



## **General Terms and Conditions of Sale and Delivery of Baerlocher GmbH**

### **§ 1 Scope of application**

- (1) All sales and deliveries of Baerlocher GmbH are made exclusively on the basis of the following General Terms and Conditions of Sale and Delivery (referred to hereinafter as “GTC of Delivery”). These GTC of Delivery, following valid inclusion, also apply to future transactions with the customer. The customer is deemed to acknowledge the validity and applicability of these GTC of Delivery by placing the order or accepting the delivery.
  
- (2) Baerlocher GmbH rejects any terms and conditions of the customer that conflict with or deviate from these GTC of Delivery. They do not become part of the contract unless Baerlocher GmbH has explicitly consented to their application. Such consent, if any, must be given by Baerlocher in writing or in text form (e.g. e-mail). In particular, failure by Baerlocher GmbH to object to any reference made by the customer to his terms and conditions in the documents submitted by the customer must by no means be deemed to constitute consent by Baerlocher to those terms and conditions of the customer. These GTC of Delivery, following valid inclusion, also apply if Baerlocher – while being well aware of the conflicting or deviating general terms and conditions of business of the customer – executes delivery without reservation.

### **§ 2 Offer and contract conclusion**

- (1) The offers of Baerlocher GmbH are without engagement and subject to change and do not give rise to any obligations of Baerlocher GmbH.
  
- (2) A contract is only deemed consummated upon confirmation of the order by Baerlocher GmbH, which will be sent in text form (e.g. e-mail) to the address provided by the customer. The content of the contract is exclusively dictated by the order confirmation. Oral agreements or promises require confirmation by Baerlocher GmbH to be valid.



- (3) If the delivery from Baerlocher GmbH exceeds the agreed delivery quantity by more than a minor difference usually accepted in trade (“excess delivery”), the quantity actually delivered is considered as the quantity agreed upon unless the customer files a complaint about the excess delivery, respecting the time limit and form prescribed in § 7 subsection 6. The purchasing price is increased by the amount that would have to be paid for the excess quantity delivered according to § 5 subsection 1.

### **§ 3 Delivery times and dates**

- (1) Delivery times and dates are only deemed binding if they have been confirmed by Baerlocher GmbH and the customer has communicated respectively provided to Baerlocher GmbH in due time all information and documents that are required for the execution of the delivery and has made down-payments, if any, as agreed. Any agreed delivery times run from the date of the order confirmation. Any subsequent enlargements of or changes to the order will cause a reasonable extension of the delivery time.
- (2) Unforeseeable events that cannot be prevented and are not within the sphere of influence of Baerlocher GmbH such as force majeure, especially war, natural disasters, lack of raw materials, industrial action or other disturbances of the production facilities release Baerlocher GmbH for the duration of any such event from its obligation to deliver in due time. For goods or components of goods that are not produced by Baerlocher GmbH itself, compliance with the agreed delivery dates and times is subject to correct and timely supply to Baerlocher GmbH by its pre-suppliers. The preceding sentences 1 and 2 do not apply if Baerlocher GmbH is or is deemed responsible for the delay.
- (3) In the event of a delay in terms of the preceding subsection 2, the agreed delivery times are deemed extended by the duration of such delay. Baerlocher GmbH will inform the customer of the occurrence of the delay in an appropriate manner. If the end of the delay is not foreseeable or if the delay exceeds a period of 3 months, either party is entitled to withdraw from the contract.
- (4) Baerlocher GmbH can make partial deliveries if there is legitimate cause provided that such partial delivery is in the customer’s interest and reasonably acceptable for him.



- (5) If there is a delay in delivery on the part of Baerlocher GmbH, the customer is only entitled to withdraw from the contract if Baerlocher GmbH is or is deemed responsible for the delay and a grace period granted by the customer in a warning letter threatening non-acceptance of the delivery has expired without result. If Baerlocher GmbH has already made partial deliveries according to the preceding subsection 4, the customer will only be entitled to withdraw from the contract as a whole if the partial deliveries are of no interest to the customer.
  
