

General Terms and Conditions

1. Validity of conditions

1.1 The terms and conditions of trade and delivery of BERG Kompressoren GmbH (in the following referred to as "BERG") shall apply exclusively. Any conditions of the other contracting party (in the following referred to as "Purchaser") conflicting with or deviating from these Conditions of Sale, Delivery and Payment shall not be recognized unless BERG has expressly agreed in writing to the validity of the deviating conditions. These terms and conditions of trade and delivery shall also apply if BERG has carried out the delivery to the Purchaser without objecting despite being informed about the Purchaser's conditions conflicting with or deviating from BERG's own terms and conditions of trade and delivery.

1.2 The terms and conditions of trade and delivery shall also be valid for all future transactions with the Purchaser.

1.3 The terms and conditions of trade and delivery shall only be applicable to entrepreneurs.

1.4 All BERG goods and services are made exclusively in accordance with these General Terms and Conditions unless there has been a previous stipulation in writing.

2. Offer and acceptance, conclusion of contract, offer documentation

2.1 Every offer submitted by BERG is subject to confirmation. BERG reserves the right to cancel an article, exclude an article from delivery terms, or change the price. The scope of BERG's supply commitment is determined by BERG's acknowledgment of the order or offer. Verbal agreements, direct or by telephone, only become effective after written confirmation.

2.2 If the order is to be qualified as an offer according to § 145 BGB (German Civil Code), BERG may accept this within a period of 4 weeks. At the latest, the contract shall commence with the shipment of the goods ordered or with the shipment of the first supply in the case of partial shipment.

2.3 BERG reserves the property right and copyright to illustrations, drawings, calculations and other documents. This also applies to written documents that are indicated as "private". Their forwarding requires the written permission of BERG.

2.4 The drawings, statements of weight and dimensions, patterns, etc., contained in the offer documentation are only approximations and do not represent standard characteristics. BERG is entitled to deviate from the descriptions in the offer in so far as these deviations are not of a fundamental or essential nature and the contractual purpose is not restricted thereby.

2.5 Where BERG manufactures parts on the basis of the Purchaser's drawings, sole validity shall be accorded to the drawings prepared by BERG and approved by the Purchaser. Any deviations from approved drawings shall be agreed separately and any extra costs arising therefrom shall be remunerated.

2.6 Individual cost estimates requested by the Purchaser shall be remunerated. In the case of order placement, the corresponding charges shall be included in the purchase price.

3. Protective rights

3.1 BERG reserves the property right and copyright to all representations, drawings, calculations and other documentation. This applies in particular to any written documentation marked as "confidential". The Purchaser may only make such documentation available to third parties after previously obtaining BERG's written agreement.

3.2 If deliveries are based on drawings or other information supplied by the Purchaser and if this results in protective rights being claimed by a third party, the Purchaser shall, within the internal relationship, absolve BERG from all liability.

4. Products – product changes

4.1 The quality of BERG goods results exclusively from the agreed specifications.

4.2 All examples, samples, drawings, other descriptions and statements by BERG only serve to provide an overview of goods; they are not a component of the contract.

4.3 BERG can make changes to the goods at any time, provided these:

4.3.1 are necessary in order to meet legal requirements or product safety, and

4.3.2 do not significantly impair their properties and functions, and

4.3.3 are acceptable for the Purchaser.

5. Prices, payment and cancellation

5.1 Unless otherwise agreed, prices are valid ex-works, including loading at the works, but excluding packing; the latter is charged separately on the invoice.

5.2 Our price lists, price quotations, and cost estimates are non-binding.

5.3 The stated prices always apply to a concrete order, specifying both the quantity and the delivery time.

5.4 All prices are net prices to be understood plus value-added tax.

5.5 Payment shall be effected within 30 days after the date of invoice without deduction, unless something else has been separately stipulated in writing.

5.6 BERG is entitled, even in the case of the Purchaser's contrary terms of payment, to credit any payment initially against the oldest, not specifically defined debt. If cost has already arisen or interest is already due, BERG shall be entitled to credit any payment initially against the cost, subsequently against the interest, and finally against the main account.

