

Terms and Condition of Sale and Delivery No. 15 (TCSD15)**I. General**

1. All offers, products and services, including consultancy services, supplied by W. Baelz & Sohn GmbH & Co. will be subject exclusively to these Terms and Conditions. These Terms and Conditions shall also apply – for non-traders in this current version, otherwise in the version as valid from time to time – to any future contracts, even if not expressly referred to in such cases. Our Terms and Conditions of Sale and Delivery shall be deemed to have been accepted at the latest on the goods or services supplied being accepted by the customer.
2. Any terms and conditions of the customer which are at variance with our own and which we have not accepted in writing shall not be binding on us even if not expressly rejected by us.
3. Neither the introduction of the single currency (Euro) nor the replacement of the national currencies of the participating member states nor the fixing of the official exchange rate nor any economic consequences whatsoever, which arise due to one of the aforementioned events or in connection with the introduction of the single currency, shall affect the legal validity of the supply contract which has come into existence with due reference to our Terms and Conditions of Sale and Delivery.

II. Offers and contracts

1. All our offers are without engagement.
2. Any documents accompanying our offers – such as illustrations, drawings, brochures and statements of weights and dimensions – are only approximate and shall not be considered binding unless expressly declared as such in writing. We reserve title and copyright to cost quotations, drawings and other documents, which may not be made accessible to any third party. In the event that no contract is concluded between us, they shall be returned to us at our request without delay, free of charge.
3. Declarations of acceptance and orders shall only become legally valid on being confirmed by us in writing by mail or telefax; performance of delivery or service by us shall also be deemed as confirmation.
4. Any subsidiary agreements, warranties, supplements and amendments to contracts shall only be valid if confirmed by us in writing. The same shall also apply to any deviation from these Terms and Conditions.

III. Prices

1. Prices are quoted net ex supply plant; they do not include value added tax unless this is specifically stated.
2. Packing, transport costs, transport insurance and other ancillary services will be charged additionally.
3. If any unforeseeable increases in the prices of materials, wage costs, taxes or other levies occur between the conclusion of a contract and delivery being effected, we shall have the right to adjust the price in accordance with such factors even if a price was expressly agreed. Where the customer is a non-trader, this shall only apply if there is a period of more than 4 months between conclusion of the contract and the agreed delivery date. If the adjusted price exceeds the agreed price by more than 5%, the customer shall have the right to withdraw from the contract.
4. The minimum order value for our goods and services is € 50.00 plus the legally applicable value added tax. We will charge this minimum amount should the customer order goods or services which cost less than this order value.

IV. Terms of payment, delays in payment, security

1. Payments – including also part-deliveries – shall be made free of charge to Baelz, Heilbronn, as follows:
Order values below EUR 5.000,00
- 2% cash discount on receipt of payment by us within 14 days from date of invoice
- net within 30 days from date of invoice.
Order values above EUR 5.000,00 without any deduction
- 1/3 down payment after receipt of the order confirmation
- 1/3 as soon as the customer is notified that the goods are ready for dispatch
- the balance within a further month.
The staff of our technical office, agencies/representations and branch offices are not authorised to make collection.
2. We will not accept bills of exchange.

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3. Payments shall only be deemed to have been effected when the amount in question is at our free disposal.
4. No offset may be made against our claims except where the counterclaim is undisputed or has been finally awarded by non-appealable judgement. A right to retention under a contract may only be claimed for payments arising from the same contract. Where the customer is a registered trader, also this right of retention is excluded except insofar as we have contravened our contractual obligations with deliberate intent or gross negligence.
5. Where payment deadlines are exceeded we shall have the right, without the need to provide proof of loss, to claim interest on arrears or, in the case of bilateral commercial transactions interest after due date, in each case at a rate of 4% above the discount rate of the German Bundesbank ruling at such time. Non-traders shall have the right to provide proof that a loss has not been caused or only in a substantially lesser amount than the aforesaid flat-rate amount.
6. Should any substantial deterioration occur in the customer's financial circumstances, we shall have the right to refuse to make any further deliveries until all our claims, whether due or not, have been settled or security has been provided for them. We shall also have the right in such case to terminate all commercial credits and to demand immediate settlement from the customer for all outstanding claims relating to deliveries. The same shall also apply if the customer suspends payments, if a petition for composition or bankruptcy proceedings is filed, if a creditor's petition is admitted and a receiving order made in accordance with § 106 Bankruptcy Code or if the customer asks his creditors for a composition arrangement.

