

**General Terms and Conditions of Sale and
Delivery of bielomatik GmbH
(Last updated: 04/2020)**

1. General

- 1.1 Our deliveries and services are subject exclusively to the following Terms and Conditions of Sale and Delivery (“Terms and Conditions”). We explicitly object to the assertion of any Terms and Conditions of Purchase used by the Buyer or other regulations. These shall not even become part of the contract if we perform deliveries or services without reservation and in full awareness of contradictory Terms and Conditions of Purchase, Terms and Conditions of Purchase which deviate from our Terms and Conditions, or other regulations applied by the Buyer.
- 1.2 The Terms and Conditions shall also apply to all future business with the Buyer, without us having to refer to them again in each individual case.

2. Conclusion of the contract

- 2.1 Our offers are non-binding. Once the Buyer has placed their order, the contract shall only come into force through our order confirmation in text form (e.g. letter, email, fax) or, if we do not issue an order confirmation, through our performance of the delivery or service.
- 2.2 Our order confirmation is decisive for the scope of our performance obligation. Information provided in the context of order processing prior to placement of the order – particularly relating to performance, consumption or other individual data – is binding only if it is confirmed as such by us with the order confirmation or subsequently in text form. Information included in brochures and advertisements does not provide any guarantees of characteristics. Individually made verbal agreements shall remain effective.
- 2.3 We reserve our right to the ownership and copyright of cost estimates, calculations, illustrations, drawings and other documents; they must not be made accessible to third parties and are only intended for the purposes of collaboration with us.
- 2.4 With the exception of our managing directors, authorised signatories and other salaried employees who have been explicitly named to the Buyer as contacts, our salaried employees or external distribution agents (e.g. commercial agents) are not authorised to give guarantees of characteristics and durability or other guarantees, or to enter into agreements which deviate from these Terms and Conditions.

3. Prices

- 3.1 Unless agreed otherwise, the prices are ex works (EXW Incoterms 2020) and exclude taxes, duties, levies, charges and packaging.
- 3.2 VAT shall be invoiced separately at the rates valid on the day on which the delivery or service is performed.
- 3.3 We reserve the right to amend the prices accordingly if, after conclusion of the contract, cost reductions or cost increases – particularly due to wage settlements, changes to material or energy prices, or changes to transport costs – occur, provided that the contract does not need to be fulfilled within four months of its conclusion.
- 3.4 Amendments made by the Buyer following conclusion of the contract are only effective with our consent (i.e. supplementary agreement). Any additional costs incurred due to the amendment shall be borne by the Buyer. In the context of the supplementary agreement, the prices shall be adapted to any additional costs.
- 3.5 Should the intended delivery date be postponed by more than three months for reasons which are not attributable to us, we reserve the right to amend our prices in line with the changes to wage and material costs between the order confirmation and the actual delivery date.

4. Packaging, identification

- 4.1 The Buyer shall return the transport packaging to our factory at their own expense.
- 4.2 If the Buyer attaches additional labels to our goods, or if they modify or process our goods or combine them with other products, they are obligated to comply with all the legal regulations and release us from all resulting obligations in the event of recourse by state authorities or other third parties due to a breach against the legal requirements on identification, including the EU regulations, unless the breach is not attributable to the Buyer.

5. Software

- 5.1 We hereby grant the Buyer the non-exclusive right to use – i.e. to install, load and run – the delivered standard software in accordance with the contractual regulations. The Buyer is only allowed to create one copy of the standard software which may be used exclusively for backup purposes (backup copy). The Buyer is not entitled to modify, reverse engineer or translate the standard software, or to delete parts thereof, except in the cases set forth in Section 69e of the German Copyright Act (“Decompilation”).

5.2 If the Buyer transfers their right of use to a third party, they must ensure that the third party is not granted any further rights of use to the software other than those to which the Buyer is entitled under the contractual agreement with us, and that the third party is at least subjected to the software-related obligations arising from this contractual agreement with us. The Buyer must not retain any copies of the software in this regard. The Buyer is not entitled to grant sub-licences. If the Buyer provides a third party with the software, the Buyer shall be responsible for ensuring compliance with any export requirements and shall release us from any obligations in this respect.

