

General Terms and Conditions of Business

I. General Terms and Conditions of Business

1. These General Terms and Conditions of Business (hereinafter "general conditions") shall apply to any and all business activities of BÖWE SYSTEC GmbH (hereinafter: "BÖWE SYSTEC") within the commercial course of business with entrepreneurs (acc. Art. 14 German Civil code), legal entities under public law or special funds under public law (hereinafter together "buyer"), under express exclusion of any contradictory or divergent conditions of the buyer. BÖWE SYSTEC's general conditions shall also apply to future transactions with the buyer, even if they are not expressly agreed upon each time again. All stipulations, secondary agreements and alterations of any agreement must be in writing. This shall also apply to any waiver with respect to the prescribed written form. The validity of any commitments and stipulations, which diverge from BÖWE SYSTEC's general conditions and/or order confirmations require the consent of the executive board or of the authorized officers of BÖWE SYSTEC in compliance with the corporate representation rules of BÖWE SYSTEC. Furthermore BÖWE SYSTEC's staff is not entitled to enter into any divergent arrangement or to grant special conditions. BÖWE SYSTEC's general conditions are at the latest considered to have been accepted with the acceptance of the delivered goods.
2. Information and consulting referring to our products are given on the basis of BÖWE SYSTEC's current experience. The values specified in such scope, particularly performance figures, are only average values determined in tests carried out under laboratory conditions. BÖWE SYSTEC does not undertake any commitment with respect to the exact compliance of the values and application possibilities. As for liability, chapter VI of these general conditions shall apply. All particulars relating to our products, especially illustrations, drawings, statements or weight- measure- and performance-declarations contained in our offers and publications are to be considered only as approximate average values and are not guaranteed as far as not agreed expressly, but only descriptions or characterizations of the goods. As far as limits are not agreed upon expressly regarding admissible deviations and referred to as such in the order confirmation, common commercial deviations (fabrication tolerances) are admissible in any and all case. BÖWE SYSTEC reserves the right to carry out design and form modifications of the ordered product during the delivery period provided that no fundamental changes are made with respect to the subject matter of the order, and its exterior and its function remains acceptable for the buyer. As for series-type production, the version of the respective series when the order is placed is valid as delivery item, if there are no changes in comparison with the order, which might be unacceptable for the buyer.
3. BÖWE SYSTEC reserves the ownership and the copyright on to cost estimations, drawings and other documents, which must not be accessible to third persons.
4. Specimen are prospective specimen and do not commit BÖWE SYSTEC. Any Purchase basing upon samples is subject to usual commercial alterations and such being within the scope of normal fabrication. If BÖWE SYSTEC has provided samples to the buyer, the characteristics of such sample are not deemed to have been guaranteed as far as it is not expressly stipulated divergently in the order confirmation. Samples are to be returned to BÖWE SYSTEC within four weeks after delivery in perfect condition. Failing this, BÖWE SYSTEC is entitled to invoice the purchase list price.