V. Delivery and delivery time

1. Our written order confirmation shall be authoritative for the scope of the goods or services supplied. Where we have submitted a binding offer which is valid for a limited period and the offer has been accepted in good time, the content of such offer shall be authoritative. In the case of any design changes, we shall have the right to supply the design ruling at the time provided that such changes are not unreasonable for the customer.
2. Delivery dates or delivery periods shall be stated in writing. Where the customer is a registered trader, a legal entity under public law or a special asset body under public law, delivery dates or delivery periods shall only be approximate and without engagement. The period for delivery shall commence on conclusion of the contract, though not before receipt by us of any documents, approvals or clearances to be obtained by the customer or of any clarification of technical details to be provided by the customer or of any agreed down-payment. Delivery periods quoted in days shall always refer to working days. A delivery period or date shall be deemed to have been met if on expiry of such period or date the delivery item has left the delivery plant or notification has been given of its readiness for delivery.
3. Our duty to deliver shall be suspended for as long as the customer is in arrears with fulfilment of his contractual obligations.
4. In the event of force majeure in the form of strikes, lockouts or other unforeseeable and extraordinary circumstances or other circumstances beyond our control – e.g. difficulties in the procurement of materials, failure by sub-suppliers to meet delivery dates, plant breakdowns, unavailability of transport, interventions by official bodies, energy supply difficulties, etc., including also if they occur at sub-suppliers – which prevent us from fulfilling our obligations on time, the delivery period shall be extended appropriately. Such circumstances shall also be deemed beyond our control even if they occur during an already existing delay. If a delay in delivery lasts for longer than 3 months, the customer shall have the right, after allowing us a reasonable additional time, to withdraw from the contract. The customer shall have no claim to damages. In important cases, we shall notify the customer as soon as possible of the beginning and end of such impediments to delivery.
5. When a non-binding delivery date has been exceeded by 6 weeks, the customer may request us in writing to deliver within a reasonable period. This reminder shall place us in delay, though without affecting the provisions of Section V, Subsection 4. Even in the case of firmly agreed delivery dates or periods, we shall only come into delay on receipt of a reminder from the customer made after the due date.
6. Where the customer sustains loss due to a delay for which we are at fault, he shall have the right, to the exclusion of all other claims, to claim default damages. These shall amount to 1/2% for each full week of delay, though altogether to not more than 5%, of the value of that part of the total delivery which because of the delay cannot be used on time or as provided for in the contract.
7. If dispatch is delayed at the request of the customer and with our agreement, the costs arising through storage, though in the case of storage in our plant a sum of 1/2% of the invoice amount for each month, shall be charged to the customer, beginning one month after notification of readiness for dispatch. Where we can provide proof of higher costs, we shall also have the right to claim a higher amount. After allowing the customer a reasonable additional time and after such time has elapsed, we shall have the right to dispose of the delivery item elsewhere and to supply the customer with an appropriately extended delivery period.

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1. The risk shall pass to the customer at the latest on dispatch of the delivery parts, including also if part-deliveries are made or we have assumed responsibility for other performance, e.g. dispatch costs, delivery or erection. The consignment will be insured by us at the customer's expense against loss or damage in transit.
2. The customer shall accept delivery of delivered items even with minor defects, but without any prejudice to his warranty rights.
3. Part-deliveries are allowed.

VII. Liability for defects in the goods delivered and defects of title, exclusion of liability

1. The customer's rights with respect to defects in the goods delivered, which also includes the absence of guaranteed qualities, will become time expired one year after the commencement of the legal limitation period.
2. We assume the following liability for defects in the goods delivered as well as for the absence of guaranteed qualities to the exclusion of additional claims:

We will at our option subject to our equitable discretion refurbish or deliver anew free of charge all parts that are revealed to be unusable and whose use is considerably limited within the warranty period as a result of circumstances present before the transfer of risk – particularly due to a faulty design, poor materials or defective workmanship. We must be notified as soon as such defects are established. Replaced parts will become our property. Our liability for major products supplied by third parties is limited initially to the assignment of liability claims to which we are entitled from the supplier of these products. We will bear subsidiary liability to the same extent that we are liable for our own products should the customer be unable to pursue these claims against the supplier for practical or legal reasons.

3. No warranty will be assumed for damage incurred due to the following factors:

Unsuitable or unqualified use, faulty assembly or commissioning on the part of the customer or third parties, natural wear and tear, faulty or careless treatment, unsuitable equipment, replacement operating materials, faulty construction work, unsuitable building land, chemical, electrochemical or electrical influences unless these are due to our negligence.

