



## Terms and Conditions of Purchase of Baerlocher GmbH

### § 1 Scope of application

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

### § 2 Contract conclusion

- (1) Offers are prepared by the supplier without charge. Baerlocher GmbH is entitled to reject the supplier’s offer at any time without stating the reasons for the rejection. Requests for offers or quotations of Baerlocher GmbH are without engagement and do not give rise to any obligation of Baerlocher GmbH.
  
- (2) The supplier can only accept the order of Baerlocher GmbH, which will be sent to the



supplier in writing or in text form (e.g. e-mail), within a period of two weeks from receipt ("Zugang"<sup>1</sup>) of the order. The aforesaid time limit is deemed observed if the notice of acceptance is received "zugegangen"<sup>2</sup>) by Baerlocher GmbH within the said time limit. Until acceptance by the supplier, Baerlocher GmbH is entitled to cancel the order at no expense to it. The order is deemed cancelled in due time if the cancellation is made prior to the receipt ("Zugang"<sup>3</sup>) of the notice of acceptance.

- (3) The supplier is obliged to explicitly advise Baerlocher GmbH in the case that the request/ offer of Baerlocher GmbH is only accepted with changes. In this case the contract is only deemed concluded upon approval of such changes by Baerlocher GmbH.
- (4) If the supplier has a more favourable solution in terms of technology or costs than proposed by Baerlocher GmbH in its order, the supplier will propose and make an offer for such solution to Baerlocher GmbH as an alternative.
- (5) In case a specific work ("Werkleistung") or service ("Dienstleistung") is agreed to be provided, the party obliged to provide such work or service undertakes to perform on its own in its own enterprise. Any subcontracting requires the prior consent of Baerlocher GmbH.

### § 3 Delivery times and dates

- (1) The supplier must comply with the agreed delivery dates and times. Delivery is deemed timeous if the delivery arrives at the destination designated by Baerlocher GmbH within the agreed time limit.
- (2) If circumstances occur or become apparent or foreseeable suggesting that the agreed delivery time cannot be complied with, the supplier is obliged to notify Baerlocher GmbH in writing without undue delay ("unverzüglich"), stating at the same time the reasons and the

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<sup>1</sup> Note: An order 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.

<sup>3</sup> See footnote 1.



anticipated duration of the delay. Baerlocher GmbH is entitled to unrestricted rights as provided by law if the supplier defaults on performance.

- (3) The supplier is obliged to request in due time any documents to be provided by Baerlocher GmbH to enable order execution.

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

- (1) Delivery must be made to the destination designated by Baerlocher GmbH during the regular goods acceptance times of Baerlocher GmbH.
- (2) The consignment must be accompanied by the delivery note and packing slip as well as by all legally specified documents such as ID cards, certificates etc. All shipping documents and the outer packaging must bear the order numbers and the details specifying the point of unloading, the recipient of the goods and the place of installation.
- (3) Partial deliveries will be accepted provided they have been announced beforehand and Baerlocher GmbH has consented to such partial delivery in writing.
- (4) Unless otherwise agreed, the supplier must arrange for the dispatch and choose the most cost-effective and most appropriate mode and route of transport. The supplier is obliged to take out, upon request and at the expense of Baerlocher GmbH, an appropriate transport insurance policy.
- (5) The goods must be delivered packed, if and to the extent that the condition of the goods requires packaging for the transport. The packaging must be transport-proof and conform to the transportation provisions applicable to the specific mode of transport chosen and the statutory packaging regulations, if any, and the packaging specifications contained in the order of Baerlocher GmbH. In particular, hazardous goods must be packed, labelled and dispatched in accordance with the applicable national and international regulations. Additional costs incurred in the case of non-compliance with the said packaging and dispatch regulations are borne by the supplier.



- (6) For every consignment, irrespective of the mode of dispatch, the supplier must send to Baerlocher GmbH a notice of dispatch on the day of the departure of the goods. The invoice is not deemed to constitute notice of dispatch. In the case of sea transport, the names of the shipping company and the ship must be indicated, too.
  
- (7) Until their arrival at the destination, the dispatch of the goods is carried out at the supplier's risk unless the transport is carried out by Baerlocher GmbH using its own vehicles or by a carrier designated by Baerlocher GmbH. If the consignment arrives at its destination in damaged packaging or if it is handed over to Baerlocher GmbH's driver or to the carrier designated by Baerlocher GmbH in damaged packaging, Baerlocher GmbH will be entitled to reject the consignment without inspecting its content in more detail. The costs of return shipment are borne by the supplier.

