

## General terms of sale and delivery

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### 1. Scope

**1.1.** The present General Terms of Sale & Delivery form an integral part of the sales contract and shall be applicable unless deviations were explicitly agreed in writing by the contractual partners.

**1.2.** The following provisions relative to delivery of goods shall analogously apply to other services rendered.

**1.3.** The present provisions shall likewise apply to supply of spare parts or deliveries effected on basis of warranty claims, etc.

**1.4.** For assembly work seller's Assembly Terms shall be referred to in addition.

### 2. Conclusion of Contract

**2.1.** The contract shall be considered as concluded through sending of the written order confirmation to the purchaser, the order confirmation being alone decisive as to scope and execution of the order. Collateral agreements shall be considered valid only if approved in writing by the seller.

**2.2.** Seller's quotations are to be understood without engagement and subject to prior sale.

**2.3.** Drawings, dimensioned sketches and similar enclosed with the quotations are without engagement and to be considered as approximate. Seller reserves the right to make necessary changes at any time.

**2.4.** Prior to conclusion of the sales contract, the purchaser shall point to legal, official, and other regulations relative in particular to execution of delivery, assembly, operation of the plant, sickness and accident prevention, foreign exchange related export and import restrictions, and any other official regulation which might delay or prevent delivery.

**2.5.** Purchaser engages to provide for procuring in time all necessary official permits. Otherwise, the legal consequences stated under **13.5.** and **13.6.** of these General Terms shall become effective.

### 3. Drawings and Documents

**3.1.** Quotations, project documents plus pertinent drawings, descriptions, illustrations, and similar remain seller's intellectual property and must not be copied or reproduced, nor be disclosed to third parties in any way and must neither be used for the making of plants or plant components. Upon request, purchaser shall immediately return such documents if the order is not executed.

### 4. Prices

**4.1.** Unless stipulated otherwise, seller's prices are to be understood ex works, packing, transport insurance, freight and assembly unpaid.

**4.2.** Taxes, contract fees, stamp duties, fees for export, import and transit, discount interest, customs duties and customs fees, official factorage, and similar shall be borne by the purchaser.

**4.3.** If the relation of the currency stated in the invoice as against USD changes, in particular as a result of devaluation or revaluation of either currency, the purchase price shall be calculated on the basis of the relation of both currencies at the date of concluding the contract.

### 5. Terms of payment

**5.1.** All payments to be made as agreed and in the currency stated in the quotation or the order confirmation respectively, to seller's account indicated in the order confirmation or invoice. Purchaser may pay to one of seller's commercial agencies with debt releasing effect only if the seller has explicitly approved of this in writing.

**5.2.** In the absence of an order confirmation stipulating anything else, 50% of the purchase price shall fall due on receipt of the order confirmation and the balance on notification of readiness for shipment.

**5.3.** It shall be considered as day of payment that date when the payment is received at the place of payment stated.

**5.4.** Purchaser shall not be entitled to retain or compensate payments for reason of possible warranty claims or other counterclaims, nor of claims resulting from other business, provided such claims were not confirmed by court decision or accepted by the Seller.

**5.5.** If in case of payment by instalments (crediting of the purchase price) the purchaser is in default of one instalment, the overall still outstanding debt shall immediately fall due (forfeiture of credit period).

### 6. Sale Scope

**6.1.** All the goods under these terms are made in P.R.C.

**6.2.** All the goods under this General Terms of Sale and Delivery are only used in P.R.C and Asia. If the goods should be used outside this area, Seller will not be responsible for the duties under this terms and Seller may have all rights to claim for any damages against the Buyer.

### 7. Retention of Title

**7.1.** Seller reserves the right of property on the goods delivered until all amounts due to the seller have been settled in full. Purchaser has to provide for satisfying any formality required to safeguard seller's retention of title. In case of seizure or similar measures, the purchaser undertakes to assert the right of property and to inform the seller immediately.

**7.2.** If in case of exports the relevant legal provisions valid at the assembly place need to be observed, purchaser undertakes to take all measures to make seller's right of retention legally effective. If the law of the country of destination does not provide for retention of title yet allows the seller to reserve other rights on the goods delivered, the latter shall be entitled to exercise all rights of this kind. In case of non-observance of this obligation, the seller shall be entitled to retain the parts not yet delivered until proof of fulfillment of this condition is furnished, or to cancel the contract without period of grace with the legal effects of **13.5.** and **13.6.** of the present General Terms coming into force.