6. Partial deliveries, deadlines, delay

6.1 Partial deliveries and partial services are permissible provided these are reasonable for the Buyer.

6.2 Delivery dates and service deadlines are only binding if we have expressly confirmed the same. For our stated delivery period to start, all of the technical issues between the Buyer and ourselves must have been clarified. We are only obligated to perform services and deliveries if the Buyer has made all of the agreed payments. If payments – particularly agreed advance payments – are made late, or if the Buyer's duties to cooperate are not fulfilled in good time, all of the delivery periods shall be extended accordingly.

6.3 Force majeure and other external events which have no operational connection and are unavoidable despite the application of due care shall release us from our contractual duties to perform deliveries or services for the duration of the disruption and the extent of its effects. Force majeure particularly includes labor disputes, unrest, floods and other natural disasters, fire, explosions, failure of operating equipment, war, epidemics, strikes and other industrial disturbances, embargoes and other official measures or restrictions.

6.4 Adherence to delivery dates and service deadlines is subject to the condition that we receive correct and timely deliveries from our suppliers. We shall notify the Buyer at our earliest possible convenience if such delays become apparent.

6.5 If we exceed dates or deadlines which are binding according to Section 6.2, only taking the legal requirements into account the Buyer is particularly entitled to grant a reasonable grace period, to withdraw from the contract concerning the respective delayed delivery or service, or to claim compensation.

6.6 If, in exceptional cases, a contractual penalty is agreed for delays in delivery or service, the Buyer can only demand the contractual penalty if they reserved the right to this effect upon acceptance.

6.7 The Buyer is obligated to state, within an appropriate period of time at our request, whether they intend to withdraw from the contract due to the delay in delivery or service and/or claim compensation instead of receiving the service, or insist on the delivery or service.

- 6.8 If the delivery or service is delayed, the Buyer may – in addition to insisting on the delivery or service – claim compensation for any loss suffered as a result of the delay. This claim for compensation in addition to receipt of the delivery or service is, however, limited to a maximum of 5 % of the net invoice amount for the delivery or service in question, provided that we have not acted with intent or gross negligence and that there has been no injury to life, limb or health. The Buyer's right to withdraw from the contract once the reasonable grace period has elapsed and/or to claim compensation due to non-compliance according to these Terms and Conditions remains unaffected.
- 6.9 If, following conclusion of the contract, the Buyer's financial situation deteriorates or changes significantly, thereby endangering our claim to counter-performance, or if the Buyer was already in such a situation when the contract was concluded but we only became aware of this afterwards, we can refuse to effect performance until counter-performance has been fulfilled. Significant deterioration can particularly be assumed if enforcement proceedings are instituted against the Buyer, if the Buyer is refused key credit or issues bad cheques, and if bills of exchange are protested. In these cases, we can set the Buyer an appropriate period to effect counter-performance or provide security to pay for our performance in instalments. If the counter-performance is not effected or the security is not provided, we are entitled to withdraw from the contract.

7. Transfer of risk, acceptance

- 7.1 Deliveries are carried out "ex works" (EXW INCOTERMS 2020), unless agreed otherwise in text form. Upon performance of the delivery or service, the risk shall transfer to the Buyer. The risk transfers to the Buyer at the latest at such time that they do not contractually accept the contractually offered delivery or service (e.g. by indicating readiness for the delivery or dispatch). If the Buyer does not accept the contractually offered delivery or service, they shall bear our resulting additional expenses, particularly storage costs.
- 7.2 If delivery has exceptionally been agreed by us, the Buyer shall enable contractual unloading in good time by providing specialist personnel and any technical equipment required. The Buyer must ensure that the transport vehicle can immediately travel to the unloading site and perform prompt unloading there. If these requirements are not met, the Buyer must bear the additional expenses and losses incurred as a result of this. If a delay occurs with respect to the Buyer's duties to cooperate, the risk of accidental loss and accidental deterioration of the goods shall transfer to the Buyer.

7.3 If the services to be provided by us are works services and therefore the law applicable to works and services applies, or if we have exceptionally agreed to perform acceptance for the goods with the Buyer, the risk shall transfer to the Buyer upon acceptance at the latest. The Buyer may not refuse acceptance due to insignificant defects. Acceptance shall be deemed to have taken place if the Buyer does not accept the goods or the works following completion within a reasonable period of time set by us unless they refuse acceptance and state a defect. Acceptance shall further be deemed to have taken place if the Buyer receives the goods or the works in series operation.

