

Robert Bürkle GmbH**General terms and conditions for the supply of machines and services****As per January 1, 2002**

For use vis-à-vis

1. a person acting in its commercial or self-employed function (entrepreneur) at contract conclusion;
2. a legal person under public law or a public law special fund.

I. General

1. All deliveries and services provided by Robert Bürkle GmbH, hereinafter referred to briefly as "supplier", shall be based on the present terms and conditions as well as any separate contractual agreements. Any deviating purchase conditions of the customer shall not become subject matter of the contract through order acceptance. A contract shall be formed with the written order confirmation of the supplier – unless special arrangements have been agreed upon.
2. All quotations are subject to confirmation. In respect of the scope of deliveries and services (hereinafter called "deliveries"), the order confirmation of the supplier shall be decisive, unless otherwise agreed upon.
3. The supplier shall reserve his unrestricted ownership, copyright and right of exploitation with regard to any quotations, drawings, models, plans and other physical and non-physical and in particular electronic documents and information (hereinafter called "documents"). Documents designated as confidential may only be disclosed to third parties with the approval of the supplier. If the order is not placed with the supplier, these shall be returned immediately upon request. Information provided in non-physical – in particular electronic form – shall be deleted, and the deletion shall be confirmed in writing.
4. The customer shall inform the supplier at the latest when placing the order and to the extent this is required about the intended use of the delivery object, in particular if the product to be supplied is intended to be used in connection with hazardous materials or under special circumstances or ambient conditions or if specific operating conditions, hazards or other risks exist.

II. Prices and payment

1. Unless otherwise provided for, the prices are ex factory including loading on the factory premises, however excluding packaging and unloading, plus the applicable value-added tax.
2. Unless specific conditions of payment have been agreed upon, payment shall be made on account of the supplier without any deductions as follows:
1/3 upon receipt of the order confirmation,
1/3 as soon as the customer is informed that the main parts are ready for shipment,
the rest within one month following passage of risk.
3. The customer shall be entitled to withhold payments or set off counter-claims only to the extent that his counter-claims are uncontested or have been established in a legally valid manner.

III. Period of delivery, delays in delivery

1. The period of delivery results from the agreements between the contracting parties. Keeping the period of delivery requires clarification of all commercial and technical issues between the contracting parties and compliance of the customer with the preconditions he is responsible for, such as obtaining the necessary official certificates or approvals or making an advance payment. If this is not the case, the period of delivery shall be prolonged accordingly. This does not apply if the supplier is responsible for the delay.
2. Keeping the period of delivery is subject to the reservation of correct and in-time receipt of our own deliveries. Any delays becoming apparent shall be notified by the supplier as early as possible.
3. The period of delivery shall be deemed to have been kept if until its expiration the delivery object has left the supplier's factory or has been reported as ready for shipment. If an acceptance test is to be performed – except for cases of justified refusal of acceptance –, the date of the acceptance test or the notification that the delivery object is ready for the acceptance test is decisive.
4. If shipment or acceptance of the delivery object is delayed for reasons the customer is responsible for, he will be charged any costs arising from this delay, starting one month after readiness for shipment or acceptance has been notified.
5. If the period of delivery cannot be kept owing to force majeure, industrial dispute or other events which are not within the supplier's sphere of influence, the period of delivery shall be prolonged accordingly. The

supplier shall notify the customer on the start and end of such circumstances as soon as possible.

6. The customer may withdraw from the contract without granting a period of notice if the supplier is ultimately unable to perform prior to passage of risk. The customer may furthermore withdraw from the contract if a partial delivery becomes impossible or if he has a justified interest in refusing the partial delivery. If that is not the case, the customer shall pay the contractually agreed price for the partial delivery. The same is applicable in case of non-performance of the supplier. In all other cases, Section VII.2 shall apply.

If the impossibility or inability of performance occurs during acceptance delay or if the customer is solely or primarily responsible for these circumstances, his counter-performance obligation shall remain.

7. If the supplier's delayed performance causes a damage to the customer, he shall be entitled to claim a lump-sum compensation. This compensation amounts to 0.5% for each full week of delay, however at most 5% of the value of that part of the overall delivery which cannot be used in time or in accordance with the contract owing to the delay.

If in case of delay the customer has granted the supplier a reasonable respite – taking into account the statutory exceptions – and the supplier has not complied with this time-limit, the customer shall be entitled to withdraw from the contract in accordance with the legal provisions.

Any other claims arising from delay in delivery shall be exclusively as provided for in Section VII.2 of the present terms and conditions.

IV. Passage of risk, acceptance

1. The risk passes to the customer when the delivery object has left the factory, also in case of partial delivery or when the supplier has assumed other services, e.g. shipment costs or delivery and setting up. If an acceptance test is to be performed, it is decisive with regard to passage of risk. The acceptance test has to be performed promptly on the acceptance test date or after the supplier notifies readiness for acceptance test. The customer may not refuse acceptance in case of a non-major defect.
2. If shipment or acceptance is delayed or does not take place on account of circumstances the supplier is not responsible for, the risk shall pass to the customer on the day readiness for shipment or acceptance is notified. The supplier agrees to conclude any insurance contracts required by the customer at the customer's costs against an advance payment.
3. Partial deliveries are admissible to a reasonable extent.

