

General Terms and Conditions of Trade and Conditions of Delivery and Payment for business relationships with Messrs. BILZ Vibration Technologie AG, Leonberg (AGB-BILZ)

1. Scope of Validity

1.1 These General Terms and Conditions of Trade of Messrs. Bilz (AGB-BILZ) regulate the business relationship between ourselves and our customers and determine the conditions of delivery and payment. They apply to all contractual partners whatever their legal form, with the exception of consumers in the sense of § 13 BGB I (German Civil Code)

1.2 These AGB-BILZ apply to all legal relationships and legal transactions between ourselves and our customer for all business conducted in the present and the future, without the AGB-BILZ having to be expressly agreed again.

1.3 Our customer's purchasing conditions and other terms of trade do not become a contractual component of a legal transaction in the present or the future, even if we do not expressly contradict such in general or in an individual case. The AGB-BILZ likewise apply even if we execute an order in awareness of the customer's contradictory terms without making any express reservation.

2. Offers and Conclusion of Contract

2.1 Our offers in all forms are non-binding and without obligation. A contract in the individual case first comes into existence with our confirmation of order.

2.2 In the case of a written confirmation of order, this is decisive for the content of the contract. Additional agreements, in particular assurances of certain characteristics, require the written form, likewise subsequent amendments to contract.

2.3 The information concerning our services and products (product information) detailed in catalogues, price lists, brochures, on our Web site or in other media is non-binding and without obligation, technical changes are reserved. Normal commercial deviations in the quality, dimensional accuracy and colour tone of the goods are reserved.

3. Prices and Conditions of Payment

3.1 Our prices apply ex-works Leonberg as the place of fulfilment. Packaging, freight costs, transport insurance, other shipment costs and any customs duties are borne by the customer.

3.2 Our prices do not include value-added tax. This shall be charged in addition at the legal rate prevailing on the date concerned.

3.3 Unless agreed to the contrary, remuneration for our services is payable immediately upon receipt of invoice by the customer without deductions.

3.4 We can demand payment in advance if the customer's credit-worthiness is unknown or doubtful, or in case of default of payment for earlier deliveries.

4. Delivery Dates and Deadlines

4.1 Dates for deliveries and the provision of services are non-binding, unless such have been expressly confirmed in writing as "binding" in the confirmation of order or in an individual contract.

4.2 Binding delivery dates and deadlines are not fixed dates in the sense of § 286 Para. 2 BGB or of § 376 HGB (German Commercial Code) unless we have designated and confirmed a delivery deadline as "fixed".

4.3 In case of late deliveries, the customer must set a reasonable period of grace for us, providing a fixed date has not been agreed.

We are entitled to make part-deliveries and provide part-services at any time, insofar as this is not unreasonable for the customer.

4.3 In case of default of delivery for which we are responsible which concerns a culpable infringement of a major contractual obligation, whereby culpability on the part of our representatives or vicarious agents is accountable to us, we are liable in the scope of legal regulations, under the proviso that the liability to recompense losses is limited to the damages typically foreseeable in such a case. Further-going claims are excluded, unless we are culpable of malice aforethought.

5. Shipment and Transfer of Risk

5.1 We dispatch the goods to the place of delivery nominated by the customer using a transport company of our choice, insofar as no specific method of shipment has been agreed.

5.2 The risk of accidental loss is transferred to the customer upon handover of the goods by us to the transport company.

5.3 We do not take back transport or other packaging. The customer shall dispose of packaging at its own expense.

5.4 Transport insurance is only concluded at the request of the customer and for its account.

5.5 The customer is obliged to inspect the delivered goods immediately for any transport damage, to complain of such to the carrier and to inform us.

6. Reservation of Title

6.1 The goods remain our property until all the goods previously delivered by us have been paid for in full.

6.2 The customer is entitled to sell and/or use the reserved goods in orderly business transactions, as long as it is not in default of payment, has not put a general stop to its payments or has not applied for insolvency. In case the goods are reprocessed or converted, we are regarded as the manufacturer in the sense of § 950 BGB. In case the reserved goods are combined with objects belonging to the customer or a third party, we acquire co-ownership as per § 947 BGB.

