

## General Terms and Conditions of Supply

For use in business transactions with entrepreneurs, legal entities under public law, and special funds under public law.

### **1. General**

1.1 Our deliveries are governed exclusively by the following terms and conditions. Terms and conditions which are contrary to or deviate from our Terms and Conditions do not apply unless we have expressly approved their validity. The following terms and conditions also apply if, despite being aware of terms and conditions of the purchaser which are contrary to or deviate from our Terms and Conditions, we effect delivery to the purchaser without reservation.

1.2 Oral agreements made before or at the time of conclusion of the contract are not valid unless confirmed by us in writing.

1.3 If the purchaser does not accept our quotation within two weeks of receipt thereof, we are entitled to withdraw the quotation.

1.4 Cost estimates are nonbinding and subject to a charge unless otherwise expressly agreed.

1.5 Until our new Terms and Conditions of Supply enter into force, these Terms and Conditions also govern all future deliveries to the purchaser.

### **2. Quotations, quotation documents, order confirmation**

2.1 A supply contract is not deemed to exist until a written order confirmation is issued by BMTS Technology, upon delivery at the latest.

Communications sent by remote data transmission/e-mail are deemed to have been made in writing. If we are able to demonstrate, by submitting a transmission report, that BMTS Technology has sent a statement by fax or remote data transmission/e-mail, it is assumed that the purchaser has received the statement.

### **3. Prices**

3.1 Invoices are calculated on the basis of the list prices in effect at the time of delivery or a binding quotation plus sales tax. Sales tax is charged in all cases except those in which the prerequisites for tax exemption of export deliveries have been fulfilled.

3.2 In the absence of any special agreement, the prices are quoted "ex works" (or "ex warehouse") and exclusive of packaging.

3.3 We reserve the right to adjust our prices appropriately in the event of cost reductions or cost increases occurring after the conclusion of the contract, particularly as a result of changes in labor costs, for instance, due to collective agreements, or changes in the price of materials. We shall provide proof of said changes to the purchaser on request.

3.4 Spare parts and repaired goods will be shipped in return for payment of an appropriate flat rate charge for shipping and packaging plus the charge for the service performed by us, insofar as these are not covered by the liability for material defects.

#### **4. Delivery, delivery periods, default**

4.1 The prerequisite for the commencement of and adherence to agreed delivery periods is that the purchaser fulfills the duties to cooperate, in particular the timely receipt of all materials, documentation, approvals, examinations, and clearances to be supplied by the purchaser and adherence to the agreed payment terms. If these prerequisites are not duly fulfilled in a timely manner, the delivery periods will be extended appropriately; this does not apply if the supplier is solely responsible for the delay.

4.2 Deliveries of spare parts are subject to availability. Indicated delivery dates for spare parts are not binding on ÓT VÙ V^&@ [ [ \* ^ but will be adhered to where possible. The prerequisite for adherence to said delivery dates is that all technical questions have been clarified and payments or other obligations of the purchaser are made or fulfilled in a timely manner.

4.3 If the non-adherence to delivery periods is due to acts of God or other disturbances beyond our control, e.g., war, adverse weather conditions, terrorist attacks, import or export restrictions, or labor disputes, including such disturbances affecting subcontractors, the agreed delivery periods will be extended appropriately.

4.4 If we are in default in delivery, the purchaser shall, at our request and within a reasonable period of time, state whether

it insists upon delivery or asserts its other statutory rights.

4.5 In the event of delayed delivery, the purchaser may rescind the contract in accordance with statutory provisions only insofar as we are responsible for the delay.

4.6 The purchaser's claims for damages on account of delayed delivery are subject to the provisions of section 10.

4.7 If the purchaser is in default in acceptance or fails to fulfill other duties to cooperate, ÓT VÙ V^&@ [ [ \* ^ is entitled to give priority to other third-party orders and to extend the delivery period appropriately. Without prejudice to further claims, we are entitled to demand compensation for damages, including any additional expenses, incurred by ÓT VÙ V^&@ [ [ \* ^ in this respect.

4.8 If, at the purchaser's request, shipment or delivery is delayed by more than one month after notification of readiness for shipment was given, the purchaser may be charged, for every month commenced, storage costs of 0.5% of the price of the delivery products, but no more than a total of 5% of the price of the delivery products. The contracting parties reserve the right to prove that higher or lower storage costs have been incurred. The right to assert further claims on account of default in acceptance remains unaffected.

4.9 Partial deliveries and invoicing of the same are permissible unless this constitutes an unreasonable hardship for the purchaser.

#### **5. Transfer of risk**

5.1 Delivery is "ex works" (or "ex warehouse"), unless otherwise expressly agreed. Goods are shipped at the risk and expense of the purchaser. This also applies to returns.