5.7 Any extra expenditure due to subsequent requests for changes can be charged by BERG to the Purchaser.

5.8 Only when the time period agreed on between order placement and delivery is more than four (4) months is BERG entitled to charge the Purchaser the prices in effect at the time of the delivery of the service.

5.9 The Purchaser bears the transport costs (including a valid hazardous material allowance), cartage and costs for transport insurance, etc. The same applies to any customs charges and import taxes in third-party countries etc., unless something else has been separately stipulated in writing.

5.10 Once cheques and bills of exchange are accepted by BERG, this only takes place on account of payment. Bill taxes shall be borne by the Purchaser.

5.11 All payments must be made in Euros, that is, another currency must be agreed upon in writing.

5.12 Provided BERG agrees upon special arrangements with the Purchaser, these only apply under the condition that the Purchaser meets their obligations properly, in particular within the deadline and to the full amount. Non-compliance, including in partial areas, entitles BERG to the immediate withdrawal of the special agreement.

5.13 If the Purchaser is in default with due payments or BERG becomes aware of conditions that put the credit worthiness of the Purchaser into doubt, BERG is entitled to consider receivables that are still open to be due, even if they are deferred, given as surety or issued as bills of exchange. Without prejudice to further rights, BERG is entitled to execute outstanding deliveries only when payment is made in advance. BERG also reserves the right to cancel agreements without notice when applications were filed for the opening of the insolvency proceeding.

5.14 If the Purchaser cancels the confirmed sales order due to any reason especially lack of liquidity/cash or any other payment issues or lost interest etc., BERG retains the full advance payment (Hundred %) paid by Purchaser as compensation.

5.15 The Purchaser shall only be entitled to offset amounts due, if and in so far as his counterclaims have been found to be legally effective and are undisputed or have been acknowledged by BERG in writing. The Purchaser's right of retention shall be restricted to claims arising from the contractual relationship.

6. Delivery time

6.1 Delivery periods and delivery dates shall only be regarded as binding agreements if the offer expressly contains such a promise in writing. BERG shall not be obliged to observe the delivery date or delivery deadline, if the Purchaser does not carry out his duties (payment on account, supply of the necessary documents, etc.) in time. The defense of non-performance of the contract shall be maintained.

6.2 Delivery periods shall commence at the earliest on the day on which the contract was concluded in writing. Prior clarification of all technical questions is a precondition of commencement. (The start of the delivery period stated by BERG requires the clarification of all technical questions. Compliance with the delivery requirement by BERG further requires the timely proper fulfillment of the obligations of the Purchaser)

6.3 Partial shipments are permissible.

6.4 If the Purchaser subsequently requests changes, BERG shall not be obliged to comply with the delivery date or delivery period.

6.5 Transport routes and means are at the discretion of BERG. Provided the contract party wishes, BERG will insure the goods at the cost of the Purchaser (point 5.9).

6.6 The delivery time shall be regarded as fulfilled, if the item to be shipped has left BERG's works before the expiration of said time or if BERG has communicated that the item is ready for shipment.

6.7 In the event of delays in delivery not due to intent or gross negligence on the part of BERG, the Purchaser shall not be able to put forward claims. This applies in particular to delays in delivery due to force majeure. In such a case, the agreed delivery date or delivery period shall be extended by the duration of the conditions preventing delivery.

6.8 If a shipment is delayed at the request of the Purchaser, the cost due to storage shall be charged to the Purchaser from one month after communicating readiness for shipment; in the case of storage at our works, the charge shall be 1 percent (One%) of the invoice amount for every month of storage. However, after setting a reasonable deadline and fruitless expiration of this period, BERG shall be entitled to make other arrangements for the delivery item or to supply the Purchaser within a reasonably extended period of time.

6.9 In the event of force majeure, BERG is entitled to delay delivery for the duration of the obstruction. If the end of the obstruction is not foreseeable, BERG is entitled to withdraw completely or partially from the contract without further obligations. All conditions that BERG is not responsible for and that make the delivery of the goods temporarily impossible or unreasonable, in a particular war, natural catastrophes, strikes, lock-outs, import and export bans, shortage of energy and raw materials, or similarly serious events such as well as late self-delivery outside of the responsibility of BERG are considered to be force majeure. The same applies to extraordinary traffic and road conditions.