6.3 In case of a physical or legal seizure of our reserved goods by a third party, this third party must be informed of our ownership and we must be notified of the seizure without delay.

6.4 If the customer resells the reserved goods, it assigns the claims to remuneration it accrues against its buyer with all securities to us until our claims have been redeemed. We accept the assignment. We shall notify the assignment and collect the claim if the customer is in default of payment. The customer must provide us with all the information required to pursue our rights.

6.5 We shall release securities due to us insofar as the realisable value of our securities exceeds the claims to be secured by more than 25%. We are entitled to select which securities are to be released.

7. Warranty and Liability (Limitation of Liability)

7.1 The delivered goods must be inspected without delay after receipt in accordance with § 377 HGB and obvious defects complained of in writing.

7.2 We assume the warranty for defects prescribed by law for goods supplied by us. Insofar as we assume a guarantee for the quality or service life of the goods under an individual agreement, such provisions have priority, without prejudice to the minimum claims prescribed by law.

7.3 Insofar as the goods have a defect for which we are responsible, we are entitled to perform subsequent fulfilment by means of rework or replacement delivery within a reasonable period of grace, under the provisional exclusion of the buyer's right to withdraw from contract or reduce the purchase price. We shall bear the costs required to rectify any defects, insofar as these are not increased because the object of contract is in place different to the point of delivery. If subsequent fulfilment fails, the customer accrues the legal right of a reduction in the purchase price (diminution) or may withdraw from contract. Rework is regarded as having failed after the second attempt has been made in vain. If a trial period is required to establish whether subsequent fulfilment has succeeded, this period must be allowed to run.

If the customer complains of defects, we are entitled to inspect and test the goods in question on the spot. The customer must give us sufficient opportunity to do so.

7.4 Liability for defects is excluded, insofar as the defect is caused by circumstances which lie in the customer's deployment or sphere of risk and these circumstances are beyond our control, or if our products are put to a use not intended and not normally to be expected. The intended uses of our products are detailed in our product information.

Deployment of our products for uses not stated in our general or specific product information, or for which no adequate trials have been held, must be agreed with us before the order is issued.

7.5 When using our products, we assume that our customer has a certain level of specialist knowledge. Should this not be the case, we must be informed to allow us to further clarify the matter.

7.6 Our instructions of use and technical directives must be strictly complied with in order to prevent damage or defects. Should these not be observed, claims to damages, warranty rights and guarantee claims are excluded if such damage or defects would not have occurred, had the products been handled properly.

7.7 We are liable without limitation under legal regulations for fatalities, physical injuries and harm to health which result from gross negligence or malicious infringement of general obligations by ourselves, our legal representatives or vicarious agents, likewise for losses covered by liability under product liability laws. We are liable under legal regulations for damage resulting from malice aforethought or grossly negligent infringement of contractual obligations on our part. In this case, however, liability to recompense losses is limited to the damages typically foreseeable, providing we are not culpable of malicious behaviour. We are only liable for losses caused by the lack of a guaranteed quality or service life, yet not directly incurred on the delivered goods, insofar as and to the extent that the risk of such losses is clearly covered by the guarantee of quality or service life extended.

7.8 We are also liable for losses caused by simple negligence if we infringe a contractual obligation which is of particular importance to attaining the purpose of contract (cardinal obligation). We are liable only to the extent that the losses are typically bound up with the contract and are foreseeable. Otherwise liability for slight negligence is excluded.

8. Place of Fulfilment and Jurisdiction, Applicable Law

8.1 The place of fulfilment and jurisdiction for deliveries, payments and for all disputes arising between ourselves and the buyer from all legal relationships with our customer is our company headquarters in Leonberg. We are nevertheless entitled to take legal action against the buyer at its general place of jurisdiction.

8.2 The law of the Federal Republic of Germany shall prevail exclusively over the legal relationships between the contractual parties. Application of the uniform law concerning the international sale of movable objects and of the law concerning the conclusion of international sales contracts for movable objects is excluded.

(AGB-Bilz vers. 03/2007)