legal limitation period are applicable.

## **§ 8 Liability and compensation**

- (1) The Baerlocher GmbH is liable without limitation in case of intention and gross carelessness. Otherwise, the liability of the Baerlocher GmbH is limited to typical defects resulting of slight careless breach of duties from the contractual obligation that are predictable at the moment of conclusion of the contract. The buyer is solely responsible for the infringement of possible property right of third parties (e.g. application patents) and the infringement of legal provisions when using / treating the objects delivered.
- (2) The limitation of liability mentioned in paragraph 1 is not applicable in cases of compelling legal liability as e.g. according to the law on liability for products as well as in case of a warranty and for claims because of damages caused to life, body or health and in case of



breach of fundamental contractual obligations.

## § 9 Title retention

- (1) The delivered objects rest, until complete payment of all claims of the Baerlocher GmbH resulting from the entire business relationship including interests and costs as well as future claims (also those resulting from contracts concluded simultaneously or in the future with the buyer), property of the Baerlocher GmbH (in the following called "retention objects"). In case of a current invoice, the reserved property is to guarantee the claim of the Baerlocher GmbH.
- (2) The buyer only has the right to sell the delivered objects concerned by title retention (in the following called "retention objects") in ordinary business. The buyer does not have the right to impawn the retention objects, to give them as guarantee, or to take other decisions that put the property of the Baerlocher GmbH into danger. The buyer already now ceds the claims resulting from the resale to the Baerlocher GmbH. The Baerlocher GmbH accepts this cession. If the buyer sells the retention objects after having treated or modified them or after joining them to other products, or together with other products, the cession of claims is only applicable to the part that corresponds to the price agreed upon by the Baerlocher GmbH and the buyer plus a security margin of 10% of this price. The buyer is repealably entitled to fiduciary collect for the Baerlocher GmbH in its own name the claims ceded to the Baerlocher GmbH. The Baerlocher GmbH can abrogate this entitlement as well as the right to resale, if the buyer is in default with regards to important duties, as e.g. payments to the Baerlocher GmbH. In case of abrogation, the Baerlocher GmbH is entitled, to collect the claims itself.
- (3) The buyer will give to the Baerlocher GmbH at any time all necessary information about the retention objects or about claims that were ceded to the Baerlocher GmbH, the buyer will also immediately notify accesses or claims of third parties with regards to retention objects by handing over the necessary documents. The buyer will also attract the attention of the third party to the title retention of the Baerlocher GmbH. The buyer has to assume the costs of repel such accesses or claims.
- (4) If the realizable value of the guarantees is higher than the whole claims of the Baerlocher GmbH to be secured resulting from the business relation with the buyer, for more than 10%, the buyer has the right to ask for clearing. The choice of the securities to be clear is carried out according to the free choice of the Baerlocher GmbH.
- (5) If the Baerlocher GmbH is in default with regards to essential duties as for example payments to the Baerlocher GmbH and if the Baerlocher GmbH resigns from the contract,



the Baerlocher GmbH can notwithstanding other rights can ask for the issue of the retention objects and use them otherwise in order to satisfy due claims against the buyer after prior notification. In this case, the buyer will immediately grant access for the Baerlocher GmbH or the representatives of it to the retention objects and hand these over. The provision of § 107 Abs. 2 InsO remains unchanged.

- (6) In case of deliveries to countries with other legal systems, in which the aforementioned provision on title retention does not have the same effect it has in Germany, the buyer will do everything in order to immediately guarantee adequate security interests for the Baerlocher GmbH. The buyer will participate in all measures as e.g. registration, publication and so on that are necessary and beneficial for the validity and enforceability of such security interest.
- (7) The buyer is obliged to adequately insure the retention objects at his own expenses, to present the respective insurance documents and to cede the claims resulting from the insurance contract in respective height to the Baerlocher GmbH.

#### **§ 10 Documents, concealment**

- (1) The Baerlocher GmbH reserves itself all the rights with regards to all the documents (especially calculations, technical documents etc.) and models that are provided to the buyer independently of an actual conclusion of contract within the negotiations of contracts. This is also applicable to documents that are established by the buyer according to special indications of the Baerlocher GmbH. These documents and models may not be used by the buyer, be copied or provided to third parties for purposes other than those within the contractual relationship. If the Baerlocher GmbH asks to do so, these as well as their copies have to be handed-over. If the negotiations do not lead to the conclusion of a contract, the buyer immediately and without being asked to do so has to hand over all documents to the Baerlocher GmbH.
- (2) The buyer has to treat query, order and delivery as business secret and to keep them secret.



## § 11 Final provisions

- (1) Modifications or amendments to the contract and/or these delivery provisions as well as side-agreement need subject to individual agreements according to § 305 b BGB the written form. This is also applicable to modifications of the requirement of written form
- (2) If one provision of this contract should be or become invalid or impossible to realize, the validity or viability of the other provisions is not influenced by this. In this case, the invalid provision respectively the provision that cannot be realized – with regards to penal law with retroactive effect to the moment of the invalidity / impossibility to be realized- will be replaced by the valid respectively realizable provision that is closest to the aim pursued by the parties in an economic point of view. The same is valid if the contract and / or the delivery conditions have a gap that must be filled.
- (3) Exclusive jurisdiction and place of fulfillment for all disputes resulting from the contractual relationship is Munich. However, the Baerlocher GmbH has the right to sue the buyer at his legal jurisdiction.
- (4) The laws of the Federal republic of Germany are applicable to the contractual relationship. The application of the UN agreement of Vienna concerning the international sale of products (CISG) is excluded.

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