#### **§ 5 Prices, terms of payment**

- (1) The agreed prices are fixed prices, net and inclusive of packaging, dispatch, insurance provided and to the extent that insurance has to be taken out by the supplier, import duties and other charges and expenses.
  
- (2) Value-added tax must be shown as a separate item in both the quotation and the invoice.
  
- (3) Invoices can only be processed if – when received by Baerlocher GmbH – they show all order data, the order number or delivery number stated in the order and all mandatory statutory information, including but not limited to the VAT ID number of the supplier, if required. The information in the invoice must correspond to order of the items, prices and item numbers shown in the order. Baerlocher GmbH reserves the right to return to the supplier invoices that do not meet these requirements, especially with regard to the order information and VAT regulations, and request issue of a proper invoice. Invoices should be submitted in duplicate whereby the duplicates must be marked as such.



- (4) The supplier, upon request, provides Baerlocher GmbH with an electronic invoice according to subsection 3 including the annexes, if any, to the invoice.
- (5) Unless otherwise agreed in writing, Baerlocher GmbH will make payment within 14 days less 3% discount or within 30 days net. The periods for payment are calculated from complete delivery of defect-free goods and receipt ("Zugang"<sup>4</sup>) of a proper invoice as described in the preceding subsections 3 and 4.
- (6) Payment must by no means be deemed to constitute approval of the delivery as compliant with the contract.
- (7) Baerlocher GmbH is entitled to unrestricted rights of set-off and retention as provided by law.

## **§ 6 Quality, warranty rights, obligation to inspect**

- (1) The supplier warrants that the delivered goods exhibit the contractually agreed features and characteristics, comply with the applicable statutory provisions and the recognized state of the art and are free of defects. The supplier further guarantees that the delivered goods are still unchanged in terms of design and composition with regard to any previous deliveries of the same kind which had been approved and accepted as free of defects, except in the case that such changes have been made with the consent of Baerlocher GmbH.
- (2) The supplier warrants that its deliveries comply with the provisions of the Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation) as well as the Chemicals Prohibition Order (Chemikalien-Verbotsverordnung).

The supplier provides Baerlocher GmbH with the safety datasheets and/or information prescribed by the REACH Regulation without request.

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<sup>4</sup> See footnote 1.



- (3) The supplier's warranty in terms of the preceding subsections also extends to the parts and services procured from sub-suppliers.
- (4) Baerlocher GmbH undertakes to inspect the goods without undue delay ("unverzüglich") as to non-compliance as regards quality or quantity. Any detected defects must be reported within a reasonable period. In any case, such notice of defect is deemed given in due time if it is received by the supplier within five working days ("Werktage") from the date of receipt of the goods, or in the case of hidden defects, from the date of detection of the defect.
- (5) Baerlocher GmbH is entitled to assert any statutory warranty rights for defects without restriction. In any case, Baerlocher GmbH is entitled to claim from the supplier, as Baerlocher GmbH thinks fit, either remedy of the defect (subsequent improvement – "Nachbesserung") or delivery of a new item (subsequent delivery - "Nachlieferung", hereinafter also collectively referred to as "subsequent performance" – "Nacherfüllung"). Baerlocher GmbH is entitled to remedy the defect itself at the supplier's expense if the supplier is in default of performance of the remedy. If subsequent performance by the supplier has failed or is reasonably unacceptable to Baerlocher GmbH (e.g. due to extreme urgency, endangerment of operating safety or threatening occurrence of unreasonably great damage), no additional grace period must be granted. Baerlocher GmbH will advise the supplier prior to the intended remedy by Baerlocher GmbH itself or without undue delay ("unverzüglich") after such remedy has been carried out by Baerlocher GmbH itself.
- (6) The supplier bears all costs incurred in the context of the subsequent performance including but not limited to the costs of replacement (de-installation/ disassembly, re-installation/ reassembly, transport, workshop costs etc.) or costs incurred in connection with the processing of the delivered item.
- (7) The right to compensation of damage including but not limited to the right to damages in lieu of performance ("Schadensersatz statt der Leistung"), the right to withdraw from the



contract and the right to reimbursement of expenses are expressly reserved.

- (8) The defective goods are made available to the supplier for subsequent improvement, at the choice of Baerlocher GmbH either at the place where the defect was detected or at their destination. The running of the warranty period is suspended for the duration of the subsequent performance.
- (9) The limitation period for warranty rights is 24 months, calculated from when the risk has passed to Baerlocher GmbH. Within the scope of warranty repaired or newly delivered parts, the aforementioned warranty regulation applies, calculated from the date of defect remedy.