- (6) If the customer is in default of acceptance or in breach of any other obligation to cooperate, Baerlocher GmbH will be entitled, without prejudice to any other rights to which it may be entitled, to properly store the goods to be delivered at the risk and at the expense of the customer or to withdraw from the contract after expiry of an adequate grace period granted to the customer.

#### **§ 4 Dispatch, passing of risk**

- (1) Subject to special arrangements with the customer, Baerlocher GmbH is entitled to carry out the dispatch using an adequate mode and route of dispatch to be determined by Baerlocher GmbH in its sole discretion. Costs possibly arising for freight charges, additional freight in the case of express delivery or for air freight dispatch are at the expense of the customer, regardless of the reason for such costs being incurred. Insurance policies will only be taken out upon request and at the expense of the customer.
  
- (2) Any packages provided by Baerlocher GmbH are left to the customer for up to two months from delivery of the goods. For such duration, the customer pays an adequate package rent as fixed by Baerlocher GmbH. The customer is obliged to discharge the packages provided by Baerlocher GmbH without undue delay (“unverzüglich”) and to notify the Lingen plant of Baerlocher GmbH without undue delay (“unverzüglich”) as soon as the packages are ready for collection. Baerlocher GmbH is obliged to collect the packages within a reasonable period after notice of readiness for collection has been given. Delivery on Euro pallets is only made against concurrent return of the same number of undamaged empty pallets.



- (3) If the packages or pallets get lost or are returned in unusable condition, the customer bears the costs of replacement or repair. This does not apply if the customer is not or is not deemed to be responsible for the loss or damage. As long as the customer's obligation to return the packages or pallets is not duly fulfilled due to the loss or damage, the customer remains obliged to pay the package rent.
  
- (4) Returnable packaging and means of transport provided by Baerlocher GmbH remain the property of Baerlocher GmbH. It is specifically forbidden to resell them. The returnable packaging respectively means of transport have to be treated with care and must not be used for any purpose other than the storage of the goods delivered by Baerlocher GmbH. The customer is liable for any damage caused to such packaging according to the statutory provisions.
  
- (5) The provisions of the German Packaging Rules (Verpackungsverordnung) in the respective version valid at the time as well as any supplementary agreements apply to the return of packaging with the exception of returnable packaging.
  
- (6) 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 GmbH, by way of exception, has agreed to bear the costs of dispatch. 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.
  
- (7) The weight of the goods is calculated solely on the basis of the weight measured upon dispatch at the Baerlocher GmbH supply plant.
  
- (8) If Baerlocher GmbH and the customer agree that the provisions of the Incoterms shall apply, the Incoterms are deemed to apply in the current version valid at the time when such agreement is entered into.



## § 5 Prices, terms of payment

- (1) Unless the contracting parties have expressly agreed upon a certain price, the price calculated on the basis of the price list of Baerlocher GmbH valid at the time of contract conclusion applies.
- (2) All prices of Baerlocher GmbH are ex works, exclusive of the legal value-added tax and exclusive of the costs of packaging and dispatch which are charged separately. In the case of delivery abroad, any public charges and customs duties incurred in connection with the import of the goods to be delivered are at the customer's expense.
- (3) If the agreed delivery date is more than four months after contract conclusion and if after contract conclusion an unforeseeable increase in the costs incurred by Baerlocher GmbH such as wages, material costs or energy costs has occurred with regard to the goods to be delivered, Baerlocher GmbH will be entitled to correspondingly increase the price initially agreed upon in its reasonably exercised discretion. Baerlocher GmbH will upon customer's request prove the increase in costs to the customer. In the case that an adjustment of the price in the form of an increase is requested, the customer is entitled to withdraw from the contract. Such withdrawal must be declared to Baerlocher GmbH within 1 week from receipt ("Zugang"<sup>1</sup>) of the request for price adjustment.
- (4) All invoices of Baerlocher GmbH have to be paid within 30 days from receipt ("Zugang"<sup>2</sup>) of the invoice. If the aforesaid time limit expires without payment, the customer is deemed to be in default of payment ("Verzug") with no reminder being required. The payment obligation is deemed duly fulfilled if the payment is timeously credited to the account indicated by Baerlocher GmbH. If the customer is in default of payment, Baerlocher GmbH is entitled to claim default interest at the statutory rate. This is without prejudice to any further claims for damages arising from the delay.

