

Terms and conditions of delivery and service of b+m surface systems GmbH

1 Basic information

All agreements and tenders are based on our terms and conditions. They are accepted by order placement or acceptance of delivery and service. Terms and conditions of the contracting party that differ from our terms and conditions and that we have not specifically accepted are non-binding for us, even if we have not specifically rejected them.

2 Tender and content of contract

Our tenders are subject to confirmation. The contract will not be in force until we have signed it. The right to implement deviations from plans, descriptions and specifications in tenders and documentation for reasons of technical improvement or to comply with legal or regulatory requirements is reserved without allowing the contracting party to derive rights from them. Specifications of our products (technical data, dimensions, models etc.) are only approximate and do not represent assured properties.

We reserve the property rights and copyright of samples, drawings and proposals etc. - also in electronic form. They must not be made available to third parties without our approval and must be returned without delay on demand.

3 Prices and payment

Our prices are ex works plus sales tax at the current statutory level including loading at the factory, but not including packaging and unloading.

Our prices are calculated based on the wage and material costs applicable at the time the tender is submitted. We reserve the right to raise prices to cover price and cost increases if the period between signing the contract and delivery is greater than four months.

Installation, assembly, programming, training and other services that are not specifically stated in our tenders are charged on a case by case basis in accordance with our current rates.

Unless otherwise agreed, payments are due as follows:

- 30% of agreed compensation after receipt of order confirmation by the contracting parties or signature of the contract,
- 30% after delivery and start of assembly, but 10 days at the latest after notification of readiness to ship,
- 30% on completion of assembly,
- 10% after commissioning or start of production.

Payments are due without discount to one of our accounts within 10 calendar days.

The contracting party may offset uncontested or legally specified counterclaims only with the reason and the amount. If the contracting party is more than two weeks late with a payment or if the party's capacity for payment or creditworthiness is in doubt, all open invoices for all deliveries made are due in cash immediately, regardless of any differing conditions in the order confirmations.

4 Shipping, transfer of risk

Selection of the shipping method and the means of transport is our responsibility unless otherwise agreed. We will select a suitable standard means of transport. Delivery will be at the risk of the contracting party, unless otherwise agreed. If shipping is delayed by fault of the contracting party, the risk will be transferred to the contracting party on the day of notification of readiness to ship. We will insure the goods at the request and expense of the contracting party.

The contracting party will inspect the goods in accordance with Section 377 Part I HGB [Commercial Code] on delivery, or no later than five business days for shipping damage and for deviations from the specifications in the confirmation of order or the waybills, and notify us of any damage or deviations immediately in writing.

When shipping by rail or road transport, the shipping company must be informed of damage without delay and a survey of the damage must be conducted. Delayed notification of transport damage will not be liable for compensation, cancellation or withholding of payment by the purchaser.

5 Delivery deadlines

Agreements on binding delivery deadlines or assembly periods must be in writing. For us to provide timely services, this requires that the contracting party complies with all obligations, such as the provision of regulatory approvals or making agreed payments.

All delivery schedules start on the day when the order confirmation was sent. They are deemed to be complied with if the object of the contract has left our factory by the end of the delivery deadline or if we have notified the customer that the goods are ready to ship.

Release orders must be completed within four months of the date of confirmation of the order unless otherwise specified.

If it is impossible to comply with the delivery deadline in whole or in part because of force majeure, strike, shortage of raw materials or other circumstances that are not our responsibility, the delivery deadline will be extended appropriately.

Delivery is considered to be delayed only if we have not delivered in accordance with the contract after expiration of a period of at least four weeks specified by the contracting party for reasons that are our responsibility. In case of delay we will pay compensation as specified by the regulations in Section 8 of these terms. There is no right of cancellation to the extent permitted by law.

6 Retention of title

The object of the contract will be delivered subject to retention of title with the following supplements:

The goods will remain in our ownership until all our invoices have been paid in full including future invoices from contracts made simultaneously or subsequently. This will also apply if single or all invoices have been included in one single invoice and the balance has been calculated and accepted.

We retain the right to inspect goods that remain in our ownership at any time at the place where they happen to be. If we implement our right of claim for return, the contracting party will permit us irrevocably to reclaim goods that remain in our ownership, even if they have been modified or processed.

In the case of conduct of the contracting party contrary to the contract, particularly in case of delay in payment, we retain the right to reclaim the objects of the contract. Reclamation of the objects of the contract does not imply cancellation of the contract, unless we have specifically stated so in writing.

The contracting party agrees to treat the objects of the contract with care. The contracting party is specifically required to insure the objects of the contract against fire, flooding and theft at the new value. If maintenance and inspection are required, the contracting party must conduct this at their own expense.

The contracting party is entitled to resell the purchased goods in the normal course of business; however, all invoices due from the resale to be paid by the subsequent purchaser must be assigned to us in full.

If the object of the contract is resold by the contracting party after processing or combination with items that do not belong to us, all invoices due from the resale will be assigned to us to the value of our item along with all ancillary rights and precedence over all others. We will accept the assignment. The contracting party is authorised to enforce payment even after assignment. Our right to enforce payment ourselves is not affected; however, we agree not to enforce payment so long as the contracting party continues to make payments and complies with other obligations as specified, does not fall into arrears and in particular does not commence an application for opening insolvency or bankruptcy proceedings or ceases to make payments. We may require the contracting party to inform us of the assigned invoices and their debtors, to provide all information required for enforcement of payments, to provide all associated documentation and to inform the debtors of the assignment.