#### **§ 7 Inspection/ Audits**

- (1) Baerlocher GmbH is entitled to conduct inspections at the manufacturer's plant. The supplier bears its own costs of material and personnel incurred by it on such occasion; Baerlocher GmbH bears its own personnel costs.
- (2) If the parties have agreed to conduct an inspection, the supplier will give at least one week's notice to Baerlocher GmbH of its readiness for inspection and then consults with Baerlocher GmbH to fix an inspection date. If the item to be delivered is not ready for inspection by that date for reasons imputable to the supplier, all costs incurred by Baerlocher GmbH in connection with the scheduled inspection will be borne by the supplier. If defects require repeated or further inspections, the supplier will bear all material and personnel costs incurred in connection therewith.
- (3) The supplier will bear the material and personnel costs incurred for the provision of material certificates for the primary materials.
- (4) The inspection does not affect the supplier's warranty.
- (5) Material and inspection certificates are included in the scope of delivery and must be



available upon delivery.

## **§ 8 Liability insurance**

- (1) The supplier is obliged to take out and maintain, at its own expense, an adequate liability insurance policy to cover damage caused by the delivered goods and/or by the supplier itself, its legal representatives, executive employees or other vicarious agents or persons engaged by it in the performance of its obligations ("Erfüllungsgehilfen") in the context of the execution of the contract.
  
- (2) The coverage for each case of personal injury or damage to property must be sufficient to cover any and all damage typically occurring with contracts of the kind in question that was foreseeable as potential consequence upon contract conclusion. The liability insurance policy must be maintained during the term of the contract, i.e. until the applicable limitation period for warranty claims has expired. Proof of the coverage amount for each single case of damage must be furnished to Baerlocher GmbH upon request. The taking out and proof of the liability insurance policy is without prejudice to the scope of statutory liability.

## **§ 9 Proof of origin, export control**

- (1) Generally, unless otherwise explicitly confirmed in the order confirmation, all orders pertain solely to products that are so-called "goods of preferential origin" in terms of the preferential arrangements of the European Community or the European Union. The supplier is obliged to provide Baerlocher GmbH no later than upon delivery with the required certificates of preferential origin (long-term or individual declarations of the supplier containing the indication of origin, the declaration of origin in the invoice: UE or UE EUR-MED, the movement certificate: EUR.1 or EUR-MED, the certificate of origin – form A). In addition, the contractor is obliged to furnish upon request proof of origin as described above by submission of the information sheets INF 4 which have been confirmed by the contractor's local customs agency. Where in these certificates the place of origin is generally referred to as e.g. "European Union", the specific country of





origin (e.g. "The Netherlands") must be indicated, too.

- (2) In case the supplier departs from its declaration during the validity period of a long-term supplier declaration, the supplier undertakes to specify the changes made by the supplier by an appropriate note in its invoice and moreover to give written notice of such changes to the customs foreign trade department under whose jurisdiction Baerlocher GmbH falls (double notification obligation). It is to be noted that supplier declarations containing an exclusion clause are not accepted by Baerlocher GmbH because such declarations are not covered by the provisions of Regulation (EC) No. 1207/2001. An exclusion clause in this context means any rider to the prescribed wording of the supplier declaration, which limits the import of the declaration by making reference to subsequent individual documents (delivery notes, invoices etc.) and to any existing or non-existing labelling or identification.
- (3) The supply of goods that are not "goods of preferential origin" in terms of a preferential arrangement of the European Community and/or the European Union requires the prior written consent of Baerlocher GmbH.
- (4) The supplier is obliged, in addition to the alternative obligations under § 9 subsection 1 and subsection 3, to submit for all goods to be delivered certificates (certificate of origin, long-term and individual supplier declaration without indication of origin, rider in the declaration of origin in the invoice) which confirm the non-preferential origin of the goods. Where in these certificates the place of origin is generally referred to as e.g. "European Union", the specific country of origin (e.g. "The Netherlands") must be indicated, too.
- (5) Any proof of origin must be submitted without specific request no later than upon delivery, at the supplier's own expense.
- (6) The supplier undertakes to inform Baerlocher GmbH by separate express written notice upon receipt of the order and in the relevant business documents of any existing obligations to obtain permits or authorizations under the German Foreign Trade Act