8. Notifications of defects and material defects

8.1 The Buyer shall examine the goods immediately upon receipt and shall notify us of any noticeable defects in a prompt manner, but at the latest within five working days of the delivery. In the event of defects which were not noticeable in the context of the proper incoming goods inspection, the Buyer shall notify us of the same promptly, but at the latest within three working days of discovery of the defects. Otherwise, the delivered goods shall be deemed accepted, unless we fraudulently concealed the defect.

8.2 If a shipment is exceptionally agreed by us and the delivery is incomplete or transport damage is externally visible, the Buyer shall notify the transport company of this upon delivery. Both we and the transport company must be notified in text form (e.g. by fax, letter or email) of any transport damage which is not externally visible within seven calendar days of delivery.

8.3 Unless agreed otherwise, the owed characteristics of the goods shall exclusively result from the agreed product specifications. Information concerning characteristics and durability as well as other information only constitutes guarantees if they are agreed and referred to as such.

8.4 The Buyer shall give us the opportunity to examine the notification of defect, and shall particularly provide the goods concerned and their packaging for inspection. If a defect has occurred, we shall be entitled to carry out supplementary performance within a period of time set by the Buyer. If the Buyer denies us the right to supplementary performance, their claims for defects shall lapse.

8.5 If the Buyer requests supplementary performance on account of a defect, we can choose whether to rectify the defect itself or to deliver defect-free goods as a replacement. Replaced goods must be returned to us.

- 8.6 The Buyer is entitled to withdraw from the contract or to reduce the purchase price if supplementary performance is impossible, fails, is unreasonable to the Buyer, is unjustifiably refused by us or does not take place within the reasonable period of time set by the Buyer. Withdrawal is excluded if defects are only insignificant. Supplementary performance shall be deemed to have failed following the second unsuccessful attempt at supplementary performance at the earliest. Based on the nature of the goods or defect or the other circumstances – particularly in the event of particular technical complexity or defects that are difficult to remedy – it may be the case that we have a right to additional attempts at supplementary performance.
- 8.7 If the notification of defect turns out to be justified, from the costs incurred due to rectification or replacement delivery we shall bear the costs of the replacement item including shipment and reasonable removal and installation costs. The Buyer shall bear any further costs that they incur themselves. This also applies to increased expenses which are incurred because the goods were subsequently taken to somewhere other than the Buyer's subsidiary, unless such transfer corresponds to their intended use. The Buyer shall reimburse us for necessary assembly and travel costs incurred in connection with unjustified notifications of defects.
- 8.8 We shall not be held liable for any damages to or functional impairments of the goods which are attributable to incorrect operation, improper storage, improper transport, negligent maintenance, natural wear and tear, processing of parts which do not comply with drawings or bad parts whose dimensions deviate from defined tolerances or to other improper handling by the Buyer.
- 8.9 The Buyer's claims to recourse against us according to Section 445a of the German Civil Code can only be asserted insofar as the end customer is a consumer.
- 8.10 The Buyer's claim to compensation shall only exist in accordance with the mandatory legal regulations and the subsequent regulation set down in Section 11.
- 8.11 If we make a specimen or sample available, the characteristics of the sample or specimen alone shall not yet provide a contractual agreement or guarantee with regard to the goods.
- 8.12 Compliance with all kinds of safety regulations (VDE, TÜV, trade associations, etc.) is exclusively the responsibility of the Buyer.