### 8. Delivery Period

**8.1.** The delivery period starts at the earliest after conclusion of the contract and after any official formality such as import and payment licenses having been obtained, all agreed payments and securities having been made and furnished, resp., and after clarification of essential technical points. The delivery period shall be considered as observed when at its expiration the goods ordered are ready for shipment. If the goods are intended to be accepted by the purchaser in the seller's works, the date of notification to the purchaser that the goods are ready for acceptance shall be considered as observed delivery period.

**8.2.** The delivery period shall be extended:

**8.2.1.** If information required for execution of the order does not reach the seller in time or if such information is subsequently changed by the purchaser;

**8.2.2.** If obstacles arise which are beyond seller's control, irrespective of whether such obstacles are caused by the purchaser or a third party. It shall be considered as obstacles such as e.g. epidemics, mobilization, war, riots, substantial operation troubles, accidents, labor disputes, delayed or incorrect supply of raw materials, semi-finished or finished products required, essential workpieces becoming useless, official measures, force majeure;

**8.2.3.** If the purchaser is in arrears with work to be carried out or in default of meeting his contractual obligations, and in particular when the terms of payment are not observed.

**8.2.4.** If the policies changed by the Buyer's or Seller's government, so the goods permit to import or export.

**8.3.** In presence of events such as stated under **8.2.**, the delivery period shall be extended by that time for which the event in question continues. Should an obstacle as per **8.2.2.**, **8.2.4.** continue for more than 12 months; the contractual partners shall be entitled to cancel the contract in writing. In presence of obstacles according to **8.2.1.** and **8.2.3.**, the seller alone shall have the right to terminate the contract in writing. In case of events such as stated under **8.2.1.** and **8.2.3.** and under **8.2.2.**, **8.2.4.** (as far as they produce on the purchaser's side), the stipulations of **13.5.** and **13.6.** of these General Terms shall apply analogously. No payment of interest shall be made for payments received from the purchaser. The purchaser waives moreover any compensation claims or retention rights at this time already. The provision of **13.4.** shall apply analogously.

**8.4.** Seller shall be entitled to effect partial or advance deliveries.

### 9. Packing

**9.1.** Packing shall be effected if not explicitly agreed upon otherwise as commercially usual to prevent the delivery from getting impaired through weather influences under normal shipping conditions.

**9.2.** Purchaser shall inform the seller in time about special wishes for packing. Such an information shall be considered as given in due time if the desired packing may be effected without delay and problems. If advice regarding a special packing is not given in due time or if such packing requires substantial expenditure, the seller shall be entitled to refuse such packing without legal consequences. Such a refusal shall be notified immediately and in writing.

**9.3.** Every packing shall be separately invoiced and shall be non-returnable, if not explicitly agreed upon otherwise.

### 10. Transport and Insurance

**10.1.** All transport arrangements are to be effected by the purchaser at his cost and risk. If, as agreed, the carrier is instructed through the seller and for his account, the purchaser shall continue to bear the risk and undertakes to provide for securing of the goods during transportation from door to door to prevent them from slipping, tilting, possible external mechanical influences, and similar.

**10.2.** Complaints relative to transportation to be directed by the purchaser to the last carrier within 2 days upon receipt of the delivery or of the shipping documents. Furthermore, the purchaser engages to immediately assert possible transport damages with the carrier in accordance with the carriage contract and the General Forwarding Terms. Seller to be immediately informed accordingly.

**10.3.** Purchaser undertakes to take out at this expense a transport insurance from door to door corresponding to the value of the goods delivered. Even if this insurance is agreed to be concluded by the seller, it shall nevertheless be on purchaser's account and at his risk. The seller shall in no case be liable for transport damages.

### 11. Passing of Risk and Benefit

**11.1.** Benefit and risk shall pass on to the purchaser on the delivery leaving seller's works at the latest, even if partial deliveries are effected or if other services were carried out by the seller like take over of transport cost.

**11.2.** If delivery ex seller's works is delayed without his fault, the risk shall pass on to the purchaser at the date of notification that the goods are ready for shipment.

### 12. Acceptance

**12.1.** Purchaser undertakes to examine the delivery on the day upon receipt and to inform the seller immediately and in writing about possible transport damages, otherwise he shall forfeit any claims.

**12.2.** If non-conformity of the delivery with contractual provisions is stated upon receipt, purchaser shall provide an opportunity for the seller to repair defects. Decision on how and where to rectify any non-conformity is made solely by the seller.

**12.3.** The purchaser is not entitled to reject delivery of the goods due to non-conformity with contractual provisions.

**12.4.** In case purchaser is rejecting delivery of the goods the regulations of **13.5.** and **13.6.** of this General Terms of Sale and Delivery shall be applicable.