6.10 If the obstruction lasts for longer than four (4) months, the Purchaser is entitled to withdraw from the contract after setting an appropriate deadline when they demonstrate that the partially outstanding fulfillment of the contract is no longer of interest to them due to the delay. A deadline for the rectification to be set by the Purchaser must be at least four weeks and be given in writing.

7. Passage of risk/packaging

7.1 The risk passes to the Purchaser at the latest upon dispatch of the delivery items, even in the case of partial shipments. BERG shall only insure the goods against insurable risks, if this is expressly desired by the Purchaser.

7.2 Returned transport or other packaging shall not be accepted, apart from pallets. The Purchaser shall be obliged to dispose of the packaging at his own expense.

7.3 If a shipment is delayed for reasons for which BERG is not responsible, the risk is transferred to the Purchaser after receipt of the notification of the readiness for dispatch.

7.4 Otherwise the risk is transferred to the Purchaser on transfer. The risk transfer is also the same if the Purchaser delays approval.

8. Installation & mounting

8.1 BERG's offers do not include installation & mounting. In so far as contractually agreed with BERG (has been separately stipulated in writing), installation & mounting shall be charged to the Purchaser separately. In such a case, the Purchaser shall ensure that the site allows reasonable access and is suitable for use. Furthermore, the Purchaser shall be responsible for unloading.

8.2 The Purchaser shall provide a power connection.

9. Reservation of ownership

9.1 BERG retains the ownership title to all items supplied until receipt of all payments arising from the supply agreement. In the case of conduct not conforming to contract, in particular delay in payment, BERG shall be entitled to repossess the purchased item.

9.2 During the period of reservation of ownership, the Purchaser shall be obliged to treat the items supplied carefully and to insure them at reinstatement value, at his own expense, against any type of destruction or loss.

9.3 Costs for maintenance and inspection work shall also be borne by the Purchaser during the period of reservation of ownership; this also applies when this work is carried out by BERG.

9.4 In the case of seizure or other interference by third parties, the Purchaser shall inform BERG immediately in writing so that BERG may lodge a third-party action against execution. If the third party is unable to reimburse the judicial and extrajudicial costs of such an action, the Purchaser shall be liable for these costs.

9.5 If the Purchaser does not comply with the contract due to any reason, in particular due to delay in payment, BERG is entitled to recover possession of all delivered goods and withdraw from contract after demanding payment in writing and by setting a deadline of 30 calendar days, while the Purchaser is obliged to give up possession on all delivered goods immediately after the above mentioned deadline.

9.6 If the goods supplied are inextricably mixed or interconnected with other articles not belonging to BERG, BERG shall become co-owner of the new or interconnected object to the extent of the value of the goods supplied (final invoice amount, incl. value-added tax) in relation to the other article or other articles at the time of mixing or interconnection. The Purchaser shall hold the resulting sole ownership or co-ownership in safe custody for BERG.

9.7 Herewith the Purchaser also assigns to BERG the account receivable from third parties in order to secure BERG's receivables arising from the connection of the goods supplied to a piece of real estate.

9.8 BERG undertakes to release the receivables due to BERG upon request if the realizable value exceeds BERG's receivables by more than 20%. BERG shall be able to choose the type of security.

10. Liability for defects/liability

10.1 BERG is not liable for damage due to misuse, wear, and tear, storage, or other actions by the Purchaser or third parties. This applies in particular to wearing parts.

10.2 Legal entitlements arising from the liability for defects shall become statute-barred two years after delivery of the goods. This does not represent a durability guarantee.

10.3 The Purchaser shall be obliged to fulfill his duty to examine the goods according to § 377 HGB (German Commercial Code) even if they are to be resold.

10.4 BERG shall be entitled to choose between remedy of the defect and supply of a replacement.

10.5 The Purchaser's right of recourse against BERG due to liability for defects in the case of claims against the Purchaser by his buyers shall be excluded, if the Purchaser has not fulfilled his duty to examine the goods and give notice of defects or if the goods have been modified by processing.