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<sup>1</sup> Note: An declaration is deemed "received" ("zugegangen") in terms of German law if it has come into the recipient's sphere of control in such a way that the recipient can reasonably be expected to take note of it.

<sup>2</sup> See footnote 1.



- (5) Any agreed cash discounts are deemed to be inapplicable if the customer is in default of payment of the total or a partial amount of any other invoices of Baerlocher GmbH that are due for payment.
- (6) Payment by bill of exchange or cheque is only accepted after prior written agreement and only on account of performance (“erfüllungshalber”). Discount charges are at the customer’s expense.
- (7) In legitimate cases, in particular in the case of doubts regarding the customer’s ability to pay or the customer’s creditworthiness or in the case that the customer is in default of payment of other invoices of Baerlocher GmbH, Baerlocher GmbH is entitled to request prepayment or the provision of security before delivery is made.
- (8) The customer is only entitled to set-off if the customer’s counter-claim is undisputed or has been established by a final non-appealable court decision (*res judicata*). The customer is only entitled to retention to the extent that his counter-claim is based on the same contract and is undisputed or has been established by a final non-appealable court decision (*res judicata*).

## **§ 6 Electronic transmission of invoices (e-invoicing)**

- (1) The customer agrees to the electronic transmission of invoices (e-invoicing). The customer agrees that he will not receive hard copy invoices for sales and deliveries of Baerlocher GmbH.
  - (a) Baerlocher GmbH is entitled to 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 a qualified electronic signature with provider accreditation according to the German Electronic Signatures Act (Signaturgesetz) or by electronic data interchange (EDI) according to Art. 2 of the Recommendation 94/820/EC.
  - (b) Baerlocher GmbH is also entitled to transmit electronic invoices by e-mail if the authenticity of the origin of the invoice and the integrity of the content are guaranteed



by internal control procedures of Baerlocher GmbH which guarantee a reliable audit trail between invoice and delivery.

- (2) Baerlocher GmbH is not obliged to transmit electronic invoices. Baerlocher GmbH may in its sole discretion decide to transmit its invoices as hard copy invoices constantly or from time to time. This applies especially in the case of technical problems or if the legal regulations of the recipient's country conflict with the provisions of this § 6.
- (3) In order to enable electronic transmission of invoices, the customer will communicate to Baerlocher GmbH a suitable electronic address for receiving invoices. The customer is obliged to inform Baerlocher GmbH without undue delay ("unverzüglich") of any change of the address. The customer guarantees that he is able and ready to receive invoices under the respective address provided.

The customer is responsible for the verification of the authenticity of the origin and the integrity (verification) and for the storage (archiving) of the electronically transmitted invoices (each of which consists of a PDF file, a verification report and an XML file with the verification formats). The customer is solely responsible for compliance with the statutory obligations regarding accounting/bookkeeping and archiving. If the invoice recipient comes to conclude 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 GmbH to that effect without undue delay ("unverzüglich"). For such purpose, the customer will specify to Baerlocher GmbH by electronic message those details which led to a negative result of the verification, e.g. in the form of the verification report. The same approach is to be chosen if the invoice is incorrect as regards the content (e.g. differences in price, quantity or conditions). The correction of an invoice by Baerlocher GmbH is carried out by electronic means, too, in accordance with these GTC of Delivery. The costs of the correction of the invoice are at the customer's expense provided that the incorrectness of the invoice is imputable to him.