9. Defects of title

- 9.1 If third-party rights prevent the contractual use of the goods, the Buyer shall – at their own expense – immediately inform us in writing of the assertion of such third-party rights and shall issue us with all powers and authorities which are necessary to defend the goods against the asserted third-party rights.
- 9.2 If third-party rights prevent the contractual use of the goods, we shall – at our own discretion – eliminate the third-party rights or assertion of the same by taking suitable measures, purchase the rights of use from the third party for the Buyer at their own expense, or replace the goods so that they no longer violate the third-party rights, if and to the extent that the goods' compliance with the contract is not affected.
- 9.3 The Buyer is entitled to withdraw from the contract or reduce the purchase price if supplementary performance according to Section 9.2 is unreasonable for the Buyer, if supplementary performance is unjustifiably refused by us, or if we do not comply with the request for supplementary performance within a reasonable period of time set by the Buyer. Withdrawal is excluded if contractual use of the goods is only impaired to a minor extent.
- 9.4 Claims due to the violation of industrial property rights or third-party copyrights are excluded if such violation is based on an instruction issued by the Buyer, unauthorised modification or non-contractual use of the goods by the Buyer.
- 9.5 The Buyer's claims to recourse against us according to Section 445a of the German Civil Code can only be asserted insofar as the end customer is a consumer.
- 9.6 A claim for compensation in accordance with the legal regulations and the regulations set down in Section 11 only exists insofar as we knew about or must have known about the conflicting third-party rights.

10. Limitation for claims for defects

Claims for defects shall lapse 12 months after a service has been provided or the goods have been delivered to the Buyer. This does not apply (i) to any claims recorded in Section 11, (ii) to cases of recourse according to Sections 445a and 445b of the German Civil Code in conjunction with Section 478 of the German Civil Code if the end customer is a consumer, and (iii) to goods which represent a structure or have been used as a structure according to their customary application and have caused the defective nature; the legal regulations on limitations shall apply in cases (i) to (iii).

11. Liability

- 11.1 We shall be held liable without restriction in the event of any culpable injury to life, limb and health by ourselves, our legal representatives or our vicarious agents.
- 11.2 We shall be held liable for our own intent and gross negligence, as well as for intent and gross negligence on the part of our legal representatives and vicarious agents. Insofar as we or our legal representatives and vicarious agents have not acted with intent and no case exists according to
- 11.3 Section 11.1, the liability shall however be limited to the foreseeable damage typical of the contract.
- 11.4 We shall further be held liable for any culpable violation of such obligations, the fulfilment of which enables performance of the contract in the first place and on compliance with which the Buyer regularly relies and may rely, on the part of ourselves, our legal representatives or our vicarious agents. Insofar as we, our legal representatives and vicarious agents have not acted with intent and no case exists according to Section 11.1, the liability shall however be limited to the foreseeable damage typical of the contract.
- 11.5 We shall further be held liable in the event of fraudulent concealment of a defect or in the event of assumption of a guarantee. In the latter case, the extent of liability depends on the warranty declaration. We shall further be held liable in cases of mandatory legal liability according to the German Product Liability Act, for example.
- 11.6 We shall only be held liable for data loss on the Buyer's premises up to the amount typical for the costs of data recovery which are incurred despite regular, state-of-the-art data backup measures.
- 11.7 Otherwise, our liability is excluded – for whatever legal reason – unless stipulated otherwise in these Terms and Conditions.
- 11.8 Insofar as our liability is excluded or limited according to the above regulations, this shall also apply to the personal liability of our committees, legal representatives, salaried employees, workers and vicarious agents.
- 11.9 The Buyer shall immediately provide us with comprehensive information and consult with us if they intend to seek legal recourse. The Buyer shall immediately give us the opportunity to investigate the claim.

12. Retention of title

- 12.1 The goods delivered by us remain our property until all outstanding claims resulting from the business relationship between us and the Buyer have been paid in full ("goods subject to retention of title").