(Außenwirtschaftsgesetz – “AWG”), the German War Weapons Control Act (Kriegswaffenkontrollgesetz - “KrWaffKontrG”) and the Act for the implementation of the Chemical Weapons Convention (Ausführungsgesetz zum Chemiewaffenübereinkommen - “CWÜAG”). In addition, it must be pointed out by specific indication of the applicable items of the list whether the goods are listed in the EC Dual Use Regulation including Annexes I to IV (Regulation (EC) No. 428/2009) or in the export list, Part I, Section A and C of the German Foreign Trade Regulation (Außenwirtschaftsverordnung – “AWV”). It must be made clear whether the goods or their components (whereby the value percentage in the goods to be delivered must be stated) are included in the US American Commerce Control List (CCL) (with indication of the specific Export Control Classification Number [ECCN]) or are otherwise subject to US Export Administration Regulations (EAR) (Classification EAR99). The relevant business documents in terms hereof include but are not limited to sales contracts, order confirmations, delivery notes, packing lists, pro forma invoices, notices of dispatch.

#### **§ 10 Product liability**

The supplier is liable, to the extent prescribed by law, for the material, substances and individual components of the goods delivered by it and, within such limits, also for the end product. The supplier is obliged to indemnify Baerlocher GmbH upon first request from any third-party claims for damages or other third-party claims provided and to the extent that the cause of the damage originates from the sphere of control or the organizational sphere of the supplier and the supplier is itself liable to the third party. Baerlocher GmbH will inform the supplier of any assertion of claims by third parties and will give Baerlocher GmbH the opportunity to comment on the third-party claim asserted. The supplier is obliged to support and assist Baerlocher GmbH in the defense of such claims in the best possible way and provide Baerlocher GmbH with the information required for such purpose.

#### **§ 11 Industrial property rights and compliance with the law**

- (1) The supplier guarantees that the delivered goods and/or the use thereof do/does not infringe any industrial property rights (such as trademark rights, patents or design rights) or



other rights (such as copyrights, moral rights or personality rights) of third parties and also comply/complies with any other law (e.g. the German Unfair Competition Act [“Gesetz gegen den unlauteren Wettbewerb” – “UWG”], the REACH Regulation [cf. § 6 subsection 2 of these GTC of Purchase], etc.).

- (2) If claims are asserted against Baerlocher GmbH by a third party for infringement of industrial property rights or non-compliance of the goods with the applicable laws in terms of the preceding subsection 1, the supplier will be obliged to indemnify Baerlocher GmbH from any and all claims of such third party upon first written request. The obligation to indemnify pertains to all costs and payment obligations necessarily incurred by or incumbent on Baerlocher GmbH under or in connection with the third-party claims. The limitation period for the claims to indemnification is 36 months from the passing of the risk. § 10 clauses 3 and 4 of these GTC of Purchase apply accordingly.

## **§ 12 Weight**

The weight stated in the order of Baerlocher GmbH must be observed, subject to a 5% tolerance. If and to the extent that the supplier, in the case of a purchase based on fixed weights, fails to conduct any agreed official weighing of the goods, it will arrange for an equivalent weighing at its own expense.

## **§ 13 Safety and environmental protection**

- (1) The goods, deliveries and services provided by the supplier must conform to the statutory provisions including but not limited to the safety regulations and the regulations for environment protection.
- (2) The supplier carries sole responsibility for compliance with the accident prevention regulations Instructions of the manufacturer, if any, must be made available to Baerlocher GmbH upon delivery.

**§ 14 Advertising**

The supplier may refer to the existing business relationship only with the written consent of Baerlocher GmbH.

**§ 15 Incoterms**

If Baerlocher GmbH and the supplier agree on the application of the Incoterms, such an agreement is deemed to refer to the Incoterms in the respective current version valid at the time.

**§ 16 Documentation, confidentiality**

- (1) The supplier must provide Baerlocher GmbH with the requested plans, calculations etc., and with the documents required by law such as ID cards, certificates etc. in due time and make the requested number of such - possibly revised - documents available to Baerlocher GmbH without charge.
- (2) Baerlocher GmbH reserves all rights to all documents (including but not limited to calculations, technical records etc.) and samples which are placed at the supplier'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 supplier 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 supplier 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 supplier is obliged to return to Baerlocher GmbH without request all such documents without undue delay ("unverzüglich").
- (3) The supplier is obliged to treat the request for an offer, the order, delivery or other performance as confidential business secrets.

**§ 17 Final provisions**

- (1) Subject to any individual agreement in terms of § 305 b German Civil Code (§ 305 b BGB), modifications and amendments to the contract and/or these GTC of Purchase 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 Purchase 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 Purchase 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 supplier at the supplier’s general place of jurisdiction as prescribed by law (“allgemeiner Gerichtsstand”).
- (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.