**§ 7 Quality, warranty rights, duty to inspect**

- (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. e-mail).
- (2) Any quality guarantees need to be explicitly agreed in writing or in text form (e.g. e-mail). In particular information contained in catalogues, price lists and other information material provided to the customer by Baerlocher GmbH as well as any product specifications must by no means be deemed to constitute a guarantee warranting a special quality of the goods to be delivered.
- (3) Advices rendered by Baerlocher GmbH orally or in writing with regard to the application of the delivered goods 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 also applies if the delivered goods are generally recommended for a specific purpose of use.
- (4) The customer is obliged, without prejudice to the warranty rights to which he may be entitled under the following provisions, to accept goods that show minor defects.
- (5) Minor deviations in quality of the delivered goods that are usual in trade do not give rise to warranty rights of the customer.
- (6) Warranty rights of the customer are subject to the condition that the customer has inspected the goods after delivery and has given written notice of defects, if any, to Baerlocher GmbH without undue delay (“unverzüglich”) but no later than within five working days (“Werktage”) including the day of delivery. Hidden defects must be reported to Baerlocher GmbH in writing without undue delay (“unverzüglich”) after their detection. In each case of a complaint for defect, Baerlocher GmbH is entitled to inspect and examine the allegedly defective goods. The customer will grant to Baerlocher GmbH the time and opportunity required for such purpose. Baerlocher GmbH may also request the customer, on the expense





of the customer, to return to Baerlocher GmbH allegedly defective goods or a sample for inspection purposes.

- (7) Baerlocher GmbH will remedy the defect at its choice either by elimination of the defect or by substitute delivery of non-defective goods (collectively referred to hereinafter as “subsequent performance” – “Nacherfüllung”) at no expense to the customer. The customer grants to Baerlocher GmbH the opportunity and a reasonable period of time required for the subsequent performance. Only in urgent cases where the operating safety is endangered or to prevent unreasonably great damage or where Baerlocher GmbH is in default of defect remedy, 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 GmbH reimbursement of the necessary costs incurred for such remedy.
- (8) The customer is not entitled to warranty rights if the defects are due to reasons imputable to the customer, e.g. improper use, improper application or improper treatment, unless the defects are imputable to Baerlocher GmbH.
- (9) If the subsequent performance fails or if it is reasonably unacceptable to the customer or if Baerlocher GmbH has refused to carry out subsequent performance because it would involve unreasonably high costs, the customer may – at his choice – either withdraw from the contract or reduce the purchase price in accordance with the statutory provisions.
- (10) The warranty claims of the customer (§ 437 no. 1 – 3 German Civil Code [§ 437 Nr. 1 – 3 BGB]) become time-barred after expiry of twelve months from the passing of the risk as stipulated in § 4 subsection 6. The legal period of limitation for the right of recourse (according to § 445b German Civil Code [§ 445b BGB]) shall remain unaffected. As to claims for damages based on reasons other than defects of the delivered goods (including but not limited to claims for damages for an injury of the life or limb or health and claims under the German Product Liability Act [Produkthaftungsgesetz]) as well as for any rights of the customer in the case of defects which were fraudulently concealed or intentionally caused by Baerlocher GmbH or in the case of warranted qualities, the statutory limitation periods apply.



## **§ 8 Liability and damages**

- (1) Baerlocher GmbH is fully liable for any damage caused by intentional or grossly negligent conduct. Otherwise, in the case of a slightly negligent breach of fundamental duties (“wesentliche Pflichten”) under the contractual relationship, the liability of Baerlocher GmbH is limited to the damage foreseeable upon contract conclusion and typically occurring with contracts of that kind. The customer is solely liable for any infringement of industrial property rights of third parties (e.g. application patents) and for any violation of statutory provisions caused by the use and/or the processing of the delivered goods.
  
- (2) The limitation of liability described in the preceding subsection 1 does not apply in the case of mandatory statutory liability such as under the German Product Liability Act (Produkthaftungsgesetz) or in the case that a guarantee is given or in the case of wilful deceit or fraudulent misrepresentation or with regard to claims for an injury of the life or limb or health or in the case of a breach of fundamental contractual duties (“wesentliche Vertragspflichten”). Fundamental contractual duties in terms of clause 1 are deemed to be duties the fulfilment of which is an indispensable condition for the proper execution of the contract and on the compliance with which the customer is usually allowed to rely and the breach of which by the respective other party endangers the achievement of the purpose of the contract.