- 12.2 The Buyer shall immediately inform us in writing in the event of seizure of or other interventions by third parties in the goods subject to retention of title, so that we can institute third party proceedings according to Section 771 of the German Code of Civil Procedure and take other measures to protect our title to the reserved goods. The Buyer shall support us in safeguarding and asserting our titles. If the third party is unable to reimburse us for the judicial and extrajudicial expenses of a suit according to Section 771 of the German Code of Civil Procedure, the Buyer shall be liable to reimburse the losses we incur.
- 12.3 If the goods subject to retention of title are combined or inseparably mixed with other items which do not belong to us, we shall be entitled to co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other combined or mixed objects at the time of combination or mixing. If combination or mixing is carried out in such a way that an item belonging to the Buyer is considered to be the main item, it is agreed that the Buyer shall hereby transfer to us co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other combined or mixed objects at the time of combination or mixing. We shall accept the assignment. The Buyer is obligated to make the required documents available to us at any time and upon request so that we can determine our share of co-ownership.
- 12.4 Processing or transformation of the goods subject to retention of title by the Buyer is always carried out for us. If the goods subject to retention of title are processed with other objects which do not belong to the Buyer, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (total invoice amount including VAT) to the other processed objects at the time of processing. The Buyer is obligated to make the required documents available to us at any time and upon request so that we can determine our share of co-ownership.
- 12.5 The Buyer shall store the goods subject to retention of title, to which we are entitled to sole or co-ownership, for us at no charge. The Buyer is obligated to handle the goods subject to retention of title with due care; in particular, they are obligated to sufficiently insure at their own expense the replacement value against damage, destruction and loss.
- 12.6 The Buyer is entitled to sell the goods subject to retention of title in the ordinary course of business. The Buyer shall hereby assign the claims arising from the resale of the goods subject to retention of title – whether they have been further processed, combined, mixed or not – in the amount of our claim arising from the contract concerning the goods. We shall accept this assignment. The Buyer is revocable entitled to collect the assigned claims. Our right to collect the claim remains unaffected. We shall not collect the claims ourselves or revoke the collection authorisation for as long as the Buyer is meeting their payment obligations and is not in payment default.

12.7 The Buyer is obligated, upon request, to provide written information about the whereabouts of the goods which are subject to rights to retention of title. They shall also notify us of any other beneficial owners and debtors with regard to the claim assigned to us and shall provide us with all the information necessary for the assigned claims to be collected, submit to us any required documentation and inform the debtor of the assignment at our justified request. The Buyer shall provide us with notices of assignment at any time.

13. Invoices and terms of payment

13.1 Invoicing takes place upon delivery. If ready goods cannot be delivered for reasons which fall under the Buyer's sphere of risk, the invoice shall nevertheless be issued and fall due.

13.2 In the context of agreed goods credit, our invoices fall due for payment within 30 calendar days of delivery without any deductions. Discount deductions are only permissible following explicit agreement in text form. Also in this case, they are only permissible if the Buyer has offset or simultaneously settles all of our outstanding invoices.

13.3 If invoices are not paid within 30 calendar days following receipt, but within 40 calendar days of delivery at the latest, the Buyer shall fall into arrears and we can claim default interest and further default damages unless the delay in payment is not attributable to the Buyer.

13.4 We only accept bills of exchange upon special agreement. Bills of exchange or cheques shall always only be accepted on account of performance.

13.5 The Buyer is only entitled to a right of offset or retention, even in the event of notification of complaint, if their counter-claims are legally established or undisputed.

14. Alteration of the goods

We reserve the right to make minor and commercial alterations to the goods. We are further entitled to alter the goods insofar as doing so is necessary owing to technical further development of the production process and/or the goods and insofar as the alteration is reasonable to the Buyer. However, we are not obligated to make such changes to goods which have already been delivered.

15. Applicable law, place of jurisdiction. Partial effectiveness

15.1 The law of the Federal Republic of Germany shall exclusively apply to the exclusion of the UN Convention on the International Sale of Goods (CISG).

15.2 The place of fulfilment for all liabilities is Neuffen, Germany.

15.3 The competent courts at our headquarters are exclusively responsible for all disputes concerning rights and obligations arising from these Terms and Conditions and the contracts concluded based on these Terms and Conditions, including their validity. However, we are entitled to take action against the Buyer at their general place of jurisdiction. The jurisdiction agreement also applies to legal proceedings concerning cheques and bills of exchange.

16. Other provisions

16.1 The Buyer is not entitled to assign rights or claims resulting from the contract to third parties without our prior written consent.

16.2 Any modifications or amendments to these Terms and Conditions must be made in writing to be valid. This shall also apply to the amendment of the written form clause.

16.3 If one or more regulations set down in these Terms and Conditions become invalid or infeasible, this shall not affect the validity of the remaining regulations set down in these Terms and Conditions. The same applies in the event of these Terms and Conditions containing a loophole. The Contracting Parties shall replace the invalid or unenforceable regulation with a legally permissible and enforceable regulation which most closely reflects the economic sense and purpose of the invalid or unenforceable provision. Should these Terms and Conditions be incomplete, the Contracting Parties shall come to an agreement regarding the contents they would have agreed on under these Terms and Conditions if they had been aware of the loophole upon conclusion of the contract.