### 13. Delay in Performance

**13.1.** If delivery is delayed through seller's fault, purchaser shall be entitled to insist on performance or to cancel the contract in writing, granting a reasonable period of grace. Adequacy of this period of grace to depend in particular on the scope of delivery and on whether a special execution was made, etc.

**13.2.** In case of delayed or non-contractual delivery (performance), seller's liability shall be limited to the provisions of **16.3.**

**13.3.** If purchaser withdraws from the contract in accordance with these provisions, he shall be entitled to reimbursement of the money paid, however, without interest. Purchaser shall return anything received under this contract, waiving any compensation or retention claims. Return of mutual performances to be effected concurrently.

**13.4.** Should the purchaser be using a partial delivery received and if this partial delivery continues to be of use to him, withdrawal from the contract relative to this partial delivery shall be excluded.

**13.5.** If the purchaser comes in default of an agreed payment or of another obligation (in particular **2.4.** and **7.2.**) the seller shall be entitled to insist on performance; and

**13.5.1.** Defer performance of his own contractual obligations until receipt of outstanding payments or furnishing of other performances,

**13.5.2.** Reasonably extend the period of delivery.

**13.5.3.** Insist on payment of the still outstanding balance of the purchase price (forfeiture of credit period), and

**13.5.4.** If the purchaser cannot state a reason in his defence in the sense of "force majeure", the seller shall be entitled to charge, at maturity, penal interest amounting to double respective loan interest rate of People's Bank of China.

**13.5.5.** To declare cancellation of the contract, granting a reasonable period of grace. In case of default in payment the period of grace is inapplicable.

**13.6.** In case of a withdrawal according to **13.5.**, the purchaser shall return all deliveries received so far, compensating the depreciation meanwhile occurred, and refund to the seller all disbursements made, in particular freight charges, customs duties, fees, travel expenses, design and administration cost, etc. Included in such disbursements are also expenses incurred or to be paid for the delivery of parts from third parties (subcontractors). Depreciation amounts to 3% p.m. of the purchase price and shall be imputed pro rata to the performance affected. Payments effected by the purchaser shall be returned to the latter taking the above deductions, without interest into account. In case of special executions, the seller shall be entitled to place the finished parts at purchaser's disposal and to demand the corresponding share of the purchase price.

**13.7.** If a binding business is not executed in time and time is of the essence, the seller shall be liable in the framework of the stipulations of **16.3.** only.

#### 14. Warranty

**14.1.** The warranty of Seller under these terms is limited to the place stated in the sale contract as place of delivery. Seller has the right to refuse warranty or add extra fees when the place is different.

**14.2.** The period of warranty is only in the plant trial. It means the period of guaranty is 12 months or 4,000 operation hours at the most. Run operation hours to be evidenced by the purchaser. In case of doubt, the seller shall be entitled to suppose that the plant had been run in multi-shift operation. The period of warranty starts running on delivery of plant and/or components ex works or, if operation start-up is supervised by the seller, on termination of the same. If shipping and/or operation start-up are delayed for reasons which are beyond seller's sole control, the period of warranty shall, however, expire 12 month at the latest after notification of readiness for shipment; If the seller alone is responsible for default in delivery or performance, the stipulation of the foregoing phrase shall apply.

**14.3.** Seller undertakes to repair or replace as he deems to be practical as soon as possible all parts delivered which have provably become defective or useless due to bad materials, faulty design or improper execution. It shall be fully up to the seller how and where to repair such defects. The replaced parts shall become seller's property. Purchaser is liable at any time to give evidence that a defect claimed for in the goods delivered has already been existing at time of delivery.

**14.4.** As explicitly agreed upon, seller assumes liability for defects only in the framework of the stipulations of **16.3.**

**14.5.** Unless stipulated otherwise, seller shall bear only those costs arising from repair or replacement of damaged parts in his workshops. If defective parts cannot be repaired or replaced in his workshops for reasons beyond his responsibility, e.g., parts contained in special executions deviating from the delivery scope as per catalogue, the additional cost resulting therefrom shall be at purchaser's charge.

**14.6.** Purchaser shall inform the seller immediately in writing about defects occurred, otherwise all warranty claims extinguish.

**14.7.** The period of warranty according to **14.2.** shall not be extended through elimination of defects or recognition of the same, incorporation of new parts in the main delivery, neither for the main delivery nor for replaced or new parts.

**14.8.** After expiration of the period of warranty, the seller shall warrant hidden defects only if despite his provable knowledge of such defects he has failed in gross negligence to point the purchaser to these defects on delivery.