## **§ 9 Retention of title**

- (1) The delivered goods remain the property of Baerlocher GmbH until any and all claims of Baerlocher GmbH existing under or arising from the entire business relationship including interest and costs as well as future claims, including even those claims arising from contracts concluded with the customer concurrently or later, have been paid in full (referred to hereinafter as “goods subject to retention of title”). In the case of a current account, the reserved property serves to secure the balance claim of Baerlocher GmbH.
  
- (2) The customer is only entitled to resell the delivered goods subject to retention of title (referred to hereinafter as “goods subject to retention of title”) in the ordinary course of



business. The customer is not entitled to pledge goods subject to retention of title, transfer title to them by way of security or otherwise dispose of them in any way which would endanger the property rights of Baerlocher GmbH. The customer already now assigns to Baerlocher GmbH any claims arising out of the resale. Baerlocher GmbH hereby accepts the assignment. If the customer resells the goods subject to retention of title after they have been processed or transformed or combined with other goods, or together with other goods, the assignment of the claims is deemed to be limited to the amount which corresponds to the price agreed between Baerlocher GmbH and the customer, plus a safety margin of 10 % of the said price. The customer is revocably authorized to collect the claims assigned to Baerlocher GmbH in his own name on a fiduciary basis. Baerlocher GmbH can revoke this authorization as well as the authorization to resell the goods if the customer is in default of the performance of fundamental duties such as payment to Baerlocher GmbH. In the case of revocation, Baerlocher GmbH is entitled to collect the claim itself.

- (3) The customer provides Baerlocher GmbH at any time with all requested information regarding the goods subject to retention of title or regarding the claims assigned to Baerlocher GmbH. The customer is obliged to promptly notify Baerlocher GmbH of any seizure or attachment by third parties or third-party claims relating to the goods subject to retention of title, providing at the same time all necessary documents. The customer will at the same time inform the third party concerned of the retention of title by Baerlocher GmbH. The costs of defence against such seizure, attachment or claims are borne by the customer.
- (4) If the realizable value of the security provided exceeds the total of the claims of Baerlocher GmbH to be secured under the business relationship with the customer by more than 10%, the customer is entitled to request release of the excess security. The security or collaterals to be released will be chosen by Baerlocher GmbH in its sole discretion.
- (5) If the customer is in default of performance of fundamental duties such as payment to Baerlocher GmbH and if Baerlocher GmbH withdraws from the contract, Baerlocher GmbH may, without prejudice to any other rights to which it may be entitled, claim return of the goods subject to retention of title and, subject to prior warning, use or realize them otherwise for the purpose of satisfying due claims of Baerlocher GmbH against the customer.



In this case, the customer will grant to Baerlocher GmbH or its agents immediate access to the goods subject to retention of title and hand them over to them. The provision of § 107 subsection 2 Germany Insolvency Act (§ 107 Abs. 2 InsO) remains unimpaired.

- (6) In the case of deliveries to other regimes or countries where the preceding retention of title clause does not have the same effect as in Germany, the customer will take all possible measures to create corresponding security rights in favour of Baerlocher GmbH without undue delay (“unverzüglich”). The customer will participate and assist in all measures such as registration, publication etc. which are necessary and helpful to ensure the validity and enforceability of the security rights.
- (7) The customer is obliged to take out at his own expense adequate insurance policies for the goods subject to retention of title, provide Baerlocher GmbH with the appropriate proof of insurance and assign to Baerlocher GmbH the claims under the insurance policy in the appropriate amount.