5.2 Transport packaging and other disposable packaging will not be taken back. The purchaser is obliged to ensure disposal of the packaging at his own expense.

5.3 At the purchaser's request and expense, we shall insure deliveries against customary transport risks.

## **6. Complaints and notification of defects**

6.1 The purchaser shall notify us in writing immediately, no later than 15 days after receipt of the goods, of any recognizable material defects. Adhesive labels on boxes, content labels, and tally sheets accompanying the shipment must be sent with the notification. The purchaser shall notify us in writing of other material defects immediately after discovery thereof. The date on which we receive notification of a defect is used to determine the timeliness of notification.

6.2 If notification of a defect proves to be unjustified, we are entitled to demand compensation from the purchaser for expenses incurred by us in this respect.

6.3 No claims for material defects may be asserted if timely notification of a material defect is not given.

## **7. Taking delivery**

The purchaser may not refuse to take delivery on account of minor defects.

## **8. Material defects/Defects of title**

8.1 Characteristics of the contracted products must be expressly described, in detail, as such in writing. The initial sample presented to the buyer for inspection and testing, shop drawings from ÓT VÙÁ^&@ [ || \* ^ Ê and the agreed specifications shall be the only criteria for

the design, dimensions, weight, and suitability.

8.2 Claims based on material defects become time-barred after a period of 12 months. The foregoing provision does not apply insofar as longer limitation periods are prescribed by law pursuant to Section 438, para. 1 (2) (buildings and things used for a building), Section 479, para. 1 (right of recourse), and Section 634a (defects of a building) of the German Civil Code (BGB).

8.3 The limitation period for material defects commences: a) in the case of vehicle and engine equipment, on the date on which the product is put into use, i.e., in the case of original equipment when the vehicle is first registered and in other cases upon installation, but no later than 6 months after delivery of the product (time of transfer of risk); b) in all other cases, upon delivery of the product (time of transfer of risk).

8.4 If a material defect arises during the limitation period, the cause of which already existed at the time of the transfer of risk, we may, at our discretion, effect subsequent performance by remedying the defect or delivering a nondefective product.

8.5 In cases of subsequent performance, the limitation period does not commence anew.

8.6 If subsequent performance fails, the purchaser may—without prejudice to any claims for damages—rescind the contract or reduce the payment amount in accordance with the statutory provisions.

8.7 Claims of the purchaser with respect to expenses incurred in the course of subsequent performance, including costs of transport, carriage, labor, and material, are governed by the statutory provisions.

However, such claims are excluded to the extent that expenses are increased because the delivered product was subsequently transported to a location other than the business establishment of the purchaser, unless such transport is in accordance with its intended use.

8.8 Claims for material defects do not exist in the case of only minor deviation from the agreed quality or in the case of only minor impairment of usability.

8.9 The following are not deemed material defects:

- Normal wear and tear
- Characteristics of the product or damage arising after the transfer of risk as a result of improper handling, storage, or erection, nonobservance of installation and handling instructions, or excessive strain or use
- Characteristics of the product or damage arising as a result of force majeure, particular external influences not assumed under the contract, or as a result of use of the product beyond normal use or the use assumed under the contract
- nonreproducible software errors

Claims for material defects do not exist if the product is modified by third parties or by the installation of parts manufactured by third parties, unless there is no causal link between the defect and the modification. We assume no liability for the quality of the product based on the design or choice of material insofar as the design or material was prescribed by the purchaser.

8.10 The purchaser's right of recourse against us is limited to cases where the purchaser has not made any agreements with its customer above and beyond the statutory claims for defects, e.g., goodwill agreements.

8.11 Claims on account of material defects including claims to recourse by the purchaser are excluded to the extent that

the purchaser has had the defect remedied by a specialist workshop/service center not authorized by us.

8.12 Sections 8.3, 8.6, and 8.7 do not apply insofar our product has been demonstrably sold by the purchaser or customer of the purchaser to a consumer without being processed or installed into another product.

8.13 Our obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 of the BGB on account of defects is governed by section 10 below in all other respects. Further claims or claims of the purchaser other than those governed by section 8 of these Terms and Conditions on account of material defects are excluded.

8.14 The provisions of section 8 of these Terms and Conditions apply mutatis mutandis to defects of title not constituted by the infringement of third-party property rights.

## ***9. Industrial property rights and copyright***

9.1 We assume no liability for claims arising from infringement of third-party industrial property rights or copyright (hereinafter: intellectual property rights) if the intellectual property right is or was owned by the purchaser or by an enterprise in which the purchaser holds, directly or indirectly, a majority of the shares or voting rights.

9.2 We assume no liability for claims arising from infringement of intellectual property rights unless at least one intellectual property right from the family of intellectual property rights has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria, or the USA.