II. Delivery

1. Delivery period starts by sending of the confirmation order, but not earlier than the documents, permits and releases to be supplied by the buyer have been received by BÖWE SYSTEC. The delivery deadline is met if the delivery item has left the production facility before the expiration of the delivery period or if BÖWE SYSTEC has informed the buyer about its readiness to dispatch the goods. Then BÖWE SYSTEC is entitled to dispatch the respective invoice to the buyer.
2. Any commitment for the observance of the delivery period is given under the condition that BÖWE SYSTEC itself has been supplied in time by its subcontractors and the delivery period shall be reasonably extended in cases that measures are taken within the scope of industrial conflicts, like strikes, lock-outs as well as in the case of force majeure as far as such obstacles hinder the performance of the order. This shall also apply if such circumstances affect BÖWE SYSTEC's suppliers.
3. BÖWE SYSTEC shall be liable for any delay or impossibility to deliver - for whatsoever reason - according to chapter VI hereinafter.
4. The buyer undertakes upon BÖWE SYSTEC's demand to declare within a reasonable time limit if for reasons of the delay he is claiming the rescission of the contract and/or damages or if he continues to insist on fulfillment of the contract.
5. All confirmed prices are ex works excluding packing, freight, postage, insurance, transport and assembly plus legal VAT.
6. Shipment will be executed for the buyer's account, ex works or ex warehouse without taking responsibility for least expensive freighting. As of the dispatch of the item to the forwarder, the carrier or the person or institution charged with the execution of the shipment, any risk including the risk of accidental destruction or deterioration of the item passes to the buyer. This shall also apply in cases when shipment is executed free of charge for the buyer.
7. As far as the buyer does not expressly declare waiver to it, BÖWE SYSTEC will insure the shipment by a transport insurance at market conditions for the account of the buyer. Packing material will be invoiced at cost. The cost for the return shipment of the packing material to BÖWE SYSTEC or, as the case may be, the cost of any other recycling of it by the buyer shall be born by the buyer himself.
8. If the dispatch of the goods shall be delayed at the request of the buyer, the buyer will be charged, four weeks after having received the information that the goods are ready for dispatch, with the cost incurred by storage at least however with 1 % of

the invoice amount monthly. Extra cost resulting from a necessary additional shipment due to the delay in acceptance by the buyer, will be born by the buyer. If the assembly of the items cannot take place at delivery for reasons the buyer is responsible for, the buyer shall bear any additional cost. Furthermore, the buyer has to bear the cost including any additional expenses for the damage that could be caused to BÖWE SYSTEC if there was a default in acceptance or if any other duty to cooperate was violated. In such case, the risk of an accidental destruction or deterioration of the delivery item passes to the buyer as soon as he is in default on acceptance.

If the buyer is in default on acceptance, BÖWE SYSTEC will be entitled, after having allotted a reasonable additional period of time for acceptance, and after expiry of such additional period, to dispose about the delivery item differently and to supply the buyer with a reasonably extended period, or to rescind the contract and/or to claim damages for failure of performance. If BÖWE SYSTEC is claiming damages, it shall be entitled to demand 30 % of the purchase price as compensation under express waiver by the buyer to demand evidence of an actual damage. BÖWE SYSTEC remains entitled to prove and claim that damages in excess of it were caused as well as the buyer is entitled to prove that only minor damages were caused.

The delivery deadline can only be met if the buyer performs his contractual duties. Safety devices will only be delivered upon agreement.

III. Terms of payment

1. Consignments of goods up to the value of € 50.-- can be executed by BÖWE SYSTEC at cash on delivery.
2. As far as nothing divergent has been stipulated the following payment conditions shall apply to all deliveries and services rendered:
 - for any delivery, the invoice amount has to be paid by the buyer net without any deduction within 30 days from the invoice date; however the buyer is entitled to claim 2 % cash discount if payment is effected within two weeks.
 - services rendered are to be paid by the buyer net without any deduction within 14 days from the invoice date. If buyer does not effect total payment within due period, then he shall be treated to be in delay.
3. The total amount of our claims - including those from other contracts with the customer - will become payable immediately in the case of a default in payment, protest of a bill or stoppage of payment by the customer or if we do not learn of circumstances which give rise to justified and considerable doubts about the solvency or credit-worthiness of the customer. This also applies if such circumstances were prevailing on the part of the customer when the contract was concluded without our being informed. In such cases we are furthermore entitled to make outstanding deliveries only against advance payment or security and to withdraw from the contract if the advance payment or security is not given within two weeks, without setting a new deadline. Any further pretension remains undisputed.
4. Irrespective of any agreement for installment payments, the residual purchase price becomes due immediately if the buyer defaults on one agreed installment that has become payable.
5. In case of buyer's delay, BÖWE SYSTEC shall be entitled to claim interest on arrears amounting to 8 % above the valid rate of basic interest.
6. The balancing of accounts is only admissible with undisputed or legally enforceable claims. Retention is only admissible as far as the right of withholding is based on the same contractual relationship and if the buyer's counterclaims have been undisputedly or legally ascertained.
7. Payments with the effect of discharging the contract can only be effected to BÖWE SYSTEC GmbH, Werner-von-Siemens-Str. 1, D-86159 Augsburg.