## **§ 10 Documents, confidentiality, analysis of samples and goods**

- (1) Baerlocher GmbH reserves all rights to all documents (including but not limited to calculations, technical records etc.) and samples which are placed at the customer’s disposal in the context of the contract negotiations and contract conclusion, regardless of whether the contract is actually concluded. This also applies to documents which are prepared by the customer on the basis of special information or specifications of Baerlocher GmbH. These documents and samples must not be used, copied or made available to third parties by the customer for any purposes other than those relating to the contractual relationship with Baerlocher GmbH. Upon request of Baerlocher GmbH, the said documents and samples must be returned along with all copies and/or duplicates. If the parties do not conclude a contract, the customer is obliged to return to Baerlocher GmbH without request all such documents without undue delay (“unverzüglich”) or delete such documents upon request by Baerlocher GmbH which is in the latter’s sole discretion whereby the customer is obliged to present appropriate evidence of such deletion.



- (2) The chemical composition of samples or goods delivered by Baerlocher GmbH must not be analyzed for any purpose outside the contractual relationship.
- (3) The customer is obliged to consider and treat any request for an offer, any order, delivery or other performance as confidential business secrets.

## **§ 11 Data protection, consent, indemnification**

- (1) Baerlocher attaches great importance to compliance with the applicable data protection regulations such as the Bundesdatenschutzgesetz (German Federal Data Protection Act) and the General Data Protection Regulations (GDPR). The customer is hereby made aware that also personal data of the customer's employees or agents must be collected and stored for the purposes of contract negotiation, contract conclusion and contract execution. The customer makes sure that the relevant employees, freelancers and other agents have explicitly consented to the use and processing of their personal data (surname, first name, position in the company and, where applicable, telephone number and email address) for the purposes of contract negotiation, contract conclusion, contract execution and for the purposes of necessary communication in the context of the business relationship with Baerlocher GmbH. The grant of consent must be documented in writing or text form ("Textform" according to § 126b German Civil Code [§ 126b BGB]). In terms of time, consent to data processing must in any case be granted for the period until the end of the business relationship between the customer and Baerlocher GmbH. In the case of dismissal or other employment termination and/or lasting internal change of position of the employee or agent, the customer will inform Baerlocher to that effect without undue delay ("unverzüglich"). In this case, Baerlocher GmbH will immediately delete or pseudonymize the personal data of the person concerned (data subject).
- (2) Upon request by Baerlocher GmbH, the customer submits to Baerlocher GmbH without undue delay ("unverzüglich") evidence of the consent given by the person concerned (data subject).
- (3) If third parties or authorities assert claims against Baerlocher GmbH alleging culpable (i.e. intentional or negligent) breach by the customer of the provisions in this section 11 subsection 1 sentence 3 through 6 or section 11 subsection 2, the customer is obliged to



indemnify Baerlocher GmbH upon first request from any and all claims for damages, claims, costs (including lawyers' fees) or fines incurred as a result of the breach. Baerlocher GmbH is obliged to inform the customer without undue delay ("unverzüglich") of any asserted claims and give the customer the opportunity to comment on the case. The customer is obliged to support and assist Baerlocher GmbH in any defence actions and, where required, provide Baerlocher without undue delay ("unverzüglich") with all information and documents required for the defence. Any further claims to which Baerlocher GmbH may be entitled remain unaffected.

## **§ 12 Final provisions**

- (1) Subject to any individual agreement in terms of § 305b German Civil Code (§ 305b BGB), modifications and amendments to the contract and/or these GTC of Delivery as well as side-agreements must be in writing ("Schriftform") or in text form (e.g. e-mail).
- (2) If any provision of this contract and/or these GTC of Delivery should be or become invalid or impracticable in whole or in part, this will be without prejudice to the validity of the remaining provisions hereof. In this case, the parties will be obliged to arrange for the invalid or impracticable provision to be replaced by a valid or practicable provision which corresponds to the economic purpose of the invalid or impracticable provision as closely as possible. The same applies if a gap is found in the contract and/or these GTC of Delivery which needs to be filled.
- (3) The place of exclusive jurisdiction and the place of performance ("Erfüllungsort") for all disputes arising out of the contractual relationship is Munich City ("München-Stadt"). Baerlocher GmbH is however entitled to also sue the customer at the statutory place of jurisdiction.
- (4) The contractual relationship is subject to the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as of German Private International Law is excluded.