9.3 The purchaser shall notify us immediately of (alleged) infringements of intellectual property rights and of risks of infringement in this respect, which become known and, at our request, allow us—as far as possible—to conduct legal proceedings (including nonjudicial proceedings).

9.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an intellectual property right, to modify said product so that it no longer infringes the intellectual property right, or to replace said product with an equivalent product which no longer infringes the intellectual property right. If this is not possible under reasonable conditions or within a reasonable period of time, the purchaser is entitled to the statutory rights of rescission, insofar as the purchaser allowed us to carry out a modification. We are also entitled to a right of rescission, subject to the foregoing prerequisites. The provisions of section 8.9 above apply mutatis mutandis. We reserve the right to carry out the action at our disposal in accordance with section 9.4, sentence 1 above, even if the infringement of the intellectual property right has not yet been established with legal effect or recognized by us.

9.5 The purchaser's claims are excluded insofar as the purchaser is responsible for the infringement of intellectual property rights or does not support us to a reasonable extent in defending against third-party claims.

9.6 The purchaser's claims are also excluded if the products are manufactured in accordance with the specifications or instructions of the purchaser, if the (alleged) infringement of the intellectual property right arises from the use in conjunction with another product not manufactured by us, or the products are

used in a manner which we were unable to foresee.

9.7 Our obligation to pay damages in the event of infringements of intellectual property rights is governed by section 10 in all other respects.

9.8 Sections 8.2 and 8.3 apply mutatis mutandis to the time-barring of claims based on infringements of intellectual property rights.

9.9 Further claims or claims of the purchaser on account of the infringement of third-party property rights other than those governed by section 9 are excluded.

## **10. Claims for damages**

10.1. Unless provided otherwise by these Terms and Conditions of Supply or binding statutory regulations, liability for damages exists only if the purchaser is at fault for said damages. 10.2 We are liable to pay damages and compensation for abortive expenditure within the meaning of Section 284 of the BGB (hereinafter referred to as "damages") on account of an infringement of contractual or noncontractual obligations only in the following cases:

- (i) Intent or gross negligence
- (ii) Negligent or intentional injury to life or limb or damage to health
- (iii) Assumption of a quality guarantee
- (iv) Negligent or intentional breach of material contractual obligations
- (v) Compulsory liability under the German Product Liability Act
- (vi) Other compulsory liability

10.3 The damages for a breach of material contractual obligations are however, limited to foreseeable damage typical of

this type of contract, except in the event of intent or gross negligence, on account of injury to life or limb or damage to health, or on account of the assumption of a quality guarantee. The compulsory provisions of the German Product Liability Act remain unaffected by the foregoing provisions.

10.4 To the extent that liability for damages on the part of ÓT VÙÁ^&@ [ [ \* ^ is excluded or limited, this also applies with regard to the personal liability for damages of our employees, representatives, and persons employed in the performance of our obligations.

10.5 The foregoing provisions do not imply a change in the burden of proof to the detriment of the purchaser.

## **11. Retention of title**

11.1 We retain title to the delivered products until all our present and future claims on the basis of the business relationship have been satisfied in full.

11.2 The purchaser is entitled to process our products or combine them with other products in the course of the purchaser's ordinary business. To secure our claims set forth in section 11.1, we acquire joint ownership, which the purchaser hereby transfers to us already, of the products arising from such processing or combination. As a secondary contractual obligation, the purchaser shall, free of charge, keep safe the products in which we have joint ownership. The amount of the share of our joint ownership is determined by the ratio of the value of our product to the value of the product created by processing or combination at the time of said processing or combination.

11.3 The purchaser is entitled to resell such products in the ordinary course of business against cash consideration or subject to retention of title. The purchaser

assigns to us now already the full amount (including sales tax) of any claims, including ancillary rights, to which the purchaser is entitled from the resale of our product, irrespective of whether our product has been further processed or not. The assigned claims act as security for our claims set forth in section 11.1. The purchaser is entitled to collect the claims assigned. This does not affect the authority of ÓT VÙÁ^&@ [ [ \* ^ to collect the claims itself. We may revoke the rights of the purchaser as set forth in section 11.3 of these Terms and Conditions if the purchaser fails to duly comply with its contractual obligations with respect to us, particularly if the purchaser is in default in payment. These rights also lapse without any express revocation if the purchaser suspends payments for more than a merely temporary period.

11.4 At our request the purchaser shall notify us immediately in writing of the parties to whom the products to which we have retained title or joint title have been sold and of the claims to which the purchaser is entitled on the basis of the resale and shall issue to us deeds officially authenticated at the purchaser's expense pertaining to the assignment of the claims.

11.5 The purchaser is not entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The purchaser shall notify us immediately of any attachments of or other legal impairments of products or claims belonging to us in whole or in part. The purchaser shall bear all costs necessary to cancel the attachment of our retained property or security by third parties and to recreate the product insofar as it cannot be retrieved from third parties.