IV. Reservation of ownership

1. The goods supplied (goods to which property is reserved) remain the property of BÖWE SYSTEC - without prejudice to the former passage of risk - until all claims resulting from the transaction including all subsidiary claims are completely satisfied and bills of exchange and checks are honoured and until BÖWE SYSTEC has been discharged from all liabilities that have been taken over for the buyer. Until then the buyer agrees to insure the delivery item at his expense in favour of the supplier against fire, water, breakage and other damage and to prove for this at the request of BÖWE SYSTEC. He shall furthermore grant BÖWE SYSTEC and their agents access to the site of installation.
2. Processing of the goods supplied by BÖWE SYSTEC whilst they are still their property is always executed by the order of BÖWE SYSTEC without their accepting any liabilities therefore; the new item becomes the property of BÖWE SYSTEC and is considered to be reserved in accordance with figure 1.
3. If the object supplied by BÖWE SYSTEC is connected to or combined with other objects and cannot be regarded as the main part of the new object, the buyer will immediately cede his rights of ownership and co-ownership of the new object and with due commercial care will hold the new object in safe custody for BÖWE SYSTEC. The coverage of the rights of ownership and of co-ownership ceded to BÖWE SYSTEC is determined by the relation of the invoice value of the objects supplied by us to the invoice value of the other goods which are in use. The rights of ownership or co-ownership resulting for BÖWE SYSTEC herewith are looked upon as goods to which property is reserved in accordance with figure 1.
4. In the due course of his business and only if there is no default in performance on his part, the buyer is entitled to sell or to process the goods to which property is reserved or to combine them with other objects or to mount them otherwise (hereafter also shortly called resale). Any other use of the goods to which property is reserved is inadmissible. If the buyer grants his customer a delay in the payment

of the purchase price, he must reserve the ownership of the goods on the same terms on which BÖWE SYSTEC has reserved ownership when the goods were delivered; however, the buyer is not obliged to reserve the ownership with respect to claims that he will have against his customer in the future. Otherwise, the buyer is not authorized to resale.

5. The claims of the buyer arising from the resale of the goods to which property is reserved are herewith ceded to BÖWE SYSTEC. They serve as a security to the same extent as the goods to which property is reserved. The customer is entitled and authorized to resell only if it is guaranteed that the claims hereof due to him pass over to BÖWE SYSTEC. If the assigned claim is included in a current account, the buyer cedes the part of the balance which corresponds to the amount of the claim including the final balance of the current account to BÖWE SYSTEC. The assignment of claims is herewith accepted. If the reserved goods are alienated together with other goods not belonging to BÖWE SYSTEC, the assignment of the claims arising from the alienation will be valid only to the invoice value of the goods to which title is reserved at the time of delivery for the purpose of fulfilling the alienation transaction. The assignment will provisionally be a tacit one, i.e. the customer will not be informed. The buyer shall be entitled to collect the claims until further notice; he is however not entitled to dispose of claims otherwise; e.g. by assignment. BÖWE SYSTEC has the right to revoke the authorization to collect claims and to collect them by themselves. BÖWE SYSTEC refrains therefrom as long as the buyer meets his obligations to pay in proper form and BÖWE SYSTEC does not come to know of circumstances that could considerably reduce the creditworthiness of the buyer. At the request of BÖWE SYSTEC, the buyer shall be obliged to notify his customer of the cession and to give all information and documents required for the assertion of assigned claims to BÖWE SYSTEC.
6. If BÖWE SYSTEC has guaranteed for any liability of the buyer in favor of a third party and the third party avails such guarantee parties, the buyer shall re-assign to BÖWE SYSTEC for purposes of security any and all claims he may possess related to retransfer of ownership of the goods transferred to such third party.
7. If the realizable value of the securities given to BÖWE SYSTEC exceeds the secured claims by a total of more than 10 %, BÖWE SYSTEC is obliged upon demand of the buyer to release exceeding securities at its own option.
8. If the item delivered by BÖWE SYSTEC or any other item created out of it or any new item created in combination with it, and the title to it has been assigned to BÖWE SYSTEC, is pledged, encumbered or seized by third parties, then the buyer undertakes to immediately inform BÖWE SYSTEC in writing. All intervention costs are at the expense of the buyer if they cannot be collected by third persons (opponent of the third-party action against execution) and the third-party action against execution has been brought with full justification.
9. The assertion of any reserved title as well as the distraint of any item supplied by BÖWE SYSTEC does not require prior rescission of the respective contract by BÖWE SYSTEC. Such actions taken by BÖWE SYSTEC do not represent the rescission of the contract, unless otherwise expressly stated by BÖWE SYSTEC.
10. In case of infringement of contractual obligations by the buyer, especially if the buyer is in delay with payment, BÖWE SYSTEC is entitled to take back the delivered item. In this case, the purchaser authorizes BÖWE SYSTEC to take away the delivered item and to this purpose to enter the business premises of the buyer.