**14.9.** In case of defects, the purchaser undertakes to send back to the seller or to a third party stated the defective goods or parts for repair or replacement. In this case, the purchaser shall assume cost and risk for sending to the seller and returning to him the parts after replacement or repair of the same.

**14.10.** Excluded from warranty are defects due to: natural wear, insufficient servicing, non-observance of operation instructions, excessive stress, use of unsuited operation means and raw materials, or use of raw materials and operation means which as a result of their properties cause stronger wear, or chemical or electrolytic influences, unsatisfactory building and mounting work effected by other than seller's personnel, and due to other reasons which were not caused by the seller. Excluded from warranty are moreover unimportant defects which mean such defects which are without immediate or visible effect on the functioning of the plant or plant components or on the quality of the product to be manufactured such as in particular optical or similar defects. In case regenerate is being processed in the plasticizing units, the seller shall be released from any liability as to those parts which might be affected, unless a separate and written agreement had been concluded in this context.

**14.11.** Warranty shall lapse if the purchaser or third parties carry out modifications or repairs without seller's written consent; furthermore, if the purchaser fails to immediately take suitable measures to prevent damages from getting worse and disabling the seller to repair such damages.

**14.12.** If an order is executed on basis of design specifications, drawings or models made available by the purchaser, seller's warranty shall not cover correctness of the design, yet shall be limited to conformity with purchaser's specifications. In case of possible infringement of patent rights of third parties, purchaser engages to hold the seller harmless.

**14.13.** Seller shall not assume any liability whatsoever in case of repairs or modifications or reconstructions of old or other than seller's makes. Shall be considered as "old" products such makes for which the warranty period according to **14.5.** has already expired or which, with purchaser's knowledge, have been in use in seller's works or in the factory of a third party.

**14.14.** It is explicitly agreed that the seller shall be liable only for damages caused on intent.

**14.15.** For parts obtained from sub-suppliers, seller shall be liable only to the extent of his warranty claims toward such sub-suppliers.

**14.16.** If parts of the delivery or the delivery as a whole are taken back a depreciation of 3% p.m. shall be deducted from the partial or full purchase price for the period of use of the returned partial or main delivery.

#### 15. Place of Performance and Jurisdiction

**15.1.** Daliang, Foshan City, Guangdong Province of P.R.C. to be the place of performance and payment even when handing over of the delivery was agreed to be effected at another place.

**15.2.** If no arbitration court was agreed upon between the contractual partners, all disputes arising from this contract shall be referred to and settled by the materially competent court in Daliang, Foshan City, Guangdong Province of P. R. China.

**15.3.** Chinese Law shall likewise apply if the goods are exported and the customer declares on placing the order to understand the legal terms used in these delivery conditions in the way they are understood according to law applies without reference to its international private law and without referring to other foreign laws or referring back to itself. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

#### 16. Miscellaneous

**16.1.** Modifications to and deviations from these General Terms of Sale & Delivery shall be valid only if made expressly and in writing. Possible other conditions of the purchaser which are in contradiction to the present General Terms shall be applicable only if and to the extent explicitly accepted in writing by the seller.

**16.2.** Promises and agreements of seller's employees shall be binding only if confirmed by seller's management.

**16.3.** Purchaser's claims for damages due to late delivery or performance, for unsatisfactory delivery or performance, shall be considered only in presence of intent or gross negligence. In case of gross negligence, the claim for damages shall be limited to that damage which provably was caused by the seller on the goods supplied. Consequential damages of any kind, in particular loss of profit, are excluded except for damages caused intentionally. Claims for damages shall lapse within 6 months from supply if the damage and the damaging party are known and within 12 months from supply if the damaging party is unknown.

**16.4.** Purchaser shall not be entitled to claim compensation or retention of rights possibly due to him, not even by way of defense.

**16.5.** If one of the foregoing provisions violates compelling law and would hence become invalid when applied, it is agreed that in such a case an admissible regulation shall be applied this

comes nearest to the sense of this condition instead of the clause possibly subject to nullification.

**16.6.** The English version of these General Terms is binding for business transactions. The Chinese translation provided is for information purposes only.

#### 17. Compliance Management System:

battenfeld-cincinnati has established a Compliance Management System and set up a Code of Conduct that is observed by the company and all employees when doing business. This Code of Conduct also mirrors the core values of our company. You can find it for download on our website: ([www.battenfeld-cincinnati.com/en/china/company/mission-statement/compliance/](http://www.battenfeld-cincinnati.com/en/china/company/mission-statement/compliance/)).