V. Reservation of ownership

1. All objects delivered shall remain property (goods under reservation of ownership) of the supplier until all obligations have been fulfilled, irrespective of the legal basis, including future or conditional obligations, also obligations arising from contracts entered into simultaneously or later. This also applies to payments made with regard to specially designated claims.
2. The processing and treatment of delivery objects shall be performed for the supplier as manufacturer in the sense of Section 950 Civil Code (BGB) without constituting an obligation to him. The processed delivery objects shall be deemed as goods under reservation of ownership in the sense of Section V.1. In case of processing, combining or mixing the delivery objects with other goods by the customer, the supplier shall be entitled to co-ownership on the new object(s) at a ratio invoice value of the processed delivery object to invoice value of the other goods used. If the supplier's ownership is canceled by combination or mixing, the customer shall already now assign to him the ownership rights the customer is entitled to on the new inventory or object in the amount of the invoice value and retain it for him without charge. The co-ownership rights thus established are deemed as goods under reservation of ownership in the sense of Section V.1.
3. The customer may only sell the delivery objects in the framework of ordinary business at his usual terms and conditions as long as he is not in default, provided that the claims arising from the resale are transferred to the supplier pursuant to Sections V.4 to V.6. The customer shall not be entitled to otherwise dispose of the goods under reservation of ownership.
4. The claims of the customer arising from the resale of the goods under reservation of ownership shall be assigned to the supplier already now. They serve as security in the same scope as the goods under reservation of ownership. If the goods under reservation of ownership are sold by the customer together with other goods not sold by the supplier, the claim arising from the resale shall only be assigned in the amount of the resale value of the delivery objects in question. In case of resale of delivery objects where the supplier has a co-ownership in accordance with Section V.2, the claim shall be assigned in the amount of these co-ownership shares.
5. If the customer integrated the claim arising from the resale of goods under reservation of ownership into an existing open account relationship with his client, the open account claim shall be fully assigned to the supplier. After netting out, this is replaced by the acknowledged balance which is deemed to have been assigned in the amount corresponding to the original open account claim.

6. The customer shall be entitled to collect claims arising from the resale until revocation by the supplier, which he is entitled to pronounce at any time. The customer may only assign claims or sell claims to factoring banks with the prior written approval of the supplier. Upon request of the supplier, the customer shall be obliged to immediately inform his buyers about the assignment – if the supplier does not inform them himself – and to provide the information and documents necessary for collection to the supplier.
7. In case of payment by check, ownership is transferred to the supplier as soon as the customer acquires it. If payment is made by bill of exchange, the customer hereby assigns the rights arising therefrom to the supplier in advance. Surrendering these documents is replaced by the customer keeping same documents for the supplier or, if they do not directly come into his possession, by assigning in advance his claim for surrender vis-à-vis third parties to the supplier. The customer shall affix his endorsement on these documents and hand them over to the supplier without delay.
8. The customer shall immediately inform the supplier about any attachment or impairment through third parties and provide the information and documents required to assert his rights.
9. The application for institution of a bankruptcy proceeding on the assets of the customer shall entitle the supplier to withdraw from the contract and to demand immediate return of the delivery object.
10. If the value of the existing securities exceeds the claims covered by more than 20 percent, the supplier shall in this respect be obliged upon request of the customer to release securities as selected by the supplier.
11. The customer agrees to insure the goods under reservation of ownership against damage through fire and water as well as against theft. The supplier is entitled to insure the delivery object against theft, breakage, fire, water and other damage at the expense of the customer, unless the customer proves that he has concluded the insurance himself.
12. If special prerequisites or formal requirements exist in the customer's country with respect to the transfer of the delivered objects, the customer shall fulfill these requirements at his cost.
13. If the customer behaves contrary to the contract, in particular in case of payment delay, the supplier is entitled to demand restitution of the delivery object following reminder and the customer is obliged to surrender the delivery object.
14. On account of the reservation of ownership the supplier can only demand return of the delivery object if he has withdrawn from the contract.

VI. Claims in case of defects

The supplier gives warranty of material defects and defects of title of the delivery excluding any other claims – under reservation of Section VII - as follows:

Material defects

1. All those parts showing defects due to a circumstance that occurred prior to the passage of risk shall be free of charge, either remedied or replaced free of defect, as chosen by the supplier. The supplier shall be notified of defects of this kind without delay. Replaced parts become property of the supplier.
2. The customer shall in coordination with the supplier give the supplier the time and opportunity to perform any remedies or replacement deliveries the supplier deems necessary; otherwise, the supplier shall be indemnified from any consequences resulting thereof. The customer has the right to remedy the defect himself or by third parties and demand compensation of the necessary expenses in urgent cases involving danger to operating safety or to avoid unreasonably high damage only, in which case he shall inform the supplier without delay.
3. Of the direct costs resulting from remedy or replacement, the supplier shall bear the costs of the replacement part including shipment, if the complaint proves to be justified. In addition, he shall bear the costs of dismantling and mounting as well as the costs for providing the necessary mounting and auxiliary personnel including travel expenses, to the extent this does not lead to an unreasonable burden of the supplier.
4. The customer has the right to withdraw from the contract in the framework of the legal provisions if the supplier – taking into account the legal exceptions – lets the time period granted for remedy or replacement of a material defect expire without remedying the defect or replacing the part. In case of a minor defect, the customer merely has the right to reduce the contractually agreed price. In all other cases, the right to reduce the contractually agreed price shall be excluded.
Any other claims shall be as provided for in Section VII.2 of the present terms and conditions.
5. No warranty is granted in particular in the following cases:
Unsuitable or incorrect use, wrong assembly or commissioning by the customer or third parties, natural wear, incorrect or careless treatment, faulty maintenance, inadequate equipment, faulty construction work, unsuitable construction ground, chemical, electrochemical or electrical influences – unless in the field of responsibility of the supplier.
6. If inadequate remedy is performed by the customer or a third party, the supplier shall not assume liability for the ensuing consequences.
This also applies to any modifications performed on the delivery object without the prior approval of the supplier.

Defects of title

7. If the use of the delivery object leads to the infringement of national industrial property rights or copyrights, the supplier shall at his expense obtain the right for further use or modify the delivery object in a manner reasonable to the customer so that the property right in question is no longer infringed.
If this is not possible at economically adequate conditions or within an adequate period of time, the customer shall have the right to withdraw from the contract. Under the aforementioned conditions, the supplier shall also have the right to withdraw from the contract.
8. The obligations of the supplier set out in Section VI.7 shall be applicable to property right or copyright infringements with reservation of Section VII.2. They shall only be applicable if
 - the customer immediately notifies the supplier of asserted property right or copyright infringements,
 - the customer provides adequate support to the supplier in averting the asserted claims and/or allows the supplier to perform the modification measures according to Section VI.7,
 - all defense measures, including extrajudicial arrangements, are reserved to the supplier,
 - the defect of title is not based on an instruction given by the customers, and
 - the defect of title was not caused by the customer modifying the delivery object arbitrarily or using it in a manner contrary to the contract.

VII. Liability

1. If the customer cannot use the delivery object in accordance with the contract by fault of the supplier as a consequence of proposals and consultations made prior or after contract conclusion or of the violation of other contractual subsidiary duties – in particular instructions for use and maintenance of the delivery object – the provisions of Sections VI and VII.2 shall apply, excluding any other claims by the customer.
2. In case of damage which did not occur on the delivery object itself, the supplier shall be liable, irrespective of the legal grounds, only
 - a. in case of intentional action,
 - b. in case of grossly negligent action of a body or management employee,
 - c. in case of culpable injury to life, human body, health
 - d. in case of malicious silence with regard to a defect or a defect the absence of which has been warranted,
 - e. in case of defects of the delivery object, to the extent that liability for damage to persons or property in connection with privately used objects is provided for by the product liability law.

In the event of culpable violation of essential contractual obligations, the supplier shall also be liable for the gross negligence of non-management employees and in cases of ordinary negligence. In the latter case, limited to contract-typical, reasonably foreseeable damage

VIII. Statutory limitation

All claims of the customer – irrespective of the legal grounds – shall be subject to statutory limitation of 12 months. The time-limits provided for by law shall apply for claims for damages according to Section VII.2 a. These also apply to defects of a building or for delivery objects which were used for a building in accordance with their common use and caused the building's defects.

IX. Software use

1. If the delivery scope includes software, the customer is granted a non-exclusive right to use the delivered software including its documentation. The software is provided for use on the delivery object it is intended for. Using the software on more than one system is prohibited.
2. The customer may reproduce, revise, translate or convert the software from the object code to the source code only to the extent this is allowed by law. The customer undertakes not to remove manufacturer information – in particular copyright notices – or modify the same without prior approval by the supplier.
3. Any other rights with respect to the software and the documentations including the copies shall remain with the supplier or the software supplier, respectively. Granting sub-licenses is not permitted.

X. Applicable law, place of fulfillment and jurisdiction

1. All legal relations between the supplier and the customer shall be exclusively subject to the legal provisions for legal relations between national parties included in the law of the Federal Republic of Germany.
2. Place of jurisdiction shall be Freudenstadt, Germany. The supplier shall also be entitled to take legal action at the customer's place of business or any other legal place of jurisdiction. This regulation shall also apply to check and bill of exchange proceedings. If the customer is a merchant, a legal person under public law or a public law special fund, the aforementioned jurisdiction shall also apply in case of cancellation, withdrawal and similar matters.
3. Place of fulfillment with respect to the performance of work outside of the supplier's factory shall be the place agreed upon for the work to be carried out. Place of fulfillment for any other deliveries and services as well for payment of the customer, also for claims arising from checks and bills of exchange, shall be Freudenstadt, Germany.