4. Following notification by us, the customer is required to allow us the necessary time and opportunity to carry out refurbishment work and replacement deliveries that we consider necessary on the basis of our equitable discretion, otherwise we will be absolved from our warranty obligations. The customer is only entitled to eliminate the defects himself or to have the work carried out by a third party and to demand reimbursement of necessary costs in urgent cases, should the safety of operations be endangered and in order to forestall disproportionately excess damage, whereby we must be notified immediately, or should we be in arrears in eliminating the defect.
5. Of those costs incurred as a result of refurbishment work or a replacement shipment, we will pay the costs of the replacement part and of dispatch, provided that the complaint is found to be justified. We will also pay dismantling and reassembly as well as any costs of fitters and auxiliary workers that might be incurred, including travel costs, provided that the costs we incur are not disproportionately high. We will only be liable for consequential damage caused by a defect to the extent that the defect was due to our negligence.
6. The warranty period for replacement parts and refurbishment work is three months. It will however remain in force until the original warranty period for the part delivered expires. The warranty period for the part delivered will be extended by the length of time that operations are interrupted as a result of refurbishment work.
7. All liability is excluded for the consequences of any modifications or repairs carried out by the customer or any third party improperly or without our prior approval.
8. The customer may rescind the contract should we be unable to carry out the complete serve before risk is transferred. The same will apply in the event of our incompetence. The customer may also rescind the contract should on an order for similar parts it not be possible to deliver the correct quantity for part of the delivery and the customer have a legitimate interest in rejecting a part-shipment. The customer may reduce his payment should this not be the case.
9. The customer is entitled to rescind the contract should the service be delayed in the manner described in section V of the delivery terms and conditions and should the customer grant us a grace period, stating expressly that the service will be rejected after the expiry of this grace period, and should the grace period not be complied with.

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10. The customer has the right as provided for in law to rescind the contract or to reduce the contractually agreed price should we – account being taken of the exceptions provided for in law – fail to comply with a reasonable grace period set for repairs or the delivery of replacement goods on account of a defect of quality.

11. Should the use of the item delivered entail the infringement of commercial proprietary rights or copyrights in Germany, we will either procure at our expense the right to continued use by the customer or adapt the item delivered in such a way that is reasonable for the customer and ensures that these rights are no longer infringed.

The customer will be entitled to rescind the contract should this not be possible at commercially reasonable conditions or within a reasonable period of time. We will also be entitled to rescind the contract should the conditions described arise.

We will also indemnify the customer for uncontested or legally established claims pursued by the owner of the proprietary rights.

12. Subject to section VII.13, the obligations described under VII.11 are conclusive should proprietary rights or copyright be infringed. They will only apply provided that the customer notifies us immediately that an infringement of proprietary rights or copyright has been claimed, the customer assists us in resisting such claims and allows us to carry out the modifications referred to above, reserves to us the right to pursue all measures to resist these claims including out-of-court settlements, the defect of title is not due to instructions issued by the customer and provided that the infringement of rights is not due to a change to the item delivered carried out by customer or to a use not authorised by contract.

13. Irrespective of the legal reasons, we are only liable for damage not incurred by the delivered item itself in the following cases

- intentional damage
- gross negligence on the part of our legal representatives or agents
- culpable injury to life, limb or health
- defects that we have fraudulently concealed
- in fulfilment of warranty obligation
- for defects of the item delivered provided the German Product Liability Law stipulates liability for objects used by private persons.

We are also liable for gross negligence on the part of our agents in the event of culpable infringement of cardinal contractual obligations and in the event of minor negligence, in the latter case however limited to damage that is reasonably foreseeable in contractual situations of this type. Contrary to the time limitation provisions stipulated in section VII.1, the liability claims covered by this section (VII.13) will be governed by the provisions of the law

VIII. Liability for collateral duties

If through our fault the delivered item cannot be used as provided for in the contract because of non-implementation or deficient implementation of proposals or consultation, whether made or provided before or after conclusion of the contract, or of other contractually agreed collateral obligations – in particular instructions for the operation and maintenance of the delivery item – the provisions of Sections VII and IX shall apply accordingly, all other claims of the customer being excluded.

IX. Rights of the customer in respect of rescission and other liability on our part

1. The customer may rescind the contract in the case of final and definitive impossibility on our part to make complete performance before the passing of risk. The same shall also apply in the event of our incapacity. The customer may also rescind the contract if in the event of his ordering identical delivery items the delivery of a quantity of the items under the order is found to be impossible and the customer has a justified interest in rejecting a part-order; if this is not the case, the customer may lower the purchase price accordingly.

2. Where there is a delay in performance as defined in Section IV of these Terms and Conditions and the customer has allowed us an additional period for delivery, thereby expressly stating that on expiration of such additional period he will refuse acceptance of our performance, and delivery is not made within such additional period the customer shall have the right to rescind the contract.

3. Where impossibility of performance occurs during a delay in acceptance or due to the fault of the customer, the customer's obligations as to the payment of the purchase price shall remain in force.

4. The customer shall also have the right to cancel the contract if through our fault we fail within a reasonable additional period allowed to us to make remedy or to provide a replacement for a defect as defined in these Terms and Conditions and for which we are responsible.