10.6 BERG's liability according to the legal regulations concerning damages shall be unrestricted, if a violation of duty attributable to BERG is due to intent or gross negligence. In so far as the violation of duty attributable to BERG is due to ordinary negligence and an essential contractual duty has been culpably breached, the liability for damages shall be restricted to the foreseeable damage which typically occurs in similar cases. Otherwise, liability is excluded.

10.7 Liability according to the provisions of the product liability law shall remain unaffected. Equally unaffected shall be the liability for injury to life, body and health.

11. Product liability

11.1 The Purchaser may only use the goods in accordance with the intended application and must ensure that these goods are only resold to persons familiar with the hazards and risks of the product.

11.2 If the Purchaser uses the goods as basic material and sub-product of his own products, his duty to warn when putting the final product into circulation shall also extend to the goods supplied by BERG. Within the internal relationship, the Purchaser shall absolve BERG, upon first demand, from the assertion of claims in the case of non-observance of this duty.

11.3 BERG has unlimited liability for intent or gross negligence.

11.4 For slight negligence, BERG is only liable where an obligation has been violated, whose compliance enables the proper performance of the contract and on whose compliance the Purchaser can regularly rely. In these cases, BERG's liability is limited to a typical, foreseeable violation of this kind of contract.

11.5 Liability limitations and exclusions according to this point 11 do not apply to claims from the Product Liability Act and with damages due to loss of life, bodily injury, or damage to the health of a person.

11.6 Where BERG's liability is excluded or limited, this applies accordingly to the personal liability of the institutes, employees, representatives, and subcontractors of BERG.

11.7 The limitation period for warranty claims (point 12) of the Purchaser is one year from the transfer of risk (point 7). Other compensation claims expire a year after knowledge of the damaging event. This does not apply to claims that relate to intent or gross negligence, to damages due to loss of life, bodily injury, or damage to the health of a person, and to claims from the Product Liability Act.

11.8 The Purchaser releases BERG, its institutes, employees, representatives, and subcontractors from any claims of third parties to the first request, which results in BERG and/or the named persons from a culpable breach by the Purchaser. The Purchaser reimburses BERG and the named persons for all costs necessary and appropriate for the legal defense.

11.9 The Purchaser is not entitled to offset their claims against BERG. This does not apply in the cases of Section 354a of the German Commercial Code.

11.10 The Purchaser is only entitled to offsetting if their counterclaims are undisputed or recognized by declaratory judgment.

11.12 The same applies to retention rights and rights to refuse performance in accordance with Sections 320, 273 of the German Civil Code. The Purchaser may only exercise these rights if they result from the same contractual relationship. In an ongoing business relationship, each individual order applies as its own contract.

12. Warranty - Retention of title – insurance

12.1 If the Purchaser intends to claim defect damages, then it is required according to Section 377 of the German Commercial Code that it has met its obligations with regard to examination and notification of defect. Clear faults must be complained to BERG immediately, but within seven days of receipt of the goods at the latest. Hidden faults must be complained of immediately after their discovery.

12.2 With any complaint, BERG is entitled to the right to inspect and examine the goods that have been rejected. Purchaser will support BERG in determining and remedying the errors according to their abilities. In particular, the Purchaser must provide insight into documentation from which the more detailed circumstances of the fault result.

12.3 The aforementioned rights to damages can only be claimed, when the goods were used exclusively and applied in accordance with operating conditions established in the operating instructions, information and provisions.

12.4 In the event of defective goods, BERG can opt for correction of the faults or for delivery of a faultfree item.

12.5 All goods delivered by BERG remain outside of the respective contract until the entry of all payments and all other receivables against the Purchaser from the business relationship property of BERG. This applies in particular to gases and gas containers delivered or any systems or system components, even when these are meant for processing.

12.6 The Purchaser is obligated to handle goods under retention of title with care. They are further obligated to insure these goods at their own expense against loss, fire and water damages, theft and natural hazards to the sum of their purchase price.