V. Warranties

Notwithstanding any express divergent agreement between the parties BÖWE SYSTEC shall only be liable for defects in title and for defects in material or workmanship under exclusion of any different or more far-reaching liability, as defined hereinafter.

1. Defects in title or defects in material or workmanship including the lack of any quality, which is guaranteed by BÖWE SYSTEC, as well as deliveries of items in excess of ordered quantities or incomplete deliveries or deliveries of wrong items (hereinafter: "defect") have to be, to the extent, that such defects are evident, noticed in written form immediately, however not later than within 14 days from the date of delivery, by the buyer to BÖWE SYSTEC. If the buyer fails to give notice of existing defects to BÖWE SYSTEC within such period, all claims regarding such defects shall be then excluded.
2. In case that an item delivered by BÖWE SYSTEC is or becomes defective, BÖWE SYSTEC shall, provided, that notice according to par. V.1) was given in due time by the buyer and the buyer has proved, that the defect noticed already existed at passing of risk, within a period of 12 months from the date of delivery to the buyer, at BÖWE SYSTEC's exclusive choice, eliminate the defect (repair) or deliver an adequate substitute. In case of the use of the item by the buyer within an industrial multiple shift operation BÖWE SYSTEC shall only be liable for defects within a period of 6 months from the date of delivery. In case that shipment, installation or putting into operation of the item is delayed for reasons beyond the responsibility of BÖWE SYSTEC then any liability of BÖWE SYSTEC for defects shall extinguish latest within 12 months after passage of risk. With respect to damages resulting from any injury of life, physical well-being and health of persons caused by defects of delivered items, BÖWE SYSTEC shall be liable for a period of 24 months from the date of delivery of the items to the buyer. For used equipment any liability of BÖWE SYSTEC is excluded.
3. The buyer undertakes to grant to BÖWE SYSTEC upon arrangement any requested time period and occasion to perform a repair of the item or to deliver an adequate substitute as it may be reasonable necessary.
4. In case, that the defect could not be eliminated by repair or delivery of an adequate substitute, or in case, that BÖWE SYSTEC being not unjustified refuses any necessary repair or delivery of an adequate substitute or it is in delay with such obligation, or when the repair or the delivery of a substitute would be unreasonable for the buyer as well as when the provisions of articles 281 par. 2 and 323, par. 2 of the German Civil Code are given, the buyer is entitled, instead of repair or delivery of an adequate substitute to avail of the remedies provided by law as rescission of contract, reduction of purchase price and claims for damages and costs may be according to the provisions of chap. VI.