11.6 In case of default in payment or any other culpable violation of material

contractual obligations by the purchaser, we are entitled to demand the return of our retained property or security. If we make use of such right, this only constitutes rescission of the contract if we expressly declare that the contract is being rescinded.

11.7 If the purchaser files a petition for insolvency proceedings to be commenced, we are entitled to rescind the contract and demand the immediate return of the delivered goods.

11.8 If the value of the security existing for us exceeds the amount of our claims by a total of more than 10%, we shall, at the purchaser's request, release security to this extent at our discretion.

## **12. Confidentiality**

12.1 The purchaser shall keep confidential with respect to third parties all business and technical information originating from us (including features, which may be derived from objects or software provided and any other knowledge or experience) as long as and to the extent that such information is not proven public knowledge or intended by us to be resold by the purchaser. Such information may only be made available to those persons within the purchaser's business facility who necessarily need to be involved in the use thereof and who are likewise obliged to maintain confidentiality; the information remains our exclusive property. Without our prior written consent, such information may not be duplicated or exploited commercially. At our request, all information originating from us (including, if applicable, any copies or records made) and goods made available on loan must be returned to us immediately in full or destroyed.

12.2 We reserve all rights to the information mentioned in section 12.1

above (including copyright and the right to file applications for industrial property rights, such as patents, utility models, semiconductor protection, etc.).

## **13. Payment terms**

13.1 Unless otherwise agreed in writing, payment must be effected within 30 days of the invoice date without any deductions whatsoever. We may also, however, make delivery conditional upon immediate payment (e.g., cash on delivery or bank direct debit) or advance payment. The date on which the payment is received by ÓT VÙÁ^&@ [ [ [ \* ^ is used to

determine the timeliness of the payment.

13.2 We are entitled to offset payments against the oldest claim due.

13.3 If payment is not received by the end of payment period, we are entitled to charge default interest at 8% above the base interest rate. This does not affect our right to claim further damages.

13.4 Payment by bill of exchange is only permissible following prior agreement with us. We accept bills of exchange and checks on account of performance only and they do not constitute payment until honored.

13.5 If the purchaser is in default in payment, we are entitled to demand immediate cash payment of all due and undisputed claims arising from the business relationship. This right is not affected by a deferral of payment or by the acceptance of bills of exchange or checks.

13.6 The purchaser only has the right to withhold payments or set payments off against counterclaims to the extent that the purchaser's counterclaims are undisputed or have become res judicata.

13.7 If, after the conclusion of the contract, ÓT VÙÁ^&@ [ [ [ \* ^ becomes

aware of circumstances, which call into question the creditworthiness of the purchaser, or the payment claim is under serious threat because the purchaser is verging on insolvency, ÓT VÙÁ/^&@ [ [ [ \* ^ may demand advance payment or securities within a reasonable period of time and refuse to perform services until this demand is fulfilled. If the purchaser refuses to effect payment or the deadline passes without payment, ÓT VÙÁ/^&@ [ [ [ \* ^ is entitled to rescind the contract in whole or in part and to claim damages for nonperformance.

13.8 The provisions of section 13.7 also apply to cases in which the purchaser is in default in payment.

13.9 In addition to the legal prerequisites, the purchaser may also be put in default after the due date by means of a reminder notice. If a specific calendar date has been specified as the payment date, the purchaser may also be put in default without a reminder notice being issued. If the purchaser is in default in payment, ÓT VÙÁ/^&@ [ [ [ \* ^ is also entitled to withhold all deliveries or services.

#### **14. Tools**

14.1 A separate charge will be made for models, casting molds, forging dies, compacting tools, jigs, and other operating equipment. They remain the property of ÓT VÙÁ/^&@ [ [ [ \* ^, even if a portion of the cost has been charged to the purchaser.

#### **15. General provisions**

15.1 If one of the provisions of these Terms and Conditions and of additional agreements reached should be or become ineffective, this will not affect the validity of the remainder of the Terms and

Conditions. The contractual partners are obliged to replace the ineffective provision by another provision, the economic effect of which comes as close as possible to that of the ineffective provision.

15.2 The courts of Stuttgart or, at our discretion, if the purchaser—is a registered merchant or—has no general domestic place of jurisdiction or—has moved its domicile or habitual residence abroad after entering into the contract or if its domicile or habitual residence is unknown at the time of bringing an action, the courts with jurisdiction over the registered office of the operating facility carrying out the order, shall have jurisdiction and venue. We are also entitled to invoke a court, which has jurisdiction over the registered office or a branch office of the purchaser.

15.3 All legal relationships between us and the purchaser are governed exclusively by the law of the Federal Republic of Germany, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

BMTS Technology GmbH & Co. KG

Stuttgart, 10/22/2010