12.7 After prior written approval by BERG, the Purchaser is entitled to resell retained goods in the proper course of business, provided they are not in default of payment. The Purchaser now transfers all receivables to the sum of the final bill amount of the BERG claim to BERG, incurring to them from reselling towards his customers or third parties, and regardless of whether the goods were resold without or after processing or combination. BERG hereby accepts this assignment.

12.8 The Purchaser remains authorized to collect this claim even after assignment. The authorization of BERG to collect the receivables itself is unaffected by this. However, BERG commits not to collect the receivables provided the contract partner complies with his payment obligations arising out of the proceeds collected, in particular is not in default of payment or an application is made to commence insolvency proceedings or payments cease to be made. If this is the case, BERG can demand that the Purchaser notifies the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the associated documentation and notifies the debtor (third party) of the assignment. BERG commits to release its collateral for goods and receivables to the Purchaser on request, where the realizable value of the collateral exceeds the receivables to be secured by more than 20%.

12.9 If a third party impounds retained goods or otherwise impairs the property of BERG, the Purchaser immediately notifies BERG so that BERG can take actions to protect its property, and can in particular bring an action in accordance with Section 771 of the Code of Civil Procedure. In addition, the Purchaser is obligated to notify the third party and the bailiff that the respective product is owned by BERG. Where the third party is not able to reimburse the legal and extralegal costs of these protective actions, the Purchaser is liable to BERG for the unpaid costs by the third parties.

12.10 The Purchaser is obligated to inform BERG immediately of any damages to the retained goods and to any relocation of the Purchaser's registered address.

12.11 In no case will we be liable for the costs that arise as a result of the purchased item being brought to a location other than the place of performance.

13. Written form – ancillary agreements

13.1 Verbal ancillary agreements have not been found. All agreements between BERG and the Purchaser require a written form. A written agreement or the written confirmation of BERG is decisive for the content and design of contracts, amendments or additions to contracts and individual agreements. The transfer of the statement by fax or email is sufficient to comply with the written form.

13.2 Employees, commercial agents or employees of BERG are not entitled to deviate from the agreement by verbal or written agreement or assurance, to add to the contractual content or to give guarantees. This does not apply to agreements, assurances, additions or guarantees that are given by institutes of BERG or its signatories, where these are so authorized.

14. Other/final provisions

14.1 Place of performance shall be Germany.

14.2 Place of jurisdiction for all disputes arising from the contract shall be Krefeld, Germany. However, BERG shall also be entitled to sue the Purchaser at the court seat where the Purchaser has his general place of jurisdiction or at the court seat where the Purchaser has a branch establishment.

14.3 Applicable shall be German law only with the exclusion of UN-purchase law.

14.4 In so far as individual provisions of the contractual relationship are invalid, the validity of the other provisions shall not be affected thereby. The parties shall try to replace the invalid provision with a valid one corresponding as closely as possible to the commercial purpose of the contract.

14.5 Rights and obligations from agreements between BERG and its Purchaser and other legal relationships are transferred to the respective legal successor of the Purchaser. The Purchaser is obligated to notify every amendment immediately in writing and without request, in particular with regard to changes in their company name or legal form. The Purchaser is liable for any disadvantages resulting to BERG from a culpable failure or delay in notification.

14.6 For all legal relationships between BERG and the Purchaser, the law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

14.7 If individual provisions or parts of these General Terms and Conditions are or become ineffective,

the effectiveness of all other provisions remain unaffected. The ineffective provisions should be replaced by an agreement that comes closest to the contractual purpose and the will of the parties.

14.8 We take part in JanoFair. JanoFair is an alternative to the state-approved consumer arbitration boards. If we cannot amicably resolve differences of opinion arising from our contractual relationship,

JanoFair's free dispute resolution procedure is available to you. The statute of limitations for any claims is excluded for the duration of this procedure. If no agreement can be reached there either, legal recourse is still open.

14.9 Where the Purchasers of BERG are those whose registered address is outside of the European Union or Switzerland, disagreements from or in connection with this contract should be finally decided in accordance with the arbitration code of the German Institute for Arbitration (DIS). Düsseldorf is stipulated as the place of arbitration, the number of arbitrators is set as three and the language of the court is German.