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5. All other claims of the customer, in particular those relating to termination or reduction of the purchase price or to compensation for loss or damage of any kind, including any damage not occurring to the delivery item itself, are excluded.

This exclusion of liability shall not apply in the case of deliberate intent or gross negligence on the part of general managers or executive officers or in the case of culpable violation of any major contractual obligations. In the case of culpable violation of any major contractual obligations – except in cases of deliberate intent or gross negligence on the part of general managers or executive officers – we shall only be liable for reasonably foreseeable damage typical of this kind of contract. The exclusion of liability shall also not apply to liability under the Product Liability Act for defects in the delivery item causing personal injury or damage to privately used items. Nor shall it apply in the case of absence of expressly warranted qualities where the purpose of such warranty was specifically to safeguard the customer against loss or damage occurring not to the delivery item itself.

X. Reservation of title

1. We reserve title to all goods delivered by us until their price has been paid in full. Reporting the claims under current invoices or the netting of a balance and recognition of this balance will not impair this reservation of title. Should the customer be an entrepreneur, a legal entity under civil law or civil law special funds, we reserve title to goods we have delivered until all claims, also future claims (including netted amounts and current accounts) and ancillary claims, arising from the business relationship have been paid in full.

2. All further processing or manufacture of or with the reserved goods by the customer shall be done on our behalf without any charge for us and without any obligations being thereby incurred by us; the new item shall become our property. In the event of the reserved goods being used for manufacture together with other goods not belonging to the customer, we shall acquire co-title to the new item in the same proportion as the value of the reserved goods to the value of such other goods; in the case of combination with other goods, we shall acquire co-title in accordance with the statutory regulations. Where as a result of combination the customer acquires sole title, he already herewith assigns co-title to us in the same proportion as the value of the reserved goods to the value of the other goods involved at the time of combination. In the aforesaid cases the customer shall keep the item to which we have title or co-title, which shall likewise constitute a reserved good within the meaning of the following provisions, on our behalf free of charge.

3. The customer already herewith assigns to us in the amount of the value of the reserved goods together with all collateral rights all claims accruing to him from resale of the reserved goods. The same shall also apply accordingly if the reserved goods are incorporated as a major component into the real property of a third party. Where we have co-title to the reserved goods, claims are hereby assigned to us in an amount equivalent to our share in the total value. This advance assignment shall also include any claims to balances on current account.

4. As long as the customer fulfils his obligations towards us, he shall have the right to dispose of the reserved goods, insofar as our claims under Subsection 3 above are effectively assigned, and of our claims in the ordinary way of business; extraordinary disposals such as pledging, collateral assignment and all other assignments are not permitted. The customer shall notify us immediately of any recourse by third parties to the reserved goods or assigned claims, in particular seizure by way of execution.

5. In the case of any delay in payment or impending suspension of payments, enforcement by writ or protest of a bill of exchange against the customer or failure by the customer to fulfil his obligations towards us, we shall have the right to take possession of the reserved goods and the customer shall have a duty to release them to us. Assertion of our reservation of title and seizure of the delivery item by us shall not be deemed rescission of the contract. All costs of recovery and realisation shall be borne by the customer. On our request, the customer shall provide us without delay with a list of all claims assigned to us in accordance with the foregoing Subsection 3.

6. We undertake, on request by the customer, to release any securities provided to us to the extent that the value of the securities exceeds the value of the secured claims by more than 20%, whereby the choice of released securities shall be ours.

XI. Use of software

1. If the scope of delivery includes software, the customer is granted a non-exclusive right to use the software delivered along with its documentation. It is transferred for use on the delivery object intended therefore. It is not permitted for the software to be used on more than one system.

2. The customer may duplicate, re-engineer or translate the software or convert it from the object code to the source code only insofar as legally admissible (§§ 69 a ff, of the UrhG [Copyright Act]). The customer undertakes not to remove manufacturer's particulars – copyright notices in particular – or to alter them without our prior explicit consent.

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3. We reserve the software supplier reserves all other rights to the software and the documentation including copies. Granting sub-licences is inadmissible.

XII. Final provisions

1. The place of performance for all deliveries and services shall be Heilbronn.
2. The legal venue for any disputes between the parties arising directly or indirectly from the contractual relationship shall, to the extent that the customer is a registered trader, a legal entity under public law or a special asset body under public law, be Heilbronn. We shall also have the right to bring legal action against the customer at his place of domicile.
3. Any contract shall be governed solely by the law of the Federal Republic of Germany; application of Uniform UN Purchase Law CISG is excluded.
4. Should any of the provisions of these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. Should any part-clause be invalid, this shall not affect the validity of the remaining clause if this is contentually separable from the part-clause,comprehensible within itself and constitutes a meaningful provision within the overall context of the Terms and Conditions.