5. Any parts or items replaced within performance of repair or substitution shall become the property of BÖWE SYSTEC.
6. The warranty period for defects of any replaced item or part or any effected repair shall be 6 months, however such warranty period does not end prior to the expiry of the original warranty period for defects of the respective item and such period shall be extended by the duration of the interruption in use reasonably caused by the elimination of the defects.
7. This provision will not apply in case of an insignificant deviation from the agreed condition of the item or in case of an insignificant detraction of usability. No guarantee is accepted for damage arising for the following reasons: non-observance of our technical instructions, unsuitable or faulty usage, defective assembly or putting into operation by the buyer or third persons, natural wear and tear, faulty or negligent handling, the use of unsuitable operating aids, replacement materials, inadequate building work, unsuitable buildings or building sites, chemical, electrochemical or electrical influences, if they are not the fault of BÖWE SYSTEC.
8. If the buyer or a third party makes improper modifications or repairs without BÖWE SYSTEC's prior written consent, BÖWE SYSTEC's warranty for any defect resulting from such improper modification or repair and as a consequence thereof shall be void.
9. Buyer's claims for compensation of costs caused by measures related to the rectification of defects, especially transport, travel, working and material costs are excluded from reimbursement to the extent as such costs are increased due to the fact that the item delivered by BÖWE SYSTEC was removed to a site other than the place of business of the buyer at the time of the delivery unless such removal was in accordance to the scheduled usage of the item.
10. The above provisions shall apply on defects in title accordingly.

VI. Liability

1. Notwithstanding any express divergent agreement between the parties any and all claims of the buyer for the compensation of damages, including compensation of cost and consequential damages, based on whichever legal ground are excluded. This restriction shall also apply when BÖWE SYSTEC employs persons in the performance of its obligations (vicarious agents).
2. The restriction of liability according to the above par VI. 1. shall not apply if any respective infringement or breach of contractual obligations or act in tort was caused intentionally or by gross negligence of BÖWE SYSTEC, its directors and officers or its vicarious agents as well as in such cases, when BÖWE SYSTEC, its directors and officers or its vicarious agents are culpable for the breach of essential contractual obligations (hereinafter: "essential obligation") and such breach jeopardizes the purpose of the respective contract.
3. In case of the breach of essential obligations BÖWE SYSTEC's liability is limited to the value of the respective order, provided that such breach was only caused by slight negligence.
4. In case that under circumstances described in the latter par 3. the value of the order does not cover the typically expected damage, then the liability of BÖWE SYSTEC will anyhow be limited up to the amount of the typically expected damage.
5. The above restrictions of liabilities shall not apply for claims under the product liability act or in the case that BÖWE SYSTEC undertakes a guarantee regarding a specific aspect of a delivered item and such guarantee is just given for the purpose to safeguard the buyer against damages, which do not occur within the delivered item itself. The above restrictions shall also not apply with respect to damages related to injuries of life, physical integrity and health of persons.

VII. Place of delivery, applicable law and venue

1. The place of delivery shall be the respective BÖWE SYSTEC plant, wherefrom the delivery is effected ex-works.
2. The laws of the Federal Republic of Germany are applicable under exclusion of the rules of the UN Sales Convention.
3. Any disputes arising from or in connection with the contractual relationship are to be referred, in commercial transactions (if the buyer is entrepreneur, legal entities under public law or special funds under public law), to the court having jurisdiction for the principal place of business of BÖWE SYSTEC. BÖWE SYSTEC is also entitled to bring action at the buyer's principal place of business. Legal provisions relating to exclusive jurisdictions are not to be affected.

VIII. Data processing

This is to inform the buyer that BÖWE SYSTEC will store any incoming data in connection with the business relationship to the buyer in computer aided data files and process it for the purpose of the business relationship.

IX. Validity

If individual clauses of this general conditions should prove to be or to become legally not valid, the validity of the other clauses shall not be affected. In such cases the invalid clauses shall be deemed to be replaced by a valid clause coming next to purpose of the invalid clause.