Any work or processing of our objects of delivery will be done for us by the contracting party without requiring us to incur any obligations. In the case of processing, compounding, mixing or combination of our items with items that do not belong to us, we retain the proportion of ownership in the new item to the ratio of the value of our item to the remaining processed items at the time of processing, compounding, mixing or combination.

The contracting party is not entitled to assign claims that have been assigned to us by third parties; assignment to factoring companies requires our approval, which we will not withhold without good reason.

As long as the retention of title is in force, the contracting party may not mortgage the item or use it as security. In the case of mortgages or other interventions by third parties, the contracting party must inform us immediately in writing and include a copy of the mortgage record.

If the value of existing securities of the invoice that must be secured exceeds 20%, we agree to release it to that extent on demand of the contracting party.

7 Warranty

Warranty claims by the contracting party require compliance with the contracting party's required obligation of inspection and notification (see Section 4) as specified. Obvious faults must be notified without delay - within 10 business days of delivery at the latest - with specification and description of the notified fault, otherwise the goods will be deemed to be accepted.

We accept no liability if the objects of the contract are improperly stored, installed, operated or used by the contracting party or third parties, and in case of natural wear, absence of confirmation of proper maintenance or non-compliance with the maintenance intervals specified in the documentation, the use of unsuitable operating material, or in case of damage caused by repairs or other work by third parties that have not been specifically approved by us.

If the fault is accepted by us, the contracting party has the right of compensation. According to our choice, we will correct the problem or replace the item. The contracting party will have the right to reduce payment or cancel the contract only if replacement or repair after notification of the fault has failed twice. However, the right of cancellation of the contract requires that the object of the contract deviates from the agreed delivery and performance data to the extent that the contracting party cannot be expected to retain the object of the contract for business reasons. The contracting party will have no claim for damages apart from cancellation of the contract.

If correction of the problem involves unacceptably high costs, we retain the right to refuse correction.

The contracting party will have no further claims for faults in the item or legal defects, unless we have acted improperly or given guarantees.

The warranty period is one year from acceptance of the object of the contract without faults, but no longer than 15 months after delivery of the last part of the system if the contracting party has good reason for delay in the acceptance.

8 Liability

Our liability, regardless of the legal reason, is restricted to intent and gross negligence. This restriction is not applicable to personal injury or damage resulting from a fault in the properties that we have guaranteed.

We accept no liability for indirect damages or consequential damages (e.g. cost incurred by production downtime, loss of profit, costs for interruptions in business operations) to the extent permitted by law.

9 Acceptance

If we provide factory services with assembly and commissioning at the installation site, the contracting party will be notified in writing of completion of the delivery, and an acceptance date in the next 10 business days will be offered. The result of the acceptance will be recorded on one of two pages of a signed form.

If the contracting party does not accept the goods or does not respond to the acceptance date, our delivery will be deemed to have been accepted without faults after the 10th business day after notification of completion. If we only provide planning or project management services, our deliveries will be deemed accepted 10 business days after receipt of the plans and project documentation by the customer, unless the customer notified us of defects within this period.

The contracting party is only entitled to refuse acceptance if the fault makes it impossible to use the delivery in the accustomed manner and/or the manner as provided in the contract and/or makes it valueless or significantly reduces its value.

Usage of the object of delivery for production purposes by the contracting party is deemed as acceptance.

10 Software usage

If the scope of delivery includes software, the contracting party will have the right to use the supplied software including documentation for the object of the contract.

We retain the right to allow other contracting parties to use the software.

Usage of the software by other users than the contracting party or those persons named as authorised to use it in the order confirmation is prohibited.

The contracting party agrees not to remove or change manufacturer's information, specifically copyright notifications, without specific approval in writing.

All rights to the software and the documentation including copies are retained by us or the software supplier.

11 Confidentiality

The contracting party agrees to treat all non-published commercial and technical information that have become known to the party during the business relationship as confidential and not to allow access by third parties.

Without our written approval, models, samples and other production equipment that we provide for the contracting party may not be used for purposes other than operation of the object of the contract.

12 Place of performance. Court of jurisdiction

The place of performance is 36132 Eiterfeld.

If the contracting party has a head office on the territory of the Federal Republic of Germany, the court of jurisdiction is at our company head office. We reserve the right to use the site of the head office of the contracting party.

If the contracting party has a head office outside the territory of the Federal Republic of Germany, an arbitration procedure will be used at the International Chamber of Commerce in Paris under the ICC rules of arbitration. We reserve the right to take suitable legal action.

The laws of the Federal Republic of Germany apply exclusively with exclusion of all conflict of laws standards and exclusion of the United Nations convention on contracts regarding international sale of goods.

13 Conclusions

We store personal data in conformity with legal regulations.

If any individual clauses of these terms and conditions cannot be enforced, this will not diminish the effectiveness of the remaining clauses.

The German version alone is the authoritative version for application of these terms and conditions.